

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

FINANCIAL IMPLICATIONS OF CRIMINAL JUSTICE FINES AND FEES



An Informational Hearing

TUESDAY, FEBRUARY 5, 2019
9:30 A.M. – 11:30 A.M.
STATE CAPITOL, ROOM 126
SACRAMENTO, CALIFORNIA

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Counsel

NIKKI MOORE
Counsel

AGENDA
Tuesday, February 5, 2019
9:30 a.m – 11:30 a.m.

FINANCIAL IMPLICATIONS OF CRIMINAL JUSTICE FINES AND FEES

I. Introduction and Opening Remarks. 9:30 a.m. - 9:40 a.m.

II. Overview of Fines and Fees by Legislative Analyst's Office. 9:40- 10:00

Anita Lee, Principal Fiscal & Policy Analyst, Legislative Analyst's Office

Luke Koushmaro, Fiscal & Policy Analyst, Legislative Analyst's Office

III. The Personal Impact of Fines of Fees. 10:00 a.m. – 10:10 a.m.

Anthony Robles, Youth Organizer, Youth Justice Coalition

IV. Alameda and S.F. Counties Have Eliminated Fee Assessments Related to Probation Supervision and Attorney Costs. 10:10 a.m. – 10:50 a.m.

Brendon Woods, Public Defender, Alameda County

Karen Baker, Assistant Chief Probation Officer, Alameda County

Jeff Adachi, Public Defender, City and County of San Francisco

José Cisneros, Treasurer, City and County of San Francisco

V. Considerations in Reforming the Structure of Fines and Fees. 10:50 a.m. - 11:30 a.m.

Stephanie Campos-Bui, Clinical Supervising Attorney, Policy Advocacy Clinic, University of California, Berkeley, School of Law

Brandon Greene, Clinical Supervisor, Clean Slate Practice, East Bay Community Law Center, University of California, Berkeley

Mary Booher, Assistant County Executive Officer, Napa County

Shelley Curran, Director of Criminal Justice Services, Judicial Council of California

VI. Public Comment. 11:30 a.m. -11:45 a.m.

SPEAKER BIOGRAPHIES

Jeff Adachi, Public Defender, City and County of San Francisco

Jeff Adachi has served as elected Public Defender of the City and County of San Francisco since March 2002 and has worked as a deputy public defender in San Francisco for 15 years. From 1998-2001, he served as the Chief Attorney of the office. He has tried over 150 jury trials, including numerous serious felony and homicide cases, and has handled over 3,000 criminal matters throughout his career. As the only elected Public Defender in the state of California, Mr. Adachi oversees an office of 98 lawyers and 70 support staff. The office represents more than 23,000 people each year who are charged with misdemeanor and felony offenses and is among a handful of public defender's offices in the U.S. to provide deportation defense to detained immigrants. The San Francisco Public Defender's Office offers a panoply of innovative programs to its clients, including Drug Court, Mental Health Court, Clean Slate expungement services, and a full-service juvenile division. The public defender's community MAGIC programs address the root causes of juvenile crime in San Francisco's underserved neighborhoods by linking families with educational, health and community services. Mr. Adachi has received numerous local, state and national awards, most recently the 2017 Youth Champion Award, the 2016 Society of Professional Journalist's Public Official Award, the 2015 American Bar Association Hodson Award for Public Service, 2014 SPUR Good Government Award, and 2014 California Public Defender's Association Program of the Year Award. He serves on the Board of Directors of Cal Humanities and the National Association of Criminal Defense Lawyers. Mr. Adachi graduated from Hastings College of the Law in 1985 and received his undergraduate degree from U.C. Berkeley. As a filmmaker, he wrote, produced and directed *The Slanted Screen*, a 2006 documentary film about stereotypical depictions of Asian males in American cinema. He also directed the 2009 film *You Don't Know Jack: The Jack Soo Story* and 2016 short film, *America Needs a Racial Facial*. His latest film, *Defender*, won Best Documentary at the Independent Television and Film Festival in October, 2017.

Karen Baker, Assistant Chief Probation Officer, Alameda County

Karen Baker is an Assistant Chief Probation Officer of Alameda County, with responsibility for Re-Entry and Administrative Services, including Evidence-Based Programs, Program Design and Development, Policy, Research and Fiscal programs. Karen is representing Chief Probation Officer Wendy Still, who is unable to be here today due to a critical Juvenile Justice Symposium she is hosting in Alameda County today. Karen has served as the Assistant Chief Probation Officer since July 2017, and prior to that, for California State Government for 34 years. Karen specializes in project management, fiscal, research, program development and activation management. Chief Still and Assistant Chief Baker have worked together for over 12 years both in California State Government and in Alameda County, implementing community and in prison rehabilitative programs designed to improve outcomes and reduce recidivism for California's offenders and parolees. Her experiences include implementing trauma-informed community and in prison rehabilitative programs, developing, designing and activating medical and mental health care facilities within the correctional setting, and program designs for rehabilitative, compassionate release, and long term care needs of the California prison population.

Mary Booher, Assistant County Executive Officer, Napa County

After graduating with a degree in Criminal Justice from the University of Nevada, Reno in 1989, I began my career in Mono County, then moving to Sonoma County, and I am now the Assistant County Executive Officer in Napa County. While working, I also completed a BS in Business, and a Master's in Public Administration. As part of my county service, I have worked in several departments, and in the CAO/CEO office as a liaison to most other departments within the County with a primary focus of budgeting and finance. I also had extensive opportunities to collaborate with other public and private agencies and work directly with the community in implementing projects. While in Sonoma County Administrative Office, I was responsible for the Court Support budget, which includes the General Fund revenues from fees and fines, and the corresponding court MOE payments and Court Facility payments, among other assignments.

Stephanie Campos-Bui, Clinical Supervising Attorney, Policy Advocacy Clinic, University of California, Berkeley, School of Law

Stephanie is a supervising attorney in the Policy Advocacy Clinic at Berkeley Law. In the Clinic, she supervises interdisciplinary teams of law and public policy students in pursuit of non-litigation strategies to address systemic racial, economic, and social injustice. Stephanie currently leads the Clinic's national efforts to eliminate debt imposed on youth and families in the juvenile justice system. Previously, she worked as a fellow at the East Bay Community Law Center in its Education, Defense, and Justice for Youth Practice. Stephanie graduated from Berkeley Law in 2014 and is a member of the California bar.

José Cisneros, Treasurer, City and County of San Francisco

José Cisneros is the elected Treasurer for the City and County of San Francisco. As Treasurer, he serves as the City's banker and Chief Investment Officer, managing all tax and revenue collection for San Francisco. In office since 2004, Cisneros has used his experience in the tech and banking industries to enhance and modernize taxpayer systems and successfully manage the City's portfolio through a major recession. Treasurer Cisneros believes that his role of safeguarding the City's money extends to all San Francisco residents, and continues to expand his role as a financial educator and advocate for low-income San Franciscans through award-winning initiatives like the Financial Justice Project, Kindergarten to College, and Bank On San Francisco. Cisneros is co-chair of the Cities for Financial Empowerment Coalition and previously served as Vice Chair on the President's Advisory Council on Financial Capability for Young Americans.

Shelley Curran, Director of Criminal Justice Services, Judicial Council of California

In her capacity as the director of Criminal Justice Services, Shelley Curran leads a team of attorneys, researchers, and analysts to implement the Judicial Council's priorities related to criminal law and procedure including the implementation of criminal justice realignment, the imposition of criminal and traffic fines and fees, Propositions 36 and 47, adult collaborative courts, the Recidivism Reduction Fund Court Grant Program, evidence based practices, and community supervision. Prior to joining the Judicial Council in 2009, Ms. Curran served as Principal Consultant to the President pro Tempore of the California State Senate on budget and legislative matters related to adult and juvenile criminal justice, civil rights, and the judiciary. She also spent seven years as a Policy Analyst with the Consumers Union where she advocated on behalf of low-income Californians on matters related to credit and finance. Ms. Curran has a B.A. from Indiana University, Bloomington and a M.A. in policy analysis from the University of Wisconsin, Madison.

Brandon Greene, Staff Attorney / Clinical Supervisor, Clean Slate Practice, East Bay Community Law Center

Brandon Green is the Clinical Supervisor in the Clean Slate Practice, where he focuses on the decriminalization of poverty. Brandon is a graduate of Boston University Law School where he was a Public Interest Scholar and Martin Luther King Social Justice Fellow. Brandon was recently a Law for Black Lives Legal Innovation Fellow focusing on deepening movement lawyering within his practice. Brandon has worked on education and civil rights issues while serving as a fellow with Education Pioneers, Education Chair for the Boston NAACP, and as the Northeastern Regional Attorney General with the National Black Law Students Association. Brandon also served as legal fellow with Public Advocates in San Francisco and as a Deputy Public Defender in Contra Costa County.

Luke Koushmaro, Fiscal and Policy Analyst, Legislative Analyst's Office

Luke Koushmaro is the Fiscal and Policy Analyst for correctional healthcare, rehabilitation, community corrections, and juvenile justice for the non-partisan Legislative Analyst's Office (LAO). In his role, he provides the California Legislature with objective analysis and recommendations regarding the state's budget and policies in these areas. Prior to the LAO, he worked for the Rhode Island Office of Management and Budget where he developed and monitored performance measures and assisted agencies in achieving the goals of the administration. Mr. Koushmaro holds a Master's degree in economics from San Diego State University and a Bachelor's degree in economics from San Francisco State University.

Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office

Anita Lee is the Principal Fiscal and Policy Analyst for judicial branch, Department of Justice, victims, and gambling issues for the non-partisan Legislative Analyst's Office (LAO). In her role, she provides the California Legislature with objective analysis and recommendations regarding the state's budget and policies in these areas. Prior to the LAO, she worked extensively on structural governance reform with a wide range of nonprofit, research, advocacy, and government entities. Ms. Lee holds a Master's degree from the University of Chicago's Harris School of Public Policy and a Bachelor's degree in political science and a minor in public policy from the University of California Berkeley.

Anthony Robles, Youth Organizer, Youth Justice Coalition

Anthony Robles is a youth organizer with the Youth Justice Coalition in Los Angeles. Anthony works to end mass incarceration, the school-to-jail track, police violence, and deportations. His passion for the work comes from his own experiences of being separated from his father through deportation, being pushed out of school, and eventually incarcerated. In 2018 young people from the Youth Justice Coalition, including Anthony, successfully advocated in the Capitol for SB 1391, SB 1421, SB 439, SB 1437, AB 2298, and AB 1637. In October 2018 these same young people led a county motion to erase \$90 million in juvenile injustice debt for 54,000 families in LA County.

Brendon Woods, Public Defender, Alameda County

Brendon Woods, appointed in December 2012, is the first African American Public Defender in Alameda County's history. Woods has 20 years of experience in criminal defense litigation and leads 170 staff in providing superior legal defense in more than 3,300 new files monthly. Woods is committed to providing holistic representation and is a nationally recognized leader in public defense. He is a Board Member and former President of the California Public Defenders Association and was honored with the Harvard Law School Wasserstein Public Interest Fellowship for outstanding public service. From a young age, Brendon Woods had formative experiences with law enforcement – ultimately steering his life and career toward public defense. He feels fortunate to fight for those battling systems of oppression and strives to reshape the discourse and nature of public defense and criminal justice as a whole.

LAO REPORT

February 27, 2017

Overview of Criminal Fine and Fee System

L E G I S L A T I V E A N A L Y S T ' S O F F I C E

Presented to:

Assembly Budget Subcommittee No. 5 on Public Safety

Hon. Shirley N. Weber, Chair





How Are Criminal Fines and Fees Assessed?

- ***Criminal Fines and Fees Assessed for Criminal Offenses.*** During court proceedings, trial courts typically levy fines and fees upon individuals convicted of criminal offenses (including traffic violations).
- ***Total Amount Owed Consists of Various Fines and Fees.*** The total amount owed by an individual begins with a base fine that is set in state law for each criminal offense. State law then requires the courts to add certain charges to the base fine. On a limited basis, state law authorizes counties and courts to levy additional charges depending on the specific violations and other factors. Statute also gives judges some discretion to reduce the total amount owed by waiving or reducing certain charges.



How Are Criminal Fines and Fees Assessed?

(Continued)

Various Fines and Fees Substantially Add to Base Fines			
As of January 1, 2017			
	How Charge is Calculated	Stop Sign Violation (Infraction)	DUI of Alcohol/Drugs (Misdemeanor)
Standard Fines and Fees			
Base Fine	Depends on violation	\$35	\$390
State Penalty Assessment	\$10 for every \$10 of a base fine ^a	40	390
County Penalty Assessment	\$7 for every \$10 of a base fine ^a	28	273
Court Construction Penalty Assessment	\$5 for every \$10 of a base fine ^a	20	195
Proposition 69 DNA Penalty Assessment	\$1 for every \$10 of a base fine ^a	4	39
DNA Identification Fund Penalty Assessment	\$4 for every \$10 of a base fine ^a	16	156
EMS Penalty Assessment	\$2 for every \$10 of a base fine ^a	8	78
EMAT Penalty Assessment	\$4 per conviction	4	4
State Surcharge	20% of base fine	7	78
Court Operations Assessment	\$40 per conviction	40	40
Conviction Assessment Fee	\$35 per infraction conviction and \$30 per felony or misdemeanor conviction	35	30
Night Court Fee	\$1 per fine and fee imposed	1	1
Restitution Fine	\$150 minimum per misdemeanor conviction and \$300 minimum per felony conviction	—	150
Subtotals		(\$238)	(\$1,824)
Examples of Additional Fines and Fees That Could Apply			
DUI Lab Test Penalty Assessment	Actual costs up to \$50 for spe- cific violations	—	\$50
Alcohol Education Penalty Assessment	Up to \$50	—	50
County Alcohol and Drug Program Penalty Assessment	Up to \$100	—	100
Subtotals		(—)	(\$200)
Totals		\$238	\$2,024

^a The base fine is rounded up to the nearest \$10 to calculate these additional charges. For example, the \$35 base fine for a failure to stop would be rounded up to \$40.
DUI = Driving Under Influence; EMS = Emergency Medical Services; and EMAT = Emergency Medical Air Transportation.



How Have Fine and Fee Levels Changed Over Time?

Total Fine and Fee Level for Stop Sign Violation Has Increased Significantly Since 2005^a

	Stop Sign Violation (Infraction)		
	2005	2017	Change
Base Fine	\$35	\$35	
State Penalty Assessment	40	40	—
County Penalty Assessment	28	28	—
Court Construction Penalty Assessment	20	20	—
Proposition 69 DNA Penalty Assessment	4	4	—
DNA Identification Fund Penalty Assessment	—	16	\$16
EMS Penalty Assessment	—	8	8
EMAT Penalty Assessment	—	4	4
State Surcharge	7	7	—
Court Operations Fee	20	40	20
Conviction Assessment Fee	—	35	35
Night Court Fee	1	1	—
Totals	\$155	\$238	\$83

^a Depending on the specific violation and other factors, additional county or state assessments may apply.
EMS = Emergency Medical Services and EMAT = Emergency Medical Air Transportation

- **Total Fine and Fee Levels Increased Significantly in Recent Years.** Over the past decade, the number and size of charges added to the base fine have increased significantly—resulting in increases in the total amount owed by individuals convicted of criminal offenses. As shown in the above figure, the total penalty for a stop sign violation has increased by 54 percent since 2005.
- **Fine and Fee Levels Set to Serve Multiple Purposes.** The state has enacted various fines and fees for various purposes. Some (such as the base fine) are generally tied to the seriousness of the crime. Others (such as the DNA assessments) were enacted to generate revenue to fund specific activities. Finally, some fines and fees were enacted to help offset state or local costs for providing particular services to individuals paying the specific charge.



How Is Fine and Fee Revenue Distributed?



Numerous Funds Eligible to Receive Fine and Fee Revenue.

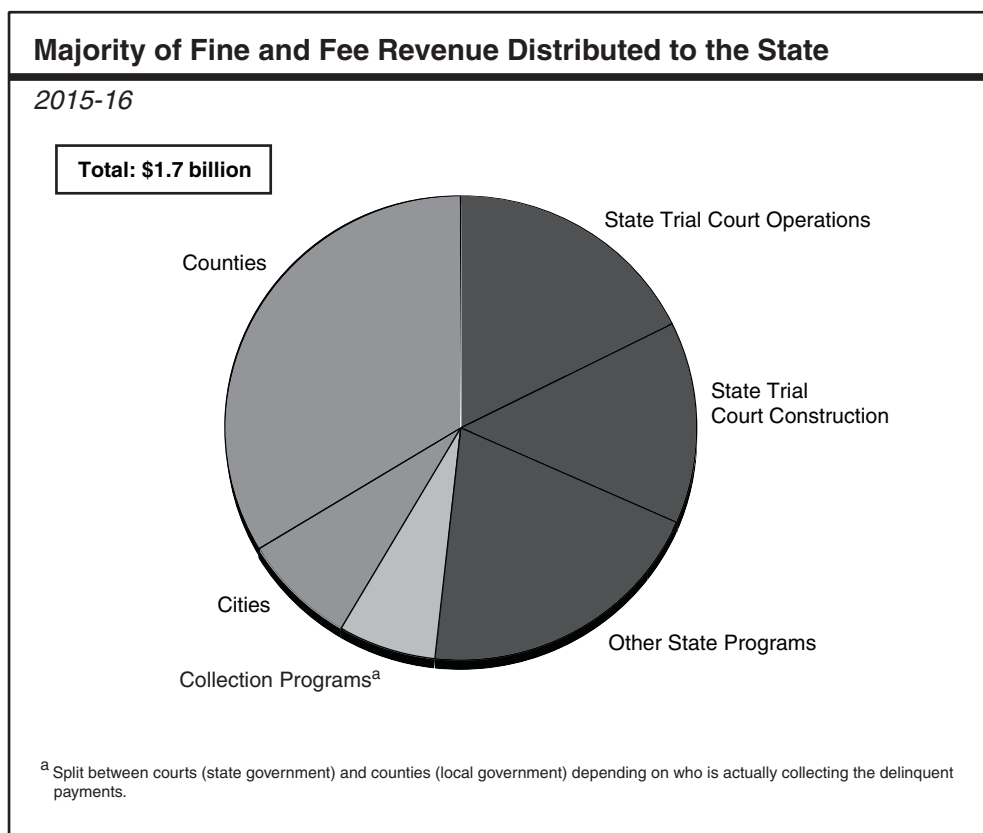
Over 50 state funds—in addition to many local funds throughout the state—are eligible to receive fine and fee revenue. However, some of these funds receive very little revenue, such as those that only receive revenue from fines and fees for specific offenses that occur infrequently.



Complex Process for Distributing Fine and Fee Revenue.

State law (and county resolutions for certain local charges) dictate a very complex process for the distribution of fine and fee revenue. State law currently contains at least 215 distinct code sections specifying how individual fines and fees are to be distributed to state and local funds, including additional requirements for when payments are not made in full. In order to comply with these requirements, collection programs must carefully track, distribute, and record the revenue they collect.

Who Benefits From Fine and Fee Revenue?



- **State Receives Majority of Revenue.** According to available data compiled by the State Controller's Office (SCO) and the judicial branch, we estimate that a total of \$1.7 billion in fine and fee revenue was distributed to state and local governments in 2015-16. As shown in the figure, the state received \$881 million (or roughly half) of this revenue. Of this amount, roughly 60 percent went to support trial court operations and construction.
- **Local Governments Receive Most of Remaining Revenue.** We estimate that local governments received \$707 million (or 42 percent) of the total amount distributed in 2015-16. Of this amount, about 80 percent went to the counties.



Who Benefits From Fine and Fee Revenue? (Continued)

- ***Collection Programs Receive Share of Revenue.***
Collection programs received \$114 million (or 7 percent) of the total amount distributed in 2015-16 for their operational costs related to the collection of delinquent payments. These funds are split between state trial courts and counties depending on which entity incurred the costs.



Key Problems With California's Fine and Fee System

- ☒ ***Difficult for Legislature to Control Use of Fine and Fee Revenue.*** The statutory formulas that dictate how monies are distributed to funds ensure certain programs receive funding annually, which often makes it difficult for the Legislature to control use of fine and fee revenue. This is because the statutory formulas result in the following effects: (1) limited information to guide legislative decisions, (2) difficulty for the Legislature to reprioritize the use of revenue, and (3) administering entities maintaining significant control over the use of funds.
- ☒ ***Revenue Distributions Generally Not Based on Need.*** By locking in formulas in statute, the existing system preserves levels of funding deemed appropriate when the formulas were established. This can result in programs receiving more or less funding than needed to provide legislatively desired service levels.
- ☒ ***Difficult to Distribute Revenue Accurately.*** The numerous statutory distribution requirements can make it difficult for courts and counties to track and distribute revenue accurately and audits have frequently found distribution errors.
- ☒ ***Lack of Complete and Accurate Data on Collections and Distributions.*** Although the SCO and judicial branch both collect information on the collection and distribution of fines and fees, each omit pieces of data (generally because the data is not required to be collected). It also appears that there are inconsistencies between similar pieces of data they report as well as in how collection programs report data. Without complete, consistent, and accurate data, it is difficult for the Legislature to conduct fiscal oversight to ensure that funds are being allocated and used in accordance with its priorities and state law.



Recommend Reevaluating Structure of Criminal Fine and Fee System

- ☒ ***What Should Be the Goals of the Criminal Fine and Fee System?*** A fine and fee system can service various purposes, such as deterring behavior or mitigating the negative effects of crime. Ultimately, the Legislature should set fines and fees to reflect these goals.
- ☒ ***Should Ability to Pay Be Incorporated?*** To the extent the Legislature is interested in incorporating ability to pay into the criminal fine and fee system, there are various ways to do so. One way is to calculate fines and fees based on an individual's ability to pay. Another option is to levy the same level of fines and fees on all offenders who commit the same violation, but implement alternative methods for addressing the debt (such as through community service).
- ☒ ***What Should Be the Consequences for Failing to Pay?*** The Legislature will want to consider what consequences individuals should face when they fail to pay their fines and fees and whether to authorize additional sanctions and/or modify existing sanctions (such as holds on drivers' licenses). The Legislature could also take action to help prevent individuals from becoming delinquent—such as by authorizing programs to offer a discount if offenders pay their debt in full.
- ☒ ***Should Fines and Fees Be Adjusted?*** Once the Legislature sets the appropriate fine level for criminal offenses, the Legislature will want to decide whether and how such fines are adjusted in the future. For example, the levels could be regularly reevaluated or automatically adjusted (such as by using a statewide economic indicator).



Recommend Increasing Legislative Control of Criminal Fine and Fee Expenditures

- ☒ ***Deposit Most Criminal Fine and Fee Revenue in the General Fund.*** We recommend requiring that nearly all fine and fee revenue be deposited into the state General Fund for subsequent appropriation by the Legislature. This would increase legislative oversight and ensure that funding is provided based on program workload and legislative priorities. Additionally, programs supported by such revenue would no longer be disproportionately impacted by fluctuations in fine and fee revenue.
- ☒ ***Consolidate Most Fines and Fees.*** We recommend consolidating most fines and fees into a single, statewide charge and eliminate the ability of trial courts and local governments to add charges. Such a consolidation would eliminate the need for the existing complex distribution model and make it easier for collection programs to track such revenue.
- ☒ ***Evaluate Existing Programs Supported by Criminal Fine and Fee Revenues.*** If the Legislature deposits most revenue into the General Fund as we recommend, it would need to determine the appropriate level of funding (if any) for the various programs currently supported by fine and fee revenue. Accordingly, the Legislature would want to review each program to determine whether the program is a statewide priority as well as to define its expectations on program service levels and the level of funding needed to meet those expectations.
- ☒ ***Mitigate Impacts on Local Governments.*** We recommend mitigating the fiscal impact any restructuring of fines and fees would have on local governments.

ENDING THE DEBT TRAP: STRATEGIES TO
STOP THE ABUSE OF COURT-IMPOSED
FINES AND FEES

Ending the Debt Trap: Strategies to Stop the Abuse of Court-Imposed Fines and Fees

Alexandra Bastien
March 2017



PolicyLink is a national research and action institute advancing economic and social equity by **Lifting Up What Works®**.

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Introduction

In 2014, Michael Brown, an unarmed African American teenager, was shot and killed by a police officer in Ferguson, Missouri. The U.S. Department of Justice's investigation of the incident awakened the nation to the long-standing practice of local courts and police departments criminalizing the activities of low-income people and people of color in order to generate revenue. Ferguson police routinely and disproportionately charged African Americans fines and fees for parking violations, traffic violations, housing code infractions, and more. These charges did not promote public safety—the local justice system instead employed this tactic to fund its activities by using residents as a cash source. If the fines and fees charged to residents were not paid, the threat of jail loomed over them.

The inequitable treatment of low-income residents and people of color was happening not only in Ferguson, but also around the nation—and it continues in many places today. For several years, researchers have looked at the role of the justice system in placing low-income people and people of color into serious financial disrepair. While “debtors’ prisons” are technically outlawed, courts and police departments have used loopholes in laws to place people in jail for the nonpayment of fines and fees. More than \$50 billion in debt from fines and fees is currently being held by approximately 10 million people because of their involvement in the criminal justice system.¹ Much of this debt is not collected because low-income people simply do not have the money to pay it; this, in turn, causes state governments to spend more on the expense of trying to collect on fines and fees than what they actually take in. The practice targets the most vulnerable communities, such as low-income people and children who are unwittingly pulled into various court systems through unlawful and biased policing tactics. Wide swaths of low-income communities’ resources are being stripped away due to their inability to overcome the daunting financial burdens placed on them by state and local governments.

The expanded use of fines and fees has not occurred in a vacuum. Over the last several decades, as the prison population has increased, state budgets have been starkly reduced. In response, many states and municipalities resorted to charging “user fees”—fees for room and board, court time, public defense, etc.—as a strategy to address budget gaps. Since 2010, 48 states have increased civil and/or criminal fees assessed on defendants. The growth of these user fees is linked to an inequitable and regressive tax code that often requires little in local and state taxes from businesses and the wealthy.

The assessment of fines, fees, and additional charges distinctly promotes financial insecurity of low-income households. These fees play an integral role in wealth and income inequality, and contribute to the growing racial wealth gap in our country where Black and Latino households, on average, own less than $\frac{1}{13}$ and $\frac{1}{10}$, respectively, of the average wealth of White households.² Nationally, 44 percent of households are asset poor. One-third of Americans have no savings at all.⁴ Too many people are stuck—first they must try to dig themselves out of a financial hole or sometimes multiple holes before reaching stability when they can then begin to save for an emergency. Pervasive financial insecurity among American households threatens the future of our families, communities, and the nation’s economic prosperity.

Researchers around the country have shown that fees can be limited and debt collection practices can be managed in a way that does not prey on low-income communities. Policymakers can limit the use of fines and fees that directly contribute to burdensome debt, can create barriers to housing and employment, and result in imprisonment and recidivism. Organizers can put pressure on the justice system to ensure that governments are not taking advantage of low-income people and perpetuating household financial insecurity. This brief looks at the ways in which the use of fines and fees has expanded over time, the impact of these practices on low-income people and juveniles, and the inefficiency of these policies as a budget tool for local governments. The brief also includes a set of promising practices and recommendations to help institutionalize reforms within local and state governments and courts.

The Criminalization of Poverty

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Fines are, technically, punishment. In other words, you trespass, therefore, you are fined \$100. The fees are the way that the criminal system maintains itself... Those fees are really taxes. They're not about whether anybody did anything wrong. They're opportunistic in the sense that they're sweeping up hundreds of thousands of people into this criminal justice net. It's expensive to run the criminal justice system, and now we're going to use its subjects—arguably, the population that is least able to afford paying for these processes—to fund the machinery. I would locate fines and fees as part of that sort of vicious cycle, a regressive burden imposed on individuals who come into contact with the criminal system.

Professor Alexandra Natapoff,
Loyola Law School, Los Angeles

Despite a U.S. Supreme Court ruling in 1983 that prohibited the practice of imprisonment for nonpayment of court fines and/or fees, this practice is still all too common due to loopholes in the law.⁵ These loopholes allow courts to incarcerate defendants by holding them in contempt of court if they do not have the cash on hand to immediately pay a fine. Three years after this ruling, the Conference of State Court Administrators issued guidelines that set definitions for fines and fees and standards for the appropriate times to use them. According to the guidelines, fees and miscellaneous charges should be waived for low-income defendants, and fees and miscellaneous charges should not be an alternate form of taxation.⁶

As the costs of a growing incarcerated population put pressure on states and municipalities to raise revenue, the option of increasing fines, fees, and bail became more attractive.⁷ The law requires that judges consider a defendant's ability to pay before determining that his or her nonpayment of a fine or fee is willful. However, these hearings are often not held and, when they are, there is no consistent standard of how the defendant's actual ability to pay is evaluated.⁸ Some judges may ask a defendant if he or she smokes. If the answer is yes, they are considered able to pay because they have purchased cigarettes.⁹ Other examples include similar questions to defendants with tattoos¹⁰ or a manicure.¹¹ When a defendant has an administrative hearing related to a traffic ticket, a misdemeanor possession of marijuana charge, or outstanding debts from time he or she spent in jail, the judge may ask one

question: “Are you able to pay today?”¹² For many low-income people, the answer is no. Often for these types of hearings, the defendant does not have a public defender who would request that the judge take into consideration the defendant's ability to pay, or who would ask about other options in lieu of fees. Instead, the defendant, unable to pay the fine on the spot, may be placed on supervision, on probation, or in jail.¹³ All of these punishments come with yet more fees attached.¹⁴

In almost every state, defendants are charged fees, including room and board, during the time they spend in jail or prison (referred to as “pay-to-stay” fees). These fees can accumulate daily while a defendant waits for weeks¹⁵ or, in larger cities like Chicago, months before their arraignment or trial.¹⁶ One study reported that 80 to 90 percent of the people who are charged these pay-to-stay fees are eligible for the free services of a public defender—meaning that these fees are almost solely charged to indigent people.¹⁷ Moderate-income defendants can also be charged for the services of a public defender and for supervision after release.¹⁸ Even when a person is found not guilty, or if charges are dropped, he or she may still be liable for the fees incurred during the stay and for the cost of a public defender.

A Disproportionate Impact on Low-Income People and People of Color

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One of our plaintiffs in Bogalusa had been charged with stealing \$5 worth of ground beef to feed his family, and he couldn't pay the fine. When he came back to court, the judge put him in jail because he could not pay a \$50 extension fee that the judge required people to pay who needed additional time to pay. One of the most immediate effects [of these fines] is that our clients are being jailed because of their poverty and because they can't pay... They are also facing a choice of paying their rent, or paying for food or other necessities, or paying these fines. Some people we've met have had to take out payday loans in order to pay off the fines.

Micah West,
Southern Poverty Law Center,
Montgomery, Alabama

Accumulated debt follows low-income people and often leads to discrimination in securing housing and obtaining jobs, because many landlords and employers perform credit checks on candidates. Even in cities and states that have adopted ban-the-box policies that forbid employers from asking a person about their criminal history until a designated time after initial screening, credit checks still show outstanding debt that is related to a criminal charge, providing a loophole to housing and employment anti-discrimination laws.¹⁹ Additionally, when a person with unpaid debt does find employment, their wages and taxes can be subject to garnishment. Although statutes of limitations are typically in place for garnishment, these limits do not apply to criminal debt.²⁰ In addition to garnishing wages, unpaid fines and fees can be prohibitive for low-income people seeking other public supports that might help them achieve a certain level of economic stability. For example, in California a person cannot qualify for an amnesty program that was designed to provide low-income people with some relief from the ballooning costs of a traffic ticket if he or she owes an outstanding victim restitution payment. Often, when driver's licenses are suspended, a person's ability to work and earn income is then limited. This creates a cycle of instability that does not serve the original purpose of the fine.

Criminal debt cannot be discharged under bankruptcy protections, and there is no statute of limitation on collections.²¹ Therefore, collections actions against a defendant can remain active indefinitely. For formerly incarcerated low-income people, unpaid fees can be considered a parole violation, making them ineligible for public benefits, including food and housing assistance, and can lead to being charged for new offenses based on this debt.²²

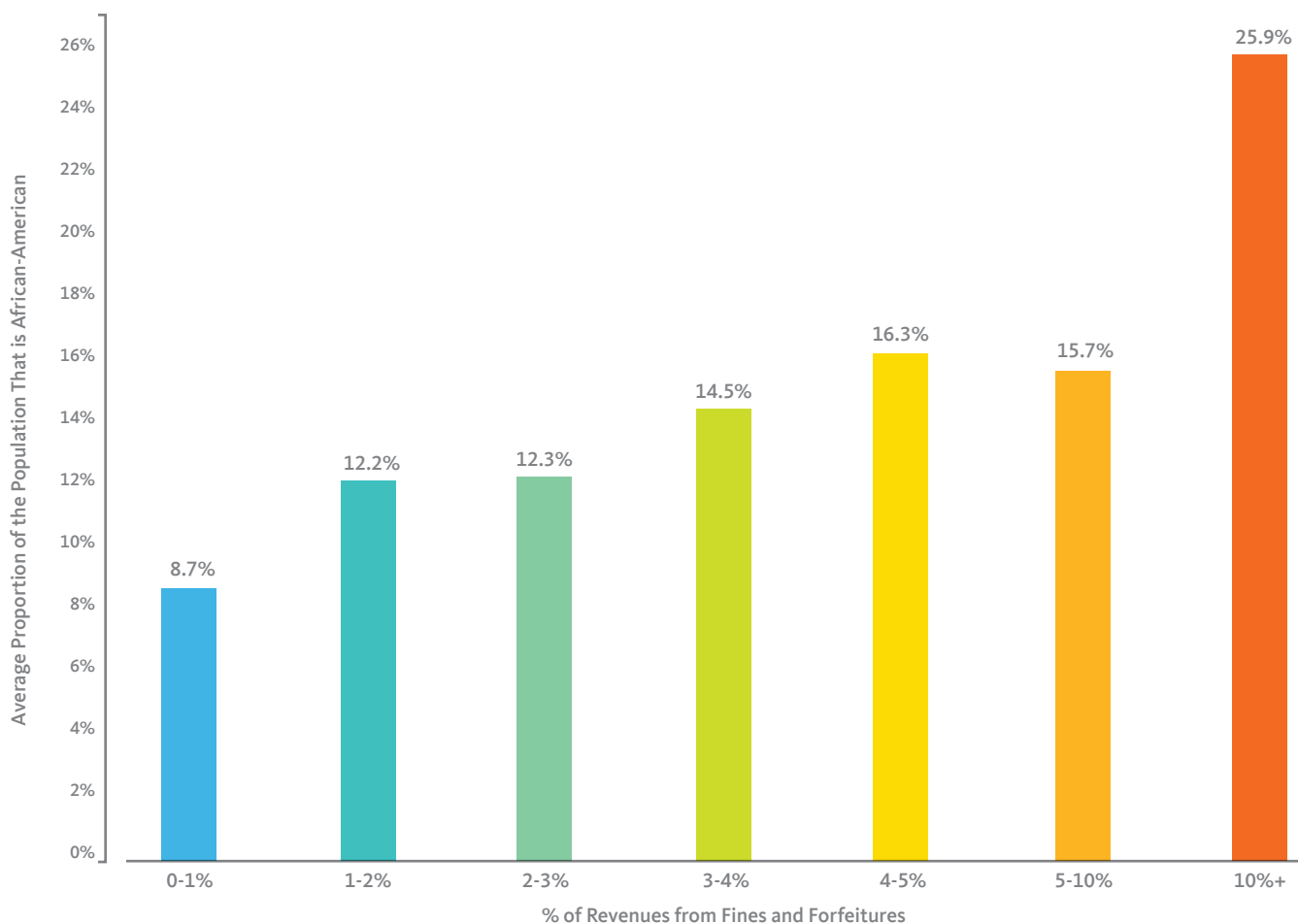
Decriminalization efforts for a range of offenses have helped reduce some inequities in the criminal justice system, and have been a positive policy change in many regards. However, efforts to decriminalize some misdemeanors into “fine-only offenses” have, ironically, fed the practice of issuing fines and fees. In 1971, the Supreme Court ruled that jail time is not an appropriate punishment for a fine-only misdemeanor.²³ However, it is permissible to incarcerate someone for a fine-only offense if the defendant is held in contempt of court, even if that defendant is indigent.²⁴ A person charged with a fine-only misdemeanor has no right to a public defender,²⁵ yet many states and localities still put the onus on defendants to inquire about community service or payment plans.²⁶

Fines and fees do not only impact the formerly incarcerated. Often, the burden also falls on their siblings, parents, spouses or partners, and children. According to one study, the average, post-incarceration debt amounts to more than \$13,000, and eats up around 60 percent of a formerly incarcerated person's income. Researchers found that more than 60 percent of formerly incarcerated individuals relied on family members to help them make payments, with more than 20 percent taking out loans to cover the cost. Nearly 10 percent of survey respondents indicated that family members' wages or tax refunds were garnished to make payments. For people of color, the consequences are even more acute.²⁷

In a 2016 Priceonomics analysis, author Dan Kopf noted that “The use of fines as a source of revenue is not a socioeconomic problem, but a racial one.”²⁸ He found that cities with large African American populations relied more heavily on fines and fees than cities with smaller populations of color.²⁹ In Philadelphia, a 15-year study of the use of criminal justice fees found that fees were significantly more likely to be imposed on African Americans than on Whites.³⁰ People of color, particularly African American men, are more than twice as likely³¹ to be stopped and cited for infractions like marijuana possession or moving violations,³² yet they have only about a third as

much available cash on average than White Americans across income levels,³³ which seriously limits their ability to pay fees without a payment plan or other accommodation. A recent study in New Orleans found that in 2015, Black residents were 1.5 times more likely to be jailed for nonpayment of fees than White residents. In the same study, it was noted that 84 percent of bond fees in New Orleans were paid by Black residents and 69 percent of conviction fines and fees came from Black residents. This was despite the fact that Black residents have a median income that is 57 percent lower than White residents.³⁴

Cities with High Proportions of African Americans Rely More Heavily on Revenues from Fines and Fees



Source: Adapted from “The Fining of Black America,” by Dan Kopf, Priceonomics, June 24, 2016.

Lower Economic Prospects for Youth

The justice system is also actively steering youth and their families into periods of financial hardship that can have lasting consequences. Over 20 states charge court-involved youth fees for investigations, monitoring, and the use of a public defender.³⁵ Twenty-nine states have laws on the books that require parents to pay at least part of the costs of juvenile detention.³⁶

Youth with records can carry over court-imposed debt from childhood into adulthood. A juvenile record is not automatically sealed or expunged upon release or upon the young person turning 18, which can limit his or her ability to get a job,³⁷ be accepted into college, and receive financial aid.³⁸ If the young person has outstanding debt when he or she turns 18, which many do, it is “converted into a civil judgment,”³⁹ which some studies show increases the risk of recidivism.⁴⁰ Juvenile court debt undermines family financial stability when it is needed most. It pushes families that are already struggling further into debt, which works against the stated goal of juvenile court, that of rehabilitation.

In some states, the debt incurred during juvenile detention is applied to parents, with the threat of wage and tax garnishment

if it goes unpaid.⁴¹ For example, a mother in Michigan was jailed for her failure to pay her child’s court fees. Unable to pay the \$104 monthly fee for her son’s detention, she herself was jailed and charged a total of \$144 for her booking and drug test.⁴² For youth with minor charges, like traffic tickets or shoplifting, the possibility of incarceration for nonpayment also exists in some states.⁴³ In Washington State, when children on probation turn 18 their cases are transferred to adult court, leading to their ineligibility for public benefits and limiting their access to housing and employment.⁴⁴

Finally, the racial disparities previously discussed continue to carry through into the juvenile system. Children of color are more likely than White children to be profiled and targeted by police,⁴⁵ and are more likely to incur court debt because they are pushed deeper into the system. The further interactions with the system, in terms of length of stay, amount of time on probation, and supervision, all incur additional fees throughout the process. A 2015 study of Alameda County in California found disparities in juvenile administrative fees. African American youth were charged almost twice the amount of White youth due to the fact that they were held for longer periods of time.⁴⁶ The practice of criminalizing children of color puts them at an even greater financial disadvantage than their White peers before they have turned 18.⁴⁷

Youth of Color Incur Higher Fees On Average in Alameda County, CA, 2015

	Total Fines	Juvenile Hall	Electronic Monitoring	Drug Testing	Probation Supervision
Black	\$3,295	25 days	34 days	11 times	22 days
Latino	\$2,534	24 days	33 days	7 times	14 days
Asian	\$2,269	7 days	56 days	6 times	12 days
White	\$1,665	11 days	21 days	5 times	10 days

Source: Adapted from *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California*, authored by Alexander Kaplan, et al. and published by Berkeley Law, University of California, Policy Advocacy Clinic, March 2016.

Ineffective Revenue Strategy

“”

The vast majority of these cases are not there for any legitimate [reason] or let alone any rigorous public safety concern. They're there because so many people have come to depend on the everyday metastasizing of this bureaucracy for their own livelihoods and to make a profit, and that's got to change.

Alec Karakatsanis,
Equal Justice Under Law,
Washington, DC

At first glance, it may seem practical for cash-strapped governments to turn to fines and fees to augment their budgets. However, a deeper analysis of the practice has shown that, in many cases, using fines and fees actually costs the government more money than it receives. Increased government expenditures often arise because of the administration and processing of fee assessments, additional courtroom time, increased jail populations, and costly collection efforts.⁴⁸ In some states, legislatures have responded to municipal courts raising their own revenue by further cutting their budgets, which in turn increases the pressure on courts to raise more money from defendants.⁴⁹

In Florida, the state began raising revenue through fines and fees, but estimates show that the state recouped only about 20 percent of its debt from those charged.⁵⁰ In Riverside County, California, raising court fees raised less than 1 percent of what it hoped to generate.⁵¹ Because low-income people who are unable to pay these debts are often imprisoned as punishment, municipalities are effectively *increasing* the budgetary costs to the criminal justice system. A 2008 study in Rhode Island found that almost 20 percent of their incarcerated population was in jail because of unpaid debt; 13 percent of those incarcerations cost the state more than the amount owed by the defendant.⁵²

Ultimately, the use of fines and fees leads to a cyclical path of financial crisis for not just defendants and their families, but for local governments as well. As governments become dependent on such revenues, they prioritize extracting financial resources from their residents, even to the point of employing tactics of coercion such as demanding immediate payment from a person with the threat of being sent to jail. This can put pressure on other social institutions when families cannot fill in gaps. For example, when households are faced with the choice to pay a court fine or the loss of wages to garnishment, it can lead to unpaid utility payments. This was found to be the case in a study of Black neighborhoods in St. Louis, Missouri.⁵³

Promising Practices

In light of the damaging and inefficient court practices described above, several local and state governments have enacted reforms that can help reduce the over-reliance on revenue from fines and fees assessed on low-income populations. With data and tools becoming more widely available, government institutions are developing policy solutions for cities, counties, and state governments to build upon. The goal of these actions is to help governments provide remedies for the decades of damage that these long-standing practices have levied on low-income communities and communities of color across the nation.

State Reforms

States have the most authority over court practices and setting overall policy related to allowable revenue strategies in localities. The following list highlights states that have stepped up to the challenge of ensuring more equitable treatment of its citizens in the justice system, and that have begun work to ensure courts are not engaging in predatory financial practices.

Require “Ability-to-Pay” Hearings for All Defendants

Some states now require “ability-to-pay” hearings to bring more uniformity and fairness to assessing whether a defendant is actually able to pay assessed fines and/or fees for minor offenses. These hearings should be used to help eliminate bias and varied approaches among judges and to standardize punishment within jurisdictions. Historically, judges have used varying criteria to determine a defendant’s ability to pay, and the criteria are often arbitrary and disproportionate to the offense. In response, [Colorado](#) began requiring ability-to-pay hearings with pre-established standards to determine indigence in 2014.⁵⁴ [Michigan](#) followed suit in 2016 and, after a report by the ACLU showed the abuse of fines and fees in [Ohio](#) municipal courts, the Ohio Supreme Court issued new rules for judges to conduct ability-to-pay hearings before jailing a defendant for nonpayment of judicial fines or fees.⁵⁵ In a case not addressing fines and fees, the [Washington State](#) Supreme Court found that an ability-to-pay hearing must be held before a driver’s license can be suspended for nonpayment.⁵⁶

Set Guidelines for Determining “Ability-to-Pay”

Since 2014, judges in [Ohio](#) have been issued two-page “bench cards” that explain their obligations before jailing any defendant for nonpayment,⁵⁷ and includes citations to state statutes and court cases. The obligations include asking the defendant about his/her ability to pay, ensuring the defendant has the right to a public defender, and forbidding jail time if the person has already served six months in jail.⁵⁸ Bench cards are part of a broader effort to make the law unambiguous and uniformly applied.

Offer Flexible, Penalty-Free Payment Plans

[Iowa](#) passed legislation in 2016 that allowed an individual with overdue court debt to enter payment plans before his driver’s license was suspended for nonpayment. Previously, the license had to be suspended before a payment plan was an option. The law now allows a defendant to continue her participation in an installment plan even if she has missed a payment. Previously, once a payment was missed, the person would be required to pay the remaining balance in full or lose his license.

Enact Amnesty Periods

In 2011, [California](#) enacted a law that relieved a noncustodial parent of child-support obligations during the time the person was incarcerated. This prevented the accrual of additional penalties and fees when a person was unable to earn income, which often resulted in a large amount of debt and potential re-incarceration for nonpayment.⁵⁹ The law cited an Urban Institute study that found that the “median arrears [for incarcerated noncustodial parents] was \$14,564.”⁶⁰ In 2015, Governor Jerry Brown instituted an 18-month traffic ticket amnesty program that reduced fines by 80 percent for individuals with earnings below the federal poverty line, and by 50 percent for those with higher incomes.⁶¹

Cease Warrant Issuance for Unpaid Debt

The reforms to the fines and fees practices introduced by the Supreme Court of [Ohio](#) in 2015 included guidance that prohibits judges from issuing warrants for unpaid fine and fees.⁶² The reforms protect Ohio residents from the risk of incarceration for unpaid debt, and saved court resources and staff time by reducing costs and jail populations.

Divert Indigent Defendants into Alternative Programs

In 2015, following public scrutiny in [Georgia](#) for its heavy use of private probation companies and revenue generation from court fines and fees, the state legislature passed a law requiring that judges use “alternatives to fines for poor defendants.”⁶³ Alternatives include community service and/or fee waivers.⁶⁴ A [Washington State](#) law also allows juveniles to perform community service instead of paying cash restitution.⁶⁵ **[Author’s note: However, it is important to note that community service in lieu of nonpayment can also be a form of coerced labor that would disproportionately impact people of color. This practice raises several questions related to labor standards. Diversion programs should give thoughtful consideration to avoid exploitation or abuse.]**

Place Caps on Allowable Revenue from Fines and Fees

Following the U.S. Department of Justice report on unfair policing practices in Ferguson, Missouri, in 2015, the state of [Missouri](#) passed a law that limits a municipality’s ability to raise more than 12.5 percent of its annual revenue from traffic tickets.⁶⁶

Eliminate Debt for Juveniles

In 2015, [Washington State](#) limited municipalities’ ability to charge fees to juveniles. The statute eliminates nonrestitution fines and fees and “prohibits cities, towns, and counties from imposing financial obligations for juvenile offenses unless specifically authorized by statute.”⁶⁷

Eliminate Application Fees for Juvenile Record Sealing

In 2015, Governor Jerry Brown of [California](#) signed legislation eliminating the \$150 application fee for adults with juvenile records seeking to seal those records. In most counties, the fee was previously required with no guarantee that the application would be approved. For many applicants, the \$150 fee was prohibitively expensive, and erected future economic barriers to employment and housing.⁶⁸

County and City Reforms

Local governments also play a significant role in setting policy that determines how court fines and fees are assigned, to whom they are assigned, the actual dollar amounts assessed, and how they are collected. The following list highlights county and city governments that have worked to reduce the number of fines issued as well the actual costs for those fines.

Connect Indigent Defendants to Workforce Development Programs

A 2008 pilot program in [Suffolk County, Massachusetts](#), reduced court debt for indigent defendants who completed job training, mental health, and/or addiction programs, where applicable. Those who successfully completed the program had a markedly lower recidivism rate than the general population of recently incarcerated individuals (19 percent vs. 50 percent, respectively).⁶⁹

Prohibit Warrants and Jail Time for Unpaid Fees

[Leon County, Florida](#), closed its collections court in 2010 and terminated approximately 8,000 outstanding arrest warrants for nonpayment.⁷⁰ A lawsuit filed by the American Civil Liberties Union (ACLU) spurred [Benton County, Washington](#), to make a series of changes in its handling of outstanding fines and fees. Starting in 2016, the county no longer issues warrants for individuals with unpaid court debt.⁷¹ Similar to Benton County, a settlement between [Colorado Springs, Colorado](#), and the ACLU ensured that the city would no longer jail individuals for nonpayment of court debt, and that it would provide payment to people who had previously been jailed under the practice.⁷² In response to the protests that followed the police shooting of Michael Brown, the [St. Louis](#) Municipal Court canceled more than 200,000 warrants for outstanding debt.⁷³

Enact Amnesty Periods

[Atlanta, Georgia](#), offers a six-week amnesty period to have warrants issued the previous year canceled and fees waived,⁷⁴ while nearby [Montgomery, Alabama](#), offers two days per year when a person with an outstanding warrant for failure to appear or pay may have the warrant removed and a new court date issued.⁷⁵

Provide Relief for Indigent Defendants

In settling a lawsuit in which a woman was arrested for unpaid traffic tickets, [Montgomery, Alabama](#), agreed to a “presumption of indigence” for defendants whose income is at or below 125 percent of the federal poverty level. This policy was designed to make clear that unpaid debt from impoverished individuals is not the same as “willful” nonpayment worthy of punishment.⁷⁶

Provide Free Public Defender Services for Debt Hearings

[Montgomery, Alabama](#), now provides public defenders in administrative hearings on outstanding debt.⁷⁷ Previously, this right did not apply because debt assessment hearings are civil rather than criminal. [Biloxi, Mississippi](#), also agreed to hire a public defender to exclusively represent indigent defendants in administrative debt hearings.⁷⁸

Eliminate Private Collection Services for Court Debt

[Biloxi, Mississippi](#), now prohibits the use of private companies to collect outstanding fees.⁷⁹

Offer Accessible Payment Plan Options

In 2007, [San Antonio, Texas](#), responded to jail overcrowding by prohibiting the incarceration of people for nonpayment of minor traffic offenses. The policy also included programs that allowed people to negotiate customized and flexible payment plans with judges outside of the courtroom. The city established kiosks in local grocery stores to allow people with court debt to meet directly with judges, without fear of arrest, to explain their financial situation and work out individualized payment plans.⁸⁰

Eliminate Juvenile Fees

In early 2016, the county board of supervisors of [Alameda County, California](#), unanimously agreed to impose an immediate moratorium on all fees charged to parents and guardians with children in the juvenile justice system. This followed released data showing that the costs of collecting court-imposed debt was actually higher than the revenue that was generated by the program.⁸¹ Similar action took place in neighboring [Contra Costa County](#) in 2016.⁸²

Eliminate Application Fees for Juvenile Record Sealing

Prior to the statewide legislation in California that was mentioned in the prior section, [Contra Costa County](#) had already taken action in 2014 and announced it was eliminating its application fee for adults with juvenile records seeking to seal those records. The fee was previously required with no guarantee that the application would be approved.⁸³

Eliminate Bail for Minor Crimes

In 2017, the [New Orleans](#) City Council voted unanimously to allow indigent defendants charged with minor offenses to be released without bail in its municipal court system. This vote will reduce the more than 2,600 people annually who awaited trial in jail simply because they could not afford bail.⁸⁴

Additional Reforms Needed

While this list of promising practices is not exhaustive, it highlights those that promote the greatest financial relief for low-income people and people of color. However, there is still much work to be done. While 48 states have been the subject of a study related to their fines and fees practices, only 25 have adjusted their policies to improve their practices—14 of which were connected to recent litigation. Only seven states currently have standards set for ability to pay.⁸⁵

What You Can Do



As we work to help low-income communities of color build assets, we need to recognize that our justice systems have put many so deep in a hole that there is no stable foundation upon which to build. We need to fill the massive holes created by unjustifiable fees and fines, and end decades-long policies that criminalized poverty and racialized crime.

Tirien Steinbach,
UC Berkeley School of Law,
Director, East Bay Community Law Center

Significant strides have been made across the nation toward the reduction and outright elimination of onerous and counterproductive fines and fees placed on vulnerable populations. With heightened awareness of the compounding economic, budgetary, and social impacts of these practices, it is now an imperative for all governments to address the problem. Once officials understand the full scope and impact of fines and fees within their jurisdictions, they should then seek to undo the harm that has already been inflicted on low-income communities, and ensure proper remedies for populations already affected. Key lessons for policy solutions can help to improve equity within the justice systems of states and localities by considering the following reforms and actions.

Define the Scope of the Problem

1. Examine the historic and current costs and revenue generated from court-imposed fines/fees against low-income defendants for civil and misdemeanor offenses.

This can be achieved by requiring an annual audit of court fines and fees, and making that data publicly available. Data can help researchers, advocates, and policymakers monitor and inform more efficient uses of revenue to accomplish desired policy goals, without relying on practices that are detrimental to low-income people and people of color. Public data is a strong tool to hold all parties accountable to the goals of safety and justice, as well as sound government budgetary strategies.

- 2. Place limitations on the ability of courts and police to use fines and fees to fill budget gaps.** Even during recession periods, states and localities should adopt measures to prohibit governments from seeking operational revenue through the justice system. This practice creates an inherent conflict of interest that undermines justice and safety goals.
- 3. Eliminate court access fees.** Many courts have begun requiring filing fees for those to simply enter the court room, before guilt or liability is determined, especially for traffic ticket disputes. This is especially burdensome on low-income people, particularly when these hearings often require multiple appearances and fees. When a defendant is responding to a warrant or trying to dispute a traffic ticket, access fees should be eliminated.
- 4. End driver's license suspensions for nonpayment.** The decision to suspend a driver's license should be directly correlated to a driver's potential hazard to road safety, not as a punitive measure for nonpayment. Prohibiting low-income workers or job-seekers' ability to drive a vehicle has widespread economic impacts that can limit their ability to obtain and maintain steady employment and to secure stable housing. Because many driver's license suspensions are due to nonpayment of traffic tickets and other court-ordered fines, it is counterproductive for governments to further restrict a person's means for earning income.

Ensure Fairness and Proportionality

- 5. Standardize court practices.** In determining a low-income defendant's ability to pay court-ordered fines and fees, a uniform standard should be applied to all defendants, particularly those within the same court jurisdiction. Statewide standards should be adopted and enforced at all levels of court systems within each state.
- 6. Eliminate financial burdens placed on young people and their family members.** By eliminating juvenile fines and fees altogether, governments can help improve overall economic conditions for youth, their families, and the local government itself by eliminating future costs associated with continued court involvement.
- 7. Guarantee adequate legal representation.** All low-income or indigent defendants whose cases involve monetary punishment and/or charges should have access to free legal representation. This can help to ensure that the defendant is informed of their rights and that the court is held accountable to the goal of administering justice that is proportionate to the offense.

8. Provide easily accessible and flexible payment plans, and eliminate intimidating collection practices. Both defendant and government interests are served when realistic and accessible payment plans are available to address the needs of low-income defendants. Governments can end senseless collection efforts that produce little revenue, and defendants will be better able to pay what is owed based on their financial conditions.

Restore Financial Security

9. Connect indigent families to financial empowerment programs. More than 17 cities and the state of Delaware have made investments in financial empowerment programs to help low-income people manage financial hardship and begin to save for their futures. The Consumer Financial Protection Bureau offers a wide range of financial education and management resources. Reentry programs are now offering financial coaching to citizens returning to the community after incarceration. Policymakers should require that indigent defendants charged with fines and fees have access to financial education or coaching. This not only serves the purpose of the original fine, but allows those who have been charged with the opportunity to get on stable financial footing with support.

10. Institute a remediation program for those who have been unjustly harmed by previous practices. Restitution is owed to the hundreds of thousands of Americans who have been unjustly assigned judicial fines and fees without any regard to their ability to pay, and/or were subjected to arbitrary treatment under the law. Many who have been incarcerated solely due to nonpayment would not have been imprisoned if they had the financial resources to pay fines and fees. States and municipalities should institute a remediation program to restore lost earnings from unjust incarcerations, and to eliminate any remaining debts for those who were unjustly denied fair treatment under debilitating judicial fines and fees practices.

Conclusion

Governments across the nation are finding themselves to be predatory financial actors in low-income communities and communities of color. They should properly assess how deep the economic impact has been, and address the harm that has been done to the communities they serve. State and local courts should revise their practices to reflect a new understanding of “equality and justice for all” by incorporating the tools and lessons that have emerged to stop the widespread practices that have led to the criminalization of poverty.

State governments should implement strong policies that remove local incentives to funnel low-income people through the justice system for the sake of revenue, and ensure that moving forward all people can fully participate and prosper in a fair and just society—one in which the judicial system does not penalize or criminalize poverty. The fight to achieve these changes does not rest solely on advocates focused on criminal justice reform. Economic security advocates, anti-poverty groups, and the asset-building field must join the call for an end to wealth stripping taking place in communities across the country, especially communities of color, and there must be an end to the caging of human beings for the sake of profit.

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SHACKLED TO DEBT: CRIMINAL JUSTICE
OBLIGATIONS AND THE BARRIERS TO
RE-ENTRY THEY CREATE

Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create

Karin D. Martin, Sandra Susan Smith and Wendy Still

Executive Session on Community Corrections

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Introduction

Formerly incarcerated people face a considerable number of obstacles to successful re-entry. Their ability to graduate from community supervision is complicated by their low and eroding levels of education and skills (Waldfoegel, 1994; Western, Lopoo and McLanahan, 2004; Lopoo and Western, 2005), serious mental and physical health conditions that often go untreated (Travis, 2000; Mallik-Kane and Visser, 2008; Binswanger, Krueger and Steiner, 2009; Rich, Wakeman and Dickman, 2011), and alcohol and drug addictions (Bureau of Justice Statistics, n.d.; Karberg and James, 2005; Mumola and Karberg, 2006), which are issues nurtured in neighborhoods of concentrated disadvantage from which many justice-involved people come. State-sanctioned barriers, including government restrictions on access to public-sector employment and government-related private occupations (Dale, 1976; May, 1995; Olivares, Burton and Cullen, 1996; Petersilia, 2003; Bushway and Sweeten, 2007), restrictions on voting rights (Manza and Uggen, 2006), and limited access to public housing and social welfare programs also hinder

reintegration efforts (Carey, 2004; Thompson, 2004). Despite recent successes¹ in an effort to “ban the box” — the “box” on employment and college applications that asks about criminal history — the social stigma that justice-involved people face further compounds problems with re-entry, including their attempts to find work (Pager, 2003, 2007).

To this lengthy list we add yet another significant state-sanctioned barrier — criminal justice financial obligations (CJFOs), also known as monetary sanctions or legal financial obligations. There are at least five types of CJFOs (Ruback and Bergstrom, 2006; Harris, Evans and Beckett, 2010): *fines* and *forfeiture of property*, which are intended as punishment; *costs* and *fees*, including but not limited to court costs and supervision fees, which reimburse the state for costs associated with the administration of justice; and *restitution*, a financial payout to specific victims or a general fund designated for them, intended to compensate victims for the losses they have suffered.² Although some have written about the benefits of incorporating CJFOs as one option among many criminal justice sanctions (Morris and Tonry, 1990; Gordon and Glaser, 1991; Ruback and Bergstrom, 2006), this form of sanction can, if left unchecked, have long-term effects that significantly harm the efforts of formerly incarcerated people to rehabilitate and reintegrate, thus compromising key principles

of fairness in the administration of justice in a democratic society and engendering deep distrust of the criminal justice system among those overburdened by them.

In what follows, we describe trends in the assessment of CJFOs, discuss the historical context within which these trends have unfolded, and reflect on their unintended (but perhaps easily foreseen) consequences. We then treat restitution separately, given the distinct function (in theory at least) that restitution serves. We also raise serious concerns about how restitution tends to be implemented and who benefits from this particular obligation. We end by considering alternative models for the effective and fair deployment of fines, fees and restitution in the criminal justice context.

Historical and Institutional Context

CJFOs are not new. According to Harris and colleagues (2010: 1758), “monetary sanctions were integral to systems of criminal justice, debt bondage, and racial domination in the American South for decades.” Although their use waned significantly in the first half of the 20th century, CJFOs have proliferated since the 1980s. As a result of statutes and policies at every level — city/municipal, county, state and federal — that mandate various forms of CJFOs, the vast majority of people who come into contact with the criminal justice system and are found guilty (and some who are not) pay for these encounters or are punished for not doing so.

The 1960s and 1970s marked an opening for the resurgence of CJFOs. According to Garland (2001), the rehabilitative approach to crime and punishment had been hegemonic since the 1890s. Under this approach, crime was understood in terms of relative deprivation. Specifically, when deprived of proper education, socialization, opportunities and treatment, individuals were more likely to become involved with the justice system. But with individualized treatment, aid to and supervision of families, institutionalized supports for education, and job creation and training, people would likely abstain from further criminal behavior. Mass protests of the 1960s and 1970s, however, inspired a marked shift in values and approaches to criminal justice. With unrest related to the Vietnam War, women's liberation and various Civil Rights revolutions threatening to fundamentally disrupt the foundation on which well-established racial, gendered and class-based hierarchies had been built, many people raised serious concerns about the rehabilitative approach, arguing that it was ineffective (relative to alternative approaches) at addressing the emerging threats society faced. These critics favored the retributive approach instead. In this approach, criminal behavior was not considered a deviation from the norm but rather a rational choice by self-serving actors who were taking advantage of opportunities in contexts where sufficient controls and disincentives for crime were weak or nonexistent. State efforts at retribution, incapacitation and the management of risk would effectively curtail such self-serving, opportunistic behaviors.³

With this shift in values came the implementation of a set of rigid criminal justice policies — determinate sentencing, truth in sentencing, mandatory minimums and three strikes — that not only drove up rates of incarceration but also dramatically increased the numbers of those under supervision outside the nation's jails and prisons (Western, 2006; Wacquant, 2009; Raphael and Stoll, 2013). Between 1925 and 1975, fewer than 100 Americans per 100,000 were in prison. By 2003, even though crime rates had remained relatively stable, this number had quadrupled to more than 400 per 100,000. Further, between 1983 and 2001, incarceration (jail and prison) in the United States increased from 275 inmates per 100,000 to 686 inmates per 100,000, more than five times the rate in Western European countries (Western, 2006). The numbers of people under community supervision also increased dramatically. In 1980, Wacquant (2009) reports that 1.84 million were on probation or parole. By 1990, that figure had increased to 4.35 million and jumped again to 6.47 million by 2000 (Wacquant, 2009).

The proliferation of CJFOs was likely a result, direct and indirect, of this cultural shift to retribution. First, in an era of “just deserts” punishment, the increased use of fines and forfeiture, alone or in combination with other forms of nonmonetary sanctions, signaled to the public that people who committed crimes were being made to account for their actions (Wacquant, 2009). Second, the 1970s cultural shift included increased concern for victims who, it was argued, should be

made whole — through reparations — after experiencing crime-related losses (Office for Victims of Crime, 2013; Garland, 2001).

Third — and perhaps most important — as the criminal justice apparatus swelled to accommodate the oceans of people cycling in and out of the system's courts, jails, prisons, and probation and parole departments, so too have the costs to operate such a system. For instance, Wacquant (2009) shows that, between 1980 and 1997, criminal justice budgets — those devoted to police, justice and corrections — increased from roughly \$35 billion to \$130 billion per year. Growth in criminal justice personnel also skyrocketed, from approximately 1.3 million in 1980 to 2.1 million in 1997. Wacquant (2009) notes that, based on the number of personnel in 1997, American criminal justice was the third largest employer in the country, second only to Manpower, Inc., and Walmart.

However, legislators have been reluctant to pass these dramatically rising costs on to taxpayers. Jurisdictions have instead shifted more of the costs to justice-involved people through CJFOs (Wacquant, 2009), implicating every stage of criminal case processing (Bannon, Nagrecha and Diller, 2010).⁴ They have done so in at least three ways — by imposing numerous *new* fines, fees and surcharges; by increasing the amounts associated with CJFOs; and by adopting more proactive strategies to collect debt. In California, for instance, 16 different statutes codify 269 separate court fines, fees, forfeitures, surcharges and penalty assessments that, depending on

the type of offense, may now be assessed (Nieto, 2006). Texas has 15 categories of court costs that are “always assessed” and an additional 18 discretionary CJFOs that include fees for being committed or released from jail (Texas District Court, 2013). In Washington state, a defendant with a single conviction is subjected to 24 fines and fees (Beckett and Harris, 2011).

Jurisdictions have also shifted costs to justice-involved people by increasing the amounts and numbers of fines, fees and surcharges they assess. For instance, since 1996, Florida added more than 20 new categories of CJFOs and recently increased amounts of existing fees and surcharges in two consecutive years (Bannon, Nagrecha and Diller, 2010; Diller, 2010). In New York state — where the laws require 10 mandatory surcharges, 19 fees⁵ and six civil penalties ranging from \$5 to \$750 — lawmakers have repeatedly increased the amounts and numbers of fees and surcharges since the early 1990s (Rosenthal and Weissman, 2007). In 2008 alone, two “additional surcharges” were assessed for driving offenses; fees for assistance to victims of misdemeanor crimes and felony crimes were increased by \$5 each; and surcharges for felonies, misdemeanors and violations were increased by \$5 to \$50 (Bannon, Nagrecha and Diller, 2010). In 2009, North Carolina initiated two new fees — a \$25 late fee for debtors making tardy payments and a \$20 surcharge for those wishing to establish a payment plan for their CJFOs. North Carolina also increased fees for defendants who fail to appear in court and increased the costs associated with lab tests (Bannon, Nagrecha and Diller, 2010).

Since 2010, 48 states have increased civil and criminal fees (Shapiro, 2014), a likely response to government coffers emptied by the effects of the Great Recession (Burch, 2011; Government Accountability Office, 2015). It is no wonder, then, that CJFOs have become ubiquitous.⁶

With ubiquity, the odds of justice-involved persons receiving one or more monetary sanctions and the median amounts assessed have increased substantially.⁷ For instance, Harris and colleagues (2010) report that 25 percent of federal prison inmates were assessed fines, but that figure rose to 66 percent by 2004 — only 13 years later.⁸ Although the prevalence of fines and restitution payments subsided to 32 percent of federal nonimmigration cases in 2015, it is important to note that the overwhelming majority of cases for some federal offenses — robbery, fraud, larceny, arson and burglary, for instance — received a fine or were required to pay restitution (U.S. Sentencing Commission, 2015).

On the state level, 4 percent of persons convicted of felonies who were sentenced to prison in 1986 were also fined; by 2004, that figure was seven times higher (28 percent) (Harris, Evans and Beckett, 2010). On the local level, 12 percent of persons charged with felonies who were sentenced to jail in 1985 (awaiting trial or serving time for less serious felonies) were also fined; by 2004, that figure tripled to 37 percent. In addition, 17 percent of people on probation for felonies in 1986 were also fined; by 2004, that figure more than doubled to 36 percent.

For persons who are incarcerated, the overwhelming majority now accumulate mounds of debt due to numerous fees while behind bars. A 1997 survey of the nation's largest jails revealed that more than three-quarters of people in jail were charged fees for a host of programs and services, most notably medical care, per diem payments, work release programs and telephone use; the latter three produced the greatest revenue by far. By 2005, that figure had risen to 90 percent. In addition, more than 85 percent of people on probation and parole are now required to pay supervision fees, fines, court costs or restitution to victims to remain free from further sanctions (Travis and Petersilia, 2001; Rainville and Reaves, 2003; Siegel and Senna, 2007).

The result of this expansion in the numbers and amounts of CJFOs, deployed at every stage of criminal case processing, is that some 10 million people owe more than \$50 billion from contact with the criminal justice system (National Center for Victims of Crime, 2011; Evans, 2014; Eisen, 2015).⁹ To be clear, jurisdictions collect only a fraction of this debt each year; for instance, people owe the federal government more than \$100 billion in criminal debt, and federal judges assessed nearly \$14 billion in monetary penalties in fiscal year 2014, but the federal government collects only \$4 billion each year (U.S. Department of Justice, 2015). Nevertheless, CJFOs still produce significant revenue for federal, state and municipal coffers. According to the Criminal Court of the City of New York (2014), in the New York metropolitan area, fines generate 47 percent of criminal court revenue, which is then split

between New York City and the state. Another report finds that “administrative assessments on citations fund nearly all of the Administrative Office of the Court’s budget in Nevada [and] ... [i]n Texas, probation fees made up 46 percent of the Travis County Probation Department’s \$18.3 million budget in 2006” (McLean and Thompson, 2007: 3). In Ferguson, Missouri — the site of major protests against police brutality inspired by the death of 18-year-old Michael Brown at the hands of a Ferguson police officer — fines, fees and surcharges, which are generously assessed and aggressively collected (particularly during periods of projected *general* revenue shortfalls) covered slightly more than 20 percent of the general revenue fund. In nearby towns, this figure was much higher.

Unintended Consequences

Four principles have informed an ideal of how justice in the United States should be meted out — (1) the punishment should fit the crime (proportionality); (2) the punishment should not exceed the minimum needed to achieve its legitimate purpose (parsimony); (3) the punishment should not compromise a formerly incarcerated person’s chance to lead a fulfilling and successful life (citizenship); and (4) penal systems should avoid reproducing social inequalities, especially given that formerly incarcerated people disproportionately come from disadvantaged families and communities (National Research Council, 2014). These principles must be a part of any deliberation to establish fair and just penal policies and practices. However, it seems these principles have largely

been ignored in order to recover the costs of a behemoth penal apparatus by increasing the amounts and numbers of CJFOs. As a result, on all levels of government, policymakers’ actions have produced a set of unintended and negative consequences — especially for poor people and people of color — a point we turn to next.

Law Enforcement or Debt Collection?

During periods of economic downturn, government revenues from various forms of taxes inevitably fall; the temptation is to fund government by adding new fees and surcharges, increasing the size of CJFOs, and deploying law enforcement in ever more aggressive debt collection strategies. This will be too much for some jurisdictions to ignore, especially if the failure to engage in these practices would lead to budget deficits otherwise resolved with job cuts in the system. Indeed, since 2010, several states (including but not limited to Arizona, Louisiana, Ohio and Texas) have implemented new fees and increased already existing surcharges and fees to address 2010 budget shortfalls (Burch, 2011). Given this, we must consider what perverse incentives we create by tying the solvency of major institutions to criminal justice enforcement. Essentially, the basic conflict that emerges when a public institution is both the originator and the beneficiary of financial obligations is that resources are directed away from other critical, but less lucrative, law-enforcing or adjudicating tasks (e.g., clearing backlogs of DNA analysis or testing rape kits).¹⁰

Perhaps more egregious is that such pressures can foster collusion between government agencies to generate revenue via law enforcement. Indeed, Ferguson provides stark evidence that court officials' use of law enforcement to generate revenue to fund government can lead to corruption and injustice, especially for vulnerable populations. There, the city finance director explicitly urged both the police chief and the city manager to write more tickets in order to fill municipal coffers. In other words, the system in Ferguson sought to extract income for the county and state from some of its most disenfranchised citizens, often through unconstitutional stops and arrests. Also, according to the Department of Justice report on Ferguson, law enforcement practices — driven in part by racial bias — produced and exacerbated racial disparities throughout local policing, court and jail systems.¹¹ The overwhelming majority of those arrested only because of an outstanding municipal (civil) warrant (96 percent) were African-American (U.S. Department of Justice, 2015). As a result, they bore a disproportionate burden as the primary population targeted to make up for government revenue shortfalls. Adjacent cities and towns were no better, nor is it clear that such practices are specific to Missouri. Evidence from California reveals similar patterns of disproportionate harm of CJFO enforcement on minority communities (e.g., Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2015). Moreover, because contact with police is the common entry point to the criminal justice system, any role of CJFOs in increasing exposure to police merits careful scrutiny because such

incentives can encourage more aggressive policing and punitive punishments targeted at the poorest and most powerless among us.

The same pressures to produce revenue affect probation and parole officers, who end up facing mutually incompatible demands. As social workers, they are expected to assess the needs of people under supervision and facilitate treatment. As law enforcement agents, they are expected to monitor and surveil formerly incarcerated persons (Rothman, 1980; Travis and Petersilia, 2001; Wodahl and Garland, 2009). As debt collectors, they are expected to monitor payments, set up payment plans, aggressively press people under supervision to pay court-ordered and community corrections-related CJFOs, and penalize them (including revoking probation or parole) for missed payments (Bannon, Nagrecha and Diller, 2010). The first two responsibilities relate to public safety concerns but pit the "officer as advocate" who offers individualized treatment against the "officer as law enforcement agent" who manages risk.¹² The third responsibility, however, does not ensure public safety at all; perhaps with the exception of restitution to victims, it is solely about generating revenue, which is disbursed to a general fund or to criminal justice agencies. But this third responsibility is the one that is likely to be prioritized in a system whose financial health and well-being — indeed, the stability of officers' very own positions — hinge on it. Such efforts, however, distract from officers' responsibilities to ensure public safety and facilitate rehabilitation. Given the incentives inherent in prioritizing

officers' roles as debt collectors, we might have anticipated some of the unfair and unjust practices that have emerged.

Punishing the Poor

CJFOs can be quite daunting. In some states, however, it is difficult to say with any precision exactly how much those who have had contact with the criminal justice system have been assessed because, according to Bannon and colleagues (2010), information about fees, fines, surcharges and restitution cannot be found in any one statutory code, and different types of monetary sanctions are collected at different stages of criminal case processing. Case studies of different jurisdictions have been revealing. Amounts vary by state but, for example, court records from 2005 to 2011 reveal that persons convicted of felonies in Alabama accrued a median of about \$5,000 in CJFOs (Meredith and Morse, 2015). The Texas Office of Court Administration reports that individuals released on parole owe between \$500 and \$2,000 in offense-related debt, a figure that does not include restitution. A recent study examining the hidden costs of incarceration finds that families of the formerly incarcerated incur, on average, \$13,607 for court-related fines and fees (deVunopowell et al., 2015). An analysis of data from Washington state revealed court assessments ranging from a minimum of \$500 (mandatory for all felony convictions) to a maximum of \$256,257; the median amount assessed per person was \$5,254 and the mean was \$11,471 (Harris, Evans and Beckett, 2010). Because the vast majority of formerly incarcerated people are poor or

near poor (Western, 2006), these figures are not inconsequential. In the short or long term, most of them simply could not afford to fulfill these unreasonably high debt burdens.

Further, being indigent rarely exempts a person from CJFOs.¹³ Focusing on the 15 states with the largest prison populations, Bannon and colleagues (2010) identified four mechanisms through which the courts' administration of CJFOs have created barriers to re-entry. First, even when courts had the discretion to waive or modify monetary sanctions, few considered whether people had the financial resources to meet these obligations, and few had institutionalized mechanisms to reduce CJFOs contingent on people's financial resources (Bannon, Nagrecha and Diller, 2010). Second, few states provided adequate payment plans to allow formerly incarcerated people who are indigent to pay down their debts over time; among states that did, some required that people pay a fee to apply.¹⁴ Third, for indigent individuals, jurisdictions could replace CJFOs with community service. Some of the 15 states studied, however, did not offer community service as an alternative, and those that did offered limited options that the courts rarely chose. Nor do these states offer exemptions from the consequences associated with inability to pay because of indigence. Unpaid CJFOs are subject not only to unreasonably high interest on court-imposed sanctions but are also routinely subject to late fees, fees for payment plans, and debt collection fees (Bannon, Nagrecha and Diller, 2010).¹⁵ Consequently, formerly incarcerated people and their family

members, who often shoulder the bulk of the legal debt burden (Wacquant, 2009; deVuono-powell et al., 2015; Nagrecha and Katzenstein, 2015), can be saddled with these obligations for decades. Therein lies one of the major problems with CJFOs, as applied in the U.S. For many, there is no end to the resulting debt (Beckett, Harris and Evans, 2008; American Civil Liberties Union, 2010; Harris, Evans and Beckett, 2010; Bannon, Nagrecha and Diller, 2010; Katzenstein and Nagrecha, 2011). The common, significant time lag between assessment and final payment undermines the goal of finality in punishment and poses significant obstacles to achieving stability because even small monthly payments on debt could reduce take-home pay substantially among disadvantaged families and thus make it extremely difficult to meet other needs and obligations (deVuono-powell et al., 2015).

For many, criminal justice debt can also trigger a cascade of debilitating consequences, many of which undermine post-incarceration re-entry goals such as finding stable housing, transportation and employment (Bannon, Nagrecha and Diller, 2010; Beckett and Harris, 2011). For instance, Bannon and colleagues (2010) find that legal debt can be a hindrance to obtaining a driver's license,¹⁶ can restrict voting rights,¹⁷ and can interfere with obtaining credit and making child support payments. Criminal justice debt can also prompt additional warrants, liens, wage garnishment and tax rebate interception. In addition, it can lead to a civil judgment, which is available to credit agencies because this information is made public. With

poorer credit scores, individuals with legal debt also risk being denied employment, and they may be unable to secure credit cards, mortgages, leases or loans. Thus, employment, housing and transportation are all jeopardized. And, to be clear, in each of these areas the impacts are far greater for racial minorities than for whites, not solely because the former are disproportionately represented in the criminal justice system. Not only are they more likely to be targets of aggressive law enforcement practices, once caught in the criminal justice net they are also penalized more harshly (Rosich, 2007; Spohn, 2000; Mitchell and MacKenzie, 2004; Jannetta et al., 2014; Starr and Rehavi, 2012).

For some formerly incarcerated individuals, these liabilities may also have the unintended consequence of reducing commitment to work, increasing reliance on available forms of public assistance (in some cases, CJFOs can make a person ineligible for receiving public assistance), or motivating further criminal involvement. According to Harris and colleagues (2010), 80 percent of the respondents found their legal debt obligations to be "unduly burdensome." Despite the possibility that they might be sanctioned with jail time for nonpayment, some chose not to work, instead engaging in criminal activity or relying on state benefits (where these had not been revoked because of CJFOs) to make ends meet (also see Martin, 2015).

Perhaps the most intolerable penalty that formerly incarcerated people who are indigent face for inability to pay CJFOs is to be re-incarcerated. A

lawsuit¹⁸ against the City of Ferguson, Missouri describes the experience of Ms. Fant, which illustrates this concern:

Ms. Fant was a 37-year-old single mother who worked as a certified nurse's assistant. Over the course of 20 years, she was arrested more than a dozen times. On the way to taking her children to school one day in 2013, she was arrested and taken to jail because of old traffic tickets. She was initially told that she would only be released after paying \$300, but she was then "released" for free. Being released, however, just meant that the arresting jurisdiction had dropped its demand for money. Because she had unpaid tickets in other nearby places (that paid for a central city to house their jail inmates), "release" meant she was kept in the same jail under the auspices of other jurisdictions. As a result, she was held in a single jail, but transferred to the custody of one jurisdiction to another, totaling five different jurisdictions — each holding her for three to four days and each insisting on hundreds or thousands of dollars to secure her liberty. Eventually, she was told that her release amount was \$1,400, but after it was clear she would not be able to come up with the money, she was released without paying anything. This freedom was temporary. The following year, she was arrested again and told that she would have to pay \$1,400 or be held indefinitely. This time, her family and friends came up with \$1,000 and she was released. She was told to make future cash payments directly to the Police Department.

Despite the Supreme Court ruling in *Bearden v. Georgia* (461 U.S. 660-661, 1983), which found

that inability to pay cannot be the reason to revoke probation or to re-incarcerate,¹⁹ there is ample evidence that inability to pay is indeed associated with expanded custody (American Civil Liberties Union, 2010). Incarceration can follow CJFOs in at least four ways. First, probation and parole can be revoked or not granted for nonpayment of CJFOs. According to Bannon and colleagues (2010), regardless of the fact that none of the 15 states they studied adequately sought to determine individuals' ability to pay, at least 13 of these states allowed for revocation of probation and parole in cases where formerly incarcerated persons missed payments. Second, criminal and civil offenses can result in incarceration via willful failure to pay CJFOs, an action that is interpreted as civil contempt. Third, in some states (such as Missouri), criminal justice debtors can "pay off" their debt by "choosing" jail — requesting to participate in programs that allow them to pay down court-imposed debt by spending time in jail. Finally, individuals can be arrested and jailed in some states (e.g., Texas) for missing a debt payment or for failing to appear at a court hearing relating to a missed debt payment (e.g., Georgia). In February 2016, for instance, seven armed U.S. Marshals arrested and jailed Paul Aker, a Texas resident, for failure to appear in court to address a 29-year-old delinquent federal student loan; the original loan was \$1,500 (Lobosco, 2016). Roughly one-quarter of the respondents in Harris and colleagues' 2010 study served time in jail for nonpayment of fees and fines; another study found that 12 percent had been re-incarcerated for missing payments (deVuono-powell et al., 2015). Thus, as assessed

and administered in the U.S., CJFOs can be quite punitive and insufficiently parsimonious. In those instances, their administration challenges even basic notions of citizenship rights and social justice.

Distrust and Demoralization

When people perceive that law enforcement officials have treated them unfairly, they come to distrust the motives of legal authorities and to negatively assess the procedures by which legal authorities engage them. They also come to question the very legitimacy on which law enforcement's authority rests, feeding an unwillingness to consent or to cooperate with law enforcement in general (Tyler and Huo, 2002). Thus, to the extent that CJFOs are administered in unfair and unjust ways, it should come as no surprise that the U.S. system of CJFOs breeds deep distrust of the criminal justice system, especially among the poor and people of color. To illustrate, the Department of Justice (DOJ) report on Ferguson highlighted how the unfair, unlawful, disrespectful and harmful practices of the police and the courts, both in Ferguson and in nearby towns and cities, led Ferguson's black residents to both fear and distrust them, further deteriorating already strained relations between law enforcement and the communities they are tasked to serve as well as contributing to less effective, more difficult, less safe and more discriminatory policing (U.S. Department of Justice, 2015).

CJFOs may also be demoralizing for officers, especially police, probation and parole officers.

When signing on for service, most of them likely imagined that they would help make their communities safer and would positively impact the lives of those at high risk for future criminal involvement. Few, if any, signed up to become debt collectors. But, in many jurisdictions, systemic pressure to produce revenue puts officers in this position, whether or not they like it. In Ferguson, for instance, where community policing efforts had never been more than modest, their efforts had recently declined further to focus more police time and energy on revenue generation. According to the DOJ report (U.S. Department of Justice, 2015: 87):

Officers we spoke with were fairly consistent in their acknowledgment of this, and of the fact that this move away from community policing has been due, at least in part, to an increased focus on code enforcement and revenue generation in recent years. [O]ur investigation found that FPD redeployed officers to 12-hour shifts, in part for revenue reasons While many officers in Ferguson support 12-hour shifts, several told us that the 12-hour shift has undermined community policing. One officer said that "FPD used to have a strong community policing ethic — then we went to a 12-hour day." ... Another officer told us that FPD officers should put less energy into writing tickets and instead "get out of their cars" and get to know community members. One officer told us that officers could spend more time engaging with community members and undertaking problem-solving projects if FPD officers were not so focused on activities

that generate revenue. This officer told us, “everything’s about the courts ... the court’s enforcement priorities are money.”

It is difficult to say how widespread the perception is among officers that debt collection has directed attention away from arguably more important roles that law enforcement officers can play in the communities they serve, but the comments that officers in Ferguson shared suggest that officers’ morale might be a part of the collateral damage from the expansion of a monetary sanctions system that relies heavily on officers’ efforts to collect debts.

Victims and Restitution

Restitution stands somewhat apart from the other types of CJFOs. It is meant to be assessed when there is both an identifiable victim and quantifiable (i.e., “monetizable”) harm to person or property. The underlying notion is to directly compensate a crime victim for a specific loss stemming from the offense. Therefore, on the federal level at least, restitution is mandatory for several categories of offenses, as stipulated in the Mandatory Victims Restitution Act of 1996.²⁰ Problems arise, however, when we examine both the practice and the consequences of restitution as it is actually implemented. First, the system of payment and disbursement very often severs the direct link between the person who committed the crime and the victim. A judge may issue either a direct order for restitution, which is related to a victim’s loss, or the person who committed the offense may have to pay to a

general restitution fund. The first case preserves the notion of “restoration” inherent in restitution, but the second case is far less clear. Surely, a victim who cannot collect from the person who actually committed the offense still benefits from compensation from a state restitution fund. Indeed, Vermont (where the average individual restitution order is \$1,100) has a system that allows for victims to be paid immediately upon court order, using capital funded by a 15-percent surcharge on all criminal and civil fines (Vermont Center for Crime Victim Services, 2012). But the flip side of this arrangement is that people convicted of offenses must contribute to compensating victims of crimes in which they played no role (and even when they have inflicted no harm to an identifiable victim or property). How this ultimately weighs in the balance in terms of ethics is beyond the scope of this report; however, the situation merits careful attention when considering the universe of CJFOs and their consequences.

The second problem with restitution is the enormous, intractable and growing gap between the restitution amounts assessed and the amounts actually collected and disbursed. By one estimate, total state restitution debt was nearly \$40 billion in 2007 (Dickman, 2009). At the federal level, there is more than \$100 billion in uncollected criminal debt, of which restitution is a large portion. Collection rates across the country reveal the extent of the problem. In Florida, people convicted of felonies owe \$709 million of restitution debt, of which the state

collects 4.5 percent (Burnett, 2012). In Iowa, judges ordered \$159 million in restitution over a five-year period but collected only \$19 million during the same period (12 percent of the amount owed) (Eckhoff, 2012). In Texas, the parole division collected 5.3 percent of the \$43 million that discharged parolees owed between 2003 and 2008; fewer than 10 percent of parolees paid their restitution in full (Vogel, 2008). Vermont's restitution collection rate of 31.8 percent for 2005 to 2010 is, by comparison, relatively high (National Center for Victims of Crime, 2011). Not only are collection rates generally poor,²¹ but the amount of outstanding restitution debt is growing. For instance, the amount of unpaid restitution in Florida grew 51 percent between 2007 and 2012 (Burnett, 2012).

Of course, these low collection rates mean low disbursement rates — very few victims are paid or are paid in full. Pennsylvania, for example, disbursed less than 12 percent of the \$435 million it assessed in restitution for the three years ending in 2012 (Pennsylvania Office of the Victim Advocate and the Center for Schools and Communities, 2013). Minnesota assesses \$25 million in restitution, with an individual average of \$2,100. Of this, only 25 percent is paid, but taking into account restitution that is reduced, adjusted or credited, the amount of restitution that is “satisfied” reaches 49 percent. There is also significant variation by county: outstanding debt ranges from as low as 6 percent of the assessed amount to as high as 83 percent (Minnesota Restitution Working Group, 2015).

Finally, it is essential to remember that — from the perspective of the debtor — restitution is simply part of a formidable amount of criminal justice debt. Importantly, this debt incurs disproportionate harm. An analysis of 80,000 Florida correctional cases found that unpaid restitution rendered almost 40 percent of the debtors ineligible to have their rights restored (Diller, 2010). In sum, although restitution serves a particularly distinct function compared to the other CJFOs, it suffers from pitfalls that render it just as problematic.

Recommendations

As administered in the U.S. system, CJFOs can be punitive and insufficiently parsimonious. As others have written (Bannon, Nagrecha and Diller, 2010; deVuono-powell et al., 2015), we can and must do better. In what follows, we offer recommendations for reform. Although these recommendations will not reverse the damage done to individuals, their families and the communities they come from, if these or similar reforms are implemented moving forward, millions of people who are enmeshed in the criminal justice system might avoid the same troubling fate.

We propose two sets of reforms. The first regards the use of CJFOs for low-income or poor people and includes six recommendations. First, when setting out to use CJFOs to punish and deter or repair and reimburse victims, we must consider people's ability to pay. In the U.S., statutorily mandated fines, fees, surcharges and restitution are not adjusted to ability to

pay (Justice Management Institute and Vera Institute of Justice, 1996). However, tailoring the sanction to the individual, as is often done in parts of Europe (Kantorowicz, 2014), would avoid many of the deleterious effects found in the American CJFO system. In Europe, “day-fines” (as they are called) are calculated on the basis of a person’s financial situation — typically by calculating a percentage of income — and the severity of the offense (Hillsman and Mahoney, 1988; Vera Institute of Justice, 1988).²² In addition, because the financial burden on the individual is considered seriously as part of the assessment rationale, European countries that have adopted this approach have been able to generate income without undermining the basic tenets of effective criminal justice policy (Frase, 2001).²³

Second, additional safeguards need to be implemented so as not to penalize the poor for being poor. The short- and long-term prospects for people who are formerly incarcerated or under supervision are also negatively affected by the interest that accrues on criminal justice debt as well as the fees and penalties for delinquent payments, payment plans and debt collector services. These contribute to poverty entrapment by further increasing the debt burden for these individuals, making it difficult to make ends meet and blocking opportunities for social and economic stability and mobility. As a penalty for tardy or missed payments, or missed court hearings because of delinquent payments, (re)incarceration also penalizes the poor. Very simply, these poverty penalties need to be eliminated — interest should not be allowed

to accrue on the CJFOs that are assessed; the poor, as objectively determined, should not have to pay fees to apply for payment plans, as penalties for late payments, or as part of an aggressive campaign of debt collection; and under no circumstances should individuals be incarcerated for delinquency on financial obligations related to criminal or civil judgments. Importantly, by taking an individual’s financial resources into consideration and eliminating poverty penalties, we also end indeterminate punishment and related debt; individuals will be relieved of criminal justice debt and related incarceration that can extend for decades, if not a lifetime.

Third, alternatives to monetary sanctions should also be considered more seriously than they are, especially where indigent persons are concerned. Financial transactions are not the sole means by which people can be made to account for their actions and make victims whole. As indicated earlier in the report, community service is an available option in most states, although it is used infrequently. When implemented judiciously, however, this would seem to be a reasonable substitute for monetary sanctions.

Fourth, jurisdictions should consider amnesty for those who already hold debt. The evidence provided here shows the questionable value of pursuing debt from people unable to pay. Indeed, when the cost and social harm of enforcing CJFO collections is greater than the benefit of (typically partial) payment, there is a strong argument for amnesty. Accounting for and excusing CJFO debt

not only allows people to exit the destructive cycle of debt, warrants, arrests, court judgments and incarceration, it also helps clear the prodigious administrative backlog that typifies U.S. court systems.

Fifth, if any fees are collected, they should be deposited into a trust account to be invested solely in direct rehabilitation services for the supervised population. This approach is similar to the inmate welfare funds that are mandatory for jails and prisons for fees collected from inmates, which can only be expended on direct programs or services that benefit the inmate's welfare. In a similar vein, we offer a sixth recommendation that connects criminal justice debt to the improved well-being of those who are involved in the justice system. To the extent that they invest in their own education and vocational training, their fees might be significantly reduced or erased. In this way, the government incentivizes behaviors it wishes to see, with the prospect of reduced victimization and improved public safety.

The second set of reforms addresses the criminal justice system's growing reliance on CJFOs for their own operations and maintenance. The criminal justice system is meant to serve the general public. As such, it is logical and just to insist that each of us bears this burden. Instead, however, we increasingly require that people who have had contact with the criminal justice system pay a disproportionate share for its operation; in so doing, we link the financial solvency of the institution to law enforcement practices. This incentivizes law enforcement to redirect efforts away from critical, but less lucrative, law

enforcing toward those activities that, while doing little to promote public safety, would generate significant revenue for government coffers, thus putting revenue, not safety, first.

To rectify this, we first propose that an independent commission should be established in each jurisdiction to determine the causes and consequences of proposed increases to criminal justice fees, fines, surcharges and the like. CJFOs should not be allowed to increase in size and/or number unless studies determine that changes would not unduly burden those subject to them. The institutional health and well-being of criminal justice institutions should not hinge on the amount and number of CJFOs assessed; this is the purpose of general tax revenue.

Our second proposal is that the roles criminal justice officers — probation, parole and police officers — play should be limited to efforts that increase public safety. Law enforcement officers should not be tasked with the responsibility to collect debts. Their roles are already complicated by what some consider to be mutually incompatible demands — being advocate and counselor as well as law enforcement and disciplinarian. To add a debt collection function to their roles forces officers to pit their own jobs and that of the institution that employs them against the efforts of individuals in their charge at rehabilitation and successful re-entry. Not only would this conflict further complicate what is already a difficult balancing act but, in essence, it would also direct attention away from the more important task of facilitating increased public safety.

Endnotes

1. Boston, San Francisco and Minneapolis were early adopters (Henry and Jacobs, 2007). Currently, more than 100 cities and counties nationwide have implemented “ban the box” policies (Rodriguez and Avery, 2016).

2. In this report we do not consider child support. Although child support often contributes to the debilitating debt that justice-involved people have, it has been treated extensively elsewhere. (See Grall, 2003, and Cammett, 2006, for discussions of child support debt as it relates to justice-system involvement; also see Nagrecha and Katzenstein, 2015; Thoennes, 2002; U.S. Department of Health and Human Services, 2006; and Pearson, 2004.)

3. See Garland (2001) for a full discussion of this cultural shift.

4. User fees are commonly assessed at preconviction; for instance, defendants can be charged booking fees, application fees to obtain a public defender, and jail fees for pretrial detention. At sentencing, fines associated with convictions are typically accompanied by surcharges; the amount of restitution to victims is determined; and fees mount up for court costs, designated funds and reimbursement for public defenders and prosecution. During jail or prison stays, fees are routinely assessed for a variety of programs and services, most commonly for medical services (including prescriptions, physician/nurse visits, dental care and eye care),

participation in work release programs, per diem payments and telephone use. Among the CJFOs added to the tab of probationers and parolees are monthly fees for supervision (including electronic monitoring) and administration fees for the installation of monitoring devices, drug testing, mandatory treatment, therapy and classes. Further, at each stage of criminal case processing, there are interest charges and penalties for tardy payments, application fees for payment plans, and fees for debt collection services — all adding to the heavy weight of accumulated debt placed on justice-involved people, who are already disproportionately at a disadvantage economically and educationally (Bannon, Nagrecha and Diller, 2010).

5. Included are fees for crime victim assistance, incarceration, DNA databanking, parole and probation supervision, sex offender registration, and supplemental payments to sex offender victims.

6. Despite its “growing normativity” (Katzenstein and Nagrecha, 2011), policies and practices related to the assessment, administration and collection of CJFOs are quite diverse. Jurisdictions typically have dozens of statutes mandating fines, fees and surcharges, but every comparison of jurisdictions — federal versus state, between states, between counties within a single state, and even between courthouses — reveals a substantial array of differences.

7. Meredith and Morse (2015) illustrate this well with case studies of Alabama and Tennessee.

8. These data are from the Survey of Inmates in State and Federal Correctional Facilities. The authors make clear that these figures likely underestimate the use of CJFOs because they do not include those assessed by departments of corrections, jails or other noncourt agencies (Harris, Evans and Beckett, 2010).

9. In the federal system, more than \$14 billion in monetary penalties was assessed in fiscal year 2014 for up to 96 percent of cases for some offenses. In a study of CJFOs in 11 states, the average amount of uncollected debt was \$178 million per state (McLean and Thompson, 2007). California alone had \$10.2 billion in outstanding court-ordered debt at the end of 2012 (Taylor, 2014). As of 2010, Iowa and Arizona reported unpaid court-ordered obligations on the order of \$533 million and \$831 million, respectively. Pennsylvania reported unpaid restitution of \$638 million. In Los Angeles County, the fines, forfeitures and assessments related to 8,000 complaints filed each week for failure to appear exceeded \$75 million in a single year. Finally, in just one federal district in New York (southern region), more than \$270 million was owed for criminal debts (U.S. Department of Justice, 2014).

10. Concern about this motivation prompted the Conference of State Court Administrators (n.d.) to assert that “[i]t is axiomatic that the core

functions of our government are supported from basic and general tax revenues. Government exists and operates for the common good based upon a common will to be governed, and the expense thereof is borne by general taxation of the governed.”

11. African-Americans were 68 percent less likely to have their cases dismissed by the court, at least 50 percent more likely to have their cases lead to an arrest warrant, and accounted for 92 percent of cases in which the court issued an arrest warrant (U.S. Department of Justice, 2015).

12. These are in conflict to the extent that officers’ advocacy cannot comfortably coexist with their role as disciplinarians.

13. This is so despite a series of Supreme Court rulings to the contrary: *Bearden v. Georgia*, 461 U.S. 660 (1983); *Frazier v. Jordan*, 457 F.2d 726 (5th Cir. 1972); *Tate v. Short*, 401 U.S. 395 (1971); and *Williams v. Illinois*, 399 U.S. 235 (1970).

14. In Franklin County, Ohio, for instance, the payment plan fee was \$25; in the Orleans district in Louisiana, it was \$100 (Bannon, Nagrecha and Diller, 2010).

15. Economic sanctions had once been criticized because they did not include penalties for nonpayment (Petersilia and Turner, 1993; Langan, 1994; Wheeler et al., 1990).

16. In California, Florida, Louisiana, Michigan, North Carolina, Pennsylvania, Texas and Virginia, driver's licenses are suspended if people fail to make CJFO payments (Bannon, Nagrecha and Diller, 2010).

17. In seven of the 15 states that Bannon and colleagues (2010) studied, CJFOs must be paid off before people regain their right to vote. According to Meredith and Morse (2015), southern states are almost three times more likely than non-southern states to disenfranchise people because of CJFOs (40 percent compared to 14 percent).

18. Case No. 4:15-cv-253, U.S. District Court, Eastern District of Missouri.

19. "If a State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it. *Williams v. Illinois*, 399 U.S. 235; *Tate v. Short*, 401 U.S. 395. If the probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay, the State is justified in using imprisonment as a sanction to enforce collection. But if the probationer has made all reasonable bona fide efforts to pay the fine and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the probationer are available to meet the State's

interest in punishment and deterrence." 461 U.S. 660-661, <http://supreme.justia.com/cases/federal/us/461/660>.

20. The federal statute, 18 U.S. Code § 3663A, "Mandatory restitution to victims of certain crimes," lists the following offenses as requiring mandatory restitution: crimes of violence, property offenses (including offenses committed by fraud or deceit), offenses related to tampering with consumer products, and offenses relating to the theft of medical products. Mandatory restitution bars judges from considering a defendant's ability to pay when determining restitution.

21. Collection rates are hampered by people's inability to pay, difficulty in locating people over time, and age of the debt.

22. See Vera Institute of Justice (1988) for a full explanation of how this works.

23. The U.S. does have some experience with day-fines. During the 1980s and 1990s when some in the criminal justice community sought alternative sanctions to incarceration, several initiatives were launched to explore the viability of proportional fines. The results were largely promising. A RAND study of day-fines in Arizona's Maricopa County focused on people convicted of felonies "with low need for supervision and treatment." It found that day-fines successfully diverted people from standard "supervision probation" and increased payment

without negative consequences in arrests and technical violations (Turner and Greene, 1999). Another study of the efficacy of day-fines in low-level courts in Milwaukee and Staten Island found similarly positive results (Greene and Worzella, 1992). In sum, these valuable experiences, drawn from the European context and in parts of the U.S. as well, provide reasons to be optimistic as they indicate that by taking both offense severity and ability to pay into account, the day-fine model or an equivalent could help to address the most pressing concerns regarding our current system of CJFOs.

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