

**A FINE SCHEME: HOW COURT-IMPOSED FEES  
AND FINES UNJUSTLY BURDEN VULNERABLE  
COMMUNITIES**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON CRIME, TERRORISM,  
AND HOMELAND SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTEETH CONGRESS  
FIRST SESSION

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TUESDAY, JULY 27, 2021  
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## **A FINE SCHEME: HOW COURT-IMPOSED FEES AND FINES UNJUSTLY BURDEN VULNERABLE COMMUNITIES**

**Tuesday, July 27, 2021**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Subcommittee met, pursuant to call, at 10:11 a.m., in Room 2141, Rayburn House Office Building, Hon. Sheila Jackson Lee [chair of the subcommittee] presiding.

*Members present:* Representatives Nadler, Jackson Lee, Demings, Bass, McBath, Dean, Scanlon, Bush, Cicilline, Jordan, Biggs, Gohmert, Steube, Massie, Spartz, Fitzgerald, and Owens.

*Staff present:* David Greengrass, Senior Counsel; Moh Sharma, Director of Member Services and Outreach & Policy Advisor; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian and Senior Counsel; Merrick Nelson, Digital Director; Keenan Keller, Senior Counsel; Ben Hernandez-Stern, Counsel for Crime; Joe Graupensperger, Chief Counsel for Crime; Veronica Eligan, Legislative Aide/Professional Staff Member for Crime; Jason Cervenak, Minority Chief Counsel for Crime; Ken David, Minority Counsel; Kiley Bidelman, Minority Clerk; and Carter Robertson, Minority USSS Detailee.

Ms. JACKSON LEE. The Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

We welcome everyone to this morning's hearing, "A Fine Scheme: How Court-Imposed Fees and Fines Unjustly Burden Vulnerable Communities."

Before we begin, I would like to remind Members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today. If you would like to submit materials, please send them to the email address that has been previously distributed to your offices and we will circulate the materials to Members and staff as quickly as we can.

We would also like to ask all Members to mute your microphones when you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself any time you seek recognition.

We want to continue in the Crime Subcommittee to have as many important hearings as possible with the idea towards legislation in our major theme of criminal justice reform. So, I am certainly grateful to all of the Members that are here and have been faithful in their attendance on both sides of the aisle, and of course, to our Chair who has been extremely engaged in our work and the commitment of our Ranking Member as well. It is very important. So, thank you for your presence here today, along with the witnesses who will give their testimony and they will contribute to being problem solving and criminal justice reform.

Today, the Subcommittee hears testimony on the impact that fees and fines have on families and communities. To be clear at the onset, the topic today does not cover restitution or other equitable relief for victims, but focuses costs imposed by the criminal justice entitles upon those who come into contact with the criminal justice system.

Just as an aside, let me indicate that I am very pleased that the Nadler-Jackson Lee bill, Victims of Crime Act Fix, was signed into law last week that indicates our commitment to protecting victims all over the Nation who have been impacted from crime to human trafficking. We are glad to see that movement.

Here, we talk about a different aspect of fines and fees and I believe it is important to find a solution to the oppression that comes about on individuals who are impoverished. These charges to show up at every level of the criminal justice system, there are fees for traffic detention, phone calls from jail and prison, prison commissary and fee for pre-trial release, such as electronic monitoring, supervision, and parole fees. Some of these fees can be hundreds of dollars a month which in some places can be imposed before guilt is adjudicated.

The United States Department of Justice investigation of Ferguson, Missouri that followed the tragic and violent shooting of Michael Brown, brought the imposition of fines and fees in the justice system to the forefront of our nation's public discourse. In its comprehensive report, the DOJ concluded that the Ferguson Police Department, the municipal court, and the city all depended on fines and fees to operate. Fines are monetary penalties ordered by a court to be paid by the defendant after arrest that are not restitution or other equitable relief.

Many experts argue, and I believe factually, that the fees charged by Ferguson by those levied elsewhere in the United States helped entrench poverty, exacerbate racial disparities, undermining public safety, diminishing trust in the judicial system, and as well, trapping people in cycles of poverty and punishment. After arrest, most judicial systems require to have people pay fines and fees. These fees are for minor traffic and municipal code violations, misdemeanors, and some low-lying felonies as well, and are considered resources, unfortunately, for funding the government. That is of great concern to all of us and I would make the argument that as we proceed, we will find out the basis of all of this.

To be clear at the onset, the topic today does not cover restitution, as I have already said. What the imposition of fines and fees have done is create a two-tier system of justice, those who can afford to immediately pay their court debt and exit the justice debt

system after the underlying matter is resolved. Americans without the means, by contrast, may be quickly trapped in what can be for many a spiral of mounting debts, long after their case has been settled.

The total scope of the court-imposed fees is astounding.

By some estimates, criminal justice debt in this country will exceed \$27 billion. Without reliable data, the exact amount is unknown and likely unknowable, but it still appears to be a staggering level. On a personal level, the harm caused by court-ordered debt can be grave.

I remember going to the region that our Member represents after the shooting of Michael Brown. Our Vice Chair comes from that area and has spoken often about it, Vice-Chair Congresswoman Bush. I remember going to that area and meeting women, head of households, who unfortunately were caught up in the fines and fees, lost their jobs, and were not able to take care of their family. Some finding found, disturbingly, that 83 percent of those surveyed gave up necessities like rent, food, medical bills, car payments, and child support to pay their court debt.

Communities are harmed as well. The same study found that 38 percent of respondents admitted to having committed at least one crime to pay off their court debt. About 20 percent of those whose only previous offenses were traffic violations admitted to committing more serious offenses, included felonies, to pay off their traffic tickets. This means that levying fines and fees take food out of the mouths of those who can't afford to pay them and decreases public safety by perversely incentivizing further criminal behavior.

The harm doesn't stop there. The deleterious impact of the imposition of fees and fines is most acutely felt by juveniles. Youth who have interactions with the juvenile justice system are often required to pay fines and fees. Juvenile fees, like adult fines and fees, include juvenile detention fees, fees for drug testing, and charges for physical and mental health treatment, the practice of passing fees imposed on juveniles to their parents or guardian is too common and has the effect of weighing down an entire family and particularly an impoverished family.

The woman that I met in the Ferguson community had been in jail because she was not able to pay the fines and fees. When juveniles fail to pay fines and fees, the debt may also follow them into adulthood putting them a step behind their peers, even before they have had a chance to begin their adult lives. Weighing down youth with debt at the start of their adult lives undermines the very goal of our juvenile justice system rehabilitation.

I applaud the efforts in the states to eliminate the imposition of fees and fines, but more must be done to remove these barriers to youth rehabilitation. That is why we are holding this hearing. More must be done.

One of the most troubling trends in the collection of fees and fines is the outsourcing of rehabilitative services, the entities that then charge fees for their services. This a circle that one does not want to be in. These fees which ultimately become collectible by court order or contract, are sometimes levied without the supervision of a judge. This type of arrangement can elevate private supervision companies to the position of determining not only where

the supervisee violated the terms of their supervision, whether fines should be imposed, and basically creating more debt. I am gravely concerned that this type of arrangement is both corrosive to public trust in the criminal justice system and that it incentivizes private companies to violate supervisees simply to impose or improve their bottom line. That is absolutely ridiculous and of course, tragic.

What is particularly troubling is the report's finding that private companies charge many fees for profit. Evidence shows how levying court-imposed fees and fines is not only harmful for those can't afford them, but it is a bad deal for taxpayers.

A 2019 report by the Brennan Center for Justice revealed that the counties studied, including those in my home State of Texas, spent more than 41 cents of every dollar collected from fees and fines and related in-court hearings and jail costs mean that for every dollar imposed, only 59 percent made it into State coffers. The harm these fees and fines cause does not outweigh the fraction of the charges that are ultimately collected. Our criminal justice resources should be used on other high-priority issues like preventing and responding to violent crime and reducing recidivism.

As we discuss this pressing issue, I hope to work across party lines to serve our constituents and communities better. Already State and local governments have recognized the terrible cycle of harm that justice-related fees and fines can impose and have begun enacting essential reforms. Groups across the political spectrum have expressed support for reducing and eliminating the use of fines and fees. That is why I believe this common ground is good for a discussion for this Committee where we will be working in a bipartisan manner to solve this problem and to help Americans overcome the detours in their life, but to do it under the light of justice.

I look forward to working with my colleagues to address this issue.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Arizona, Mr. Biggs, for his opening statement.

Mr. BIGGS. Thank you, Madam Chair, and I apologize for my tardiness, coming from our own conference meeting. So, I apologize.

Once again, the Subcommittee on Crime, Terrorism, and Homeland Security of the United States House of Representatives is holding a hearing on a topic that quite frankly is mainly a State and local issue. I was pleased at last week's markup where the chair expressed a willingness to work with us on a bipartisan basis on issues such as the flow of fentanyl across our Southern border and the crisis that it is creating throughout the country.

In February, news organizations announced with shock that more than 100,000 aliens had been encountered at the Southern border. The White House and Secretary Mayorkas worked overtime to deny that there was a crisis at the Southern border. This Committee did its part by refusing to hold a hearing on the Biden border crisis as we had requested a hearing.

In March, the Republican Members of the Subcommittee sent you a letter requesting that the Chair schedule a hearing so that Subcommittee Members have the opportunity to hear from and

question Biden Administration officials about how the Biden Administration's failure to secure the U.S. Southern border has allowed transnational criminal organizations, smugglers, and drug traffickers to engage in criminal activity and harm public safety. We have yet to receive a response to that letter.

Unfortunately, the number of encounters at the Southern border has grown each month since President Biden took office. Last month, more than 188,000 aliens were encountered by CBP at our Southern border. I have taken multiple groups of Members to the border over the past several months, visiting from San Diego, Calexico, Yuma, and Tucson, all the way to McAllen multiple times in most of those spots.

In each of these areas, we heard and saw the same thing. The Biden Administration's policies have created a crisis and we renew our request to hold a hearing to hear directly from Biden Administration officials so that they can be held accountable for the crisis they created.

The surge of aliens at the borders allowing drugs and other illegal contraband flow across the border because border patrol is occupied caring for aliens instead of securing the border.

I hope that our next hearing will be on this topic. After all, this is the Subcommittee on Crime, Terrorism, and Homeland Security. This Committee cannot continue to ignore the crisis at our Southern border and the impact the crisis is having throughout the nation.

I also hope the Chair will hold a hearing soon to examine the dangerous efforts to defund the police and the increase in violent crime in American cities. In June, all the Republican Members of the Subcommittee wrote a letter to the Chair requesting a hearing on these issues and we have yet to receive a response to that letter as well.

Don't get me wrong. The issue of fines and fees is a very important issue. It is one that should be looked at the State level. The Eighth amendment to the Constitution prohibits the Federal Government from imposing excessive fines, a prohibition that the Supreme Court incorporated against the states in a February 2019 decision.

Studies have found that criminal justice debt is sharply rising across the country, that associated fees lead to a cycle of debt, and that this debt could impede re-entry and rehabilitation, but this is largely a State issue. The Federal Government should not be in the business of bribing states to implement specific policies. Doing so—closes what Justice Brandeis called the laboratories of democracy. Why would we wish to do that? Let the states work these matters out on their own. In fact, many states are already taking a leading role to reform fines and fees in the criminal justice system.

When I worked in the Arizona criminal justice system, both as a prosecutor and then later as a criminal defense attorney, I will tell you that nothing was more dismaying to me to see someone be fined, for instance, \$100 and yet the surcharge which is what we all the add-ons would be about 100 percent, so they would end up paying a \$200 fine and fee for what should have been a \$100 fine per statute. My experience was routinely, judges were allowed to

waive those surcharges in Arizona. They didn't always do so, but we could advocate for that.

This year, the State of Arizona enacted one of the changes that will be advocated for at this hearing today. In April, the change was enacted in Arizona so that Arizonans will not have their driver's license suspended if they do not pay traffic fines or fees. This change is estimated to impact 30,000 people in the state. It is a pleasant change. I cannot tell you how many people used to come in to see me, both as a prosecutor, and then later in representational capacity, whose license had been suspended, so they couldn't get to work in a very broad and large metropolitan area that had very little public transportation services. They would lose their license, thus losing their job, thus being in a cycle of problems. The State has now exercised its legislative prerogatives to change that. I hope it is a positive change in the State of Arizona.

The important and salient point here is that the State legislature made that change, the corrective, without being coerced or enticed by the United States Congress. Between February and April 2021, several other states including Florida, Indiana, my own Arizona, New Mexico, and Oregon considered legislation that would eliminate fines, fees, and court costs for juveniles in the criminal justice system.

Just last month, Nevada enacted a law in the practice of suspending an individual driver's license or prohibiting an individual from applying for a driver's license because of an unpaid fine or fee. Again, last month, Colorado enacted a law to eliminate certain monetary amounts a juvenile or juvenile's parent or legal guardian in the criminal justice system is required to pay like fees for applying for court-appointed counsel. These discussions and decisions are taking place exactly where they should be taking place, in State houses across this great country.

As I noted earlier, states are the laboratories of democracy and are better equipped to make decisions regarding fines and fees implemented in the State statutes and municipal codes. In Federalist 45, James Madison wrote, "The powers delegated by the proposed Constitution of the Federal Government are few and defined. Those which are to remain in the State governments are numerous and indefinite."

Yet, here we find ourselves in this Committee in hearing after hearing or markup after markup discussing matters that are more rightly State issues. My colleagues are looking to impose their wills on the states through grant programs and I urge that practice to be discontinued. In 1905, there were four grant programs. Today, there are more than 1,300 grant programs. This is the problem I think we should be looking at.

With that, Madam Chair, I thank you for your time. Again, I apologize for being late. I look forward to this hearing today and I yield back.

Ms. JACKSON LEE. I thank the gentleman, and I thank the gentleman from Ohio Ranking Member Jim Jordan, he had an earlier meeting.

It is now my pleasure to recognize the Chair of the Judiciary Committee, Mr. Nadler, for his opening statement.



Chair NADLER. Thank you, Madam Chair. I thank the Chair for convening this hearing on a topic that has not received the attention it deserves, given the impact it has had on communities across the country. I would remind the Ranking Member that the Constitution, that was the Fourteenth amendment which it didn't have when the Federalist Papers was written which changes things a little.

Over the course of the last three decades, the increase imposition of fees and fines in the criminal justice system have had increasingly deleterious impact on individuals, families, and their communities. In recent years, states and localities across the country have imposed a variety of fees and fines on everything from minor traffic violations and municipal code violations to misdemeanors and felonies to pay for programs traditionally funded by tax revenues.

When you actually examine the numbers, it is not clear that these fees and fines are even generating any revenue. One study found that some counties spend more than 41 cents for every dollar collected in fees and fines. One New Mexico county spends as much as \$1.17 for every dollar it raises in fines and fees incurring a net overall loss.

This financial shell game does not measure the real cost to communities. Rather than improving public safety, frequently such fees and fines have only served to place an undue burden on low-income communities and communities of color. In fact, by many measures, fees and fines have had an adverse impact on public safety.

The comprehensive report of the City of Ferguson, Missouri, the Department of Justice found that the Ferguson Police Department, the municipal court, and the city, all depended on burdensome fees and fines to operate, trapping its citizens in a cruel cycle of poverty and punishment. Ultimately, what the DOJ found in Ferguson is occurring in jurisdictions across the country. This dynamic is often exacerbated by the fact that courts rarely consider a defendant's ability to pay the fines that they impose. In many cases, those that cannot afford to pay fees and fines receive warrants telling them to comply. If they cannot pay the debt to satisfy their outstanding warrants, which may increase over time, making them even more unaffordable, these individuals may even be jailed. This is, in effect, a modern debtors' prison. A person's liberty is deprived because they cannot afford their court-imposed fine or fee.

Practices like those in Ferguson and elsewhere diminish public trust in our criminal justice system and perpetuate the notion that equal justice under the law is only accessible to those who can afford it. Often these fees are imposed on the family of the person who couldn't afford to pay it and they can't afford to pay it.

At the other end of the criminal justice process, fees are often imposed on individuals after a conviction, creating yet another barrier to their reintroduction into safety. Everything we have been talking about until now is before anybody is convicted of anything. We have worked to ease the reintegration of those who are recently released from jail or prison. Burdening individuals who make the journey back to being full Members of their communities with fees and fines stands in stark contrast to these efforts.

Thankfully, change in this area is afoot. The costs imposed to individuals and families without discernible public safety benefit has

led many jurisdictions to pause imposing and collecting fees and fines. Some other jurisdictions have eliminated fees and fines altogether. In a time of deep partisan divide, I hope that this is an issue that reaches across the political spectrum to build a bipartisan consent to some reform.

I look forward to the testimony of our witnesses. I thank the Chair for convening this hearing. I yield back the balance of my time.

Ms. JACKSON LEE. I thank the Chair very much. We will recognize the Ranking Member of the Full Committee if the gentleman from Ohio arrives, and we will now move forward to the swearing in of our witnesses. We welcome all of our distinguished witnesses, and we thank them for their participation.

I will begin by swearing in our witnesses. I ask our witnesses to turn on their audio and make sure I can see your face and your raised hand while I administer the oath. I ask the witness that is present to rise so that he can be sworn in, who is physically in the room.

I will begin. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God? I need to hear the witnesses louder please that are virtual. Let the record show the witnesses answered in the affirmative. Thank you. The gentleman in the room may be seated. We will now proceed with witness introduction.

Judge Lisa Foster is the Co-Director of the Fines and Fees Justice Center. She is also the former Director of the Office for Access to Justice at Department of Justice and retired California State Judge. She previously worked as staff attorney at the Legal Aid Foundation of Los Angeles, the Executive Director of California Common Cause, was of counsel to the Law Firm of Phillips and Cohen.

Ms. Soto is a resident of Colorado where she has worked in non-profits for over two decades. She immigrated to the United States nearly 21 years ago from the State of Michoacan in Central Mexico and is the mother of a young man who had court-imposed fees imposed during a juvenile proceeding.

Timothy Head is the Executive Director for the Faith and Freedom Coalition. Prior to joining Faith and Freedom, Tim worked in public policy as the District Director for a Member of the Texas Congressional Delegation. He also has served as Chief of Staff and as Policy Advisor to Members of the Texas Legislature. Before working in public policy, Tim served as a missionary in Asia, the Middle East, and Europe and worked on staff at Antioch Community Church in Waco, Texas.

Professor Alexes Harris, Professor Harris is a Sociologist and Presidential Term Professor at the University of Washington. She has written extensively on the impact of juvenile fees and fines have on over-incarceration. Her book entitled "A Pound of Flesh, Monetary Sanctions is a Punishment for Poor People," is widely considered to be the foundational text on fees and fines.

Ms. Woog is Executive Director of Texas Fair Defense Project. Prior to her current position, she was the co-founder of the Texas Justice Initiative and served as the policy director on the Texas

House Committee on Criminal Jurisprudence in the Texas Legislature.

Please note that each of your written testimonies will be entered into the record in its entirety. Accordingly, I ask you to summarize your testimony in five minutes. There is a timer in the Zoom view that should be visible on your screen.

Judge Foster, you may begin. You are now recognized for five minutes. Welcome again.

#### **STATEMENT OF LISA FOSTER**

Ms. FOSTER. Thank you and good morning. Thank you all for holding this important hearing. Right now, as we speak, fines and fees are devastating the lives of millions of Americans.

Ms. JACKSON LEE. Judge, can you speak a little louder or we will try to that we—yes, could you speak into the mic? Thank you.

Ms. FOSTER. Can you hear me, now?

Ms. JACKSON LEE. Better.

Ms. FOSTER. Good. Across the country, people, including children, who are convicted of minor traffic and municipal code violations, misdemeanors, and felonies are assessed fines and fees.

I am hearing a lot of static. Can you all hear me?

Ms. JACKSON LEE. Yes, we can hear you. Yes, Judge, we can hear you. If you could continue, please.

Ms. FOSTER. Thank you. When people are assessed fines and fees and they cannot afford to pay the full amount imposed, they are punished with aggressive and often unconstitutional collection practices. The result today is a deeply flawed system of monetary sanctions that exacerbates poverty, widens racial disparities, and diminishes trust in our justice system.

Those fines and fees are often charged together, they are not the same and they do not serve the same purpose. A fine is a punishment for violating the law. A fee has nothing to do with punishment or accountability. Its sole purpose is to generate revenue to fund government. In other words, a fee is a clever rebrand for a tax and taxes have no place in our justice system. The justice system is a core government responsibility. It is supposed to serve everyone, and it should be paid for by everyone.

Let me give you an example of how this works. Today, in California, the fine for a simple traffic violation is often \$100, but the legislature has added an additional \$390 on top of that \$100 fine and those \$390 in fees fund everything from the Fish and Game Service to the Office of Emergency Management.

The impact of a nearly \$500 ticket on the average American is catastrophic. According to the Federal Reserve in 2019, 40 percent of Americans could not access \$400 for an emergency. If they don't have \$400, how are they going to pay a \$500 ticket?

If a person cannot afford to immediately pay the full amount they owe, jurisdictions use a host of abusive practices to coerce payment including incarcerating people who cannot afford to pay, suspending driver's licenses, vocational licenses, and vehicle registrations, making it impossible for people to legally access the very jobs they need to pay off the debt. They add late fees, and interest, and allow private collection companies to add an additional 40 percent to the amount owed. They refuse to restore voting rights until all

finest and fees are paid in full. They often keep individuals under supervision until their fines and fees are fully paid, and then they charge them an additional fee for remaining under supervision.

Fines and fees do not burden all Americans equally. Policing practices in our communities of color, coupled with the demographics of poverty in the United States means that State and local governments are attempting to wring fines and fees principally out of our most vulnerable communities, the communities hardest hit by the economic and health impacts of the COVID pandemic.

Without question, fines and fees are a State and local issue, but they are a national problem, and there are Federal solutions. Traditionally, when we think of the ways Congress can influence State policies, we think of carrots and sticks and those can be used to great effects in this arena. The Driving for Opportunity Act introduced in the House by Representatives Scanlon, Fitzpatrick, Moore, and Reschenthaler is a great example. This bipartisan bill incentivizes states to end debt-based driver's license suspension.

Similarly, in 2016, the Justice Department provided grants to five states willing to pilot fines and fees reform. Congress could do the same and cause states to innovate and engage in reform. Congress could also mandate that the National Institute for Justice study State reforms to determine best practices.

A particular problem in this arena is the dearth of data. In consultation with the Bureau of Justice Statistics, Congress could mandate that states that receive Federal funding provide data so that we can fully understand the scope of the problem and again, so the Bureau of Justice Statistics could analyze that data and tell us how to solve these problems.

Finally, the Fair Debt Collection Practices Act, which governs private debt collection, does not apply to debt owed to a state. We should not allow State and local governments to engage in conduct that we have barred in the private sector.

I urge you to take action today. We in the advocacy community stand ready to help. Thank you for the opportunity to testify and I would be delighted to answer any questions that you have.

[The prepared statement of Ms. Foster follows:]

Testimony of Lisa Foster  
Co-Director, Fines and Fees Justice Center  
Before the House Subcommittee on Crime,  
Terrorism and Homeland Security

A Fine Scheme: How Court-Imposed Fees  
and Fines Unjustly Burden Vulnerable  
Communities

July 27, 2021  
10:00 a.m.

Chairman Nadler, Ranking Member Jordan, Chairwoman Bass, Ranking Member Biggs:  
Good morning.

My name is Lisa Foster, I'm the Co-Director and Co-Founder of the Fines and Fees Justice Center, and I am the former Director of the Office for Access to Justice in the US Dept of Justice. I am also a retired California Superior Court Judge.

Fines & Fees Justice Center (FFJC) is a national hub for advocacy, information and collaboration committed to eliminating fees in the criminal legal system and making fines proportionate to the offense and the individual. FFJC engages in intensive advocacy in 4 states -- Florida, Nevada, New Mexico and New York -- and provides strategic and technical assistance nationwide. FFJC also works with and builds the capacity of community organizations to advance fines and fees reform. FFJC's online Clearinghouse has provided easily accessible information relevant to fines and fees reform to over 80,000 discrete users. In three years, FFJC has grown from a staff of 2 to a team of 18 with an annual budget of over \$3 million.

Thank you for holding this important hearing today, and thank you for providing the opportunity for me to testify.

Right now, as we speak, fines and fees are devastating the lives of millions of Americans. Across the country, people -- including children -- who are convicted of minor traffic and municipal code violations, misdemeanors, and felonies are assessed fines and fees. Those who can't afford to pay the full amount imposed are punished with aggressive - and often unconstitutional - collection practices. The result is a deeply flawed system of monetary sanctions that exacerbates poverty, widens racial disparities and diminishes trust in our justice system.

Though fines and fees are charged together, it is important to note that they are not the same nor do they serve the same purpose. A fine is a punishment for violating the law. A fee has nothing to do with punishment or accountability. Its sole purpose is to generate revenue to fund government. A "fee", in other words, is a clever rebrand for a "tax" -- and taxes have no place in our justice system. The justice system is a core government function. It is supposed to serve everyone, and it should be paid for by everyone. The Justice system is meant to protect public safety and everyone's rights and responsibilities. It can not do that if police are used as tax assessors and debt collectors, and our courts are used to impose regressive taxes on marginalized communities.

Today in California, the fine for a simple traffic violation is often \$100, but the Legislature has mandated an additional \$390 in fees that fund everything from the Fish and Game Service to the Office of Emergency Management.

The impact of a nearly \$500 ticket on the average American is catastrophic. According to the Federal Reserve, in 2019, 40% of Americans didn't have access to even \$400 dollars in an emergency. With the economic crisis caused by the pandemic, even more Americans can not afford to pay for basic necessities, let alone pay off a ticket.

And if a person cannot afford to immediately pay these fines and fees — jurisdictions use a host of abusive practices to coerce payment including:

- Incarcerating people who cannot afford to pay - despite explicit Supreme Court precedent to the contrary;
- Suspending driver's licenses, vocational licenses and vehicle registrations for those who cannot pay, making it impossible for millions of Americans to legally access the very jobs they need to pay off their debt;
- Adding late fees and interest and allowing private debt collection agencies to add up to 40% to the amount owed;
- Refusing to restore voting rights until all fines and fees are fully paid, disenfranchising millions of Americans solely because they are poor;
- Keeping individuals on supervision until their fines and fees are fully paid; and charging them with additional fees for remaining on supervision and,
- Misusing police and courts to focus on revenue generation rather than public safety -- undermining their legitimacy and endangering our communities.

Fines and fees do not burden all Americans equally. Over policing in communities of color coupled with the demographics of poverty in the United States means that state and local governments are attempting to wring fines and fees principally out of our most vulnerable communities - the communities hardest hit by the economic and health impacts of the covid pandemic.

Without question, fees and fines are a state and local issue. But they are a national problem, and there are federal solutions. Traditionally, when we think of the ways Congress can influence state policies, we think of carrots and sticks. Those can be used to great effect in this arena. The Driving for Opportunity Act, introduced in the Senate by Senators Coon and Wicker and in the House by Representatives Scanlon, Fitzpatrick, Moore and Reschenthaler, is a great example. This bipartisan bill incentivizes states to end debt-based driver's license suspensions.

Similarly, in 2016, the Justice Department provided grants to five states willing to pilot fines and fees reform. Congress could create a specific grant program to fund state innovation and encourage additional reform. Congress could also mandate that the National Institute for Justice study state reforms to determine best practices.

A particular problem with respect to reform is the dearth of data. In consultation with the Bureau of Justice Statistics, Congress could mandate that states that receive federal funding for their justice systems collect the data that we need to fully understand the scope of the problem and then direct BJS analyze that data.

Another important role for Congress is in regulating debt collection practices. The Fair Debt Collection Practices Act, which governs private debt collection practices does not apply to debt owed to a state. Criminal justice debt collection practices are both aggressive and excessively punitive. We should not allow government to engage in conduct we have barred in the private sector.

Finally, local governments are cash-strapped and revenue-constrained. Congress needs to help communities develop innovative strategies for funding essential government services - solutions that are fair and equitable. Without addressing the revenue and funding of state and local

governments, fines and fees will always be a tempting solution to what is a funding and revenue problem.

I urge you to take action. We in the advocacy community stand ready to help.

Thank you, and I would be delighted to answer your questions.



Ms. JACKSON LEE. Yes, thank you very much for your testimony. I now recognize Ms. Soto for five minutes. Welcome.

#### STATEMENT OF JULISSA SOTO

Ms. SOTO. Good morning, Chair Jackson Lee, Ranking Member Biggs, Chair Nadler, Ranking Member Jordan, and Members of the Subcommittee.

[Speaking foreign language.]

Ms. SOTO. My name is Julissa Molina Soto. As an immigrant, English is not my first language, so please bear with me. I'm a naturalized citizen from Colorado, where I raised my two kids as a single parent.

We were a close-knit immigrant family. We managed okay until my nino, or my son, Juan, got caught up in the juvenile system. Juan was 14 when police arrested him for stealing toothpaste from a supermarket. He thought we didn't have enough money to buy the toothpaste, but it was wrong, and I felt ashamed. I also had no idea what his mistake would cost us.

The court charge Juan hundreds of dollars in fines and fees, including \$60 each week for a class about the consequences of stealing. Since we couldn't afford the application fee for a public defender, I had to help him myself. Since I didn't understand English very well at that time, my 14-year-old tried to explain, translate everything to me in court.

As a child, Juan did not have any money, so I had to pay everything. I was making \$19,000 a year working at McDonalds to pay the court. I was late on rent, sacrificed things like groceries, and took a second job. I left the house every day at 5:00 a.m., and sometimes I didn't get home until after the kids were in bed.

At 15, they arrested Juan for a small amount of marijuana. I was surprised, but maybe I shouldn't have been surprised because I rarely saw him and his sister. I had no time for my kids.

This time, the court fees were even more expensive. We had to take a weekly class on communication, which cost us \$75 each time we will attend this class. If we miss a class because we couldn't afford the fee, they charge us another fee. Sometimes when I made payments, the total increased because of late fees.

I begged the court for a waiver. I offered to clean the courthouse or do other community service. After years of working two jobs, I finally paid off almost \$8,000. The cost to my family was more than just money. I couldn't be a mother that I wanted to be, and my son still resents me for not being around when he needed me.

I don't blame the system for Juan's mistake. The fees made everything much worse for my family. Last month, my State ended all juvenile fees, but most states still charge fees to youth in the legal system and their families.

My son Juan joined the U.S. Army after high school and served two tours, including Afghanistan. He is now in the Army Reserves and has a daughter of his own. However, he still struggled because of the financial hardship imposed on our family. We still struggle with communication.

My son went to fight for our country and he's a good guy. It's our turn to fight for kids and families by ending these harmful fees and fines.

Thank you for listening to me today, and I'm happy to answer all your questions.

[The prepared statement of Ms. Soto follows:]

**Testimony of Julissa Molina Soto**

**for**

**“A Fine Scheme: How Court-Imposed Fees and Fines Unjustly  
Burden Vulnerable Communities”**

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND  
SECURITY

Tuesday, July 27, 2021

Good morning Chairwoman Jackson Lee, Ranking Member Biggs, Chairman Nadler, Ranking Member Jordan, and members of the Subcommittee.

*Mi nombre es Julissa Molina Soto. Como inmigrante, el inglés no es mi primer idioma, así que por favor tengan paciencia conmigo.*

My name is Julissa Molina Soto. As an immigrant, English is not my first language, so please bear with me.

I am grateful for the opportunity to tell my story to people in a position to help millions of families like mine across the country.

I am a naturalized U.S. citizen, and I live in Aurora, Colorado, just outside of Denver. I am the proud parent of Julianna and Juan, who are now adults.

I raised my kids as a single parent. It was hard, but like most immigrant families, we were very close-knit.

We managed OK until *mi hijo*, my son, got caught up in the juvenile justice system and we faced an avalanche of fees and fines.

Juan was 14 when police arrested him for stealing toothpaste from King Sooper, our local supermarket. He took the toothpaste because he thought we didn't have enough money to buy it, but it was wrong, and I felt ashamed.

I also had no idea what his mistake would cost us.

First, Juan was fined hundreds of dollars for shoplifting one tube of toothpaste.

Second, he had to pay money to the store, much more than the cost of the toothpaste.

Finally, he had to pay administrative fees to the court, including \$60 each week for a class about the consequences of stealing.

Juan didn't have a lawyer – they said we would have to pay a fee just to apply for a free public defender – so I tried to help him myself.

But the language barrier made it very hard. I didn't understand why he was being punished so harshly, and my 14-year-old had to try to explain everything to me in court.

Of course, Juan also did not have any money. He was a child, so I was expected to pay everything.

I was making \$19,000 a year working at McDonald's, and we didn't have extra money for anything. To pay the court, sometimes I was late on rent or sacrificed other things like groceries or doctor's visits for my children.

Because of the financial difficulty, I took a second job. I left the house every day at 5:00 am, and sometimes I didn't get home until after dinner or the kids were in bed. The second job to pay the court fees made things much worse for family.

About a year later, when Juan was 15, he was arrested two times with small amounts of marijuana. I was surprised, but maybe I shouldn't have been because I rarely saw him or his sister.

This time, the court fees and classes were even more expensive. We had to take classes on effective communication every week, which cost \$75 each time. If we were not able to attend a class because we couldn't afford the fee, they charged us another fee for missing the class.

All told, I was charged almost \$8,000. Even when I made payments, sometimes the total amount I owed increased because of late fees. I begged the court for a waiver, and I even offered to clean the courthouse or do other community service.

I felt like I was being punished just because I was too poor to pay the fees.

After several years of working two jobs, I finally paid off everything. But the cost to my family was terrible. We were trapped by the fees. I couldn't be the mother I wanted to be, and my son still resents me for not being around enough when he needed me.

I don't blame the system for Juan's mistake, but I blame the fees for making it much worse. The fees made all of us feel like the system was unjust.

I'm happy to say that just last month my state abolished all fees in the juvenile system and will waive \$58 million for thousands of Colorado families. But most states still charge these regressive and racially discriminatory fees to youth and families in the legal system.

Juan joined the U.S. Army after high school and served two tours of duty in Afghanistan. He continues to serve in the Army Reserves, and he has a daughter of his own. He works very hard to be there for my granddaughter. Nevertheless, my son still struggles because of the financial hardship imposed on our family.

My son went to fight for his country twice in Afghanistan, and he is a good dad. It's our turn to fight for kids and families by ending these harmful fees and fines.

Thank you for listening to me today. I am happy to answer your questions.

Ms. JACKSON LEE. Ms. Soto, thank you for that very powerful testimony. I now recognize Mr. Head for five minutes.

#### STATEMENT OF TIMOTHY HEAD

Mr. HEAD. Good morning, thank you, Chair.

The discussion of fines and fees in our State criminal justice system is an exceedingly important topic, surprising agreement on both the political left and right. My remarks today will focus on the mounting consensus from a conservative and libertarian perspective, which is not as often discussed in our national dialog.

The power to punish is the greatest domestic power a government wields. Scholars and judges have debated the purpose of this power for centuries, settling on four fundamental justifications: Incapacitation, retribution, rehabilitation, and deterrence. A function that's notably absent from this list is revenue raising.

However, the raising of revenue has never been considered one of the core functions for a variety of reasons. We've reached a point in many cases that this is exactly what's happening. It's not illegitimated in some circumstances to expect a convicted offender to bear the cost of at least a portion of their own punishment in the criminal justice system.

When an enormous portion of local governments' budget comes from criminal justice fees and fines, we can reasonably wonder whether the quest for revenue has displaced one or all four legitimate purposes that I just mentioned.

It's not uncommon for 10–20 percent of many cities' municipal budgets to come from criminal justice fees and fines. Chicago, as an example, in 2014 derived 15 percent of its city budget from criminal justice fees and fines.

Conservatives and libertarians often wonder that a conflict of interest is developing in our criminal justice institutions. Too often, police officers, courts, and community supervision officers are put in positions to raise revenue for their respective jurisdictions through their day-to-day functions. This is something we should all be concerned about.

A conservative point of view tends to be skeptical of oversized budget—oversized government budget. In the worst cases, this issue we're discussing today is a telltale practice of oversized, over-reaching budgets.

When law enforcement officers must serve warrants for a failure to pay fees and fines, they're less available to respond to 911 emergency calls. When courts schedule appearances for failure to pay fees and fines, court proceedings for more serious offenses can be postponed or rushed to judgment.

When criminal justice fees and fines begin to ebb away at relationships between law enforcement officers and community Members, we run the risk of converting our police force essentially into tax agents.

We should not be putting our law enforcement officers and community supervision officers into such positions, which divert from their primary mission as public safety officers. It also erodes community trust, which I think is a critical element that we tend to kind of underestimate.

Now, with all of this said, I think that we have to point out that reforms have been happening in States for the last several years. We at Faith and Freedom Coalition advocate in a multitude of States. In the last three years, we've touched about 20 different States on subjects related to fines and fees, and we're seeing progress being made with on the State legislative level, and also on the local jurisdictions.

While I'm encouraged by this, I'm also concerned that Federal efforts to incent or potentially to coerce such practices may actually have an adverse effect. So, one of the reasons why we've seen the embellishment of fines and fees across the country is because we've actually had too many expenses absorbed by our local—our criminal justice system.

So, and when jail populations explode, when court dockets explode, that has to be offset, and in some way, shape, or form. Rather than raising taxes in a lot of jurisdictions, they turn to fines and fees. As the judge just mentioned, these are essentially user fees.

Unfortunately, when the Federal Government comes in with grants to this effect, it actually can create a reliance by local jurisdictions on these grants that only last for a finite period of time, three to five years. When that grant is removed or terminates, we see a very dangerous need or reliance on that money.

So, we actually effectively end up either raising taxes or raising fines and fees at the end of these practices. So, we believe that it's important for the Federal Government, for DOJ and other entities to be extremely judicious in the use of Federal grants to be able to entice these local practices. Thank you.

[The prepared statement of Mr. Head follows:]

A Fine Scheme: How Court-Imposed Fees and Fines Unjustly Burden Vulnerable Communities

U.S. House of Representatives  
House Committee on the Judiciary  
Sub-committee on Crime, Terrorism, and Homeland Security  
July 27, 2021

Written testimony of Timothy Head, Executive Director, Faith & Freedom Coalition

The discussion of the use of fines and fees in our state criminal justice systems is an exceedingly important topic with surprising agreement on the political left and right. My testimony will focus on the issue from a conservative or libertarian perspective, as it is not discussed as much in the national dialogue on this issue.

To begin, the power to punish is the greatest domestic power a government wields. Scholars and judges have debated the purpose of this power for centuries, settling on four fundamental justifications: incapacitation, retribution, rehabilitation, and deterrence. One function that is notably excluded from this list is raising revenue. Revenue raising has never been considered one of the legitimate purposes of the criminal justice system. However, for a variety of reasons, we have reached a point where in many places this is exactly what is happening.

Courts may impose fines and fees, which are found in state statutes and municipal codes. The terms fines and fees are often discussed interchangeably, but their purposes and implications differ. *Fines* serve as both a deterrence and punishment for an individual upon conviction (e.g., court fines associated with a misdemeanor or felony charge) whereas *fees* are generally levied to support operational expenses in the criminal justice system (e.g., court clerk fees). The Eighth Amendment to the Constitution prohibits the federal government from imposing “excessive fines,” a prohibition that the Supreme Court incorporated against the states in a February 2019 decision.

It is not illegitimate, in some circumstances, to expect a convicted offender to bear the cost of at least a portion of their own punishment in the criminal justice system. But when an enormous portion of a local government's budget comes from criminal justice fees and fines, we can reasonably wonder whether the quest for revenue has displaced those four legitimate purposes of the criminal justice system mentioned above.

It is not uncommon for 10 to 20 percent of many cities’ municipal budgets to come from criminal justice fees and fines. Chicago, the third largest city in the United States, derived 15 percent of its budget in 2014 from criminal justice fees and fines.

Conservatives and libertarians often worry that a conflict of interest has developed in our criminal justice government institutions. Too often, our police officers, courts, and community supervision officers are put in positions to raise revenue for their respective jurisdictions through the execution of their day-to-day functions in the criminal justice system. This is something we should all be concerned about. Conservative or libertarian points-of-view tend to be skeptical of big government. In its worst cases, the issue we're discussing today is a telltale practice of big government.



When law enforcement officers must serve warrants for a failure to pay fees and fines, they are less available to respond to 911 emergency calls. When courts schedule appearances for failure to pay fees and fines, court proceedings for more serious offenses can be postponed or rushed to judgment. When criminal justice fees and fines begin to ebb away at relationships between law enforcement officers and community members, we run the risk of converting our police force into tax agents. We should not be putting our law enforcement officers and community supervision officers into such a position. This diverts from their primary mission as public safety officers and erodes community trust.

States have been taking a leading role to reform the use of fines and fees in the criminal justice system. Various states have recently considered legislation and others have enacted laws to reform their fines and fees. Between February and April 2021, several states including Florida, Indiana, Arizona, New Mexico, and Oregon considered legislation that would eliminate fines, fees, and court costs for juveniles in the criminal justice system. In June 2021, Nevada enacted a law to end the practice of suspending an individual's driver's license or prohibiting an individual from applying for a driver's license because of an unpaid fine or fee. Also in June 2021, Colorado enacted a law to eliminate certain monetary amounts a juvenile or a juvenile's parent or legal guardian in the criminal justice system is required to pay, like fees, for applying for court-appointed counsel.

A few years ago, the American Legislative Exchange Council passed model legislation, urging states to prioritize victims' restitution in fees and fines as research has found no direct correlation between the payment of state criminal fines and lower recidivism rates. This model legislation focusing on restitution for victims has been modified and passed in several states.

A permutation of the use of fines and fees in our criminal justice system involves the use of civil asset forfeiture with seized assets utilized in equitable sharing programs. When federal and state law enforcement combine forces in an investigation or a state law enforcement agency requests that the federal law enforcement agency adopt a seizure, the forfeiture investigation becomes a federal matter. Equitable sharing allows federal law enforcement to share the forfeited assets with their state and local law enforcement partners. Restrictions under Department of Justice policy require that the shared funds must be used for a law enforcement purpose only.

Obviously, there are cases where civil forfeiture has been abused by both state and federal law enforcement agencies. However, there are areas where civil forfeiture can be useful. In cases involving romance scams, online lottery scams or business email compromise scams where a money mule is used to facilitate the transfer of funds from a domestic account to a foreign account, criminal forfeiture is usually not a good vehicle because the originator of the fraud cannot be identified, or the fraudster is outside the jurisdiction of the state or the United States.

Over the past decade, more than half of all states have passed some form of asset forfeiture reform, mostly in response to media investigations and reports by civil liberties groups that found the practice frequently ensnared innocent owners. Four states have abolished civil forfeiture completely while another twelve have allowed civil forfeiture to proceed through civil

courts only after prosecutors obtain a criminal conviction. Many of the states that have reformed their civil forfeiture statutes have included restrictions on how forfeited assets may be used. The carrot and stick approach of equitable sharing has undermined state efforts to reform their civil forfeiture laws by allowing state and local law enforcement to circumvent their own state civil forfeiture laws unless, like Maine, the participation in equitable sharing is prohibited outright.

While not necessarily a grant program, equitable sharing takes on certain aspects of a federal grant program in that it allows federal law enforcement agencies to share forfeited property owned by the federal government with state law enforcement agencies. This asset sharing policy scheme can produce perverse incentives for federal and local law enforcement agencies to seize assets. Some states that have enacted reforms to civil forfeiture are requiring forfeited assets to go into specific funds like those set aside for education, so as to ameliorate the motive of supplementing state law enforcement budgets and sticking to the purported purpose of forfeiture: deterring crime and taking away criminals' profit motive.

Well beyond the scope of equitable sharing, federal grant programs have increased significantly over the past several decades. There were an estimated 1,386 federal aid programs in 2018—triple the number of programs in existence in the 1980s. Noticeably, in the 1960s, President Lyndon Johnson expanded the federal aid system and created hundreds of new programs for housing, urban neighborhoods, and education. The number of federal aid programs quadrupled from 132 in 1960 to 530 in 1970. Using federal taxpayer dollars to influence state and local activities is a dubious use of taxpayer money and contradicts the Founding Fathers' framework established in the Constitution. States are the laboratories of democracy and are better equipped to make decisions regarding fines and fees implemented in their state statutes and municipal codes than the federal government.

A 2010 study by economists at George Mason University found that for every dollar given to the states through a federal grant program, there was an eventual increase in state and local taxes or fees of 33-to-42 cents per dollar. The initial grant incented and paid for the expansion of a government service. But once the initial grant ran its course, the service had become inculcated in the city's or county's service portfolio, increasing the felt need to perpetuate the service beyond the life of the original grant.

In conclusion, these three general recommendations could help to curb the overuse of fines and fees in our criminal justice system by states and local jurisdictions. First, jurisdictions generally should limit fees and fines to an amount adequate for satisfying retributive interests and for restoring victims. To go much beyond that, law enforcement and the courts become little more than mechanisms for raising revenue via criminal justice fees and fines. Second, jurisdictions should provide for alternative mechanisms when people cannot pay fees and fines. Community service is a simple example, though there are several larger states like Arizona, New York, North Carolina that do not allow for such a provision. Jurisdictions could also offer workable payment plans. And third, a large part of the national conversation of criminal justice reform surrounds the reduction in incarceration rates in the U.S. In the 1980s, when prison censuses began to climb notably, it became very expensive, very quickly. We started looking for ways to pay for it, often turning to criminal justice fees and fines as the solution. As we see the nation's overreliance on incarceration begin to wane, we may also see a reversal on some of the

needs and incentives for overusing fines and fees. While overuse of fines and fees has several undesired effects on our justice system, it is advisable for the U.S. Department of Justice to function as a data gatherer and policy repository, rather than a national policy engineer through the grantmaking process.

Ms. JACKSON LEE. Thank you, Mr. Head, for your testimony. Now, I recognize Professor Harris for five minutes.

#### STATEMENT OF ALEXES HARRIS

Ms. HARRIS. Thank you for the invitation to engage in this conversation with you today.

Few aspects of the criminal legal system vividly illustrate the two-tiered nature and extent of punitive excess of the United States as does the practice of monetary sanctions. I will spend my time summarizing a few emergent research findings.

It is important to note that in some states, judges have actually been granted discretion to assess criminal defendants for the cost of their public defender. In other words, an individual who cannot afford to pay a lawyer is expected to pay for the lawyer that the State is constitutionally required to provide.

Many jurisdictions charge per-night fees for jail or prison space, as well as costs associated with probation and other court-mandated requirements, such as electronic home monitoring. In most states, all monetary sanctions must be paid in full before a person is released from court supervision.

In many states, people are unable to vote until all costs are paid. They must remain in constant communication with court officials about their living and financial arrangements.

As noted earlier, people lose their drive related to nonpayment. Then, if apprehended while driving with a suspended license, even to a job that might enable them to pay their debt, they face renewed incarceration and further financial sanctions.

It is also important to note that monetary sanctions are frequently impose in addition to incarcerative time. So, on their sentencing day, people may get several days to months to years of jail or prison time, and in addition receive thousands of dollars in fines, fees, court costs, and restitution.

So, even when people have served their incarceration and their probation time, they still remain under the control of the criminal legal system. Many of these people are unemployed, unhoused, suffer from mental health problems and chemical addiction disorders. As a result, they become tethered to the criminal legal system for the rest of their lives because of this debt.

As mentioned, in the juvenile legal system, we know that nearly every State imposes costs on children, many of whom cannot legally work, enter into contracts, and are mandated to attend school. Recent reports have found that these costs include billing parents or guardians for child support fees related to detention in youth and jail and youth authority facilities.

Families are also charged administrative costs, as we've heard, for court processing and appearances. In addition, youth are charged fees and fines and restitution.

Recent research using data from a large cohort of adolescent court-involved youth found that significantly greater percentages of non-White youth still owed monetary sanctions upon case closing relative to White youth counterparts. The study also found that penal debt significantly increased the odds of youth recidivating.

In a recent study, we found statistically that poor communities and communities that are non-White carry more penal debt than

non-impoveryished or White communities. Furthermore, this debt is statistically associated with increases in future poverty, especially for Black neighborhoods. It appears that penal debt makes poor communities even poorer.

A final area I will highlight relates to revenue generation, policing, and traffic stops. Because local governments have come to rely so heavily on revenue generated from fines and fees, traffic citations have become a tool for profit-making.

This pocketbook policing encourages police to their authority and discretion to make pretextual traffic stops. These are judgment calls that often involve such things are faulty taillights, expired license tags, or an air freshener improperly suspended from the rear-view mirror.

The racially disparate impact of monetary sanctions intensifies the aggressive policing of Black and Latinx neighborhoods because these racial groups typically find it more difficult to pay.

The policy implications from existing research are clear. The Federal Government should use its power to attach conditions to grants related to State law enforcement and justice practices. We need Federal leadership.

Such conditions should mandate states to require current ability-to-pay hearings prior to assessment of fines and fees, desist from imposing fees on minors and their families for court processing and relieve all outstanding juvenile debt, discontinuing suspending driver's licenses related to nonpayment of court-imposed fines and fees and reinstate all prior licenses that have been suspended related to nonpayment, prohibit courts from issuing warrants related to nonpayment of court fines and fees, impose caps on the amount of revenue local and State jurisdictions can generate via fines and fees.

States must annually report, by jurisdiction, the amount of fines and fees, sentence owed, and related surcharges, interest and payment fees owed and collected.

In closing, the system of monetary sanctions reinforces the United States' two-tiered system of justice, one for people with financial means, and one for people without. Within a society riven by so much inequality, a system of punishment based on economic resources can never be fair or just. We have alternative punishment and rehabilitative options; we just need the will to make these changes.

Thank you for your considerations of my remarks.

[The prepared statement of Ms. Harris follows:]

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U.S. House Judiciary Committee  
 Subcommittee hearing on fines and fees  
 Tuesday, July 27, 2021

Few aspects of the criminal legal system vividly illustrate the two-tiered nature and extent of punitive excess of the United States as does the practice of monetary sanctions. This punishment schema, also called legal financial obligations (LFOs), requires financial payments, from most people who make contact with the criminal legal system. In addition to fines associated with specific offenses, people are charged for their court processing, for DNA testing, for required post-sentencing rehabilitative programs (such as drug and alcohol assessment and treatment), and even in some instances for the costs of incarceration itself. To apply Travis and Western's notion of punitive excess (2021); this system of monetary sanctions highlights the relationship between the state and citizen in this country, particularly when the citizen is poor or racialized, as one of control, marginalization, and perpetual punishment.

In most states, all monetary sanctions must be paid in full before a person is released from court supervision. In many states, people are unable to vote until all costs are paid. They must remain in constant communication with court officials about their living and financial arrangements. Not only are monetary sanctions frequently appended to jail or prison time, so are costs associated with probation and other court mandated requirements, such as electronic home monitoring. A recent report relying on attainable data from just 25 states approximates that in total \$27.6 billion is owed in monetary sanctions (Hammons 2021).

Since the 1980s, paralleling the massive growth in convictions and incarceration, state and local jurisdictions expanded the types of fees and fines demanded of people convicted of traffic violations, juvenile offenses, misdemeanors, and felonies (Harris 2016). At the same time, the cost to local jurisdictions of the expanding conviction and incarceration rate accelerated as well. As a result, policymakers turned to the very people convicted to pay for the costs of their own processing and punishments. For example, Washington State has a mandatory victim penalty assessment that must be charged for each misdemeanor (\$250) and felony (\$500) conviction, even if there is no direct victim of the crime in question (Harris et al 2010).

In some states, judges have actually been granted discretion to assess criminal defendants for the cost of a public defender — in other words, an individual who cannot afford to pay a lawyer is expected to pay for the lawyer that the state is constitutionally required to provide. Furthermore, many jurisdictions charge per night fees for jail or prison stays. For those too poor to pay, interest, per payment fees, and nonpayment penalties become penal debt that hangs like a cloud over their families' lives.

Many states also allow cities and counties to engage in contracts with private collection companies, and when debt is transferred to these agencies, additional collection fees are assessed — as much as 50 percent of the principal owed. These public-private debt collection arrangements affect the individuals' credit scores, limit their employment opportunities, and inhibit their ability to access housing, education, and transportation. The price of services such as telephone calls, electronic communication, video visitation, and health care include kickbacks from the private companies to local jurisdictions — the price the collection agencies pay to win exclusive contracts.

## RESEARCH

In researching monetary sanctions for my book I gathered as much data as possible to better understand this system (Harris 2016). I reanalyzed prior interviews conducted with colleagues (see Harris et al. 2010 and 2011), conducted a set of five case studies of people who owed legal financial obligations, conducted court ethnographies in five counties, interviewed judges, prosecutors, defense attorneys and court clerks in Washington State, and analyzed a sample of individual level court automated data from the Washington State Administrative Office of the Courts (AOC).

Elaborating on the unequal racial and class contours of LFOs, *A Pound of Flesh* (Harris 2016) was the first book-length study to highlight the pernicious and permanent consequences for those who are saddled with criminal legal debt. My book describes a punishment continuum, whereby counties across Washington State unevenly interpreted and applied laws regarding LFOs. Infused by decision-makers' own values of personal responsibility, accountability, and redemption, and depending on the county where one was sentenced and monitored, individuals carrying legal debt faced punishments of varying intensity and duration.

Since publishing my book in 2016, I have also completed serving as the principal investigator on a five-year project that replicated and expanded my prior work. The Multi-State Study of Monetary Sanctions (funded by *Arnold Ventures*) was in partnership with seven researchers at universities in California, Georgia, Illinois, Missouri, Minnesota, New York and Texas (Shannon 2020). With our research assistants, we conducted 519 interviews and surveys with people who owed monetary sanctions, 447 interviews and surveys with people who worked in the court system (judges, prosecutors, defense attorneys, clerks, and probation officers). We also conducted over 1,900 hours of courtroom ethnography to document firsthand how LFOs are sentenced, discussed, and monitored in real time. Furthermore, we attempted to gather individual level court automated data within these states for statistical analyses. Below I outline main themes that have emerged thus far from both my book project and the Multi-State Study, as well as other research that has been conducted by scholars across the U.S..

## FINDINGS: PAINFUL CONSEQUENCES

When people are unable to pay penal debt, they become entangled with the criminal legal system — already stressed by daily financial choices they must make regarding food, health, and childcare — they incur additional legal consequences. In many states, people lose their right to drive; then, if apprehended while driving with a suspended license (even to the job that might enable them to pay their debt), they face renewed incarceration and further financial sanctions.

### I. Tethered to the Criminal Legal System

Consequences accelerate, tethering people to the criminal legal system: not only are people who are behind in their payments sent regular court summonses, but in some instances even those making their monthly payments must regularly report to the court about their employment and living arrangements. This requires many to miss work and to find childcare and transportation (particularly if their driver's licenses are suspended) just to attend court hearings. When people have been summoned to court but failed to receive notice or chose not to attend out of fear of incarceration, bench warrants are issued for their arrest (Modjadidi 2019).

It is important to note that monetary sanctions are frequently imposed in addition to incarcerative time – so on their sentencing day people may get several days to months to years of jail or prison time, and *in addition* receive thousands of dollars in fines, fees, court costs and restitution. As a result, even when people have served their incarceration and probation time, they remain under the control of the criminal legal system. Many people – those who are unemployed, unhoused, suffer from mental health problems and chemical addiction disorders – become tethered to the criminal legal system for the rest of their lives because of this debt.

## **II. Individual, Family, and Community Consequences**

Monetary sanctions affect not just adults who encounter the criminal legal system – but also minors, people’s children and families, and their communities. Much of these consequences are disproportionately borne by people of color and people who are poor.

### ***Children and Monetary Sanctions***

In the juvenile realm, from emergent research we know that nearly every state imposes costs on children – many of whom cannot legally work or enter into contracts, and at the same time are required to attend school. Recent reports have found that these costs include billing parents or guardians for “child support” fees related to detention in youth jail and youth authority. Families are also charged administrative costs for court processing and appearances. In addition, youth are subject to fines, other fees, and restitution (Uppal 2020; Feierman 2016). We have found in my recent five-year study that much of this debt is carried by youth into adulthood – and people face criminal legal contact and punishment related to these unpaid juvenile fines and fees.

Other research, using data from a large cohort of adolescent court-involved youth, found that significantly greater percentages of non-white youth still owed fines, fees and/or restitution in general upon case closing relative to their white youth counterparts. The study also found that this penal debt significantly increased the odds of a youth recidivating (Piquero and Jennings 2016).

Some jurisdictions have begun to end fees imposed on youth. In 2018, California abolished all administrative fees imposed in juvenile delinquency cases. Other jurisdictions, such as Orleans Parish in Louisiana and the states of Nevada, New Jersey and Maryland all limited or abolished juvenile civil fines and court costs, as well as limited fiscal charges to parents and guardians. The Los Angeles County Board of Supervisors went one-step further in 2018, and stopped collecting on unpaid juvenile penal debt, which discharged over \$89 million in debt.

Not only are youth directly charged for costs related to juvenile court involvement, but children and other family members also shoulder the burden of parental penal debt (deVuono-Powell et al. 2016; Katzenstein and Waller 2015). Research illustrates how people who owe court costs make difficult decisions to trade off needed items, food and medical care for their children in order to meet their monthly court payments (Harris 2016). Parents face difficult decisions when owing penal debt.

### ***Community Debt***

In a paper currently under peer-review, my colleagues and I use longitudinal data from the Washington State Administrative Office of the Courts (AOC), and the American Community Survey (ACS) to examine the debt burden carried at the neighborhood level. We find monetary



sanctions are more burdensome in high-poverty and non-white neighborhoods, and that per capita rates of LFOs sentenced are associated with increased future poverty rates across all neighborhoods, with an especially large association among Black neighborhoods (O'Neill, Kennedy and Harris, under review). That is, poor communities, and communities that are non-white carry more penal debt than non-impooverished or white communities do. Furthermore, this debt is statistically associated with increases in future poverty – especially for Black neighborhoods. It appears that penal debt makes poor communities even poorer.

### *Racial disparities*

Arrests, convictions and punishments are disproportionately borne by communities with higher rates of poverty and BIPOC (Black, Indigenous and People of Color) residents (Gaston 2018; Lanfear, Beach, & Thomas 2018; Roberts 2004). BIPOC, particularly Black people, are more likely to experience police contact, arrest, incarceration, and supervision than are White people (Barnes et al. 2015; Lundman & Kaufman, 2003; Phelps 2017). Monetary sanctions are also differentially distributed along racial and ethnic lines, and Black and Latino defendants receive harsher financial penalties at sentencing than do White defendants (Harris, Evans, & Beckett 2011; Ruback 2004), and reason to believe post-sentencing LFO outcomes differ by race and ethnicity due to pervasive racial and economic inequalities. Research has also shown that the LFOs that accrue from criminal traffic cases can be especially sticky, leading to new cases of driving on a suspended license, and even incarceration, especially for Black drivers (Edwards and Harris 2020).

### **III. Policing, Fines, Fees, Arrests and Warrants**

An additional legal consequence related to monetary sanctions is the over policing that plagues so many communities of color. Because local governments have come to rely so heavily on revenue generated from fines and fees, traffic citations have become a tool for profit making. This “pocketbook policing” (Pacewicz & Robinson 2020) encourages police to use their authority and discretion to make “pretextual” traffic stops — judgement calls that often involve such things as a faulty taillights, expired license tabs, or an air freshener improperly suspended from the rearview mirror. The racially disparate impact of monetary sanctions intensifies the aggressive policing of Black and Latinx neighborhoods because these racial groups typically find it more difficult to pay (Harris et al. 2011; Henrichson et al. 2017; Henricks and Harvey 2017; Piquero and Jennings 2017; Sances and You 2017; U.S. Commission on Civil Rights 2017). The criminal legal monitoring and collection of fines, fees, and other costs extends and deepens the punishment of non-payers and individuals reentering society, and warps and delegitimizes the very legal institutions that legislate and implement these practices (Harris et al. 2010; 2011; Harris 2016; Pattillo and Kirk 2021).

Moreover, when police use their discretion to decide whom they are going to pull over, they pull over Black drivers disproportionately more often than white drivers. Black drivers are consequently searched one and a half to two 2 times more often than are white drivers (Pierson, Simoiu, & Overgoor, 2020). Costly citations for fines and fees fall most heavily on those least able to pay them. These fines and fees lead to perpetual state surveillance, wealth extraction, and the social control of people who are poor and racially marginalized. I have come to refer to this hyper surveillance and social control by the criminal legal system as a predatory practice (Harris 2020).

#### IV. Two-Tiered System of “Justice”

The system of monetary sanctions reinforces the United States’ two-tiered system of “justice”: one for people with financial means and one for people without. Within a society riven by so much inequality, a system of punishment based on economic resources can never be fair or just. This “coerced financialization” perfectly and purposefully places the freedom of poor and racially marginalized people on a perpetual layaway plan (Pattillo and Kirk 2021). It’s a system so fully embedded in our criminal legal system that the American Rescue Plan Act, passed by Congress in March 2021 to alleviate the financial pains of the Covid-19 pandemic, allowed private collectors and courts to seize the \$1,400 stimulus grants from people burdened with unpaid penal debt, either public or private.

#### POLICY IMPLICATIONS

Set within the context of the criminal legal system, this system of punishment is nuanced, but it is not complicated. Policy implications are clear. In fact, recognizing this system as a purposeful mechanism designed by both policy and statute allows us to clearly see that it can be dismantled. State and local policymakers and court leadership should establish this set of guiding principles and practices.

- (1) Statutes must be revised to discontinue monetary sanctions associated with felony convictions. There is no reason that someone sentenced to incarceration should also receive financial penalties, much less be charged daily room and board fees. Fines and fees charged to people who are sentenced to live behind bars, without access to employment and a living wage, are *prima facie* excessive.
- (2) Monetary sanctions are also excessive when imposed on children, the unemployed, the unhoused, or those suffering from mental health or chemical addiction disorders. Burdening people who are unable — and who may never be able — to pay fiscal debts is a cruel punishment. Ability to pay hearings must be mandated at the outset of sentencing of all court imposed fines, fees, surcharges, and restitution.
- (3) Fiscal penalties attached to lower-level offenses that do not call for incarceration, such as traffic violations or misdemeanors, must be calibrated to individuals’ abilities to pay the total sum within, say, two years. Countries around the world rely on day fine systems that calculate a score based on both the severity of the offense and the daily wage of the convicted individual.
- (4) State and local jurisdictions must discontinue the practice of suspending driver’s licenses related for nonpayment of any court fine and fee and cease issuing warrants related to nonpayment.
- (5) State and local jurisdictions, along with law enforcement agencies, must review and revise practices related to pretextual traffic stops. Less than one month after the police killing of Daunte Wright in Brooklyn Center, Minnesota, the mayor and city council enacted an ordinance to create a new Department of Community Safety and Violence Prevention. Among other things, this restructuring of police duties transferred the responsibility of traffic enforcement to an unarmed civilian unit.

- (6) States must require all jurisdictions to report (without names attached, to protect individual privacy) all monetary sentences and fees, regularly and systematically, to a state-monitored database. Such data should include amounts collected, amounts waived, means of levy (fine, fee, surcharge, restitution, etc.), and any additional charges imposed related to nonpayment, such as late fees, interest, and collection fees.
- (7) The federal government should use its power to attach conditions to grants related to state law enforcement and justice practices. Such conditions should mandate states to:
  - Require current ability to pay hearings prior to assessment of fines and fees
  - Desist from imposing fees on minors and their families for court processing and relieve all existing outstanding juvenile debt
  - Discontinue suspending driver's licenses related to non-payment of court imposed fines and fees and reinstate all prior licenses that have been suspended related to non-payment
  - Prohibit courts from issuing warrants related to non-payment of court fines and fees
  - Impose caps on the amounts of revenue local and state jurisdictions can generate via fines and fees
  - Annually report by jurisdiction (e.g., county, city, township, etc.) the amounts of fines and fees sentenced, owed, and related surcharges, interest and payment fees owed and collected

The evidence is clear: The American system of monetary sanctions is a purposeful punishment, which results in extracting wealth from individuals, their families, and communities — a pound of flesh that many just do not have left to give. It is a system that valorizes those “deserving” of redemption (people with financial means) and stigmatizes those deemed not deserving of redemption (people living in poverty). Impoverished citizens who are sentenced to monetary sanctions clearly understand their relationship to the state — they are forever indebted, forever subjected to court and police surveillance, control, and punishment. We have alternative punishment and rehabilitative options; we just need the will to make these changes.

Thank you for your consideration of my remarks.

Sincerely,



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Ms. JACKSON LEE. Thank you very much, Professor Harris, for your testimony. We're now delighted to yield five minutes to Ms. Woog. Welcome.

#### STATEMENT OF AMANDA WOOG

Ms. WOOG. Thank you, Chair and Committee Members, for this opportunity this morning. Good morning. My name is Amanda Woog. I am the Executive Director of the Texas Fair Defense Project. We are a legal organization that fights to end the criminalization of poverty.

In each year, our attorneys represented hundreds of people who are saddled with criminal debt that they cannot afford. We help people get out of this debt and on with their lives. We then work with our clients to take what we've learned from these experiences and push for greater systemic changes.

Criminal fines and fees uniquely burden people who are low income, and even a few hundred dollars of court debt will turn into a high-stakes, years-long struggle to keep those expenses from landing them in jail. Because our policing and criminal legal systems disproportionately target Black people and other communities of color, fines and fees also operate as a form of racialized wealth extraction.

Criminal court debt keeps people from getting back on their feet financially, living in neighborhoods with better schools, better jobs, and obtaining basic necessities for themselves and their families. When I get a traffic ticket, and unfortunately, I've gotten a few in my lifetime, I get frustrated with myself, my husband teases me, and I pay the ticket. Life goes on.

The same cannot be said for people who are living at the economic margins. With 40 percent of people in the United States unable to afford \$400 in an emergency, a simple traffic ticket can quickly snowball into more debt, warrants, a driver's license suspension, and even arrest and jail.

Several of our clients have gone on to serve as advocacy fellows with TFDP telling their stories to lawmakers to help them understand how these policies can trap people into a perpetual cycle of debt, fear, and the constant threat of jail.

Emily is a current client at TFDP who had more than \$5,000 in criminal legal debt from her court case. She recently shared with testimony with the Texas legislature. She said,

"The debt makes me feel like I'm drowning. I cannot afford things for my children. My son wants to go to summer band camp, but I have to tell him it's not possible. If he wants a new deodorant at the grocery store, I have to tell him no, you have to finish every last drop of your old deodorant first.

I'm the sole caretaker for two children, and all my money goes towards them. I never spend anything on myself. I embarrassingly wear shirts with holes in them. Anything I receive goes to my children.

To pay my fines and fees, and I've tried everything. I even donated plasma to pay them. But every time I see my

probation officer, it's never enough, and all she asks about is the money.

This debt makes me feel like I can't be a good mother to my children because I can't provide for them like I want to. They should not have to pay the consequences for my actions. And the system should be focusing on rehabilitating people, not on debt that just makes it harder for me and my family."

Perversely, criminal legal debt becomes more expensive when a person cannot pay because additional fees for nonpayment or even fees for entering a payment plan end up adding up, and the cycle feels impossible to break for the people who are in it.

We help people resolve their criminal legal debt through legal representation, but there's a huge gap in services that we simply cannot fill. Many people with criminal legal debt never had an attorney to help them if the underlying cause was a traffic ticket or a low-level misdemeanor offense.

For people who did have did have assistance of counsel in their underlying criminal cases, the assistance ended when the criminal case was adjudicated, and the impacts of the debt continue.

On average, it takes our attorney ten hours from start to finish to get a person's debt handled. Without a lawyer, most people with criminal legal debt have no realistic chance of getting unaffordable court fines, fees, and costs waived or reduced. That's why we need structural changes that do not create these unmanageable debt burdens to begin with.

Fines and fees are also an unreliable revenue source for local and State jurisdictions. A recent study by the Brennan Center for Justice found that, in addition to thwarting rehabilitation and failing to improve public safety, criminal court fees and fines also fail at efficiently raising revenue.

Because punitive approaches to debt collection hamper people's ability to obtain employment and support their families, they likely have an even broader negative financial impact than these studies suggest. Here in Texas, we've been chipping away at user pay systems that significantly harm low-income communities, and I want to conclude by highlighting a recent bipartisan success.

For years, Texas assessed a surcharge on some driving offenses in addition to the fine penalty. When a person did not pay the surcharge, which they often did not even know about, their driver's license would be suspended. These surcharges kept millions of low-income Texans in debt without licenses.

In 2019, the surcharge was repealed with support from a diverse coalition, including ourselves, the Sheriffs Association, ACLU, Hospital Association, Goodwill Industries, and Texas Public Policy Foundation. More than \$2 billion in surcharges were relieved, and 1.5 million people were immediately able to get their driver's license back.

This was a bipartisan victory. The bill passed unanimously in both houses of the Texas legislature, and it was signed into law by Governor Abbott.

More recently, Texas has abolished a number of juvenile fines and fees just in the past legislative session, again, with bipartisan support.

Thank you so much for the opportunity to speak today, and I'm happy to answer any questions from the Committee.  
[The prepared statement of Ms. Woog follows:]



**WRITTEN TESTIMONY OF AMANDA WOOG, EXECUTIVE DIRECTOR,  
TEXAS FAIR DEFENSE PROJECT, TO THE HOUSE COMMITTEE ON THE  
JUDICIARY**

**Subcommittee on Crime, Terrorism, and Homeland Security  
*A Fine Scheme: How Court-Imposed Fees and Fines Unjustly Burden Vulnerable  
Communities***

**July 27, 2021 10:00 AM**

Good morning, Chairman Nadler, Ranking Member Jordan, Chairwoman Bass, and Ranking Member Biggs.

**1. INTRODUCTION**

My name is Amanda Woog. I am the Executive Director of the Texas Fair Defense Project, a legal organization where we fight to end the criminalization of poverty. Each year, our attorneys represent hundreds of people who are saddled with criminal debt they cannot afford. We help them get out of debt and on with their lives; we then work with our clients to use what we have learned from their experiences and push for greater systemic changes.

Thank you for the opportunity to speak about fines and fees, and to emphasize the importance of dramatically rethinking our current fee-based criminal legal system. Criminal fines and fees uniquely burden people who are low-income, and even a few hundred dollars of court debt will turn into a high-stakes, years-long struggle to keep those expenses from landing them in jail. Because our policing and criminal legal systems disproportionately target Black people and other people of color, fines and fees also operate as a form of racialized wealth extraction.

Today I will highlight some client stories to show how unaffordable court debt uniquely and unjustly burdens people and their families who live at the economic margins. This debt keeps them from getting back on their feet financially, living in neighborhoods with better schools, getting better jobs, and obtaining basic necessities for themselves and their families. I will highlight how fines and fees, and the punitive measures that are often used to collect or enforce them are not only unjust, but also unreliable and counterproductive. Finally, I will speak to how Texas has made bipartisan strides recently to change some fines and fees systems, recognizing this revenue structure simply does not work – for low-income communities as well as the systems they are intended to fund. As our experience in Texas shows, this should not be a partisan or polarizing issue: there can and should be broad consensus that punitive user-pay systems simply do not work when they uniquely target low-income people.

## 2. CLIENT STORIES

When I get a traffic ticket, and unfortunately, I've gotten a few in my life, I get frustrated with myself, take some teasing from my husband, and pay the ticket. Then life goes on. The same cannot be said for people who are living at the economic margins. With 40% of people in the United States unable to afford to pay \$400 in an emergency, a simple traffic ticket can quickly snowball into more debt, warrants, a driver's license suspension, and even arrest and jail. I cannot overstate how much devastation can be wrought by debt that might not seem like a lot to you or me, but is everything for the people who simply do not have the money to pay it.

Over the years, attorneys at TFDP have represented many clients who faced extreme hardship because of court debt that they could not afford to pay. After we get their debt waived or reduced, their lives improve dramatically. Several of these clients have gone on to join us in our fight against the criminalization of poverty by serving as advocacy fellows, telling their stories to state and local legislative bodies to help lawmakers understand how these policies can trap someone in a perpetual cycle of debt, fear, and the constant threat of jail.

Here are some stories of people we have helped get their lives back on track by clearing their fees, fines and court costs. I've also appended some testimony prepared by our client advocates on recent Texas bills, in which they explain what court debt has meant to them and their families.

We represented a woman in North Texas who couldn't get her driver's license because she owed over \$5,000 for a misdemeanor DWI case from over a decade earlier. She had not driven a car in ten years because her criminal legal debt prevented her from getting a license. So she sat at home, without friends, surviving off of disability payments. She lives in a rural part of Texas, miles away from anything, so relied on her local county mental health worker to take her to the grocery store. We worked with her to get the fines waived so that now she can get her driver's license back. Now that she can renew her license, she will be more self-sufficient and less reliant on county employees going above and beyond their normal job duties just so she has food in her house.

We represented a veteran in Central Texas who owed thousands of dollars in court costs for a crime that he went to prison for. His debt prevented him from being able to afford an apartment where he and his kids could

live together – instead, he rented a room from family while his kids stayed exclusively with their mother in public housing. He rode his bicycle to and from his job working the overnight shift at a fast food restaurant, with few prospects for job advancement. Now that his court costs have been waived, he's eligible to get his commercial driver's license, which would open up a whole new set of good job prospects for him.

We represented a man in North Texas with serious mental illness who was convicted of one property crime and owed thousands of dollars in fines and costs. He was on a fixed income of approximately the Federal Poverty Level. Because of those fines and costs, he relied on donations from his local church to have food at the end of the month. He told us that if not for the charity of his local church, he would have killed himself out of financial desperation. Now that we've gotten his costs waived, he is in a more stable financial position.

But judges do not have to waive court costs. Just this week one of our attorneys was contacted by the family member of a man who is currently incarcerated. He has been admitted to an in-prison work training program in which he can learn to drive commercial vehicles and get his commercial driver's license. The only catch is that his driver's license must be otherwise valid for him to start the program. The only thing standing in the way of his driver license is \$430 in unpaid court costs. He has petitioned the court to waive the costs but was told that the judge "does not do that," and his request was denied. Less than \$500 is all that stands in his way of learning a skill that might help propel him away from the criminal legal system. Instead, that chance has been denied because the laws are discretionary and judges can deny motions and requests for cost waiver, as a matter of policy or for no reason at all. This unjust system leaves poor Texans trapped under their criminal legal debt.

### **3. BREAKING OUT OF THE CYCLE**

Criminal legal debt creates a cycle of poverty where if a person cannot pay their fines, fees, and costs, they become more fees and costs, then driver's license suspensions, warrants, arrests, and jail time. Perversely, the debt becomes more expensive when a person cannot pay because they are charged additional fees for nonpayment or even for entering payment plans. This cycle feels impossible to break for the people trapped in it. They typically are not told of their legal options for waiver, reductions or community service, and it often feels like whatever they do they only amass more debt and more

exposure to the criminal legal system. As our client stories show, this has profound effects on the financial, mental and physical health of individuals, and their families and communities. At Texas Fair Defense Project, we help people resolve their criminal legal debt through legal representation, but there is a huge gap in legal services that we simply cannot fill. Many people with criminal legal debt never had an attorney to help them, if the underlying cause was a traffic or low-level criminal offense. For people who had assistance of counsel in their underlying criminal cases, that assistance ended when the criminal case was adjudicated, even though the impacts from the debt continued.

Attorneys at Texas Fair Defense Project represent people with court debt they cannot afford to help them obtain waiver, reduction, community service or a manageable combination of the three. On average, it takes one of our highly-trained attorneys about 10 hours from start to finish to get someone's court debt handled. Many people facing these expenses have no idea how they could even get the debt waived or reduced. They go to court and explain that they don't have the money, but all that happens is they get put on a payment plan. Frequently they're not even permitted to speak with a judge, instead getting shunted off to a court clerk who has authority to modify payment plans but not to waive debt. Without a lawyer, most people with criminal legal debt have no realistic chance of getting unaffordable court fines, fees and costs waived or reduced. That's why we need structural changes that do not create these unmanageable debt burdens to begin with.

#### **4. UNRELIABLE AND UNJUST REVENUE SOURCE**

In addition to the ways fines and fees unjustly target low-income communities and operate as a form of racialized wealth extraction, fines and fees are also an unreliable revenue source for local and state governments. Jurisdictions can spend significant amounts of money attempting to collect criminal legal debt, including through punitive means such as driver's license suspensions and jailing, which only drive people further into poverty, trauma and desperation. A recent [study](#) by the Brennan Center for Justice found that "in addition to thwarting rehabilitation and failing to improve public safety, criminal-court fees and fines also fail at efficiently raising revenue."

As part of their report, the Brennan Center did a deep dive look at ten counties in Texas, Florida and New Mexico. In their examination of my own home county of Travis County Texas, where Austin is located, they found that "in 2017 misdemeanor and traffic courts in Travis County, Texas, spent nearly \$4.8 million on in-court proceedings and staff costs related to fee and fine compliance. In addition, the county spent more than \$4.6 million on jailing those who failed to pay fees and fines and those allowed to earn jail credit against amounts owed."

Punitive approaches to debt collection only drive people further into poverty and have not been shown to help with revenue collection. Because these approaches hamper people's ability to obtain employment and support their families, they likely have a broader negative financial impact than these studies even suggest. Fines and fees policies should make it easy for the people who are able to pay to pay, and easy for the people who cannot pay to otherwise take care of the debt through waiver, reduction or in some cases community service.

## 5. BIPARTISAN LEGISLATIVE VICTORY: THE "DRP"

Here in Texas, we have been hard at work chipping away at the massive court bureaucracy and user-pay systems that significantly harm low-income people for minimal financial return. While the Texas Legislature's membership has politics as diverse as the state itself, with plenty of well-documented disagreements, making the criminal legal system more fair and effective is a goal where we have been able to work together. Perhaps nowhere is that more clear than in the area of criminal legal debt, which harms low-income Texans without increasing public safety or even providing stable revenue. The recent repeal of the Driver Responsibility is a significant example of bipartisan success toward reducing the harm caused by fines and fees.

### *Driver Responsibility Program*

The Driver Responsibility Program (DRP) assessed a special court cost on certain low-level criminal cases – tied largely to what we consider poverty offenses – and was used to fund rural trauma hospitals. When a person did not pay the "surcharge" associated with the program, which they often did not even know they owed, their driver's license would be suspended for nonpayment. This program trapped millions of low-income Texans in debt without driver's licenses – which are practically a necessity in Texas for obtaining stable employment and housing. The repeal was supported by a diverse coalition, including ourselves, the Sheriff's Association, ACLU, Hospital Association, and Goodwill. The bill was so broadly supported because the program was so harmful to low-income communities, it was not a reliable source of revenue for the hospitals, and it did nothing for public safety. When the DRP was repealed in 2019, more than \$2 billion in debt was relieved and nearly 1.5 million people were immediately eligible to legally drive again.

This was the definition of a bi-partisan victory. In the State House, the DRP repeal bill that was eventually signed in 2019 had a Republican lead author, with three more Republican and one Democratic authors, and eighteen co-authors spanning the ideological spectrum. That bill was passed unanimously in both chambers of the Texas legislature and signed by Governor Abbott.

## **6. CONCLUSION**

Fines and fees create a debt trap for low-income people, particularly Black people and people of color, that can be impossible to get out of, and which has a profound effect on their families and communities. They provide an unreliable source of revenue and have cascading economic effects in a community by keeping low-income people on the economic margins and unable to provide for themselves and their families. For these combined reasons, fines and fees is an area ripe for bipartisan reform, as recent successes and Texas show.

Ms. JACKSON LEE. Thank you very much for your testimony. Now, we will begin the questioning under the five-minute rule. I will begin by recognizing myself for five minutes.

I am very appreciative of the testimony of the witnesses and would ask them, because I have so many questions, for their succinct response so that we can get as much from you as we need to. As I indicated, this is an important hearing so that we can legislate, and we need to hear you, of course.

Judge Foster, let me start with you. In your testimony you specifically make the point about fines and fees are not placed upon Americans equally. In over-policing communities, the most vulnerable people of color are really targeted, as one of our witnesses has indicated.

So, I am interested in what you believe Congress can do to stop that tide as relates to State actions to a certain extent.

Then what would be the level of fines and fines levied on the Federal level, and how that can be steered in the right direction so most vulnerable are not the victims twice in terms of trying to get justice in the justice system. I say that meaning that everyone accused and not accused are supposed to have justice in our system.

So, if you would respond to that, I'd appreciate it.

Ms. FOSTER. Certainly. Let me start with the question of racial disparities. There's no question, as I think you and many of the witnesses have recognized, that there are racial disparities in the justice system, and those are pronounced when it comes to monetary sanctions.

One of the most important things that Congress could require immediately is data. We don't have very good data from local and State courts about exactly what's going, and that's quintessentially something that the Congress can do, and the Federal Government has an important role.

As I mentioned, the Bureau of Justice Statistics exists for the purpose of gathering justice system data from the states, as well as the Federal Government. We don't have good data about the racial disparities in the system.

The best data that we have, a meta-analysis that was done at Stanford, demonstrates unequivocally that Black drivers are stopped 20 percent more frequently than White drivers.

Once stopped, Black drivers are given a ticket 20 percent more often than White drivers. Hispanic drivers are given a ticket 30 percent more often than White drivers. We know that about some places, we don't know that about every place. So, data is a key factor.

The second is once we have that data, to make sure that we're enforcing the laws that prevent police from disparately policing. Some of that may also include some experimentation. We're learning around the country about alternatives to an armed police officer enforcing traffic laws, for example.

One of the things that the Justice Department could do is study places around the country that are moving to alternatives, unarmed traffic enforcement, and determine whether that works. Whether that's something that other states could adopt.

Those are things that the Federal Government does best. It looks at what's happening in the states and can study those, gather data, and then promulgate best practices to the rest of the country. So that would be my answer with respect to some of the things Congress could do on racial disparities.

Ms. JACKSON LEE. Thank you very much, Judge, thank you so very much. Let me—I appreciate it, and I will—we'll continue our dialog. Let me ask these questions to Professor Harris.

In just the past few years, there have been a number of high-profile police stops that involve warrants based on a fee or fine. Can you describe how nonpayment of a fee or fine can lead to an arrest, and therefore a loss of income? I'm going to give three questions back-to-back, so that is for you, Professor Harris.

Ms. Soto, let me acknowledge that your son is serving his Nation in the United States military. We thank you for that, which should be an indication of what happens to vulnerable people, and yet these people are worthy Americans, Americans committed to serving their nation, or committed to being citizens that contribute, but, yet they're burdened by these fees.

So, you did so much to support your son. Can you describe in greater detail what the long-term consequences of the imposition of fees and fines had on your family?

Then Ms. Woog, thank you for exposing Texas and what continues to go on right now today as we sit here in this room. It sounds as if they have been moving in the right direction. Can you describe in greater detail how Texas and other states have reformed how fees and fines are imposed, even in the backdrop of so many who have suffered?

So, the first answer should come from Professor Harris, then Ms. Soto, and then Ms. Woog.

Professor Harris, can you be concise in your response, please? Thank you.

Ms. HARRIS. Thank you for that question. To be concise, when people, in some—the one key issue is that there's disparities in the ways in which fines and fees are implemented and monitored across counties, municipalities, and states. So, there's no consistent set of practices.

In general, in many jurisdictions, if people do not pay their fines and fees, they will have a warrant issued. Many times, people will receive a summons to appear in court if they have not made payments.

If they fail to receive the summons, a recent study published in the UCLA Law Journal found that many people do not even receive the summons because they're of wrong addresses, homelessness, or people receive the summons and they're scared to get incarcerated because they don't have the money.

So, if they don't appear at the summons, a warrant will be issued. These warrants do not indicate to the police if it's a violent issue or if it was just a nonpayment, and then people can be pulled over.

We've seen when we have that contact in our communities, a recent study found that Black men have a one-in-one-thousand lifetime risk of being killed by police, one-in-one-thousand lifetime risk. So, this warrants related to nonpayment increase the likeli-



hood of interactions with police, increase fear, anxiety, trauma, and even the possibility of death in our communities.

Ms. JACKSON LEE. Thank you so very much. Ms. Soto, the impact on your family, the long-term impact on your family.

Ms. SOTO. The long-term impact on my family, like I said in my testimony, is that my son still resent me, and my kids resent me because I was never there for them. He got arrested twice after that for having small amount of marijuana. So, I couldn't be the mother that I could be.

No communication whatsoever. I was working 5:00 a.m.–10:00 p.m. trying to pay these fees, and in the meantime, we got evicted, also, once because I had to choose between paying those fees or paying my rent. We are still paying those consequences because still my kids resent me, still till now. They say Mom, you were always working, you were never there for us.

So, I feel that by punishing not only the youth, you're punishing the whole family, the family as a whole. His sister struggled from that, I struggled from that. What happened with these fees is they do separate families. You separate families because somebody has to pay these fees.

These kids are young, so it imposes all those fees on the parent. Sometimes when you're a single parent, you're going to struggle to make it on your own.

Like I said, I'm not blaming the system for Juan mistakes, I'm not blaming the system for me being a single mom. I am asking the system to take into account on all those things. You're trying to fix one thing by imposing those fees. Supposedly, maybe the youth are going to learn the lesson, but—

Ms. JACKSON LEE. Thank you.

Ms. SOTO. You're separating families and evicting families.

Ms. JACKSON LEE. Thank you so very much. We have to respond. Ms. Woog, very quickly, thank you.

Ms. WOOG. Thank you. To your question about the reforms that we're seeing on the State level in Texas, I mentioned the repeal of the driver responsibility program, the abolition of some juvenile fees.

We've also seen advances made to provide procedural protections for people, such as requiring ability-to-pay hearings. The problem with reforms like that is a lot of times they require the assistance of counsel. As I mentioned, there's a huge gap in legal services.

So, some of the exciting experimentation that we're seeing in Texas actually occurs in a lot of local jurisdictions, where we're seeing local courts and counties trying to think of more effective and efficient ways to collect debt initially. What is really important to tie to that, is to allow people who are unable to afford to pay to their debt to get into court quickly and resolve it by other means.

Ms. JACKSON LEE. Thank you.

Ms. WOOG. That kind of experimentation is one of the more exciting pieces.

Ms. JACKSON LEE. Thank you so very much.

Ms. SPARTZ for five minutes.

Ms. SPARTZ. Thank you, Madam Chair.

I agree with Judge Foster that the justice system is a core government function. I also don't disagree that California has very

high taxes and fees. I also agree that fees are really a form of regressive taxation.

The issue I have generally, is it the responsibility of the Federal Government to bail out states with bad policies? Because ultimately if you do that, you punish the states with good policies and make them pay to the states with bad policies.

It seems like it should be responsibility of constituency of that State to elect good government, to not vote for them and replace this with better people if they don't like policies, or they can move to other states. We see a lot of this happening.

I also, as the gentleman from New York mentioned that the Fourteenth amendment didn't exist during the time of the Federalist Papers. The Sixteenth amendment didn't exist too. The Supreme Court recently also confirmed that excessive fines clause applies to states. It seems like this issue should go through the judicial system; it would be a better approach.

If the Federal Government must do something, it seems like we talk about carrots. I think Judge Foster, you mentioned the carrots and sticks. What kind of sticks?

Maybe we should look, states maybe shouldn't get some money for something. Instead of giving them the money, what is examples of few sticks you can give us to make sure that the states having bad policies are not doing that instead of keep bailing them out?

Ms. FOSTER. Certainly. Let me just say that I gave California as an example, but every single State in the country and many municipalities within those states charge excessive fines and fees. This is a problem everywhere; it is not just a problem in some states. It's a problem in every state.

Ms. SPARTZ. Is it just the scale of problems is large in some states? I don't disagree with you. Just quickly if you can briefly mention few things.

Ms. FOSTER. Sure. With respect to sticks, let me give an example. When Congress determined that, for example, the speed limit across the country should be reduced to both conserve gas and protect lives, Congress did that by conditioning the receipt of Federal dollars on states lowering the speed limit. That's a stick.

We could do the same thing with respect to the money that Congress has appropriated through Justice Department grants, money that goes to the states. We could say to the states, for example, if you want those Federal dollars, then you have to collect data.

If you want those Federal dollars, you have to stop suspending driver's licenses for unpaid fines and fees. If you want those Federal dollars, you need to do an ability-to-pay assessment before you impose a fine. If you want those Federal dollars, you have to provide counsel, which the Constitution requires, without charging people a fee for that counsel.

Those are the kinds of sticks that the Federal Government could use.

Ms. SPARTZ. It just seems the government, all we do is just collect data and data and data and report, and it seems like I've been in State government too and we just collect data. It's all about collection data. I would like to get really real policies we have discussion.

Maybe, Mr. Head, you have some other thoughts that you have, you know, from libertarian perspectives. Because I do understand that excessive fines really can have adverse effects on people who do not have money. The system can be stacked against someone who doesn't have the money and it's very bureaucratic and expensive.

So, what other thoughts you have what is there is a function Federal Government should have, or should be really just purely go through the judicial system?

Mr. HEAD. Well, I wouldn't say that I have specific examples of sticks. What I actually am even more concerned about is the inadvertent, in essence, sticks that end up coming by dangling carrots and finding overreach.

So, when you, as I mentioned earlier, we have burgeoned our either Federal or State justice systems over the last particularly 40 years, 35–40 years, and have introduced different Federal grants to either study or to implement programs or to provide services. The grants are never offered in perpetuity. It's a three, five, sometimes maybe like a seven-year grant.

When that is removed, the expectation for that service or facility doesn't go away. Also, the expectation in the community doesn't go away.

Ms. SPARTZ. It's a big challenge. I mean, the dependency, and it's a huge challenge. I've seen it as a State legislator, I've seen it. Is there any solution that really should go through the judicial system and government should be sued in a court of law for its excessive fines, which apply to the states, too?

So, do you believe that is the best approach and how it should be dealt with?

Mr. HEAD. Well, it's a longer, a longitudinal approach. The reason why I spend much more time in State capitals than I do here is because that's actually where we see the most effective and most innovative practices.

Ms. SPARTZ. People just have to elect better legislators, I guess. Better governments in the States.

Mr. HEAD. Call for better policies on that at either local or State level.

Ms. SPARTZ. Thank you, I yield back.

Ms. JACKSON LEE. I thank the gentlelady. I'm now pleased to recognize the Chair of the Full Committee, Mr. Nadler, for his questions for five minutes.

Chair NADLER. Thank you, Madam Chair.

Ms. Soto, you should blame the system because it has greatly failed you and your family.

Judge Foster, the use of fines and fees has increased steadily over the last three decades. Despite a constitutional requirement do so, many courts never consider a person's ability to pay. In what ways does the failure to conduct ability-to-pay determinations affect the assessment of monetary sanctions?

Ms. FOSTER. So, it's very direct. When fines and fees are imposed, for example, on a family like Ms. Soto, rather than looking at what her economic circumstances are, the court just imposed a flat amount.

Let me talk specifically about fines. The purpose of a fine is—began as an alternative to incarceration. The purpose is really both to punish and deter, right. If you think about a speeding ticket, we want you to think about it before you speed again. So, we want the monetary sanction to be enough so that you'll think twice before speeding, but not enough to bankrupt you and your household.

That argues for the amounts to vary based on one's economic circumstance. So, instead of doing that and saying to someone who's in Ms. Soto's economic circumstance, a minimum wage worker who, at \$7.25 an hour, the Federal minimum wage, is \$400 for a ticket is literally a week and a half of work.

Instead of saying we're going to charge you a flat amount, you say what's it going to take to deter that person from doing that consequence again, and it's less. Their economic—

Chair NADLER. Do you think that fines maybe should be assessed at a percentage of a person's income?

Ms. FOSTER. I think that would make a lot of sense. That's exactly what happens in most of Western Europe and South America. We can do it in lots of different ways. We can say this is the standard amount, and if you earn less than that we're going to adjust the fine to compensate for the fact that you earn less than that. That would make a lot more sense.

Chair NADLER. Thank you. Professor Harris, compared to the amount they actually receive, courts spend massive sums of money attempting to recoup unpaid debt and create severe hardship while doing so, even garnishing poverty-level income, like SSI benefits, to obtain payment.

These fees then compound. Additional sanctions are imposed as a result of failure to pay, prolonging both spending on recoupment and hardship for debtors. What are the financial and human costs of pursuing unpaid debt? I think we've heard some of that—

Ms. HARRIS. My research team and I interviewed over 500 people across eight states and in the U.S. The system is pervasive across the U.S., I do want to establish that. What we found is that people receive a bill, their monthly bill owed to the court, and every month for many people that bill increases because of payment costs, collection fees, and interest.

So, when that bill keeps coming and people feel like they're drowning, it creates a great deal of stress, emotional stress and strain on families and children, where some people say they can't go outside, they're afraid to go outside because they'll be arrested.

It creates this tethering to the criminal legal system where people have to constantly report. They have to miss work to report to court to sit in the courtroom all day, right. Many courtrooms require you to report at eight, but your case might not be heard till three.

It'll put strain on garnishment of your wages. Even tax, income tax can be taken for payment in many jurisdictions. So, it's a great deal of economic, emotional hell, and criminal legal stress for individuals and their families.

Chair NADLER. Thank you. Ms. Woog, monetary sanctions raise serious constitutional questions, including around the Eighth amendment prohibition on excessive fines, Fifth and Fourteenth

amendment due process rights, and Sixth amendment right to counsel.

How do court fees affect due process and the Administration of justice for people who are accused of crimes, and how do you think we might fashion the kind of legislation that we were talking about a moment ago to base fines on peoples' incomes in a way that wouldn't violate constitutional rights?

Ms. WOOG. Thank you for that question. You're right that in theory there are multiple constitutional amendments that should protect people from criminal debt burdens having the kind of impacts that we've discussed today.

Unfortunately, in our work what we see is that most people don't have access to assistance of counsel to actually assert those constitutional claims and challenge their criminal legal debt from a constitutional perspective.

So, I agree with Judge Foster that it's really on the front end that we need to be addressing these issues. We're right to keep focused on the constitutional issues, but in these millions of individual cases where people do not have counsel typically, it's very, very difficult to assert those rights.

So, I agree that on the front end we need to be thinking about how to issue fines that are commensurate with what a person is able to pay and doesn't create the kind of burden that carries with them for years and really has this devastating impact on themselves and their families.

Chair NADLER. Thank you. Madam Chair, I ask for unanimous consent for a letter from the National Legal Aid and Defender Association describing the harm fees and fines may impose and a report from the Brennan Center for Justice entitled, "The Steep Costs of Criminal Justice Fees and Fines," that undertakes an empirical analysis of the fiscal effects of fines and fees be entered into the record.

Ms. JACKSON LEE. Mr. Chair, without objection, so ordered.  
[The information follows:]



**CHAIR NADLER FOR THE RECORD**

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July 26, 2021

The Honorable Sheila Jackson Lee  
Chair  
U.S. House Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and  
Homeland Security  
2141 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Andy Biggs  
Ranking Member  
U.S. House Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and  
Homeland Security  
2141 Rayburn House Office Building  
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**Re: Court-Imposed Fines and Fees**

The National Legal Aid & Defender Association (NLADA) commends the members of the Subcommittee on Crime, Terrorism, and Homeland Security for their focus on court-imposed fines and fees. These monetary sanctions cause serious, unnecessary harm to individuals and communities across the United States, distribute that harm disproportionately onto low-income people and people of color, and create perverse incentives that cause justice systems to entangle increasing numbers of people within them. It is time for Congress to draw attention to this problem and to take action to address it, and to undertake further inquiry into fines and fees that originate outside of the criminal court setting.

NLADA, founded in 1911, is America's oldest and largest national nonprofit organization dedicated to the excellence in the delivery of legal services for people who cannot afford to pay for counsel. NLADA serves as a national collective voice for civil legal aid and public defense, with more than 700 organizations that collectively represent thousands of attorneys and advocates who provide services to low-income and underserved individuals in the 50 states, the District of Columbia, American Samoa, Micronesia, Puerto Rico, and the U.S. Virgin Islands. NLADA members and its governance structures include representatives from the client communities who are served by these providers and who are directly impacted by court fines and fees.

The imposition of monetary sanctions on people by courts - and other justice system entities - in order to punish certain behavior (fines) or shift the economic cost of justice system functions (fees) has increased considerably in the past three decades. The number of people who are assessed to owe fines or fees, the dollar amounts of them, and aggressiveness of collection strategies have all grown.<sup>1</sup> These comments will discuss the many negative consequences of this,

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<sup>1</sup> Karin D. Martin, Karin D., Smith, Sandra Susan, and Still, Wendy. *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, Harvard Kennedy School Program in Criminal Justice Policy and Management, January 2017



foremost of which is the hardship they cause for low-income people and moreover, the fact that this hardship is both unnecessary and counterproductive.

Monetary sanctions routinely push Americans into poverty and prevent them from escaping it: even Supplemental Security Income – a benefit only available to those who are already very poor – can be garnished to obtain payment on fees. These fees can then compound, as additional sanctions are imposed as a result of failure to pay, generating further collection costs<sup>2</sup> and prolonging a situation in which a person must choose between paying debt and affording basic necessities.<sup>3</sup> Aside from criminal penalties for nonpayment, numerous collateral consequences make it more likely that a person will experience future criminal legal system involvement. Unpaid fines and fees affect a person's credit, making it more difficult for them to obtain the basic needs, like employment or housing, that will allow them to keep themselves out of poverty. A common pattern is that person unable to pay court debts resulting from a civil infraction, like a traffic ticket, will then be punished with the suspension of their driver's license. Unable to legally commute to their job, they are even less able to pay their fines and fees, or else risk arrest and criminal punishment for driving without a valid driver's license.<sup>4</sup>

This is short-sighted and inherently discriminatory on the basis of wealth. In theory, an accurate determination of a person's ability to pay could mitigate some of the consequences of this by preventing the assessment of monetary sanctions on those who simply do not have funds, though it would not protect those who can pay but only at the cost of disproportionate financial hardship. Unfortunately, even this basic measure – required by statute in almost all states, and by the constitution in some cases<sup>5</sup> – is in practice non-existent. In 2019, the Brennan Center reported that “from watching more than 1,000 court proceedings in seven jurisdictions, the authors found that judges rarely hold ability-to-pay hearings.”<sup>6</sup> Many jurisdictions do not even have written procedures for how to conduct such an assessment, leaving decision-making highly subjective and frequently inaccurate. Judges should be able to account for the totality of a person's circumstances when *lowering* costs, but in the other direction this provides them the ability to impose unrealistic costs on the basis of personal biases or other erroneous information.

<sup>2</sup> In San Francisco, for example, “more than 80 percent of [court] fees are not collected within six years, and instead hang over these families as debt.” Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government San Francisco Office of the Treasurer & Tax Collector, City & County of San Francisco, p.6, 2018 ([https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019\\_1.pdf](https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf))

<sup>3</sup> Ruback, R. B., *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 Minnesota Law Review, 2015 (<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1268&context=mlr>)

<sup>4</sup> See Marsh, A., *Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees*, in 2017 Trends in State Courts: Fines, Fees, and Bail Practices: Challenges and Opportunities 20, 22 (Deborah W. Smith, Charles F. Campbell & Blake P. Kavanagh, eds., 2017, (<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/784>).

<sup>5</sup> See *Bearden v. Georgia*, 461 U.S. 660 (1983) (holding, inter alia, that it is a violation of the Equal Protection Clause of the Fourteenth Amendment for a court to revoke probation and jail someone for failure to pay a fine and make restitution if the person has made bona fide efforts to make payment and the court has no justification for imprisoning them other than their poverty and inability to pay).

<sup>6</sup> Matthew Menendez, *The Steep Costs Of Criminal Justice Fees And Fines*, Brennan Center for Justice, 2019 ([https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf)). This report states that “from watching more than 1,000 court proceedings in seven jurisdictions, the authors found that judges rarely hold ability-to-pay hearings.”

Ruback, R. B., *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 Minnesota Law Review, p.1805, 2015 (<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1268&context=mlr>)

Fines and fees are also disproportionately harmful to people and communities of color. Disparate impacts on Black, Latinx, tribal, and other communities of color are evident throughout our civil and criminal legal systems, and there are direct and indirect reasons why this is the case with respect to fines and fees. Sanctions are imposed at far higher rates than in affluent white communities in part because law enforcement disproportionately targets communities of color,<sup>7</sup> and as discussed below, the ability to generate revenue from fines and fees has contributed to this excessive enforcement. Moreover, when a person of color receives a fine or fee, they are ordered to pay on average a higher amount than a similarly situated white person.<sup>8</sup> This has a number of consequences at the aggregate level, primarily by contributing to a racial wealth gap, which at the same time makes even nominally equal monetary sanctions disproportionately harmful.<sup>9</sup>

User fees in the criminal legal system also have the particularly pernicious consequence of affecting the ability of a defendant to access programs and services that will affect the outcome of their case, making them a barrier to an individual's rights to due process. Even those provided a public defender *because they have already been deemed indigent* can face fees for that very public defender. As a result, many forego counsel altogether,<sup>10</sup> and when they do not, this can pit an attorney's legitimate need to be paid for their services against the financial needs of their client. In 45 states, courts routinely assess counsel fees onto indigent defendants.<sup>11</sup> Related fees, such as expert witness fees or transcript fees, similarly limit the ability of low-income people to exercise their rights. This issue exists at many other stages of a person's involvement with a justice system. Commonly, the successful completion of probation and pretrial programs requires the payment of various fees that individuals may be unable to pay, making their ability to avoid incarceration contingent on amount of money they have.

A through line of the various harms described above is that they are counterproductive to the objective of reducing criminal legal system involvement. This is not entirely unintentional. Serious questions about fines and fees have been raised increasingly in recent years, and a major part of the answer to them was inserted into public understanding by the Department of Justice investigation into the Ferguson Police Department in 2015. That investigation found that the city relied on the receipt of future fines and fees to fund large portions of its budget and that formal practices and informal norms strongly encouraged law enforcement officers to "aggressively enforce the municipal code", explicitly for the purpose of revenue generation rather than any concern about public safety. Ferguson was not an outlier in this total corruption of the purported

<sup>7</sup> See, e.g., New York Law School Racial Justice Project, *Driving While Black and Latinx: Stops, Fines, Fees, and Unjust Debts* (2020) ([https://digitalcommons.nyls.edu/racial\\_justice\\_project/8](https://digitalcommons.nyls.edu/racial_justice_project/8))

<sup>8</sup> See, e.g., Phil Hernandez, Laura Goren & Chris Wodicka, *Set Up to Fail: How Court Fines & Fees Punish Poverty and Harm Black Communities in Virginia*, Commonwealth Institute for Fiscal Analysis, Jan. 14, 2021 (<https://prodci.wpengine.com/research/set-up-to-fail-how-court-fines-fees-punish-poverty-and-harm-black-communities-in-virginia-2>)

<sup>9</sup> See generally Larry Schwartz, *The Role of Courts in Eliminating the Racial Impact of Criminal Justice Debt*, in 2017 Trends in State Courts: Fines, Fees, and Bail Practices: Challenges and Opportunities 14 (Deborah W. Smith, Charles F. Campbell & Blake P. Kavanagh, eds., 2017), <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/784>.

<sup>10</sup> Hannah R. Gourdie, Note, *The Guiding Hand of Counsel, for a Price: Juvenile Public Defender Fees and Their Effects*, 62 Wm. & Mary L. Rev. 999 (2021), <https://scholarship.law.wm.edu/wmlr/vol62/iss3/6>, and Devon Porter, ACLU of Southern California, *Paying For Justice: The Human Cost of Public Defender Fees* (2017), <https://law.yale.edu/sites/default/files/area/center/liman/document/pdfees-report.pdf>

<sup>11</sup> National Public Radio, *State-by-State Court Fees*, May 19, 2014, (<https://www.npr.org/2014/05/19/312455680/state-by-state-court-fees>). This survey studies the 43 states that have statewide statutes mandating counsel fees. Mississippi and Nebraska do not have state mandated counsel fees, but routinely assess these fees under county statutes.

purpose of fines and fees, or in its consequence being the increasingly excessive use of enforcement that has been the subject of growing public anger.

Additionally, it is important to be clear that in many cases, the use of fines and fees is actually a highly inefficient way to generate revenue. Even if it were not, this would not justify the human cost described above. However, research indicates that monetary sanctions are frequently not effective at meeting even these illegitimate objectives, with low rates of successful collection<sup>12</sup> and with some jurisdictions spending more pursuing collection than ever generating in revenue.<sup>13</sup> The entire endeavor is a widespread and counterproductive driver of human hardship, and NLADA would be pleased to offer assistance as Congress considers its role in addressing this urgent challenge.

Jo-Ann Wallace  
President & CEO  
National Legal Aid & Defender Association

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<sup>12</sup> See for example a finding of the San Francisco Superior Court that collection rates for probation cases was as low as 9%(Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government San Francisco *Office of the Treasurer & Tax Collector, City & County of San Francisco*, p.6, 2018)

<sup>13</sup> For example, a study of fines and fees in Texas and New Mexico found that counties spent more than 41% of fines and fees revenue just on in-court hearings, with one country spending 117% of fines and fees revenue on costs to levy and collect fines and fees (see: Matthew Menendez, *The Steep Costs Of Criminal Justice Fees And Fines*, Brennan Center for Justice, 2019, p14) and a similar study in the California juvenile system that found over 70% of all fee revenue is used to collect money, with Santa Clara County (San Jose) spending 112% of fee revenue on collection (see: Stephanie Campos-Bui et al., *Making Families Pay: The Harmful, Unlawful, And Costly Practice Of Charging Juvenile Administrative Fees In California*, University of California, Berkeley School of Law Policy Advocacy Clinic, p19, 2017, <https://ssrn.com/abstract=2937534>)

# The Steep Costs of Criminal Justice Fees and Fines

A Fiscal Analysis of Three States  
and Ten Counties

**By Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison**

Produced with research assistance from the Texas Public Policy Foundation  
and Right on Crime PUBLISHED NOVEMBER 21, 2019

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## Executive Summary

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**T**he past decade has seen a troubling and well-documented increase in fees and fines imposed on defendants by criminal courts. Today, many states and localities rely on these fees and fines to fund their court systems or even basic government operations.

A wealth of evidence has already shown that this system works against the goal of rehabilitation and creates a major barrier to people reentering society after a conviction.<sup>1</sup> They are often unable to pay hundreds or thousands of dollars in accumulated court debt. When debt leads to incarceration or license suspension, it becomes even harder to find a job or housing or to pay child support. There's also little evidence that imposing onerous fees and fines improves public safety.

Now, this first-of-its-kind analysis shows that in addition to thwarting rehabilitation and failing to improve public safety, criminal-court fees and fines also fail at efficiently raising revenue.<sup>2</sup> The high costs of collection and enforcement are excluded from most assessments, meaning that actual revenues from fees and fines are far lower than what legislators expect. And because fees and fines are typically imposed without regard to a defendant's ability to pay, jurisdictions have billions of dollars in unpaid court debt on the books that they are unlikely to ever collect. This debt hangs over the heads of defendants and grows every year.

This study examines 10 counties across Texas, Florida, and New Mexico, as well as statewide data for those three states. The counties vary in their geographic, economic, political, and ethnic profiles, as well as in their practices for collecting and enforcing fees and fines.

### Key Findings

- Fees and fines are an inefficient source of government revenue. The Texas and New Mexico counties studied here effectively spend more than 41 cents of every dollar of revenue they raise from fees and fines on in-court hearings and jail costs alone. That's 121 times what the Internal Revenue Service spends to collect taxes and many times what the states themselves spend to collect taxes. One New Mexico county spends at least \$1.17 to collect every dollar of revenue it raises through fees and fines, meaning that it loses money through this system.
- Resources devoted to collecting and enforcing fees and fines could be better spent on efforts that actually improve public safety. Collection and enforcement efforts divert police, sheriff's deputies, and courts from their core responsibilities.

- Judges rarely hold hearings to establish defendants' ability to pay. As a result, the burden of fees and fines falls largely on the poor, much like a regressive tax, and billions of dollars go unpaid each year. These mounting balances underscore our finding that fees and fines are an unreliable source of government revenue.
- Jailing those unable to pay fees and fines is especially costly — sometimes as much as 115 percent of the amount collected — and generates no revenue. The practice is not just unconstitutional but also irrational.
- The true costs are likely even higher than the estimates presented here, because many of the costs of imposing, collecting, and enforcing criminal fees and fines could not be ascertained. No one fully tracks these costs, a task complicated by the fact that they are spread across agencies and levels of government. Among the costs that often go unmeasured are those of jailing, time spent by police and sheriffs on warrant enforcement or driver's license suspensions, and probation and parole resources devoted to fee and fine enforcement. This makes it all but impossible for policymakers and the public to evaluate these systems as sources of revenue.

### Recommendations

- States and localities should pass legislation to eliminate court-imposed fees. Courts should be funded primarily by taxpayers, all of whom are served by the justice system.
- States should institute a sliding scale for assessing fines based on individuals' ability to pay. The purpose of fines is to punish those who violate the law and deter those who might otherwise do so. A \$200 fine that is a minor inconvenience to one person may be an insurmountable debt to another.
- Courts should stop the practice of jailing for failure to pay, which harms rehabilitation efforts and makes little fiscal sense.

- States should eliminate driver's license suspension for nonpayment of criminal fees and fines. The practice makes it harder for poor people to pay their debts and harms individuals and their families. Lawmakers should follow the approach taken by Texas, where recent legislation will reinstate hundreds of thousands of licenses.<sup>3</sup>
- Courts and agencies should improve data automation practices so that affected individuals understand their outstanding court debts and policymakers can more thoroughly evaluate the efficacy of fees and fines as a source of revenue.
- States should pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions, as some jurisdictions, including San Francisco, have done.<sup>4</sup> This would also ensure that individuals who have been free and clear of the criminal justice system for many years are not pulled back in simply on the basis of inability to pay.

### What's the Difference Between Fees and Fines?

**Fines**, imposed upon conviction, are intended as both deterrence and punishment. In Texas, for example, a fine of up to \$500 may be imposed for a low-level offense, such as a traffic violation; a fine of up to \$2,000 may be imposed for more serious misdemeanors, such as harassment or minor drug possession; and a fine of up to \$4,000 may be imposed for the most serious misdemeanors, such as unlawful carrying of a weapon and assault with injury.<sup>5</sup>

**Fees**, by contrast, are intended to raise revenue.<sup>6</sup> Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the "users" of the courts. They cover almost every part of the criminal justice process and can include court-appointed attorney fees, court clerk fees, filing clerk fees, DNA database fees, jury fees, crime lab analysis fees, late fees, installment fees, and various other surcharges.

### The Growing Use of Fees and Fines — and the Damage They've Done

Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded. Our justice system increasingly relies on fees and fines charged to defendants in criminal cases to fund basic operations.<sup>7</sup>

For example, North Carolina collects 52 separate fees, disbursing them to four state agencies and 611 counties and municipalities. It uses fees to fund half of the state's

judicial budget as well as jails, law enforcement, counties, and schools.<sup>8</sup> Using fee and fine revenues to fund the judiciary can create perverse incentives with the potential to distort the fair administration of justice. When criminal courts become responsible for their own financing, they may prioritize the imposition of significant fee and fine amounts and dedicate substantial staff to collecting these sums.

In Florida, a significant portion of the funds raised through fees and fines is allocated to the state's general coffers.<sup>9</sup> Colorado has used increased court fees to replace and update public buildings, including a judicial complex and a museum.<sup>10</sup> Florida and Kentucky increased court fees as a way to address state fiscal crises.<sup>11</sup> In Oklahoma, where a 1992 referendum made it nearly impossible for legislators to raise taxes, lawmakers have increasingly come to rely on fees and fines to fund the state budget.<sup>12</sup> Some fee and fine revenue has even been used for personal perks: fees and surcharges allocated to a judicial expense fund in Louisiana were found to have been spent on luxury goods, including supplemental health insurance for judges, two Ford Expeditions, a leather upholstery upgrade for a take-home vehicle, and a full-time private chef.<sup>13</sup>

This increase in fees and fines has exacted a steep human cost. Individual amounts may be small, but they can quickly add up, meaning indigent people may face hundreds or thousands of dollars in accumulated debt that they're unable to pay. While "debtors' prisons" have been declared unconstitutional, many states still incarcerate people for failure to pay criminal justice debt. And even when failure to pay is not an explicit charge, jail sentences are handed down for failure to appear or failure to comply — infractions that often stem from failure to pay. In Socorro County, New Mexico, for example, one magistrate judge has adopted a "three strikes" policy. For each missed payment of outstanding court costs, the court's enforcement response progresses from a bench warrant, to a bench warrant with a bond, to a charge of failure to comply that carries a three-day jail sentence. Each day spent in jail may then be credited against the defendant's outstanding debts.<sup>14</sup> Under the guise of different charges, such a policy perpetuates the function of a debtors' prison.

In this way, criminal justice debt represents a significant barrier to a person's chances of successfully reentering society following a conviction. It also hurts the families of those who are incarcerated, depriving them of a wage earner while adding new court costs to the defendant's criminal debts. One study found that about half of families with convicted members cannot afford to pay fees and fines. Moreover, nearly two in three families who had a family member incarcerated were unable to meet their households' basic needs, such as food and housing.<sup>15</sup> States such as Florida that suspend driver's

licenses for unpaid fees and fines only exacerbate this economic distress, as those who lose their license may then lose their job as well as their ability to take family members to school or medical appointments and to drive themselves to court.

There is also evidence that fees and fines are assessed in a racially discriminatory way. A 2017 report by the U.S. Commission on Civil Rights found that municipalities that rely heavily on revenue from fees and fines have a higher than average share of African American and Latino residents.<sup>16</sup>

By now, these harms have been well documented. But there has been much less research conducted on the fiscal costs of fees and fines. This report aims to start filling that gap. Without an understanding of how much governments are spending to administer fees and fines, and how much in fees and fines is never collected, decision-makers can't accurately gauge the efficacy of these programs.

## Report Terms

**Assessment.** As used in this report, assessment refers to the amount of the fee or fine imposed by a judge on a criminal defendant at sentencing. For many minor offenses, assessments are made at the conclusion of a simple hearing before a judge or magistrate in which the defendant makes a plea, the evidence is reviewed, and a decision is made by the judge or magistrate. More complex and serious criminal cases may involve separate appearances in court, including an arraignment in which the charges are read and a defendant's plea is accepted by the judge, a trial before the judge (and possibly a jury), and a sentencing hearing, at which point fees and fines may be imposed by the judge.

**Criminal justice debt.** Criminal justice debt is composed of legally binding financial obligations imposed on those convicted by criminal courts. While such debt may comprise fees, fines, and victim restitution — payments ordered to victims as compensation — this report deals only with fees and fines (see below), which are recognized as revenue on the balance sheets of courts and other public agencies. In contrast to private and many civil debts, criminal justice debt is enforced by the criminal justice system and can result in the issuance of arrest warrants for nonpayment, criminal court hearings, additional fines and court surcharges, detention in jail, inclusion on criminal records, and — in some states — loss of voting privileges.

**Fines.** Criminal fines are penalties imposed on defendants after conviction, intended as both deterrence and punishment. The amount of a fine is set by statute and based on the severity of the crime. For misdemeanors, fines may be relatively small. For felonies, fines are typically larger. Fines vary by jurisdiction and may be enhanced for repeat offenses. For example, each of

the three states included in this study imposes fines as a penalty for drunk driving. For a first offense, New Mexico assesses a \$300 fine, Florida assesses a \$500 fine, and Texas may assess up to \$2,000. In all three states, drunk driving is an enhanceable offense, meaning that the penalties, including fines, escalate depending on the number of prior offenses.<sup>17</sup>

**Fees.** Criminal fees, unlike fines, are intended to raise revenue. Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the “users” of the courts. Cash-strapped state and local governments rely on criminal fees to raise revenue for other purposes as well, thereby avoiding the politically unpopular step of raising taxes. Most jurisdictions impose certain fees on every defendant convicted, regardless of the nature of the offense. For example, one convicted of a misdemeanor in Florida is charged a \$20 court cost fee, a \$3 Court Cost Clearing Trust Fund fee, a \$60 Fine and Forfeiture Fund fee, a \$20 Crime Stoppers Program fee, a \$50 prosecution fee, a \$50 crime compensation fee, and a \$20 Crime Prevention Fund fee, and potentially others.<sup>18</sup> Other fees are offense-specific and imposed only on defendants convicted of certain offenses. For example, in New Mexico there are fees for defendants convicted of driving under the influence (DUI) or drug offenses.<sup>19</sup> While fees may be imposed by courts, parole and probation departments, and jails and prisons, this report focuses on fees imposed by criminal courts following conviction. In some jurisdictions, fees may be referred to by another name. For example, some of the fees imposed by courts in Texas are called “court costs.”<sup>20</sup>

**Revenue.** Fees and fines both serve as sources of revenue for state and local governments. The permissible uses for this revenue are typically set by statute. Many fees are earmarked for specific purposes, such as programs that divert defendants from prison, courthouse maintenance, or traffic safety education. Much of the revenue from criminal justice fees and fines is used to fund the judiciary or routed to law enforcement. In some cases it goes to a state or locality's general fund, where it may be used for purposes wholly unrelated to law enforcement or the courts. Fine revenue is disbursed according to statute in each of the three states studied. In each state, most fine revenue goes into a general fund at the state or municipal level, though some is directed toward particular programs, such as road maintenance or schools.

While state statutes prescribe the distribution of funds collected through the criminal justice system, the allocation of revenue varies. For example, in New Orleans, the \$11.5 million in criminal justice fees and fines collected in 2015 was distributed among eight agencies, providing funding for the municipal court, district court, public defenders, and traffic court.<sup>21</sup> In Allegan County, Michi-



gan, half of court-imposed fees went toward running the county courthouse, paying employee salaries, heating the court building, purchasing copy machines, and underwriting the cost of the county employee gym.<sup>22</sup>

**Waivers.** In some courts, judges have authority to reduce the amount of certain fees and fines imposed at conviction.<sup>23</sup> Amounts reduced without a quid pro quo (such as the performance of community service in lieu of payment or time spent in jail) often are referred to as waivers. This is the meaning of the term as employed in this report. The issuance of waivers varies considerably among jurisdictions and states.

**Jail credits.** Some states waive fees and fines in exchange for jail time, which are referred to as jail credits and are distinct from the kinds of credits through which people earn reductions to sentences. Though this alternative might be pitched as a benefit to those who want to discharge their debt in this manner, no one who has a choice and can make other payment arrangements would choose jail. Further, many defendants have no say in the matter. For example, one magistrate judge in Socorro County, New Mexico, jails individuals for missing three payments without making a court appearance, regardless of ability to pay.<sup>24</sup> Perversely, people can accumulate additional fees during their stay in jail, leaving them with more debt than when they entered.<sup>25</sup>

In some states, including Alabama, Michigan, and Texas, when people are picked up on a warrant for a failure to pay traffic tickets or fines, they may be jailed involuntarily to pay off delinquent criminal justice debt through credits issued for each day spent in jail.<sup>26</sup>

These credits do not generate actual revenue but simply exchange jail time for debt reduction at a great cost to the government, falling also comes at great cost to the people affected and their families. The U.S. Supreme Court has held that imprisonment for unpaid fines or fees without a hearing to determine ability to pay is unconstitutional.<sup>27</sup> If courts find that a defendant is unable to pay, they are required to consider alternatives, such as deferrals, payment plans, community service, and waivers. Unfortunately, in practice, many courts fail to make these financial determinations.<sup>28</sup>

**Community service credits.** Most states offer some type of community service option as an alternative to payment, though these practices vary significantly within and across states.<sup>29</sup> Some states offer programs assigning people to pick up trash or maintain parks in lieu of a jail sentence or fine, while other states allow people to meet educational requirements to pay off their debt. Some types of community service require classes for certification (e.g., controlling traffic for the Department of Transportation), which can lead to employment opportunities after the debt is paid.<sup>30</sup>

In some states, community service is seldom available to defendants because judges feel pressure to raise revenue for their city or county.<sup>31</sup> For those who get the opportunity, community service hours are often paid at the federal minimum wage, only \$7.25 an hour, making it unrealistic for people to devote the time necessary to work down their debt. This is even harder if they have jobs or are caring for family members.<sup>32</sup>

## I. Key Findings

### A. Fees and Fines Are Inefficient for Raising Revenue

The costs of fee and fine enforcement are huge. For example, in 2017 misdemeanor and traffic courts in Travis County, Texas, spent nearly \$4.8 million on in-court proceedings and staff costs related to fee and fine compliance. In addition, the county spent more than \$4.6 million on jailing those who failed to pay fees and fines and those allowed to earn jail credit against amounts owed.

On average, the jurisdictions in this report spent more than \$0.41 for every dollar they collected over the period studied. Because of a lack of available data, this figure counts only in-court and jail costs.<sup>33</sup> If all costs were measured — including the sizable cost to law enforcement for warrant enforcement and arrests, the cost to Department of Motor Vehicles (DMV) offices for processing suspended licenses, and the cost to parole and probation officers for fee and fine compliance<sup>34</sup> — it would be even higher.<sup>35</sup>

Compare these collection costs to the cost of raising revenue through taxation. The Internal Revenue Service spends just \$0.34 for every *hundred dollars* in taxes collected.<sup>36</sup> In other words, it costs jurisdictions, on average, *121 times more* to collect criminal fees and fines — even without including some of those costs — than it costs the IRS to gather taxes. Meanwhile, Texas spends around \$0.31 for every *hundred dollars* in taxes collected.<sup>37</sup> New Mexico spends roughly \$0.95. It's clear that general taxation is significantly more cost effective than criminal fees and fines at raising revenue.<sup>38</sup>

### B. Collecting Fees and Fines Detracts from Public Safety Efforts

Fees and fines are most often evaluated by courts and criminal justice agencies, legislators, and policymakers on the basis of the revenue they generate, but they come at a great cost to the criminal justice system. When criminal courts impose fees and fines and then spend much of their resources collecting them, this leaves less to spend on true public safety needs. For example:

- When police and sheriff's deputies are serving warrants for failure to pay fees and fines, they are less readily available to respond to 911 calls.
- When courts schedule appearances for failure to pay, proceedings for more serious crimes can be delayed or rushed.
- When community corrections officers spend much of their time reminding their clients to pay unaffordable fees and fines, they have less time to work with

people to help them break the cycle of repeated contact with the criminal justice system.

- When people who can't afford to pay fees and fines are jailed, they are exposed to the many harms of incarceration, while correctional authorities are burdened with providing jail space and services to people who pose no risk to public safety.

These are just a few examples; there are many more ways in which criminal justice agency efforts to coerce payment translates into less time spent on more valuable criminal justice work.

Put concretely and in dollar terms, almost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue.<sup>39</sup> This is a fundamentally inefficient way to collect revenue to support courts and other criminal justice agencies, and it does not make fiscal or economic sense.

### C. Almost No Time Is Spent in Court Determining Whether People Can Afford to Pay Fees and Fines

One reason that fees and fines are so inefficient as a revenue raiser is that each year millions of people are given sentences that include fines and fees they are simply unable to pay. From watching more than 1,000 court proceedings in seven jurisdictions, the authors found that judges rarely hold ability-to-pay hearings. While there are plainly up-front costs associated with such hearings, in the long run, jurisdictions would spend less money by holding them rather than trying to chase down debts that cannot be paid.

### D. Jailing for Nonpayment Is Costly and Irrational

The Supreme Court has held that "punishing a person for his poverty" is unconstitutional. Still, states and localities continue to jail large numbers of indigent defendants as a sanction for unpaid criminal justice debt. Jailing people for nonpayment is by far the most expensive method of enforcing collections and generates little to no revenue — making it highly uneconomical. In counties where courts incarcerate for failure to pay, the authors found that the cost of incarceration dwarfs other collections costs. For example, in Bernalillo County, New Mexico, jail costs represent as much as 98 percent of the collection costs documented by the authors.<sup>40</sup>

Further, while the full costs are unknown, they are considerable — with many jails in Texas and New Mexico reporting costs per inmate per day clustering around \$55 to \$65 or higher — and the costs negate or reduce much

of the revenue that city, county, and state officials believe that criminal fees and fines produce.

Often when someone is unable or unwilling to pay a fee or fine, the court issues a warrant.<sup>41</sup> Frequently, indigent people do not appear on their court date, due to a transportation issue (they may have had their license suspended), or because they have to work, or because they fear arrest for nonpayment. In these instances, courts often issue a warrant for failure to appear, resulting in additional debt for the defendant and, in some jurisdictions, jail time.<sup>42</sup> Some defendants receive credit toward their debt at a state-determined per diem rate for the time they spend in custody; others incur additional debt in the form of jail fees; and some are released still owing the amount they owed before the warrant was issued.<sup>43</sup> Jailing is particularly counterproductive not only because incarceration is extremely costly to jurisdictions but also because it diminishes a person's ability to pay outstanding fees.

#### **E. The Amount of Uncollected Debt Continues to Grow**

A substantial portion of fees and fines is never collected and is likely uncollectable, meaning that these assessments are an unreliable source of government revenue that will always come up short.

No one knows how much is owed in total because few states and courts track this information — which is itself a problem requiring attention. But from 2012 to 2018, the states of Florida, New Mexico, and Texas amassed a total of almost \$1.9 billion in uncollected debt.<sup>44</sup> And in each of the jurisdictions studied here, the amount of unpaid debt grew significantly over the period examined. Much of this debt is unlikely to ever be collected, as those with low incomes lack resources to draw on for payment.

This high level of uncollected debt demonstrates why fees and fines are such an unreliable way to raise revenue. It also hurts those who can't pay, putting them at risk of incarceration, loss of their ability to legally drive, voter disenfranchisement, and increased difficulty in getting a job. And courts keep track of debts in perpetuity, making it all but impossible for defendants to get out from under them.

#### **F. Jurisdictions Do Not Track Costs Related to Collecting Fees and Fines**

For the most part, jurisdictions do not know how much it costs them to collect fees and fines. Of the three states studied, only Texas systematically tracks some of the costs for court collection units. But even there, the picture is incomplete. No jurisdiction tracks any of the following: the court costs for fee and fine administration, the cost to public defender systems for dealing with their clients' fees and fines, the cost to parole and probation systems for fee and fine enforcement (whether they engage in collections or simply remind their charges constantly to pay their court debts), the cost to DMV offices processing license suspensions or state tax agencies processing offsets, and the cost to law enforcement for warrant enforcement or arrests for failure to pay or suspended driver's licenses.

Though Texas collects some data on the costs of jailing people who fail to pay fees and fines or are allowed to earn jail credit against amounts owed, most courts and other criminal justice agencies do not track and report such costs.

#### **G. Fees and Fines Are a Regressive Tax on the Poor**

Revelations that cities like Ferguson, Missouri, collect millions in fees from poor citizens sparked a national debate in 2014 about predatory and regressive policies targeting vulnerable communities.<sup>45</sup> The city relied on rising municipal court fines to make up 20 percent of its \$12 million operating budget in fiscal year 2013.<sup>46</sup> But Ferguson is not alone. As detailed below, fee and fine assessments in each of the states studied amount to significant costs for the people who pass through the criminal justice system, many of whom are poor. Across the three states, billions of dollars are charged without regard to ability to pay. According to the Federal Reserve, many Americans are unable to pay an unexpected bill of \$400.<sup>47</sup> The fees and fines charged in these three states may well be more than what the average defendant can afford (and the noticeable growth of unpaid fee and fine debt bears this out). This is particularly so where evidence exists that policing frequently has a disproportionate impact on marginalized communities.<sup>48</sup>

## II. Recommendations

**C**ourts rely excessively on criminal fee and fine practices that are costly and inefficient, unfairly burden the poor, and do little to deter crime or improve public safety. Reforms are urgently needed.

### A. States and Localities Should Eliminate Court-Imposed Fees

Courts need to be funded adequately. But even under a conservative estimate of the costs of collection, fees are an inefficient source of revenue. In addition, they fall disproportionately on the poor and create perverse incentives. And they transfer the obligation of taxpayers to fund courts to defendants in the justice system, even though the system serves society as a whole. State legislators should allocate appropriate funding to courts from their general funds and repeal legislation requiring courts to raise their own revenue by imposing fees.

### B. States Should Require Courts to Assess Fines Based on Ability to Pay

The purpose of fines is to deter people from violating the law and punish those who do. But a \$200 fine may represent an insurmountable obstacle to one person and a minor inconvenience to another. Charging people amounts they cannot pay is draconian. State legislatures should statutorily scale fines according to a defendant's wealth and how much he or she earns in a day, adjusted for essential expenses and obligations such as child support. In addition to ending the disproportionate punishments given to the poor, sliding-scale fines would more effectively incentivize the wealthy to obey the law. Studies show that sliding-scale fines can increase both collection rates and total fine revenue.<sup>49</sup> Mandating that fines are calibrated according to ability to pay would also drastically reduce the resources allocated to collections — since fines that are manageable are more likely to be paid — and reduce the burden on indigent defendants, creating a more efficient and just system.

### C. Courts Should Stop the Practice of Jailing for Failure to Pay

In the three states studied here, 46 percent of fees and fines were not paid.<sup>50</sup> Sometimes courts waive fees and fines for those unable to pay, and sometimes they offer credit for court-ordered community service. Too frequently, however, they jail people for nonpayment.<sup>51</sup> Incarceration as a penalty for unpaid debt not only is unconstitutional but, as a practical matter, makes little economic sense. It provides no revenue benefit and is costlier for courts and taxpayers than simply forgiving the debt.<sup>52</sup>

### D. States Should Eliminate Driver's License Suspension for Nonpayment of Criminal Fees and Fines

This punishment, too, is counterproductive.<sup>53</sup> As with incarceration, suspending someone's driver's license makes it less likely that he or she will be able to pay the debt, as it is difficult to hold a job in most parts of the United States without access to a car. License suspension also hurts families that depend on their cars to buy groceries, transport their children to school, get medical care, and provide for other needs. Suspended license enforcement becomes a needless, costly priority for law enforcement personnel who could be deployed more effectively to prevent or respond to serious crime.

### E. Courts and Agencies Should Improve Data Automation Practices

As the authors learned, many states and local jurisdictions are in the dark about the amount of criminal fees and fines that are unpaid and outstanding. In part this is the result of well-intentioned automation efforts that prioritize more recent and critical case data over older data. In other cases, as the authors found in some local courts, basic operating records and ledgers remain unautomated, making it hard to quickly collect information on caseloads, amounts owed, and amounts paid. Given the risk of arrest and other consequences for nonpayment of criminal fees and fines, courts are under an obligation to ensure that relevant data is easily retrievable and regularly updated to reflect actual amounts waived, credited, paid, and owed. Such efforts would serve policymakers as well, allowing them to more systematically assess the inefficiency of relying on fees and fines as a revenue stream.

### F. States Should Pass Laws Requiring Purging of Old Balances That Are Unlikely to Be Paid

As detailed in this report, tremendous amounts of old fee and fine debt will never be collected but continue to burden millions of people. Jurisdictions are unlikely to receive revenue from arrears of any kind that go back many years, especially from those least able to pay. Financial professionals have long employed accounting methods such as "allowances for doubtful accounts" to identify uncollectible debts and assign them a value of zero for

purposes of preparing financial statements. Some jurisdictions, such as San Francisco, have adopted this kind of financial practice and wiped millions of dollars in uncollected debt off the books.<sup>54</sup> Courts should more widely adopt these practices in tracking and reporting outstanding balances of criminal fees and fines, recognizing that older debts have little prospect of ever being paid. States

should require courts to report on uncollected fees and fines and issue periodic waivers or adjustments in cases where significant additional payment is unlikely. In addition to providing relief to the least well-off defendants, it would free public agencies from expending resources trying to chase down uncollectible debts.

### Assessing Fines Based on Ability to Pay

>> While sliding scales for fines may seem radical, this approach has been successfully implemented in Europe as a default sanction for numerous crimes.<sup>55</sup> When it was introduced in West Germany in the 1970s as a replacement for

incarceration, the number of short-term prison sentences dropped by 90 percent. Germany still uses these “day fines” as the only sanction imposed for three-quarters of all property crimes and two-thirds of all assaults.<sup>56</sup>

Day fines have also worked in the United States. When a court in Staten Island, New York, replaced fixed fines with day fines in 1988, both collection rates and fine amounts increased.<sup>57</sup> In Maricopa County, Arizona, an experimental day fine

program in the 1980s saw a 100 percent increase in the proportion of people fully paying off their court debt, and a drop in the recidivism rate from 17 to 11 percent.<sup>58</sup>

### Disproportionate Policing in Marginalized Communities

**>> Research indicates** that economically disadvantaged communities and people of color are policed at greater rates than white, affluent areas are. This means that fees and fines are imposed on and collected more frequently from them, creating a cycle of debt and incarceration. The consequences for marginalized communities are particularly severe and regressive.

**>> Operating primarily** in low-income communities of color, the “broken windows” theory of policing has drastically increased the number of citations and arrests for low-level, nonviolent offenses.<sup>59</sup> The theory, introduced in 1982, held that cracking down on minor offenses would prevent major crime.<sup>60</sup> However, it resulted in criminalizing poor communities for activities that would go unchecked in white, wealthy areas. For example, in Newark, New Jersey, citations for low-level offenses — known as “blue summonses” — were regularly handed out, forcing residents to pay fines or make court appearances on violations such as loitering or drinking in public.<sup>61</sup> Although police officers were rewarded for distributing high numbers of citations, including through quotas instituted by police leadership, crime levels did not go down. Instead, this approach damaged the relationship between residents and the Newark Police Department. It also shifted law enforcement’s focus to “convenient targets” rather than serious crime, leading to federal intervention and attempts at reform in recent years.<sup>62</sup>

**>> In Ferguson, Missouri**, police issued 32,975 arrest warrants for nonviolent offenses and collected \$2.6 million in fees and fines in 2013.<sup>63</sup> These fines were mostly imposed for minor, nonviolent offenses such as traffic infractions, and data shows huge racial disparities in those citations. In Ferguson, 67 percent of the population is black, but 86 percent of traffic stops were of black drivers. Conversely, 29 percent of the population is white, but only about 12 percent of traffic stops involved white drivers.<sup>64</sup> A 2018 report from the Missouri attorney general examines the disparity, noting that in more than 1.5 million traffic stops in the state, black drivers were 91 percent more likely to be pulled over than white drivers.<sup>65</sup>

**>> Racial profiling** and bias continue to contribute to the over-policing of people of color. A comprehensive study of 20 million traffic stops in North Carolina found that black drivers were twice as likely to be pulled over as white drivers and four times as likely to be searched, even though whites drive more on average.<sup>66</sup> The study also indicated that racial minorities were less likely to be found with contraband, despite being more likely to be searched.<sup>67</sup> A 2013 Department of Justice study found that about 2 percent of white drivers are searched after being pulled over, versus 6 percent of black and 7 percent of Latino drivers.<sup>68</sup>

**>> Gentrification** and changing social dynamics in low-income neighborhoods are leading to an increased criminalization of people of color who have lived in those areas for decades.<sup>69</sup> The influx of wealth into these communities has created pressure for the perception of public safety and order. Higher rates of arrest and increased citations have been the result of increases in police presence rather than in offenses, and as resources are concentrated in these gentrifying areas, they are diverted from others.<sup>70</sup>

**>> In San Francisco**, an app called Open311 was launched in 2013 to make it easier to report loitering, vandalism, and other quality-of-life complaints.<sup>71</sup> Data gathered from the app shows a disproportionate increase in 311 calls and responses in gentrified areas of the city after the app was launched.<sup>72</sup> Approximately 11 percent of 311 calls in San Francisco were from the Mission District, a neighborhood whose population makes up about 5 percent of San Francisco’s total. The community, with a significant Hispanic and Latino population, has seen increased gentrification in the last few decades.<sup>73</sup> More than 112,000 calls were reported from the Mission in 2013 compared with about 48,000 from the financial district.<sup>74</sup> The tension between newcomers and lifelong residents can be fatal: in 2014, 28-year-old Alejandro Nieto — the son of Latino immigrants who had lived in the neighborhood all his life — was anxiously pacing after a run-in with a dog when he was shot dead by officers responding to a 911 call from a new resident who reported that Nieto was “behaving suspiciously.”<sup>75</sup>

### III. County Fiscal Impacts

This basic fiscal analysis identifies the cost to courts and criminal justice agencies in target counties of assessing and collecting criminal fees and fines, then subtracts those costs from the revenues collected for each jurisdiction.<sup>76</sup> The remainder is the net gain in revenue.

Until now, the costs of assessing and collecting criminal justice fees and fines have gone largely unmeasured. To provide a clearer understanding of whether fees and fines are an efficient means of raising government revenue,

both within each jurisdiction studied and on average, the authors gathered data from various stakeholders in the criminal justice system engaged in the collection of fees and fines in 10 counties. These included courts, prosecu-

FIGURE 1

#### Fiscal Analysis of Target Counties in Texas (2017), New Mexico (2016), and Florida (2017)

Thousands of dollars

Total Fees and Fines Assessed	TEXAS				NEW MEXICO			FLORIDA			RANGE	
	Travis	El Paso	Jim Hogg	Marion	Bernalillo	Santa Fe	Socorro	Leon	Miami-Dade	Madison	Low	High
Total Assessments	\$38,006	\$14,109	N/A	N/A	\$4,170	\$1,138	\$207	\$1,148	\$10,143	\$257	\$207	\$38,006
Waivers/Adjustments	\$1,176	\$308	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$308	\$1,176
Community Service Credits	\$561	\$83	N/A	N/A	\$84	\$55	\$2	\$44	\$12	\$1	\$1	\$561
Jail Credits	\$6,958	\$3,140	N/A	N/A	\$1,448	\$214	\$76	\$0	\$0	\$0	\$0	\$6,958
Conversions to Liens	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0	\$0	\$54	\$0	\$54
Other Credits	\$0	\$0	N/A	N/A	\$661	\$83	\$10	\$20	\$0	\$6	\$0	\$661
Total Adjustments	\$8,694	\$3,532	N/A	N/A	\$2,193	\$352	\$88	\$64	\$12	\$61	\$12	\$8,694
Net Amounts Owed	\$29,312	\$10,577	N/A	N/A	\$1,977	\$787	\$120	\$1,084	\$10,131	\$196	\$120	\$29,312
Revenue Collected												
Collections	\$26,929	\$8,132	\$237	\$366	\$1,862	\$724	\$119	\$858	\$7,978	\$174	\$119	\$26,929
Collections as a Percentage of Assessments	71%	58%	N/A	N/A	45%	64%	58%	75%	79%	68%	45%	79%
Cost to Levy and Collect												
In-Court Costs	\$3,186	\$68	\$10	\$29	\$40	\$54	\$14	\$31	\$267	N/A	\$10	\$3,186
Collections Unit Costs	\$1,610	\$733	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$733	\$1,610
Jail Costs	\$4,627	\$2,917	N/A	N/A	\$2,138	\$239	\$81	N/A	N/A	N/A	\$81	\$4,627
Other Costs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0	\$0
Total Costs	\$9,423	\$3,718	\$10	\$29	\$2,178	\$294	\$96	N/A	N/A	N/A	\$10	\$9,423
Costs as a Percentage of Collections	35%	46%	4%	8%	117%	41%	80%	N/A	N/A	N/A	4%	117%
Net Gain (Revenue Minus Cost)	\$17,506	\$4,414	\$227	\$336	-\$316	\$430	\$24	N/A	N/A	N/A	-\$316	\$17,506

Sources: New Mexico Judicial Information Division; Texas Collection Improvement Program; Florida Court Clerks & Comptrollers; Brennan Center calculations.

tors, public defenders, probation/parole officers, and local jails. The authors had the most success obtaining data for courts, with jailing costs also available for some jurisdictions. With this data, the authors were able to quantify the costs associated with in-court proceedings dealing with fees and fines, court collection costs for some jurisdictions, and jailing costs for nonpayment in certain jurisdictions. For a variety of reasons, including local policies, the authors were unable to collect any information from law enforcement agencies.

Our fiscal analysis revealed that, across the counties studied, 66 percent of criminal justice debts assessed were eventually collected. In the most recent year examined, revenues ranged up to \$27 million raised in these jurisdictions, with more populous and urban counties at the higher end. Costs associated with assessments and collections that could be documented were as much as \$9.4 million, depending on the county.<sup>77</sup> As expected, costs were higher in counties where courts jailed for nonpayment. Costs associated with time spent on fees and fines in court proceedings were estimated to be relatively low, as little time was observed in courtrooms considering the amounts owed or the ability to pay.

The authors' estimates of collection and enforcement costs underestimate the full set of direct costs due to limited data availability in the jurisdictions studied; if data had been fully available, this study's cost estimates would have been higher.

- The authors observed court proceedings to estimate personnel costs for the judges, prosecutors, public defenders, and other staff involved in court proceedings in all but three jurisdictions, smaller counties in which court proceedings do not occur weekly. Personnel costs are therefore not included in estimates for those counties.

- Jail costs could be calculated for New Mexico and larger Texas counties. Florida jail data was not available. Florida does not jail for failure to pay but does incur costs for incarceration for driving with a license that has been suspended due to inability to pay fees and fines.

- The authors were not able to obtain the cost of court collections for a large portion of Texas counties.

- The authors were unable to obtain adequate survey responses from judges, court clerks and their staff, prosecutors, public defenders, and probation and parole staff to document time spent outside courtrooms on fee/fine enforcement and collection; and no cooperation was received from law enforcement agencies.

In addition to the basic fiscal analysis, the authors tallied uncollected court debts in most of the 10 jurisdictions to calculate the extent of accumulating unpaid fees and fines. Courts are rarely able to provide estimates of outstanding balances. The authors therefore examined how these debts accumulated by using several years of fee and fine assessments, credits, waivers, and collections data for each jurisdiction; calculating unpaid balances for each year; and totaling these amounts for the years examined.

Figure 2 illustrates how revenues compare across each county studied over a five-year period. While the trends vary among jurisdictions (see section IV), one major finding of this report is that across states, the amount of uncollected debt increases year over year.



FIGURE 2

### Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
<b>Florida</b>						<b>5-Year Total</b>
<b>Leon County</b>						
Assessed	\$3,661	\$3,240	\$2,673	\$2,431	\$1,148	\$13,153
Collected	\$2,065	\$1,825	\$1,953	\$1,888	\$858	\$8,589
Credits/Waivers/Liens	\$379	\$217	\$83	\$259	\$64	\$1,002
Remaining Outstanding	\$1,217	\$1,198	\$637	\$283	\$226	\$3,562
Cumulative Unpaid Balance	\$1,217	\$2,415	\$3,053	\$3,336	\$3,562	\$3,562
Collection Rate	56%	56%	73%	78%	75%	65%
<b>Miami-Dade County</b>						
Assessed	\$20,872	\$14,384	\$15,772	\$12,178	\$10,143	\$73,348
Collected	\$12,245	\$9,353	\$9,453	\$8,297	\$7,978	\$47,326
Credits/Waivers/Liens	\$28	\$33	\$43	\$23	\$12	\$140
Remaining Outstanding	\$8,598	\$4,998	\$6,276	\$3,858	\$2,153	\$25,883
Cumulative Unpaid Balance	\$8,598	\$13,596	\$19,872	\$23,730	\$25,883	\$25,883
Collection Rate	59%	65%	60%	68%	79%	65%
<b>Madison County</b>						
Assessed	\$288	\$291	\$224	\$243	\$257	\$1,303
Collected	\$124	\$190	\$187	\$175	\$174	\$850
Credits/Waivers/Liens	\$60	\$38	\$36	\$74	\$61	\$268
Remaining Outstanding	\$104	\$63	\$2	-\$6	\$22	\$185
Cumulative Unpaid Balance	\$104	\$167	\$169	\$163	\$185	\$185
Collection Rate	43%	65%	83%	72%	68%	65%
<b>New Mexico</b>						<b>4-Year Total</b>
<b>Bernalillo County</b>						
Assessed	\$5,371	\$5,294	\$4,558	\$4,170	N/A	\$19,393
Collected	\$3,062	\$2,704	\$2,267	\$1,862	N/A	\$9,895
Credits/Waivers/Liens	\$1,703	\$2,077	\$2,089	\$2,193	N/A	\$8,062
Remaining Outstanding	\$606	\$513	\$203	\$115	N/A	\$1,437
Cumulative Unpaid Balance	\$606	\$1,119	\$1,322	\$1,437	N/A	\$1,437
Collection Rate	57%	51%	50%	45%	N/A	51%
<b>Santa Fe County</b>						
Assessed	\$987	\$1,243	\$1,370	\$1,138	N/A	\$4,738
Collected	\$675	\$843	\$952	\$724	N/A	\$3,193
Credits/Waivers/Liens	\$172	\$143	\$350	\$352	N/A	\$1,016
Remaining Outstanding	\$141	\$256	\$69	\$63	N/A	\$528
Cumulative Unpaid Balance	\$141	\$397	\$465	\$528	N/A	\$528
Collection Rate	68%	68%	69%	64%	N/A	67%

Continues>

FIGURE 2-CONTINUES

**Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017**

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
<b>New Mexico</b>						<b>4-Year Total</b>
<b>Socorro County</b>						
Assessed	\$289	\$281	\$231	\$207	N/A	\$1,008
Collected	\$156	\$155	\$140	\$119	N/A	\$569
Credits/Waivers/Liens	\$105	\$112	\$102	\$88	N/A	\$406
Remaining Outstanding	\$29	\$14	-\$10	\$0	N/A	\$33
Cumulative Unpaid Balance	\$29	\$43	\$33	\$33	N/A	\$33
Collection Rate	54%	55%	60%	58%	N/A	56%
<b>Texas</b>						<b>5-Year Total</b>
<b>El Paso County</b>						
Assessed	\$34,690	\$34,568	\$34,364	\$31,272	\$14,109	\$149,003
Collected	\$22,497	\$19,075	\$19,844	\$19,083	\$8,132	\$88,631
Credits/Waivers/Liens	\$11,267	\$12,602	\$10,587	\$7,970	\$3,532	\$45,958
Remaining Outstanding	\$926	\$2,890	\$3,933	\$4,220	\$2,445	\$14,414
Cumulative Unpaid Balance	\$926	\$3,816	\$7,749	\$11,969	\$14,414	\$14,414
Collection Rate	65%	55%	58%	61%	58%	59%
<b>Jim Hogg County</b>						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	\$206	\$215	\$196	\$292	\$237	\$1,147
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
<b>Marion County</b>						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	\$352	\$287	\$324	\$394	\$366	\$1,722
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
<b>Travis County</b>						
Assessed	\$48,412	\$51,563	\$49,307	\$41,497	\$38,006	\$228,784
Collected	\$34,090	\$36,619	\$35,703	\$29,164	\$26,929	\$162,505
Credits/Waivers/Liens	\$11,882	\$10,112	\$9,827	\$8,026	\$8,694	\$48,541
Remaining Outstanding	\$2,440	\$4,833	\$3,777	\$4,307	\$2,382	\$17,738
Cumulative Unpaid Balance	\$2,440	\$7,272	\$11,049	\$15,356	\$17,738	\$17,738
Collection Rate	70%	71%	72%	70%	71%	71%

FIGURE 3

### Summary of Collections and New Debt from Fees and Fines in States Studied, 2012–2018

Thousands of dollars by fiscal year

	2012	2013	2014	2015	2016	2017	2018	
<b>Florida</b>								<b>7-Year Total</b>
Assessed	\$489,689	\$482,927	\$461,447	\$453,718	\$484,594	\$427,737	\$441,829	\$3,241,942
Collected	\$158,353	\$153,664	\$158,921	\$181,877	\$182,065	\$167,865	\$172,217	\$1,174,960
Credits/ Waivers/Liens	\$144,993	\$131,850	\$90,252	\$134,769	\$164,812	\$123,622	\$141,872	\$932,170
Remaining Outstanding	\$186,343	\$197,413	\$212,275	\$137,073	\$137,717	\$136,250	\$127,740	\$1,134,812
Cumulative Unpaid Balance	\$186,343	\$383,757	\$596,032	\$733,104	\$870,821	\$1,007,071	\$1,134,812	\$1,134,812
Collection Rate	32%	32%	34%	40%	38%	39%	39%	36%
<b>New Mexico</b>								<b>5-Year Total</b>
Assessed	\$17,855	\$23,806	\$24,445	\$23,699	\$23,344	N/A	N/A	\$113,149
Collected	\$9,196	\$14,474	\$15,036	\$14,521	\$13,431	N/A	N/A	\$66,659
Credits/ Waivers/Liens	\$2,558	\$5,398	\$6,347	\$6,420	\$6,760	N/A	N/A	\$27,483
Remaining Outstanding	\$6,101	\$3,933	\$3,062	\$2,759	\$3,152	N/A	N/A	\$19,007
Cumulative Unpaid Balance	\$6,101	\$10,034	\$13,096	\$15,855	\$19,007	N/A	N/A	\$19,007
Collection Rate	52%	61%	62%	61%	58%	N/A	N/A	59%
<b>Texas</b>								<b>7-Year Total</b>
Assessed	\$1,142,695	\$965,942	\$932,339	\$808,289	\$786,583	\$824,876	\$769,166	\$6,229,890
Collected	\$585,584	\$602,778	\$581,181	\$526,207	\$525,762	\$509,393	\$480,884	\$3,811,790
Credits/ Waivers/Liens	\$384,010	\$246,049	\$236,683	\$194,202	\$205,294	\$205,974	\$204,143	\$1,676,355
Remaining Outstanding	\$173,101	\$117,115	\$114,475	\$87,880	\$55,527	\$109,509	\$84,139	\$741,746
Cumulative Unpaid Balance	\$173,101	\$290,216	\$404,691	\$492,572	\$548,098	\$657,607	\$741,746	\$741,746
Collection Rate	51%	62%	62%	65%	67%	62%	63%	61%

### Additional Research Needed

More research is needed to determine the many costs of imposing and collecting criminal fees and fines. The network of courts and criminal justice agencies involved in levying, processing, and collecting fees and fines is vast, and the full scope of practices and costs is not fully understood. Public personnel involved include judges, court clerks, and administrators; prosecutors and public defenders; police and sheriffs; and parole and probation officers. In some jurisdictions, this network includes DMV staff who process driver's license suspensions, state tax agency personnel who process requests to deduct amounts owed from tax refunds, police and sheriffs who make arrests for failure to pay or for driving with a suspended license, and correctional officers who incarcerate those with outstanding debt. In some places, this network also includes businesses, such as private collection agencies or private probation services. Despite numerous contacts, including visits, phone calls, and emailed surveys, much of the cost of this network remains for future and more intensive research to determine.

Further, juvenile justice, noncriminal traffic infractions, and restitution were beyond the scope of this analysis, though the costs of all three are considerable.

- The juvenile justice system operates separately from the adult criminal system. But it mirrors the adult system in certain respects, often including the imposition of considerable fees and fines. The authors did not include the juvenile justice system in this study.
- Traffic violations vary from state to state in terms of the range of penalties imposed and whether common types are regarded as infractions or criminal misdemeanors (or worse, felonies). For example, in Texas even seemingly minor "moving violations" that occur while a driver is operating a vehicle are classified by state law as misdemeanors, while this is not the case in Florida and New Mexico. In its analysis, this report focuses on criminal fees and fines imposed in misdemeanor cases in 10 local jurisdictions and both misdemeanor and felony cases statewide for Florida, New Mexico, and Texas. It does not include fees and fines associated with noncriminal traffic infractions.
- Restitution amounts imposed by the courts as recompense to crime victims are also not considered in this report.
- Finally, the authors did not attempt to quantify massive costs associated with collateral consequences for individuals, families, and communities

faced with significant fee and fine charges they cannot afford to pay. Loss of income to those who are incarcerated or who lose their license, attendant loss of future earning potential and tax revenue, costs to families and communities disproportionately affected, and other costs were beyond this study's scope.

The costs of collection estimated by this study are therefore lower (and perhaps significantly so) than the full and true costs. Further study of the full costs of collection will help states, counties, and municipalities better understand the inefficiency of relying on fees and fines to generate revenue.

### Cost Shifting Hides Some Costs of Debt Collection

Significant hidden costs are not reflected in court and other public safety budgets because of a tangled web of costs, functions, revenues, and records among state, county, and municipal governments. For example, if you commit a traffic infraction or misdemeanor in Socorro County, New Mexico, the sheriff's deputy who tickets or arrests you is paid by the county. The judge who hears your case in the municipal court is paid by the city, the attorney who prosecutes your case is paid by the district, and the lawyer who serves as your public defender — if you're entitled to one — is paid by the state.<sup>78</sup> This cost shifting across levels of government makes it difficult to quantify the total cost of enforcing fees and fines. It also complicates the task of understanding the incentives to impose fees in the first place.

While criminal fines and certain fees may appear as revenue sources in state budgets (often indistinct from noncriminal fee revenue), much of the cost of enforcing and collecting these fees is borne by counties and municipalities. Even when the costs are shouldered by the states, they are stretched across multiple agencies, making them difficult to aggregate.

These different jurisdictions may fund their justice systems using a combination of tax revenue, "fees for service," and money from state and federal programs, leading to webs of intergovernmental charges.

In some cases, cost shifting has led to conflicts between states and cities. For example, in Austin, Texas, the mayor accused the state of creating an unfunded mandate by requiring the city to collect fees without providing funding adequate to cover the cost of collections.<sup>79</sup> The typical speeding ticket in the city carried \$103 in fees, \$76 of which went to the state.<sup>80</sup>

Often, cost shifting takes place between municipalities and counties, further obscuring the costs of collecting fees and fines. For example, when municipal courts in Austin impose jail time for failure to pay fees and fines,

### Consequences of Fees and Fines

>> **Criminal justice debt** creates a downward spiral of collateral consequences for those who cannot afford fee and fine payments. Shanetra Roach, a defendant in Austin, told the Brennan Center in 2018 that she received a speeding ticket in 2004. Her failure to pay triggered a driver's license surcharge of \$250 per year for three years. When she could not afford these payments, her driver's license was suspended. In the 14 years since, she has been arrested three times, all on warrants derived from her inability to pay the initial ticket. The debt has grown to \$1,800 in driver's license surcharge fees, and she is doing community service to satisfy \$1,200 in outstanding court costs. This debt has prevented her from getting jobs that she is well qualified for. "It's a monkey on a person's back," she said. "It's pushing people further and further into a hole."<sup>84</sup>

>> **Some penalties** for failure to pay debts are imposed by statute, while others are imposed at the discretion of a judge or even a court clerk.<sup>85</sup> Common penalties include bench warrants, license suspension, disenfranchisement, and incarceration, and can result in lower credit scores, fueling a cycle that impedes reentry.

- **Bench warrants.** Bench warrants authorize an arrest. The arrest often occurs when the defendant encounters law enforcement in an unrelated incident, most commonly a traffic stop. The issuance of a bench warrant may trigger an additional fee that is added to the defendant's criminal justice debt.

- **License suspension.** In 43 states, driver's license suspensions are authorized or mandated for failure to pay.<sup>86</sup> License suspension can make finding or keeping a job hard, sometimes impossible. Driving on a suspended license can lead to additional fees and fines, along with incarceration.

- **Disenfranchisement.** In many states, disenfranchisement can be imposed on a discretionary basis or can even be a requirement of the criminal justice system. Thirty states continue to disenfranchise voters on the basis of wealth by requiring payment of all legal financial obligations for voting rights restoration, according to a new report from the Campaign Legal Center and the Civil Rights Clinic at Georgetown University Law Center.<sup>87</sup> This is effectively a modern-day poll tax, despite the 24th Amendment's promise of the right to vote without such a tax.<sup>88</sup>

- **Incarceration.** In almost all 50 states, a formerly incarcerated person may be reincarcerated if he or she is found to be willfully delinquent in payments. A 2016 report by the *Atlantic* found that "the determination of whether an individual is 'willfully' trying to make payments is very much up to judges; some judges decide that a former prisoner's inability to get a job can constitute a lack of willful attempts to pay fees and fines — resulting in them ending up back in jail and facing even more fines."<sup>89</sup> This often leads to disparate outcomes for those charged with the same offense in different counties, or even in different courtrooms in the same courthouse.

- **Lower credit scores.** Criminal justice debt can also damage credit, impairing an individual's ability to obtain a loan or a mortgage or to secure housing. Additionally, such debt on a credit report can provide employers a backdoor means of learning whether an applicant has a criminal history. And wage and tax garnishment can discourage individuals from participating in legitimate employment, pushing them toward the underground economy.<sup>90</sup>

defendants are confined in a Travis County facility.<sup>81</sup> Austin reimburses the county for jail costs but does not report those costs to the state office charged with compiling data on the costs of fee and fine compliance.<sup>82</sup>

The disconnect between the government agencies that benefit from fees and fines and those that bear the costs of enforcement is widened when people are jailed for failure to pay. Counties pay 85 percent of local jail costs,

and costs per inmate can range from \$55 to \$180 per day.<sup>83</sup> This can create a cost spiral: As states prod courts to impose fees because of the revenue they generate, they shift significant collection costs to counties. In turn, counties ask courts to fund more of their operations through additional fees to offset the costs of collecting the fees the state imposed.

## IV. Key Variations Among Jurisdictions

This section examines key variations in collections practices and demographics among the 10 jurisdictions studied. Appendix A provides a detailed fiscal analysis for criminal fees and fines imposed by misdemeanor courts in each of the 10 jurisdictions.

### A. Collections Practices

This study covers 10 counties in three states: Florida, New Mexico, and Texas. Figure 4 summarizes the range of collections practices used in each of these states, the available alternatives to payment, and how the ability to pay fees and fines is determined.

To enforce payment of fees and fines, nonpayment carries an escalating series of penalties in most counties. These practices can carry high costs for defendants and can also have profound effects on the amount of net revenue collected in each county. For example:

- While the full costs of collecting criminal fees and fines could not be determined, documented collection costs are significantly higher in counties where courts jail for nonpayment than in counties where courts do not. Although Florida courts do not jail for failure to pay, they do jail many who are arrested for driving on a suspended license, which may be a consequence of failing to pay fees and fines. Counties studied in New Mexico and Texas, where courts jail for nonpayment, had lower collection rates — and higher collection costs — than counties studied in Florida, although Florida also imposes counterproductive license suspensions that likely do not improve collections and result in costly jailing for driving with a suspended license.
- Statewide warrant roundups occur in Texas and New Mexico but not in Florida. These warrant roundups are a partnership between state and local law enforcement aimed at clearing uncollected debt for low-level offenses. They usually involve a public information campaign regarding old warrants and checkpoints where law enforcement personnel run people's license plates and IDs to check for outstanding warrants.

In theory, defendants in each county in this analysis have the same alternatives to payment. In practice, there is wide variation both between and within states in how often these alternatives are offered to defendants. In most jurisdictions, decisions regarding waivers, community service credits, incarceration for nonpayment, and tailored determinations based on ability to pay are left to the discretion of individual judges.

FIGURE 4

### Collections Practices Across Jurisdictions

	TEXAS	FLORIDA	NEW MEXICO
<b>Enforcement</b>			
Referrals to Private Collection Agencies	Yes	Yes	Yes*
License Suspensions for Failure to Pay	Yes	Yes	No
Vehicle Registration Holds for Failure to Pay	Yes	No	No
Arrest Warrants Issued for Failure to Pay	Yes	No	Yes
Arrest Warrants Issued for Failure to Appear	Yes	Yes	Yes
Statewide Warrant Roundup Program	Yes	No	Yes
Collections Courts	No	No	No
Online Payment Options	Yes	Yes	Yes
Wage Garnishment for Restitution	No	Yes	Yes
Bank Account Garnishment for Restitution	Yes	Yes	Yes
Property Liens for Restitution	Yes	Yes	Yes
<b>Alternatives to Payment</b>			
Jail Credits	Yes	Yes	Yes
Community Service	Yes	Yes	Yes
Waivers for Fines and Fees	Yes	Yes	Yes
Payment Plans/ Installment Payments	Yes	Yes	Yes
<b>Ability to Pay</b>			
Ability-to-Pay Hearings Before Issuing Warrants	Yes	N/A	Yes*
Ability-to-Pay Determinations at Sentencing	Yes	Yes	Yes*

\* Practices occur in some, but not all, courts or counties.

Source: New Mexico Criminal Code; Florida Criminal Code; Texas Penal Code.

FIGURE 5

## Variations in Demographics, 2016

	TEXAS				NEW MEXICO			FLORIDA		
	Travis	El Paso	Jim Hogg	Marion	Bernalillo	Santa Fe	Socorro	Leon	Miami-Dade	Madison
<b>Demographics</b>										
Population	1,176,584	834,825	5,262	10,140	674,855	147,514	17,098	285,890	2,702,602	18,518
Population Density (per sq. mi.)	1,188	824	5	27	581	77	3	429	1,423	27
Poverty Rate	12.2%	22.7%	27.9%	22.6%	16.2%	14.0%	25.4%	19.0%	18.2%	31.9%
Median Income	\$68,350	\$43,244	\$31,403	\$36,938	\$50,386	\$57,945	\$34,008	\$49,941	\$46,338	\$31,816
Unemployment Rate	3.2%	4.9%	9.6%	7.0%	5.8%	5.2%	7.3%	4.5%	5.1%	5.2%
Percentage of White (not Hispanic or Latino)	49%	12%	6%	71%	39%	43%	35%	57%	14%	54%
Percentage of Black or African American	8%	3%	0%	24%	3%	1%	0%	31%	18%	39%
Percentage of Hispanic or Latino (of any race)	34%	82%	94%	4%	50%	51%	50%	6%	67%	5%
<b>Collections</b>										
Assessments Per Capita	\$32.30	\$12.82	N/A	N/A	\$6	\$8	\$12	\$4	\$4	\$14
Collections Per Capita	\$22.89	\$778	\$45	\$36	\$3	\$5	\$7	\$3	\$3	\$9
Collection Rate	71%	61%	N/A	N/A	45%	64%	58%	75%	79%	68%

**Sources:** U.S. Census Bureau (2013–2017 ACS 5-year estimates, 2016 SAIPE); Bureau of Labor Statistics; Florida Court Clerks & Comptrollers; New Mexico Judicial Information Division; Texas Collection Improvement Program; Texas Office of Court Administration; Brennan Center calculations.

## B. Demographics

The jurisdictions in this analysis represent a wide range of racial, ethnic, political, and economic diversity. A summary of the demographics of each county is shown in figure 5. These demographic differences highlight how the system of fines and fees plays out differently across communities. These are some results comparing 2016 data across our target counties:

- Collections per capita were highest in Texas, where they averaged \$28 per person across four target counties. In Florida and New Mexico, collections per capita were much lower, each at \$5.<sup>91</sup>
- Assessments per capita were generally higher in rural areas. In Florida, rural Madison County had the state's highest assessments per capita. Likewise, in New Mexico, another rural county, Socorro, had the state's highest assessments per capita.<sup>92</sup> Unfortunately, the authors were unable to compare rural counties in Texas because assessment per capita data for rural counties was unavailable.

- In all target counties across the three states, rural counties had higher collections per capita than other counties. Governments in rural areas are frequently poorly funded and may be more reliant on revenue generated from fees and fines. This may lead rural governments to prioritize generating this fee and fine revenue. For example, in Texas, Jim Hogg and Marion Counties — both rural — had higher collections per capita than urban El Paso and Travis Counties. Compared with El Paso and Travis, Marion and Jim Hogg have a larger proportion of residents that face financial burdens, indicated by the counties' lower median household incomes. In Florida, Madison County also had the highest collections per capita in 2016. Those in rural Madison County face more financial burdens than their urban counterparts in Miami-Dade and Leon Counties. Finally, New Mexico's rural Socorro County had the highest collections per capita in 2016. As in rural counties in Texas and Florida, the residents of Socorro are more financially burdened than their counterparts in the urban Santa Fe and Bernalillo Counties, also both in New Mexico.



## V. Statewide Analysis

This section provides a set of statewide analyses of criminal fees and fines imposed by both misdemeanor and felony courts in Texas, Florida, and New Mexico. Figure 6 shows statewide totals for assessments, waivers, and collections for misdemeanor and felony courts in each of the three states studied, as well as some enforcement costs in Texas and New Mexico, including jail costs.

### A. Texas

Between 2012 and 2018, Texas criminal courts imposed as much as \$8.7 billion in fees and fines, which is a projected estimate for a state in which most, but not all, courts report to the state.<sup>93</sup> In an average year, the amount of these legal financial obligations could total \$47 for every person in the state — a significant source of revenue both for the state's general revenue fund and for local court programs.<sup>94</sup> Rather than raise this revenue from general taxes, however, Texas criminal courts assess criminal defendants in cases ranging from minor traffic infractions to serious felonies.

While Texas lacks statewide data, its Office of Court Administration collects information from more than 70 counties and most cities with a population greater than 100,000; this represents about 72 percent of Texas by population.<sup>95</sup> The data suggests that the average amount of fees and fines charged to each defendant between 2012 and 2018 was \$268.<sup>96</sup> However, the size of criminal fees and fines imposed varies tremendously by court and type of charge. Additional findings include:

- In general, district courts, which handle mainly felony cases, assessed an average of \$957 per defendant between 2012 and 2018. These courts, however, administered just 3 percent of the cases in which fees and fines were imposed.
- For county courts, which tend to handle serious misdemeanors, the average assessment per person was \$606. The county courts administered 7 percent of fee and fine cases.
- For justice of the peace courts (justice courts) and municipal courts, which tend to handle traffic cases and some misdemeanors, the average fee and fine amount assessed were \$222 and \$213, respectively. Together these courts hear 90 percent of cases in which fees and fines were assessed.<sup>97</sup> Overwhelmingly, the criminal cases handled by justice and municipal courts are traffic violations — 87 percent in the justice courts and 78 percent in the municipal courts.<sup>98</sup>

FIGURE 6

### Statewide Fiscal Analysis for Texas (2017), New Mexico (2016), and Florida (2017)

Thousands of dollars

	TEXAS	NEW MEXICO	FLORIDA
<b>Total Fees and Fines Assessed</b>			
Total Assessments	\$763,058	\$23,344	\$427,737
Waivers	-\$46,091	N/A	-\$9,173
Community Service Credits	-\$10,722	-\$603	-\$4,055
Jail Credits	-\$140,476	-\$4,358	-\$403
Conversions to Liens	N/A	N/A	-\$109,993
Other Credits	\$0	-\$1,800	\$0
Total Adjustments	-\$197,289	-\$6,760	-\$123,622
Net Amounts Owed	\$565,769	\$16,584	\$304,115
<b>Revenue Collected</b>			
Collections	\$465,391	\$13,431	\$167,865
Collections as a Percentage of Assessments	61%	58%	39%
<b>Costs</b>			
Collections Unit Costs	\$16,314	N/A	N/A
Jail Costs	\$134,170	\$5,267	N/A
Total Costs	\$150,484	\$5,267	N/A
Costs as a Percentage of Collections	32%	39%	N/A
<b>Revenue Minus Cost</b>			
Net Gain	\$314,906	\$8,164	N/A

Source: New Mexico Judicial Information Division; Texas Collection Improvement Program; Brennan Center calculations.



FIGURE 7

### Assessments, Cases, and Types of Cases by Type of Court, 2012-2018

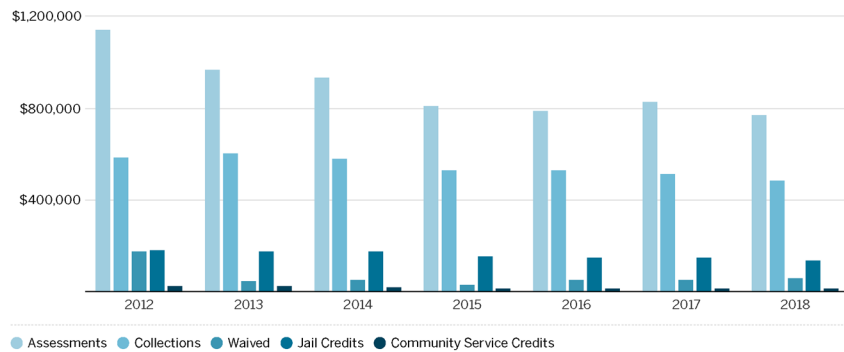
	AVERAGE ASSESSMENT	PERCENTAGE OF FEE/FINE CASES	COLLECTION RATE	MAIN TYPES OF CRIMINAL CASES
District Courts	\$957	3%	33%	Serious Felonies
County Courts	\$606	7%	49%	Serious Misdemeanors
Justice of the Peace Courts	\$222	23%	82%	Traffic Cases
Municipal Courts	\$213	67%	64%	Traffic Cases
All Courts	\$268	100%	61%	-

Source: Texas Collection Improvement Program; Annual Statistical Report for the Texas Judiciary, Fiscal Year 2018.

FIGURE 8

### Reported Texas Criminal Fee and Fine Assessments, Collections, Waivers, and Credits, 2012-2018

Thousands of dollars



Assessments Collections Waived Jail Credits Community Service Credits

Source: Texas Collection Improvement Program.

FIGURE 9

### Average Texas Jail Credits and Cost of Incarceration, Associated with Jail Credits 2012-2017

	AVERAGE ANNUAL CREDITS	AVERAGE ANNUAL COST	PERCENTAGE OF TOTAL COST
District Courts	\$5,129,365	\$3,982,078	3%
County Courts	\$37,811,999	\$28,996,783	21%
Justice of the Peace Courts	\$16,154,378	\$13,443,971	10%
Municipal Courts	\$109,324,473	\$91,182,746	66%
Total	\$168,420,216	\$137,605,577	100%

Source: Texas Collection Improvement Program.

In an average year, Texas courts collect about 61 percent of the criminal fees and fines levied. That means 39 percent cannot be collected, and much of that will not ever be collected.

Between 2012 and 2018, Texas data indicates that 21 percent of fees and fines on average were credited.

- 14 percent of fees and fines was satisfied by time served in jail. This accounted for more than half of all amounts waived or credited.
- 6 percent was waived, usually for indigency or other hardship.
- 1 percent was satisfied by community service credits, usually given for some number of hours of work for a community nonprofit or other local organization.

Jail credits are an expensive proposition. For example, between 2012 and 2018, Texas criminal courts issued more than \$1 billion in credits for jail time; this represents more than 10 million days of incarceration. Some of these credits were issued by courts to defendants already serving sentences for crimes. However, some credits were associated with jailing solely to satisfy outstanding court debts, a type of incarceration that serves no useful public safety purpose. Texas spent more than \$825 million on these jail stays between 2012 and 2018, an average of more than \$137 million a year.<sup>99</sup> There is no revenue associated with jail credits. For Texas courts and jurisdictions, jail credits only represent costs. For Texas courts reporting such costs, the average daily cost of jailing is \$81.08.

Not every case of jailing associated with the use of jail credits represents incarceration simply for the purpose

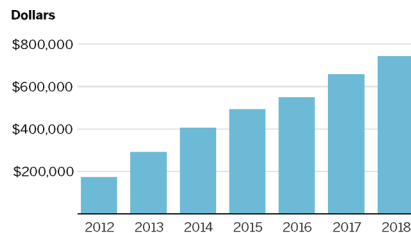
of satisfying fees and fines; there may be other offenses involved beyond failure to pay. However, until recently, the use of both voluntary and involuntary jail stays to satisfy court debts was common. During the period studied, municipal courts, which handle traffic cases and low-level misdemeanors that do not typically involve jailing, granted the majority of jail credits statewide, suggesting that jail stays were used to satisfy fee and fine debt. In 2017 Texas passed legislation intended to limit involuntary jailing for nonpayment of fees and fines.<sup>100</sup> Data released by the Texas judiciary shows a decline in the number of people incarcerated for nonpayment from 523,059 in 2017 to 456,220 in 2018.<sup>101</sup> But this still represents the incarceration of nearly half a million people for inability to pay.

Significantly, despite the use of waivers and credits, there is also a growing balance of unpaid fee and fine debt in Texas. While there is no official accounting of total uncollected criminal fees and fines in the state, between 2012 and 2018 almost \$742 million was not collected, credited, or waived, averaging \$106 million in added debt per year. Without action by the Texas judiciary or legislature to remediate this debt, it will continue to grow.

One important consideration for the courts is that if fees and fines are not collected soon after they are imposed, the rate of collections falls to a comparative trickle, further highlighting that many of these debts are unlikely to be collected. For example, during 2016 courts took in 66 percent of their fee and fine collections in the first 30 days after imposition. After that, collections slowed to 5.5 percent in the next 30 days and continued to drop from there. This indicates that people who can pay these debts tend to pay them within the first 30 days; those who cannot will struggle to pay for a much longer period, and many older debts may never be paid.

FIGURE 10

### Texas Growth of Uncollected Criminal Fees and Fines, 2012–2018



Source: Texas Collection Improvement Program.

FIGURE 11

### Drop-Off in Collections Over Time in Texas, 2016

DAYS UNTIL COLLECTION	AMOUNT COLLECTED (IN MILLIONS)	PERCENTAGE COLLECTED
0 to 30 Days	\$342.7	66%
31 to 60 Days	\$285.6	6%
61 to 90 Days	\$205.0	4%
91 to 120 Days	\$160.8	3%
121 Days and Over	\$115.6	22%

Source: Texas Collection Improvement Program.

### Promising Reforms in Texas

>> **Over the past** several years, Texas has passed a series of reforms aimed at improving inefficient fee and fine collection practices that placed significant burdens on indigent defendants.

>> **Texas Senate Bill 1913** was passed in 2017 to alleviate criminal justice debt.<sup>102</sup> The law broadly requires judges to conduct ability-to-pay hearings, allows waivers or reductions of fees and fines, and offers alternatives to jail sentences.<sup>103</sup> This has led to a decline of 11.4 percent in arrest warrants, and data released in 2018 by the Texas Office of Court Administration shows a drop over a year in the number of people incarcerated for failure to pay fines from 523,059 to 456,220.<sup>104</sup>

>> **In 2019**, Texas built on Senate Bill 1913 and passed new legislation, Senate Bill 1637, to mitigate the burdens imposed on defendants facing unaffordable fees and fines.<sup>105</sup> The law changed the state's imposition and collection of fines and fees by requiring courts to administer ability-to-pay hearings upon notice to the court that defendants are unable to pay, though judges have the authority to waive the hearing if an inability to pay is already apparent.<sup>106</sup> If defendants are unable to pay, alternative options must be offered, including full or partial waivers of the fees and fines, deferred payment plans, or community service.<sup>107</sup> If community service is also shown to be an undue hardship (for reasons such as child-care responsibilities, health concerns, employment, or homelessness), then the fees and fines must be waived.<sup>108</sup> Under Senate Bill 1637, judges also have greater discretion to waive certain fees and are no longer required to issue warrants for failure to appear.<sup>109</sup> The bill came soon after a ruling by a federal

judge in Texas in 2018 that it is unconstitutional to set bail without considering ability to pay.<sup>110</sup>

>> **Also in 2019**, lawmakers in Texas unanimously approved a bill to repeal the Driver Responsibility Program (DRP), limiting the practice of license suspensions for unpaid fines.<sup>111</sup> Under the DRP, which was enacted in 2003, drivers were penalized with hefty fines for traffic offenses ranging from speeding to driving without insurance, and if the surcharges were not paid within 105 days, their licenses were automatically suspended.<sup>112</sup> These fines recurred annually, and failure to pay or a failure to appear in court prevented drivers from renewing their licenses.<sup>113</sup> Some 1.8 million drivers with unpaid surcharges related to traffic violations have had their licenses suspended.<sup>114</sup>

>> **The DRP was created** to fund trauma centers in rural areas of the state that lacked access to emergency medical care due to underfunding.<sup>115</sup> However, most of the license suspensions under the DRP were not imposed for serious public safety violations, such as driving while intoxicated or speeding. Likewise, though the number of trauma centers in Texas has increased through DRP surcharges, less than 12 percent of the driving offenses generating these charges were of the type that send people to trauma centers.<sup>116</sup> In fact, the magnitude of license suspensions under the program has led to an increase in uninsured and unlicensed drivers.<sup>117</sup> Once the repeal of the DRP goes into effect, the decline in trauma center funding will be offset by an increase in minimum fines for traffic citations, from \$30 to \$50, and more than 1.5 million Texans will be eligible for license reinstatement.<sup>118</sup>

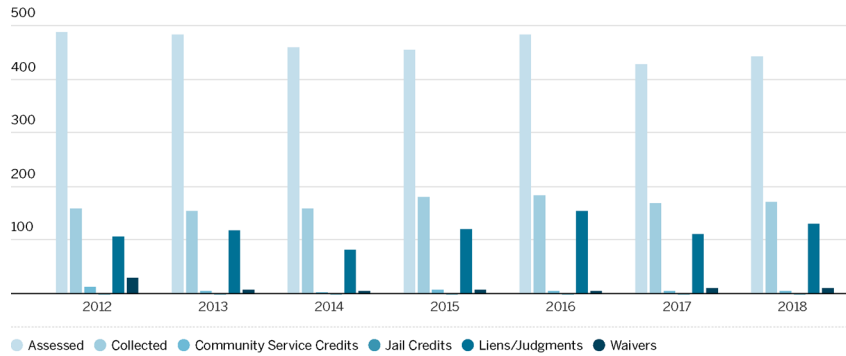
The full cost of collecting these debts is unknown, but it comes to at least 25 percent of revenue, based on incomplete reporting to the state, and an average of more than \$120 million a year for incarceration of those with debt outstanding. The full cost is likely higher. Further, in 2015, the best recent year for compliance with cost-reporting requirements, Texas criminal courts spent \$27.4 million in salaries, benefits, and other operating costs, and used 750 employees, for collection activities. Again, these costs understate what Texas spends on collection of criminal fees and fines. First, reporting is incomplete — many of the courts required to participate in data reporting for the

state's Collection Improvement Program do not do so. Second, the program's reporting requirements cover only about 72 percent of the state's population. Third, these costs do not include expenses of other public employees involved in the collection of these debts (e.g., time spent by judges, public defenders, prosecutors, and other employees during court appearances; warrant service for nonpayment; and community corrections officers' time monitoring probationer and parolee compliance with fee and fine sanctions). Only with more complete reporting can the full cost to local, county, and state agencies be fully tallied.

FIGURE 12

### Florida Criminal Fee and Fine Assessments, Collections, Waivers, and Credits, 2012–2018

Millions of dollars



Source: Annual Assessments and Collections Reports, Florida Court Clerks & Comptrollers Association.

#### B. Florida

Between 2012 and 2018, Florida criminal courts imposed \$3.2 billion in fees and fines, an annual average of \$22 for every person in the state.<sup>119</sup> This revenue is used to fund criminal justice and local court programs.<sup>120</sup> Rather than raise this revenue from taxes, Florida criminal courts assess these amounts on criminal defendants in cases ranging from traffic infractions to serious felonies. In fiscal year 2018 alone, these fees and fines totaled almost \$442 million.<sup>121</sup>

In an average year, Florida courts collect only \$168 million, or 36 percent of total criminal fees and fines assessed, meaning that nearly two-thirds, or \$295 million, of court debts are simply not collected. On average, circuit courts collect just 27 percent of amounts assessed, while county courts collect 73 percent.

Florida courts appear to recognize that a significant portion of these debts cannot be collected. In fiscal year 2018, circuit courts treated 23 percent of criminal fees and fines assessed as “at risk” for collection because of indigency.<sup>122</sup> County courts considered 26 percent of assessments at risk for the same reason.<sup>123</sup>

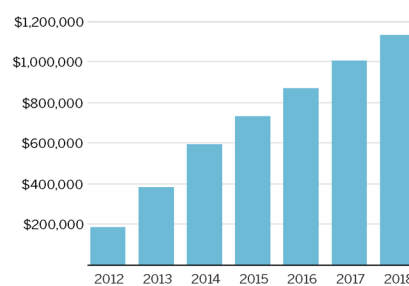
However, courts only sparingly waive or offer credits against amounts owed. In the period studied, they waived just 2 percent of the total, credited 1 percent in exchange for community service, and credited less than 1 percent for jail time served. This totaled just \$16 million a year on average.

By contrast, conversions to liens and civil judgments are used liberally by Florida courts. On average, 25 percent of fees and fines imposed are converted this way, even though Florida courts have low expectations for eventual payment. These civil conversions are used routinely by

FIGURE 13

### Florida Growth of Uncollected Criminal Fees and Fines, 2012–2018

Dollars



Source: Annual Assessments and Collections Reports, Florida Court Clerks & Comptrollers Association.

### License Suspension Costs

>> **Forty-three states** use the threat of driver's license suspension to coerce the payment of amounts owed to courts.<sup>127</sup> Nationwide, more than 7 million people have had their driver's licenses suspended for failure to pay court or administrative debt, a number that could well be much higher because states do not uniformly report such data.<sup>128</sup> In Texas alone, 1.8 million people have had their driver's license suspended for failure to pay fines and fees.<sup>129</sup> In Florida, more than 1.1 million license suspension notices were issued in 2018, just for failure to pay court debts. As in most states, suspensions take place with no ability-to-pay determination, resulting in people losing their licenses with little opportunity to present their case.<sup>130</sup>

>> **Driver's license suspensions** impose a significant cost on those affected, as most Americans drive to work. Without a car, it's often hard to hold down a job. In a New Jersey study of suspended licenses, almost half of those affected lost their jobs and were unable to find another.<sup>131</sup> People face other hardships without a driver's license, including an inability to drive children to school or even to buy groceries. At a recent Texas Senate hearing on a surcharge program responsible for many driver's license suspensions for failure

to pay, Sen. Don Huffines (R–Dallas) said the program led to a “permanent underclass” and split “society by those who can pay the fines and those who can't.”<sup>132</sup>

>> **There are also significant costs** to state and local governments. Processing and executing license suspensions consumes staff time and other resources. Efforts to apprehend and punish those who drive without a valid license also impose a cost on police, courts, prosecutors, public defenders, and jails. While comprehensive data on these public costs is unavailable, examples in a few states suggest they may be substantial:

- In 2019, an Oregon legislative proposal to eliminate license suspension for failure to pay fines led the Oregon Department of Transportation to predict savings of almost \$1 million by eliminating processing costs and the need to address drivers' questions about suspensions.<sup>133</sup>
- Colorado estimated its annual requirements for non-safety-related suspensions of driver's licenses under a new state code and found a cost of 18,646 man-hours to process and hold hearings involving 16,800 suspension cases — roughly nine full-time-equivalent employees.
- In Washington State, failure to pay a fine or appear in court on a moving violation currently results in driver's license suspension. In 2015 almost 38,000 cases of driving following such a suspension were prosecuted at a cost of \$925 per case. More than 14,000 convictions were secured, many including jail time, at a net cost — less any fines revenue — of \$182 per case. In total, the estimated cost to the state in 2015 alone was \$37.5 million.<sup>134</sup> Additional fees imposed to offset these costs are expected to cover less than half the state's expenses: Washington forecasts revenue of \$10.6 million in driver's license reinstatement fees and \$4.7 million in hearing fees for 2019 through 2021.<sup>135</sup>

### Reasons for Driver's License Suspension Notices in Florida (2018)

Delinquency on Child Support Payments	134,079
Failure to Pay Court Financial Obligations (Traffic, Misdemeanor, and Felony)	1,118,601
Other	387,446
Total Suspensions and Revocations	1,640,126

Source: Fines and Fees Justice Center.

circuit courts in felony cases, where they total 36 percent of assessed criminal fees and fines, and less so by county courts for misdemeanor cases, at 11 percent.

Besides indigency, another factor making criminal fees and fines difficult to collect is incarceration. In 2018 the circuit courts rated 55 percent of amounts imposed as at risk for collection purposes because the defendants were jailed or serving prison sentences.<sup>124</sup> The compara-

ble figure for county courts was just 4.4 percent.<sup>125</sup> In total, for the factors the judiciary considers as impediments to collection, 86 percent of circuit court criminal assessments and 38 percent of county court assessments were rated “at risk” of non-collection in 2018.<sup>126</sup> In other words, of the \$442 million assessed in 2018, two-thirds, or \$295 million, was considered uncollectible by the courts.

With little use of waivers and credits, defendants in

### Disenfranchisement in Florida

>> In 2018, Florida voters passed Amendment 4, a historic initiative restoring voting rights to the 1.4 million people in the state with past felony convictions.<sup>136</sup> Minorities, especially black and low-income people, were vastly overrepresented in this group. But in May 2019, Florida enacted a law requiring they pay all fees, fines, and restitution in order to be eligible to

vote again.<sup>137</sup> The average income of the formerly incarcerated people who registered to vote between January and March of 2018 is nearly \$15,000 below that of an average Florida voter.<sup>138</sup> Disenfranchisement for failure to pay court debts disproportionately removes the poor from voter rolls, depriving them of a voice in their government.

Florida face a growing balance of fee and fine debt. While the total amount of uncollected criminal fees and fines in the state is unknown, an average of more than \$162 million a year was added to the balance between 2012 and 2018, for a total of more than \$1.1 billion over the seven-year period. Without action by the Florida judiciary or legislature to remediate this debt, it almost certainly will continue to grow. While Florida courts appear to recognize that indigency poses a problem for collections, extremely low usage of indigency waivers and community service credits fuels spiraling uncollected court debt that serves neither the courts nor those held liable for unpaid amounts.

The cost to Florida of collecting criminal fees and fines is unknown. With no systematic collection and reporting of data, it is impossible to tally the costs for the courts, the law enforcement agencies that perform warrant service or enforcement of driver's license suspensions due to nonpayment, or probation and parole services that must remind their clients of payment requirements.

### C. New Mexico

Between 2012 and 2016, New Mexico's district, magistrate, and metropolitan courts assessed an estimated \$113 million in fees and fines. In an average year, this amounts to about \$54 for every person in the state.<sup>139</sup> While data for county courts is unavailable, even this partial total is significant, coming to more than \$23 million in 2016 alone.

- Magistrate courts, which handle mainly misdemeanor and traffic violations, assessed an average of

\$16,219,194 per year between 2012 and 2016. These courts handled, on average, 70 percent of the cases in which fees and fines were imposed.

- District courts are courts of general jurisdiction handling a wide range of cases. These courts assessed an average of \$1,712,418 per year and administered 6 percent of fee and fine cases on average.
- The Bernalillo Metropolitan Court combines the county's municipal and magistrate courts in a single court serving New Mexico's most populous county. The court assessed an average of \$4,698,242 per year and administered 24 percent of the state's fee and fine cases on average.

The authors observed the following yearly averages for 2012 through 2016:

- Of the \$1.7 million assessed in district courts, \$326,462 was converted into credits and only \$298,000 was collected, leaving \$1,088,111 uncollected.
- Magistrate courts had the highest amount of fee and fine activity. Of the approximately \$16.2 million in fees and fines imposed, \$3,332,494 in credits were awarded and \$10,609,152 in fees and fines were collected, leaving \$2,277,549 uncollected.
- The Bernalillo Metropolitan Court awarded \$1,837,685 million in credits and collected \$2,424,789 million in fees and fines, leaving \$435,768 uncollected out of \$4.7 million assessed.

On average, credits as a percentage of assessments was rather low for district and magistrate courts — at 19 percent and 21 percent, respectively — compared with 39 percent for the Bernalillo Metropolitan Court.

Jail credit was the most common type of credit applied by the magistrate and metropolitan courts. From 2012 to 2016, magistrate courts applied a total of \$16.6 million credits, of which \$11.3 million, or 68 percent, were jail credits. In the metropolitan court, there were \$9.2 million credits, of which \$6.5 million, or 71 percent, were jail credits. The amount of jail credits issued in district courts was relatively low from 2012 to 2016, totaling \$9,709. Across the district, magistrate, and metropolitan courts from 2012 to 2016, a total of \$17,835,136 in jail credits was issued. This corresponds to 300,502 days in jail — which cost a total of \$21,814,692.<sup>140</sup>

Although credits and waivers are supposed to reduce the amount of debt owed, considerable amounts of uncollected fees and fines still accumulate each year. Figure 16 shows that uncollected fees and fines have piled up

### Reforms in New Mexico

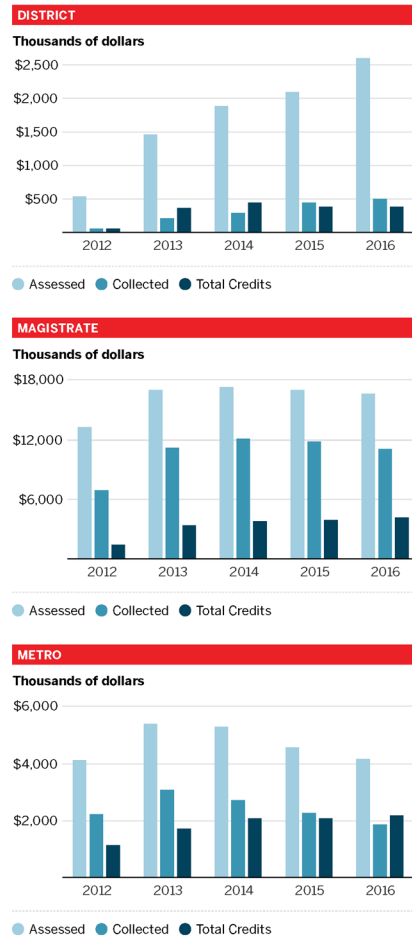
**>> Bernalillo Metropolitan Court** has hosted “Safe Surrender” events for the past several years, inviting people to work with a judge to address their outstanding bench warrants and avoid the risk of arrest.<sup>145</sup> Prosecutors and defense attorneys are available at these one-day events for individual meetings ahead of appearances before a judge. New Mexico courts have promoted this opportunity — including through an active Twitter account — to encourage people to voluntarily appear and resolve pending issues.<sup>146</sup> The program does not provide a formal amnesty, but judges promise to resolve or at least offer new opportunities to settle amounts owed for every case.<sup>147</sup> People who appear on a traffic citation are almost guaranteed to have their cases resolved, while those appearing on warrants for public safety violations and other types of misdemeanors can expect to have an opportunity to set a future court date without being arrested.<sup>148</sup>

**>> In 2010, New Mexico defendants** spent a median of 147 days in jail while awaiting trial.<sup>149</sup>

Judges often set the bail high to keep defendants in custody and avoid the risk of releasing dangerous people — though wealthier defendants or those using bail bond companies could still bail out.<sup>150</sup> In 2016 New Mexico voters approved Constitutional Amendment 1 to protect the right to pretrial release for non-dangerous defendants.<sup>151</sup> The new bail measures prohibit judges from jailing defendants simply because of financial inability to pay bail, and they allow a defendant to file a motion to request release on nonmonetary conditions.<sup>152</sup> Although the amendment also grants judges broad authority to deny bail to defendants charged with a felony who are deemed dangerous or flight risks, its provisions for reform are an important step in allowing future litigation against unfair monetary bail practices.<sup>153</sup> And though prosecutors have pushed back against the reforms, the New Mexico Supreme Court is committed to continuing on the path to bail reform and noted that crime rates appear to have dropped since the measure was implemented.<sup>154</sup>

FIGURE 14

### New Mexico Criminal Fee and Fine Assessments, Collections, and Credits, 2012–2016



Source: New Mexico Judicial Information Division.

FIGURE 15

**Comparison of Credits in New Mexico, 2012–2016**

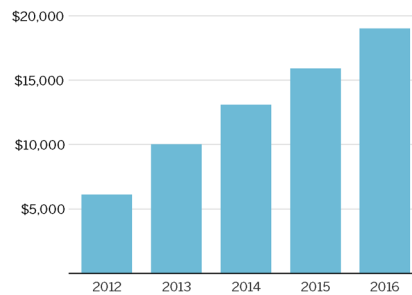
Source: New Mexico Judicial Information Division.



FIGURE 16

### New Mexico Growth of Uncollected Fees and Fines, 2012–2016

Thousands of dollars



Source: New Mexico Judicial Information Division.

each year in New Mexico since 2012. The average increase was almost \$4 million per year, with approximately \$19 million uncollected in total.

The accumulation of uncollected debt is a problem for New Mexico. The rate of uncollected debt in counties throughout New Mexico correlates with the poverty rate within each county. This relationship underscores

how fees and fines tend to be a serious problem for the communities that can least afford them. (The authors could not perform a similar analysis for Florida and Texas because of lack of available data. In Texas, revenue data for rural and less-populated counties is unavailable, which would bias the results. Likewise, for Florida, the authors did not have access to sufficient data at the county level.)

Not only do fees and fines appear to be an inefficient way to collect revenue, but they are also poorly targeted and perpetuate social and economic disparities for people who cannot afford to pay them. For example, Hidalgo, Luna, and Quay Counties have relatively high poverty rates as well as rather high amounts of uncollected fee and fine debt per capita between 2012 and 2016.<sup>141</sup>

- Hidalgo County, with a poverty rate of 24.8 percent, has \$78.45 of uncollected fees and fines per person.<sup>142</sup>
- Luna County, with a poverty rate of 28.3 percent, has \$47.96 of uncollected fees and fines per person.<sup>143</sup>
- Finally, Quay County, with a poverty rate of 23.9 percent, has \$28.05 of uncollected fees and fines per person.<sup>144</sup>

By comparison, New Mexico has a statewide poverty rate of 19 percent and uncollected fees and fines of \$9.30 per person.

## VI. Conclusion

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In recent years, states and municipalities have come to rely on criminal fees and fines, shifting the burden for funding courts, the criminal justice system — and, sometimes, general government operations — from the general public to defendants. But these fees and fines undermine rehabilitation and public safety by saddling people with debt just as they are reentering society. This report shows that they also fail at their primary objective: raising revenue.

**The ten counties across Florida, New Mexico, and Texas** studied here show that criminal fees and fines are an unreliable and inefficient revenue stream. They frequently burden the members of society who are least able to pay, and the costs of collection are many times greater than those of general taxation, effectively canceling out much of the revenue. Particularly costly is the practice of jailing defendants solely for their failure — or inability — to pay these debts.

While it is clear that fees and fines don't deliver, the full costs to jurisdictions certainly exceed those estimated here. Activities involved with fees and fines are spread across agencies and levels of government, and none of the agencies or jurisdictions studied here track the full scope of work involved in imposing and enforcing them. Only with a thorough accounting can jurisdictions appreciate just how inefficient fines and fees are as a source of revenue.

## Appendix A:

### Fiscal Impact Analysis of Individual Jurisdictions

#### A. New Mexico

New Mexico has a population of 2 million, concentrated mostly in urban areas around Albuquerque, Las Cruces, Rio Rancho, and Santa Fe.<sup>155</sup> The state faces severe economic challenges, with a poverty rate of 20 percent, the second highest in the country.<sup>156</sup> A Republican governor was succeeded by a Democrat in early 2019, and New Mexico leans Democratic in national elections. The state's population is approximately 49 percent Hispanic or Latino, 37 percent white non-Hispanic, 10 percent Native American, and 2 percent black.<sup>157</sup>

Every New Mexico county except Bernalillo has three levels of criminal courts.<sup>158</sup> Municipal courts deal mostly with traffic violations, magistrate courts handle low-level

misdeemeanors and small claims such as debt collection and landlord-tenant disputes, and district courts oversee serious misdemeanors and felonies. In Bernalillo, the municipal and magistrate courts are combined into a single metropolitan court. Most fee and fine activity occurs in magistrate and municipal courts, but data for municipal courts is limited. Therefore, this report focuses on magistrate courts in Santa Fe and Socorro Counties and the Metropolitan Court in Bernalillo County.

When someone is unable to pay assessed fees and fines in New Mexico, a bench warrant is issued for that person's arrest and an additional \$100 bench warrant fee is added to the court debts. This also triggers an automatic driver's license suspension. To reinstate the license, the defendant must pay \$30 to the DMV. This means that, for each warrant issued by the court, most defendants actually owe \$130.

Figure 17 provides an example of the fees and fines imposed on defendants in New Mexico.

FIGURE 17

#### Fees and Fines in New Mexico

Fines	Amount
Motor Vehicle Code Violation	Up to \$300
Petty Misdemeanor	Up to \$500
Misdemeanor	Up to \$1,000
Universal Fees	
Domestic Violence Offender Treatment Fee	\$5
Crime Victims Reparations Fee	\$50
Magistrate Court Automation Fee	\$10
Traffic Safety Fee	\$3
Judicial Education Fee	\$3
Jury and Witness Fee	\$5
Brain Injury Services Fee	\$5
Case-Specific Fees	
DUI Chemical Testing Fee	\$85
DUI Community Program Fee	\$75
Controlled Substances Testing Fee	\$75
Public Defender Fee	\$10
Mediation Fee	\$5
Pre-prosecution Diversion Program Fee	\$85/month
Misdemeanor Probation Fee	\$15/month

Source: New Mexico Criminal Code.

#### 1. Bernalillo County

Bernalillo County is home to New Mexico's largest city, Albuquerque. With nearly 675,000 residents, it is also the most populous county in the state.<sup>159</sup> Bernalillo's local government contains a mix of Democrats and

FIGURE 18

#### Bernalillo County Criminal Fee and Fine Fiscal Analysis, 2016

Thousands of dollars

Revenue Collected	
Assessments	\$4,170
Credits	\$2,193
Collections	\$1,862
Percentage of Fees and Fines Collected	45%
Costs	
In-Court Costs	\$40
Jail Costs	\$2,138
Total Costs	\$2,178
Cost as a Percentage of Collections	117%
<b>Net Gain (+)/Loss (-)</b>	<b>-\$316</b>

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

Republicans, but like the state as a whole, the county leans Democratic in national elections.<sup>160</sup> Albuquerque was established as a Spanish colonial outpost, and the county's history is reflected in its demographics: It is 50 percent Hispanic or Latino, 39 percent white non-Hispanic, 4 percent Native American, and 3 percent black.<sup>161</sup> While Bernalillo is home to some of New Mexico's wealthiest citizens, mostly in northeastern Albuquerque and the adjacent suburbs, it also has some of its poorest. The poverty rate in the county is 19 percent, roughly equal to that of the state overall.<sup>162</sup>

Two courts with criminal jurisdiction operate in Bernalillo County — the Bernalillo Metropolitan Court and the Second Judicial District Court. The metropolitan court, which handles traffic and misdemeanor cases, generates the greatest fee and fine volume and is the focus of this analysis. The district court handles felonies.<sup>163</sup>

While the docket changes each day, custody and traffic arraignments occur daily. Once someone is arrested, court rules require arraignment within 24 hours.<sup>164</sup> After the judge arrives, each court appearance typically lasts between two and five minutes. Fees and fines are rarely mentioned, and no indigence determinations were observed in the courtroom. After appearing before the judge, the defendant meets with a clerk who explains the fee and fine obligations, how to convert them to community service hours, the date by which they must be paid, and any other requirements. One judge told the authors that access to community service conversions has greatly

reduced the amount of paperwork for clerks and defendants and has reduced instances of people failing to pay.

If a person fails to make payments, the court issues a warrant. When that person next comes into contact with the justice system, as in a traffic stop, he or she is taken into custody. Typically, arraignment occurs the day following the arrest, at which point a jail credit is applied to this person's fees and fines, the outstanding amount is waived, and he or she is released.

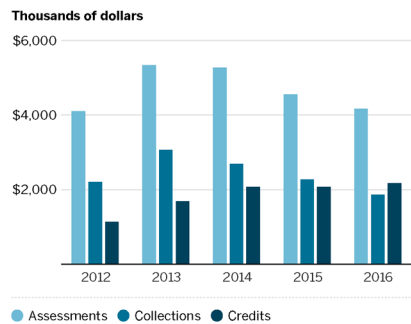
Figure 18 shows the results of the Brennan Center's fiscal analysis for traffic and misdemeanor criminal fees and fines imposed by the Bernalillo Metropolitan Court for fiscal year 2016. The \$2.2 million cost estimate for 2016 is conservative because of the difficulty of determining some collections and related law enforcement costs (e.g., for warrant service, arrest, and processing).

#### Key findings:

- Court and jail costs for imposing and collecting fees and fines from Bernalillo Metropolitan Court were \$2.178 million in 2016, or 117 percent of what ultimately was collected.<sup>165</sup>
- In 2016 the Bernalillo Metropolitan Court assessed more than \$4.1 million in criminal fees and fines. Nearly \$2.2 million was written off, either through waivers or credits for time served in jail or community service. Of the remainder, close to \$1.9 million

FIGURE 19

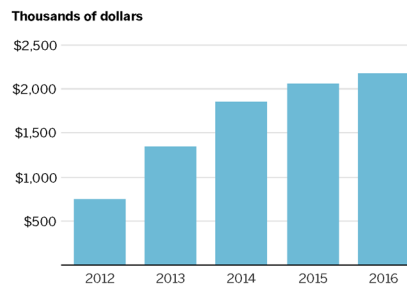
#### Bernalillo County Assessments, Collections, and Credits, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 20

#### Bernalillo County Growth of Uncollected Criminal Fees and Fines, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

was ultimately collected. However, more than \$2.1 million was spent on collections activity; therefore, the collected amount reflects a net loss of \$316,000.

- The authors estimate that approximately \$40,000 was spent on the portion of court proceedings dealing with fees and fines.
- Bernalillo County expended an estimated \$2.138 million for jailing due to unpaid fees and fines in 2016. In addition to being costly, jailing is an example of cost shifting from the state-funded Bernalillo Metropolitan Court to local county taxpayers.

Figure 19 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall short of the amounts assessed; on average, 9 percent of the fees and fines charged to defendants went uncollected and not credited or waived between 2012 and 2016. Further:

- Fee and fine assessments and revenues have fallen for Bernalillo County in recent years.
- Assessments have fallen faster than revenue, meaning that a larger portion of fees and fines are being collected each year.

Figure 20 depicts how uncollected amounts in Bernalillo County have grown since 2012.

New Mexico courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 20 shows only the amount of uncollected debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable.

Uncollected amounts rose between 2012 and 2016, although the rate of growth of uncollected criminal fees and fines appears to have slowed during this period. Much of this court-imposed debt will never be paid and will continue to pose challenges for the courts because of its uncollectibility. Tracking these uncollectible amounts imposes costs on the courts for information technology and personnel. More significantly, enforcing warrants and scheduling repeated hearings for failure to pay takes up valuable law enforcement and court time that would be better spent on serious criminal matters.

## 2. Santa Fe County

Bordering Bernalillo County is Santa Fe County, which contains New Mexico's capital city. It is smaller than Bernalillo in area, and its population of just under 150,000 makes it the third-most-populous county in New Mexico.<sup>166</sup> Like Bernalillo, its electorate leans Democratic.<sup>167</sup> The county is about 51 percent Hispanic or Latino, 43

FIGURE 21

### Santa Fe County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	\$1,138
Credits	\$352
Collections	\$724
Percentage of Fees and Fines Collected	64%
Costs	
In-Court Costs	\$54
Jail Costs	\$239
Total Costs	\$294
Cost as a Percentage of Collections	41%
<b>Net Gain (+)/Loss (-)</b>	<b>\$430</b>

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

percent white non-Hispanic, 2 percent Native American, and 1 percent black.<sup>168</sup> The area around the state capitol attracts many professional workers, and the county is wealthier than the rest of the state. The poverty rate is 14 percent, the lowest of the three New Mexico counties included in this report.<sup>169</sup>

Santa Fe County is home to the New Mexico Supreme Court, a court of appeals, a district court, a magistrate court, a municipal court, and a probate court. The district court has general jurisdiction over civil and criminal matters, and the magistrate court handles various low-level civil matters.

Arraignments of defendants held in custody take place via video feed to the county jail. One court employee told the Brennan Center in 2018 that seven people were in custody that day solely because of failure to pay fees and fines.

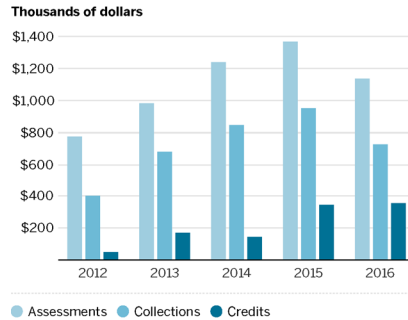
Defendants are able to pay fees and fines in three ways. They can pay the amount in full or through a payment plan, perform community service and reduce their debt at a rate equal to the federal minimum wage (\$7.25 per hour), or serve jail time to earn a credit of \$58 per day (equal to eight hours of the federal minimum wage).

Jail time is considered only if a person fails to make payments or complete community service. The court then sends a notice to appear for a hearing. If the person misses the hearing, the court will issue a warrant for arrest for failure to pay. One judge estimated that about half of the people who receive a notification return to court and the other half are taken into custody.<sup>170</sup>

Figure 21 represents the Brennan Center's fiscal analysis for misdemeanor criminal fees and fines for Santa Fe County

FIGURE 22

### Santa Fe County Assessments, Credits, and Collections, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

for fiscal year 2016. The total collection cost estimate of \$294,000 is a conservative one because of difficulties in determining some collections and related law enforcement costs (e.g., for warrant service, arrests, and processing).

#### Key findings:

- In 2016, the Santa Fe Magistrate Court assessed about \$1.1 million in criminal fees and fines, of which \$352,000 was written off through credits, such as community service and jail. Of the remaining \$786,000, \$724,000 was ultimately collected.
- At least \$294,000 was spent on collections activity in court and jailing alone. The collected amount therefore reflects at most \$430,000 in net gain, 38 percent of what was originally assessed.

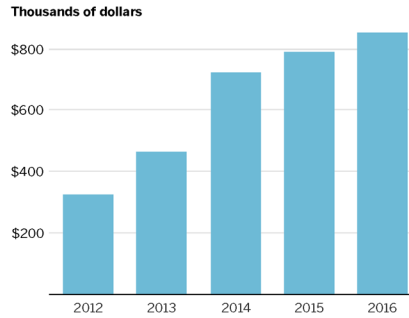
Figure 22 shows how criminal fees and fines imposed, collected, and credited have changed over time in Santa Fe County.

As shown, criminal fees and fines collected do not approach the amounts assessed. On average, from 2012 to 2016, 17 percent went uncollected and was not credited or waived. Further:

- While fee and fine assessments and collections increased through 2015, both were lower in 2016, highlighting the unreliability of criminal fees and fines as a source of funding.

FIGURE 23

### Santa Fe County Growth of Uncollected Criminal Fees and Fines, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

- Santa Fe County offered a lower amount of credits to defendants than Bernalillo County.

Figure 23 depicts how uncollected amounts in Santa Fe County have significantly grown since 2012.

Reliable estimates of the total amount of criminal fees and fines that remain uncollected are unavailable. Therefore, figure 23 shows only the amount of debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable: uncollected amounts rose by \$528,367 between 2012 and 2016. Much of this court-imposed debt will never be paid.

### 3. Socorro County

With a population of just over 17,000, Socorro County is the smallest New Mexico county in this analysis.<sup>171</sup> Just over half of the residents in this rural county live in the town of Socorro, 75 miles south of Albuquerque. Much like the rest of the state, Socorro County leans Democratic in county and state elections.<sup>172</sup> The county's population is approximately 50 percent Hispanic or Latino, 35 percent white non-Hispanic, 10 percent Native American, and 1 percent black.<sup>173</sup> With a poverty rate of 25 percent, Socorro is one of the poorest counties in New Mexico and the poorest in this analysis.<sup>174</sup>

The staff of the Socorro Magistrate Court consists of one elected judge and five clerks. The judge was previously the county sheriff, a position he first held at the age of 25. While he has an extensive background in law enforcement, he does not have a law degree. During busi-

FIGURE 24

### Socorro County Criminal Fee and Fine Fiscal Analysis, 2016

Thousands of dollars

Revenue Collected	
Assessments	\$207
Credits	\$88
Collections	\$119
Percentage of Fees and Fines Collected	58%
Costs	
In-Court Costs	\$14
Jail Costs	\$81
Total Costs	\$96
Cost as a Percentage of Collections	80%
<b>Net Gain (+)/Loss (-)</b>	<b>\$24</b>

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

ness hours, three clerks work at windows in the lobby. In the mornings, particularly before court starts at 9:00 a.m., the clerks are kept busy by defendants checking in and people making payments. When asked, one clerk said that her entire job revolves around court costs.

According to the clerks, nearly all defendants enter into payment plans to pay their fees and fines. It is rare for a defendant to pay in full at the time of assessment. The standard payment is \$50 per month, although clerks have the discretion to lower this amount. Still, the clerks estimate that 60 to 70 percent of people miss payments and are issued bench warrants.

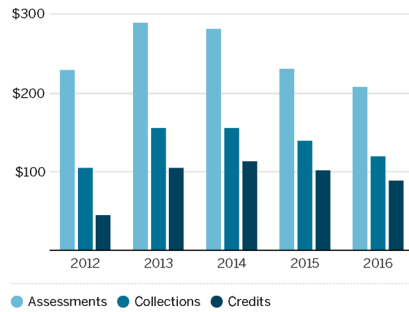
In the courtroom on a day when a Brennan Center staff member was present, the magistrate judge asked each defendant how much he or she would be able to pay. Some defendants expressed an inability to pay anything at all. Many stated that they were unemployed and had no income, and others said they earned no more than \$40 per month. Still, community service was not initially offered as an option to most defendants. Rather, they were entered into payment plans, with some payments as low as \$10 per month. The judge repeatedly instructed defendants to contact the court if they would be unable to make a payment deadline.

Community service was granted only to those defendants who specifically requested it. Of 24 cases observed in which costs were assessed, only three defendants did so. Two requests were granted and the third was denied, though that defendant's monthly payment was reduced. When conversions to community service were granted,

FIGURE 25

### Socorro County Assessments, Credits, and Collections, 2012–2016

Thousands of dollars



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

community service hours were credited at the federal minimum wage of \$7.25 per hour.

If a defendant misses a payment for a third time, the magistrate judge may charge the defendant with failure to comply and hold that person in jail. Jail time is credited against court fees at \$58 per day. As the former county sheriff, the current judge is aware of the high daily cost of jailing and said that the county would “rather make money than lose money.” Still, in the week observed by a Brennan Center staffer, he sentenced two defendants to jail time for “willfully refus[ing] to pay court costs or perform community service.” One of them was sentenced to 10 days.

Two days per week are dedicated to bench trials and case management, meaning that state prosecutors, public defenders, and law enforcement officers appear in court. Two public defenders handle the bulk of these dockets. One public defender expressed concern about the length of time that cases “languish on” until defendants are able to pay off their debt and ultimately close their cases. She estimated that 10 percent of her clients complete community service and that 30 to 40 percent serve jail time for court costs.

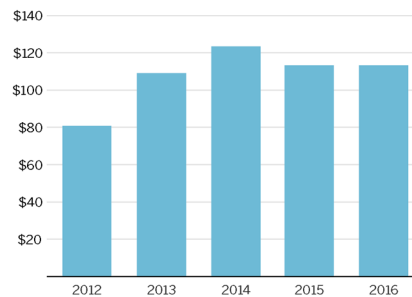
For his part, the magistrate judge is under no illusions about the role of court costs in his courtroom. “This is a money-making machine,” he said. “We collect \$20,000 per month, easy. The state just wants to make money. It’s tough on [the defendants], man.”

Figure 24 represents the Brennan Center’s fiscal analysis of misdemeanor criminal fees and fines for Socorro County for fiscal year 2016. The cost estimate of \$96,000

FIGURE 26

### Socorro County Growth of Uncollected Criminal Fees and Fines, 2012–2016

Thousands of dollars



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

is conservative, as many potential costs of collections and law enforcement could not be tallied.

#### Key findings:

- In 2016, the Socorro Magistrate Court assessed about \$207,000 in criminal fees and fines.
- The magistrate court wrote off \$88,000 through either waivers or credit given for jail time or community service. Virtually all of the remainder, \$119,000, was collected.
- At least \$96,000 was spent on jail costs and collections activity in court, so the collected amount reflects at most a net gain of \$24,000, 11 percent of what was originally assessed.

Figure 25 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall far short of the amounts assessed. On average for 2012 to 2016, 9 percent went uncollected and was not waived or credited. Figure 26 depicts how uncollected amounts in Socorro County have grown significantly since 2012.

There are no reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 26 shows only the amount of debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable.

- Uncollected amounts rose by about \$33,000 between 2012 and 2016. Much of this court-imposed debt will never be paid.
- Growing balances of uncollected court debt strain the courts as well as local law enforcement. In fact, an officer in Socorro's police department told the authors that they stopped processing many warrants requested by the courts for nonpayment.<sup>175</sup>

## B. Florida

Florida has a population of more than 20 million and a poverty rate of about 14 percent.<sup>176</sup> With more than 90 percent of its population living in cities, it is the most urban state included in this report. Florida has leaned slightly Republican in the most recent national and state elections.<sup>177</sup> Its population is approximately 54 percent white non-Hispanic, 26 percent Hispanic or Latino, and 17 percent black.<sup>178</sup>

#### COURT FEES AS FUNDING

Between 1996 and 2007, the Florida legislature added more than 20 new categories of legal financial obligations, including surcharges and fees, many of which were increased after their introduction.<sup>179</sup> Florida courts have increasingly come to rely on fees to finance core government functions and have removed exemptions for indigence.<sup>180</sup> This is still felt today: across the state, court clerks' offices are funded primarily through fines and fees.<sup>181</sup> As most court fees are statutorily imposed, Florida judges have little to no discretion to waive them, even for indigent defendants.

The shift toward reliance on court fee collections came with a 1998 amendment to the Florida Constitution. The amendment absolved counties and municipalities of fiscal responsibility for clerks of court, requiring that clerks draw on revenue collected from court-imposed fees.<sup>182</sup> In effect, this amendment made the fiscal viability of Florida clerks dependent on their ability to collect fees and fines. As one circuit court public defender described it, "Our clerks are underfunded, and this is their blood. It's pretty much their source of funding, so they're in a bind."<sup>183</sup> In fact, collections rates are baked in to their performance evaluations. When a county clerk of court drops below a specified collections rate, the office must submit a corrective action plan to the clerk of state and file it with the state legislature.<sup>184</sup>

This funding scheme has a distorting effect on court operations. In the observed counties, clerks of court reported employing substantial numbers of full-time staff whose sole mandate is to collect court-imposed fees.

One former public defender noted that clerks are not the only parties interested in maintaining this system, which she described as "a little unholy." Pieces of the collections pie also go to courts, public defenders, prosecutors, and even state general revenue.<sup>185</sup>



### COLLECTIONS AGENCIES

Florida law requires clerks to refer court debts to collectors if not fully paid within 90 days. These firms are legally permitted to add surcharges of up to 40 percent.<sup>186</sup> One circuit public defender candidly described the collections agencies: “They’re nasty as hell,” he said. “They scare our clients to death.”<sup>187</sup>

### ABILITY TO PAY

The Florida Supreme Court has held that due process requires a judicial ability-to-pay determination when the state seeks to enforce collection and the defendant is subject to loss of liberty or property.<sup>188</sup> However, this principle is not always — and likely rarely — satisfied. Because an ability-to-pay inquiry is not required at the point when fines are imposed, clerks need to make these determinations during enforcement of collections. To compound the problem, this due process right may be lost with the use of collections agencies.<sup>189</sup> What is puzzling is that the vast majority of Floridians with court debts qualify for indigent defense. Presumably, the finding of indigency would indicate an inability to pay — yet this is not what happens for many.

Florida law authorizes, but does not require, judges to convert court debts to community service hours in cases of indigency.<sup>190</sup> These are typically credited at \$7.25 per hour, the federal minimum wage. It is reported that clerks in some counties fail to notify defendants of this option or impose an additional processing fee for granting it.<sup>191</sup>

### DRIVER’S LICENSE SUSPENSIONS

Driver’s license suspension for failure to pay criminal fines and fees is a legally permitted and common practice in Florida, and one that is mandatory in noncriminal traffic cases.<sup>192</sup> In fact, in 2018 more than 1.1 million driver’s license suspension notices were issued simply because of Floridians failing to meet court financial obligations.<sup>193</sup> Across Florida, more than 71 percent of driver’s license suspension notices in 2018 were for failing to pay a court debt.<sup>194</sup> Licenses are often suspended automatically when cases are transferred to private collectors and are not restored until debts are paid in full. Suspensions disproportionately impact low-income defendants who are not able to pay their fees and fines upon assessment. In most cases, defendants are not afforded an ability-to-pay hearing prior to having their driver’s license suspended.<sup>195</sup> While the language of the state law on license suspensions for criminal court debt permits discretion, it is the policy of the clerks of court to read it as mandatory, making suspensions automatic with failure to pay.<sup>196</sup>

Reinstating a driver’s license, by contrast, is not automatic. A person must obtain an affidavit from the clerk stating that payments have been satisfied or converted to community service. The affidavit then has to be taken to the DMV as proof of payment to obtain reinstatement.

FIGURE 27

### Fees and Fines in Florida

Fines	Amount
Second-Degree or Noncriminal Misdemeanor	\$500
First-Degree Misdemeanor	\$1,000
Third-Degree Felony	\$5,000
First- or Second-Degree Felony	\$10,000
Life Felony	\$15,000
Drug Trafficking	\$25,000–\$750,000
Universal Fees	
Misdemeanor & Violation Court Cost Fee	\$20
Court Cost Clearing Trust Fund	\$3
Crimes Compensation Trust Fund	\$50
Fine and Forfeiture Fund	\$60
Operating Trust Fund of the Department of Law Enforcement	\$100
Crime Stoppers Program Fee	\$20
Costs Incurred by Law Enforcement	\$50
Misdemeanor Prosecution Fee	\$50
Felony Prosecution Fee	\$100
Case-Specific Fees	
Determination of Indigent Status Fee	\$50
Cost of Representation Fee	\$50
Traffic Offense Surcharge	5%
Teen Court Cost Fee	\$3

Source: Florida Criminal Code.

ment. The DMV also imposes reinstatement fees that can reportedly add hundreds of dollars in additional costs.<sup>197</sup> Further, many people must work with multiple agencies to reinstate a license, most commonly the court clerk, DMV, and Department of Revenue.<sup>198</sup>

Some counties, notably Leon County, now hold driver’s license reinstatement clinics. By assembling all relevant agencies, attorneys, and judges in one place, such clinics aim to streamline the process of regaining valid driving licenses. Leon County’s first clinic attracted more than 1,200 attendees. Most, however, were unable to have their licenses reinstated, primarily because of the number of agencies involved in the process and the money required.<sup>199</sup>

FIGURE 28

### Leon County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	\$1,148
Credits/Liens	\$64
Collections	\$858
Percentage of Fees and Fines Collected	75%
Costs	
In-Court Costs	\$31
Cost as a Percentage of Collections	4%
<b>Net Gain (+)/Loss (-)</b>	<b>\$827</b>

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

#### 1. Leon County

Leon County sits on the Florida Panhandle and is home to Tallahassee, the state capital and a midsize city. The county population of approximately 285,000 is 57 percent white non-Hispanic, 31 percent black, and 6.1 percent Hispanic or Latino.<sup>200</sup> Approximately 19 percent of Leon County residents live in poverty, a rate slightly higher than for Florida overall.<sup>201</sup> The county has leaned Democratic in recent national and local elections.<sup>202</sup>

This research focused specifically on the Leon County Court, where five judges currently sit. The county court handles misdemeanor and criminal traffic cases. Like many lower-level criminal courts, the vast majority of the court's docket is composed of case management and first appearances.

Within the large court clerk payments office, clerks working from six windows report spending approximately half of their workday on matters related to court fees. A separate cashiering department with a large, full-time staff manages court fee collections.

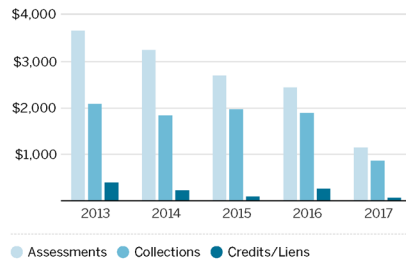
For a week of proceedings observed by a Brennan Center staffer, a single judge presided over all criminal cases. Judges have no discretion to reduce statutorily imposed fees. Clerks stressed this point, and the observed judge emphasized his lack of discretion and his inability to defy or influence the legislature. Public defenders may request that non-mandatory fines be reduced or dismissed, but such motions appear to be rare.

For individuals offered plea deals, an assessment of court fees is included in the offer. In a few observed cases, this amount was found to be miscalculated and was later corrected by a clerk. For each plea entered, the judge asked how the defendant would like to pay the

FIGURE 29

### Leon County Assessments, Credits, and Collections, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

fees, often expressing sympathy as to the high amount. The overwhelming majority of defendants requested a payment plan. As of October 2018, 92 percent of defendants owing court fees in Leon County had entered into payment plans. The default payment for a criminal traffic offense is \$50 per month. There is also a one-time fee to create a payment plan of \$25, with a lower monthly alternative option.<sup>203</sup>

Clerks draft all initial payment plans. The judge informed nearly every defendant that the clerk would be flexible to accommodate their ability to pay, often explaining that there was no expectation that they forgo necessities in order to make payments, particularly if they have children. According to the court manager, "Since we're a self-funded office, it gets a little hairy. We have to collect the money, but we also want to be mindful of what our customers are able to do without raking them over the coals." Florida law requires clerks to offer "reasonable" payment plans, with a presumption that 2 percent of a person's monthly income is a reasonable amount. However, it is not clear that clerks abide by the standard, and the judge privately conceded that he does not conduct formal ability-to-pay hearings.<sup>204</sup>

Judges do have the discretion to grant community service in lieu of payments. In each case in which community service was granted, the defendant was given 30 to 45 days to complete the hours of service. Defendants who enter into payment plans also can later request to convert outstanding debts to community service. Clerks typically grant these requests. Still, waivers and community service credits are almost never used in Leon County. Overall, they satisfied just 3.3 percent of all assessments from 2013 to 2017.

The observed judge extensively warned defendants of the risks of missing payments or failing to complete community service hours, including the possibility of driver's license suspension and the addition of surcharges imposed by collections agencies — what he described in open court as a “parade of horrors.” Judges have discretion to convert fines and fees to civil judgments, which prevents license suspensions and referrals to collection agencies. The judge exercised this discretion with some indigent defendants. Civil judgments accrue interest, however, and may harm an individual's credit score.

Figure 28 highlights the results of the Brennan Center's fiscal analysis for criminal misdemeanor and traffic criminal fees and fines for Leon County for fiscal year 2017. It includes a conservative estimate of the in-court costs of imposing and collecting fees and fines. It does not include costs associated with license suspension or other time spent on enforcement of fees and fines, because of the lack of available data. License suspension is the primary means of enforcement for unpaid fines and fees in Florida.

#### Key findings:

- In 2017, Leon County Court assessed about \$1,148,000 in criminal fees and fines, of which \$64,000 was waived either due to community service (\$44,000) or for other reasons (\$20,000). Of the remaining \$1,084,000, \$858,000 was ultimately collected. At least \$31,000 was spent on collections activity, so the collected amount represents \$827,000 in net gain, 72 percent of what was assessed.

- In-court costs of collection were relatively low but included a fair amount of license suspensions. Seventeen percent of the 163 cases observed involved license suspension. The observed costs of license suspension fall primarily on defendants and law enforcement, rather than on the court, though the authors were unable to estimate costs for enforcement incurred outside the courtroom.

Figure 29 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fell far short of the amounts assessed. About 25 percent, on average, of the fees and fines charged to defendants from 2013 to 2017 went uncollected in Leon County. Assessments have dropped rapidly since 2013, perhaps putting even more pressure on court clerks. While collections held relatively steady through 2016, they dropped off dramatically in 2017.

Figure 30 depicts how uncollected amounts in Leon County have grown significantly since 2013.

Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 30 shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable. Despite rising collection rates, the balance of uncollected amounts rose by almost \$3.6 million between 2013 and 2017. Much of this court-imposed debt will never be paid.

## 2. Miami-Dade County

Miami-Dade County is a large county at the southeastern tip of Florida. With a population of close to 2.7 million, it is the most populous county in Florida, and it contains Miami, the largest city included in this analysis. A diverse area with a large Cuban expatriate population, it is 67 percent Hispanic or Latino, 18 percent black, and 14 percent white non-Hispanic.<sup>205</sup> Miami-Dade County leans Democratic in national elections but elects both Democrats and Republicans at the state and local levels.<sup>206</sup> The county has a poverty rate of approximately 18 percent, just above that of the state as a whole.<sup>207</sup>

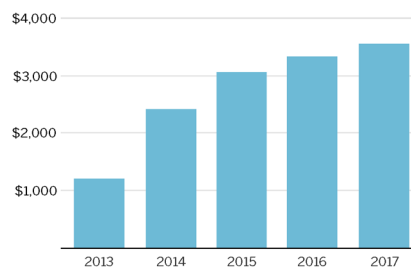
The county's court divisions include civil court, criminal court, juvenile services, probate and mental health court, small claims court, and traffic court. The Miami-Dade Criminal Court is composed of circuit criminal and county criminal courts. Generally, the county criminal court handles most misdemeanor and criminal traffic cases, while the circuit criminal court deals with felonies.

In traffic court proceedings observed by Brennan Center staff, the judge's goal was to move defendants through the process quickly so they could get back to work. Most defendants in court for criminal traffic arraignments were

FIGURE 30

### Leon County Growth of Uncollected Criminal Fees and Fines, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

there due to suspended licenses. In cases for which the defendant showed up, the judge often reduced a citation to a lesser offense. The judge was clearly concerned about the well-being of the defendants, at one point saying, “Knock it down to a parking ticket so he doesn’t lose his license and his livelihood.”<sup>208</sup>

The chief assistant public defender said that public defenders handle a vast number of license suspension cases, but Miami-Dade has no data on how many of these cases stem from failure to pay. Defendants who are not directed to a pretrial diversion program must pay a \$50 public defender application fee if they need a public defender, as well as a \$50 cost of defense fee.<sup>209</sup>

On the walls of Miami-Dade courtrooms are posters that detail the fines that a defendant might incur. For a DUI offense, there is a \$500 fine plus a \$622.25 surcharge. Criminal traffic fines vary according to the offense, with a \$358 fine for driving without a valid license, a \$476.25 fine for reckless driving, and a \$411.25 fine for leaving the scene of an accident.

One judge explained various options defendants have regarding their traffic citations. For example, a defendant with many tickets or infractions may enter the Drive Legal Program, which, according to the judge, “helps close out cases, converts fines to community service, and is a good program for those with a financial situation.” To participate, defendants must pay a program fee of \$100. Another option is a pretrial diversion program, in which defendants pay a \$200 fee for a four-hour class in order to dismiss a ticket. During the observed court sessions, most traffic arraignments resulted in pretrial diversion or admission to the Drive Legal Program. Miami-Dade courthouse officials are conscious of the financial burden that fees and fines impose on defendants and have sought to address the issue. Still, waivers and community service credits are almost never used in the county courts, satisfying less than 1 percent of all fees and fines assessed.

Figure 31 highlights the results of the Brennan Center’s fiscal analysis for criminal fees and fines for Miami-Dade County for fiscal year 2017. The estimated in-court costs of imposing and collecting fees and fines are a small part of the total costs of fee and fine collection. Because license suspension is the primary means of enforcement for unpaid fines and fees in Florida, large costs of collection — such as DMV employee time, law enforcement time spent enforcing warrants, and costs of incarceration for those caught driving on a suspended license — were not measurable for this report and are not reflected in the costs listed in figure 31 or the discussion below.

#### Key findings:

- In 2017, the Miami-Dade County Court assessed more than \$10 million in criminal fees and fines.

FIGURE 31

### Miami-Dade County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	\$10,143
Credits/Liens	\$12
Collections	\$7,978
Percentage of Fees and Fines Collected	79%
Costs	
In-Court Costs	\$267
Cost as a Percentage of Collections	3%
<b>Net Gain (+)/Loss (-)</b>	<b>\$7,111</b>

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

About \$12,000 was waived for community service. Just over \$7.9 million was collected. At least \$267,000 was spent on collections activity, so the collected amount represents \$7.7 million in net gain, 79 percent of what was assessed.

- In-court costs of collection were relatively low but included a large proportion of license suspensions — 37 percent of the 49 cases observed. The costs of license suspension fall not just on the court but also on defendants, the DMV, and law enforcement.

Figure 32 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall short of the amounts assessed. A large portion (34 percent, on average) of the fees and fines charged to defendants went uncollected each year between 2013 and 2017. Further, while assessments have dropped steadily since 2013, collections have not. In fact, collection rates have increased dramatically, from 58 percent in 2013 to 79 percent in 2017.

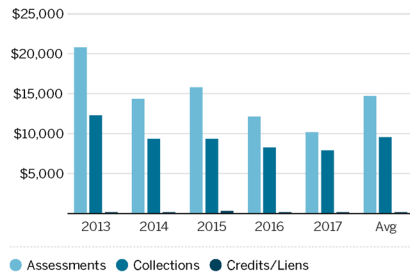
Figure 33 depicts how uncollected amounts in Miami-Dade County have significantly grown since 2013.

Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 33 shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable: uncollected amounts rose by almost \$17.3 million between 2013 and 2017. Much of this court-imposed debt will never be paid.

FIGURE 32

### Miami-Dade County Assessments, Credits, and Collections, 2013–2017

Thousands of dollars

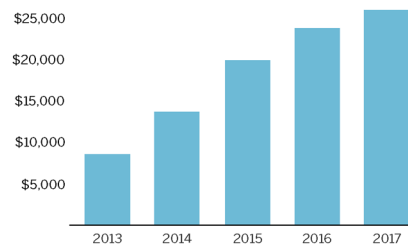


Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

FIGURE 33

### Miami-Dade County Growth of Uncollected Criminal Fees and Fines, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

### 3. Madison County

Madison County is a rural county on Florida's northern border with Georgia. It has a population of roughly 18,000 and is the poorest county in the state, with a poverty rate of more than 30 percent in 2016.<sup>20</sup> Madison is 54 percent white non-Hispanic, 39 percent black, and 6 percent Hispanic or Latino.<sup>21</sup> The county leans Republican in federal elections, and its voters are largely polarized along racial lines. In local races, voters elect both Democrats and Republicans.<sup>22</sup>

The Madison County courthouse is a small, historic building that serves as the centerpiece of the town of Madison. Beyond a one-block radius, the county's poverty becomes apparent.

The courthouse contains the clerk's office, the county judge's chambers, and two additional clerks' offices: one for misdemeanors, the other for felonies. Three clerks handle all criminal traffic and misdemeanor cases. Court for these dockets is held once every two weeks.

Approximately 100 criminal traffic and misdemeanor cases are handled in the county court per month, and a significant portion are related to failure to pay court-imposed fees. For September 2018, 17 people were scheduled to appear on charges related to failure to pay, with outstanding debts ranging from \$200 to \$400.<sup>23</sup> A clerk said this was typical, estimating that there are generally 20 such cases monthly. The clerk reported that more than half of the people who face court fees enter into payment plans. Although the county has a high rate of indigency, she said that she had never witnessed an ability-to-pay hearing.

In addition to these cases, the traffic clerk reported processing approximately 15 driver's license suspensions

per month that result directly from failure to pay fees and fines.<sup>24</sup> The suspensions processed in September 2018 were triggered by payment deadlines that had passed two months prior, in July. The traffic clerk said she tries to allow people more time to pay before triggering the suspensions, suggesting that clerks have some discretion about when suspensions are issued.

The elected clerk of court is under no illusions about the ability of individuals within the jurisdiction to pay court debts. "Madison is a poor county," he said. "You can't squeeze much out of a stone."

Madison County stands out among Florida counties in that its courts do not rely as heavily on the collection of fees to support its operating costs. This is largely due to the highly active Madison County Sheriff's Office, whose

FIGURE 34

### Madison County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	\$257
Credits/Liens	\$61
Collections	\$174
Percentage of Fees and Fines Collected	68%

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

deputies patrol the interstate running through the county and issue a comparatively large number of speeding tickets. (This practice has led to accusations of racial profiling against the Madison County Sheriff's Office.<sup>215</sup>) Most ticketed people do not contest such citations, resulting in a large source of income for Madison County.

As is true across Florida, fees are statutorily imposed. One public defender noted that it is rare for defendants to come away from a misdemeanor conviction in Madison County without at least \$450 in fees.

Figure 34 highlights the results of the Brennan Center's fiscal analysis for criminal fees and fines for Madison County in 2017. It includes fee and fine amounts imposed by the Madison County Court as well as revenue collected; the authors were unable to obtain cost data for the court.

#### Key finding:

- In 2017, the Madison County Court assessed about \$257,000 in criminal fees and fines. Of this amount, there was \$61,000 in credits, of which 88 percent was reduced to a civil judgment or lien. Smaller portions were waived for community service or for other reasons. Some \$174,000 was collected, 68 percent of what was assessed.

Figure 35 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, the criminal fees and fines collected fall well short of the amounts assessed. A large portion (30 percent, on average) of criminal fees and fines charged to defendants each year between 2013 and 2017 went

uncollected. Further:

- Since 2013, roughly 1.2 percent of fees and fines assessed have been waived or satisfied through community service. Significant amounts of debt have been converted to liens in recent years.
- Unlike other Florida jurisdictions in this analysis, assessments have changed little in recent years. However, collection rates have varied widely, from 83 percent in 2015 down to as low as 43 percent in 2013, highlighting the unreliability of criminal fees and fines as a source of revenue.

Figure 36 depicts how uncollected amounts in Madison County have varied since 2013, while trending upward.

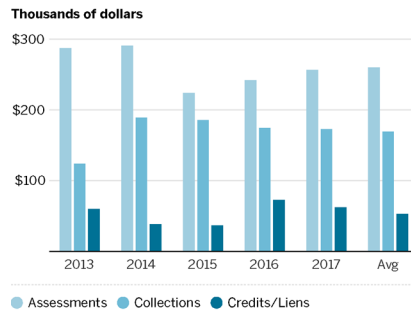
Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Figure 36 therefore shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable. Uncollected debt rose by \$80,000 between 2013 and 2017, and much of this court-imposed debt will never be paid.

## C. Texas

Texas has a population of just over 25 million, approximately 85 percent of which is urban. Its poverty rate is 17 percent, well above the 13.4 percent national rate.<sup>216</sup> The state has a Republican governor and has voted solidly Republican in national elections.<sup>217</sup> Its population is 44

FIGURE 35

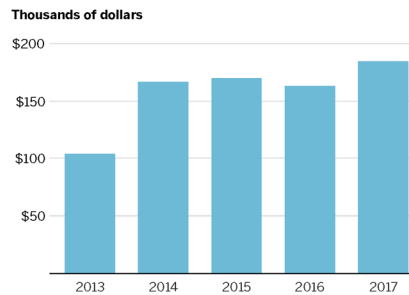
### Madison County Assessments, Credits, and Collections, 2013–2017



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 36

### Madison County Growth of Uncollected Criminal Fees and Fines, 2013–2017



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.



percent white non-Hispanic, 38 percent Hispanic or Latino, and 12 percent black.<sup>218</sup> The counties examined here vary considerably in their demographics and follow diverse fee-and-fine practices.

In 2016, 95 percent of warrants issued in Texas were for unpaid fees and fines.<sup>219</sup> Texas has the nation's highest rate of incarceration for failure to pay, with a staggering 640,000 people jailed for this reason in 2016 alone.<sup>220</sup> This is done at great cost, and often in contradiction of state and federal law, which prohibits incarcerating people for fees and fines they are unable to pay. (The authors expect that this practice has diminished with changes to state law in June 2017, as discussed on page 26.)<sup>221</sup>

As of 2017, 1.8 million Texans' driver's licenses were suspended for failure to pay fees and fines.<sup>222</sup> Over a three-year period, more than 400,000 new criminal filings were related to driving on licenses suspended for nonpayment of traffic-related fines.<sup>223</sup>

FIGURE 37

### Fees and Fines in Texas

Fines	Amount
Class A Misdemeanor	Up to \$4,000
Class B Misdemeanor	Up to \$2,000
Class C Misdemeanor	Up to \$500
<b>Universal Fees</b>	
Services of Peace Officers	\$0.15/mile traveled by officer
Jury Services Fee	\$4
Court Clerk Services Fee	\$40
Written Notice to Appear Issuance Fee	\$5
Execution of Arrest Warrant Fee	\$50
Court Technology Fee	\$4
Juvenile Delinquency Prevention Fee	\$50
<b>Case-Specific Fees</b>	
Bad Check Fee	\$10–\$500
Prosecutor Fee for Gambling Offense	\$25
Class B Misdemeanor Court Cost Fee	\$60
Driving While Intoxicated	\$15
Taking and Approving a Bond	\$10
Summoning a Jury	\$8
Pretrial Intervention Program Fee	\$60/month

Source: Texas Penal Code.

Texas's Office of Court Administration (OCA) maintained the Collection Improvement Program (CIP), which helped municipal and county courts collect fees and fines assessed to individuals convicted of misdemeanor or felony charges. CIP was canceled by action of the state legislature effective September 1, 2019.

Criminal courts in Texas are separated into four levels. District courts handle felonies and more serious misdemeanors, while less serious misdemeanors and traffic violations are split among county, municipal, and justice of the peace courts. Collection of legal debt is not always handled by the courts; probation and other collections offices bring in a large portion of fee and fine revenue.

Figure 37 illustrates the array of fees and fines an individual convicted of a misdemeanor in Texas may face.

### 1. Travis County

Travis County is a large county in central Texas that encompasses Austin, the state capital and county seat. Its population of 1.2 million is 49 percent white non-Hispanic, 34 percent Hispanic or Latino, and 9 percent black, making it less diverse than Texas as a whole.<sup>224</sup> The county votes Democratic in national elections, and relatively few local positions are held by Republicans.<sup>225</sup> The county has a larger proportion of wealthy residents than most of Texas. However, despite its high median income of \$61,000, 13 percent of the county's residents live in poverty.<sup>226</sup>

FIGURE 38

### Travis County Criminal Fee and Fine Fiscal Analysis, 2017

Thousand of dollars

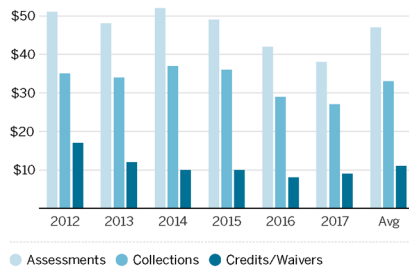
Revenue Collected	
Assessments	\$38,006
Credits/Waivers	\$8,694
Collections	\$26,929
Percentage of Fees and Fines Collected	71%
Costs	
In-Court Costs	\$3,186
Court Collections Costs	\$1,610
Jail Costs	\$4,627
Total Costs	\$9,423
Cost as a Percentage of Collections	35%
<b>Net Gain (+)/Loss (-)</b>	<b>\$17,506</b>

Source: Texas Collection Improvement Program; Brennan Center calculations. (Excludes waivers in June and August 2016 due to likely errors in reported assessments.)

FIGURE 39

### Travis County Assessments, Credits, and Collections, 2012–2017

Millions of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

Within Austin, low-level criminal charges are divided among several courts. For this report, proceedings at the county and municipal court and the Downtown Austin Community Court (a special municipal court) were observed, and one justice of the peace was interviewed. Each of these courts applies its own policies and procedures to assess indigency.

#### COUNTY COURT

At the Blackwell-Thurman Justice Center in downtown Austin, county judges often conduct brief, informal ability-to-pay proceedings during plea hearings. Judges may ask defendants how much they can afford to pay, what their monthly income is, and whether they are responsible for dependents. One judge observed by the authors waived fees for defendants with income of less than 150 percent of the federal poverty level. The standard is 125 percent, but the judge recognizes that “people still struggle at 150 percent.” A second judge was less inclined to waive fees, explaining, “I don’t do it automatically. This is how we fund our department.”<sup>227</sup>

The vast majority of fees and fines assessed result in payment plans or community service hours. Judges frequently impose costs in tandem with jail time so that fees and fines will be fully satisfied by the time the individual spends in jail.<sup>228</sup>

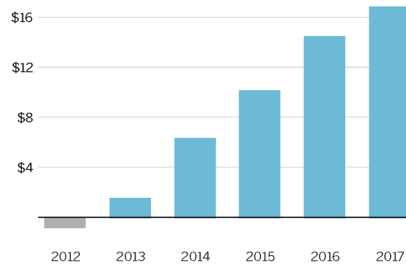
#### MUNICIPAL COURT

Municipal court judges rotate traffic, mitigation, and jury trial dockets. Criminal cases at the municipal court are limited to Class C misdemeanors, for which the maximum penalty is a fine.

FIGURE 40

### Travis County Growth of Uncollected Criminal Fees and Fines, 2012–2017

Millions of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

Indigence determinations vary; one judge reported that he assesses individuals as indigent if their income is less than 200 percent of the federal poverty level. Individuals unable to pay fees and fines may make an additional appearance in mitigation, or “walk-in,” court. Here, individuals can request an indigency hearing, adjustment of a payment plan, or conversion of costs to community service.

For nearly all defendants appearing in mitigation court, the presiding judge offers a choice between a payment plan and community service credited at \$15 per hour. Most opt for community service. One single mother, referring to payments, explained, “It’s really hard to do that with four kids.” A number of those appearing in mitigation court have outstanding debts nearly a decade old.

#### JUSTICES OF THE PEACE

The jurisdictions of the five justices of the peace overlap with that of the municipal court, and they assess a substantial amount of fees and fines. Defendants may qualify for community service in lieu of payments, and if they can demonstrate that community service would also be onerous, the justices may waive outstanding debts.

One justice of the peace has adopted a discretionary practice of refraining from issuing warrants for arrests for failure to pay. Instead, the court issues letters to individuals requesting that they appear. The judge began doing this in the wake of the U.S. Justice Department’s report on law enforcement practices in Ferguson, Missouri.<sup>229</sup>



#### DOWNTOWN AUSTIN COMMUNITY COURT

The jurisdiction of the Downtown Austin Community Court (DACC) encompasses the downtown Austin area. Homeless people make up the largest population served by this court, and many struggle with mental health issues. The court has a staff of 10 social workers who operate alongside the prosecutor and judge to provide restorative justice.<sup>230</sup>

DACC judges rely heavily on community service to satisfy fees and fines. Many defendants fail to complete their community service and cycle in and out of court. Jail credit is available for those arrested. Social workers may grant credit against fees and fines for a client who has completed activities such as showing up for a doctor's appointment or receiving a housing assessment.

Figure 38 highlights the results of the Brennan Center's fiscal analysis for traffic and misdemeanor criminal fees and fines in Travis County for fiscal year 2017. Its estimate of the in-court and jail costs of imposing and collecting fees and fines is a conservative one.

#### Key findings:

- In 2017, Travis County's county, municipal, and justice of the peace courts assessed approximately \$38 million in criminal fees and fines. More than \$8.6 million was written off through waivers, community service, or jail time.
- Collection costs related to fees and fines were \$9.4 million in 2017, or 35 percent of what ultimately was collected.<sup>231</sup>
- The authors estimate that almost \$3.2 million was spent on the portion of court proceedings dealing with fees and fines.
- Travis County spent an estimated \$4.6 million for jailing due to unpaid fees and fines in 2017.

Figure 39 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, a good portion of assessed criminal fees and fines were collected. Still, each year an average of 6 percent of the fees and fines charged to defendants went uncollected. Further, the use of jail credits has fallen since 2010, reflecting growing pressure on the Austin Municipal Court to end jailing for unpaid debt.<sup>232</sup>

Figure 40 depicts how uncollected amounts in Travis County have significantly grown since 2012.

Texas courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 40 shows only the amount of uncollected debt that has accumulated since 2012. During this period alone, the growth of these balances has been considerable:

- Uncollected balances net of credits for Travis County's county, justice of the peace, and municipal courts have grown by an estimated \$17.7 million from 2012 to 2017.
- The use of credits, especially in later years — 2016 and 2017 — shows a willingness to correct uncollected balances. However, issuing credits can inflict extra costs. For example, the cost of jailing people for fees and fines was about \$4.6 million in 2017.

## 2. El Paso County

El Paso County is the westernmost county in the state of Texas and shares a border with Ciudad Juárez in the Mexican state of Chihuahua. The county's population of more than 800,000 is largely binational and 82 percent Hispanic or Latino, 12 percent white non-Hispanic, and 3 percent black.<sup>233</sup> El Paso County has a strong Democratic tilt in national and local elections. The poverty rate is nearly 23 percent, significantly higher than that of the state overall.<sup>234</sup>

There are eight justice of the peace precincts in the city of El Paso; these were described to the authors as the "last outpost of cowboy justice." These courts handle both criminal and civil cases, while five municipal courts in the city have jurisdiction over traffic violations and Class C misdemeanors. The county courts at law handle more serious Class A and B misdemeanors.

FIGURE 41

### El Paso County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	\$14,109
Credits/Waivers	\$3,532
Collections	\$8,132
Percentage of Fees and Fines Collected	58%
Costs	
In-Court Costs	\$68
Court Collections Costs	\$733
Jail Costs	\$2,917
Total Costs	\$3,718
Cost as a Percentage of Collections	46%
<b>Net Gain (+)/Loss (-)</b>	<b>\$4,414</b>

Source: Texas Collection Improvement Program; Brennan Center calculations.

For this report, the authors interviewed justice of the peace court staff, observed proceedings at the main El Paso Municipal Court branch, and collected data for all three levels of courts.

#### JUSTICE OF THE PEACE COURTS

Located across El Paso County, justices of the peace have jurisdiction over traffic and criminal cases carrying fines not exceeding \$500. These courts handle a high volume of fees and fines. One judge sets up monthly payment plans on the basis of what defendants say they can afford per month. At another justice of the peace court, defendants who are unable to pay a fine in full are sent directly to Financial Recovery Services, a division of the county Budget and Fiscal Policy Department responsible for obtaining payments imposed during the judicial process.

#### EL PASO MUNICIPAL COURT

Three blocks from the county courthouse sits the municipal courthouse, handling mostly traffic offenses, such as driving without insurance or without a valid license. Indigency, failure to appear, and “show cause” hearings occur monthly or bimonthly. According to a court coordinator, many failure-to-appear charges are referred directly to the Texas Department of Public Safety, which may deny the renewal of a driver’s license.<sup>235</sup>

In most cases, the judge informs the defendant of the fines incurred but does not address fees. Defendants may enter into payment plans or request community service in lieu of payments.

One judge reported that approximately 25 percent of municipal court cases deal with failure to pay. This judge

considers a defendant’s individual circumstances when addressing such cases. Recently the judge worked with a homeless person and a domestic violence survivor to craft manageable payment plans.

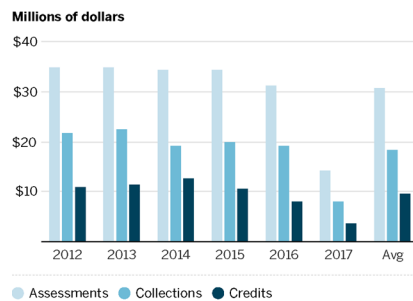
Figure 41 highlights the results of the Brennan Center’s fiscal analysis for criminal fees and fines for El Paso County for fiscal year 2017. The estimate of the in-court and jail costs of imposing and collecting fees and fines is a conservative one.

#### Key findings:

- In 2017, El Paso county, municipal, and justice of the peace courts assessed about \$14 million in criminal fees and fines. More than \$3.5 million was written off, either through waivers or through time served in jail or community service. Of the remaining \$10.5 million, \$8.1 million was ultimately collected.
- About \$3.7 million was spent on collections activity in 2017 on in-court and jail costs alone. The \$8.1 million in collections translates into about \$4.4 million in net gain, just 31 percent of what was originally assessed.
- In-court costs, jail costs, and other collections costs for imposing and collecting fees and fines from these courts were just over \$3.7 million in 2017, or 46 percent of what ultimately was collected.<sup>236</sup> Of that, most was for jailing for unpaid fees and fines.

FIGURE 42

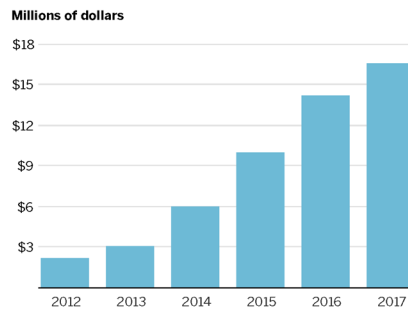
#### El Paso County Assessments, Credits, and Collections, 2012–2017



Source: Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 43

#### El Paso County Growth of Uncollected Criminal Fees and Fines, 2012–2017



Source: Texas Collection Improvement Program; Brennan Center calculations.

- The authors estimate that approximately \$68,000 was spent on the portion of court proceedings dealing with fees and fines, and that \$733,000 was spent on the salaries, benefits, and operating expenses for collections staff.

Figure 42 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, on average, 10 percent of the fees and fines charged to defendants each year from 2012 to 2017 went uncollected. Further:

- Jail credits have consistently been the most-used form of credits within El Paso from 2012 to 2017.
- The use of jail credits has varied significantly since 2012, satisfying 26 percent of fees and fines in 2012, peaking at nearly 30 percent in 2014, and falling to 22 percent in 2017. The year with the second-lowest collections, 2016, saw the highest use of jailing.<sup>237</sup> This may indicate that fines were particularly ill-targeted that year, leading to higher incidences of failure to pay. As of 2017, community service credits were little used in El Paso, suggesting that people who are unable to pay either have costs waived or are jailed.

Figure 43 depicts how uncollected amounts in El Paso County have significantly grown since 2012.

Texas courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Figure 43 therefore shows only the amount of uncollected debt that has accumulated since 2012. During this period alone, the growth of this uncollected debt was considerable. Uncollected amounts grew by \$14.4 million between 2012 and 2017. Much of this court-imposed debt will never be paid.

### 3. Jim Hogg County

Jim Hogg County is a small, rural county on the southern tip of Texas with a population of about 5,300. Like many of the counties on the border, it is largely Hispanic or Latino (94 percent).<sup>238</sup> About 6 percent is white non-Hispanic, and 1 percent is black.<sup>239</sup> It is a strongly Democratic county with a poverty rate of almost 30 percent, above that of the state overall. Jim Hogg County has a median household income of \$34,769.<sup>240</sup>

Jim Hogg County has six courts in the county seat of Hebbronville: a district court, a county court, and four justice of the peace courts. The district court holds original jurisdiction over felony criminal cases. The county court has original jurisdiction over all criminal cases involving Class A and Class B misdemeanors. There are four justice of the peace precincts, all with original jurisdiction over lower-level Class C misdemeanor criminal cases.<sup>241</sup>

One judge told the authors that the justices perform many duties outside the scope of the justice of the peace court and are also on call 24/7, sharing one full-time clerk and one part-time clerk. According to the judge, they “prefer people out there working to support their families rather than arrested on [failure-to-pay] warrants.” The judge said surcharges incurred on fines can lead to a vicious cycle: with costs increasing but wages remaining stagnant, “people get desperate.”<sup>242</sup>

If a defendant does not pay fees and fines, the judge first sends a courtesy letter of notice. If there is no response, the court issues a show cause order, which allows the defendant to provide justification for the lack of payment. If the defendant again fails to respond, the judge then issues an arrest warrant if the individual resides in Jim Hogg County. For nonresidents, the failure-to-pay and failure-to-appear charges are entered into OmniBase, a service that administers the Texas Department of Public Safety’s Failure to Appear Program.<sup>243</sup> Once a defendant is entered into this system, the defendant’s license is put on hold. While the license is not immediately suspended, it cannot be renewed until the fees and fines are paid.

Defendants have several options for paying. They can arrange a monthly payment plan, opt for community service for credit of \$100 per eight-hour day, or be jailed for credit of \$100 per day. The justice of the peace court offers at-clerk payment processing at the court, or defendants can use a third-party payment service, which charges a 3 to 5 percent processing fee. The judges offer ability-to-pay hearings, but most people opt out of them due to the amount of paperwork required.<sup>244</sup> According to the judge, about 75 percent of people pay their fines rather than opt for community service or jail.

County and district courts differ from justice of the peace court in their practices. Neither court offers

FIGURE 44

### Jim Hogg County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

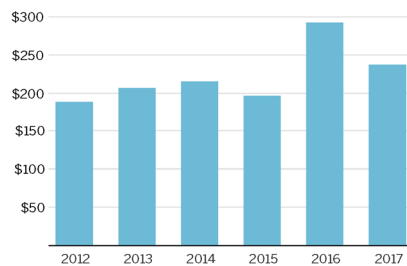
Revenue Collected	
Collections	\$237
Costs	
Court Costs	\$10
Cost as a Percentage of Collections	4%
<b>Net Gain (+)/Loss (-)</b>	<b>\$227</b>

Source: Texas Office of Court Administration; Brennan Center calculations.

FIGURE 45

### Jim Hogg County Collections, 2012–2017

Thousands of dollars

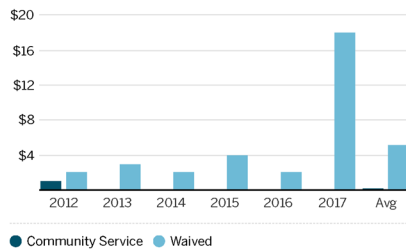


Source: Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 46

### Jim Hogg County Alternatives to Payment of Criminal Fees and Fines, 2012–2017

Number of cases



Source: Texas Office of Court Administration; Brennan Center calculations.

payment plans for amounts under \$500; larger amounts can be split into two payments.<sup>246</sup> According to the person who serves as clerk to both the county and district courts, “a lot of indigency” and numerous “out of towners” mean that defaults are common, and so courts have little faith in payment plans. When a payment plan is allowed, it is structured such that defendants have 90 days to pay what can amount to staggering costs. According to the Jim Hogg County investigator, before a case is over, a defendant can easily owe more than \$2,000 in fees and fines.

Figure 44 shows court costs and collections in Jim Hogg County’s justice of the peace courts in 2017. The Texas Office of Court Administration collects little data on rural county courts, so the value of assessments, credits, and waivers in Jim Hogg County is not available.

#### Key findings:

- In 2017, the Jim Hogg justice of the peace courts collected about \$237,000 in criminal fees and fines. Around \$10,000 was spent on in-court collections activity, so net gain came to \$227,000.<sup>246</sup>
- Clerks estimated that they spend, on average, 11 hours per week on issues related to fees and fines, at a total cost of \$8,000 per year. The judge estimates that she spends, on average, four hours a week on issues related to fees and fines, at a cost of \$2,200 per year.<sup>247</sup>

Figure 45 shows how the amount of criminal fees and fines collected has changed over time.

As shown, Jim Hogg County collections stayed fairly constant from 2012 to 2017, apart from an unexplained spike in 2016.

Figure 46 depicts the number of cases in which fines and fees were waived for indigence or satisfied through jail or community service credit. The dollar value of these waivers and credits was not reported.

As illustrated above, waivers, the main alternative to collection, rose significantly in 2017. Despite a recent spike in the number of fines and fees waived for indigence, collections have not declined dramatically, as demonstrated above in figure 45.

#### 4. Marion County

Marion County is a rural county in eastern Texas with a population of just over 10,000. It is majority non-Hispanic white, at 71 percent, with a significant black minority of 24 percent and only a small Hispanic or Latino population, at almost 4 percent.<sup>248</sup> Marion County is primarily Republican. It has a poverty rate of nearly 23 percent, higher than that of the state overall.<sup>249</sup>

The Marion County courthouse sits in Jefferson and houses four courts: the district, county, municipal, and justice of the peace courts. There are two sitting district court judges, who handle felonies, and two justices of the peace, one of whom also serves as a municipal court judge. Only the two district court judges have law degrees. The staff includes one municipal clerk, two county clerks, one justice of the peace clerk, and two contracted public defenders, one of whom also serves as city prosecutor.<sup>250</sup>

FIGURE 47

### Marion County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Collections	\$366
Costs	
Court Costs	\$29
Cost as a Percentage of Collections	8%
<b>Net Gain (+)/Loss (-)</b>	<b>\$336</b>

Source: Texas Office of Court Administration; Brennan Center calculations.

#### JUSTICE OF THE PEACE

This court handles Class C misdemeanors, small claims, and civil suits. Most of its cases are traffic citations issued by highway patrol officers outside the town limits. The court holds hearings once every three to six months, with about 40 cases on the docket each time. Many cases are related to failure to pay, and most defendants fail to appear. If the defendant does not contact the clerk within 60 days of failure to appear, a collections company sends a pre-warrant notice. A show-cause hearing is scheduled, and if the defendant again does not show up, the clerk issues an arrest warrant.

The justice of the peace handles all ability-to-pay determinations. In applying for indigency, defendants must fill out an affidavit attesting to their inability to pay and submit supporting documentation, including their most recent bank statement, tax return, and utility bills. The justice of the peace reviews the application and either grants or denies indigency, which is solely within the judge's discretion.<sup>251</sup>

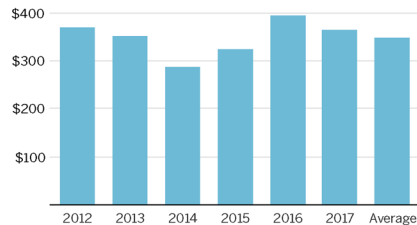
#### MUNICIPAL COURT

This court handles all traffic citations issued by city police. Hearings are scheduled once every month; a typical docket contains 30 to 40 cases. The municipal court clerk handles about 30 cases per week, roughly half of which are related to failure to pay court fees. When defendants plead guilty or no contest, they have 14 days to pay. If they plead not guilty, the case is scheduled for a subsequent hearing. Defendants who do not show up have 10 days to pay before an arrest warrant is issued. All defendants can enroll in a monthly payment plan or receive credits for community service (\$10 per hour) or jail time (\$100 per day). The average defendant will end up owing \$250 to \$500 in court fees and fines.<sup>252</sup>

FIGURE 48

### Marion County Collections, 2012–2017

Thousands of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

#### COUNTY COURT

This court deals only with Class A and B misdemeanors; most of the cases are for driving while intoxicated or minor drug possession charges. Like the justice of the peace and municipal courts, there is no set schedule for county court. Instead, hearings are scheduled once every month, and the typical docket contains around 40 cases. The county clerk is responsible for collections from defendants not on probation; the probation office collects the money from those on probation at each monthly visit and then issues a check to the county at the end of each month. As of October 2018, there were 311 probationers and parolees, whom the county clerk described as the “vast majority” of defendants.<sup>253</sup>

Across these courts, several officials criticized the fee and fine process in Marion County. They noted that only a small percentage of the assessed fees and fines are eventually collected, largely due to residents’ poverty.

Figure 47 highlights the results of the Brennan Center’s fiscal analysis for criminal fees and fines for Marion County. Its conservative estimate of the in-court costs of imposing and collecting fees and fines is based on surveys of judges and clerks in these courts. The Texas Office of Court Administration collects little data on rural county courts, so the value of assessments, credits, and waivers in Marion County is not available.

#### Key findings:

- In 2017, Marion County’s county, municipal, and justice of the peace courts collected about \$366,000 in criminal fees and fines.<sup>254</sup> At least \$29,000 was spent on court collections activity, so the net gain was no more than \$336,000.

- In the county and justice of the peace courts, clerks spend 12 to 13 hours per week on fees and fines. In municipal court, they spend around five hours per week. This represents costs of approximately \$24,600 per year.<sup>255</sup>
- The county court spends roughly five hours per week and the justice of the peace courts spend a half hour per week on fees and fines. This represents costs of approximately \$4,900 per year.<sup>256</sup>

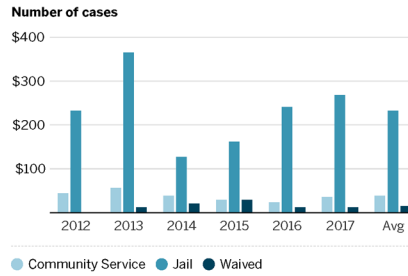
Figure 48 shows how the amount of criminal fees and fines collected has changed over time. Collections stayed relatively constant from 2012 to 2016 but decreased in 2017.

Figure 49 depicts the number of cases in which fines and fees were waived for indigence or satisfied through jail or community service credits. The dollar value of these waivers and credits was not reported.

As shown, 80 percent of the cases in which fees and fines were satisfied by a method other than payment were, in an average year, satisfied by jail credits. Also in an average year, fees and fines were waived for indigence in slightly more than 6 percent of cases satisfied by a method other than payment.

FIGURE 49

### Marion County Alternatives to Payment of Criminal Fees and Fines, 2012–2017



Source: Texas Office of Court Administration; Brennan Center calculations.

The county court reported \$261,000 in fees and fines outstanding as of October 2018.

## Appendix B: Methodology

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To obtain the data for the fiscal analysis, the authors conducted interviews and requested quantitative data from stakeholders in each of the selected counties. The information collected through interviews includes both qualitative data, relating to processes, policies, and practices, and quantitative data, including caseloads, hours worked, and time spent on fees and fines.

Once collected, this data was used to estimate costs by jurisdiction and arrayed with revenues in the broader fiscal analysis. Much of the cost data was calculated using salary data and time-use information collected through interviews, in addition to other factors, including criminal caseloads, employee compensation, and other input from state databases. Revenue data was calculated from reports that indicate the amounts of fees and fines collected, waived, and uncollected. Other criminal justice revenues and costs exist but were either beyond the scope of this study or unavailable. For example, this study did not consider the costs and revenues of bail and bond systems or restitution. The authors were also unable to estimate costs of warrant enforcement and driver's license suspensions by departments of motor vehicles.

### Cost Data Collection

For most of the study's jurisdictions, the collected cost data includes time spent by court and other public employees in court proceedings ("in-court costs") dealing with criminal fee and fine matters. For some jurisdictions, the cost data also includes costs of time spent by court employees assessing and collecting criminal fines and court fees and detention costs of people jailed for failure to pay or failure to appear on fee/fine-only charges. Further, for some jurisdictions, the cost data includes estimates of jailing costs, derived from reported jailing costs and jail credits issued. Cost data was collected in the following ways:

#### Surveys

The authors attempted to collect quantitative cost information by administering surveys asking how court and other criminal justice personnel spend their time, and how much of that time is spent on assessing and collecting fees and fines. Surveys were emailed to judges, prosecutors, public defenders, court clerks, DMV employees who suspend licenses, police officers who arrest people for failure to pay, probation/parole officers who participate in collections, court budget/finance officers, and state tax agencies that collect fees and fines through

offsets to tax refunds. Many surveys were distributed via statewide public agencies.

The authors distributed surveys to more than 3,000 members of the Texas justice system. In New Mexico, surveys went to more than 200 members of the state judiciary.

While some surveys were completed and returned by email, and others were completed online, there were not enough useable responses to incorporate the data into meaningful cost estimates.

#### Public Data

Quantitative public budget data was collected from courts and other agencies that make such data available online, including the following:

- Salaries and staffing for courts, prosecutors, public defenders, police/sheriff's departments, DMVs, and state tax agencies, with a goal of estimating the costs of assessing and collecting fees and fines and associated sanctions. Of these, the most heavily used salary and staffing data sets were online "sunshine" portals made available to the public by state agencies or news sites.
- Some daily jail cost data, collected from federal, state, or public advocacy organizations' online reports and obtained data (e.g., the Vera Institute's Price of Prisons Survey, reported rates paid by U.S. Marshals for detention in local jails, and Texas Collection Improvement Program data).
- Budget data, collected from municipal, county, and other agency budget documents.

#### Direct Data Requests

Where online public data and surveys proved inadequate, direct requests were made to agencies for quantitative budget data, such as salaries and staffing for courts and supporting agencies. For example, the Texas Office of Court Administration shared data from its Collection



Improvement Program, with reports of court collection costs for all 71 of the state's most heavily populated counties (except for Harris County). The New Mexico Administrative Office of the Courts supplied extensive criminal case data, including information on fees and fines, for the courts supported by the state (Bernalillo Metropolitan Court, magistrate courts, and district courts).

### Court Watching

Over the course of this study, Brennan Center staff observed over 1,000 cases across 16 different courts in seven counties. The study sent project staff to nine of the study jurisdictions to observe court proceedings for up to a week. (Court watching was feasible only in seven of the counties because three largely rural counties only had part-time courts that were not in session during staff visits.) These court observations were used to gauge time spent on fee and fine matters for in-court cost estimates. Because of the low level of survey response from targeted jurisdictions, court watching was the primary tool for estimating the time courts spend on fees and fines (staff were not able to perform court watching in Jim Hogg, Marion, and Madison Counties). Court observations and interviews with judges, clerks, public defenders, and defendants were helpful in determining how processes and procedures, including ability-to-pay determinations and payment plans, vary from court to court.

## Revenue Data Collection

**Revenue data includes all criminal fines and court fees** collected by local or state agencies in the jurisdictions, excluding restitution and child support payments, which were not relevant to this study.

### Public Data

Some quantitative public data on criminal fee and fine revenue and collections was gleaned from state associations for court clerks. For example, in Florida, public quantitative data on fee and fine assessments and collections came from online reports prepared by the Florida Court Clerks & Comptrollers.

### Direct Data Requests

Some data relating to assessments and revenues was collected directly from state agencies. This information was collected by contacting state-based judicial agencies, such as administrative offices of courts, and requesting that statistical data be provided for analysis. For example, the Texas Office of Court Administration shared data on court fee and fine collections for 71 of the state's most heavily populated counties. The New Mexico Administrative Office of the Courts supplied extensive criminal case data, including information on fee and fine assessments and collections for each of the courts funded by the state.

## Supplemental Research

**During site visits and interviews, and through other research,** qualitative data was collected to illuminate how courts and supporting agencies operate when imposing and collecting criminal fees and fines.

### Site Visits and In-Person Interviews

During site visits, interviews were held with court officials, prosecutors, public defenders, police officers and sheriffs, and probation/parole departments in many jurisdictions. While the interviews focused on collecting quantitative survey data, the visits were also used to document the process of criminal fee and fine assessment and collection in each jurisdiction. Many site visits also included court watching. In courts that were rarely were in session (thus preventing court watching), these visits and interviews were a primary data collection tool.

### Phone Interviews

Additional interviews were conducted by phone with state judiciary and public defender agencies to supplement information collected by other means.

### Surveys

The surveys provided space for notes and comments by respondents. These were reviewed and followed up on with additional questions when feasible.

### Literature and Statistical Review

The authors analyzed reports and articles published by governmental, advocacy, and news organizations to document how criminal fees and fines are assessed and collected in each jurisdiction. They also compiled demographic information from public sources, such as the U.S. census, to provide context for each jurisdiction, including ethnic makeup, average income, and poverty level.

## County Fiscal Analyses

**Fiscal analysis traditionally involves a diverse array** of analyses focused on budgets, costs, and revenues. When applied to a governmental project or activity, such analysis is often used to compare changes in costs and changes in revenues over a period of time. The result of this comparison is often the "net fiscal impact" or, in this context, "net gain." This is the type of analysis attempted for this report. It can indicate whether a governmental activity is a financially sensible one — and whether taxpayers should pay for it if it fails to cover enough of its costs. While the revenue data collected for courts in each jurisdiction focuses on criminal misdemeanors, the data for the Bernalillo Metropolitan Court in Albuquerque includes both non-criminal traffic and misdemeanor criminal fees and fines.



### Balance Sheet Approach

At its core, the fiscal analysis employed in this report makes use of a simple balance sheet approach. For the most recent fiscal year obtainable, the identified costs of levying and collecting criminal fees and fines are subtracted from the sums collected for each jurisdiction to obtain the “net gain” in revenue. In practice, this meant identifying and quantifying as much cost information related to fees and fines as possible and subtracting it from reported revenue collected from state court agencies and clerks’ associations.

### Additional Fiscal Analysis Measures

The authors also refer in the fiscal analysis to “percentage of fees and fines collected” and “cost per \$100 of revenue collected.” While “net gain” indicates the revenue (or loss) yielded by the activities associated with imposing and collecting criminal fees and fines, measuring “percentage of fees and fines collected” shows how much of what is assessed during a year is ultimately collected during that year, an indicator of how well fee and fine assessments and collections efforts are targeted.

“Cost per \$100 of revenue collected” is a standard measure of the efficiency of revenue collection. For example, if the cost of collecting fees and fines is higher than the cost of collecting tax revenue, it is a less fiscally prudent means of funding court (or other government) operations.

### County Unit of Analysis

The authors conducted this fiscal analysis by examining criminal fees and fines levied by courts, as well as costs, in 10 counties in Florida, Texas, and New Mexico. They were chosen to represent a cross section of geographic, economic, political, and demographic conditions found across the country. The authors examined criminal fees and fines levied by courts, whether these courts were state or locally funded. While the project presents a fiscal balance sheet for criminal fees and fines by county, depending on the jurisdiction, it may contain a mix of costs incurred by the cities, counties, and the respective states. Similarly, depending on the state, the revenue collected may represent a mixture of amounts ultimately transferred to the state and the locality or retained by the court for court operations. As a result, some of the costs and revenues in this report may be found on the various balance sheets of cities, counties, and states, rather than all in one place. The benefit of this report’s approach is that it takes disparate information that is difficult for taxpayers, let alone government officials, to decipher and analyzes it in a way that sheds light on court-related fee and fine activity in each county.

### Estimated Costs

#### In-Court Costs

Judges, court clerks, prosecutors, public defenders, and sometimes probation officers attend court proceedings at which criminal fees and fines are imposed. Because the authors found no courts or other agencies that record or track the cost of this employee time, the authors produced estimated costs in the following manner:

- **Time spent.** For each county, the authors gathered data on time spent by personnel on criminal fees and fines, as described before. This data was used to determine the average time spent on criminal fees and fines per case inside the courtroom. To build yearly estimates, this “time per case” measure was annualized using yearly caseload statistics. For cases related solely to fees and fines (such as failure to pay and failure to appear on a summons related to a fine-only case), the fraction of such cases observed during court watching was assumed to hold steady across the entire year.
- **Salaries and benefits.** The authors took salary and benefits information obtained as described above and used this data to construct an average hourly compensation cost for each type of personnel (e.g., judges, court clerks, prosecutors, public defenders, and probation/parole officers).<sup>257</sup>
- **Cost of time spent.** For in-court criminal cases, court watching was used to estimate time spent on fees and fines, and that time was assumed to be representative for the most recent year of the analysis. The average hourly compensation cost for each type of personnel was multiplied by the average number of hours per year spent in court proceedings while fee and fine matters were being handled to determine the cost of time spent on fees and fines. This information was used to project an annual estimate for the in-court cost of fees and fines in each jurisdiction. For this analysis, average hourly compensation includes an estimate of the cost of benefits, assumed at 40 percent for personnel in courts in New Mexico and Florida. The 40 percent rate documented for the New Mexico judiciary was substantially similar to the rate modeled for Florida court personnel using standard benefits rates and information. For Texas’s decentralized court system, local county and municipal budgets available online were consulted to calculate both benefits rates and other direct cost information to supplement the compensation data. Court watching was performed in seven counties. In two additional jurisdictions, Jim Hogg and Marion Counties in Texas, courts

were not in session when the team attempted site visits, so informal estimates of time spent in court were based on interviews with judges or clerks. No court watching was performed in Madison County, Florida.

#### Court Collection Costs

Court personnel and sometimes staff from other agencies, such as parole/probation offices, state tax agencies, other public agencies, and private collection agencies, collect court-imposed criminal fees and fines. The authors focused on court collection costs reported by the courts or state judiciary agencies, as cost information for other forms of fee and fine collection proved difficult to obtain.

#### Jailing Costs

Sometimes courts order individuals to jail for nonpayment of fees and fines, and sometimes police arrest individuals on a warrant and have them jailed because of nonpayment. Defendants in some jurisdictions also may elect to earn credit against fees and fines owed by spending time in jail. Much of the jail costs determined by the authors is attributable to this involuntary and voluntary jailing for the purpose of earning “jail credits” against fees and fines. However, defendants in some jurisdictions jailed for other crimes may sometimes receive credits against fees and fines owed. The authors were unable to determine the portion of calculated jailing costs attributable to these cases. The authors were also unable to estimate jailing costs in Florida, because incarceration in target counties there takes place only as a result of license suspension, and the proportion of license suspensions resulting from unpaid fines and fees could not be obtained. Estimated jailing costs for New Mexico and Texas were calculated as follows:

- **New Mexico.** In Santa Fe and Socorro Counties, time spent in jail was estimated on the basis of the value of jail credits earned against fines and fees in magistrate courts, compiled by the state Administrative Office of the Courts (AOC). In Bernalillo County’s Metropolitan Court, jail credit data compiled by AOC also was used. Jail credits were translated into time served using a daily jail credit of \$58, equal to eight hours at the federal minimum wage, the amount typically awarded by judges in these jurisdictions. Jail costs were estimated based on the daily jail rate estimated for the Bernalillo Metropolitan Correctional Facility in the Vera Institute’s Price of Jails report and the daily rate paid to other county jails by the U.S. Marshals Service. Where no Vera or U.S. Marshals daily jail rate was available for the county, an average of the U.S. Marshals rate for other counties was used.

- **Texas.** Jail credits reported to the Collection Improvement Program (CIP) was used to estimate jail costs. The jail credits reported in each county were divided by the reported jail credit rates for the courts in these counties to estimate total days of incarceration. For years in which the jail credit rates were not reported, an average rate was substituted. The total days of incarceration were then multiplied by the per diem cost of incarceration reported to CIP. When the per diem cost was not reported, the average per diem cost of incarceration was used in its place.

#### Uncollected Fees and Fines

Interviews with state judiciary and local court officials revealed, with rare exception, that little is known about outstanding balances of court-imposed fees and fines. While the authors were unable to estimate such balances, they obtained data on assessments, waivers, credits, and collections to calculate the accumulated balances of unpaid fees and fines for most study jurisdictions over a multiyear period. The uncollected balance remaining after waivers, credits, and collections were accounted for was calculated for each year. These amounts were then cumulatively summed. The total represents the accumulated unpaid balance over several years.

## Statewide Analyses

**Several years’ worth of data on criminal fee and fine** assessments, collections, waivers, credits, and other actions was obtained for felony and misdemeanor courts in Florida, New Mexico, and much of Texas. While little cost data was available, jailing costs associated with criminal fees and fines were estimated for Texas and New Mexico.

#### Texas

Comprehensive revenue data covering cities and counties representing 72 percent of Texas by population came from CIP. A statewide projection for fee and fine assessments was estimated. Several years of criminal fee and fine assessments, collections, waivers, and credits were analyzed based on the jurisdictions reporting to CIP.

Jail costs were analyzed using the data courts reported to CIP. Jail credits issued by the courts in each jurisdiction were divided by the reported jail credit rates for the courts in these counties to estimate total days of incarceration. For years in which the jail credit rates were not reported, an average rate was substituted. The total days of incarceration was then multiplied by the per diem cost of incarceration reported to CIP. When the per diem cost was not reported, the average per diem cost of incarceration was used in its place.

The growth in balances owed of unpaid criminal fee and fine debt was calculated by netting collections, waivers, credits, and liens from amounts assessed by the courts.

The collectibility of criminal fees and fines was analyzed using aging information reported by courts to CIP.

### Florida

Several years of extensive criminal fee and fine data covering assessments, collections, waivers, and credits for the felony and misdemeanor courts in each of Florida's counties was obtained from reports formerly located on the website of the Florida Court Clerks & Comptrollers Association, which is charged with annual reporting to the state. (Except for the most recent annual report, this data was later removed from the Florida Court Clerks & Comptrollers Association website.) This data was analyzed to provide a comprehensive statewide view of fee and fine activity over several years. The growth in balances owed of unpaid criminal fee and fine debt was calculated by netting collections, waivers, credits, and liens from amounts assessed by the courts. No cost data was obtainable on a statewide basis for Florida.

### New Mexico

Comprehensive data covering several years and criminal fee and fine assessments, collections, waivers, and credits was obtained from the state's Administrative Office of the Courts. This data covered all state-funded district and magistrate courts statewide as well as state-funded Bernalillo Metropolitan Court, which handles the bulk of the county's misdemeanor and felony criminal cases. The data does not include the activity of locally funded municipal or county courts.

While the data provided was transactional, case-related data, it was analyzed to determine totals for assessments, collections, waivers, and credits for the years 2012 through 2016.

The data also was used to calculate jail costs associated with criminal fees and fines. Jail credits were divided by a \$58-per-day federal minimum wage, the valuation used by New Mexico courts for jail credits, to obtain days of incarceration. The results were then multiplied by a low (\$64.22, cost for Santa Fe) and a high (\$85.63, cost for Bernalillo) estimate of daily incarceration costs to simulate the range of possible incarceration costs.

## Note on Rounding in Tables Appearing in Figures

Where numbers appearing in tables in some of the figures appearing in this report are rounded to thousands, some totals may not appear to add up due to rounding.

## Challenges and Limitations

- **Surveys.** While the study was built around the use of survey data, few and often no survey responses were obtained from the study jurisdictions. This was despite the help of state administrative offices of courts and other agencies in distributing the surveys, survey redesign, and considerable follow-up by phone and email. The failure to obtain needed data by survey necessitated site visits and limited some of the cost data originally planned to be collected.
- **Court watching.** Court observations were made over a one-week period in most study jurisdictions. The authors assume that proceedings were typical and adequate for the construction of annual estimates. However, this method does not consider potential seasonal or caseload fluctuations that may occur over the year.
- **Budgets.** The authors originally anticipated finding useful cost data in court and other agency budgets, including salaries of court personnel, agency officials, and staff engaged in levying and collecting fees and fines. Little useful information was obtained in this manner, and agency budget/chief financial officer staff generally were not responsive to the authors' emails and surveys.
- **Criminal justice system data.** Sometimes extensive criminal justice system data was made available to the authors by state administrative offices of the courts, as in New Mexico and Texas. However, the nature of the data tracked, the multiple and disparate systems, and sometimes a lack of recordkeeping — all of which vary by state and jurisdiction — meant that some data was unobtainable. For example, the authors were unable to obtain municipal court data in New Mexico or data for courts in less populated counties in Texas. The authors also were unable to identify sources for balance information on outstanding criminal justice debt. In some localities, information is still tracked on paper, making data difficult to compile. In many jurisdictions, information such as the extent of jailing for failure to pay is not tabulated, existing simply as anecdotal information.
- **Procedural requirements for public release of data.** Some agencies and jurisdictions insisted that data requests be made through the procedural requirements of their respective state's freedom of information statutes. These generally proved to be fruitless inquiries, with no mechanism for person-to-person follow-up.

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Chair NADLER. Thank you. I yield back the balance of my time.

Ms. JACKSON LEE. Thank you. The gentleman from Texas.

Mr. GOHMERT. Thank you, Madam Chair.

Ms. JACKSON LEE. Five minutes.

Mr. GOHMERT. I appreciated the suggestion that fees and fines should be adjusted based on income. Judge Foster, do you know if the Federal courts adjust fees and fines based on income?

Ms. FOSTER. So, the Federal Government doesn't impose many fees. At certainly not at—

Mr. GOHMERT. Okay, Judge, I know you'll appreciate that I just need you to answer the question if you can.

Ms. FOSTER. I am trying. The Federal Government—

Mr. GOHMERT. Does the Federal Government, it's pretty simple, do they do that?

Ms. FOSTER. Well, they don't need to if they don't impose them.

Mr. GOHMERT. All right, thank you. Does anybody know besides Judge Foster whether the Federal courts adjust fees and fines based on income? We'll have to pursue that and find out for sure. I think it's a good suggestion.

One of the things I noted having worked as a felony judge in the State system was how many departments would get Federal grants, and they would start offering what the Federal grants would require. The grants would go away and they're looking for income streams to replace what the Federal Government lured them into doing.

People would say hey, we'd like to do that so you got to come up with a source of revenue. The locals and the State couldn't afford to provide more, so they looked at fines and fees. So, I think all of it needs to be looked at. I'm particularly concerned, since this is the Federal Government, about the forfeitures.

I know Judge Foster didn't think fines and fees were a problem in the Federal system, but they have been, and I've seen them be. So, we have a little different perspective on that.

Especially when the Federal Government engages in forfeitures where they have decided we can't convict somebody, so we'll just go in and take his property. They end up taking property of the family that was not involved in any wrongdoing. It destroys their way to make a living.

I wonder, Mr. Head, have you observed anything of that nature from the Federal Government in problems with forfeitures?

Mr. HEAD. Yes, sir, and asset forfeiture is a bit of a unique animal because it has Federal implications that when applied, also brings local or State jurisdictions in. So, it's sort of this hybrid practice that even when states may either reduce, or even a number of states now abolished civil asset forfeiture, the Federal Government can essentially cooperate on a given project.

The assets that are brought in through that project are then split between the feds and that jurisdiction, State or local jurisdiction. So, it becomes a problematic situation. Then the assets themselves frequently are used for programs that, as another witness alluded to, it's kind of by definition.

It's an erratic, unpredictable income stream, so to speak, revenue stream for a government. So, it's, not only is it problematic on a

property rights standpoint and a familial standpoint, but it also is not a reliable way to run any government program.

Mr. GOHMERT. Well, there's an element of unfairness that you can often find, correct?

Mr. HEAD. That's exactly right.

Mr. GOHMERT. That's my concern from a Federal standpoint is the element of unfairness.

With regard to a reimbursement as a fine or fee to a defendant in Federal court, since Federal court is where we clearly have jurisdiction, I have seen presentence reports come back with egregiously outrageous amounts of alleged reimbursement that overwhelms the defendant. They can never pay it back. The prosecution felt good about having such a high number.

Have you seen things of that nature in Federal court?

Mr. HEAD. Yeah, yes, sir. That practice itself tends to be a bit erratic in different jurisdictions across the country. Some regions, some districts are more maybe cavalier in that practice than others. You're exactly right, even when—it's not uncommon, actually, for defendants to actually be acquitted of all or many of the charges but still have to levy the—bear the burden.

Again, I think of these things almost as user fees. You used, you rented, in essence, our defense counsel, courtroom, stenographer, etc. So, even if you got off, we're still going to—

Mr. HEAD. You're stuck on one—I see my time's expired. I would, Madam Chair, I would like to see this also pursued. Because it's not uncommon from what I've seen to have a presentence report include an amount of restitution that seems very high, maybe it's limited. I would hope maybe we could look at that some point.

I appreciate having the hearing. Thank you.

Ms. JACKSON LEE. Mr. Gohmert, while this hearing is not on that, you are absolutely right. It is an issue that this Committee should take up, and I was here long enough to have been with Mr. Hyde when we were also discussing the forfeiture challenges that we faced on the Federal level.

So, and we probably are long overdue, and so, let us look forward in a bipartisan way to look at those issues, and I thank you for raising them, a former judge.

Now, I will recognize Ms. Bass for five minutes.

Ms. BASS. Thank you, Madam Chair, and let me just thank you so much for holding this hearing today.

As the gentleman mentioned restitution and fines and all of this, I just don't understand the point when we do this and have the fee or the restitution be so high.

We know the person is not going to be able to pay it back and it just sets them up, and it's kind of like the continuum that we were talking about last week with people who are released from prison and have nowhere to go.

This is an example of the roadblocks that we set up, and we concentrate these people in certain neighborhoods, and you lock them out of the economy and then you wonder why they reoffend.

So, this is part of that continuum and why I appreciate us having the meeting today.

I wanted to talk about the impact on children, because on the report from the Committee it says that in 2016 Philadelphia netted

over half a million dollars from parents of children that had interacted with the JJ system, the juvenile justice system, and that the inability to pay for the legal guardian, to pay a nightly rate for the child's detention, can lead to a violation of probation or even facing extended periods of time.

So, children—and this is what I'm asking the panel, Professor Harris, Ms. Foster, children wind up spending time in jail because their parents can't pay a fine. I want to know the data.

How many children wind up being incarcerated, and then when they do get out what does their future hold? Has anybody studied this?

We had this policy in Los Angeles County where the parents had to pay a nightly fee, basically, for room and board, and we abolished it. We stopped doing that in L.A. County.

So, I want to know, can you talk about data and long-term consequences? When you put kids in the system, how on earth do they get out?

Ms. HARRIS. Well, the data is there, honestly, on studying many of these issues and processes because we don't have data on numbers, as Judge Foster indicated. We don't have a Federal set of numbers across all our states. We also don't have the data within the states to be able to do these analyses.

What we do know, I referenced a study that was done by Alex Piquero and his colleague that when youth have this debt that it significantly increases the likelihood of recidivism.

So, we know that the debt leads to youth reoffending in their communities. We know from qualitative studies the stress and what Ms. Soto described here, the strain put on families, and it's the strain for generations.

It's not just that moment. We know that when young people are incarcerated, they are surrounded by folks who don't support rehabilitative entry, right. The education is poor quality in these systems, and so when they come up, they're set for failure.

We're doing an analysis of some of the interview data and many of the adults that we interviewed talked about the juvenile debt that followed them into adulthood, and criminal legal consequences for not paying that juvenile debt once they are adults.

So, we're moving towards this direction to finally study the juvenile round. We just don't have the data and we need a bit more time to really dig in and understand the consequences.

It's clear and it's problematic. It's not helpful in any way.

Ms. BASS. Well, I don't see how it's not child abuse. I don't know if Ms. Foster Wong, if you would—

Ms. FOSTER. Let me just add one thing, and that's to emphasize what Professor Harris said. In many jurisdictions, if the debt cannot be paid by that child's family, the debt follows the child into adulthood. So, when the child becomes 18, they're saddled with debt.

In Florida, for example, they prospectively suspend a child's driver's license. So, if a child gets in trouble even for something as minor as Ms. Soto's child stealing a tube of toothpaste, the child cannot get a driver's license, which means the child can't find a job to pay back the debt, even if we thought it was a good idea for kids to work.

Ms. BASS. Let me ask you, I did a study about this 25 years ago, or so, and in L.A. it started with tickets for truancy. So, if you were late to school and the police were surrounding it, they could give you a ticket for truancy. It could go into a warrant.

Do you find much of that? Now, we ended that in L.A. as well. Do you find much of that around the country, ticketing for truancy?

Ms. HARRIS. There are tickets for all kinds of things, and there was actually just a study done by the Juvenile Law Center about children in Municipal Courts for municipal code violations. These are adult courts. They're not juvenile courts.

They're children who may violate some kind of a municipal ordinance, a noise ordinance or being in a curfew ordinance or a truancy ordinance, and then they end up in adult court without counsel and fines and fees are imposed upon them that, as we said, saddle or stay with them for the rest of their lives. That's just antithetical to the whole way that we are supposed to be thinking about juvenile justice.

Ms. BASS. Thank you very much, and thank you, Madam Chair.

Ms. JACKSON LEE. Thank you. The gentleman from Wisconsin is recognized for five minutes.

Mr. FITZPATRICK. Thank you, Madam Chair.

Mr. Head, I was going to kind of direct some comments and a couple questions your way. Being a former State legislator and doing a lot of ride-along at the circuit court level, I was often intrigued and interested to see the banter that goes on between some of these judges and the defendants that are before them.

A lot of times it's about the wherewithal and whether or not the defendant actually could pay for some of these enhanced fees, and probably the best example of that is State legislatures, who have a lot of control over this process at the State level, oftentimes will continue to impose fees that, quite honestly, the defendant is going to be unable to pay in the long run, and you're not going to send a police officer to somebody's door to try and collect these fees later on. So, you end up trying to jump through all these hoops to devise all these systems to pull those dollars back.

So, my first point is, with a rapid expansion of the Federal grants and what we're seeing the strings attached as those dollars move to the states, it seems to me it's just a better place to manage this kind of at the State and local level, whether it's a municipal court or a circuit court.

What's your thoughts on that?

Mr. HEAD. Well, I categorically agree.

One of the pieces that I think I'm encouraged with, so obviously, Faith & Freedom Coalition we do work on the Federal level but in a lot of states as well, about 20 states this year that will engage legislatively.

I'm seeing a significant uptick in community review boards, which, essentially, are local law enforcement, county or city law enforcement, that then sort of invite community leaders to have an ongoing—it's a charter organization and that receives input from that local community.

I think that I'm actually very encouraged by the progress, and I know six or seven cities that have implemented that just in the last two or three months here.

Every system not only is different but also every community has very pronounced different needs and dynamics, and so I think it's really, really important for us to recognize and devolve the decision making process to as local as possible and, conversely, avoid Federal or national prescriptive approaches that either are going to be inapplicable in a lot of places or truly will diverge or divert a lot of this local decision-making process.

Mr. FITZPATRICK. Yeah, I mean, it goes against what we want the system to actually accomplish, which is to hold these individuals responsible for either negligence or, obviously, in some instances at the Federal level breaking their criminal defendants that are breaking the law.

The idea is that State and local authorities, certainly, would be better served if we would allow them to make these decisions.

I'll just kind of go in a little bit different direction. Oftentimes, we would have individuals that just aren't paying child support. They're way behind.

They're in arrears, and they come before the circuit courts in Wisconsin, in my home state, and a lot of times the circuit court judges would simply say, let me get this straight. You can't pay your child support, but you've got a \$9 pack of cigarettes in your pocket right now.

There's oftentimes kind of that type of management, that level of management, and relationships that are built with defendants that I think would serve us much better.

At the Federal level, even further removed, I just don't see how this makes a lot of sense. So, I thank you for being here today. I think the detachment we see from the Federal Government to being able to manage this type of system just doesn't exist.

Mr. HEAD. I agree with that, and I also think that the use of the alternative of community supervision, excuse me, of community service is underutilized, in a lot of contexts where people's inability to pay.

The specific place for people to be able to serve, obviously, needs to be driven by local either judges or, potentially, prosecutors to make recommendations as well.

So, I think there are ways to marry—we would like to see more practices of things like that for alternative to pay. Even then we need to see partnership with local jurisdictions.

So, it's very, very important for us to be almost over aware of local input into these kinds of processes and procedures.

Mr. FITZPATRICK. Thank you, Madam Chair. I yield back.

Ms. JACKSON LEE. I thank you. The gentlewoman from Florida is recognized for five minutes.

Then we'll move to the gentlewoman from Georgia, Ms. McBath, for five minutes.

Ms. MCBATH. Thank you so much, Chair. Thank you, each and every one of you, for being with us today.

Ms. Soto, I just can't thank you enough for sharing your story and I'm so sorry that you have been saddled with all of these fees and this has become so problematic for you. I really appreciate you sharing your story with us today.

Professor Harris, as Ms. Soto experienced just shows us today often the person who is paying the fees or the fine is often not the person who actually has done anything wrong.

So, Professor Harris, I just want to ask you, you co-authored a study that looked at the fine practices in 8 states and including Georgia, which is the State that I represent, and you found that not only was there variation across the United States to how these fees were applied, these fines were applied, but you also found that there was variation within each state.

So, in your view, were these variations consistent with that principle that our justice system should treat similar cases in the same way?

Ms. HARRIS. I think we all have this broader notion that justice should be fair. What does fair look like? It should be consistent and there should be policies and practices that guide how decisions are made.

We found across our eight states that there is so much variability within a courthouse, within a city, within a county, within a State across the United States.

One example that we haven't talked yet about is that many jurisdictions impose mandatory fines and fees. So, even if there's an ability to pay assessment at the front end, if people are impoverished then judges have the discretion not to impose discretionary fines and fees.

In Washington State, people are sentenced a mandatory \$500 regardless of ability to pay. So, \$500 per felony conviction. So, there's a lot of variability and even ability to pay assessments won't apply to some practices.

So, it's important that we have this broader conversation about what is accountability, what is the point of punishment that the last person raised?

If accountability means being able to meet some bar and standard, fulfill that punishment, and then move forward with your life, then we need to really assess fines and fees, because the vast majority of individuals who face the criminal legal system do not have the ability to be held accountable, even though that they want to.

One consistent factor across all our states in interviews is people who have been convicted they wanted to serve their time to the—

Mr. MCBATH. Thank you.

Ms. HARRIS. Yeah. Sorry.

Ms. MCBATH. Thank you very much. I wanted to move on.

Ms. Soto, did you feel that you or your son were really given clear information about how much he was going to be fined for and how to avoid the late fees or the harmful consequences that you've experienced?

Then after she gives that answer, I would love for you, Professor Harris, to kind of elaborate on that.

Ms. SOTO. Yes. I felt that my son and I were clear that we were poor, that we couldn't pay these fines. I was also offering to clean the courthouse or doing some community service hours with him because we did not have the money.

It seems that the system is set not to listen to communities of color. I feel that we get punished more because of our color, because of the language barrier. It was no language justice in here.



I feel that my son and I were isolated through the system, and we were not given a chance to even speak about how much—they knew how much money I was making. So, I think it's a great idea if they can impose those fees based on your income and not put a lot more pressure on us.

Thank you.

Ms. MCBATH. Thank you for that. So, Professor Harris, can you elaborate on that for me, please, very quickly?

Ms. HARRIS. Sure. Again, that was one consistent finding across all our eight states is uncertainty, lack of knowledge, lack of what am I being billed for? Why does it increase each month? Where do I go to pay? How do I pay if I have multiple cases in different municipalities?

There was a clear lack of understanding of this process of why am I paying, because I already was in prison for several years. Why am I paying, because I'm on probation?

So, a lot of questions that were unanswered by local courthouse clerks and lack of access to judges to ask those questions or attorneys, for that matter.

Ms. MCBATH. Okay, thank you.

Ms. WOOG, some states have stopped the suspension of driver's licenses for those who have not actually paid their fee. Based on your work with clients, what effects does this have both for the client, their family, and their community?

Ms. WOOG. The effects are absolutely devastating. In Texas, a driver's license is a practical necessity for people to obtain childcare and to go to work, to provide for basic necessities for their families.

What we see for people who have their driver's licenses suspended is either they pull back entirely—it's very isolating for themselves and for their families and can exacerbate existing mental and physical health issues—or they risk driving illegally, which then exposes them to warrants, jail time, family separation, and so that stress and that fear is internalized, regardless of how someone deals with that situation, and is absolutely toxic for individuals, their families, and their communities.

Ms. MCBATH. Thank you so much. I yield back my time.

Ms. JACKSON LEE. I thank the gentlelady. The Ranking Member continues to reserve, and now I'd like to recognize Ms. Demings for five minutes, the gentlelady from Florida.

Ms. DEMINGS. Thank you so much, Madam Chair, and thank you to all our witnesses who have joined us here today.

Ms. Soto, I'm going to direct my question to you. Professor Harris talked about that it's important for the justice system to be fair, and that's a mouthful.

I strongly believe that, as someone who has served in the criminal justice system for almost three decades, and while we continue to make sure that the system is fair and even balanced, I think just as we are still working to form that more perfect union, it is still a major work in progress.

Ms. Soto, I think it's so important to hear the personal stories, because as we do this very critical work, I think those personal stories are so powerful in terms of getting us to the place where we need to be. We just need to have the political will and really believe that we are working for a more fair and just system.

I, certainly, am doing that. You spoke a bit about that the fees imposed should be based on income. I want to give you yet another opportunity. Our time has been well spent, but I want to give you another opportunity to make this appeal.

Based on your own experience, how can we, as Members of Congress, which is a pretty influential body, how can we support the efforts to make this a more fair and just system as it pertains to fines and fees?

Ms. SOTO. Thank you for giving me this opportunity to speak for I know those who don't have a voice, to be the voice of the voiceless. I do believe that we must look at a story such as mine and see the impact that we cause not only to the State but to the country.

These are our youth. These are our new generation. My son went and fought for our country twice. So, a lot of the times we're deteriorating children of color and I feel that all these fees and fines is just a way to oppress our children of color and I just don't understand why it's a system that don't—and here it is not about Republicans, Democrats, or liberals. In here, it's about something that is real that is happening to families.

So, I, certainly, believe that if we look at the person income and base that out of their income, the fines, I have no problem with that. I feel that will be the solution. Not the same fees for all.

I just don't think that everything applies to all, and I do feel that children of color get harsh punishment than children who are Anglo or other race and ethnicity.

Thank you very much.

Ms. DEMINGS. Thank you so much, Ms. Soto, for your powerful testimony.

Madam Chair, I yield back.

Ms. JACKSON LEE. All right. The Ranking Member of the Subcommittee, and now I yield five minutes to the gentlelady from Pennsylvania, Ms. Dean.

Ms. DEAN. Thank you, Madam Chair, and thank you for hosting this important hearing.

Thank you to all our testifiers for your expertise that you're offering us today.

Judge Foster if I might begin with you. In 1983, the United States Supreme Court ruled that in *Bearden v. Georgia* that someone could be sentenced only if he or she had the money and willfully refused to pay.

We heard today over and over about these debtors prisons and how they can force people to forego the basic necessities of life to avoid arrest.

Judge Foster, what kinds of constitutional rights are implicated in the current imposition of fees and fines? I'm thinking of my own court system in suburban Philadelphia and those who are struggling under fees and fines that are unbearable.

Ms. FOSTER. Thank you for the question, and there are many. So, as you mentioned, the Supreme Court long ago and consistently since *Bearden v. Georgia* has said that in the justice system, money cannot matter.

It cannot be the case that we treat people differently in our justice system based on how much money they have in their pocket or their bank account.

Yet, that's precisely, as you indicated, what happens. All over the country, people who cannot afford to pay fines and fees are incarcerated—they're going to jail because they cannot afford to pay as well as the host of other consequences. So, that is certainly one, and that's equal protection and due process.

The second is the right to counsel, and what we see often is because so many State and local governments charge people a fee for counsel, people don't obtain counsel. Ms. Soto just gave you the best example.

Here is a child who has the right to counsel. It's in the Constitution. The Supreme Court said many years ago in *Gault* children have the right to a lawyer in juvenile justice proceedings.

If a fee to apply to obtain counsel is imposed and if a parent is told, oh, at the end of the case you might owe hundreds and in some states thousands of dollars for your free lawyer, then parents are going to say to their child, no, we can't afford a lawyer, and so that child goes unrepresented.

The Eighth Amendment—and several Members have talked about the excessive fines clause—the Supreme Court has indicated, just recently held unequivocally and unanimously that the excessive fines clause applies to the states.

Yet, we see states imposing excessive fines without, as the excessive fines clause requires, doing any kind of inability to pay assessment.

That is in the excessive fines clause. The State of Indiana Supreme Court—when the case from the U.S. Supreme Court was sent back to the Indiana Supreme Court they developed a standard for determining when a fine is excessive, and part of that standard is whether the person has the ability to pay the fine imposed.

Last, but not least is due process, and that is someone's ability to understand the proceedings before them, to have the right to a fair hearing, and to have their voice heard, and that is being violated every day across this country.

Ms. DEAN. Thank you, Judge, for that very thorough listing and powerful listing, and I want to reconnect to Ms. Soto. Thank you for your testimony today.

I thank you for your son's contribution and service to our country and, therefore, your whole family's service to our country. What an extraordinary story. Theft of a tube of toothpaste because he thought his mom couldn't afford it.

What I wanted to ask you is, if you don't mind, what are the long-term effects of your story of the imposition of all the court mandates, fines, fees, and fear—what are the long-term effects for you and for your family?

Ms. SOTO. The long-term effects for me and my family is that we don't trust the system. We feel that the system has failed us. I had to have a second job to pay all these fees and I couldn't be the mother that I wanted to be.

Therefore, I have to still pay. That type of a punishment that your kids have force you because you not being there as a mother for your kids, the three of us have to still go through therapy and

still we're spending more money because of what happened with one in the past.

So, we keep giving money to the system, a system that failed us, when all of us have fought really hard for this country. The second job really ruin our job. The system failed us. I'm very afraid of the system.

I don't believe in systems somehow even though I have two decades working in the nonprofit world giving back to my country because this is my country. My son fought two wars and my daughter dedicated her life to the homeless.

We still have some type of resentment to the system. We just don't trust systems. Thank you very much.

Ms. DEAN. Thank you for your powerful voice. I yield back. I see my time has expired. Thank you, Madam Chair.

Ms. JACKSON LEE. Thank you very much.

I'll now yield to Mr. Steube for five minutes.

Mr. STEUBE. Thank you, Madam Chair.

My questions are for Mr. Head. While fines and fees can create problems if not administered correctly, it can also save law-abiding taxpayers from footing the bills run up by criminals.

How could broad Federal rules about fines and fees hurt the ability of states and localities to collect revenue from convicted criminals who drive up law enforcement and court costs?

Mr. HEAD. Excuse me, I think that, as I alluded to in my opening comments, that I do think that there is a danger of overuse, but there also is a legitimate use for fines and fees. Especially, in circumstances where very dire crimes have been committed and where long investigations or trials have been embarked upon. So, I think that there also is an inadvertent danger for Congress stepping into this, from a Federal level, those are typically outlying cases, but it can also be very profound cases.

We're certainly talking about trans-national cases and interstate cases. So, I think that we need to be mindful that a kind of one-size-fits-all prescriptive approach on the Federal side can not only contemplate the hyper-local scenarios—individualized scenarios and communities, but it also can lack the elasticity for the extremely high-end cases that are outliers. Also, those are the most expensive and most elaborate drains on our system, and on the resources that are entailed there.

Mr. STEUBE. Yes, and I'd like to further address the problems of using Federal grants to change State policy. I believe it's the role of State governments, not the Federal Government, to dictate—especially in this area of law—I come and represent Florida. I come from the great State of Florida. We've done a lot—when I was in the State legislature, after the last eight years that I was there doing criminal justice reform and looking at these issues, like civil forfeiture and those types of issues. So, I have great concerns when the Federal Government is going to address something that the States should have within their purview.

As discussed earlier today, not every State faces the same issues when it comes to criminal law, in general, or fines and fees specifically. From your experience working in public policy on the State and Federal level, can you give us some examples of a one-size-fits-

all Federal grant requirement that hurt State law enforcement efforts in unintended ways?

Mr. HEAD. Well, we just had a bit of a conversation on asset forfeiture that the asset forfeiture process as is allowed on the Federal side, but also has been either reduced or greatly restricted on State sides. Actually, about 14 states in the last four years have either restricted or abolished asset forfeiture. Ironically, but not having much treatment of the issue on the Federal side, what generally happens on the State side is the Federal investigators tend to partner with local or State law enforcement agencies and so the Federal—there's essentially a Federal work-around. This is kind of the opposite of, in some ways of what your question is. Federal inactivity has actually circumvented States' desires to reduce or curtail the practice of asset forfeiture.

So, while Federal action can certainly have an undesirable effect, Federal inaction has actually been problematic. In essence, the Fed is not having their household in order, so to speak, has actually limited States' rights.

Mr. STEUBE. Can you speak about the use of fines as an alternative to incarceration and how that could be negatively impacted by Federal rules limiting fines?

Mr. HEAD. Well, I think that, yet again, if we can contemplate or allow for local ability to treat local issues, we not only find—for instance, in North Carolina, just last week I was having meetings about the State of North Carolina considering—right now there is a prohibition against community—volunteering, basically, to supplant or replace payment of fines. So, North Carolina is actually strongly considering reversing their State policy.

New York also has a similar prohibition in place. What we would like to see for us is to be able to go to the sort of outlying States, to be able to address these kinds of unique approaches because I think that there's a—what tends to happen whenever we have a prescribed Federal approach or nationalized approach is that we contemplate the norm. Inadvertently we marginalize the exceptions. Then the exceptions can actually become exacerbated.

So, once again, it's important for us to be able to have the ability to customize approaches, not just prescribe.

Mr. STEUBE. Thank you for being here today. My time has expired.

Ms. JACKSON LEE. I thank the gentleman for his questioning. The gentleman yields back, and I am pleased to yield five minutes to the gentlewoman from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you, Madam Chair. Thank you to our witnesses for being here today. Professor Harris, before coming to Congress I participated in the defense of children in what's become known in Pennsylvania as the Kids for Cash Scandal. For those who aren't familiar, between 2003 and 2008 hundreds of Pennsylvania teens were sentenced to a for-profit detention center in which two juvenile court judges had a financial interest. The sentences usually occurred after the young people were pressured to waive the right to counsel or confessed to crimes that they didn't commit.

In one of those cases, after the court's conduct was declared unconstitutional and our client was released, her parents got a hefty bill from the county for the cost of her unconstitutional detention.

Professor Harris, in your testimony you spoke about fees like this being imposed on children and families even when the children are later cleared of misconduct. Can you very briefly highlight what you might do—what we might do at the Federal level?

Ms. HARRIS. Thank you for raising that important point—that we haven't talked a bit about. That there's profit making off these charges and fines and fees—from minors and for adults. It creates this perverse incentive, as we have seen, for some judges, but for other officials of the criminal legal system to try and find ways, right, to keep making profits. We also have a lot of contracts with private entities and—so it's not just about private facilities or private jails or prisons, it's about private entities that are infused within local courthouses, jails, probation officers, and prisons that are allowed to make profits off a literal captive audience.

I am not clear on what the Federal Government could do, and I do think that contracts should be made publically available, so we understand the degree of profit-making and kickbacks that local governments are getting from private entities in these relationships.

Ms. SCANLON. Thank you. I think in that case, actually, what the Federal Government was able to do involved prosecution for wire fraud and those judges ended up in jail. Judge Foster, thank you for mentioning my bill, the Bipartisan Bicameral Driving for Opportunity Act, which we successfully passed out of this Committee earlier this year. We know that court-imposed fines and fees can land people in an endless cycle of debt. If they can't afford to pay the costs immediately, they can face harmful consequences like the suspension of government-issued I.D.s—government-issued I.D.s like driver's licenses. About 11 million people nationwide have suspended driver's licenses for unpaid fines and fees.

I understand that some States and localities have begun implementing laws to end the suspension or revocation of licenses for unpaid fines and fees. Why are they reconsidering that? What role can the Federal Government play to incentivize States to enact these reforms and end this practice once and for all?

Ms. FOSTER. Thank you for your question. Thank you for your sponsorship of the Driving for Opportunity Act. It is important. So, the States that have stopped suspending driver's licenses for unpaid fines and fees—and there are several. We are proud of the fact that as little as four years ago, there were only three states that did not suspend driver's licensing for unpaid fines and fees, and today 22 states have engaged in some form of reform. That's important.

The reason that they've enacted reforms and stopped the practice is because it's counterproductive. It doesn't take most people much time to understand that if you want someone to pay you money, taking away their driver's license—their means of getting to work is not a terribly effective way of collecting that money. States have understood that.

They've also understood the much larger economic consequences to the States. In the United States today 30 percent of jobs require driving as part of the job. I don't mean just Uber and Lyft drivers, but if you think about it, a plumber, an electrician, a construction worker, a Verizon repair person—not to mention long-haul truck-

ers. All those jobs require a person to drive. That requires a valid driver's license. If we take that license away, we make our States less productive.

In addition, are the costs of enforcing driving with a suspended license. In many places around the country, driving with a suspended license is the number-one criminal charge. That means that the system is spending a lot of money prosecuting people whose only crime is to be poor. So, what can the Federal Government do? Exactly what you've proposed.

[Simultaneous speaking.]

Ms. SCANLON. Thank you for that. I see my time has expired. The Gentlewoman from Missouri is recognized for five minutes.

Ms. BUSH. St. Louis and I thank you to our Chair for convening this important hearing. There is a daily trauma that we experience in my town, in my home, St. Louis. In my community we have many municipal governments, and many have their own local government—their own local police force, their own local revenue stream. Each of these municipalities rely heavily on systems that incentivize raising revenue, off targeting people living in poverty, specifically Black people, through traffic stops that lead to fines and fees.

It does not have to be this way. I personally know many exemplary public servants who serve in our St. Louis municipal governments who do not want it to be this way. Our Federal, State, and local governments prioritizing funding for militarized policing and incarceration over fully funding social safety nets, that's what has led to a crisis in our local communities where harming us is not just accepted, but it's encouraged.

In 2015, the Department of Justice found that St. Louis officials evaluated their performance on the amount of revenue the produced. So much so that in 2012, 13 percent of Ferguson's municipal budget was funded by fines and fees, and the city budgeted almost a quarter of its revenue from fines and fees in 2015. Let me just say—because we didn't know—so many of us in this community, we didn't know that this was a problem—that this is something that shouldn't be happening. We were just used to it being the norm. That's a big part of the problem. Unsurprisingly, the DOJ also found that 93 percent of those arrested were black, whereas only 67 percent of Ferguson's population is black.

Black drivers were also twice as likely as White drivers to be searched on a traffic vehicle stops. The reality is that too many people live in endless cycles of punishment that are deeply linked to violent and traumatic encounters with police. The threat of going to jail or having to spend money you don't have to pay exorbitant fees. Judge Foster, how does the imposition of fines and fees affect people's livelihoods, our country's economic growth, and public safety in our communities?

Ms. FOSTER. Thank you for the question. Let me start with your—with public safety. Because there has been some research done, and it's very important to emphasize we're all concerned about public safety. We're all concerned about crime.

What we know is that fines and fees can drive crime, and they have a dramatic impact on law enforcement's ability to fight crime. Let me just give you a couple of numbers. In a study that was done

of cities that rely on fines and fees for some of their revenue, what the study authors found is that for every one-percent increase in revenue that a city derived from fines and fees—a one-percent increase in fine and fee revenue—meant a 6.1-percent decrease in violent crime clearance rates. Right?

So, we're not spending police resources on violent crime. We're spending police resources on raising revenue. Similarly, for every one-percent increase in revenue that the city relies on from fines and fees, there was an 8.3-percent decrease in property crime clearance rates. So, police are not solving property crimes. They're raising revenue from fines and fees. That's not good for anybody. It's certainly not good for public safety. So, that's an important point, and I think it's really critical that we understand that.

As Professor Harris mentioned, we also know that people commit crimes to pay their fines and fees. I was a judge. It's rare that people admit to committing crimes. In a study that was done of over 1,000 people who owed fines and fees, 38-percent admitted to committing a crime to pay their fines and fees. Now, that's just not helping our communities.

Ms. BUSH. No, it's not at all. Thank you Judge Foster for all that information. I don't think a lot of people know that information that you just gave—those numbers. Fines and fees—what we do know, though, is that fines and fees tend to show up at every level of the system. That's what a lot of people do know. That when you look at fees for traffic and detention, phone calls from jail and for pre-trial relief, and that's what we know. So, thank you for that information. Now, we need to do the work to make sure that we change this. Ms. Woog, from your testimony I gather that there has been some substantial amount of reform on the State level. Can you just briefly tell us what policies and reforms the Federal Government should promote?

Ms. WOOG. Yes, absolutely. I mentioned some local reforms that we're seeing that I think are exciting. I think that there's experimentation happening on the local level that the Federal Government could play a role in supporting. So, for example, text message reminders, redesign of court forms. Most people don't know that they have options besides paying a full amount—which they do under the law in Texas. They have options for waiver reduction, our community service law allows people to do self-improvement work as part of community service. So, taking college classes and that kind of thing.

So, we really think that encouraging people on the front end to help resolve their debt could help take care of a lot of the problems that we're seeing on the back end. I think that the Federal Government has a role to play in supporting that kind of experimentation. It's actually pretty low cost and once it gets started, can kind of keep up without needing these additional grant funding over and over, as people have mentioned.

Ms. BUSH. Thank you. I yield back.

Ms. JACKSON LEE. We thank you for your questioning to Madam Vice Chair, and to your contributions to the Committee. Now, it's my privilege to yield five minutes to the Ranking Member of this Committee, Mr. Biggs.



Mr. BIGGS. Thank you, Madam Chair. I appreciate that. Mr. Head, Congress has gotten in the bad habit of using grants to force its preferred policies on states when the Federal Government does not have the constitutional authority to mandate that States act. This would be one of those areas. Do you support States addressing issues related to fines and fees?

Mr. HEAD. I do support States' efforts, yes.

Mr. BIGGS. Are you aware of any Federal law that prohibits States from making these changes?

Mr. HEAD. No, sir, there's no Federal prohibition against this.

Mr. BIGGS. Are you aware of States acting to make changes whether it's in regard to fines, or fees, or victim restitution, without Federal coercion?

Mr. HEAD. Well, yes sir. We've enumerated several examples over the last—particularly five years that this is—the performers on the State level are actually accelerating.

Mr. BIGGS. So, for instance, we had one witness just testify that 22 states have made changes with regard to suspension of driver's license for failure to pay fine—excuse me, fees and surcharges?

Mr. HEAD. Correct, on the driver's license issues, yes, sir.

Mr. BIGGS. Driver's license issues. So, Arizona and Oregon did that?

Mr. HEAD. Yes, sir.

Mr. BIGGS. Arkansas—limited situations in which court can suspend the person's license. California has acted in some ways. Colorado, Delaware, Idaho, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oklahoma, and within Seattle, Washington's municipal courts—have all engaged and acted as well as Texas, Maryland, New York, Utah, and Virginia on these types of issues?

Mr. HEAD. Yes, sir. That's right. It's literally coast to coast at this point.

Mr. BIGGS. Yes, and were any of them mandated to do so by the Federal Government?

Mr. HEAD. Not to my knowledge, no, sir.

Mr. BIGGS. In fact, we talked—I wasn't going to bring this up, but we talked about civil RICO statutes earlier today. My home state, Arizona, now requires a conviction before proceeding on civil asset forfeiture, which is a huge, huge departure from the civil asset forfeiture realm today. So, that's very interesting.

One thing that I have found somewhat troubling today, as a guy who practiced in this field for many years, tried hundreds of cases and dealt with this issue is the conflation of fines with fees and surcharges and victim restitution. So, I want to briefly make sure we all understand what's being said and the delineation that goes on here.

So, Professor Foster, for instance, mentioned that in California there might—if you have \$100 traffic ticket, it might get ratcheted up by—that's the fine, it might get ratcheted by an additional \$390, is that what you said Professor Foster? In my home State it's about—I want to say you could get whacked on an additional 120 bucks or more. Somewhere in that neighborhood. So, you get a fine of \$100, you get \$120 surcharge that's the vernacular we use, but

it's the same thing as the fee is the surcharge is it's going to a whole host of things.

We haven't talked about the victims of crimes because there are some of the things we're talking about, there really is no apparent victim. You're dealing with actually a punitive fine, and you're dealing with some kind of—not restitution, but some kind of a fee or surcharge that's good—being disseminated, whether it's ostensibly to help police functions, police equipment, or court deferral of costs. In Arizona there's even a very small portion that goes to the State General Fund, for Pete sakes.

So, you have massive—this structure of fees and local jurisdictions are setting up, the states are setting up. We haven't talked about victims' restitution and the impact that has. I raise that because to my way of thinking, part of what the justice system should be focused on is to make sure that an innocent victim of crime is made as whole as possible. That could be a problem as well. So, is there anything that you know of, Mr. Head, that deals with Federal mandates with regard to how States administer victims' restitution programs?

Mr. HEAD. To my knowledge there aren't Federal mandates on the restitution. I mean, there are certainly Federal grants that are oriented—it's certainly VOCA and VAWA are overwhelmingly devoted in that direction.

Mr. BIGGS. Right.

Mr. HEAD. Those have grown significantly over the last decades. It's been frankly a little bit—mixed results as to whether those funds are disseminated truly to victims or if they're disseminated to sort of peripheral services that may not truly be delivered to victims.

Mr. BIGGS. Yes, I do think that that needs to be cleaned up and looked at as well. So, I mentioned in my opening statement, Madam Chair, that I do think this is an issue that needs to be addressed. One of the things that we're seeing is that many of the States are actually undertaking to address these issues without the interference of the Federal Government. I would like to see us let that go a while longer. I prefer to see State action. I am a big believer in Federalism. I believe that we have very limited jurisdiction and that's why we end up saying, well, let's do a grant program or find some way to incentivize. Whereas I think the states, with the help of some of the folks up there who are advocating within the states. States are responding and that's where I'd like to see this go. With that, Madam Chair, thank you for holding the hearing today and letting me take some time. I yield back.

Ms. JACKSON LEE. The Ranking Member—thank you for your important contribution to this hearing. Thank you for your inquiry and ask of consideration. Let me also thank the Members of our Committee, Mr. Nadler as the Chair, Ms. Bass, Ms. Demings, McBath, Dean, Scanlon, Cicilline, Lieu, Correa, Escobar, and Cohen have been very helpful in many of the aspects of our work. To thank those who are present—Ms. Spartz, Ms. Gohmert, the Gentleman from Wisconsin, and Mr. Biggs and Mr. Steube—thank you for your very constructive participation as well. Let me ask unanimous consent to place in the record a letter from the National Legal Aide and Defender Associations testimony against HB 3413,

the Murr. Emily Culp, Advocacy Fellow, Texas Fair Defense Project, testimony in support of HB 2441 and HB 117; Emily Culp, Advocacy Fellow, Texas Fair Defense Project, testimony in support of HB 162, Fernando Martinez. Tip of the iceberg how much criminal fees the United States really have in fines and fees justice? The price of justice fines, fees, and the criminalization of poverty in the United States, University of Miami Race and Social Justice Law Review. Judge Foster, the Steep Cost of Criminal Justice Fees and Fines, the Brenna Center of Justice. Let me thank the—I ask unanimous consent and here so ordered to be in the record.

[The information follows:]



**MS. JACKSON LEE FOR THE RECORD**

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## TEXAS FAIR DEFENSE PROJECT

### Re: Testimony Against HB 3413 (Murr)

Dear Chair and Members of the Texas House Committee on Homeland Security and Public Safety:

My name is Emily Culp and I am a single mother and full-time college student doing everything I can to provide for my children and make a better life for ourselves while struggling with license holds for inability to pay court debt. I am opposed to HB 3413 because it would make it harder for people like me who have OmniBase holds for failure to pay to ever get their licenses back.

Years ago, I lost my driver's license due to unpaid surcharges under the Driver Responsibility Program. I had to keep driving to get to work and take care of my children, but that meant I kept getting more tickets and more debt and constant fear of being arrested. It was a vicious cycle; there was no "right" thing to do. If I didn't drive, who would provide for my children? Who would pay our bills? How would I pay my surcharges and tickets? I chose to go with what I felt was the lesser of two evils, taking some form of action to get out of the cycle created by the system in place to me was better than sitting at home wishing my problem would go away.

When I learned that this Legislature repealed the Driver Responsibility Program, at first I was ecstatic! I thought I'd finally be able to get my license back; no more constant terror about the very real possibility of being pulled over and being arrested in front of my children, causing permanent trauma and anguish for them. However, I then learned that I still couldn't get my license back due to OmniBase holds for my unpaid tickets that I received while my license was suspended under the Driver Responsibility Program. I felt like a child learning that Santa isn't real.

Eventually I gave up on ever getting my license back. I stopped driving because I didn't want to get more tickets; I don't own a car anymore. It's incredibly difficult, some days impossible, to go to school full time and take care of my children without being able to drive. I rely on my father a lot to drive us places, but he has work and his own responsibilities. I have never been a person to give up, going back to college at my advanced age proves that. But I felt out of options.

Since I couldn't pay my tickets without risking getting more of them, the tickets turned into warrants for failure to pay and eventually I was arrested in front of my children. We teach children from a young age that the police protect us from "bad guys" and keep us safe. But with tears running down their red scared faces, my kids begged the officers to let mommy go, that mommy isn't a bad guy. I then spent two weeks in jail, next to gang members and murderers, simply for unpaid tickets. In order to not get hurt, myself and many others were forced to do things that under no other circumstance would we ever have done, all to not be the one beat or stabbed that night. I was arrested for inability to pay tickets, and was released with the medical need to take cognitive therapy classes to deal with the trauma, anxiety and depression from that experience.

When I was being booked out of jail, I asked if all my tickets were finally clear and if I'd be able to drive since. They said yes, and that my time was being served concurrently with the other counties where I had tickets. But apparently this was incorrect. I still have outstanding tickets in other jurisdictions, despite what I was informed.

I just started working with the Texas Fair Defense Project and they may be able to help me clear my tickets with my jail credit, but I may have to go on payment plans or community service plans in all those jurisdictions. If that happens, it will take forever for me to be able to lift my holds, especially with still uncertain the means of transportation in order to pay as we do not have a metro system in Midlothian. Because my OmniBase holds won't lift while I'm on a payment plan or community service plan, the only way for me to drive to work off my tickets will be for the Texas Fair Defense Project to help me get an occupational driver's license.

This bill, HB 3413, will take that option away from me. I don't know what I will do if that happens. I am currently finishing up my associate's degree and have applied to my dream school, SMU. I worked so hard on my application. They have an amazing political science department with a really exciting internship program that I would love to participate in. But I know that even if I do get in, my license will be a problem. Not all their classes are online, and I will need to drive to school. If HB 3413 passes, I'm scared that I will have to turn down this dream opportunity. I am trying to change my station in life, yet continually find the systems in government that should be set up to help me end up being the causes of my own and so many others' inability to become the successful productive member of society they so deserve.

Apparently if HB 3413 passes, the only people eligible for an occupational driver's license would be those who've been arrested driving while intoxicated and offenses like that. The world is not fair, nor do I expect it to be, however in law, there should be logic and justice. I don't see how that is just or reasonable or justifiable: I have never put anyone's lives in danger by driving under the influence -- I just can't afford nor should I be required to pay tickets after I've already served out my time in jail for them.

Please be accepting of my testimony with an open mind and heart. These have been real daily struggles my family and I face as many others do as well. We are not bad people, we simply have been less fortunate in some aspects of our lives.

Thank you for your service to our state and for your time. I apologize that I could not be in Austin to testify in person. I live in Ellis County, and because I do not have a car or license I could not drive down to testify.

Sincerely,

Emily Culp  
Advocacy Fellow  
Texas Fair Defense Project

## TEXAS FAIR DEFENSE PROJECT

### Re: Testimony in Support of HB 2441 and HB 1177

Dear Chair and Members,

My name is Emily Culp and I am a single mother and full-time college student doing everything I can to provide for my children while burdened by criminal fines and costs.

I am currently serving a three-year probation period. The plea agreement I signed had multiple fees atop the fine, which totaled around \$2,300, but then when I got on probation they said that now it was actually \$5,600, which is just impossible for me. I never had an ability-to-pay hearing, or anything close to somebody considering my finances and whether or not I could pay. If I had ever had a hearing, it would have been very clear that I cannot afford thousands of dollars in fines and fees. Also, I nor anybody I asked knew that you have to pay for a court appointed attorney- if I had known I would have to pay for my court appointed attorney I would have taken out a loan to hire one instead. To be honest, I felt I had been deceived.

The debt makes me feel like I'm drowning. I can't afford things for my children. My son wants to go to a summer band camp, but I have to tell him it's not possible. If he wants a new deodorant at the grocery store, I have to tell him no, you have to finish every last drop of your old deodorant first. I'm the sole caretaker for two children and all of my money goes towards them. I never spend anything on myself, I embarrassingly wear shirts with holes in them. I even learned to make my own makeup, so I do not spend money on that. Anything I receive goes to my children.

To pay my fines and fees, I've tried everything. I've even donated plasma to pay them, but every time I see my probation officer it's never enough and all she asks about is the money. She's even asked me to use the child support payments I get for my children to pay off my fines and fees. I was horrified by this -- I only get \$500 a month for two children and every penny goes towards them, and it's never enough.

In a way, this debt already makes me feel like I can't be a good mother to my children because I can't provide for them like I want to. They should not have to pay the consequences of my actions. And the system should be focusing on rehabilitating people, not on debt that just makes it harder for me and my family.

I support HB 2441 by Chairman White because it would make it so that ability to pay hearings that are already mandated by law would actually happen. I also support HB 1177 by Representative Crockett because it would mean that people without money would not be saddled with unaffordable court debt for years.

Thank you for your service to our state and your time,  
Emily Culp  
Advocacy Fellow  
Texas Fair Defense Project



Testimony in Support of HB 162

Dear Chair and Members of the Homeland Security and Public Safety Committee:

My name is Fernando Martinez and I want to ask you to support HB 162. I apologize that I am not able to testify in front of you today. This bill is very important to me and I wanted to stay for the hearing, but I have a construction job in Marble Falls and I couldn't get a replacement on short notice.

I am a husband and a father to two children. About a decade ago I got pulled over and got a ticket that I couldn't afford to pay, which turned into a suspended license. Then they wouldn't let me register my vehicle without my license so I kept getting pulled over and getting more tickets. I had to support my family, and so my money went to bills, and I couldn't even afford all of those. But I started doing extra site visits and side jobs so I could save up to get my license.

Eventually I saved enough money to pay all my tickets. I went to a lot of courts to pay them, and I thought I would finally be able to get my license back. But then, to my surprise, they told me that because I had paid and gotten new convictions, I was going to get another two year departmental suspension. It felt like all the money I had worked so hard to save up just went to nothing. It actually made things worse, because it was a hard suspension. The more I worked to make things right and get my license, the worse things got.

After that, I had to keep driving to get to work. I had to drive to West Lake because that's where the construction jobs were, but there aren't buses that go to West Lake. And I got pulled over again, and this time they said they were enhancing it to a class B, and because it carried jail time they said I had to hire a lawyer. So I had to save up not just for the new tickets, but also for a lawyer, and also to get my vehicle out of impoundment. And I kept getting arrested. I was arrested four times for driving with a suspended license, and I felt like there was nothing I could do to stop it from happening.

I stopped trying to get my license back again for about nine years. I just gave up, because I knew that if I tried again, they'd just re-suspend me due to the departmental suspensions. I waited so long to try again because I felt like I could either pay the money and end up with a suspended license, or I could keep the money and still have a suspended license.

Recently, I went to a Texas Fair Defense Project Clinic. The only reason I have my license now is because they told me that instead of just paying my tickets, I needed to plead "not guilty," go talk to a prosecutor, ask for a "deferred disposition," and hope the prosecutor takes pity on me. I did all of that a month ago, and luckily the prosecutor worked with me. If it weren't for that, I still wouldn't have my license, and I'd still be driving to work every day scared that I would be pulled over and go to jail.

I want to thank Chairman White for filing this bill and trying to make things better. The departmental suspension program makes things so hard for struggling families, and it would make such a big difference for people in my situation if you would pass HB 162. Thank you for your consideration.

Sincerely,

Fernando Martinez  
(512) 969-9875  
125 Dove Lane, Kyle, Texas 78640

## **Tip of the Iceberg: How Much Criminal Justice Debt Does the U.S. Really Have?**

By: Briana Hammons, Research and Campaign Associate



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## About The Fines and Fees Justice Center

The Fines and Fees Justice Center (FFJC) is a national advocacy organization working to create a justice system that treats individuals fairly, ensures public safety and community prosperity, and is funded equitably. FFJC works collaboratively with affected communities and justice system stakeholders to eliminate fees in the justice system, ensure fines are equitably imposed, and end abusive collection practices.

## Contact Us

Visit [ffjc.us](https://ffjc.us) to learn more about fines and fees practices and reform efforts around the nation. Follow [@FinesandFeesJC](https://twitter.com/FinesandFeesJC) on Twitter to get the latest updates on local, state and national reforms. For media inquiries or to reproduce any part of this publication, please contact Jag Davies at [jdavies@ffjc.us](mailto:jdavies@ffjc.us).

## Introduction and Executive Summary

Over the past two decades, advocates, researchers, government agencies and the media have drawn increasing attention to the dangerous effects of fines and fees, particularly on communities of color and low-income people. While those moving through the criminal justice system often experience fines and fees as a single, ongoing burden, there are key distinctions between how each of these revenue sources are assessed and imposed.

Fines are monetary sanctions imposed for violating the law. Fees (also known as costs, assessments and surcharges) are additional charges imposed to fund the criminal legal system and other government services. Fines and some fees are imposed by courts when a person is convicted of a criminal or traffic offense or a municipal code violation. Typically, these fines and fees are owed to the court. Fees are also often imposed by local governments or their agencies both before and after a person is convicted. For example, probation fees may be imposed by a local probation department either before trial or after a conviction. These fees are typically owed to either a city or county government.

Considerable research has uncovered the financial burden and unintended consequences wreaked on the people charged with paying fines and fees. Yet there has been little, if any, investigation into how much debt is outstanding or delinquent nationwide. One of the few studies to address the issue found that none of the eight jurisdictions studied had a central repository where information on the total amount of fines and fees owed could be found.<sup>1</sup>

**Understanding the full scope of our nation's criminal justice debt problem is vital to the task of creating an equitable justice system.** Without this information, we cannot accurately evaluate the true impact of fines and fees as a source of government revenue or, more importantly, as a financial burden on those who owe court debt. The absence of data also results in the absence of accountability for policymakers and justice system stakeholders who support and enact harmful fines and fees policies.

This report addresses fines and fees imposed at conviction in felony, misdemeanor, traffic and municipal ordinance violation cases. We refer to these fines and fees as “court debt” because it is debt imposed by the court and typically collected by courts or private collection agencies working on a court’s behalf.

This court debt is just the tip of the iceberg when it comes to monetary sanctions in the criminal justice system. Depending on the jurisdiction, the fines and fees imposed at conviction can be just a fraction of the total amount of unpaid fines and fees owed by people who are or were involved in the criminal legal system. California, a state which maintains relatively robust data on fines and fees, serves an example — outstanding debt owed to California from the fines and fees imposed at conviction is equal to roughly \$10 billion; roughly \$16 billion is owed to the state’s counties for one or more of the 23 administrative fees that

<sup>1</sup> Sarah Shannon, et al, “The Broad Scope and Variation of Monetary Sanctions: Evidence From Eight States,” UCLA Criminal Justice Law Review 4, no. 1 (2020): 272, <https://escholarship.org/uc/item/64t2w833>

<sup>2</sup> Tip of the Iceberg: How Much Criminal Justice Debt Does the U.S. Really Have?

counties are authorized by state law to impose; and approximately \$360 million was owed to counties in juvenile fees.<sup>2</sup>

We chose to focus our investigation on court debt because courts keep a record of every case, and those records should specify the amount of fines and fees imposed at conviction. We assumed that courts routinely aggregated that data, allowing them to determine the amount of fines and fees assessed. We also assumed that courts would track how much of those fines and fees were actually collected.

In an effort to obtain this critical information, the Fines and Fees Justice Center contacted judicial offices and government agencies in all 50 states and the District of Columbia that might have data related to outstanding court debt. In a few states, the information related to the data request was already publicly available, but for most of the jurisdictions, a formal request was submitted.

Uncollectible debt places an extreme financial burden on those who cannot afford to pay it. Considering the weight of this burden alongside the resources that courts, justice system stakeholders, and other government actors expend to collect these debts — you would expect states to be closely monitoring how much they are owed in fines and fees.

**But for half the country, that is not the case. What this means is that the full extent of our nation's problem with court debt is shockingly untraceable and unknown.**

And it's not just the numbers that matter. If states do not have the means (technological or otherwise) to determine how much money they are owed, there is a strong possibility that reliable data about who holds that debt may also be out of reach. Without this vital information, stakeholders cannot appropriately weigh other socio-economic factors (apart from poverty) that may correlate with an inability to settle one's court debt. How can we intelligently assess policy solutions when we can't obtain a complete view of the problem?

Uncovering these details would enable communities, reform advocates, judicial staff, and lawmakers to better understand the challenges shared by people who are unable to pay fines and fees. A number of reports already suggest that Black and Brown people suffer higher incidences of driver's license suspensions and prolonged criminal justice system involvement because of court debt.<sup>3</sup> Data tracking and transparency is a necessary prerequisite to improve court fines and fees policies and transform the current system into one that equitably imposes and enforces fines without overly burdening certain groups.

<sup>2</sup> California no longer imposes fines and fees in its juvenile justice system, and in legislation passed in 2020, it forgave all outstanding juvenile debt. In legislation also passed in 2020, California also ended the discretion previously granted to counties to impose 23 administrative fees and forgave any debt that was owed. See A.B. 1869, 2019-2020 Reg. Sess., ch. 92, 2020 Cal. Stat.

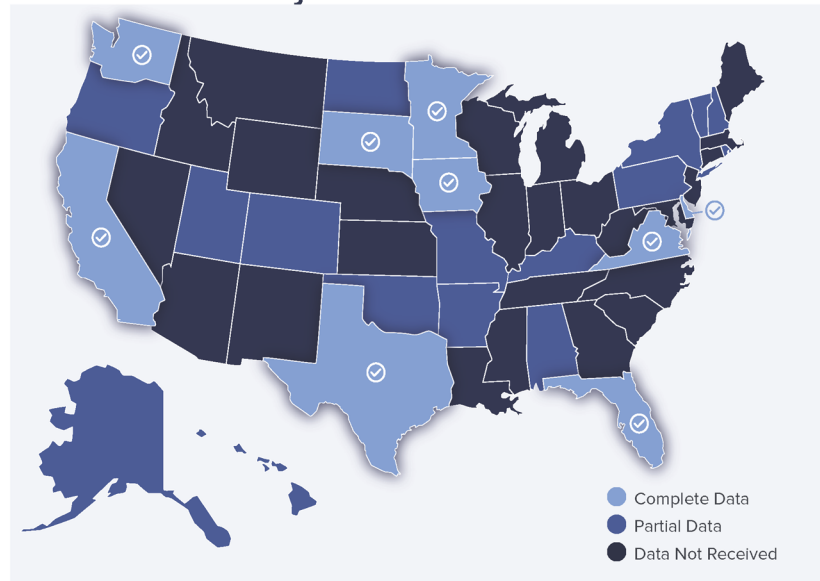
<sup>3</sup> "In For a Penny: The Rise of America's New Debtors' Prisons," American Civil Liberties Union, published October 2010, [https://www.aclu.org/sites/default/files/field\\_document/InForAPenny\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf)  
 "Targeted Fines and Fees Against Communities Of Color: Civil Rights & Constitutional Implications," U.S. Commission on Civil Rights, published September 2017, [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf)

Knowing how much court debt exists will also allow us to accurately assess whether government resources are being wasted trying to collect debt that people will never be able to pay. According to a report published by the Brennan Center for Justice, it costs New Mexico's largest county, Bernalillo, at least \$1.17 to collect every dollar of revenue it raises from fines and fees.<sup>4</sup> The report also found that some Texas and New Mexico counties spend 121 times what the IRS spends to collect taxes on fines and fees collection efforts. These are valuable funds that could be invested in our communities.

This investigation presents the findings of the data requests submitted to each U.S. state and the District of Columbia. We requested the total amount of fines and fees currently owed in felony, misdemeanor, traffic and municipal code violation cases.

Based on the information that was received, we can document that at least \$27.6 billion of fines and fees is owed across the nation. This figure grossly understates the amount of court debt that people living in the U.S. cannot afford to pay because only 25 states provided data, and the information that many provided was incomplete. Information concerning the debt totals for the remaining 25 states and the District of Columbia could not be provided or was not available.

### Which States are Tracking Court Debt?



<sup>4</sup> Steep Costs of Criminal Justice Fines and Fees- A Fiscal Analysis of Three States and Ten Counties. Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison. The Brennan Center for Justice and New York University School of Law. November 2019. [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_Fees%26Fines\\_Final5.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf)

## Key Findings

The research conducted for this report uncovered the following key findings:

■ The national court debt total is at least \$27.6 billion.

■ Twenty-five states and the District of Columbia did not provide court debt totals for various reasons: 10 states stated that they did not track the information, 10 states and D.C. claimed that they did not possess the technological capacity or bandwidth to gather the information, four states denied the data request for various reasons, one state suggested the data was available but could not be easily compiled, and one inquiry was inconclusive.

■ Only 14 states provided the total amount of court debt owed to them for the four case types requested. An additional 11 states provided partial information.

■ A majority of U.S. states lack oversight of their local courts, and these municipal courts exercise autonomous power, causing collection procedures and record keeping to vary across the jurisdiction.

■ From the data provided, Washington had the highest per capita debt (\$426) followed by Virginia (\$363), California (\$347), Oregon (\$344) and Iowa (\$312).<sup>5</sup>

■ The debt balance that states report may not reflect the total amount that is owed because some states do not account for money that the court does not expect to collect. For example, New Hampshire's debt total does not reflect its full accounts receivable balance because the state does not carry an allowance for debt that is deemed uncollectible.

■ The astonishing lack of data on outstanding court debt strongly suggests that state and local governments do not have a basic understanding of how the fines and fees imposed by their courts are affecting people in their state — or the state's bottom line.

<sup>5</sup> Average per capita debt totals were calculated by using the population information provided by the U.S. Census Bureau website. The number of adults in each state was calculated by multiplying the percentage of people in the state over age of 18 by the total population. The court debt total given for each state was divided by this sum to determine the amount of money each adult would owe to settle the state's court debt.

### State Court Debt by Type, Totals and Timeline

The following chart details the type of debts, totals, and timeline of the data received for states categorized as “received complete data”.

STATE	FELONIES	MISDEMEANORS	TRAFFIC	MUNICIPAL VIOLATIONS	YEARS COVERED	TOTAL DEBT
California	✓	✓	✓	✓	2001 - 2019	\$10.6 Bill
Delaware	✓	✓	✓	✓	2017 and prior	\$79.5 Mill
Florida	✓	✓	✓	✓	2013 - 2018	\$1.85 Bill
Iowa	✓	✓	✓	✓	FY 1998 - June 2019	\$757.3 Mill
Minnesota	✓	✓	✓	✓	2014 - 2019	\$60.1 Mill
South Dakota	✓	✓	✓	✓	2016 - 2018	\$17.2 Mill
Texas	✓	✓	✓	✓	2014 - 2019	\$2.3 Bill
Virginia	✓	✓	✓	✓	1998 - 2019	\$2.4 Bill
Washington	✓	✓	✓	✓	2000 - 2014	\$2.5 Bill



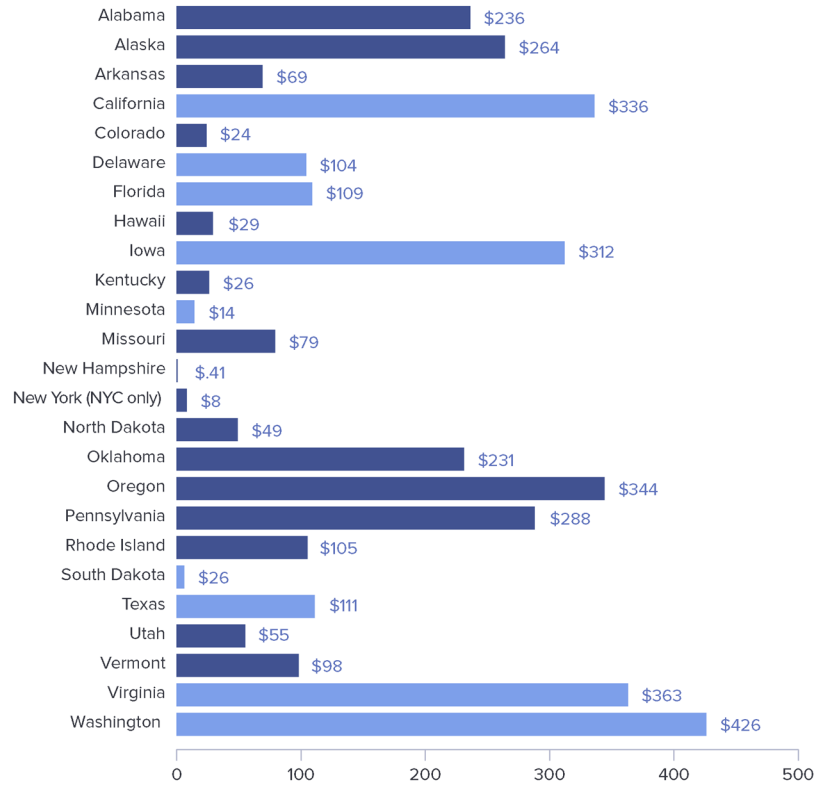
## State Court Debt by Type, Totals and Timeline

The following chart details the type of debts, totals, and timeline of the data received for states categorized as "received partial data".

STATE	FELONIES	MISDEMEANORS	TRAFFIC	MUNICIPAL VIOLATIONS	YEARS COVERED	TOTAL DEBT
Alabama	✓	✓	✓	✓	Late 1980's - October 2020*	\$903.4 Mill
Alaska	✓	✓			Current as of May 2019*	\$146.5 Mill
Arkansas	✓	✓	✓		Current as of January 2019*	\$161.2 Mill
Colorado	✓	✓	✓		2017 - 2018	\$107.2 Mill
Hawaii			✓		2015 - 2018	\$32.1 Mill
Kentucky	✓	✓	✓	✓	Current as of January 2019*	\$91.4 Mill
Missouri	✓	✓	✓		2005 - 2017	\$379.6 Mill
New Hampshire	✓	✓	✓		2015 - 2017	\$1.3 Mill
New York (NYC ONLY)	✓	✓	✓		2016 - 2018	\$53.9 Mill
North Dakota	✓	✓	✓		1990 - June 2018*	\$28.8 Mill
Oklahoma	✓	✓			Jan. 2012 - Sep. 2020	\$693.5 Mill
Oregon	✓	✓	✓	✓	Current as of February 2019*	\$11 Bill
Pennsylvania	✓	✓	✓	✓	Current as of May 2019*	\$2.9 Bill
Rhode Island	✓	✓	✓		Pre-2014 - 2018	\$89.7 Mill
Utah	✓	✓	✓		Current as of May 2019	\$112.1 Mill
Vermont	✓	✓	✓	✓	Current as of June 2018*	\$50.1 Mill

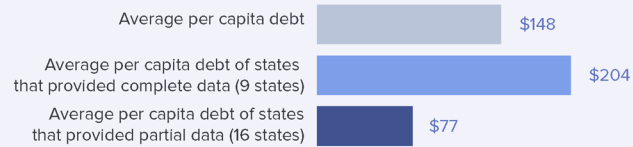
\*Please refer to this state's description in Section IV: Additional Details on States' Court Debt

### State Court Debt Per Capita



### CONCLUSIONS

● Complete Data ● Partial Data



States that did not submit data are not shown

## Recommendations

**The total amount of fines and fees imposed, assessed, collected, and outstanding should be reported by a statewide agency in every state and the District of Columbia on an annual basis. The data should include debt owed to local/municipal courts, state courts, and county and city governments. This information should be made publicly available.**

Court debt data should also include information about the people who owe fines and fees, including eligibility for a public defender or public benefits, as well as the charges for which the debt was imposed. Statewide data should also show how much debt is owed in each county and the number of people who owe debt in each county. Reliable and current data is necessary to develop informed and effective public policy, and it is a vital tool to accurately judge the efficacy of a particular program and existing practices.

**Fines and fees should be deemed uncollectible 3 years after they are imposed, and both public and private collections should cease.** Attempting to collect this debt after 3 years is a waste of government resources and continues to harm low-income communities and communities of color.

**The number and amount of fines must be reduced.** The tens of billions of dollars of outstanding debt demonstrate the staggering burden fines and fees place on low-income communities and communities of color. People cannot afford to pay the amounts imposed, and extracting this money from our most vulnerable communities has devastating consequences.

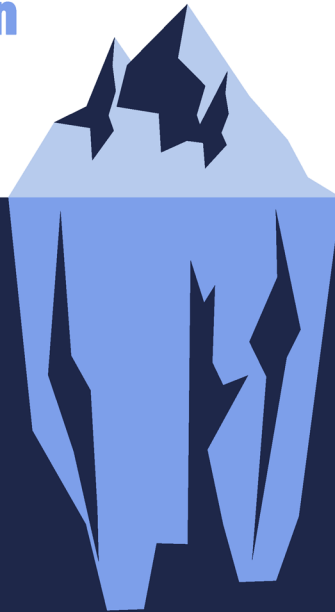
State and local governments should legalize conduct that does not demonstrably harm public health and safety.

Judges must be given discretion to waive or reduce fines. Each state should establish an ability-to-pay assessment based upon the [Fines and Fees Justice Center's Guidance](#).

**All court fees, surcharges and costs should be eliminated.** The justice system is supposed to serve everyone and should be paid for fairly and equitably by everyone.

We can document  
that at least  
**\$27.6 billion**  
of fines and fees  
is owed across  
the nation.

The rest is  
unknown.



## Additional Details on States' Court Debt

Every U.S. state and the District of Columbia provided a response to the request for data representing statewide court debt totals for felony, misdemeanor, traffic and municipal code violation cases. Fourteen states provided data for all of the categories queried, 11 states provided information for only some of the case types requested, and data for 25 states and D.C. were not provided at all. If a state responded that data might be available at the local level from county, district, circuit or municipal courts in the state, FFJC did not attempt to gather the data from local jurisdictions. The burden was more than we could bear. Texas and New York, for example, each have over one thousand municipal courts.

Each state-specific description below details all or some of the following information, based upon availability: the state's total or partial outstanding fines and fees balance, the types of fines and fees included in the reported figure, and the amount each person living in the state would have to pay to settle the debt.

### **ALABAMA:**

#### **RECEIVED PARTIAL DATA**

The Administrative Office of the Courts determined that the total amount of unpaid fines and fees for felony, misdemeanor, traffic and municipal violation cases was \$903,415,877 as of October 27, 2020. This figure covers a total of 76 courts for which the Office tracks information and accounts for the collection fees assessed by the Clerks and District Attorney. The per capita debt is \$236. The exact time frame covered by the data is unknown, but the accounting system used to track this information has been in use since the late 1980s in most Alabama counties and since the early 1990s in the remaining jurisdictions.

### **ALASKA:**

#### **RECEIVED PARTIAL DATA**

The outstanding debt owed to the state of Alaska for criminal cases amounted to \$146.5 million, about \$264 per adult in Alaska, as of May 29, 2019. This figure represents the following categories of costs that were referred to the Shared Services of Alaska Collections Program within the Division of Administration: fine, reinstated fine, correctional facility surcharge, re-imposed correctional facility surcharge, cost of incarceration, forfeited bond, forfeited bond restitution, police training surcharge, public defender fee, and public defender fee in appeals cases. FFJC could not confirm if this amount reflects debts owed for traffic and municipal code violation cases. This total does not account for debts transferred to other political subdivisions or collection efforts done on behalf of the state of Alaska. (See Appendix A)

### **ARIZONA:**

#### **DID NOT RECEIVE DATA**

In a January 19, 2019 email, a representative of the Arizona Supreme Court determined that the requested

data is not maintained at the state level but may be maintained by the county, justice and city courts. Arizona has 15 county courts, at least 67 justice of the peace courts, and numerous city courts.

## **ARKANSAS:**

### **RECEIVED PARTIAL DATA**

Based upon the information provided by the Office of Research and Justice Statistics in a January 29, 2019 memo, the debt owed to 23 of the courts of general jurisdiction was \$65,527,248 and the amount of criminal fines and fees owed to 28 of the courts of limited jurisdiction was \$95,749,706. FFJC was not able to confirm if debt from municipal code violation cases was accounted for in those totals. There are 75 courts of general jurisdiction and 74 courts of limited jurisdiction in Arkansas. Each adult living in Arkansas would owe about \$69 to settle this debt amount. However, these figures are not representative of the debt owed to courts that do not use the Contexte Case Management System, specifically courts of limited jurisdiction where fines and fees are likely to be imposed, and courts that do not use the accounting function of the case management program. The exact time frame of cases covered by this debt total is unknown, but it does represent the unpaid balances in the Case Management System on January 28, 2019. (See Appendix B)

## **CALIFORNIA:**

### **RECEIVED COMPLETE DATA**

The Report to the Legislature on Statewide Collection of Delinquent Court-ordered Debt: FY 17-18 published by the Judicial Council of California in December 2018 cited \$10.3 billion as the amount of court fines and fees owed to the state. However, \$166.3 million was discharged by collections programs. The financial responsibility of each adult living in California amounts to \$336. The FY 18-19 report published in December 2019 set the total amount of delinquent court debt at \$10.6 billion and determined that collections programs discharged \$452.5 million of uncollectible debt.<sup>6</sup> Each of California's 30.6 million adult residents would have to pay \$346 to settle this debt. The source of this data stated that the reported debt total is representative of accumulated debt since 2000-2001.

## **COLORADO:**

### **RECEIVED PARTIAL DATA**

The Colorado Judicial Branch queried their systems for the requested data on April 1 and 2, 2019 and determined that the state's outstanding court debt total was \$107,295,898. This figure only represents felony, misdemeanor, traffic and infraction cases sentenced at the county and district levels in 2017 and 2018. Court debt related to municipal violations is not accounted for in the figure. The given amount averages to about \$24 for each adult residing in Colorado.

<sup>6</sup> The passage of AB 1869 eliminated 23 criminal court fees effective July 1, 2021 and forgives corresponding debt. Berkeley Law's Policy Advocacy Clinic estimates that Californians will be relieved of \$16 billion of outstanding debt caused by these fees. According to a representative of the Judicial Council of California, their office expects changes in uncollectible debt amounts to be reflected in 2021-22 collections reports.

**CONNECTICUT:****DID NOT RECEIVE DATA**

As of February 2019, the state's Judicial Branch could only report the amount of money that has been paid in cases, but not what is owed or outstanding in a meaningful or accurate way. Inspecting individual paper files is the only way that information could be determined.

**DELAWARE:****RECEIVED COMPLETE DATA**

The Administrative Office of the Courts relayed on April 2, 2019 that the total amount of fines and fees owed to the Delaware Judiciary for criminal cases is \$79.5 million, dating back to when tracking this information began. The exact start date of data collection, however, was not specified. This averages out to approximately \$104 per adult Delaware resident.

**DISTRICT OF COLUMBIA:****DID NOT RECEIVE DATA**

A letter dated March 6, 2019 from the D.C. Superior Court stated that the Criminal and Strategic Management Divisions and Executive Office could not approve the data request. The response detailed that the data D.C. Courts collect on fines and fees resides in numerous different systems and producing the aggregate data would require extensive personnel resources that were not currently available (See Appendix C). According to an October 2020 Washington Post article, D.C. is owed more than \$373 million in parking and traffic fines due to violations committed by Maryland and Virginia drivers alone. This information was provided by D.C.'s Department of Motor Vehicles.<sup>7</sup>

**FLORIDA:****RECEIVED COMPLETE DATA**

Starting in 2013, annual Assessments and Collections Reports were made publicly available by Florida's Office of State Court Administrators. The amount of outstanding debt deemed collectible subtracted from the amount that was actually collected from the 2013 through 2018 fiscal years is approximately \$1.86 billion.<sup>8</sup> This figure includes fines, fees, service charges, and other costs imposed in felony, criminal traffic misdemeanors, non-criminal infractions, and ordinance violation cases. Each adult Floridian would owe about \$109 to settle this debt.

<sup>7</sup> "Maryland and Virginia drivers owe D.C. more than \$370 million in outstanding traffic and parking fines," Luz Lazo, Traffic, The Washington Post, published October 4, 2020, [https://www.washingtonpost.com/local/trafficandcommuting/maryland-and-virginia-drivers-owe-dc-more-than-370-million-in-outstanding-traffic-and-parking-fines/2020/10/04/c11a1df6-030c-11eb-b7ed-141dd88560ea\\_story.html](https://www.washingtonpost.com/local/trafficandcommuting/maryland-and-virginia-drivers-owe-dc-more-than-370-million-in-outstanding-traffic-and-parking-fines/2020/10/04/c11a1df6-030c-11eb-b7ed-141dd88560ea_story.html).

<sup>8</sup> Total collectible amount refers to the sum that was actually assessed minus credits for community service, time served, reduced, suspended, and waived as authorized by statute or by Administrative or local order.

**GEORGIA:****DID NOT RECEIVE DATA**

During a June 2019 call, a representative of the Administrative Office of the Courts relayed that the requested data is not available and Georgia has multiple levels of trial courts which are operated by the state's 159 counties (without state funding).

**HAWAII:****RECEIVED PARTIAL DATA**

On July 1, 2019, the Hawaii State Judiciary provided data representing outstanding debt related to administrative review, traffic crime, traffic infractions, and traffic parking cases adjudicated and/or closed between 2015 and 2018.<sup>9</sup> The debt total for those cases is \$32 million, averaging to about \$29 for each adult resident of Hawaii.

**IDAHO:****DID NOT RECEIVE DATA**

In an email dated March 13, 2019, a representative of Idaho's Administrative Office of the Courts stated that there is no existing report that includes the requested information and the request for data is denied because they did not have the resources to compile this data at the time the request was reviewed.

**ILLINOIS:****DID NOT RECEIVE DATA**

During phone calls on February 11, 2019 with representatives of the State Administrative Office of the Courts and the Court Services Division, it was determined that neither office possesses the data nor is statewide fines and fees data collected or tracked by any office.

**INDIANA:****DID NOT RECEIVE DATA**

A letter dated February 11, 2019 stated that the Indiana Office of Court Services denied the data request pursuant to Administrative Rule 9(F) because it "fail[ed] to demonstrate that its fulfillment would be an appropriate use of public resources..." (See Appendix D)

**IOWA:****RECEIVED COMPLETE DATA**

*The Gazette* reported in a February 2018 article that at the end of fiscal year 2017, court debt related

<sup>9</sup> DUI cases involving administrative review/Administrative Driver's License Revocation Office (ADLRO) cases make up the administrative review category.



to criminal and traffic cases totaled \$524.4 million and 168.7 million, respectively.<sup>10</sup> Each Iowa resident over the age of 18 would be responsible for \$301.24 of the overall court debt. Iowa's FY 2019 Court Debt Collection Report states that the total outstanding court debt balance was \$796.8 million: criminal debt was calculated at \$567.7 million and traffic debt was \$189.6 million, raising the per capita debt to approximately \$312. According to personnel in the Fiscal Division of the Iowa Legislature, the 2019 report mentioned above covers a 20-year range of data so the information represents accumulated debt since 1999). (See Appendix E)

### **KANSAS:**

#### **DID NOT RECEIVE DATA**

In an email dated February 11, 2019, a representative of the Office of Judicial Information relayed that information related to outstanding fines and fees would only be known by each of Kansas' 105 district courts and 390 municipal courts. There is no statewide database that holds this information. The Office also stated that software used by the district courts does not allow for reporting of fines and fees debt "without a lot of reprogramming". Only some of the 390 municipal courts in Kansas electronically track this information and the system is not consistent for all of the courts.

### **KENTUCKY:**

#### **RECEIVED PARTIAL DATA**

The Kentucky Administrative Office of the Courts determined that the statewide court debt total was \$91,498,594 as of January 31, 2019. The exact date range of cases covered by this figure could not be determined, but the Accounts Receivable system used to track outstanding balances was implemented in the first county in the state on July 2, 2012. Therefore, court debt that accumulated prior to the first implementation date may not be captured by the debt total cited above. This balance includes seven different fines, 27 different fees, and debt owed to funds, county attorneys, police departments, detention centers, Sheriff's departments, and other imposed costs. Each of Kentucky's adult residents would owe \$26 to settle this debt.

### **LOUISIANA:**

#### **DID NOT RECEIVE DATA**

In an email dated March 12, 2019, a representative of the Louisiana Legislative Auditor stated that the amount of fines and fees owed to Louisiana is not known, a centralized location for this information was not identified, and Louisiana state law does not require judicial districts to track the amount of court costs and fines assessed in their districts. The message further detailed that none of the courts, districts, nor municipalities could tell the state's Legislative Auditor how much they were owed in court fines and fees, and some Louisiana courts do not have electronic databases capable of tracking this information.

<sup>10</sup> Boshart, Rod. "Iowa court debt approaches \$732 million", *The Gazette*, February 25th 2018. <https://www.thegazette.com/government-politics/iowa-court-debt-approaches-732-million/>

**MAINE:****DID NOT RECEIVE DATA**

In a May 2, 2019 email, a representative of the Maine Administrative Office of the Courts relayed that reliable data could not be provided.

**MARYLAND:****DID NOT RECEIVE DATA**

An August 22, 2019 email from a representative of Maryland's Central Collection Unit stated that their office could not provide data concerning criminal court debt and they were unable to locate any other personnel who could provide the requested information.

**MASSACHUSETTS:****DID NOT RECEIVE DATA**

In an April 10, 2019 email, a representative of the Executive Office of the Trial Court stated that they would not fulfill the data request based upon the compiled data rule which limits the production of information to non-profit organizations. The Court Administrator relayed that the rule establishes "boundaries on the demand for internal court resources to support the work of external institutions".

**MICHIGAN:****DID NOT RECEIVE DATA**

In an email dated November 20, 2019, a representative of the Michigan Supreme Court stated that the quality of the financial data in their judicial data warehouse is not sufficient to generate a response to the request.

**MINNESOTA:****RECEIVED COMPLETE DATA**

The Minnesota Judicial Branch stated that as of March 1, 2019, the collectible balance for misdemeanor, petty misdemeanor (including traffic), gross misdemeanor, felony, and municipal code violation cases up to five years old was \$60,117,000. Each of the state's adults would owe about \$14 to settle this debt.

**MISSISSIPPI:****DID NOT RECEIVE DATA**

In a February 2019 email, a representative of Mississippi's Administrative Office of Courts stated that their office does not track delinquent fines and fees, and the only way to possibly get that information would be to contact the individual courts. In a July 2019 email, a representative of the Department of Finance and Administration stated that they are not aware of a central repository that would be in possession of the requested data.

**MISSOURI:****RECEIVED PARTIAL DATA**

*The Missouri Judicial Report Supplement: Fiscal Year 2017* includes 'Accounts Receivables Tables' that cite how much money is outstanding for criminal, traffic, some ordinance violation, and other case types disposed of from July 1, 2005 to June 30, 2017. The total amount of debt for the case types identified in the request was \$375,649,784. This amounts to about \$79 for each adult resident in Missouri.

**MONTANA:****DID NOT RECEIVE DATA**

Representatives of the Office of the Clerk of the Supreme Court and the Court Services Division relayed via phone on February 4, 2019 that the requested data is not tracked at the state level, but by each of the state's 56 district courts.

**NEBRASKA:****DID NOT RECEIVE DATA**

A representative of the State Court Administrator's Office relayed via phone on February 8, 2019 that the court system does not track the requested information, and the database used by the courts at the time of the request did not allow this information to be compiled.

**NEVADA:****DID NOT RECEIVE DATA**

During a call on February 11, 2019, a representative of the Administrative Office of the Courts stated that only some courts participate in a program that gathers and reports information concerning outstanding court debt to the Attorney General's office. Nevada's AOC recommended requesting the information from each of the 76 courts across the state. In an email response from the Attorney General's Office, they stated that they did not have the data that was requested.

**NEW HAMPSHIRE:****RECEIVED PARTIAL DATA**

On April 10, 2019, the New Hampshire Judicial Branch responded to the request with a statewide debt figure of \$449,314.51, averaging out to about \$.41 for each adult resident of New Hampshire. However, this amount is not representative of New Hampshire's full accounts receivable balance as it does not account for "doubtful accounts." This figure was calculated by averaging the total amount of money that was collected in July and August (the two months following the June 30th fiscal year end) in the three previous fiscal years. The source stated "To provide our estimate of \$449,314.51 for FY18, we reviewed actual collections from 7/1/15-8/31/15, 7/1/16-8/31/16, and 7/1/17-8/31/17. We average those numbers to come up with our estimated accounts receivable collections for 7/1/18-8/31/18." This method suggests that the figure New Hampshire reports in their *Comprehensive Financial Annual Report* drastically underestimates the amount

of money that is actually owed to the state.

#### **NEW JERSEY:**

##### **DID NOT RECEIVE DATA**

In a letter dated July 26, 2019, the Clerk of Superior Court denied the request for data pursuant to Rule 1:38 of the New Jersey Rules of Court which governs public access to court and administrative records. (See Appendix F)

#### **NEW MEXICO:**

##### **DID NOT RECEIVE DATA**

In two letters dated February 18 and 22, 2019, the New Mexico Administrative Office of the Courts responded stating that the inquiry could not be fulfilled because no public records concerning delinquent fines and fees existed at the time of the request, and the Administrative Office of the Courts did not have the capability to compile delinquent fines and fees data. (See Appendix G and H)

#### **NEW YORK:**

##### **RECEIVED DATA ONLY COVERING NEW YORK CITY**

The Office of Court Administration produced data concerning how much money was imposed and collected between 2016 and 2018 for criminal, supreme, and summons cases across the five boroughs as of April 2019. The total delinquent amount was \$53.9 million. This figure averages out to about \$8 owed by each of New York City's adult residents. Most traffic cases were not counted in the figure above, which, if included, would most likely multiply the debt total reported above.

#### **NORTH CAROLINA:**

##### **DID NOT RECEIVE DATA**

In a June 4, 2019 email, a representative of the North Carolina Administrative Office of the Courts relayed that the financial management systems were not designed to track outstanding debts.

#### **NORTH DAKOTA:**

##### **RECEIVED PARTIAL DATA**

A document available through the North Dakota Courts website cites \$28,810,329 as the amount of criminal justice debt owed to the state as of June 30, 2019. Based on this figure, the per capita debt is about \$49. A representative of the Finance Department clarified during a November 2020 phone call that this figure accounts for debt owed for criminal and traffic cases. It was not clear if this figure includes debt related to municipal code violation cases. This debt total includes unpaid fines and fees as of June 30, 2020 and according to a representative of the North Dakota Court, this debt figure accounts for unpaid fines and fees dating as far back as about 1990.

**OHIO:****DID NOT RECEIVE DATA**

In an email dated February 26, 2019, a representative of the Office of Public Information stated that courts throughout the state are not required to report data related to outstanding, past due, or delinquent fines and fees so this information is not available from a centralized, statewide source.

**OKLAHOMA:****RECEIVED PARTIAL DATA**

The Administrative Office of the Courts was unable to provide the court debt information that was requested and stated that it does not have the resources to create a report detailing the total amount of court debt that the state holds. Oklahoma Policy Institute's program *Open Justice Oklahoma* reported to FFJC that they determined the total amount of outstanding debt for felony and misdemeanor cases between January 1, 2012 and September 30, 2020 to be \$693,500,658. According to this figure, the per capita debt is \$231. Based on the trend from 2012 to 2020, Open Justice Oklahoma estimated the total outstanding balance for felony and misdemeanor cases from 2000-2020 to be over \$1.38 billion.

**OREGON:****RECEIVED PARTIAL DATA**

The Office of the State Court Administrator reported that the total outstanding balance as of February 2019 was \$1,142,234,070, resulting in an approximate per capita balance of \$344 per adult. The exact number of years represented by this debt total is unknown but this source stated that traffic debt has a statute of limitations of 20 years and misdemeanor and felony cases have a statute of limitations of 50 years.

**PENNSYLVANIA:****RECEIVED PARTIAL DATA**

The Administrative Office of Pennsylvania Courts found that the outstanding balance for fines and fees related to criminal, traffic, non-traffic, and Philadelphia Municipal Court summary cases amounted to \$2,926,004,966 as of May 2019. That debt figure averages to about \$288 per adult in Pennsylvania. Since a date range was not used when processing this data request, the source of this information could not specify the time frame of cases or adjudication covered by this debt figure.

**RHODE ISLAND:****RECEIVED PARTIAL DATA**

The Rhode Island Supreme Court reported \$89,723,705 as its accounts receivable balance for cases adjudicated by their superior, district, and traffic courts, making the per capita debt total \$105. This debt total covers the period spanning from when they started tracking this data prior to 2014 up to 2018. This data is current as of June 2018. The debt from unpaid fines and fees related to municipal violations are not represented by this figure.

**SOUTH CAROLINA:****DID NOT RECEIVE DATA**

The request for information was processed on March 13, 2019, and the South Carolina Judicial Branch denied the data request. The response stated that fulfilling this request would interfere with normal judicial operations since this information was not already being tracked, and the calculations that could be made would be partial and misleading. (See Appendix I)

**SOUTH DAKOTA:****RECEIVED COMPLETE DATA**

The South Dakota Unified Judicial System reported that between FY 2016 and 2018, the total amount of uncollected court fines and fees was \$17,208,379, averaging to about \$26 per adult resident.

**TENNESSEE:****DID NOT RECEIVE DATA**

During a phone call and via email on May 1, 2019, a representative of the Administrative Office of the Courts stated that there is no computer system that holds this data because Tennessee does not have a unified court system. There are 95 counties in the state and each of the corresponding county court clerks would have to be contacted to compile this data.

**TEXAS:****RECEIVED COMPLETE DATA**

The Texas Office of Court Administration reported \$2,365,647,216 in uncollected fines and fees related to criminal, traffic, and municipal cases between FY 2014 and 2019. Each of Texas' adult residents would owe \$111 based on that figure.

**UTAH:****RECEIVED PARTIAL DATA**

The Office of State Debt Collection determined that the outstanding balance for fines and fees related to criminal case matters was \$122,193,354 as of May 2019. Each adult living in Utah would owe about \$55 to cover this balance. According to the State of Utah, Division of Finance, the report of unpaid balances that was provided for this report did not account for the time in which accounts were placed into collections. Therefore, the exact time frame of cases or adjudication represented by this debt total is unknown.

**VERMONT:****RECEIVED PARTIAL DATA**

The Court Administrator's Office determined that \$50,137,453 as the state's court debt total as of June 2018. This figure represents debt owed for 18 different fines, five different fees, and a number of other

imposed costs. Each adult resident of Vermont would owe about \$98. (See Appendix J)

#### **VIRGINIA:**

##### **RECEIVED COMPLETE DATA**

The Supreme Court of Virginia reported that their accounts receivable total for circuit and general district courts was \$2,412,682,845 as of December 31, 2018 for active accounts, and March 24, 2019 for inactive accounts. Each adult living in Virginia would have to pay about \$363 to settle this debt.

#### **WASHINGTON:**

##### **RECEIVED COMPLETE DATA**

According to an analysis of data compiled by the Washington State Administrative Office of the Court, the state's court debt total for cases adjudicated in the municipal, district, and superior courts is \$2.5 billion. Each of Washington's adult residents would owe \$426 to pay off this balance.

#### **WEST VIRGINIA:**

##### **DID NOT RECEIVE DATA**

In an email dated May 28, 2019, a representative of the Supreme Court of Appeals of West Virginia stated that data related to the request is not kept at the statewide level. Circuit court clerks are mandated to collect and manage court fines, fees, and costs, but they do not report this information to the Supreme Court. This information is held by each of the 55 County clerks.

#### **WISCONSIN:**

##### **DID NOT RECEIVE DATA**

During a phone call on June 4, 2019, a representative of Wisconsin's Office of Court Operations relayed the requested information is held by the state's 72 clerks of court.

#### **WYOMING:**

##### **DID NOT RECEIVE DATA**

In a letter dated March 11, 2019, a representative of the Wyoming State Court Administrator stated that their office lacked the resources in funding, staff, and programming to create a report outside of those already available on their website, none of which fulfilled the data request. (See Appendix L)

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## Appendices A-K: Source Materials

### APPENDIX A: CHART RECEIVED FROM SHARED SERVICES OF ALASKA COLLECTIONS PROGRAM

Outstanding CR Debt:	
FINE	\$89,237,268.17
RE-INSTATED FINE	\$534,676.95
CORRECTIONAL FACILITY SURCHARGE	\$5,294,136.93
RE-IMPOSED CORRECTION FACILITY SURCHARGE	\$795,822.45
COST OF INCARCERATION	\$15,119,601.92
FORFEITED BOND	\$4,602,268.98
FORFEITED BOND RESTITUTION	\$21,464.59
POLICE TRAINING SURCHARGE	\$4,321,684.13
PUBLIC DEFENDER FEE	\$25,906,598.47
PUBLIC DEFENDER FEE IN APPEAL CASES	\$709,935.08
<b>TOTAL</b>	<b>\$146,543,457.67</b>

**APPENDIX B:**

**ADMINISTRATIVE OFFICE OF THE COURTS**  
**SUPREME COURT OF ARKANSAS**

---



OFFICE OF RESEARCH AND  
 JUSTICE STATISTICS  
 2100 RIVERFRONT DR., SUITE 100  
 LITTLE ROCK, AR 72202-1020  
 TEL: 501-492-3715  
 FAX: 501-682-9410  
 TDD: 501-682-9412  
 EMAIL: [ORJShelp@arcourts.gov](mailto:ORJShelp@arcourts.gov)

**To:** Briana Hammons  
**From:** AOC Office of Research and Justice Statistics  
**Re:** Data request  
**Date:** January 29, 2019

**Original request:** I am looking to collect an estimate of how much Arkansas state is owed for delinquent fines and fees for criminal justice matters.

**Methodology:** For those courts that use the accounting functionality in the statewide case management system, we calculated the total balance indicated.

**Results:**

- The total balance indicated on cases is \$65,527,248 for courts of general jurisdiction and \$95,749,706 for courts of limited jurisdiction.

**Limitations and notes:**

- Not all courts use the Contexte case management system, particularly the courts of limited jurisdiction where fines and fees are most likely to occur (see source of data below).
- Not all courts that use the Contexte case management system use the accounting function that allows us to pull information on the balance owed.
- Information was available for 23 courts of general jurisdiction and 28 courts of limited jurisdiction.

**Source of Data:**

Most reports generated by the Office of Research and Justice Statistics at the Arkansas Administrative Office of the Courts come from data entered into the Contexte Case Management System. In most counties in Arkansas, circuit court data are entered into Contexte by elected circuit clerks and their staff members based upon cover and disposition sheets submitted by attorneys and self-represented litigants. In some counties, these forms are submitted to the AOC monthly, and so data can be delayed. Some district courts also use the Contexte system, while others report only summary data. For a list of courts using Contexte, see <https://caseinfo.arcourts.gov>. To see implementation dates for courts using Contexte, see <https://caseinfo.arcourts.gov/docs/helppublic.htm>.

**APPENDIX C:**

**DC Superior Court  
Data Request Response**

**SUBJECT:** Response to Data Request  
**TO:** Brianna Hammons  
**DATE:** March 6, 2019

Dear Ms. Hammons,

Your request for DC Court data has been reviewed by the Criminal and Strategic Management Divisions, and the Executive Office. Unfortunately, at this time we are unable to approve your request for data related to outstanding fees and fines.

While data on fees and fines are collected by DC Courts, the data reside in several different systems. While the current systems allow DC Courts to track the requested information on a person level, linking the information in these systems to produce the aggregate data you have requested would require extensive personnel resources that we do not currently have available. With the implementation of new data systems in the near future we anticipate being able to readily provide this type of aggregate information.

Please feel free to contact me directly if you have any further questions. I can be reached at [sandra.embler@dcsc.gov](mailto:sandra.embler@dcsc.gov) or 202-879-2841.

Sincerely,  
 Sandra Embler, PhD  
 Senior Research Associate  
 DC Courts

**Sandra  
Embler**

Digitally signed by  
 Sandra Embler  
 Date: 2019.03.06  
 12:59:42 -05'00'

**APPENDIX D:**



**INDIANA  
SUPREME COURT**

251 N Illinois St | Ste 800  
Indianapolis, Indiana 46204

Office of Judicial Administration

COURTS.IN.GOV

***SENT BY ELECTRONIC MAIL TO***  
***[bhammons@finesandfeesjusticecenter.org](mailto:bhammons@finesandfeesjusticecenter.org)***

February 11, 2019

Ms. Briana Hammons  
Fines and Fees Justice Center  
181 West Broadway  
New York, NY 10013

Re: Request for Compiled Information

Dear Ms. Hammons

Your Request for Release of Compiled Information Containing Information Not Excluded from Public Access filed January 24, 2019 seeking case record data of monies owed in misdemeanor, felony, traffic citations and municipal code violations for the period 2014 - 2018 has been denied by the Executive Director of the Indiana Office of Court Services (IOCS) under Administrative Rule 9(F). The request fails to demonstrate that its fulfillment would be an appropriate use of public resources, provide a substantial benefit or serve a need of the Indiana Judicial System or another agency of government as opposed to a private interest.

Yours truly

Richard T. Payne  
Staff Attorney, Legal Support Division  
Office of Court Services  
Indiana Office of Judicial Administration

JUSTIN P. FORKNER, EXECUTIVE DIRECTOR

Indiana Office of Court Services | 317.232.2542 | 317.232.1313

## APPENDIX E:

## FISCAL UPDATE Article

Fiscal Services Division  
April 21, 2020



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

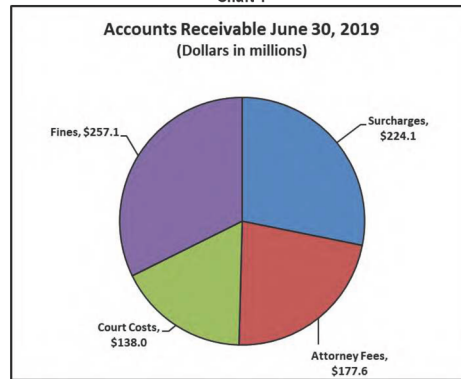
515.281.3566

## FY 2019 COURT DEBT COLLECTION REPORT

**Court Debt Report.** As required by Iowa Code section [802.8107](#), the Judicial Branch has filed a report on the FY 2019 collections of outstanding court debt. For more information regarding the history and structure of the court debt collection system, see [Issue Review: Court Debt Collection](#).

**FY 2019 Outstanding Court Debt.** At the end of FY 2019, the outstanding court debt owed to the State totaled \$796.8 million. Criminal debt and traffic debt comprise a large portion of the total outstanding debt at \$567.7 million (71.0%) and \$189.6 million (24.0%), respectively. Debt that is up to 1 year old accounts for \$88.5 million (11.0%) of the total, and debt 10 years or older accounts for \$304.0 million (38.0%). No debt was written off as uncollectable. **Chart 1** shows the June 30, 2019, court debt owed to the State by category, as reported by the Judicial Branch.

Chart 1



**Private Collector.** Linebarger, Goggan, Blair, and Sampson, L.L.P. (Linebarger), is the designated private collector for the State. Linebarger began collecting for the State on December 1, 2010. The contract is currently continued on a month-to-month basis. In FY 2019, Linebarger collected \$10.0 million, an increase of approximately \$800,000 from FY 2018. **Chart 2** shows the annual amount collected by Linebarger since it began collecting in FY 2012.<sup>1</sup>

<sup>1</sup> In FY 2016, Linebarger started receiving the debt at the time of delinquency, instead of one year later. The newer debt contributed to the large increase in collections by Linebarger in FY 2016.

**APPENDIX F:**

## SUPERIOR COURT OF NEW JERSEY

GLENN A. GRANT, J.A.D.  
ACTING ADMINISTRATIVE DIRECTOR  
OF THE COURTS

STEVEN D. BONVILLE, ESQ.  
CHIEF OF STAFF

MICHELLE M. SMITH, ESQ.  
CLERK OF SUPERIOR COURT



OFFICE OF THE CLERK  
RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 971  
TRENTON, NEW JERSEY 08625-0971  
(609) 421-6100

July 26, 2019

**Via Email Only:** ([bhammons@ffjc.us](mailto:bhammons@ffjc.us))  
Briana Hammons

**Re: Request for Information on Fines and Fees**

Dear Ms. Hammons:

This letter is in response to you July 17, 2019 correspondence requesting information on fines and fees. Specifically, you are requesting “data that reflects how much money is owed to New Jersey courts for fines and fees, excluding restitution, associated with felony, misdemeanor, traffic, and municipal code violation cases.”

Pursuant to Rule 1:38 et seq. of the New Jersey Rules of Court governs public access to court records and administrative records. As such, your July 17, 2019 correspondence is being treated as a request made pursuant to Rule 1:38.

Pursuant to Rule 1:38-13, court records and administrative records are available only in the form in which they are maintained or indexed by the Judiciary. Requests by private individuals or entities for programming, searching, or compilation of records in a form other than as used for the Judiciary’s purposes will not be granted. Thus, your request for this information is denied.

Pursuant to Rule 1:38-10(b), denials of public access requests may be appealed to the Acting Administrative Director of the Courts, Hon. Glenn A. Grant, P.O. Box 037, Trenton, NJ 08625-0037. Please note that your appeal must be submitted within thirty (30) calendar days of your receipt of this letter. The appeal should include a copy of your original record request, a copy of this letter and a detailed statement of reasons why you believe that the denial is inappropriate.

Sincerely,

Michelle M. Smith, Esq.  
Clerk of the Superior Court

**APPENDIX G:**

## Administrative Office of the Courts

February 18, 2019

Via email: [bhammons@finesandfeesjusticecenter.org](mailto:bhammons@finesandfeesjusticecenter.org)  
 Briana Hammons  
 Fines and Fees Justice Center  
 185 Broadway  
 New York, New York 10013

Re: Administrative Office of the Courts IPRA reference number 2019-02-13-Hammons

Dear Ms. Hammons:

The Administrative Office of the Courts (AOC) received your request on February 13, 2019 under the Inspection of Public Records Act for data on the money that is currently owed for criminal justice fines and fees associated with misdemeanor, felony, traffic and municipal cases.

It is the policy of the AOC to be fully responsive to requests for public records available under the Inspection of Public Records Act, NMSA 1978, § 14-2-1 et seq. ("IPRA"). We have searched our files and made inquiries within the AOC and have determined that no public records exist that are responsive to your request concerning data on fines and fees owed in state court cases. The provisions of IPRA do not require a governmental body to create documents, lists, spreadsheets, statistics or other reports in order to respond to a records request. See NMSA 1978, § 14-2-8(B) (Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.)

However, if you would like to request an existing public court record, the Court would be pleased to respond to that request consistent with IPRA. For more Court case information, please feel free to visit the Judiciary's web-based case management website at <https://caselookup.nmcourts.gov/caselookup/>.

Sincerely,

*Ana Rosa Padilla*  
 Ana Rosa Padilla  
 Paralegal  
 Administrative Office of the Courts  
 237 Don Gaspar, Room 25  
 Santa Fe, NM 87501  
 505-827-4811

**APPENDIX H:**

## Administrative Office of the Courts

February 22, 2019

Via email: [bhammons@finesandfeesjusticecenter.org](mailto:bhammons@finesandfeesjusticecenter.org)

Briana Hammons  
Fines and Fees Justice Center  
185 Broadway  
New York, New York 10013

Re: Administrative Office of the Courts IPRA reference number 2019-02-13-Hammons

Dear Ms. Hammons:

Thank you for your follow-up correspondence of February 19, 2019 regarding data on the money that is currently owed for criminal justice fines and fees associated with misdemeanor, felony, traffic and municipal cases. You inquired whether there was an "office within the New Mexico AOC or judiciary overall dedicated to research, data, or statistics that you could refer me or my request to."

The Administrative Office of the Courts (AOC) has no office dedicated to performing research for parties outside of New Mexico Judiciary. Additionally, the AOC and the Judiciary maintain no comprehensive financial database that includes all the fines and fees covered by your request. New Mexico's 81 municipal courts, for instance, are administered by their respective local governments – not AOC and the state Judiciary. The AOC does not have the capability to compile the data on "owed" fines and fees that you requested. We have only limited staff and resources and are unable to undertake a customized research project that would be required to compile the requested data.

Thank you for your understanding in this matter. We now consider this request closed.

Sincerely,

Ana Rosa Padilla  
Paralegal  
Administrative Office of the Courts  
237 Don Gaspar, Room 25  
Santa Fe, NM 87501  
505-827-4811



**APPENDIX I:**

REQUEST FOR BULK DISTRIBUTION OF AND COMPILED  
INFORMATION FROM JUDICIAL RECORDS  
[RULE 610, SCACR](#)

ACTION ON REQUEST

TO BE COMPLETED BY SOUTH CAROLINA COURT ADMINISTRATION

Request Received by South Carolina Court Administration on: 2/28/2019

Request is: ☐ Approved ☐ Partially Approved ☒ Denied

Denial Reason:

- ☐ The requestor may obtain the information using the search functions available to the public on websites maintained by the South Carolina Judicial Department or any court of this state.
- ☒ Fulfilling the request will interfere with normal Judicial Branch operations as the requested figure is not tracked and it would be difficult, time consuming, and expensive to determine.
- ☐ The requested information contains confidential data or financial information that may not be provided.
- ☒ Only a partial figure could be determined and would be misleading.

If Approved or Partially Approved, the requested information will be provided within ten (10) business days after payment is received, unless otherwise stated.

Request Processed on: 3/13/2019  
Request Processed by: Elizabeth Wellman  
Title: Staff Attorney

## APPENDIX J:

Vermont Judiciary Accounts Receivables FY 18			
Descr	Acct	Descr	(Full Accrual) Total Receivable at June 30, 2018
Personnel-Governmental	490000	Intra/Inter Unit Goods/Service	
Judiciary	415005	SUI Assessment Fee	7,128,437.90
Judiciary	415147	Small Claims State	62.50
Judiciary	415160	Family	
Judiciary	415161	Family Entry Fee	62,329.74
Judiciary	415163	Domestic Motion Fee	949.50
Judiciary	427070	Prison Facility Contraband	1,079.50
Judiciary	427120	Non-Suff Fund Check Charges	520.71
Judiciary	427201	Criminal Fines	2,131,619.89
Judiciary	427206	Surcharge on Fees	15,677.56
Judiciary	427220	Fish & Wildlife Violations	360,174.86
Judiciary	427225	Cruelty to Animals	4,341.00
Judiciary	427280	Forfeitures	120,763.00
Judiciary	427321	Surcharge Fines -General	1,568,196.73
Judiciary	427380	Tobacco Violations	17,860.32
Judiciary	427391	Minor Possess of Malt Liquor	577,800.60
Judiciary	427392	Selling Alcohol to Minors	10,999.00
Judiciary	427395	Hazing Fine	687.50
Judiciary	427401	Admin Ticket Processing Fees	284,649.23
Judiciary	427402	Filing Fee Contested Tickets	330,892.52
Judiciary	427490	Civil Suspensions	147,232.75
Judiciary	427521	Regulate Scrap Metal Processors	
Judiciary	427203	Uniform Traffic Tick Fines St	67,237.90
Judiciary	427205	Title 23 Criminal DWI	3,659,168.82
Judiciary	427404	Civil Traffic Fines State	12,141,242.32
Judiciary	427426	ATV Fines	6,489.59
Judiciary	427470	Littering Fines	80,980.50
Judiciary	427480	Seatbelt Violations	87,039.38
Judiciary	427520	State/Local Fines	
Judiciary	427505	Boating Safety Violations	5,253.32
Judiciary	427440	Restitutions	7,489.00

Vermont Judiciary Accounts Receivables FY 18			
Judiciary	417875	Public Defender Reimb	
Judiciary	427210	Public Defender Reimb	858,660.16
Judiciary	427324	Surcharge Fines -DWI	39,756.50
Judiciary	427325	Surcharge Fines - ENF	82,810.50
Judiciary	427393	Marijuana Possession- Drug Task Force	103,966.52
Judiciary	427393	Marijuana Possession- Youth Substance	133,151.49
Judiciary	427322	Surcharge Fines - Victim Group	5,136,113.63
Judiciary	427322	Surcharge Fines - Victim Act 162	1,432,313.69
Judiciary	427427	ATV Fines	4,224.64
Judiciary	427326	Surcharge Fines - Health	477,761.48
Judiciary	427515	Snowmobile Operator Violations	58,783.02
Judiciary	427323	Surcharge Fines - Training fund	
Judiciary	427327	Surcharge Fines - Sur Rest	3,141,870.51
Judiciary	415150	Court Tech Fee	1,685,459.18
Judiciary	415151	Fail Answer Fee (20 Days)	1,733,268.25
Judiciary	415152	Fail Pay Fee (30 Days)	2,608,427.86
Judiciary	415153	Debt Collect Prior To 6/25/06	108,355.00
Judiciary	415164	COPE	40.00
Judiciary	427010	Municipal Fines	2,158,892.49
Judiciary	427204	Uniform Traffic Tick Fines Loc	19.25
Judiciary	427405	Civil Traffic Fines Local	1,452,470.09
Judiciary	427520	State/Local Fines	172,763.34
Total			50,208,283.24

## APPENDIX K:

**Wyoming Supreme Court  
Administrative Office of the Courts**

LILY SHARPE  
State Court Administrator  
  
RONDA MUNGER  
Deputy State Court Administrator  
  
ELISA BUTLER  
General Counsel



CLAIRE SMITH  
Chief Fiscal Officer  
  
JULIE GOYEN  
Chief Information Officer  
  
MATT SWIFT  
State Law Librarian  
307-777-7240 (fax)

March 11, 2019

Briana Hammons  
Research and Campaign Associate  
Fines and Fees Justice Center  
EMAIL: bhammons@finesandfeesjusticecenter.org

Dear Ms. Hammons:

Thank you for your request for data regarding how much money is currently delinquent/past due/owed to Wyoming courts for fines and fees, not including restitution, for misdemeanor, felony, traffic citation, and municipal code violation cases. Although the Court is not subject to the Wyoming Public Records Act, and Rule 11 of the Rules Governing Access to Court Records does not require the creation of non-standard data elements, the Court fully appreciates the utility of reliable and accurate data for research. To assist you and others interested in data collected in court proceedings, the Wyoming Judicial Branch's website includes our standard reports and statistic. For district courts, the URL is: [www.courts.state.wy.us/district-courts/district-court-reports-and-statistics/](http://www.courts.state.wy.us/district-courts/district-court-reports-and-statistics/). For circuit courts (limited jurisdiction), the URL is: [www.courts.state.wy.us/circuit-courts/circuit-court-reports-and-statistics/](http://www.courts.state.wy.us/circuit-courts/circuit-court-reports-and-statistics/). We do not maintain reports for municipal courts. Unfortunately, at this time, limited funding, staff and lack of uniformity in current data precludes the Court from providing any additional reports outside of the information found on our website.

Best Regards,

Lily Sharpe  
State Court Administrator

---

November 2020

## The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States

Lisa Foster  
*Fines and Fees Justice Center*

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# The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States

Lisa Foster\*

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\* Co-Director, Fines and Fees Justice Center; former Director, Office for Access to Justice, United States Dept. of Justice; Retired California Superior Court Judge. I am grateful to University of Miami School of Law Professor Caroline Bettinger-Lopez and Human Rights Clinic Acting Director Tamar Ezer for including me in the Petty Offenses Symposium in September 2019. This article builds on my presentation at the Symposium. I am also grateful to my colleagues at the Fines and Fees Justice Center who work every day to end the criminalization of poverty in the United States and whose experiences and insights have informed this article.

## I. INTRODUCTION

Layne is from Washington: “And then you also have these legal financial obligations that, if you do not pay them, you risk being put in jail . . . What it was really doing is sentencing people to even more length of time tied to the court systems and not really letting us move forward with the things that we needed to do in order to be successful in re-entry and not go back to prison.”<sup>1</sup>

Qiana is from Missouri: “Upon going to court, I was asked to pay what I could, and I did that, every month — twenty dollars or whatever I could pay, until you eventually miss a court date, or you just don’t have the money to pay, and you get a warrant. . . . nobody wants to hire a person who has a warrant out for their arrest. It doesn’t say that it’s for a traffic ticket, it only says I’m a fugitive . . . . And so I was forced to do odd jobs. For twenty years—I’ve done odd jobs all my life.”<sup>2</sup>

Leah is from Minnesota: “I originally got a traffic ticket . . . that I couldn’t afford to pay for at the time . . . I found out the first time that my license was suspended on the side of the highway . . . . Part of my job was driving . . . and then I had to go to my second job . . . . My boss made it pretty, like, clear that I’m not fit for this position . . . I paid about \$900 just to get my license reinstated.”<sup>3</sup>

Crystal is from Tennessee: “I think the system is set up for you to fail, because . . . [o]nce you get on probation . . . it’s just one fee after another and if you

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<sup>1</sup> Doug Nadvornick, *Spokane Group Plans Event to Lower Debt for Formerly Incarcerated People*, SPOKANE PUBLIC RADIO (Feb. 4, 2020), <https://www.spokanepublicradio.org/post/spokane-group-plans-event-lower-debt-formerly-incarcerated-people>.

<sup>2</sup> See generally The White House, *A Cycle of Incarceration: Prison, Debt, and Bail Practices*, at 2:00-2:04 YOUTUBE (Dec. 13, 2015), <https://www.youtube.com/watch?v=ErcSHP12deE>.

<sup>3</sup> Fines and Fees Justice Center, *Leah’s Story: One unaffordable ticket led to license suspension and \$14,000 in costs*, YOUTUBE (Sept. 11, 2019), [https://www.youtube.com/watch?v=K2smLLAT97k&feature=emb\\_title](https://www.youtube.com/watch?v=K2smLLAT97k&feature=emb_title).

can't pay then you go to jail, and then once you're in jail and then you get out, you have more court fees, and [then] more fees, and more, and more, and more. It never ends . . . ."<sup>4</sup>

Maleah is from Pennsylvania: "You're taking people that have nothing and demanding that they pay something."<sup>5</sup>

These five people are not alone. Throughout the United States, state and local courts impose stiff fines and fees on people convicted of criminal and civil offenses, including minor traffic and municipal code violations, misdemeanors and felonies. The total amount of a person's court debt can range from hundreds to thousands of dollars, and if a person cannot afford to pay their fines and fees immediately, a cascade of harsh consequences ensues. Since the late 1980's, and coincident with the rise in mass incarceration, state and local legislators in the United States have dramatically increased the number and value of fines and fees imposed through the justice system. These fines and fees, which are also assessed in juvenile proceedings against children or their parents or guardians, were initially used to fund the justice system. In the ensuing decades, as political pressure to reduce or minimize taxes increased and federal funding for criminal justice decreased, fines and fees became increasingly popular as a revenue source, not exclusively for the justice system, but also for other government services and general fund revenue.

Fines and fees in the justice system hurt millions of Americans, entrenching them in poverty, exacerbating racial disparities, diminishing trust in courts and police, and trapping people in perpetual cycles of punishment. Millions of people who cannot afford to immediately pay the full amount charged face additional fees, license suspensions, loss of voting rights, and, far too frequently, arrest and jail. The problem of fines and fees in the American legal system first came to national attention after the United States Department of Justice released its report on the Ferguson, Missouri police department in 2015, following a police officer's

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<sup>4</sup> Komala Ramachandra, "Set up to Fail": *The Impact of Offender-Funded Private Probation on the Poor*, HUMAN RIGHTS WATCH (Feb. 20, 2018), <https://www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor#page>.

<sup>5</sup> Juliette Rihl, *Court fines and fees generate important revenue. But for some people, they're an insurmountable hurdle*, PUBLIC SOURCE (Feb. 6, 2020), <https://projects.publicsource.org/true-cost-of-court-debt/part-one.html>.

fatal encounter with Michael Brown, an unarmed Black man.<sup>6</sup> Since then, advocates around the country have focused on the problem, and significant reforms have been adopted at the state and local level. But millions of people are still subjected to a tax on justice they cannot afford to pay, which criminalizes poverty in our most vulnerable communities—particularly in communities of color.

That vulnerability has only been exacerbated by the COVID-19 pandemic. The virus has, disproportionately harmed Black and Brown communities both with respect to their health<sup>7</sup> and their economic security.<sup>8</sup> The people whom government expects to pay billions of dollars in fines and fees are disproportionately sick, dying, and out of work. Even if they could have paid their court debt prior to the pandemic, they are unable to now. At the outset of the COVID-19 crisis, many jurisdictions seemed to recognize this reality and provided relief from court debt by imposing moratoria on collections.<sup>9</sup> But all were temporary, expiring as stay-at-home orders were lifted, despite the fact that unemployment levels, particularly in Brown and Black communities, remained disproportionately high. The COVID-19 crisis has exposed the instability and inefficiency of attempting to fund government—in particular the justice system—through fines and fees. Revenue from fines and fees is

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<sup>6</sup> See U.S. Dep't of Just. Civil Rights Div., *Investigation of the Ferguson Police Department* 1, 5 (Mar. 4, 2015) [hereinafter *Investigation of the Ferguson Police Department*] [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>7</sup> See Stephanie Soucheray, *US blacks 3 times more likely than whites to get COVID-19*, CIDRAP NEWS (Aug. 14, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/08/us-blacks-3-times-more-likely-whites-get-covid-19>.

<sup>8</sup> See *Unemployment rate during COVID-19 highest among Hispanic and Black Americans*, USA FACTS (June 2, 2020), <https://usafacts.org/articles/unemployment-rate-during-covid-19-highest-among-hispanic-and-black-americans/>.

<sup>9</sup> See *COVID-19 Crisis: FFJC Policy Recommendations and Policy Tracker*, FINE AND FEES JUSTICE CENTER (May 28, 2020), <https://finesandfeesjusticecenter.org/articles/ffjc-policy-recommendations-for-the-covid-19-crisis> (recommending the suspension of court fees); Jessica Feierman and Jeffrey Selbin, *Moratorium on Juvenile Court Fees and Fines Can Ease Family Burdens During COVID-19*, JUVENILE JUSTICE INFORMATION EXCHANGE (May 2020), <https://jjie.org/2020/05/11/moratorium-on-juvenile-court-fees-and-fines-can-ease-family-burdens-during-covid-19/> (“California, Nevada and New Jersey abolished juvenile fees or fines, and both houses of the Maryland legislature passed a juvenile fees and fines repeal bill on the last day before adjourning because of the pandemic. Cities and counties in states as diverse as Kansas, Louisiana, Pennsylvania, Tennessee and Wisconsin have all ended at least some juvenile fees.”); *Payment of Fines and Fees During the COVID-19 Outbreak*, JUSTIA: COVID-19 LAWS AND LEGAL RESOURCES (May 2020), <https://www.justia.com/covid-19/impact-of-covid-19-on-criminal-cases/payment-of-fines-and-fees-during-the-covid-19-outbreak/> (stating that courts in California, Illinois, Florida, Georgia, among others have extended payment for deadlines for fines and fees, and others have suspended the accumulation of interest related to the debts).



down dramatically both because people cannot afford to pay and because law enforcement has issued far fewer tickets for minor traffic violations. Fines and fees were always a shaky foundation on which to rest government funding, and the pandemic has made plain that the building is collapsing.

This article provides an introduction to the problem of fines and fees in the U.S. criminal legal system and an overview of some of the solutions being explored. It begins by describing why fines and fees are problematic, including an explanation of how fines and fees criminalize poverty, particularly in communities of color. It then provides a brief overview of the constitutional doctrines that may apply to fines and fees laws and practices. Finally, this article highlights some of the reform measures adopted across the country and argues that the justice system's criminalization of poverty can only be stopped by eliminating fees in the legal system and making fines proportionate to the offense and the individual.

## II. THE SCOPE OF THE PROBLEM

Over the past 40 years, the use of monetary sanctions in the criminal legal system in the United States has metastasized, invading every aspect of an individual's encounter with the law. The increase in the number and value of fines and fees is coincident with the rise of mass incarceration; and mass incarceration, in turn, has been used by policymakers to justify the increased fines and fees. Although policy makers often characterize monetary sanctions as "user fees,"<sup>10</sup> state and local legislators have used the criminal legal system to fund a plethora of government services that have nothing to do with the justice system. The result has been to impose monetary obligations in amounts the majority of people in the criminal legal system cannot afford to pay.

Although fines and fees are both monetary sanctions imposed by courts, they serve different functions and have different histories. Fines are a monetary sanction imposed for the violation of a law<sup>11</sup>. Although fines have been part of the Anglo-American legal system since before Magna Carta, historically they were imposed as an alternative to jail or prison—a sanction for infractions too minor to merit incarceration.<sup>12</sup> That

<sup>10</sup> Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines* 6 (2019).

<sup>11</sup> *Fine*, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>12</sup> See Holt, J. C., *Magna Carta*, Cl. 20, CAMBRIDGE UNIVERSITY PRESS (1992) ("[F]or a trivial offence a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly . . ."); see also FLA. STAT. § 893.15 (2019).

is still the case today, particularly for traffic and parking offenses, but fines can also be imposed in addition to a term of custody or probation. In Florida, for example, graffiti is a second-degree misdemeanor, which is punished by up to sixty days in jail and up to a \$500 fine.<sup>13</sup> In felony cases, particularly with respect to drug offenses, some states require judges to impose mandatory minimum fines that can be as high as \$750,000,000 in addition to a mandatory prison sentence.<sup>14</sup>

In addition to fines, state and local governments in the United States also impose additional monetary sanctions. Known as fees, costs, surcharges, or assessments (hereafter collectively referred to as “fees”), they are imposed to access services or to fund the justice system or other government programs.<sup>15</sup> Fees are ubiquitous in the criminal legal system today, although they vary enormously from state to state and even within states. They are called different things in different places; they are assessed for different purposes and they fund different programs. The range and number of these monetary sanctions are difficult to overstate, in large part as a consequence of federalism. Not only does the United States have fifty-one different state court systems – one in each state and the District of Columbia – thirty-four states also have municipal courts that often exist alongside or outside of the state court system.<sup>16</sup> There are over 6,500 municipal courts operating across the country.<sup>17</sup> Many states have enacted laws that impose fees uniformly in particular types of cases.<sup>18</sup> States with municipal courts, however, often give discretion to assess fees to the local legislative body or court.<sup>19</sup> Even states without municipal courts often give local government, courts, probation departments or prosecutors discretion

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<sup>13</sup> FLA. STAT. §§ 806.13(1), 775.082(4)(b), 775.083(e) (2020).

<sup>14</sup> FLA. STAT. § 893.135(c)(2)(d) (2020).

<sup>15</sup> Menendez et al., *supra* note 10, at 6; *see also Help for Crime Victims*, NATIONAL CENTER FOR VICTIMS OF CRIME <https://victimsofcrime.org/criminal-and-civil-justice/> (last visited Sep. 26, 2020). Every jurisdiction in the U.S. also authorizes judges to order restitution in criminal cases where there is a victim of the crime who has suffered economic loss, and in approximately one-third of the states, restitution is required. This article is not addressing victim restitution. However, many jurisdictions also impose a restitution fee, in addition to actual restitution. Those fees are encompassed in this article’s definition of fees.

<sup>16</sup> For example, in New York state, there are over 1300 Justice Courts which exercise jurisdiction over petty offenses such as traffic and municipal code violations, as well as misdemeanors. *See* N.Y. UNIFORM JUST. CT. ACT § 101; N.Y. CRIM. PROC. LAW § 10.30.

<sup>17</sup> *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees*, U.S. DEPT OF JUST. 2 (2016), <https://ojp.gov/docs/finesfeesresguide.pdf>.

<sup>18</sup> *See e.g.*, NEV. REV. STAT. §§ 697.300, 176.059, 176.0623, 201.356, 176.0613, 176.062, 176.0915, 176.09187, 176.139, 174.032, 211.130, 209.4295 (2020).

<sup>19</sup> *See, e.g.*, MO. REV. STAT. §§ 559.604, 559.607.

to impose a variety of fees for costs that the local government incurs such as for probation, diversion programs, or jail.<sup>20</sup>

Fees are assessed at every step of a person's journey through the criminal legal system. Although it varies by jurisdiction, fees can be imposed before a person is even arrested (warrant fees), and then through arrest (booking and bond fees), conviction (prosecution, public defender, DNA, and court security fees), a term of custody (phone call, room and board, video visitation, and medical fees) or probation (probation and drug testing fees).<sup>21</sup>

In 2016, Leann Banderman pled guilty to stealing \$24.29 worth of nail polish from a Walmart in Dent County, Missouri. The judge sentenced her to thirty days in the county jail. After she was released, the court sent Ms. Banderman a bill for \$1,400—the cost of her thirty days in jail.<sup>22</sup>

Many of these fees are imposed even if charges are ultimately dismissed or the person is acquitted. To cite just one example, in Iowa, despite the dismissal of all charges pending against her, Lori Dee Mathes was charged a \$100 filing fee, \$40 court reporter fee, and a \$2,847.28 indigent defense reimbursement fee.<sup>23</sup>

Fees are also imposed for programs that have nothing to do with the courts or the legal system. New Jersey, for example, assesses a fee on all traffic tickets to fund autism research.<sup>24</sup> Arizona funds statewide elections

<sup>20</sup> See, e.g., CAL. PENAL CODE §1201.3(b); Lauren Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, BRENNAN CENTER FOR JUSTICE (July 31, 2014), <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate>.

<sup>21</sup> See Alexes Harris, A POUND OF FLESH, MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR 1, 26-48 (Lee Clarke et al. eds., 2016); Beth A. Colgan, *Fines, Fees, And Forfeitures*, 18 CRIMINOLOGY, CRIM. JUST. LAW & SOC'Y 22, 23 (2017).

<sup>22</sup> *Messenger: Missouri courts respond to debtors prison ruling – a tale of two judges*, ST. LOUIS POST-DISPATCH (April 7, 2019), [https://www.stltoday.com/news/local/columns/tony-messenger/messenger-missouri-courts-respond-to-debtors-prison-ruling-a-tale/article\\_6d87b1fd-efb6-53ce-84b9-02dc5d2f4d5a.htm](https://www.stltoday.com/news/local/columns/tony-messenger/messenger-missouri-courts-respond-to-debtors-prison-ruling-a-tale/article_6d87b1fd-efb6-53ce-84b9-02dc5d2f4d5a.htm); Tony Messenger (@tonymess), TWITTER (Apr. 2, 2019, 2:47 PM) <https://twitter.com/tonymess/status/1113150955787354113>.

<sup>23</sup> Lee Rood, *Critics say bill touted as reforming court fines and fees would be a civil rights setback*, THE HAWK EYE (June 28, 2020), <https://www.thehawkeye.com/story/news/local/2020/06/28/critics-say-bill-touted-as-reforming-court-fines-and-fees-would-be-civil-rights-setback/112765244/>; see *State v. Mathes*, No. 17-1909, 2019 WL 1294098 (N.W.2d Mar. 20, 2019) *aff'd* No. 17-1909, 2020 WL 2267274 (Iowa May 8, 2020).

<sup>24</sup> Laura Herzog, *We Paid \$405M in tickets last year; see where the money went*, NJ.COM (Jan. 16, 2019), [https://www.nj.com/news/2016/05/where\\_your\\_ticket\\_payment\\_money\\_goes\\_funds\\_new\\_jer.html](https://www.nj.com/news/2016/05/where_your_ticket_payment_money_goes_funds_new_jer.html).

through a surcharge imposed on all civil and criminal fines and penalties.<sup>25</sup> California provides a particularly egregious example. The fine for a red-light violation is \$100. But that \$100 fine carries with it \$390 in additional fees. The state assesses a \$40 court operations fees; a \$35 criminal conviction fee; a \$4 emergency medical air transportation penalty; a \$1 night court fee; and, a \$310 penalty assessment and surcharge.<sup>26</sup> The latter fee funds eight different state programs, including the Fish and Game Preservation Fund, the Office of Emergency Services, and the Traumatic Brain Injury Fund.<sup>27</sup>

New York state has abandoned even the pretext of tying fees to the justice system or to any particular government program. The state assesses a surcharge on all traffic, misdemeanor, and felony convictions: \$300 for felony convictions, \$175 for misdemeanor convictions, and \$95 for traffic and other violations.<sup>28</sup> The money goes directly to the state general fund. These “fees” are simply taxes imposed only on people who are involved in the criminal legal system. Like any flat tax, they are regressive, impacting low-income people much more than middle or upper-income people.

All of these types of fees have become enormously popular as a revenue-raising device. Since 2010, the majority of U.S. states have increased the number or amount of fines and fees imposed upon people who are justice-system involved.<sup>29</sup> The dramatic escalation in fines and fees occurred in large part as a result of mass incarceration. There are roughly 2.3 million people incarcerated in prisons and jails.<sup>30</sup> But that is merely a snapshot of a single day. Approximately 10.6 million people cycle through local jails in the United States each year.<sup>31</sup>

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<sup>25</sup> ARIZ. REV. STAT. ANN. §16-954(A) (2020).

<sup>26</sup> See *Penalty Assessment Funds*, CALIFORNIA STATE AUDITOR 5, 7 (Apr. 2018), <https://www.auditor.ca.gov/pdfs/reports/2017-126.pdf>.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *New York Should Re-Examine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations*, FINES AND FEES JUSTICE CENTER (Nov. 20, 2018), <https://finesandfeesjusticecenter.org/articles/new-york-should-re-examine-mandatory-court-fees-imposed-on-individuals-convicted-of-criminal-offenses-and-violations/>.

<sup>29</sup> See, e.g., Alicia Bannon et al., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 1 (2010), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf) (describing forms of debt and collateral consequences in the fifteen states with the highest prison populations); see *In for a Penny: The Rise of America's New Debtors*, ACLU 5, 8 (2010), [https://www.aclu.org/sites/default/files/field\\_document/InForAPenny\\_web.pdf](https://www.aclu.org/sites/default/files/field_document/InForAPenny_web.pdf).

<sup>30</sup> Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, PRISON POLICY INITIATIVE (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html>.

<sup>31</sup> *Id.*

The United States incarcerates more people than any other country in the world.<sup>32</sup> With less than five percent of the world's population, the U.S. accounts for almost twenty-five percent of the world's prison population.<sup>33</sup> The United States incarcerates 716 people for every 100,000 residents.<sup>34</sup> More than half the countries and territories in the world have incarceration rates of less than 150 per 100,000.<sup>35</sup> To make the comparison differently, the state of Maryland, with a population of 5.9 million, has more people in prison than Iraq, which is home to 33.7 million people; Ohio – with a population of 11.6 million people – has more people in prison than Pakistan, which is home to 194.6 million people.<sup>36</sup> The United States' incarceration rate is not only high, it is historically high. In the past forty years, the rate of incarceration in the U.S. increased by 500%.<sup>37</sup>

The dramatic increase in incarceration rates resulted in a commensurate increase in costs. From 1979–80 to 2012–13, state spending on corrections in the United States ballooned from seventeen to seventy-one billion dollars.<sup>38</sup> But corrections costs—the cost of prisons and parole—comprise just a fraction of the cost of the criminal legal system.<sup>39</sup> As states incarcerated more and more people, other costs also increased: states needed more prosecutors and public defenders, more judges and court staff, more court rooms, more probation officers, and more police.<sup>40</sup> At the same time, a “no new taxes” movement swept the country.<sup>41</sup> Legislators were increasingly reluctant to raise taxes to fund

<sup>32</sup> *Fact Sheet: Trends in U.S. Corrections*, THE SENTENCING PROJECT 2 (Aug. 2020), <https://www.sentencingproject.org/wp-content/uploads/2020/08/Trends-in-US-Corrections.pdf>.

<sup>33</sup> *Mass Incarceration*, ACLU, <https://www.aclu.org/issues/smart-justice/mass-incarceration> (last visited Sept. 26, 2020).

<sup>34</sup> Roy Walmsley, *World Prison Population List*, INTERNATIONAL CENTRE FOR PRISON STUDIES 10<sup>TH</sup> ED 1 (2013), [https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl\\_10.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_10.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> See Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POLICY INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html>; Walmsley, *supra* note 34.

<sup>37</sup> *Fact Sheet: Trends in U.S. Corrections*, *supra* note 32, at 2.

<sup>38</sup> Stephanie Stullich et al., STATE & LOCAL EXPENDITURES ON CORRECTIONS & EDUCATION: A BRIEF FROM THE U.S. DEP'T OF EDUC., POL'Y & PROGRAM STUD. SERV. 1 (U.S. Dep't. of Educ. 2016), <https://www2.ed.gov/rschstat/eval/other/expenditures-corrections-education/brief.pdf>.

<sup>39</sup> Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, PRISON POLICY INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html>.

<sup>40</sup> *Id.*

<sup>41</sup> See Peter Ferrara, *Grover Norquist's Taxation Liberation Movement*, THE AMERICAN SPECTATOR (June 17, 2015 12:00 AM), <https://spectator.org/grover-norquists-taxation-liberation-movement/>.

government and sought alternative revenue streams. As Pennsylvania State Representative Tim Briggs acknowledged, “[U]nfortunately, in a climate where we don’t want to raise taxes, fees become the substitute of taxes.”<sup>42</sup>

Those “user fees” – fees imposed on people who use a particular government service for the cost of that service – proliferated, particularly in the criminal legal system.<sup>43</sup> Pennsylvania State Senator Lisa Baker, chair of the Senate Judiciary Committee, explained to an investigative reporter that there are two reasons the state has repeatedly added costs and surcharges to the justice system. First, people believe that those who violate the law should pay at least some of the costs of running the criminal legal system; and, second, law makers want to raise revenue without raising taxes. “This is one of many nontraditional means that have drawn support in enabling our state to provide necessary services and meet public expectations.”<sup>44</sup>

Over time, and especially after the Great Recession swept through the public sector beginning in 2008, legislators became addicted to raising revenue through the criminal legal system.<sup>45</sup> Although one may question the wisdom of and motivation for raising revenue from people who have no money,<sup>46</sup> that is precisely what this regime has wrought.

### III. THE IMPLICATIONS FOR RACE AND POVERTY

Racial and economic disparities pervade the criminal legal system in the United States. People who are justice-system involved are overwhelmingly poor and disproportionately people of color. Those two factors—race and poverty—combine to create a system of monetary

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<sup>42</sup> Rihl, *supra* note 5; Juliette Rihl, *\$206 or Jail: A 15-Year-Old Traffic Fine Leads to a Painful Choice*, THE CRIME REPORT (Feb. 7, 2020), <https://thecrimereport.org/2020/02/07/206-or-jail-a-15-year-old-traffic-fine-leaves-a-painful-choice/> (“Revenue from fines and fees funds multiple levels of government, due in large part to lawmakers imposing court fees as an alternative to raising taxes”).

<sup>43</sup> Bannon et al., *supra* note 29, at 1.

<sup>44</sup> Rihl, *supra* note 5.

<sup>45</sup> See generally Bannon, *supra* note 29, at 7; Rebekah Diller, *The Hidden Cost of Florida’s Criminal Justice Fees*, BRENNAN CENTER FOR JUSTICE 14, 21 (2010), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_The%20Hidden-Costs-Florida’s-Criminal-Justice-Fees.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_The%20Hidden-Costs-Florida’s-Criminal-Justice-Fees.pdf).

<sup>46</sup> See generally Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (arguing that, with respect to the war on drugs, federal, state and local policies are purposefully racist, creating a caste-like system that has resulted in the mass incarceration of minorities). This article does not address the motivation for the criminalization of poverty through fines and fees nor its disproportionate impact on communities of color.



sanctions that attempt to extract millions of dollars from the country's most vulnerable communities. Fines and fees perpetuate and exacerbate poverty, and they keep communities of color from accumulating wealth.

Mass incarceration is not experienced by all Americans equally. According to the Sentencing Project, sixty-seven percent of the prison population is comprised of people of color; yet people of color comprise only thirty-seven percent of the U.S. population.<sup>47</sup> More significantly, with respect to fines and fees, the Stanford Open Policing Project found that Black men are more likely to be arrested than White men.<sup>48</sup> If they are arrested, Black men are more likely to be convicted of a crime than White men, and if they are convicted, they are likely to be sentenced more harshly than White men.<sup>49</sup> The likelihood of incarceration of Black men is six times that of White men, and the likelihood of incarceration of Hispanic men is more than twice that of non-Hispanic White men.<sup>50</sup>

These racial disparities are not confined to people in custody in prison or jail or to people accused of violent or serious crime. To the contrary, they pervade the criminal legal system beginning with the most mundane of policing practices. Racial disparities in traffic stops are large and ubiquitous across the nation.<sup>51</sup> A United States Department of Justice report revealed that, in 2011, Black drivers were thirty-one percent more likely to be stopped by law enforcement than White drivers.<sup>52</sup> More recently, the Stanford Open Policing Project examined approximately ninety-three million traffic stops conducted from 2011 to 2017 across twenty-one state patrol agencies and twenty-nine municipal police

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<sup>47</sup> *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Sep. 22, 2020); see also Ashley Nellis, *The Color of Justice: Racial & Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT 4 (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

<sup>48</sup> *Findings*, THE STANFORD OPEN POLICING PROJECT, <https://openpolicing.stanford.edu/findings/> (last visited Dec. 4, 2019).

<sup>49</sup> *Id.*; Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, NATURE HUM. BEHAV. (May 2020), <https://www.nature.com/articles/s41562-020-0858-1.pdf>; *The Color of Justice: Racial & Ethnic Disparity in State Prisons*, *supra* note 47.

<sup>50</sup> *Id.*

<sup>51</sup> Frank R. Baumgartner et al., *Racial Disparities in Traffic Stop Outcomes*, 9 DUKE F. FOR L. & SOC. CHANGE 21, 22 (2017).

<sup>52</sup> Christopher Ingraham, *You really can get pulled over for driving while black, federal statistics show*, WASH. POST (Sept. 9, 2014, 2:44 PM), <https://www.washingtonpost.com/news/wonk/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-Black-federal-statistics-show/>; see also Lynn Langton and Matthew Durose, U.S. DEP'T OF JUST. OFFICE OF JUST. PROGRAMS, BUREAU OF JUST. STAT., NCJ242937, POLICE BEHAVIOR DURING TRAFFIC AND STREET STOPS (2013).

departments. The study concluded that Black drivers are twenty percent more likely to be stopped by law enforcement than White drivers.<sup>53</sup>

People of color are not only more likely to be subjected to traffic stops by law enforcement than White drivers, but they are more likely to be given a ticket and to receive multiple tickets than White drivers.<sup>54</sup> For example, the Department of Justice found that when stopped for speeding, Black drivers are twenty percent more likely to get a ticket than White drivers, and Latinx drivers are thirty percent more likely than White drivers to be ticketed.<sup>55</sup>

The U.S. Justice Department's investigation of the Ferguson, Missouri police department provides a concrete example. In 2013, more than fifty percent of Black drivers ticketed by police received multiple citations during a single police encounter; but only twenty-six percent of non-Black drivers received more than one citation in a single stop. As the number of citations issued increased beyond two, the racial disparities were even more pronounced.<sup>56</sup> Finally, the disparity in speeding tickets between Black individuals and non-Black individuals "is [forty-eight percent] larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer own visual assessment."<sup>57</sup>

Other investigations throughout the United States document similar findings. Between 2009 and 2011, seven in ten people arrested for traffic offenses in Washington D.C. were Black, despite 43.6 percent of the population being White.<sup>58</sup> In Nebraska, four percent of the population is Black, but comprised nearly eight percent of the people subjected to a traffic stop.<sup>59</sup> In 2018, Black drivers were arrested incident to those traffic stops 18.2 percent of the time, compared with just 4.6 percent for the general population.<sup>60</sup> A 2016 review of traffic stops in Bloomfield, New Jersey revealed that although the city is about sixty percent White,

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<sup>53</sup> AJ Willingham, *Researchers studied nearly 100 million traffic stops and found black motorists are more likely to be pulled over*, CNN (Mar. 21, 2019), <https://www.cnn.com/2019/03/21/us/police-stops-race-stanford-study-trnd/index.html>; see generally Pierson et al., *supra* note 49.

<sup>54</sup> See *Investigation of the Ferguson Police Department*, *supra* note 6, at 66.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 66–67.

<sup>58</sup> *Demographics of Washington, D.C.*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Demographics\\_of\\_Washington,\\_D.C.](https://en.wikipedia.org/wiki/Demographics_of_Washington,_D.C.)

<sup>59</sup> Darrell Fisher et al., 2019 TRAFFIC STOPS IN NEBRASKA: A REPORT TO THE GOVERNOR AND THE LEGISLATURE ON DATA SUBMITTED BY LAW ENFORCEMENT (Mar. 27, 2020), [https://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/Traffic\\_Stops\\_in\\_Nebraska\\_2019\\_FINAL.pdf](https://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/Traffic_Stops_in_Nebraska_2019_FINAL.pdf).

<sup>60</sup> *Id.*



seventy-eight percent of ticketed motorists were Black or Latinx.<sup>61</sup> An Oregon analysis of twelve police departments found disparate outcomes (i.e., citation, search, and/or arrest) for Latinx individuals.<sup>62</sup> A 2014–2015 report issued by the Tucson Police Department found that although Black drivers only represented 4.9 percent of the city’s residents, they received 6.5 percent of all traffic citations.<sup>63</sup> Other minority drivers, including Latinx drivers “received traffic tickets at a rate slightly less than the percentage of each ethnicity’s population in Tucson.”<sup>64</sup>

Not only are people who encounter the criminal legal system in the United States disproportionately people of color, they are also disproportionately poor. Although the poverty rate in the United States today hovers at around 10.5%,<sup>65</sup> roughly 90% of people charged with felonies and misdemeanors qualify for the services of a public defender,<sup>66</sup> which requires that a judge find the defendant to be indigent.<sup>67</sup> Nearly half of the people jailed in the United States have individual incomes below \$10,000 per year.<sup>68</sup>

Thus, poverty and race combine to create a system where poor people of color are most likely to be assessed monetary sanctions they cannot afford. Indeed, the effect of race and poverty is synergistic. The racial disparities in the criminal legal system are compounded by the demographics of poverty in the U.S. The majority of poor people in the

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<sup>61</sup> Mark Denbeaux et al., RACIAL PROFILING REPORT: BLOOMFIELD POLICE AND BLOOMFIELD MUNICIPAL COURT 2, 4 (Apr. 7, 2016), <http://dx.doi.org/10.2139/ssrn.2760382>.

<sup>62</sup> OREGON CRIM. JUST. COMM’N, STAT. TRANSPARENCY OF POLICING REPORT 20 (Nov. 25, 2019), [https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP\\_Report\\_Final.pdf](https://www.oregon.gov/cjc/CJC%20Document%20Library/STOP_Report_Final.pdf).

<sup>63</sup> Amanda Le Claire, *Police Ticket Disproportionate Number of Blacks in Tucson*, ARIZONA PUBLIC MEDIA (July 30, 2015, 5:07 PM), <https://www.azpm.org/s/32764-tpd-releases-report-on-traffic-citations-and-race/>.

<sup>64</sup> *Id.*

<sup>65</sup> *What is the current poverty rate in the United States?*, CTR. FOR POVERTY RSCH., <https://poverty.ucdavis.edu/faq/what-current-poverty-rate-united-states> (last updated Sept. 15, 2020).

<sup>66</sup> Oliver Laughland, *The human toll of America’s public defender crisis*, THE GUARDIAN (Sept. 7, 2016), <https://www.theguardian.com/us-news/2016/sep/07/public-defender-us-criminal-justice-system>.

<sup>67</sup> *Frequently asked question: Who is entitled to a free lawyer?*, ABA, [https://www.americanbar.org/groups/legal\\_services/flh-home/flh-faq/](https://www.americanbar.org/groups/legal_services/flh-home/flh-faq/) (last visited Sept. 27, 2020).

<sup>68</sup> Slexi Jones & Wendy Sawyer, *Arrest, Release, Repeat: How Police and Jails are Misused to Respond to Social Problems*, PRISON POLICY INITIATIVE (Aug. 2019), <https://www.prisonpolicy.org/reports/repeatarrests.html>.

U.S. are people of color.<sup>69</sup> Black individuals are three times as likely, and Latinx individuals are twice as likely, to experience poverty than White individuals.<sup>70</sup> In 2016, roughly 13.4 percent of the U.S. population was Black, but twenty-two percent of Black individuals lived in poverty. By contrast, approximately nine percent of White individuals lived in poverty, but White individuals comprised 76.3 percent of the U.S. population.<sup>71</sup> Further, Black and Latinx families are less likely than White families to have significant wealth and other assets, and they are disproportionately more likely to be in debt.<sup>72</sup> Indeed, “in spite of laws guaranteeing civil rights, the most salient feature of American poverty remains race.”<sup>73</sup> Thus, the people in the American criminal legal system are largely poor people of color. They are the people legislators insist pay fines and fees, and they are the least likely to be able to afford them.

Buffalo, New York provides a compelling example of how these phenomena – legislators turning to the criminal legal system to raise money and a criminal legal system comprised largely of low-income people of color – converge and are inextricably linked.<sup>74</sup> In 2019, *The Investigative Post of Buffalo* reported that traffic stops in Buffalo were used to generate revenue and principally targeted people of color.<sup>75</sup> After the City of Buffalo entered into an arrangement with the State that allowed it to retain most of the money generated by traffic tickets issued by the Buffalo police, both the issuance of tickets and revenue collected from them soared from \$500,000 the year before the new system was

<sup>69</sup> See *Poverty Rate by Race/Ethnicity*, KAISER FAMILY FOUND., <http://kff.org/other/state-incator/poverty-rate-by-raceethnicity/?Timeframe=0> (last visited Sept. 27, 2020).

<sup>70</sup> *The Doorways Dish*, DOORWAYS FOR WOMEN AND FAMILY, <https://myemail.constantcontact.com/Let-s-talk-about-poverty-and-race.html?soid=1102452077294&aid=AtLAyFKnGvM> (last visited Nov. 25, 2019).

<sup>71</sup> Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INSTITUTE 10 (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/RHI225218> (last visited Dec. 23, 2019).

<sup>72</sup> Danyelle Solomon & Darrick Hamilton, *The Coronavirus Pandemic and the Racial Wealth Gap*, CENTER FOR AMERICAN PROGRESS (Mar. 19, 2020), <https://www.americanprogress.org/issues/race/news/2020/03/19/481962/coronavirus-pandemic-racial-wealth-gap/>; see SHRIVER CENTER ON POVERTY LAW, <https://www.povertylaw.org/clearinghouse/articles/answers> (last visited Nov. 25, 2019); see generally Peter Edelman, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (The New Press 2017).

<sup>73</sup> Solomon & Hamilton, *supra* note 72.

<sup>74</sup> See generally Marsha McLeod, *City Hall cashing in on traffic tickets*, INVESTIGATIVE POST (Feb. 27, 2019), <http://www.investigativepost.org/2019/02/27/city-hall-cashing-in-on-traffic-tickets/>.

<sup>75</sup> See *id.*

implemented to more than \$2.8 million in fiscal year 2017, two years later.<sup>76</sup> Despite the over \$2 million in increased fine and fee revenue, the City imposed thirteen new fees that totaled at least an additional \$100 in every traffic case.<sup>77</sup> *The Post* investigation uncovered that Black and Latinx neighborhoods were targeted for traffic enforcement, principally through the use of checkpoints.<sup>78</sup> Between 2013 and 2017, “85 percent of checkpoints were done in Black and Latin[x] neighborhoods.”<sup>79</sup> As one Buffalo resident observed, “Every time I go to City Hall or the DMV to pay tickets, it’s a wall of black and brown people . . . .”<sup>80</sup>

#### IV. THE CONSEQUENCES OF NONPAYMENT

Despite the fact that the people being assessed fines and fees often do not have the ability to pay them, they face a variety of additional sanctions when they cannot immediately satisfy their court debt in full. The amounts they owe often increase; their driver’s license may be suspended; they may be jailed; they may lose their voting rights. These collateral consequences lead to a cycle of poverty and punishment and the criminalization of poverty. Traffic tickets and other low-level violations are often the entry point into the criminal legal system, but harsh enforcement practices are the trap that keep people in the system indefinitely.

The first thing that happens to a person who cannot afford to pay their fines and fees is that the amount they owed increases. In many jurisdictions, traffic fines double if they are not paid within thirty or sixty days, or another financial penalty is imposed.<sup>81</sup> In addition, interest is often assessed. Until 2019, Washington state imposed twelve percent interest on all delinquent fines and fees<sup>82</sup>. Florida assesses a late payment fee and

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* (“Black and Latino drivers, whose neighborhoods have been targeted for traffic enforcement, appear to be hit the hardest, both in fines and loss of licenses”).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> In Chicago, for example, the cost of a citation for not having a city parking sticker is \$200; with late penalties and collection fees, the price can rise to \$488. Melissa Sanchez & Elliot Ramos, *Chicago Hiked the Cost of Vehicle City Sticker Violations to Boost Revenue*, PROPUBLICA ILLINOIS (July 26, 2018, 6:00 AM), <https://www.propublica.org/article/chicago-vehicle-sticker-law-ticket-price-hike-black-drivers-debt>. In Buffalo, New York, the City’s Traffic Violations Bureau, which does not allow partial payments charges late fees for tickets paid after the due date, charges \$50 after 30 days; after 60 days an additional \$60; and after 90 days, an additional \$90. BUFFALO TRAFFIC VIOLATIONS AGENCY, <https://www.buffalony.gov/Faq.aspx?QID=117> (last visited Sept. 27, 2020).

<sup>82</sup> Harris, *supra* note 21, at 40-41.

mandates that fines and fees that remain uncollected after ninety days be sent to private collection agencies that are permitted to charge up to forty percent of the debt owed.<sup>83</sup>

In addition to increasing fine amounts if payment is not immediate, in many state and local jurisdictions, collection costs are imposed. Alabama charges five dollars per month for every payment made pursuant to a payment plan.<sup>84</sup> California allows courts to charge up to \$300 as a “civil assessment fee” if a payment is late and up to thirty five dollars to establish a payment plan.<sup>85</sup> Buffalo, charges a fifteen dollar deferral fee if you don’t pay immediately, and ten dollars for each subsequent deferral.<sup>86</sup> In Buffalo, payment plans are not permitted.<sup>87</sup> The jurisdiction demands the money in one payment within a fixed amount of time, requiring that you make a court appearance multiple times until you pay in full.

Some jurisdictions outsource collections either to private collection agencies or to what is known as private probation—for profit companies that supervise payment plans. Traditionally, probation is ordered in lieu of a potential jail sentence.<sup>88</sup> If the probationer meets regularly with their probation officer and complies with any other court-ordered conditions of probation for a fixed period of time, they escape a term of custody that the court would otherwise impose. In some jurisdictions, probationers are charged fees to help defray the cost of probation, resulting in probation fees.<sup>89</sup> Los Angeles County, for example, charges \$155 per month for probation supervision.<sup>90</sup> But some courts have turned probation into a debt collection tool, sentencing someone to probation only because they need time to pay off their fines and fees. Known as “pay-only” probation, these schemes often further entrench people in the justice system.<sup>91</sup> The probation companies offer courts, counties, and municipalities a great deal: they provide probation services at no cost to the jurisdiction. Instead,

<sup>83</sup> Diller, *supra* note 45, at 21.

<sup>84</sup> *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide*, ALABAMA APPLESEED CENTER FOR LAW & JUSTICE <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>.

<sup>85</sup> CAL. PENAL CODE § 1214.1 (2015); CAL. VEH. CODE §40510.5(g) (1959).

<sup>86</sup> BUFFALO TRAFFIC VIOLATIONS AGENCY, *supra* note 81.

<sup>87</sup> See, e.g., *id.*

<sup>88</sup> *Profiting From Probation: America’s Offender-Funded Probation Industry*, HUMAN RIGHTS WATCH 2 (Feb. 2014) [hereinafter *Profiting From Probation*], [https://www.hrw.org/sites/default/files/reports/us0214\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf).

<sup>89</sup> *Id.*

<sup>90</sup> Memorandum from Sachi Hama, Chief Exec. Off., County of Los Angeles to Los Angeles County Board of Supervisors, at 50 (Dec. 13, 2019), *Report Back on Addressing Fines and Fees Associated with Criminal Justice System Involvement (Item No. 10, Agenda of April 16, 2019)* (on file with the author).

<sup>91</sup> *Profiting From Probation*, *supra* note 88, at 3.

they collect fees from the probationers they supervise.<sup>92</sup> As Human Rights Watch reported in 2014, “[p]ay-only probation is an extremely muscular form of debt collection masquerading as probation supervision, with all costs billed to the debtor.”<sup>93</sup>

People who are on pay-only probation are forced to pay an additional monthly “probation fee” that can range from \$35 to \$100 per month, and typically any money that the individual pays is credited first to the probation fee and then to the person’s remaining court debt.<sup>94</sup> People can remain on pay-only probation for years and can end up paying as much, if not more in probation fees than they originally owed in court debt.<sup>95</sup> In Mississippi, offenders are often sentenced to pay-only probation for twenty-four months in order to pay fines and fees totaling roughly \$1,000.<sup>96</sup> After paying the forty dollar monthly probation fee charged in Mississippi, they would owe an additional \$960 in supervision fees, almost doubling the original fine.<sup>97</sup> The conflict of interest inherent in this system is obvious: the longer it takes a person to pay off their debts, the longer they remain on probation and the more they pay in supervision fees to the private probation company. In other words, the more impoverished a person is, the more they ultimately pay and the longer they have to live with the threat of possible incarceration. In 2014, Human Rights Watch estimated that in Georgia alone, probation companies took in at least forty million in revenues from fees they charge to probationers.<sup>98</sup>

Pay-only probation companies have also engaged in often illegal and unconstitutional practices to collect. In numerous reports, researchers have documented probation company personnel and court officials, including judges, threatening to revoke probation and incarcerate people who do not make their payments.<sup>99</sup> As discussed more fully below, incarcerating a person who does not have the ability to pay their court debt is unconstitutional. Moreover, pay-only probation is used for offenders who would not be on probation at all if they had more money. They pose no threat to public safety and require no supervision. Many are guilty of offenses that carry no possibility of jail time as a sanction for the underlying offense, such as speeding, driving without proof of insurance, or failing to properly maintain a driveway.<sup>100</sup>

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 24.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 4.

<sup>99</sup> *Id.* at 1-2, 25.

<sup>100</sup> *Id.* at 1.

For example, in 2015, Adel Edwards, a plaintiff in a class action brought by the Southern Center for Human Rights pleaded guilty to burning leaves in his yard without a permit.<sup>101</sup> Mr. Edwards, who is intellectually disabled and whose only income was from food stamps, was placed on probation by the Pelham, Georgia Municipal Court for twelve months because he could not pay his \$500 fine and fees on the day he appeared in court.<sup>102</sup> With probation “supervision” costs added in, his court bill rose to \$1,028.<sup>103</sup> Immediately after his court hearing, a Red Hills probation officer demanded a payment that neither Mr. Edwards nor his family could afford to pay.<sup>104</sup> Mr. Edwards was taken to jail and held for several days until a friend paid \$250 to get him released.<sup>105</sup> Even after Mr. Edwards’s probation was terminated, private probation officers ordered him to continue reporting and threatened to incarcerate him if he failed to report and pay as ordered.<sup>106</sup>

Private probation companies are not the only way that people are threatened with and actually incarcerated because they cannot afford to pay fines and fees. The Department of Justice Investigation of the Ferguson Police Department included a section on the Ferguson Municipal Court and documented numerous instances of the judge incarcerating people who could not pay their fines and fees.<sup>107</sup> That phenomenon—the resurgence of debtor’s prisons—was not just a Ferguson problem or even a problem in just Missouri. In Washington, Alabama, Mississippi, Arkansas, Ohio, Georgia, Michigan, Tennessee, and Colorado, people were going to jail simply because they were too poor to pay exorbitant fines and fees—and those are just the states where there was litigation challenging debtor’s prisons.<sup>108</sup>

Incarceration may result indirectly, as well. If a person cannot afford immediately to pay their court debt, they may be required to return

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<sup>101</sup> Complaint at 3-4, *Edwards v. Red Hills Cmty. Prob.*, No. 1:15-CV-0067 (M.D. Ga. May 1, 2016).

<sup>102</sup> *Id.* at 3-4, 23.

<sup>103</sup> *Id.* at 22.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 23.

<sup>106</sup> *Id.*

<sup>107</sup> See *Investigation of the Ferguson Police Department*, *supra* note 6, at 3.

<sup>108</sup> See e.g. *Rodriguez v. Providence Cmty. Corr., Inc.*, No. 3:15-CV-01048 (M.D. Tenn. February 5, 2020); *Cooks v. Taylor*, No. 5:17-CV-00774 (W.D. Okla. September 18, 2017); *Foster v. City of Alexander City*, No. 3:15-CV-00647 (M.D. Ala. August 4, 2017); *Jenkins v. City of Jennings*, No. 4:15-CV-00252 (E.D. Mo. July 24, 2017); *Kennedy v. City of Biloxi*, No. 1:15-CV-00348 (S.D. Miss. September 13, 2016); *Howard v. City and County of Denver*, No. 1:11CV02797 (D. Colo. September 3, 2013); *Mahoney v. Derrick*, No. 60CV-18-5616, 2018 WL 3768088 (Ark. Cir. Ct. August 9, 2018); *Fuentes v. Benton County*, No. 15-2-02976-1 (Wa. Super. Ct. October 7, 2015).

repeatedly to court until the full debt is paid. If a person does not appear at a scheduled court hearing, perhaps because they could not take time off from work, could not arrange childcare, did not have transportation, or were ill, the judge may issue a warrant for the person's arrest.

There is a second chapter to the story of Leann Banderman, the Missouri woman who stole nail polish and was charged \$1400 for her thirty day jail sentence.<sup>109</sup> Ms. Banderman could not afford to pay the "board bill" for her jail time, resulting in the judge jailing her again.<sup>110</sup> She received another bill for an additional \$2,160 resulting from that stay.<sup>111</sup> Last year, a Missouri Court of Appeals finally ruled the practice was not authorized by state law and had to stop.<sup>112</sup> Missouri law allows counties to charge "board fees", but they cannot threaten people with jail or actually incarcerate them simply because they are poor and cannot pay the bill.<sup>113</sup> Based on the number of cases filed alleging that jurisdictions were operating debtor's prisons and the number of media reports on the resurgence of debtor's prisons for unpaid fines and fees, courts seem to have forgotten this basic constitutional rule.<sup>114</sup>

Even in jurisdictions that do not incarcerate people for failure to pay their court debt, there are other collection practices that exacerbate and criminalize poverty. The most common is driver's license suspensions. Forty-one states and the District of Columbia will suspend, revoke or not allow a person to renew their driver's license if they have unpaid fines and fees.<sup>115</sup> In the U.S. today, there are at least eleven million driver's license suspensions for unpaid court debt.<sup>116</sup>

The consequences of license suspensions can be catastrophic. People depend on their driver's licenses to get to work, to get themselves or their

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<sup>109</sup> See Messenger, *supra* note 22.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See *State v. Richey*, 569 S.W.3d 420, 425 (Mo. 2019).

<sup>113</sup> *Id.* at 425.

<sup>114</sup> See Brett Story & Todd Chandler, *A Debtor's Prison: Debilitating Cycles of Incarceration in the U.S.*, AEON VIDEO & ARTICLE (Mar. 27, 2018), <https://finesandfeesjusticecenter.org/articles/debtors-prison-court-fees/>; "Set Up to Fail": The Impact of Offender-Funded Private Probation on the Poor, FEES AND FINES JUSTICE CENTER (Feb. 1, 2018), <https://finesandfeesjusticecenter.org/articles/set-up-to-fail-the-impact-of-offender-funded-private-probation-on-the-poor/>.

<sup>115</sup> *Free to Drive maps: suspension statutes, data, narratives, and more*, FREE TO DRIVE, <https://www.freetodrive.org/maps/#page-content> (last visited Sep. 18, 2020).

<sup>116</sup> See *id.* (That number is likely a gross underestimate because there is no national standard for data collection related to license suspensions, and states track and report driver's license suspension data in very different ways). See also Mario Salas & Angela Ciolfi, *Driven by Dollars: A State-By-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt*, LEGAL AID JUST. CTR. (Fall 2017), <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.



families to the doctor, or their children to school. People need to drive to buy groceries, attend church, or make a court appearance. In most parts of the country, and especially in rural communities, public transportation options are limited or non-existent. Indeed, when eighty-three percent of Americans report driving a car multiple times a week, driver's license suspensions make life almost impossible.<sup>117</sup>

Suspensions often result in severe economic loss. Over seventy-six percent of Americans drive to work,<sup>118</sup> and thirty percent of jobs require driving as part of the job.<sup>119</sup> In one New Jersey study, forty-two percent of people who lost their driver's license lost their job.<sup>120</sup> When people lose their jobs, they and their families suffer. They can lose their homes, go hungry, or go without medicine. Similarly, roughly half of school-aged children are driven to school.<sup>121</sup> Without a parent to drive them, children skip school or are late because of inadequate alternatives. When transportation is a barrier, patients often do not seek medical care, miss appointments, or delay care until their health deteriorates and then require emergency treatment.<sup>122</sup>

It is not surprising, then, that most people whose licenses are suspended drive anyway.<sup>123</sup> Driving on a suspended license is a misdemeanor almost everywhere in the U.S. If a person drives with a suspended license and is stopped by law enforcement, they can be cited or arrested. If convicted, they face additional fines and fees and possibly jail.

In 2002, Demetrice Moore, a certified nursing assistant (CNA) and mother of two children, was convicted of grand larceny and sentenced to

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<sup>117</sup> Megan Brennan, *83% of U.S. Adults Drive Frequently; Fewer Enjoy It a Lot*, GALLUP (July 9, 2018), <https://news.gallup.com/poll/236813/adults-drive-frequently-fewer-enjoy-it.aspx>.

<sup>118</sup> Adie Tomer, *America's Commuting Choices: 5 Major Takeaways from 2016 Census Data*, BROOKINGS (Oct. 3, 2017), <https://www.brookings.edu/blog/the-avenue/2017/10/03/americans-commuting-choices-5-major-takeaways-from-2016-census-data/>.

<sup>119</sup> *30 Percent of Civilian Jobs Require Some Driving in 2016*, U.S. BUREAU OF LABOR STAT.: THE ECONOMICS DAILY (June 27, 2017), [https://www.bls.gov/opub/ted/2017/30-percent-of-civilian-jobs-require-some-driving-in-2016.htm?view\\_full](https://www.bls.gov/opub/ted/2017/30-percent-of-civilian-jobs-require-some-driving-in-2016.htm?view_full).

<sup>120</sup> Jon A. Carnegie, *DRIVER'S LICENSE SUSPENSIONS, IMPACTS AND FAIRNESS STUDY 56* (2007), <https://www.nj.gov/transportation/business/research/reports/FHWA-NJ-2007-020-V1.pdf>.

<sup>121</sup> Noreen McDonald & Annette Aalborg, *Why Parents Drive Children to School: Implications for Safe Routes to School Programs*, 75 J. AM. PLAN. ASS'N, VOL. 331 (2009).

<sup>122</sup> Jeff Hobson & Julie Quiroz-Martinez, *ROADBLOCKS TO HEALTH: TRANSPORTATION BARRIERS TO HEALTHY COMMUNITIES* 1 (2002), [https://www.transformca.org/sites/default/files/roadblocks\\_to\\_health\\_2002.pdf](https://www.transformca.org/sites/default/files/roadblocks_to_health_2002.pdf).

<sup>123</sup> Suspended/Revoked Working Group, *Best Practices Guide to Reducing Suspended Drivers*, AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS 4-5 (Feb. 2013), <http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>



jail and to pay fees.<sup>124</sup> She served her jail time, but was unable to pay the fees she owed, which resulted in the automatic suspension of her Virginia driver's license.<sup>125</sup> Her work as a CNA required that she drive to the homes of her patients.<sup>126</sup> As a result, she was convicted several times for driving on a suspended license and spent twenty-three days in jail in 2016 and then gave up her job because it required driving.<sup>127</sup> Her court debt from her multiple convictions and accumulated interest totaled almost \$4500, an amount she simply cannot afford to pay.<sup>128</sup> She has been without her license for over a decade and stuck in the system for over 15 years.<sup>129</sup>

Driver's license suspensions also impact re-entry, making it much more difficult for a person returning to their community from a period of incarceration to succeed. ABC News reported about Matt Holland, a formerly incarcerated person who works nights at a Denny's in Florida and earns eleven dollars an hour.<sup>130</sup> His wife has to pick him up at the end of his shift at 1:00 a.m. because his driver's license was suspended for unpaid traffic and criminal fines and fees.<sup>131</sup> His two school-aged children have to go with her.<sup>132</sup> Holland would much rather have kept his old job as a plumber, where he was making sixteen dollars an hour, but that would have required him to drive.<sup>133</sup>

In most states, to get one's driver's license reinstated requires paying off all of the court debt owed and paying even more fees.<sup>134</sup> In New York, the fee for termination of indefinite suspensions is seventy dollars per suspension (raised from thirty-five dollars in 2009).<sup>135</sup> There can be multiple simultaneous suspensions (one per ticket); indeed, the Department of Motor Vehicles site advises: "[y]ou can pay up to [ten] suspension termination fees in one day."<sup>136</sup> That would be \$700.

Like everything else in the criminal legal system in the U.S., driver's license suspensions are strongly correlated with race. In New York City,

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<sup>124</sup> Salas & Ciolfi, *supra* note 116, at 3.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Meghan Keneally, *'It's Not America': 11 Million Go Without a License Because of Unpaid Fines*, ABC NEWS (Oct. 25, 2019), <https://abcnews.go.com/US/vicious-cycle-11-million-live-drivers-license-unpaid/story?id=66504966>.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Salas & Ciolfi, *supra* note 116, at 3.

<sup>135</sup> See N.Y. Veh. & Traf. Law § 503(j-1)(i); New York State Department of Motor Vehicles, *A Guide to Suspension & Revocation of Driving Privileges in New York State*, <https://dmv.ny.gov/brochure/c-12.pdf> (last visited Sep. 2, 2020).

<sup>136</sup> *Id.*

the driver's license suspension rate in the ten zip codes with the highest concentrations of people of color is two-and one-half times higher than in the zip codes with the most concentrated White populations.<sup>137</sup> Outside of New York City, the suspension rate in the ten zip codes with the highest concentration of people of color is four times higher than in the ten zip codes with the most concentrated White populations.<sup>138</sup> In Florida, suspended licenses for Black drivers are one and a half times their proportion in the general population.<sup>139</sup> As the United Nations Special Rapporteur on extreme poverty and human rights observed:

So-called fines and fees are piled up so that low level infractions become immensely burdensome, a process that affects only the poorest members of society, who pay the vast majority of such penalties. Driving licenses are also commonly suspended for a wide range of non-driving related offences, such as a failure to pay fines. This is a perfect way to ensure that the poor, living in communities that have steadfastly refused to invest in serious public transport systems, are unable to earn a living that might have helped to pay the outstanding debt. Two paths are open: penury, or driving illegally, thus risking even more serious and counterproductive criminalization.<sup>140</sup>

Another consequence of unpaid fines and fees is the loss of one's voting rights. Many states prohibit people who suffer felony convictions from voting. The process of restoring those rights—re-enfranchisement—varies in every state, as do the conditions required to regain one's voting rights.<sup>141</sup> One condition often imposed, however, is the payment of court debt. In eleven states, people who seek to have their voting rights restored must first pay off all of the fines and fees they owe.<sup>142</sup> Once again, the racial disparities in the criminal legal system are implicated. “Nationwide,

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<sup>137</sup> Joanna Weiss & Claudia Wilner, *Opportunity Suspended: How New York's Traffic Debt Suspension Laws Disproportionately Harm Low-Income Communities and Communities of Color*, A STORY MAP BY THE DRIVEN BY JUSTICE COALITION, Drivenbyjustice.org (last visited Sep. 2, 2020) (analyzing data from the New York Department of Motor Vehicles 2016-2017).

<sup>138</sup> *Id.*

<sup>139</sup> Carson Whitelemons et al., *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices*, FINES AND FEES JUSTICE CENTER (Dec. 2, 2019), <https://finesandfeesjusticecenter.org/articles/driving-on-empty-florida-drivers-license-suspension-fines-fees/>.

<sup>140</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America*, A/HRC/38/33/Add.1, 48, (May 4, 2018) Phillip Alston (Special Rapporteur).

<sup>141</sup> *Felon Voting Rights*, NAT'L CONF. ST. LEGIS. (July 28, 2020), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>142</sup> Jean Chung, *Felony Disenfranchisement: A Primer*, THE SENTENCING PROJECT (June 27, 2019), <http://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/>.

as of 2016, one in every thirteen Black adults could not vote as the result of a felony conviction, and in four states – Florida, Kentucky, Tennessee, and Virginia – more than one in five Black adults were disenfranchised.”<sup>143</sup>

Collectively, these practices perpetuate and exacerbate poverty and tether people to the criminal legal system for years. In 2019, Alabama Appleseed released the results of a survey of 879 Alabama natives who owed court debt.<sup>144</sup> The findings vividly portray how fines and fees criminalize poverty. Almost seven in ten of those surveyed were at some point declared indigent by a court; almost two-thirds did not have a bank account; and over half were unemployed.<sup>145</sup> More than eight in ten gave up necessities like rent, food, medical bills, car payments, and child support in order to pay their court debt; forty-four percent used payday or title loans to cover their court debt.<sup>146</sup> Nearly half had been jailed for failure to pay their fines and fees, despite the fact that fully eighty percent of those jailed had been declared indigent by the court.<sup>147</sup> A majority reported that they owed court debt for one to five years; the average length of time people reported that they had been in debt was 54.75 months – or four and one-half years.<sup>148</sup> Thirty-eight percent admitted to committing at least one crime to pay off their fines and fees.<sup>149</sup>

## V. THE CONSTITUTIONAL CONSTRAINTS ON FINES AND FEES

A system that disproportionately impacts poor people and people of color, that can result in incarceration because of debt, and that punishes people more harshly based on their economic status raises constitutional concerns. Although the United States Supreme Court has held unequivocally that legislative classifications that discriminate on the basis of wealth are not “suspect” for purposes of constitutional analysis,<sup>150</sup> the Court has repeatedly found laws and practices in the justice system that

<sup>143</sup> *Id.*

<sup>144</sup> *Under Pressure: How Fines and Fees Hurt People, Undermine Public Safety, and Drive Alabama’s Racial Wealth Divide*, ALA. APPLESEED CTR. LAW & JUST. (2018), <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf>.

<sup>145</sup> *Id.* at 29-30.

<sup>146</sup> *Id.* at 14.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 27.

<sup>149</sup> *Id.* at 14.

<sup>150</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973).

discriminate on the basis of poverty to be unconstitutional.<sup>151</sup> A variety of constitutional doctrines implicate fines and fees, but, at least at present, their impact is limited to the enforcement rather than the imposition of fines and fees. “The Court has not held that fines will be structured to reflect each person’s ability to pay in order to avoid disproportionate burdens.”<sup>152</sup>

In a line of cases beginning in 1956, the U.S. Supreme Court has developed a unique standard for determining the constitutionality of laws and regulations that treat people involved in the justice system more harshly because of their poverty. The Court has recognized that due process and equal protection principles are implicated in these claims but has eschewed its traditional approach to either doctrine. In *Bearden v. Georgia*, the Court applied the “fundamental fairness doctrine,” requiring the Court to examine (1) “the nature of the individual interest affected,” (2) “the extent to which it is affected,” (3) “the rationality of the connection between the legislative means and purpose,” and (4) “the existence of alternative means to effectuate this purpose.”<sup>153</sup> In *Bearden*, the Court found that revoking probation and incarcerating a defendant who was too poor to pay their court fines and fees violated fundamental fairness.<sup>154</sup> The Court held that a court can incarcerate a person for nonpayment of their court debt only if the court finds that the defendant’s nonpayment was willful, and to make a finding of willfulness, the Court must find that the defendant has the actual ability to pay the amount that they owe.<sup>155</sup>

The Court, however, has also recognized limits on the principle of protecting indigents in the criminal justice system. For example, in *Ross v. Moffitt*, the Court held that indigent defendants do not have a constitutional right to appointed counsel for a discretionary appeal; and in *United States v. MacCollum*, the Court rejected a challenge to a federal statute that permits a district court to provide an indigent defendant with a free trial transcript unless the court certifies that the objections to their conviction is not frivolous and the transcript is necessary to prepare a petition.<sup>156</sup>

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<sup>151</sup> See, e.g., *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963); *Roberts v. LaVallee*, 389 U.S. 40 (1967); *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); *Bearden v. Georgia*, 461 U.S. 660 (1983); *MLB v. S.L.J.*, 519 U.S. 102, 111 (1996).

<sup>152</sup> *Rodriguez v. Providence Cmty. Corr., Inc.*, No. 3:15-CV-01048, 22 (M.D. Tenn. February 5, 2020).

<sup>153</sup> *Bearden*, 462 U.S. at 666-67.

<sup>154</sup> *Id.* at 674.

<sup>155</sup> *Id.* at 672.

<sup>156</sup> See *Ross v. Moffitt*, 417 U.S. 600 (1974); *United States v. MacCollum*, 426 U.S. 317 (1976).

The Fundamental fairness doctrine has been used by litigators to successfully challenge debtor's prisons.<sup>157</sup> In other cases, litigators have challenged the court's incarceration of people for unpaid fines and fees, but have had less success in cases challenging state laws that suspend or revoke a person's driver's license suspensions for unpaid fines and fees.<sup>158</sup> In the driver's license suspension cases, the courts have reverted to traditional equal protection analysis, that is, they determine whether the strict scrutiny or rational basis review applies to the law or practice at issue. Because, as noted, the Supreme Court has held that wealth or income-based classifications are not subject to strict scrutiny, rational basis review has been and likely will continue be the test employed.<sup>159</sup> Rational basis review requires a court to determine, first, if a law treats similarly situated individuals different; and if it does, to then assess whether the law is rationally related to a legitimate government interest.<sup>160</sup> The standard is generally considered to be highly deferential to lawmakers.<sup>161</sup> However, because plaintiffs have won more than twenty rational basis cases before the Supreme Court since 1970,<sup>162</sup> there is more to rational basis review than conventional wisdom suggests.

<sup>157</sup> See, e.g., *Jenkins v. City of Jennings*, 4:15-cv-00252-CEJ (E.D. Mo. Feb. 13, 2017); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758 (M.D. Tenn. 2015).

<sup>158</sup> See *Fowler v. Benson*, 924 F.3d 247 (6th Cir. 2019); *Mendoza v. Garrett*, No. 3:18-cv-01634-HZ, 2019 U.S. Dist. LEXIS 85906 (D. Or. May 16, 2019).

<sup>159</sup> There is a possibility that a court may consider strict scrutiny if a "clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (citing *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)).

<sup>160</sup> *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 533 (1973).

<sup>161</sup> Rational Basis Test, LAW LIBRARY - AMERICAN LAW & LEGAL INFORMATION, <https://law.jrank.org/pages/9651/Rational-Basis-Test.html> (last visited Sep. 3, 2020).

<sup>162</sup> See *United States v. Windsor*, 570 U.S. 744, 774 (2013); *id.* at 793-94 (Scalia, J., dissenting) (noting that the Court relied on rational basis review); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *United States v. Morrison*, 529 U.S. 598, 614-15 (2000); *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000) (per curiam); *Romer v. Evans*, 517 U.S. 620, 634-35 (1996); *United States v. Lopez*, 514 U.S. 549, 567 (1995); *Quinn v. Millsap*, 491 U.S. 95, 108 (1989); *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n*, 488 U.S. 336, 345 (1989); *City of Cleburne v. Cleburne Living Ctr. Inc.*, 473 U.S. 432, 449-50 (1985); *Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 623 (1985); *Williams v. Vermont*, 472 U.S. 14, 24-25 (1985); *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 880 (1985); *Plyler v. Doe*, 457 U.S. 202, 230 (1982); *Zobel v. Williams*, 457 U.S. 55, 61-63 (1982); *Chappelle v. Greater Baton Rouge Airport Dist.*, 431 U.S. 159 (1977) (per curiam); *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *James v. Strange*, 407 U.S. 128, 141-42 (1972); *Lindsey v. Normet*, 405 U.S. 56, 76-78 (1972); *Mayer v. City of Chicago*, 404 U.S. 189, 196-97 (1971); *Reed v. Reed*, 404 U.S. 71, 76-77 (1971); *Turner v. Fouche*, 396 U.S. 346, 363-64 (1970).

Turning to the first question – whether fines and fees laws treat similarly situated people differently, the answer with respect to the imposition of fines and fees may well be no. A court could conclude that since every person receives the same monetary sanctions if they are convicted of the same offense, there is no discrimination. With respect to the enforcement of monetary sanctions, although at least one court has held that poor people are punished more harshly than people with money,<sup>163</sup> one could certainly imagine a court concluding that everyone is treated the same if they don't pay what they owe. Still, reviewing the cases in which plaintiffs have prevailed under a rational basis standard demonstrates that the Supreme Court invalidates government action under rational basis review when it is persuaded that: (1) there is no logical connection between the government's action and its proffered interest; and, (2) when the harm that results from the government's action vastly outweighs any plausible benefit.<sup>164</sup> In considering these factors, the Court evaluates the challenged action in the context of the record and wider statutory background. If that more expansive rational basis test is used, both imposition and enforcement statutes may well be struck down.

A third constitutional principle—due process—has been more successful than either fundamental fairness or rational basis. In *Cain v. White* and *Caliste v. Cantrell*, two separate Fifth Circuit panels held that the New Orleans Parish Criminal District Court engaged in a process of assessing and enforcing bail and court fines and fees that violated defendants' due process right to a neutral decisionmaker.<sup>165</sup> The decisions held that because the judges both assessed monetary conditions and sanctions and administered the funds after they were collected, they would not be perceived by an average person to provide a neutral forum.<sup>166</sup> Due process may well prove a successful claim where the facts are like those in *Cain* and *Caliste*.

The final constitutional doctrine that applies to fines and fees is the Excessive Fines Clause of the Eighth Amendment. The Clause prohibits government from imposing "excessive fines," and recent U.S. and state supreme court decisions have focused attention on the its potential for challenging fines and fees. In *Timbs v. Indiana*, the U.S. Supreme Court unanimously held that the Excessive Fines Clause applies to state and local

<sup>163</sup> Robinson v. Purkey, 326 F.R.D. 105 (M.D. Tenn. 2018).

<sup>164</sup> The Supreme Court also invalidates state actions under a rational basis standard when they are based on an illegitimate interest. See, e.g., *Ward*, 470 U.S. at 878 (economic favoritism); *Romer*, 517 U.S. at 635 (anti-gay animus); *Cleburne*, 473 U.S. at 450 (anti-disabled animus).

<sup>165</sup> *Cain v. White*, 937 F.3d 446,450-51 (5th Cir. 2019); *Caliste v. Cantrell*, 937 F.3d 525, 526 (5th Cir. 2019).

<sup>166</sup> *Cain*, 937 F.3d at 454; *Caliste*, 937 F.3d at 532.

government.<sup>167</sup> The Court found that the Clause is “both ‘fundamental to our scheme of ordered liberty’ and ‘deeply rooted in this Nation’s history and tradition.’”<sup>168</sup> Virtually every state also has an Excessive Fines Clause in its state constitution, allowing for state as well as federal constitutional claims to be raised.<sup>169</sup> There has been a dearth of Excessive Fines Clause litigation, and accordingly, there are many unanswered questions regarding its potential. Though traditional fines are of course subject to the Clause; it is an open question whether fees would be. The Court has held that the Clause protects individuals from the government “abusing its power to punish.”<sup>170</sup> Thus, to apply the Excessive Fines Clause to fees would require a plaintiff to demonstrate that the fee being challenged is at least “partially punitive.”<sup>171</sup>

The second significant question that has not been definitely resolved is the standard by which courts will determine excessiveness. Although in *Timbs*, the Court suggested strongly that it would consider whether the fine was excessive both with respect to the underlying offense and with respect to the defendant’s economic circumstances, it did not adopt a test.<sup>172</sup> However, recent state supreme court opinions have adopted that two-pronged approach, making it likely that a court could well determine that monetary sanctions might be excessive when applied to an indigent individual but not to a person of economic means.<sup>173</sup>

## VI. REFORMING FINES AND FEES PRACTICES

The imposition and enforcement of fines and fees in the criminal legal system wreak havoc on people’s lives and destabilize communities. The policies and practices that have developed over the last forty years are entrenched in the system, and government at all levels has come to rely on the revenue generated by fines and fees. Over the last five years, policy makers have begun to recognize the need for change. Sometimes reforms have been forced upon jurisdictions as the result of litigation; often advocates have been able to persuade lawmakers to end particularly

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<sup>167</sup> *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019).

<sup>168</sup> *Id.* at 689 (internal citations omitted).

<sup>169</sup> *Id.*

<sup>170</sup> *Austin v. United States*, 509 U.S. 602, 610-11 (1993) (quoting *Browning-Ferris Indust. of Vt., Inc. v. Kelco Disposal Inc.*, 492 U.S. 257, 265 (1989)).

<sup>171</sup> *Id.*

<sup>172</sup> *Timbs*, 139 S. Ct. at 690.

<sup>173</sup> *State v. Timbs*, 134 N.E.3d 12 (Ind. 2019); *Colo. Dep’t of Lab. & Emp., Div. of Workers’ Comp. v. Dami Hosp., LLC*, 442 P.3d 94 (Colo. 2019), *cert. denied*, 140 S. Ct. 849 (2020).



destructive practices. In a few instances, fees have actually been eliminated altogether.<sup>174</sup>

First, with respect to the imposition of fines and fees, several reforms merit mention. California, Nevada, and Maryland recently passed legislation prohibiting the imposition of fines and fees in juvenile delinquency cases.<sup>175</sup> In California, state law allows, but does not require counties to impose a variety of fees like probation fees and electronic monitoring fees. San Francisco, Alameda, Contra Costa, and Los Angeles counties all exercised their discretion to eliminate those fees.<sup>176</sup> In April 2020, Ramsey County, Minnesota Board voted to eliminate eleven criminal justice fees, totaling approximately \$675,000 annually. The fees eliminated include a \$300 probation supervision fee; a \$16 daily fee for home electronic monitoring; a \$3 fee for diabetic supplies in jail; and a fee of 25 cents per pill for over-the-counter medication while in custody.<sup>177</sup> New York City and the City and County of San Francisco have made phone calls to and from jail

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<sup>174</sup> Although a comprehensive review of all of the reforms implemented at the state and local level throughout the United States is beyond the scope of this article, some of the most important and far-reaching reforms are by The Fines and Fees Justice Center's online library of reform. See *The Clearinghouse*, FINES & FEES JUSTICE CENTER, <https://finesandfeesjusticecenter.org/clearinghouse/?sortByDate=true> (last visited Aug. 30, 2020).

<sup>175</sup> *California SB 190: Juveniles*, FINES & FEES JUSTICE CENTER (Jan. 26, 2017), <https://finesandfeesjusticecenter.org/articles/california-sb-190-juveniles/>; Nevada Assembly Bill 439: Abolishes Juvenile Fees, FINES & FEES JUSTICE CENTER (Mar. 25, 2019), <https://finesandfeesjusticecenter.org/articles/nevada-assembly-bill-439-abolishes-juvenile-fees/>; Michael Hardy, *How Baltimore Teens Helped Push Maryland Lawmakers Abolish Juvenile Fees and Fines*, ARNOLD VENTURES (May 26, 2020), <https://www.arnoldventures.org/stories/new-laws-make-maryland-a-national-leader-in-eliminating-fees-and-fines/>.

<sup>176</sup> See Peter Hegarty, *Alameda County Eliminates Some Criminal Justice Fees that Saddle Inmates*, THE MERCURY NEWS (Nov. 21, 2018, 10:28 AM), <https://www.mercurynews.com/2018/11/20/alameda-county-eliminates-some-criminal-justice-fees-that-saddle-inmates/>; Jackie Botts, *Los Angeles County Eliminates Criminal Fees. Will California Follow?*, CALMATTERS (Feb. 19, 2020), <https://calmatters.org/california-divide/2020/02/los-angeles-county-eliminates-criminal-fees/>.

<sup>177</sup> Shannon Prather, *Ramsey County Eliminates Nearly \$700,000 in Criminal Fines and Fees*, STAR TRIBUNE (Apr. 14, 2020, 9:59 PM), <https://www.startribune.com/ramsey-county-eliminates-nearly-700-000-in-criminal-fines-and-fees/569640712/?refresh=true>.



free.<sup>178</sup> Similarly, Texas dramatically lowered the price of phone calls from prison.<sup>179</sup>

Other reforms have required courts to consider a person's ability to pay when imposing fines and fees and allowed judge's discretion to waive or reduce court debt or consider alternative sanctions such as community service. In 2017, the Texas Legislature passed and the Governor signed Senate Bill 1913, a bill that changed the way fines and fees are imposed in fine-only misdemeanor cases.<sup>180</sup> A fine-only misdemeanor is a misdemeanor for which a fine is the only possible sanction; no time in custody is authorized. In Texas, those misdemeanors include traffic and other low-level offenses that are adjudicated in the state's over 1,000 municipal courts. The new law requires that judges conduct ability-to-pay assessments either before or immediately after sentencing.<sup>181</sup> If the judge finds that the person cannot afford to pay the fines and fees that would ordinarily be imposed, the judge must: a) waive or reduce the fines and fees; b) convert the fines and fees to community service; c) offer the person a payment plan; or d) any combination of the above.<sup>182</sup>

With respect to debtor's prisons, in Jackson and Biloxi, Mississippi, in Benton County, Washington, in Jennings, Missouri, in Montgomery, Alabama, in New Orleans, Louisiana and other jurisdictions around the country, advocates like the ACLU, the Southern Poverty Law Center, Equal Justice Under Law, and the Southern Center for Human Rights have either settled or won lawsuits challenging debtor's prisons.<sup>183</sup> Litigation has also been successful against private probation company practices, with Georgia enacting legislation in 2015 that resulted in at least one private

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<sup>178</sup> Zoe Greenberg, *Phone Calls from New York City Jails Will Soon Be Free*, N.Y. TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/nyregion/phone-calls-free-nyc-jails.html>; Ben Klein, *San Francisco to Make Phone Calls from Jail Free, Eliminate Markups on Items Sold in Jail*, DAILY CALIFORNIAN (June 25, 2019), <https://www.dailycal.org/2019/06/24/san-francisco-to-make-phone-calls-from-jail-free-eliminate-markups-on-items-sold-in-jail/>.

<sup>179</sup> *Texas Dramatically Reduces Cost of Phone Calls from Prison*, EQUAL JUSTICE INITIATIVE (Aug. 27, 2018), <https://eji.org/news/texas-dramatically-reduces-price-phone-calls-prison/>.

<sup>180</sup> *Texas SB 1913: Relating to Consequences Imposed on Persons Arrested for, Charged with, or Convicted of Certain Criminal Offenses*, FINES & FEES JUSTICE CENTER (June 20, 2017), <https://finesandfeesjusticecenter.org/articles/texas-sb-1913-fines-fees/>.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* Community service is broadly defined to include job training, GED prep classes, mentoring programs, and work at a nonprofit organization.

<sup>183</sup> See cases cited *supra* note 103; *Shutting Down Debtors' Prisons*, EQUAL JUSTICE UNDER LAW, (describing lawsuits in Alabama, Louisiana, Mississippi, and Missouri).

probation company, Sentinel Offender Services, withdrawing from the state.<sup>184</sup>

Litigation has also been filed challenging driver's license suspensions in Tennessee, North Carolina, Oregon, Alabama, Montana, Michigan and Virginia.<sup>185</sup> Although several of the cases were decided favorably in district courts, those opinions have been overturned on appeal. For example, in Tennessee, Federal District Court Judge Aleta Trauger wrote a lengthy decision finding that Tennessee's practice of automatically revoking driver's licenses for unpaid court debt was unconstitutional on both equal protection and due process grounds because the state did not assess ability to pay before suspending licenses.<sup>186</sup> Employing a rational basis standard for the equal protection claim, she found that the statute mandating revocation was not rationally related to the goal of inducing people to pay their court debt, because it was both counterproductive and ineffective.<sup>187</sup> Judge Trauger found that people need to drive to get to work, and they need to work to pay off their court debt.<sup>188</sup> She also found that very few Tennessee citizens paid their court debt after their licenses were revoked, resulting in many people staying suspended for many years. She found on due process grounds that the failure to conduct an ability to pay assessment before a license was suspended meant that poor people received an additional punishment for the same underlying offense simply because they were poor.<sup>189</sup> The Sixth Circuit, however, reversed her decision, resting entirely on a decision issued after Judge Trauger issued her opinion, in a case challenging Michigan's driver's license suspension scheme. In the Michigan case, *Fowler v. Benson*,<sup>190</sup> the Court found under a rational basis standard, that driver's license suspensions were not "devoid of a rational basis" even though they may be "unwise, even counterproductive."<sup>191</sup>

More progress has been made to eliminate debit-based suspensions legislatively. Advocates, community organizations, and impacted individuals have persuaded several state Legislatures to prohibit driver's license suspension for unpaid fines and fees. In September 2019, a national campaign to prohibit debt-based suspensions, *Free to Drive*, was

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<sup>184</sup> Lorelei Laird, *Private Probation Company Pulls Out of Georgia, Saying It Can No Longer Make a Profit*, ABA JOURNAL (Apr. 17, 2017, 8:00 AM), [http://www.abajournal.com/news/article/private\\_probation\\_company\\_pulls\\_out\\_of\\_georgia\\_saying\\_it\\_can\\_no\\_longer\\_make](http://www.abajournal.com/news/article/private_probation_company_pulls_out_of_georgia_saying_it_can_no_longer_make).

<sup>185</sup> See *The Clearinghouse*, *supra* note 174.

<sup>186</sup> Robinson v. Purkey, 326 F.R.D. 105, 148 (M.D. Tenn. 2018).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 156.

<sup>189</sup> See generally *id.*

<sup>190</sup> Fowler v. Benson, 924 F.3d 247 (6th Cir. 2019), 924 F.3d 247 (6th Cir. 2019).

<sup>191</sup> *Id.* at 262, 252.

launched, and it has made notable progress.<sup>192</sup> In the last two years, California, Hawaii, Idaho, Montana, Mississippi, Oregon, Virginia, West Virginia, and the District of Columbia all stopped their suspension practices.<sup>193</sup> A comprehensive bill eliminating suspensions for both failure to appear in court and failure to pay court debt passed the New York state legislature in July and is awaiting action by the Governor.<sup>194</sup> In Maryland, the legislature passed and the Governor signed a bill eliminating suspensions in traffic cases, although they remain for misdemeanor and felony debt.<sup>195</sup>

## VII. CONCLUSION

The fines and fees regime that has come to dominate the U.S. criminal legal system criminalizes poverty. The imposition and enforcement of fines and fees extracts millions of dollars from low-income communities of color and traps people in the criminal legal system. Fines and fees raise fundamental questions of equity, fairness and the purpose of punishment. How should government be funded? What conduct should we criminalize, and what, if any purpose does the use of monetary sanctions serve?

Though the issues are complex, with respect to fines and fees, there are some easy answers that, although they will not address all of the ways the criminal legal system criminalizes poverty and exacerbates racial disparities, will dramatically improve the system for millions of Americans. First, fees should be eliminated from the criminal legal system. There is simply no defensible reason to impose fees that fund services and programs wholly unrelated to the legal system on people charged with criminal offenses. Why should people who receive traffic tickets be paying a larger percentage of the cost of the Fish and Game Service in California than people who either don't speed or don't get caught? So-called "user fees" are equally indefensible. The justice system is charged with enforcing rights and responsibilities, resolving disputes fairly, and keeping communities safe. The system serves all of us, and it should be paid for by all of us through general revenue.

Second, fines should be proportionate to the offense and the individual, and fines should rarely, if ever, be imposed on people who are serving time in custody or under supervision, like probation. If imposed at all, fines should be returned to their historical origin as an alternative to

<sup>192</sup> See generally FREE TO DRIVE, <https://www.freetodrive.org/> (last visited Aug. 31, 2020).

<sup>193</sup> *Id.*

<sup>194</sup> S. 5348B, 2019-2020 LEGIS. SESS., REG. SESS. (N.Y. 2019).

<sup>195</sup> See FREE TO DRIVE, *supra* note 192.

custody. If a person is sentenced to jail or prison, one has to ask what the additional penological purpose a fine could serve. Fines people will never be able to afford to pay don't help them to become law-abiding, and imposing a punishment that an individual is unlikely ever to be able to complete, turns every sentence into a life sentence. Fines that serve as the primary punishment for a minor offense need to be set at an amount the individual has the present ability to pay without causing economic hardship. And people need to be allowed access to reasonable payment plans that allow them to make small payments easily for limited periods of time.

Though these policies are easy to articulate, they will likely prove difficult to implement. Still, they are essential steps on the path to ensuring that government stops extracting billions of dollars from low-income communities of color by criminalizing poverty.

Mr. BIGGS. Madam Chair, I have one request for unanimous consent.

Ms. JACKSON LEE. Then you are yielded to.

Mr. BIGGS. Thank you, Madam Chair. We have a letter from someone named Vikrant Reddy. I've asked that it be admitted without objection.

[The information follows:]



**MR. BIGGS FOR THE RECORD**

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**Written Testimony of Vikrant P. Reddy, Senior Fellow, Charles Koch Institute**

For the July 27, 2021 Hearing:

***A Fine Scheme: How Court-Imposed Fees and Fines Unjustly Burden Vulnerable Communities***

Before the United States House of Representatives Committee on the Judiciary

Subcommittee on Crime, Terrorism, and Homeland Security

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Members of the Committee, thank you for the opportunity to submit this written testimony about excessive fees and fines in the U.S. criminal justice system, and thank you, more broadly, for calling today's hearing to elevate this important issue.

In this testimony, I will first offer some thoughts on what is—and what is not—proper justification for the collection of criminal fees and fines. Secondly, I will discuss the ways in which the collection of criminal fees and fines places an undue burden on individuals and warps good governance. Finally, I will close with some thoughts on how this committee may be able to respond to the problem.

**I. The Purpose of Criminal Fees and Fines**

The power to punish its own citizens, whether through fines, incarceration, or even death, is the greatest domestic power that a government wields. Philosophers have debated the justification for this power for centuries and most have concluded that punishment by the state—i.e., a criminal justice system—has four legitimate purposes: incapacitation, retribution, deterrence, and rehabilitation.<sup>1</sup> Different scholars weigh these four justifications differently, but they are the four for which there is near-universal agreement.

Raising government revenue has never been considered a legitimate purpose of the criminal justice system. Nevertheless, funds collected from criminal justice fees and fines have, in recent decades, become enormous portions of state budgets. This is true in a major city like Chicago, Illinois, where criminal justice fees and fines comprised nearly fifteen percent of the city's revenue in 2014,<sup>2</sup> and it is also true in a small town like Ferguson, Missouri, where fees and fines comprised nearly twenty percent of revenue in 2014.<sup>3</sup>

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<sup>1</sup> Kent Greenawalt, "Punishment" 4 *ENCYCLOPEDIA OF CRIME AND JUSTICE* 1336 (Sanford H. Kadish, Editor in Chief 1983), 1340-1341.

<sup>2</sup> [City of Chicago 2014 Budget Overview](#) at 12 ("[f]ines, forfeitures, and penalties includ[ing] parking tickets, redlight camera and automated speed enforcement tickets, and other fines assessed in administrative hearings or the courts").

<sup>3</sup> Mike Maciag, [Skyrocketing Court Fines Are Major Revenue Generator for Ferguson](#), *GOVERNING*, Aug. 22, 2014.



When enormous sections of a local government's budget come from criminal fees and fines, one can reasonably wonder whether the "quest for revenue," as it was described by the U.S. Commission on Civil Rights in 2016,<sup>4</sup> is displacing the four legitimate functions of criminal justice.

It could perhaps be argued that the fees and fines are furthering retribution because they hold offenders accountable. This is theoretically possible, but practically unlikely. Retribution is always difficult to evaluate because "desert" is subjective. Nevertheless, one thing that is clear is that there is *some limit* to a retributive punishment, and at some point, a fee or fine is too high. All too often in criminal justice, an unusually high fine is difficult to pay and is then followed by various late fees and interest payments—all of which lead to an amount due that is well beyond what anyone would have considered sufficient retribution.

For example, a Brennan Center report documented a Pennsylvania woman who was assessed a \$325 restitution payment and a \$500 fine for a drug-related crime. After 26 additional fees, an extra \$2,500 was added to her underlying payment. Thus, a harm of \$325 resulted in over \$3,000 of required payment. Similarly, in Missouri, a woman accumulated approximately \$1,000 in cascading late fees and associated fines even though her original ticket, for illegal parking, was only \$151. Notably, the woman attempted to pay down her debt with partial payments of \$25 and \$50, but the partial payments were refused. In addition to amassing hundreds of dollars in fines, she spent six days in jail.<sup>5</sup>

Whatever these stories may be, they are not "retribution."

It might also be argued the fees and fines serve a deterrence purpose for would-be offenders. That argument, however, can be empirically tested—and it fails the test.

A study in Nashville, Tennessee led by the Policing Project at New York University found no relationship between the number of traffic stops (most of which result in misdemeanor fines, rather than arrest) and the amount of traffic-related crime in the city.<sup>6</sup> Even more importantly, the study found no relationship between the number of traffic stops and the amount of violent crime in the city—a matter that is of even greater importance to the people of Nashville.<sup>7</sup> This should not be surprising, as criminal justice fees and fines tend to be "discretionary and unpredictable," and thus, they are hardly an adequate base for behavior modifications.<sup>8</sup>

Both the arguments for retribution and deterrence, therefore, are likely mistaken and possibly being offered merely as a pretext.

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<sup>4</sup> United States Commission on Civil Rights, *Municipal Policing and Courts: A Search for Justice or a Quest for Revenue* (March 18, 2016).

<sup>5</sup> Civil Rights Division, U.S. Department of Justice, [Investigation of the Ferguson Police Department](#) 4 (March 4, 2015).

<sup>6</sup> Policing Project, N.Y.U. Sch. of L., *An Assessment of Traffic Stops and Policing Strategies in Nashville* 3 (2018).

<sup>7</sup> *Id.*

<sup>8</sup> Neil L. Sobel, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 525 (2016).

One bit of evidence that they are pretextual comes from a North Carolina study that found “a statistically significant increase in the number of traffic tickets issued in the year immediately following a decline in local government revenue.”<sup>9</sup> Another bit of evidence comes from the Department of Justice’s 2015 “Ferguson Report,” which concluded that police officers in Ferguson, Missouri “were ordered to issue as many tickets as possible in order to boost the city’s resources.”<sup>10</sup> As Stephanos Bibas, a federal appeals court judge nominated to the bench in 2017, observed in *National Review*, the “avarice [of cities] tempts police to arrest and jail too many people in order to collect fines, fees, tickets, and the like...[and] Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs.”<sup>11</sup>

## II. The Consequences of Excessive Fees and Fines

If it is true that revenue needs, rather than criminal justice goals, are driving the issuance of fees and fines in many American states and cities, two consequences are inevitable. First, many Americans will simply find themselves trapped in a cycle of poverty because they cannot repay their debts. Secondly, trust in criminal justice actors (police officers, prosecutors, judges, etc.) will deteriorate, a situation that is also linked to cycles of poverty.

In 2010, the Brennan Center for Justice at the New York University School of Law issued a report on excessive criminal justice fees and fines in the fifteen largest American states.<sup>12</sup> In the report, the authors explained how fees and fines can accumulate throughout the course of an individual’s time in the criminal justice system, ultimately encumbering their re-entry into society. Consider the following:

- First, upon arrest but before conviction, a defendant can be charged a fee for his jail time while he awaits trial, and he may also be assessed an application fee to obtain a public defender.
- Then, at the sentencing phase, the offender may be charged reimbursement fees for both the public defender and the prosecutor, fees for court administrative costs, and of course, fines and restitution.
- Next, prison fees could be assessed if the individual is incarcerated. On parole, supervision fees can be assessed, along with fees for drug testing and treatment.
- For all these criminal justice “services,” interest and/or late fees can also be charged.<sup>13</sup>

<sup>9</sup> Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J.L. & Econ. 71 (2009).

<sup>10</sup> *Supra* n. 5.

<sup>11</sup> Stephanos Bibas, [The Truth About Mass Incarceration](#), NATIONAL REVIEW, Sept. 21, 2015.

<sup>12</sup> Alicia Bannon, Mitali Nagrecha, Rebekah Diller, [Criminal Justice Debt: A Barrier to Re-Entry](#), Brennan Center for Justice (2010).

<sup>13</sup> *Id.*

The fees and fines can add up rapidly and leave people with considerable debt in the hundreds or even thousands of dollars. Debts of this magnitude would be frustrating for most middle-class Americans. For those with limited resources, they can be absolutely debilitating. Paying for daily cost of living expenses—much less saving and planning—is virtually impossible. Credit ratings decline due to existing debt, opportunities for the expungement of criminal records are lost, and licenses can be taken away.<sup>14</sup>

Remarkably, some jurisdictions place financial burdens on an individual who wants to structure a payment plan to meet their criminal justice debt obligations. In one Louisiana municipality, offenders are charged \$100 for permission to enter a payment plan.<sup>15</sup>

Furthermore, the collection of these fees and fines presents a conflict of interest for the police officers, judges, community supervision officers, etc. who are responsible for executing the functions of the criminal justice system. People are understandably skeptical of criminal justice actors who claim to be unbiased, but whose livelihoods are paid for by the fees and fines that result from a criminal conviction. The founding father George Mason put it well when he remarked that if “the same man, or set of men, holds both the sword and the purse, there is an end of liberty.”<sup>16</sup>

In the current day, the problem is summarized colorfully by Grover Norquist, the Americans for Tax Reform president and National Rifle Association board member: “[W]hen you’ve turned the policemen into tax agents...and in The Bible it’s very clear that nobody likes the tax collectors because it’s the guy that’s always looting you...when they had the revolt in what’s Turkey now, they killed 80,000 Roman tax collectors in a couple of weeks. People hate the guy that’s physically right there and hitting you with a hundred dollar [fee or fine] and we’re [putting in that position] guys who are wearing uniforms and the kids are supposed to go to that guy for help?...And they keep giving us more tickets because we can’t pay the first ticket? We’ve turned these guys into tax collectors, and then we wonder why people hate them...”<sup>17</sup>

Extensive research by Tom Tyler and Tracey Meares of Yale Law School has demonstrated that the level of trust in the criminal justice system is an important factor behind the level of crime in a community—and by extension, the level of poverty.<sup>18</sup> The title of this hearing states the problem directly: “Court-ordered fees and fines unjustly burden vulnerable communities.”

### III. How This Committee Should—and Should Not—Respond

Members of this committee may now reasonably ask: if a state government is funding itself with excessive fees and fines, what can be done about it? For example, may Congress use the power of the

<sup>14</sup> Beth A. Colgan, *Fines, Fees, and Forfeitures* 212 (August 15, 2017). ACADEMY FOR JUSTICE: A REPORT ON SCHOLARSHIP AND CRIMINAL JUSTICE REFORM, Erik Luna, ed., 2017; see also Douglas N. Evans, [The Debt Penalty: Exposing the Financial Barriers to Offender Re-Integration](#), John Jay School of Criminal Justice (Aug. 2014).

<sup>15</sup> *Id.*

<sup>16</sup> George Mason, *Fairfax County Freeholders’ Address and Instructions to Their General Assembly Delegates* (May 30, 1783), in Jeff Broadwater, *GEORGE MASON: FORGOTTEN FOUNDER* 153 (2006).

<sup>17</sup> Charles Koch Institute, [“Advancing Criminal Justice Reform in 2016 and Beyond,”](#) (Nov. 6. 2015).

<sup>18</sup> See, e.g., Tom R. Tyler and Tracey L. Meares, “Procedural Justice Policing” in: David Weisburd and Anthony Braga (eds.) *Police Innovation: Contrasting Perspectives*. Cambridge Univ. Press (2019).

purse—through federal grants—to incentivize better policy? There is a constitutional answer and a policy answer to that question.

The Constitutional answer is almost certainly “yes.” The federal government is allowed to incentivize, but not to coerce—and enticing states to end the use of burdensome fees and fines by offering federal grants would probably not be considered coercion in a federal court.<sup>19</sup> (This is speculation, of course, and it is difficult to offer a definitive answer without a specific proposal to review). The most relevant precedent on this matter is *South Dakota v. Dole*, in which South Dakota sued the federal government to recover federal highway funding.<sup>20</sup> The federal government had conditioned the funding on states establishing a legal drinking age of 21. South Dakota refused to change its age, however, and did not receive the funds. The Court, in an opinion by William Rehnquist, found in favor of the federal government. The decision was not particularly ideological and was joined in full by both Justice Antonin Scalia and Justice Thurgood Marshall. Federalism, the Court concluded, is not generally threatened by an offer of modest incentives from the federal to the state governments.<sup>21</sup> Subsequent opinions from the court have further developed this analysis by, for instance, better explaining what could constitute coercion, but the precedents are not relevant here.<sup>22</sup> As a constitutional matter, reasonable incentives may clearly be offered to reduce the use of criminal fees and fines at the state level.

The policy question is harder. If a state is simply refusing to fund its criminal justice system from state general revenue, the federal government may want to be careful about offering grants to convince the state to change its approach. The risk is that states will rely endlessly on the funds coming from Washington, DC instead of doing the hard work of governing: namely, making reasonable calculations about the cost of criminal justice, defending those calculations to their taxpayers, and raising the necessary tax revenue. Evading this process by simply tapping into federal dollars is not good for the federal budget, is not good for federalism, and undermines the feedback process that the state is supposed to have with its own citizens. As a prudential matter, Congress should think long and hard before going down such a path.

It is possible, perhaps, that states are reluctant to stop funding their government functions through fees and fines because of some “transaction cost” that serves as an impediment. In such a case, it might be reasonable for the federal government to pay that one-time transaction cost—perhaps more accurately termed a “transition cost.” For example, many federal policymakers want states to stop suspending drivers licenses for unpaid fees and fines that have nothing to do with driving. The cost of suddenly reinstating all the suspended licenses, however, would be prohibitive. A U.S. Senate bill introduced in 2021 addresses this concern by authorizing one-time grants to states to pay the cost of reinstating the suspended licenses.<sup>23</sup> A detailed analysis of the bill’s merits and shortcomings is not

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<sup>19</sup> *South Dakota v. Dole*, 483 U.S. 203, 210-11 (1987).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., *Nat’l Fed. of Ind. Business v. Sibelius*, 567 U.S. 519, \_\_\_\_ (2012).

<sup>23</sup> See S. 998 (“Driving for Opportunity Act”).

relevant to this testimony, but it can at least be said that the bill has the virtue of providing states with a one-time payment that does not put states in the position of relying perpetually on federal funding.

It is not clear whether a similar kind of a transition cost would exist in the criminal justice fees and fines context, but if one were identified, Congress could consider providing a grant to address it. The federal government should not, however, put itself in a position wherein it is paying in perpetuity for a basic function of state government.

#### IV. Conclusion

Broadly speaking, criminal justice systems ought to be paid for out of general revenue, not through criminal fees and fines. Evidence increasingly suggests that these fees and fines are extremely difficult to pay, sow distrust in the criminal justice system, and trap individuals in cycles of poverty. In 2021, this appears to be a point of political consensus on the Left and the Right.<sup>24</sup> If a state is relying excessively on fees and fines, federal policymakers can certainly investigate ways to help the state transition out of such a system, but they should not offer annual grants that simply shift the burden of state and local government to federal taxpayers.

Finally, members of Congress who are of course among the most influential members of their communities should not hesitate to use their “bully pulpit” to encourage state and local governments to end the use of excessive fees and fines. They should, for example, encourage continued criminal justice reforms that are focused on reducing prison populations. For over ten years now, several U.S. states—especially “red states” with a conservative political culture—have undertaken major reforms to bring down the size of their prison populations.<sup>25</sup> In doing so, they have reduced the cost pressures on states and localities, and it is reasonable to think that over time, these moves will ease the pressure that jurisdictions feel to turn to fees for the financing of their criminal justice systems.

Today’s hearing was one such example of Congress using that bully pulpit power to encourage better, more responsive, and more transparent criminal justice, and as such, it was very much a step in the right direction. Thank you again to the Committee for holding this hearing today, and thank you for the opportunity to submit this testimony.

**Vikrant P. Reddy** is a Senior Fellow at the Charles Koch Institute. In 2010, Reddy managed the launch of Right on Crime initiative at the Texas Public Policy Foundation. He serves on the board of the Wilson

<sup>24</sup> Although concerns about criminal justice fees and fines are frequently perceived to be a progressive issue, many conservatives and libertarians have written eloquently on the subject and expressed worry that the fees and fines have become excessive. See, e.g., Brian Doherty, [Petty Law Enforcement v. the Poor](#), REASON, Jan. 8, 2014; [Posting of Elisabeth Boehm to Prison Fellowship Blog](#), (July 7, 2012); Russell Moore, [A Year after Ferguson, Have White Christians Learned Anything?](#) WASHINGTON POST, Aug. 12, 2015; Posting of Alex Tabarrock to Marginal Revolution, [“Debtor’s Prison for Failure to Pay Your Own Trial”](#) (Apr. 18, 2012); American Legislative Exchange Council, [Resolution to Prioritize Victim Restitution](#) (June 29, 2015).

<sup>25</sup> Ken Cuccinelli, [Criminal justice reform: Conservative states have a record of success. So why ignore it?](#) FoxNews.com (Nov. 5, 2015).

*Center for Science and Justice at Duke Law School and on the Executive Committee of the Criminal Law Practice Group of the Federalist Society. He is a member of the Council on Criminal Justice and a Salzburg Global Fellow. He has previously worked as a researcher at the Cato Institute, a judicial clerk, and an attorney in private practice. Reddy is a graduate of the University of Texas at Austin and the Southern Methodist University School of Law in Dallas.*

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Ms. JACKSON LEE. Without objection? So, ordered. Let me indicate that this hearing, *A Fine Scheme, How Court-Imposed Fees and Fines Unjustly Burden Vulnerable Communities*, is a very important hearing. I do want to acknowledge with a great deal of appreciation the signing, Mr. Ranking Member, of the Victims of Crime Act 6, which really should speak to all of us who as we are facing a surge of crime across America—we are all trying to determine and discern its cause and that we are taking care of our victims, including in that are victims of crime in the Federal Victims of Crime Act and it also helps to bolster victim crime funds in the States. Gives a certain amount of requirements in a county. It also includes human trafficking. What it does is it opens the Victim Crime Fund of the Federal Government to receive dollars from settlements, restitution, and other equitable fines.

In the Federal system there is a limited number of juveniles, as we have said—even though the Federal Government carries a big stick, they are basically not engaged in those kinds of fines and equitable relief and settlement. Those are mostly corporate crimes. I think it is important for us, in this hearing, to announce that victims are our concern and the conversations that we're having are separate and apart from what is being done with these fees and fines as it relates to victims. We do not choose here to undermine any efforts to be able to make victims whole. That is evident by the Federal law that we just had the privilege of having signed into law as a bill that Mr. Nadler, m,e and others carried—and was supported with great support in the United States Senate.

So, that is what we want to leave behind. Victims are not to be deprived or suffer. We must recognize the cases like Ms. Soto and the sacrifice she's made for her children. I do want to acknowledge that, as I thank all of the witnesses—Judge Foster, thank you so much for a very important contribution, Ms. Soto, as a mom and certainly as someone who has touched our heart. We wish your children the best understanding of your sacrifice, and we certainly thank your son for his sacrifice. If we could, we would say, love, love, love in your family because you are certainly our hero for coming here and telling your story. We thank you so very, very much.

Thank you, Mr. Head, for an important perspective and thank you, Professor Harris, for your contributions as well, and Ms. Woog for highlighting Texas and what states do. We will now proceed—excuse me. This concludes today's hearing. Thank you to all our distinguished witnesses for attending and all our Members. This hearing is now adjourned.

[Whereupon, the above-entitled matter went off the record at 12:27 p.m.]





## **APPENDIX**

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**Written Statement of Lauren-Brooke Eisen  
Director, Justice Program  
Brennan Center for Justice at NYU School of Law<sup>1</sup>**

**Submitted to Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security**

**July 27, 2021**

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

My name is Lauren-Brooke Eisen, and I am the Director of the Justice Program of the Brennan Center for Justice at NYU School of Law. Thank you for the opportunity to comment on how court-imposed fees and fines unjustly burden vulnerable communities.

The Center's Justice Program has been a national leader in studying, drawing attention to, and attempting to thwart the devastating effects of mass incarceration. Mass incarceration represents one of this nation's greatest moral and racial injustices ever. The United States currently incarcerates 2.2 million people, a 500 percent increase over the past 40 years. And we disproportionately imprison Latino and Black Americans, who make up nearly 60 percent of our incarcerated population yet constitute only about 32 percent of the entire U.S. population. We also subject 5 million people to state supervision imposed by probation or parole. And we see 12 million admissions each year through our nation's vast network of county and city jails.

We have also studied how our nation's criminal legal system extracts wealth from poor communities and communities of color. Fees and fines are a harmful byproduct of the American criminal legal system. Courts rely excessively on criminal fee and fine practices. Fees and fines are costly and inefficient; unfairly and disproportionately burden the poor and people of color (as well as the families of justice-involved individuals who often absorb the costs of these debts);<sup>2</sup> and do little to deter crime or improve public safety. Fees and fines have over time increased

<sup>1</sup> The Brennan Center is a nonpartisan law and policy institute that seeks to secure our nation's promise of "equal justice for all" by creating a rational, effective, and fair criminal justice system. The Center's Justice Program works to advance sentencing and corrections reforms at all levels of government, and it focuses on reducing our nation's reliance on incarceration and the broader carceral system. My testimony does not purport to convey the views, if any, of the New York University School of Law.

<sup>2</sup> U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications*, Sept. 2017, 3, [https://www.usccr.gov/pubs/2017/Statutory Enforcement Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory%20Enforcement%20Report2017.pdf).

dramatically, reflecting a shift away from reliance on general tax revenue to a user-funded fee and fine system.<sup>3</sup> After spending many years investigating and researching the impact of these court-imposed fees and fines on justice-involved individuals, the Brennan Center's Justice Program has recommended several policy changes regarding how many courts and jurisdictions levy and collect these dollars. I present three basic, fundamental recommendations here.

First, states and localities should eliminate court-imposed fees. Every single American taxpayer benefits from a well-supported criminal justice system, so taxpayers, it follows, should fund our courts. Balancing our judiciary's checkbook on the backs of our polity's most disempowered members has no place in the United States. Second, states should require courts to levy fines based on ability to pay. Realizing this would mitigate the disproportionate punishments meted out to poor. Third, states should pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions. Keeping old debts on the books risks trapping people indefinitely within the criminal justice system—even after they have served their time—all over unpaid debt.

#### **I. The Federal Government Should Encourage States and Localities to Eliminate Court-Imposed Fees.**

Courts impose fees to raise state revenues.<sup>4</sup> It should come, then, as hardly surprising that fees often are automatically (and thus arbitrarily) imposed and bear no relation to the charge. Georgia, as one example, levies fees against people in the criminal-legal system that it uses to pay for a state police motorcycle unit, a brain and spinal injury trust fund, and a supplemental police retirement fund.<sup>5</sup> Indeed, as one article recently indicated, 34 states can suspend, revoke, or ban from renewal a person's driver's license all because of debts a person accrued from entanglement with our criminal legal system.<sup>6</sup> Although some states, like New York, Arkansas, and Washington, this year passed legislation to curtail unnecessary license suspensions, over half the states still suspend driver's licenses for reasons having nothing to do with safety or crime deterrence.<sup>7</sup> This sort of regressive punishment, among other things, unduly impedes the ability of the justice-involved to work and thus pay their court-sanctioned debt, trapping them in an inescapable web of poverty.

Courts also impose fees for myriad administrative costs. By way of example, criminal defendants are routinely charged for a determination of whether they qualify for a public defender. Courts are increasingly depending on user-funded fees to fund their judicial systems, in addition to

<sup>3</sup> Matthew Menendez et. al., "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>4</sup> Fees are different from fines. While courts impose fees to raise revenues, they levy fines upon conviction to, at least in theory, deter and punish people. Joseph Shapiro, "As Court Fees Rise, the Poor Are Paying the Price," NPR, May 19, 2014. <https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger>.

<sup>5</sup> Mike Maciag, "Addicted to Fines," *Governing*, Aug. 2019. <https://www.governing.com/archive/gov-addicted-to-fines.html>.

<sup>6</sup> Caroline Greer, "States Should Not Suspend Driver's Licenses When People Can't Pay Fines and Fees," *Reason Foundation*, July 22, 2021. <https://reason.org/commentary/states-should-not-suspend-drivers-licenses-when-people-cant-pay-fines-and-fees/>.

<sup>7</sup> Caroline Greer, "States Should Not Suspend Driver's Licenses When People Can't Pay Fines and Fees," *Reason Foundation*, July 22, 2021. <https://reason.org/commentary/states-should-not-suspend-drivers-licenses-when-people-cant-pay-fines-and-fees/>.

government agencies across their states. In fact, since 2010, 48 states have increased criminal and civil court fees.<sup>8</sup>

Original Brennan Center research has found that even under a conservative estimate of the fiscal costs of collecting court-imposed fees, these dollars are an inefficient source of revenue.<sup>9</sup> And significantly, these court fees fall disproportionately on the poor, which can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public. Women, in addition, tend to bear the brunt of these fees. One study found that 50 percent of the family members primarily responsible for paying court-related costs were mothers, and 10 percent were grandmothers.<sup>10</sup> There is already a significant pay gap between men and women, particularly for women of color, making this burden insurmountable for some.<sup>11</sup>

Courts, all told, should be funded by the taxpayers, as we all benefit from a well-supported criminal justice system. Making courts and other justice system agencies the collections agents for fees and fines diverts them from addressing true public safety needs. State legislators, as a result, should allocate appropriate funding to courts from their general funds and repeal legislation requiring courts to raise their own revenue by imposing fees. The federal government can help actualize this by incentivizing state policymakers to eliminate their use of criminal court-imposed fees by either restricting federal grant dollars to jurisdictions that fail to eliminate this practice or through incentive grants that rewards jurisdictions for moving away from relying on court-imposed fees.

## **II. The Federal Government Should Encourage States to Require Courts to Assess Fines Based on Ability to Pay.**

Intended as both deterrence and punishment, fines are, by contrast, penalties imposed on defendants after conviction. How much a fine is depends on state statute and severity of the crime. Charging individuals amounts they cannot afford to pay is both inefficient and cruel. In fact, the Brennan Center recently found that some Texas and New Mexico counties spent more than 41 cents to collect a dollar.<sup>12</sup> In other words, that is 121 times what it costs the IRS to collect tax

<sup>8</sup> Joseph Shapiro, "As Court Fees Rise, the Poor Are Paying the Price," NPR, May 19, 2014.

<https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

<sup>9</sup> Matthew Menendez et. al., "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>10</sup> Saneta deVuono-powell et. al, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, 2015, 14. <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

<sup>11</sup> U.S. Bureau of Labor Statistics, "Highlights of women's earnings in 2019," U.S. Department of Labor, Dec. 2020. <https://www.bls.gov/opub/reports/womens-earnings/2019/home.htm> (finding that the women's-to-men's earnings ratio has hovered between 80-to-83 percent since 2004); National Women's Law Center, "The Wage Gap: The Who, How, Why, and What to Do," Oct. 2020. <https://nwlc.org/wp-content/uploads/2019/09/Wage-Gap-Who-how.pdf> (reporting the gender-wage gap persists at even higher levels for women of color: Black women make 63 cents to the dollar, Latina women earn 55 cents to the dollar, and Native American women take home 60 cents to the dollar as compared to their white, non-Hispanic male counterparts).

<sup>12</sup> Matthew Menendez et. al., "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

revenue, and many times more than what it costs these states to collect taxes.<sup>13</sup> As we noted, “almost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue. This is a fundamentally inefficient way to collect revenue to support courts and other criminal justice agencies, and it does not make fiscal or economic sense.”<sup>14</sup>

State legislatures should statutorily scale fines based on a defendant’s wealth and daily earnings, adjusted for essential expenses and obligations such as child support. Studies show that sliding-scale fines can increase both collection rates and total fine revenue.<sup>15</sup> For example, West Germany in the 1970s calibrated fines based on ability to pay as a replacement to incarceration, and the number of short-term prison sentences dropped by 90 percent.<sup>16</sup> Day fines can also work here. In 1988, a criminal court in Staten Island, New York replaced fixed fines with day fines, and both collection rates and fine amounts increased.<sup>17</sup>

Imposing high fees on people without means to pay them is an ultimately fruitless endeavor with severe ramifications and little reward. Using a sliding-scale system can meaningfully mitigate this harm while increasing collection rates and ultimately, revenue. Recognizing the pitfalls of hard-to-collect legal fees, the Department of Justice created the Price of Justice grant in 2015. This program incentivized jurisdictions to identify best practices for coordinated and appropriate justice-system responses to individuals’ inability to pay fines and fees.<sup>18</sup> Grants such as these encourage evidence-based improvements to the criminal legal system and support localities implementing sliding-scale programs. The federal government should therefore continue building upon the Obama Administration’s efforts by funding similar initiatives focused on fees and fines.

### **III. The Federal Government Should Encourage States to Pass Laws Requiring Courts to Purge Old Balances that are Unlikely to be Paid.**

Brennan Center original research has observed that significant amounts of old fee and fine debt will never be collected but continue to burden millions of people.<sup>19</sup> This makes little sense. The

<sup>13</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>14</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>15</sup> Bureau of Justice Assistance, *How to Use Structured Fines (Day Fines) as an Intermediate Sanction*, U.S. Department of Justice. <https://www.ojp.gov/pdffiles/156242.pdf> (results from other U.S. pilot programs in Connecticut, Iowa, and Oregon have brought both increased revenues and positive responses from judges, prosecutors, and attorneys).

<sup>16</sup> Bureau of Justice Assistance, *How to Use Structured Fines (Day Fines) as an Intermediate Sanction*, U.S. Department of Justice. <https://www.ojp.gov/pdffiles/156242.pdf>.

<sup>17</sup> Judith Greene, “The Staten Island Day Fine Experiment,” Vera Institute of Justice, Aug. 1990. [https://www.vera.org/downloads/Publications/the-staten-island-day-fines-experiment/legacy\\_downloads/Staten\\_Island\\_day\\_fines.pdf](https://www.vera.org/downloads/Publications/the-staten-island-day-fines-experiment/legacy_downloads/Staten_Island_day_fines.pdf).

<sup>18</sup> Bureau of Justice Assistance, “The Price of Justice: Rethinking the Consequences of Justice Fines and Fees: FY 2016 Competitive Grant Announcement,” U.S. Department of Justice, 2015. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jrpriceofjustice.pdf>.

<sup>19</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

Brennan Center documented \$1.9 billion in unpaid criminal fee and fine debt in Texas, New Mexico, and Florida just between 2012 and 2018.<sup>20</sup> And even more recently, the Fines and Fees Justice Center documented that at least \$27.6 billion of fines and fees is owed across the nation, a number that understates the total amount of debt owed due to not every state providing data.<sup>21</sup> Unpaid criminal fee and fine debt is a growing burden, both for the courts and for the lives of people unable to pay.

Clearing out old debt would, moreover, free public agencies from the burden of using resources trying to chase down uncollectible debts. For example, in September 2020, California Governor Newsom moved toward permanently ending the collection of certain administrative fees and discharging all previous related debt by signing the Families Over Fees Act.<sup>22</sup> This legislation expands on previous action in San Francisco, which became the first city and county to eliminate such fees in 2018. As a result, the San Francisco Superior Court said it eliminated more than \$32.7 million in outstanding debt, owed by over 21,000 people.<sup>23</sup>

In sum, keeping old debts on the books risks trapping people indefinitely within the criminal justice system—even after they’ve done their time—all over these dollars. Indeed, saddling justice-involved with old debt increases their likelihood of re-incarceration, jeopardizes their ability to retain a driver’s license, threatens their chances of finding employment, creates a hurdle to exiting probation, and in some states, may even result in the loss of voting privileges, which is the bedrock of citizenship in this nation. The federal government should thus encourage states to take action.

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The Brennan Center thanks the Subcommittee on Crime, Terrorism, and Homeland Security for holding this critical hearing to consider this critical matter. We know that our nation’s justice system fails to live up to the American ideals of equality, fairness, and redemption—and the role of fees and fines is plainly harmful, not to mention inefficient. I thus urge the Subcommittee—and Congress broadly speaking—to look for ways in the coming months to incentivize states to reduce the burden and unfairness of court-imposed fees and fines on the most marginalized people in our communities. Because the cost of collection is so high. Because the impact on communities nationwide is so devastating. Because elimination of these hidden costs of incarceration is so important—so vital—to creating a truly inclusive, egalitarian democracy.

<sup>20</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>21</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>22</sup> The Financial Justice Project, “Gov. Newsom signs Families Over Fees Act, making California the first state in nation to repeal criminal administrative fees and debt,” Office of the Treasurer and Tax Collector, City and County of San Francisco, Sept. 25, 2020. <https://sf.gov.org/financialjustice/newsletters/governor-newsom-signs-families-over-fees-act>.

<sup>23</sup> The Financial Justice Project, “Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government,” Office of the Treasurer and Tax Collector, City and County of San Francisco, April 2019. [https://sf.gov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019\\_1.pdf](https://sf.gov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf).

