

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**[®].

www.policylink.org

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 $\frac{1}{3}$ 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

“”

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

“”

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

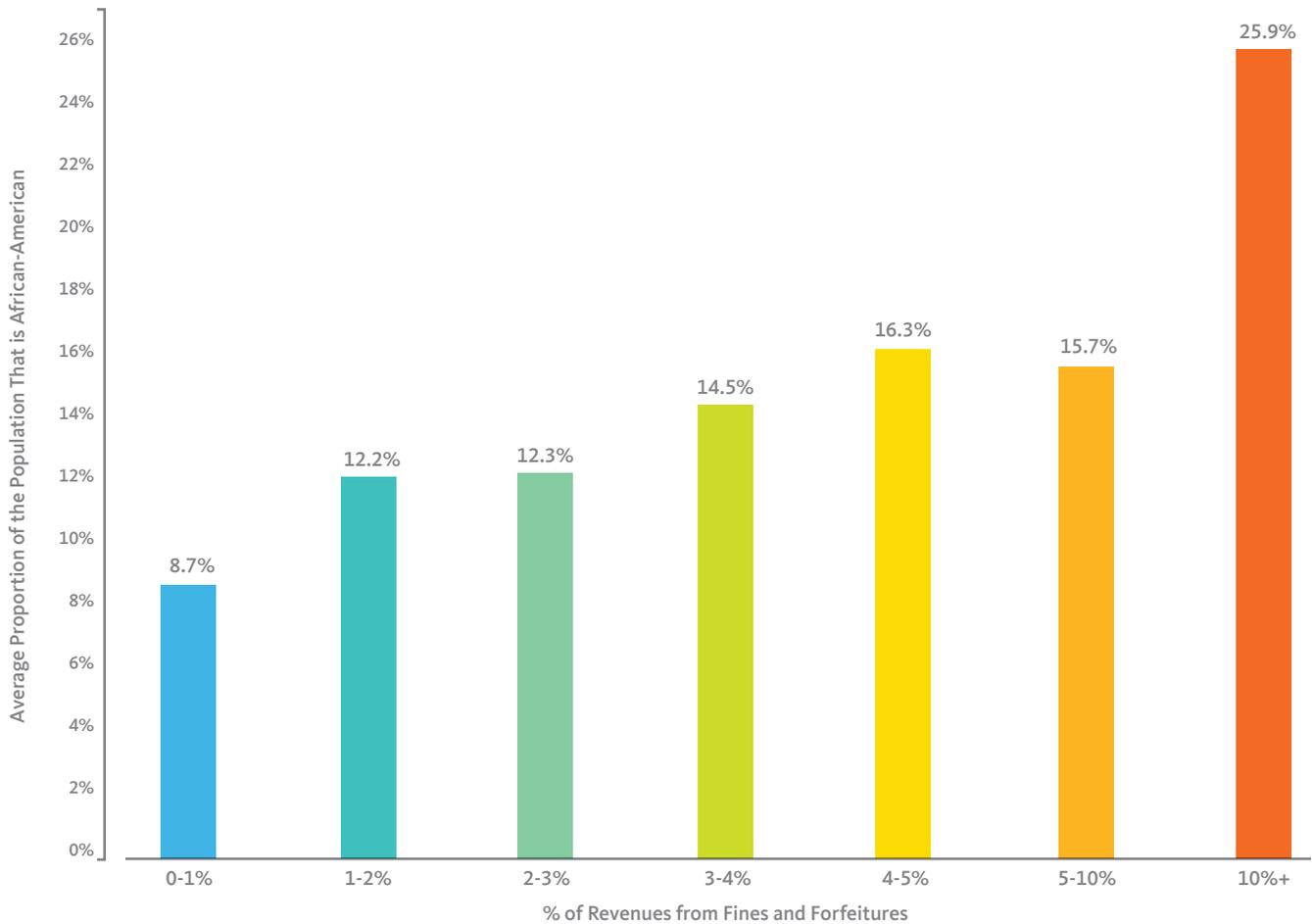
Decriminalization efforts for a range of offenses have helped reduce some inequities in the criminal justice system, and have been a positive policy change in many regards. However, efforts to decriminalize some misdemeanors into “fine-only offenses” have, ironically, fed the practice of issuing fines 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 Priceconomics 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, Priceconomics, 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.

Notes

- 1 Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration* (New York, NY: Brennan Center For Justice at New York University School of Law, 2015), https://www.brennancenter.org/sites/default/files/blog/Charging_Inmates_Mass_Incarceration.pdf.
- 2 Rakesh Kochhar and Richard Fry, "Wealth Inequality Has Widened along Racial, Ethnic Lines since End of Great Recession," Facttank, Pew Research Center, December 12, 2014, <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>.
- 3 Aimee Picchi, "Most Americans Can't Handle a \$500 Surprise Bill," MoneyWatch, CBS, January 6, 2016, <http://www.cbsnews.com/news/most-americans-cant-handle-a-500-surprise-bill/>.
- 4 Sheyna Steiner, "Survey: How Americans Contend with Unexpected Expenses," Bankrate, January 6, 2016, <http://www.bankrate.com/finance/consumer-index/money-pulse-1215.aspx>.
- 5 *Bearden v. Georgia*, 461 US 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983) (holding that a person could only be jailed for nonpayment of court fines if the state shows that the nonpayment is "willful").
- 6 Conference of State Court Administrators, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practice* (National Center for State Courts, 1986), 5-6.
- 7 Jason Furman and Sandra Black, "Fines, Fees, and Bail: An Overlooked Part of the Criminal Justice System That Disproportionately Impacts the Poor," *The Huffington Post* (blog), December 3, 2015, http://www.huffingtonpost.com/jason-furman/fines-fees-and-bail-an-ov_b_8702912.html.
- 8 Jessica Eaglin, "Improving Economic Sanctions in the States," *Minnesota Law Review* 99 (2015): 1855.
- 9 Emily Green, "Sentenced to a Life in Debt," *Street Roots News*, June 7, 2016.
- 10 Joseph Shapiro, "As Court Fees Rise, the Poor are Paying the Price," *All Things Considered* (NPR), May 19, 2014.
- 11 Green, "Sentenced to a Life in Debt."
- 12 Kendall Taggart and Alex Campbell, "Their Crime: Being Poor. Their Sentence: Jail." *BuzzFeed News*, October 7, 2015.
- 13 Ibid.
- 14 Shapiro, "As Court Fees Rise, the Poor are Paying the Price."
- 15 Nick Pinto, "The Bail Trap," *New York Times Magazine*, August 15, 2015.
- 16 Elliot Hannon, "Chicago Justice System Is So Bad Inmates Spent 218 Years Longer in Jail Than Actually Sentenced," *Slate*, June 8, 2016.
- 17 Alicia Bannon, Mitali Nagrecha, and Rebekah Diller 2010, *Criminal Justice Debt: A Barrier to Reentry*, (New York, NY: Brennan Center for Justice at New York University School of Law, 2010), 27, <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>.
- 18 Ibid.
- 19 Ibid.
- 20 Rebecca Vallas and Roopal Patel, "Sentenced to a Life of Criminal Debt: A Barrier to Reentry and Climbing out of Poverty," *Journal of Poverty Law and Policy* 46 (2012): 133.
- 21 Ibid.
- 22 Bannon, Nagrecha, and Diller, "Criminal Justice Debt: A Barrier to Reentry," 27.
- 23 Alexandra Natapoff, "Misdemeanor Decriminalization," *Vanderbilt Law Review* 68 (2015):1079-1080.
- 24 Ibid.
- 25 Ibid, 1059.
- 26 Neil L. Sobol, "Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons," *Maryland Law Review* 75 (2016): 486-540.
- 27 Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi, *Who Pays? The True Cost of Incarceration on Families* (Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015), 15.
- 28 Dan Kopf, "The Fining of Black America," *Priceonomics*, June 24, 2016, <https://priceonomics.com/the-fining-of-black-america/>.
- 29 Ibid.
- 30 Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice* (New York, NY: Brennan Center for Justice at New York University School of Law, 2015), <https://www.brennancenter.org/publication/reducing-racial-and-ethnic-disparities-jails-recommendations-local-practice>.
- 31 "Race & Bail in America," Pretrial Justice Institute, <http://projects.pretrial.org/racialjustice/>, accessed February 22, 2017.
- 32 Natapoff, "Misdemeanor Decriminalization," 1076-1077.
- 33 Paul Kiel and Annie Waldman, "The Color of Debt: How Collection Suits Squeeze Black Neighborhoods," *ProPublica*, October 8, 2015, <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>.
- 34 Mathilde Laisne, Jon Wool, and Christian Henrichson. *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* (New York: Vera Institute of Justice, 2017).
- 35 Ibid.

- 36 Tamar Birkhead, "The New Peonage," *Washington and Lee Law Review* 72 (2015): 1643.
- 37 Kate Weisburd, "High Cost, Young Age: Sentencing Youth to a Life of Debt," *The Huffington Post* (blog), June 9, 2014, http://www.huffingtonpost.com/kate-weisburd/youth-juvenile-debt_b_5118950.html.
- 38 Marsha Weissman, Alan Rosenthal, Patricia Warth, Elaine Wolf, and Michael Messina-Yauchzy 2010, *The Use of Criminal History Records in College Admissions: Reconsidered* (New York, NY: Center for Community Alternatives, 2010), 4, <http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf>.
- 39 Weisburd, "High Cost, Young Age: Sentencing Youth to a Life of Debt."
- 40 Birkhead, "The New Peonage," 1605.
- 41 Ibid.
- 42 Sarah Alexander, Yelena Konanova, and Deuel Ross, *In for a Penny: The Rise of America's New Debtors' Prisons* (New York, NY: American Civil Liberties Union, 2010), 35-36, https://www.aclu.org/files/assets/InForAPenny_web.pdf.
- 43 Ibid, 46-47.
- 44 Ibid, 57-58, 67.
- 45 Neelum Arya and Ian Augarten, *Critical Condition: African-American Youth in the Criminal Justice System* (Washington, DC: Campaign for Youth Justice, September 2008), <http://campaignforyouthjustice.org/documents/AfricanAmericanBrief.pdf>.
- 46 Alexander Kaplan, Ahmed Lavalais, Tim Kline, Jenna Le, Rachel Draznin-Nagy, Ingrid Rodriguez, Jenny van der Heyde, Stephanie Campos-Bui, and Jeffrey Selbin, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* (Berkeley, CA: Berkeley Law, University of California, Policy Advocacy Clinic, March 2016).
- 47 Birkhead, "The New Peonage," 1661.
- 48 Council of Economic Advisers, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor* [Issue Brief] (Washington, DC: Council of Economic Advisers, December 2015), 6.
- 49 Eaglin, "Improving Economic Sanctions in the States," 1663.
- 50 Furman and Black, "Fines, Fees, and Bail: An Overlooked Part of the Criminal Justice System That Disproportionately Impacts the Poor."
- 51 Bernadette Rabuy and Daniel Kopf, *Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time* (Northampton, MA: Prison Policy Initiative, 2016), <https://www.prisonpolicy.org/reports/incomejails.html>.
- 52 Rhode Island Family Life Center, *Court Debt and Related Incarceration in Rhode Island from 2005 through 2007* (Providence, RI: Rhode Island Family Life Center, 2008), 4.
- 53 Kiel and Waldman, "The Color of Debt."
- 54 "State Bans on Debtors' Prisons and Criminal Justice Debt," *Harvard Law Review* (Note), February 10, 2016: 1031.
- 55 Sobol, "Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons," 529-530.
- 56 Vallas and Patel, "Sentenced to a Life of Criminal Debt: A Barrier to Reentry and Climbing out of Poverty," 19
- 57 Sobol, "Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons," 529-530; Eaglin, "Improving Economic Sanctions in the States," 1865.
- 58 The Supreme Court of Ohio Office of Judicial Services, "Collection of Fines and Court Costs in Adult Trial Courts," revised September 2015, <https://www.supremecourt.ohio.gov/Publications/JCS/finesCourtCosts.pdf>.
- 59 Leora Gershenzon, "Child Support: Suspension of Order: Bill Analysis," http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0601-0650/ab_610_cfa_20150903_194321_asm_floor.html.
- 60 Ibid.
- 61 California Courts, "Traffic Tickets/Infractions Amnesty Program," <http://www.courts.ca.gov/trafficannesty.htm>.
- 62 The Supreme Court of Ohio Office of Judicial Services, "Collection of Fines and Court Costs in Adult Trial Courts."
- 63 Carrie Teegardin, "Run a Red Light in Atlanta? Tickets Will Now Cost More," *The Atlanta Journal-Constitution*, June 30, 2015.
- 64 Ibid.
- 65 Vallas and Patel, "Sentenced to a Life of Criminal Debt: A Barrier to Reentry and Climbing out of Poverty," 19.
- 66 Mitch Smith, "Missouri Lawmakers Limit Revenue from Traffic Fines in St. Louis Area," *New York Times*, May 8, 2015.
- 67 Nicole Porter, *The State of Sentencing 2015: Developments in Policy and Practice* (Washington, DC: The Sentencing Project, 2016), <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.
- 68 Julianne Hing, "Contra Costa County Drops Costly Juvenile Record-Sealing Fee," *Colorlines*, May 14, 2014, <https://www.colorlines.com/articles/contra-costa-county-drops-costly-juvenile-record-sealing-fee>.
- 69 Vallas and Patel, "Sentenced to a Life of Criminal Debt: A Barrier to Reentry and Climbing out of Poverty," 140.
- 70 Ibid.
- 71 Gene Johnson, "ACLU, Benton County Settle Lawsuit Over Court Fines," *The Spokesman-Review*, June 1, 2016.
- 72 Shapiro, "As Court Fees Rise, the Poor are Paying the Price."
- 73 Trymaine Lee, "Spurred by Fallout in Ferguson, St. Louis Cuts 222,000 Warrants," *MSNBC*, October 1, 2014.

- 74 Atlanta Municipal Court, “Warrant Amnesty Program,” <http://court.atlantaga.gov/warrant-amnesty-info#2>.
- 75 City of Montgomery, “Amnesty Days,” <http://www.montgomeryal.gov/city-government/departments/municipal-court/amnesty-days>.
- 76 “State Bans on Debtors’ Prisons and Criminal Justice Debt,” *Harvard Law Review* (Note), February 10, 2016, 1030.
- 77 Ibid.
- 78 Igna Sarda-Sorensen and Vincent Creel, “Biloxi and ACLU Settle Lawsuit Over Jailing of Indigent People,” March 15, 2016, <https://www.aclu.org/news/biloxi-and-aclu-settle-lawsuit-over-jailing-indigent-people>.
- 79 Ibid.
- 80 Jazmine Ulloa, “The Price They Pay: Austin Rethinks Whether to Send Poor People to Jail for Unpaid Traffic Fines They Can’t Afford,” *My Statesman*, May 20, 2016.
- 81 Kate Weisburd and Stephanie Campos-Bui, “Alameda County Halts Juvenile Probation Fees,” East Bay Community Law Center, April 7, 2016, <https://ebclc.org/in-the-news/alameda-county-halts-juvenile-probation-fees/>.
- 82 Gillian Edevane, “Contra Costa County Halts Fees for Parents of Juvenile Offenders,” NBC Bay Area, October 27, 2016, <http://www.nbcbayarea.com/news/local/Contra-Costa-County-Halts-Fees-for-the-Parents-of-Juvenile-Offenders--398739671.html>.
- 83 Hing, “Contra Costa County Drops Costly Juvenile Record-Sealing Fee.”
- 84 Kevin Litten, “New Orleans City Council Votes to End Jailing of Indigent Offenders on Minor Crimes,” *The Times-Picayune*, January 12, 2017, http://www.nola.com/politics/index.ssf/2017/01/city_council_bail_overhaul.html.
- 85 National Center for State Courts. Actions taken by state courts on fines, fees and bail practices, last saved February 15, 2017, https://public.tableau.com/profile/publish/FFBP2_0/ActivitiesByType#!/publish-confirm.

Author Biography

Alexandra Bastien is a senior associate at PolicyLink. In this role, she works to lift up policy solutions pertaining to wealth inequality across the nation. She conducts research, provides technical expertise, and develops programs and strategies related to asset building and equitable economic development.

Acknowledgments

Thank you to the Nathan Cummings Foundation for funding this research. We are also grateful to Cristina Nape, a former PolicyLink intern, who conducted preliminary research for this brief. Additionally, we would like to thank PolicyLink staff and partners who contributed to this document including Christopher Brown, Heather McCulloch, Tirien Steinbach and the staff at the East Bay Community Law Center, as well as the staff at the Southern Poverty Law Center and at Equal Justice Under Law, and we also thank Alexandra Natapoff at Loyola Law School, Los Angeles.

Photo credit: *It's Not Just Ferguson* by [Johnny Silvercloud](#) licensed under [CC BY 2.0](#).



Lifting Up What Works®

Headquarters

1438 Webster Street
Suite 303
Oakland, CA 94612
t 510 663-2333
f 510 663-9684

Communications

55 West 39th Street
11th floor
New York, NY 10018
t 212 629-9570

Washington, DC

1200 18th Street, NW
Suite 200
Washington, DC 20036

Los Angeles

1000 North Alameda Street
2nd Floor
Los Angeles, CA 90012

www.policylink.org

Facebook: /PolicyLink

Twitter: @policylink