

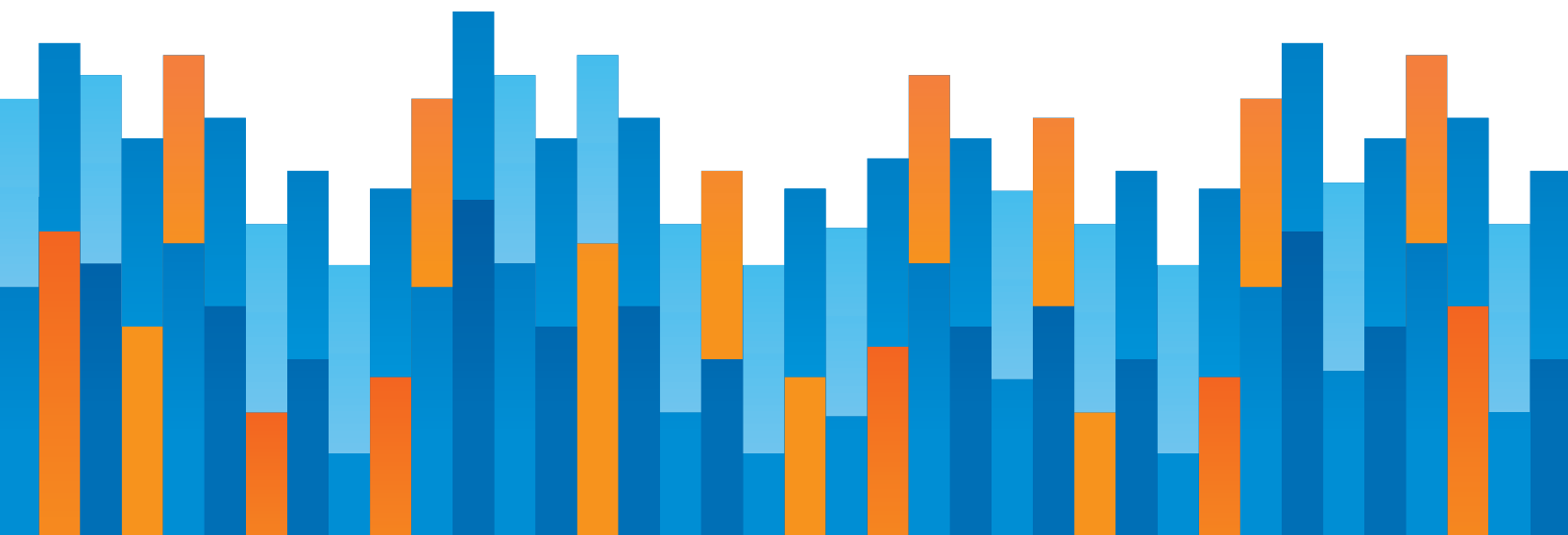


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FINES AND FEES: CONSEQUENCES AND OPPORTUNITIES FOR REFORM

by Vittorio Nastasi and Caroline Greer

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PART 1

INTRODUCTION

In August 2014, Michael Brown Jr. was shot and killed by police officer Darren Wilson in Ferguson, Missouri. The incident triggered several nights of protests and tense interactions between police and city residents. The U.S. Department of Justice subsequently launched a civil rights investigation into the Ferguson Police Department, the results of which were released in a report published by the DOJ in March 2015.

The DOJ report offered a scathing review of the Ferguson Police Department. Specifically, the investigation revealed widespread racial bias and discrimination within the police department. Moreover, the report noted that:

Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson’s police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.¹

¹ “Investigation of the Ferguson Police Department,” Department of Justice Civil Rights Division, *Justice.gov*, 4 March 2015. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (17 July 2021).

Law enforcement officials in Ferguson delivered higher revenues through fines and fees resulting from municipal code enforcement. Between 2010 and 2015, fines and fees nearly doubled as a share of Ferguson’s general revenues—from \$1.30 million (12%) to 3.09 million (23%). As noted in the DOJ report, fines and fees charged by the city were higher than those charged by neighboring municipalities. For example, the charge for “Weeds/Tall Grass” in a neighboring city was just \$5. In Ferguson, charges for the same violation were between \$77 and \$102.²



Law enforcement officials in Ferguson delivered higher revenues through fines and fees resulting from municipal code enforcement. Between 2010 and 2015, fines and fees nearly doubled as a share of Ferguson’s general revenues—from \$1.30 million (12%) to 3.09 million (23%).



Ferguson is a particularly stark example of a problem in jurisdictions across the country. Fines and fees are often used as a source of state and local government revenues. Fines and fees revenue is typically used to fund court operations, including salary and personnel costs. However, some governments rely on courts to generate revenue for other services as well. In some cases, this revenue is earmarked for a specific purpose related to the offense committed. In others, it goes to a government’s general fund or to purposes wholly unrelated to the justice system.³ The use of fines and fees as a source of revenue raises significant questions of fairness and may create poor incentives for law enforcement agencies, courts, and other government entities which may be dependent on the revenues generated.

² Ibid.

³ “Confronting Criminal Justice Debt: A Guide for Policy Reform,” Criminal Justice Policy Program, Harvard Law School, 2016. <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform.pdf>

The primary responsibilities of the legal system are to promote public safety and to provide for justice. Pressure to raise revenue, at best, undermines—and at worst, directly conflicts with—those responsibilities. When incentives are misaligned, police departments and court systems become more concerned with “taxation by citation” than carrying out their core functions. Such conflicts of interest also serve to undermine the legitimacy of the justice system among the public.

“
When incentives are misaligned, police departments and court systems become more concerned with “taxation by citation” than carrying out their core functions.

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Lawmakers are beginning to recognize the problems presented by fines and fees, but fiscal concerns may present a barrier to reform. The aim of this policy brief is to summarize existing research on the effects of fines and fees in the justice system and to present potential reforms that would resolve such fiscal concerns.

1.1

WHAT ARE FINES AND FEES?

While fines and fees are often discussed in tandem, their purposes and legal implications differ. Fines are imposed upon convictions and are primarily intended to deter and punish crime. They are usually set in statute and vary depending on the offense for which an individual is convicted. Fines are appropriate and beneficial when used as an intermediate form of punishment in place of incarceration.⁴ However, fines are commonly used in addition to incarceration, rather than being an alternative.

⁴ Outside of the United States, fines have historically been used as a substitute for short-term incarceration. The infrequent use of fines as an intermediate punishment is one reason why the incarceration rate is so high in the United States. See for discussion: Pat O’Malley, “Politicizing the Case for Fines,” *Criminology and Public Policy*, 10 (3) (2011). DOI:10.1111/j.1745-9133.2011.00736.x

In 2018, a 69-year-old resident of Dunedin, Florida was charged a \$30,000 fine for having grass longer than 10 inches. Jim Ficken was subject to a \$500 per day fine. Ficken was out of town when the city first issued the fines. During that time, the man who normally mowed Ficken's lawn passed away. Upon returning, Ficken attempted to mow the grass himself, but his lawnmower broke in the process. Ficken claims he was not given proper notice and was unaware he owed any money for nearly two months.

City officials denied exploiting fines to raise revenue and characterized Ficken as a repeat code violator. However, revenue data suggest Ficken's case is not an isolated incident. In 2007, the City of Dunedin raised \$34,000 in fine revenues from code enforcement. By 2017 the city was raking in nearly \$700,000—more than a 20-fold increase over a decade.⁵ In fiscal year 2018, Dunedin collected almost \$1.3 million in total fines.⁶

City officials claim high fines are about encouraging compliance, but don't deny making money from enforcement. Regarding the costs of code enforcement, Dunedin Mayor Julie Ward Bujalski said revenue from fines "covers your costs and whatever is left over goes into reserves." City Commissioner Moe Freaney responded "that's a great point. It is the perfect way to do it."⁷

Ficken sued the city after the Dunedin Code Enforcement Board moved to foreclose on his home. The high fine was ultimately upheld in a federal court, but Ficken plans to appeal the court's decision.⁸ While fines can serve as a legitimate punishment for code violations, they should be limited to be proportionate to the offense. No person should lose their home because of tall grass.

⁵ J. Justin Wilson, "Florida Man Could Lose His Home for Having Long Grass," Press Release, Institute for Justice, 8 May 2019. <https://ij.org/press-release/florida-man-could-lose-his-home-for-having-long-grass/>

⁶ Ibid.

⁷ Tom Germond, "Dunedin Officials Take on Nuisance Properties," *Tampa Bay Newspapers*, 26 April 2018. *TBNWeekly.com*. https://www.tbnweekly.com/north_county/article_d5fa5700-48aa-11e8-9de0-87fe057cbc9a.html

⁸ Josh Fiallo, "Federal Court Upholds \$30,000 in Fines to Dunedin Homeowner Over Tall Grass," *Tampa Bay Times*, 29 April 2021, *TampaBay.com*. <https://www.tampabay.com/news/pinellas/2021/04/29/federal-court-upholds-30000-in-fines-to-dunedin-homeowner-over-tall-grass/>

In contrast to fines, fees are used to generate revenue rather than for punishment or restitution. In this sense, fees shift the costs of the justice system away from taxpayers and onto defendants. These “user fees” are imposed by state and local governments to charge individuals for the cost of their constitutional right to due process. Common examples of fees include court-appointed attorney fees, supervision fees, administrative fees, jury fees, and drug testing fees. When individuals are unable to pay fees in a timely manner, they can face additional “poverty fees” in the form of late fees, collection fees, and payment plan fees, as shown in Table 1.

TABLE 1. COMMON COURT FEES

Pre-conviction	<ul style="list-style-type: none"> • Application fee to obtain public defender • Jail fee for pretrial incarceration • Jury fees • Rental fee for electronic monitoring devices
Sentencing	<ul style="list-style-type: none"> • Fines, with accompanying surcharges • Restitution • Fees for court administrative costs • Fees for designated funds (e.g., libraries, prison construction, etc.) • Public defender reimbursement fees • Prosecution reimbursement fees
Incarceration	<ul style="list-style-type: none"> • Fees for room and board in jail and prison • Health care and medication fees
Probation, parole, or other supervision	<ul style="list-style-type: none"> • Probation and parole supervision fees • Drug testing fees • Vehicle interlock device fees (DUIs) • Rental fee for electronic monitoring devices • Mandatory treatment (includes drug and alcohol,) therapy and class fees
Poverty penalties	<ul style="list-style-type: none"> • Interest • Late fees • Payment plan fees • Collection fees

Source: Brennan Center for Justice and NPR. Available at: <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

“Pay-to-stay” fees charge individuals for their time in prison. It is estimated that “a third of the nation’s 3,000-some county jails levy room-and-board fees.”⁹ Inmates can amass substantial debts over the course of their sentence. For example Sean Pugh, an inmate at Brown County Jail in northeastern Wisconsin, racked up around \$17,000 in fees resulting from a \$20 daily “pay-to-stay” fee and fees from previous jail stints.¹⁰ The scale of these fees varies considerably across the jurisdictions that charge them. As of 2013, prisoners in Riverside County, California could be charged up to \$142.42 per day.¹¹ These are often combined with other fees for individual items and necessities, such as dental services, medical costs, meals, and toiletries.¹² According to the Brennan Center for Justice, every state permits inmates to be charged for room and board or medical costs.¹³

A 2014 national survey conducted by NPR found that:

Defendants are charged for many government services that were once free, including those that are constitutionally required. For example:

- *In at least 43 states and the District of Columbia, defendants can be billed for a public defender.*
- *In at least 41 states, inmates can be charged room and board for jail and prison stays.*
- *In at least 44 states, offenders can get billed for their own probation and parole supervision.*
- *And in all states except Hawaii, and the District of Columbia, there’s a fee for the electronic monitoring devices defendants and offenders are ordered to wear.*

⁹ Sara B. Miller, “Is it fair and legal for inmates to foot their room and board?” *The Christian Science Monitor*, 21 July 2004. <https://www.csmonitor.com/2004/0721/p02s01-usju.html>

¹⁰ Izabela Zaluska, “Paying to Stay in Jail: Hidden Fees Turn Inmates into Debtors,” *The Crime Report*, 17 Sept. 2019. *TheCrimeReport.org*. <https://thecrimereport.org/2019/09/17/paying-to-stay-in-jail-hidden-fees-turn-inmates-into-debtors/>

¹¹ “Pay-to-Stay Jail Programs Growing,” *Prison Legal News*, 15 Feb. 2013. *PrisonLegalNews.org*. <https://www.prisonlegalnews.org/news/2013/feb/15/pay-to-stay-jail-programs-growing/>

¹² Lauren-Brooke Eisen, “Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause,” Brennan Center for Justice, 2014. <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate>

¹³ No data was available for Hawaii and Washington, D.C.; “Is Charging Inmates to Stay in Prison Smart Policy?” *BrennanCenter.org*, Brennan Center for Justice. 9 Sept. 2019. <https://www.brennancenter.org/our-work/research-reports/charging-inmates-stay-prison-smart-policy>

Indigent defense is a necessary but often costly and unpopular government service. In an effort to recover some of the costs with indigent defense, governments charge fees to defendants who are constitutionally entitled to a court-appointed attorney. Public defender fees can be applied up front and after a case is resolved. “Recoupment fees” charged after a case ends can be difficult to administer because defendants must be tracked down and payments are often made piecemeal. Alternatively, governments can charge upfront “application” or “registration” fees. Among the 43 states that charge public defender fees, 27 have upfront “registration fees.”¹⁴ These registration fees can range from \$10 to \$480. While the Sixth Amendment gives individuals the right to counsel regardless of their ability to pay, public defender fees burden low-income individuals and create a barrier to exercising their constitutional right. Public defender fees are regressive in that they burden low-income individuals more than others. Often, defendants are not informed of the consequences of not paying the fee and are unaware of whether they will still have counsel if they fail to pay the fee because they cannot afford it. Much remains unknown about the administration of these fees and their impacts on defendants’ decisions regarding legal representation.¹⁵

Fines and fees may result from either criminal or civil violations, but the financial impact on individuals is similar in both cases. Generally, in the United States, neither fines nor fees are scaled to account for an individual’s ability to pay regardless of whether they originated from a criminal or civil offense. Moreover, unpaid civil fines can become a criminal matter, and different jurisdictions may treat the same offenses as either criminal or civil. For these reasons, this report discusses criminal and civil fines and fees together unless noted otherwise.

1.2

COURT SYSTEM STRUCTURES AND FUNDING

Court system structures and funding mechanisms vary across states. For example, some states have unified court systems wherein all courts fall under the supervision of state supreme courts or other central authorities.¹⁶ Other states have less-centralized systems

¹⁴ Devon Porter, “Public Defender Fees Must Go,” American Civil Liberties Union Southern California, 8 June 2017. <https://www.aclusocal.org/en/news/public-defender-fees-must-go>

¹⁵ Ronald F. Wright and Wayne A. Logan, “The Political Economy of Application Fees for Indigent Criminal Defense,” *William & Mary Law Review* 47(6), 2006. <https://scholarship.law.wm.edu/wmlr/vol47/iss6/5/>

¹⁶ “How Many States Are ‘Unified’? There is No Definitive Answer Because There is No Definitive Definition,” *National Center for State Courts*, 24 Feb. 2021, [NCSC.org](https://www.ncsc.org/).

that rely more heavily on local funding. States also vary in how they distribute fines and fees revenue once it is generated:

In some states, a substantial proportion of such revenue remains within the state court system, either captured in accounts dedicated to paying for specific categories of expenditure within the court system or funneled into some kind of broader account or fund for the court system as a whole. In other states, most court system revenue is remitted to the state's general fund... where the legislature can then use it for purposes wholly unrelated to the court system.¹⁷

To the extent that court funding is directly related to revenues generated from fines and fees, conflicts of interest may arise. Conflicts of interest are of particular concern in municipal court systems, which are created and operated independently by cities and towns. Municipal courts typically hear traffic violations, misdemeanors, local ordinance violations, and small civil claims. According to a recent article in the *Harvard Law Review*, “There are over 7,500 such courts in thirty states scattered across the country, they adjudicate over three and a half million criminal cases every year, and they collect over two billion dollars for local jurisdictions.”¹⁸

Variation in the structure and funding mechanisms of court systems may explain some of the variation in fines and fees revenue across states. A 2017 report from the U.S. Commission on Civil Rights examined the structure and funding of courts within the top 100 municipalities in terms of reliance on fines and fees. The report found that only 52% of those municipalities were in states with unified court systems. However, 92% had local courts that partially or fully funded themselves. The authors concluded that “sending fines and fees revenue to a state’s general fund may reduce the incentive for a municipality to excessively fine its residents.”¹⁹

¹⁷ Geoffrey McGovern and Michael D. Greenberg, “Who Pays for Justice? Perspectives on State Court System Financing and Governing,” RAND Corporation, 2014.
https://www.rand.org/content/dam/rand/pubs/research_reports/RR400/RR486/RAND_RR486.pdf

¹⁸ Alexandra Natapoff, “Criminal Municipal Courts,” *Harvard Law Review* 134 (3), 11 Jan. 2021.
<https://harvardlawreview.org/2021/01/criminal-municipal-courts/>

¹⁹ “Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications,” The United States Commission on Civil Rights, *USCCR.gov*, Sept. 2017.
https://www.usccr.gov/files/pubs/docs/Statutory_Enforcement_Report2017.pdf

PART 2

REVENUE AND COST CONSIDERATIONS

2.1 QUANTIFYING FINES AND FEES REVENUES

In general, there is a severe lack of data regarding the revenue generated from fines and fees. This lack of data can make it difficult for policymakers to assess the scale of the problem and the potential impacts of reform. In the absence of data, perceived reliance on fines and fees revenues to fund court systems or government activities can present a significant obstacle to reform.

Two major sources of data can provide some insight: (1) the Annual Survey of State and Local Finances published by the Census Bureau and (2) various financial reports published by state and local governments. Neither of these sources perfectly captures the concept of fines and fees revenue, but they are among the only available sources of national data.

The Annual Survey of State and Local Finances includes a line item for “Fines and Forfeits.” According to the Census Bureau’s classification manual, Fines and Forfeits includes:

Revenue from penalties imposed for violations of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation; court-ordered restitutions

to crime victims where government actually collects the monies; and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral).²⁰

This definition does not perfectly capture the concept of fines and fees as discussed in this brief but is among the best approximations available (much of the fines and fees literature relies on data using this or similar definitions). For example, court fees levied prior to conviction are not included. Restitutions paid to victims, meanwhile, should arguably not be considered as fines or fees. As University of Washington sociologists Katherine Beckett and Alexes Harris argue:

Restitution differs from fees and fines in important ways. Restitution is imposed only in cases in which specific and direct crime victims have incurred financial losses; restitution payments are allocated to these particular people (or to those who have provided services to them). By contrast, fees and fines are routinely assessed in cases in which no direct victims exist or in which victims did not incur financial losses. Moreover, the revenues generated through the imposition of fees and fines are used to fund government operations and programs...

“

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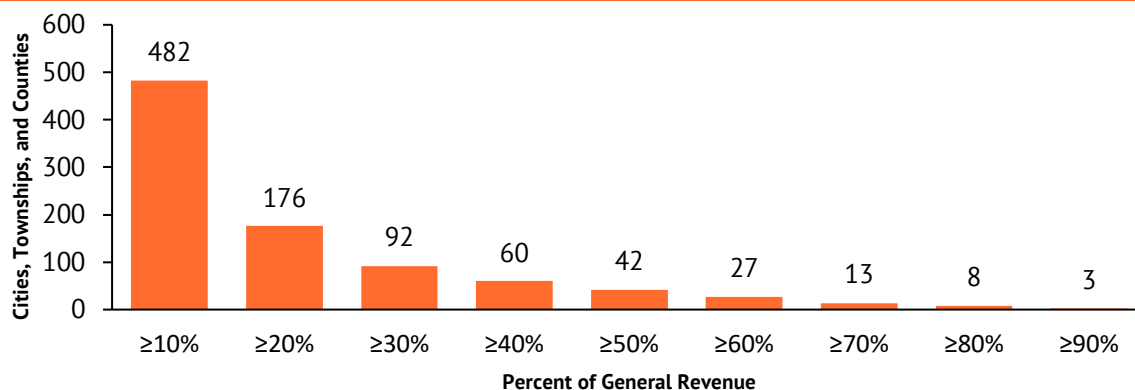
The most recent year for which detailed estimates are available is 2017.²¹ That year 28,159 cities, townships, counties across the country reported a total of \$4,975,608,000 in revenue from fines and forfeits. In the vast majority, fines and forfeits accounted for less than 10% of general revenues. However, a sizable minority of jurisdictions appears to be highly dependent on these revenue sources. At least 482 local governments derived 10% or more of general revenues from fines and forfeits. In 176 jurisdictions, fines and forfeits accounted for 20% or more of general revenues. Fines and forfeits made up 50% or more of general

²⁰ “Government Finance and Employment Classification Manual,” U.S. Bureau of the Census, 2006.

²¹ See Appendix for detailed discussion of the data.

revenues in 42 municipalities (Figure 1). Rural areas with relatively small populations tend to be the most dependent on fines and forfeits (Figure 2).

FIGURE 1: FINES AND FORFEITS AS A SHARE OF GENERAL REVENUE



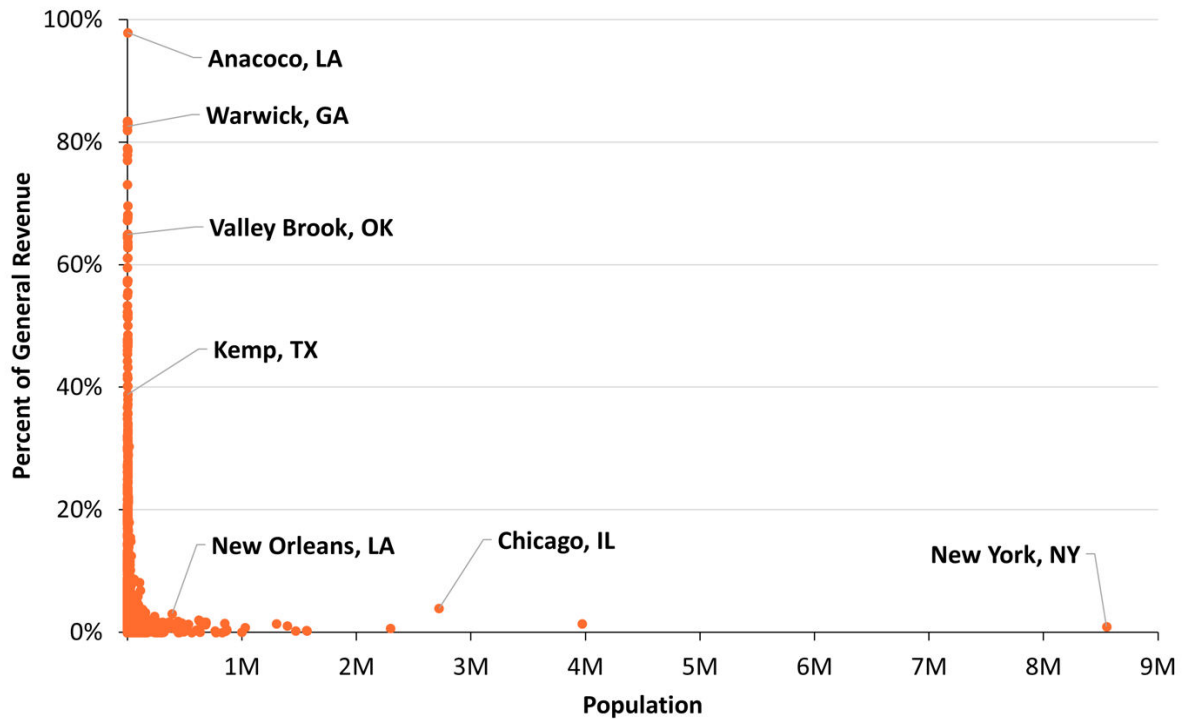
Source: Census Bureau Annual Survey of State and Local Government Finances, 2017.

Warwick, Georgia provides an all-too-common example of municipalities that generate significant revenues through speeding tickets and other traffic violations. The small city of roughly 500 residents generated \$765,000 from fines and forfeits in 2017—about \$83 per resident. Fines and forfeits accounted for over 82% of the city’s general revenue that year.

The town’s revenue-raising tactics have not gone unnoticed. In 2014, the *Atlanta Journal-Constitution* conducted an analysis of traffic ticket revenue in municipalities across the state.²² The analysis revealed a common theme: many of the worst offenders were small towns “situated along busy state routes or interstates.” As Warwick City Councilman Ronnie Fennell put it, “We had the opportunity to generate revenue on Highway 300... And that’s what we did.”

The revenues generated by traffic citations in Warwick helped pay for a new police headquarters, two Chevrolet Tahoe police cruisers, and two \$25,000 license plate readers. The city also renovated its community center, which doubles as a municipal court. “I knew what revenue was being generated,” Councilman Fennell told the *AJ-C*. “And let me tell you something. I liked it.”

²² Andria Simmons, “Some Rural Georgia Towns Policing for Profit,” *The Atlanta Journal Constitution*, 22 Oct. 2014. <https://www.ajc.com/news/local/some-rural-georgia-towns-policing-for-profit/wdYjcTLZsqUo8Px07C48VJ/>

FIGURE 2: FINES AND FORFEITS BY POPULATION

Source: Census Bureau Annual Survey of State and Local Government Finances, 2017.

Among cities and townships with populations over 5,000, the vast majority do not rely heavily on fines and forfeits. However, 26 received a larger share of their general revenues from fines and forfeits than Ferguson, Missouri. Thirty-eight (including Ferguson) received more than 10% of their general revenues from fines and forfeits. In sum, most cities and townships derive very little of their general revenues from fines and forfeits. Yet some (typically smaller, rural governments) do rely heavily on fines and forfeits as a source of revenue.

That most governments are not highly dependent on fines and fees revenue should not be interpreted as diminishing the need for reform. Rather, this observation suggests that, in the overwhelming majority of cases, reform would not have a substantial fiscal impact on state and local governments. While some government services may be entirely funded by fines and fees, this is more of an accounting problem than a fiscal one. Fines and fees do, however, have a substantial impact on those on whom they are levied. Part 3 of this report explains the negative consequences that fines and fees have on individual defendants.

While the census data provide some insight, they have flaws. For example, they are based on survey responses and are therefore subject to reporting errors. Moreover, many governments do not respond to the survey, or may leave some questions unanswered. This can result in missing data and discrepancies when comparing the census data to financial audits.

In 2019, *Governing* issued a special report on fines and fees that analyzed data compiled from financial audits, reports filed to state agencies, and other sources.²³ Despite some discrepancies between the *Governing* and census data, both sources tell a similar story.

The *Governing* report found that “for hundreds of mostly small cities and towns, fines are a critical source of funding, at times accounting for more than half of all general revenues.”²⁴ However, this finding is limited to only a select group of municipalities—the vast majority derive a very small portion of their revenues from fines and fees. As noted by *Governing*’s Mike Maciag:

*High fine communities can be found in just about every state, but they tend to be concentrated in certain parts of the country. Rural areas with high poverty have especially high rates. So do places with very limited tax bases or those with independent local municipal courts.*²⁵

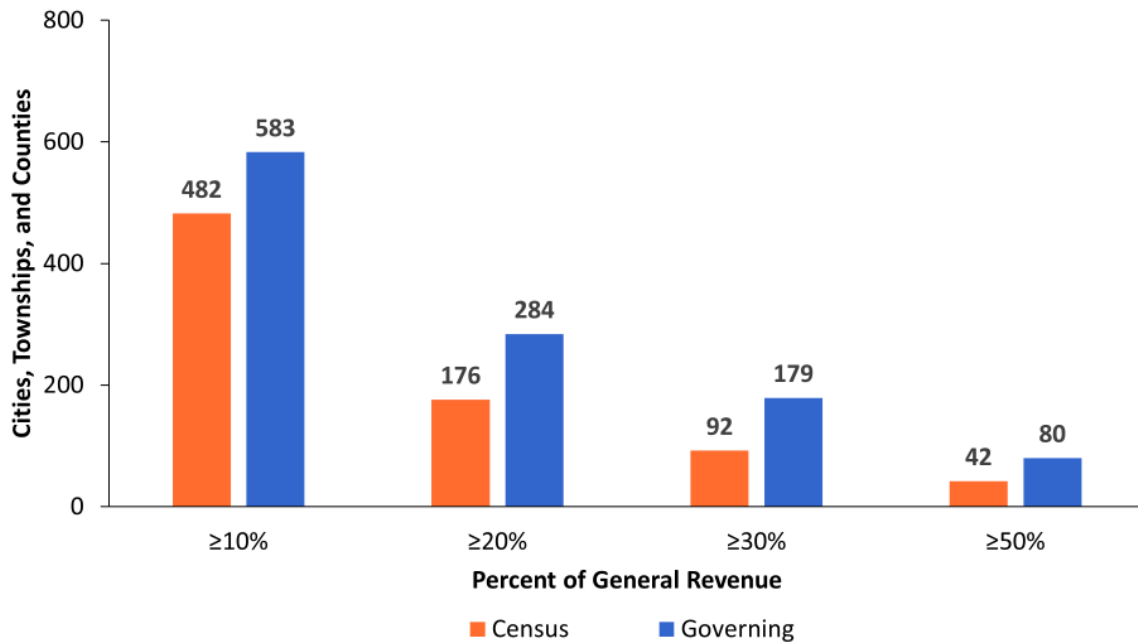
In general, the *Governing* data are similar to the census data but indicate that slightly more governments are highly dependent on fines and fees revenue (Figure 3). Arkansas, Georgia, Illinois, Louisiana, New York, Ohio, Oklahoma, and Texas stood out in the *Governing* analysis as having particularly large numbers of local governments that rely heavily on fines and fees revenue (Figure 4).

²³ Mike Maciag, “Addicted to Fines: Methodology and Notes for States,” *Governing: The Future of States and Localities*, *Governing.com*, 20 Aug. 2019. <https://www.governing.com/archive/local-government-fines-revenue-methodology.html>

²⁴ Mike Maciag, “Addicted to Fines: A Special Report,” *Governing: The Future of States and Localities*, *Governing.com*, 16 Aug. 2019. <https://www.governing.com/archive/fine-fee-revenues-special-report.html>

²⁵ Mike Maciag, “Addicted to Fines” *Governing: The Future of States and Localities*, *Governing.com*, 19 Aug. 2019. <https://www.governing.com/archive/gov-addicted-to-fines.html>

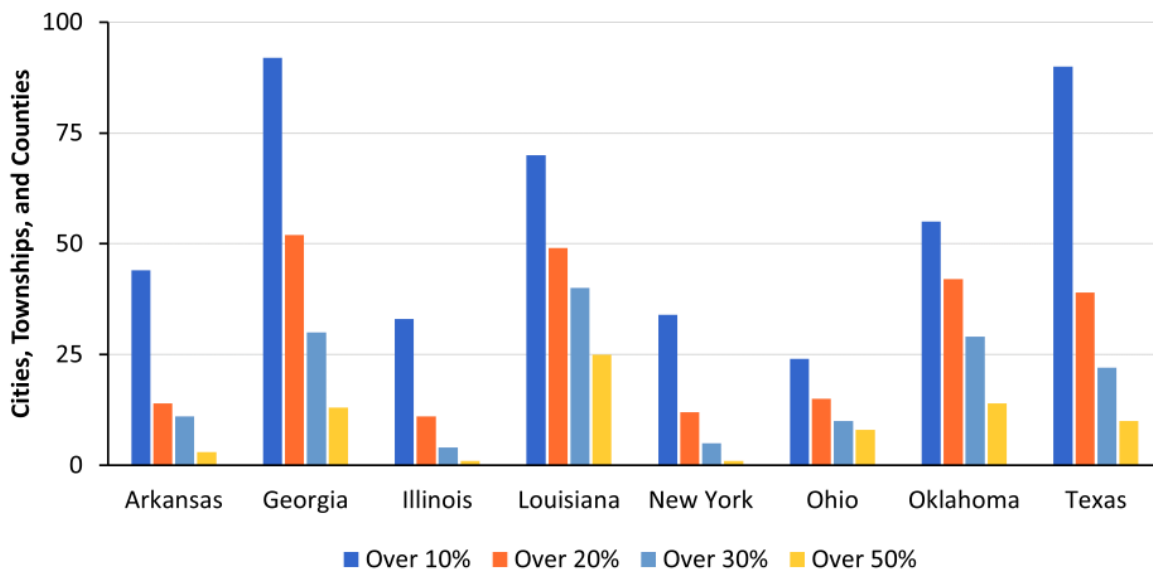
FIGURE 3: COMPARISON OF GOVERNING AND CENSUS BUREAU DATA



Source: Census Bureau Annual Survey of State and Local Government Finances, 2017; Mike Maciag, “Addicted to Fines,” 2019.

FIGURE 4: STATES WITH MOST MUNICIPALITIES THAT RELY HEAVILY ON FINES AND FORFEITS

Fines and Forfeits as a Share of General Revenue



Source: Mike Maciag, “Addicted to Fines,” 2019.

The *Governing* data exclude governments reporting less than \$100,000 in fines and other court revenues. Some additional governments were excluded because their financial reports were unavailable or did not include separate line items for fines and other court revenues. Therefore, neither the *Governing* data nor the census data provides a complete picture of fines and fees revenues. Given the number of governments excluded from both sources, the available data likely understate the scale of fines and fees revenue.

2.2

ARE FINES AND FEES A RELIABLE SOURCE OF REVENUE?

While some municipal governments are financially dependent on fines and fees, there are several reasons to believe that they are not reliable sources of revenue. For example, fines and fees revenue can vary considerably, depending on the frequency of violations, enforcement, and the ability of governments to collect assessed fines and fees. Moreover, governments often do not effectively track outstanding debts or the costs associated with collecting those debts.

2.2.1 UNCOLLECTED DEBTS

Governments are often unable to successfully collect outstanding debts.²⁶ This is due, in part, to the fact that individuals' ability to pay is rarely considered prior to the assessment of fines and fees. Data limitations have impeded national analyses of outstanding fines and fees debt.

A recent report published by the Fines and Fees Justice Center attempted to determine the amount of outstanding court debts resulting from fines and fees imposed at conviction in felony, misdemeanor, traffic, and municipal ordinance violation cases.²⁷ The authors submitted data requests to judicial offices and government agencies in all 50 states and the

²⁶ See for example: Don K. Murphy, "Why Crime Doesn't Pay: Examining Felony Collections," Institute for Court Management, May 2015. Available at: https://www.ncsc.org/__data/assets/pdf_file/0025/18961/why-crime-doesnt-pay-examining-felony-collectionsmurphy.pdf; Katherine A. Beckett, Alexis M. Harris, and Heather Evans, "The Assessment and Consequences of Legal Financial Obligations in Washington State," Washington State Minority and Justice Commission, Aug. 2008. Available at: https://media.spokesman.com/documents/2009/05/study_LFOimpact.pdf; Rebekah Diller, Judith Greene, and Michelle Jacobs, "Maryland's Parole Supervision Fee: A Barrier to Reentry," Brennan Center for Justice, 2009. <https://www.brennancenter.org/sites/default/files/legacy/publications/MD.Fees.Fines.pdf>

²⁷ Briana Hammons, "Tip of the Iceberg: How Much Criminal Justice Debt Does the U.S. Really Have?" Fines & Fees Justice Center, 28 April 2021. www.finesandfeesjusticecenter.org/articles/tip-of-the-iceberg-how-much-criminal-justice-debt-does-the-u-s-really-have/ (3 July 2021).

District of Columbia. Only 25 states were able to provide any data, among which 11 only provided partial data. The 25 states that were unable to provide data cited a lack of tracking information or technical capacity to gather data and inability to easily compile data as reasons for their non-response.²⁸ Some of the non-reporting states responded that data might be available at the local level from county, district, circuit, or municipal courts. However, the authors determined that obtaining this information in several states—some of which have over one thousand municipal courts—was too significant a hurdle for their analysis. Based on the available data, the authors were able to document at least \$27.6 billion in outstanding court debts nation-wide.²⁹



Governments are often unable to successfully collect outstanding debts. This is due, in part, to the fact that individuals' ability to pay is rarely considered prior to the assessment of fines and fees.



Some state-level analyses have been conducted. For example, an analysis of felony fines and fees in Florida found that the state collected less than 14% of the amount assessed in 2013.³⁰ A similar analysis in Washington State revealed that none of the “dollar amount assessed [from fines and fees] in 2004 had been paid for over half of the convictions by 2007.”³¹ A 2009 analysis of parole supervision fees in Maryland found that just 14% of assessed fees were collected by the state.³²

More recently, a 2019 report from the Brennan Center for Justice analyzed the fiscal impacts of fines and fees in Texas, Florida, and New Mexico.³³ The authors found that 46% of the fines and fees assessed in those states between 2013 and 2017 were not paid over

²⁸ Ibid.

²⁹ Ibid.

³⁰ Murphy, “Why Crime Doesn’t Pay.”

³¹ Beckett, Harris, and Evans, “The Assessment and Consequences of Legal Financial Obligations in Washington State.”

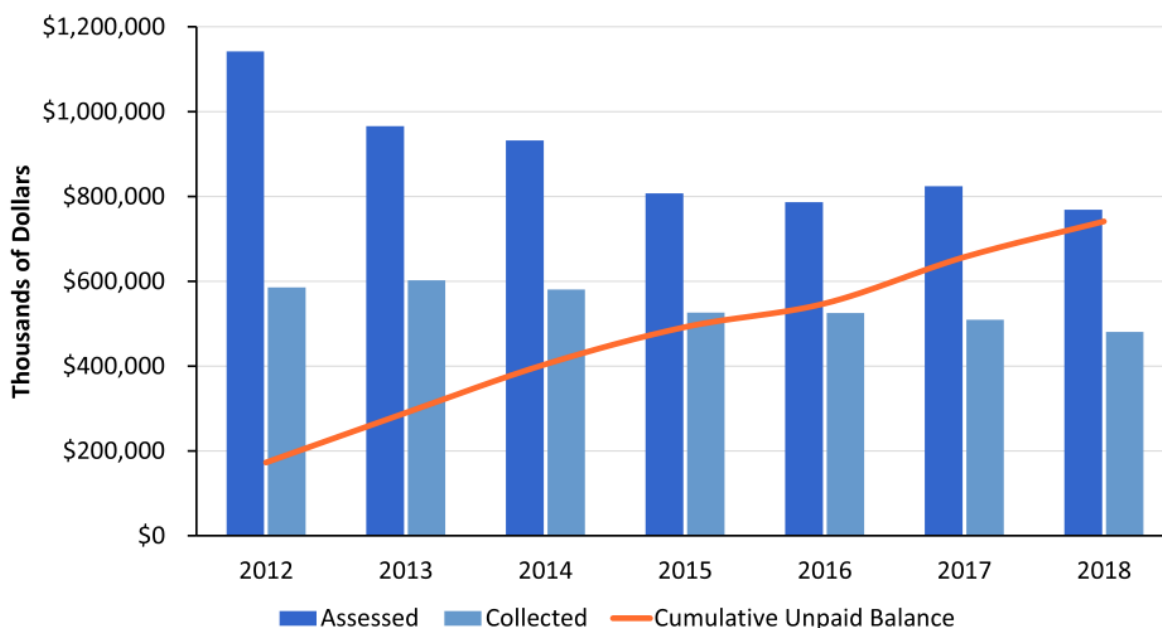
³² Diller, Greene, and Jacobs, “Maryland’s Parole Supervision Fee: A Barrier to Reentry.”

³³ Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison, “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” Brennan Center for Justice. 2019. <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>

that period.³⁴ Figures 5–7 display the amount of fines in fees assessed and collected annually in Texas, Florida, and New Mexico.³⁵

The available data demonstrate that governments are unable to collect a substantial amount of outstanding court debts each year. This finding has fiscal implications for governments, but also indicates the long-term consequences for individuals to whom fines and fees are assessed. First, the disparity between amounts assessed and collected suggest that fines and fees are not a reliable source of revenue. Policymakers should be careful to distinguish between assessments and actual revenues when considering the fiscal impacts of reform. Second, the data suggest that individuals are unable pay off their debts quickly and many may never be paid. In this way, fines and fees can become a much longer-term burden than expected—and in some cases, a lifetime sentence of debt. Part 3 discusses the individual consequences of fines and fees in greater detail.

FIGURE 5: FINES AND FEES ASSESSMENTS AND COLLECTIONS IN TEXAS

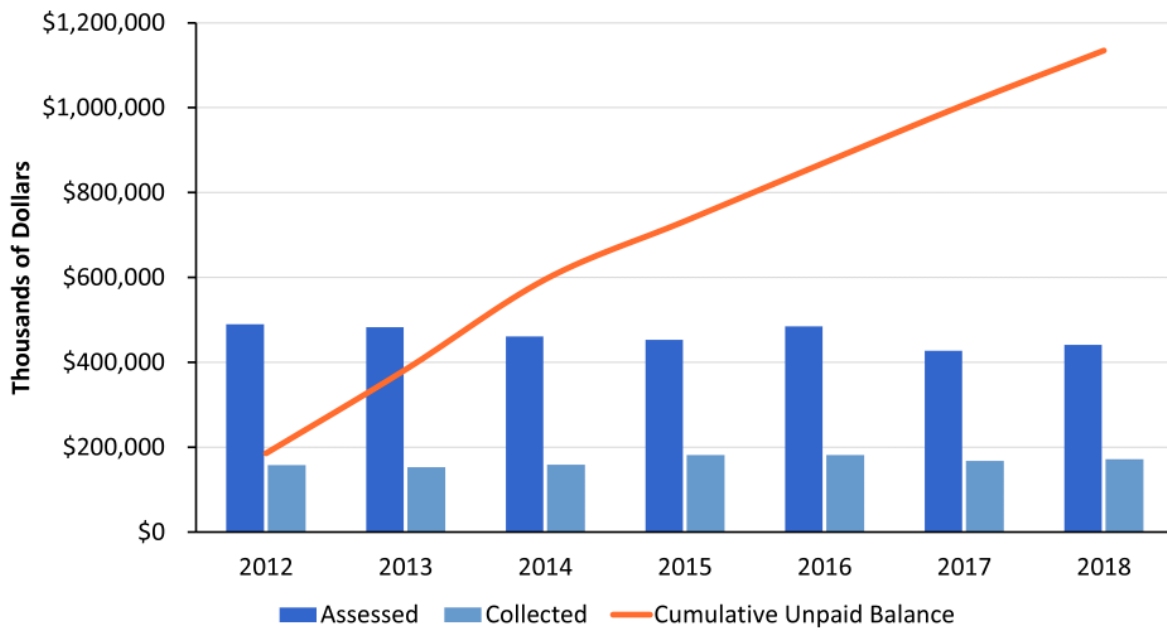


Source: Menendez, et al., “The Steep Costs of Criminal Justice Fines and Fees,” 2019.

³⁴ Ibid. Collection rates by state: Texas (61%), Florida (36%), New Mexico (59%).

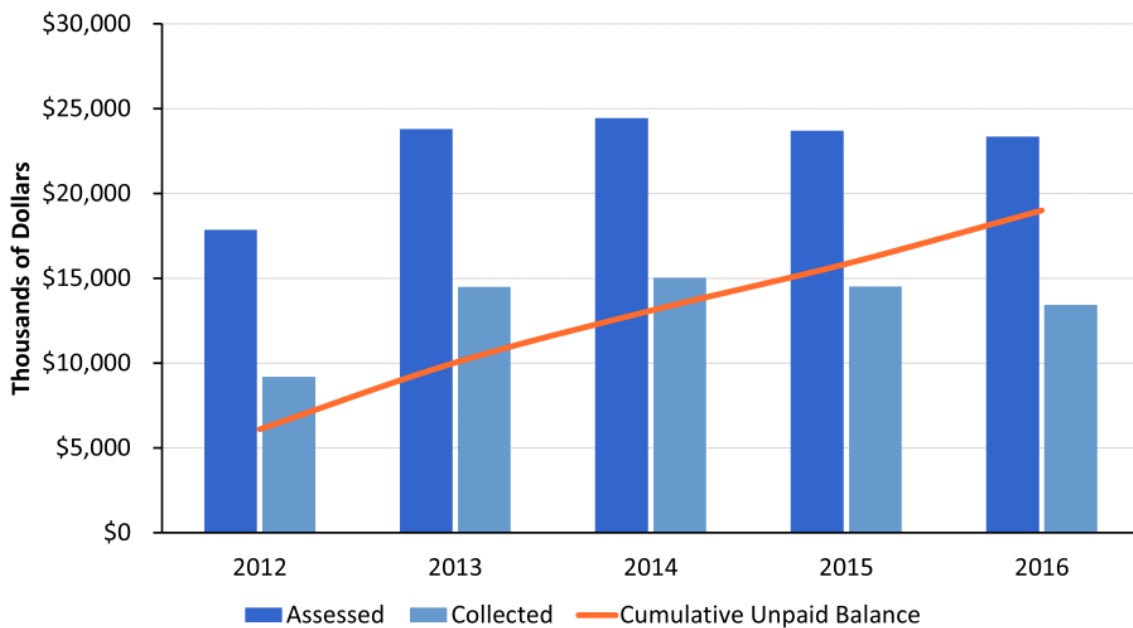
³⁵ Cumulative unpaid balances exclude credits/waivers/liens.

FIGURE 6: FINES AND FEES ASSESSMENTS AND COLLECTIONS IN FLORIDA



Source: Menendez, et al., “The Steep Costs of Criminal Justice Fines and Fees,” 2019.

FIGURE 7: FINES AND FEES ASSESSMENTS AND COLLECTIONS IN NEW MEXICO



Source: Menendez, et al., “The Steep Costs of Criminal Justice Fines and Fees,” 2019.

2.2.2 THE COSTS OF COLLECTION

There are also significant administrative costs associated with levying and collecting fines and fees that further undermine their ability to efficiently raise revenue. As noted by the Obama Administration's Council of Economic Advisors:

Despite their goal of increasing revenue to fund local criminal justice expenditures, in many cases, the costs of collection may exceed revenues from fines and fees due to the high direct costs of collecting debt and the low rate of collection. Direct costs of administering the program can be substantial, including staffing collectors, locating offenders, and administering collections.³⁶

Governments do not generally account for these costs, and little data are available to assess them. By one estimate, some counties in Texas and New Mexico “effectively spend more than 41 cents of every dollar of revenue they raise from fees and fines on in-court hearings and jail costs alone.” In fact, one New Mexico county actually loses money, spending “at least \$1.17 to collect every dollar of revenue it raises through fees and fines.” These findings suggest that fines and fees are significantly less efficient means of generating revenue than taxation. For comparison, the Internal Revenue Service spends just 34 cents for every *hundred dollars* collected through taxes. Texas and New Mexico spend 31 cents and 95 cents, respectively, for every *hundred dollars* of taxes collected.³⁷

While data are limited, the available evidence overwhelmingly indicates that fines and fees are not a reliable source of revenue. From high collection costs to poor rates of collection, fines and fees make little financial sense. These concerns will likely be exacerbated in the longer-term, as emerging technologies like autonomous vehicles could dramatically reduce the number of speeding tickets and traffic violations that generate a large amount of revenue in some areas. It would therefore be prudent for governments that rely on fines and fees for a significant portion of their revenues to consider reform.

³⁶ “Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor,” Council of Economic Advisors, Dec. 2015.
https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

³⁷ Menendez, Crowley, Eisen, and Atchison, “The Steep Costs of Criminal Justice Fees and Fines.”

PART 3

NEGATIVE CONSEQUENCES OF FINES AND FEES

In addition to the costs of assessment and collection, fines and fees result in considerable social and economic costs that are not easily quantified. When financial penalties impose significant burdens on individuals, they inhibit their ability to act as productive members of society. Failure to pay outstanding fines and fees can result in driver's license suspensions, revocation of voting rights, and even incarceration. Such penalties make it even more difficult for individuals to pay off their debts, reduce access to housing and employment, and create additional administrative costs for governments.

3.1

PUNISHMENTS FOR FAILURE TO PAY

3.1.1. DRIVER'S LICENSE SUSPENSIONS

More than half of states suspend, revoke, or refuse to renew an individual's driver's license because of unpaid court debt from fines, fees, drug offenses, or other legal costs.³⁸ As of

³⁸ Free to Drive Coalition. <https://www.freetodrive.org/maps/#page-content>

2018, more than seven million people nationwide may have had their driver's licenses suspended for failure to pay court or administrative debt.³⁹

The enforcement and administration of license suspensions carry high costs for motor vehicle agencies. A 2021 report from the American Association of Motor Vehicle Administrators (AAMVA) examined these costs in Arkansas, Colorado, Missouri, and Oregon.⁴⁰ Each of the states experienced significant personnel and postage costs resulting from suspensions unrelated to traffic safety. For example in Arkansas, “nearly four full-time employees (FTEs) were required for administrative processing, and more than \$20,000 was spent in postage alone” in 2017. Likewise, Missouri “employed two full-time staff to process non-highway safety suspensions,” and Oregon “spent approximately \$73,000 on forms and postage costs for communication with suspended drivers for non-highway safety suspensions.”⁴¹

Not only is this an inefficient strategy for money collection, but it also makes fines and fees an unreliable source of revenue for municipalities because it restricts individuals' ability to pay their legal financial obligations.⁴²

With over 85% of Americans driving to work⁴³ and many jobs requiring⁴⁴ a driver's license, this license-for-payment system has long-term negative effects on individuals' employment status. One study of New Jersey drivers found that 42% of people whose driver's licenses were suspended lost their job within six months of the suspension, and nearly half were

³⁹ Justin Wm. Moyer, “More than 7 million people may have lost driver's licenses because of traffic debt,” *The Washington Post*, 19 May 2018. https://www.washingtonpost.com/local/public-safety/more-than-7-million-people-may-have-lost-drivers-licenses-because-of-traffic-debt/2018/05/19/97678c08-5785-11e8-b656-a5f8c2a9295d_story.html

⁴⁰ “Reducing Suspended Drivers and Alternative Reinstatement Best Practices,” American Association of Motor Vehicle Administrators, 2018. <https://www.aamva.org/Suspended-Driver-Alternative-Reinstatement-Working-Group/> (30 Sept. 2021)

⁴¹ Ibid.

⁴² Menendez, Crowley, Eisen, and Atchison, “The Steep Cost of Criminal Justice Fees and Fines.”

⁴³ Brian McKenzie, “Who Drives to Work? Commuting by Automobile in the United States: 2013,” United States Census Bureau, Aug. 2015. <https://www.census.gov/content/dam/Census/library/publications/2015/acs/acs-32.pdf> (5 July 2021).

⁴⁴ Alana Semuels, “No Driver's License, No Job,” *TheAtlantic.com*, 5 June 2016. www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653/ (2 July 2021).

unable to get new employment during the time their license was suspended.⁴⁵ Of those who could find another job, 88% reported a decrease in income.⁴⁶

According to the federal National Highway Traffic Safety Administration, at least 75% of individuals with suspended licenses continue to drive, risking being pulled over and facing fines, court costs, additional periods of suspension, or even mandatory incarceration.⁴⁷

Rather than encouraging individuals to pay their unpaid fines and fees, license suspensions create significant barriers for people to earn the money needed to regain their license and income.

3.1.2. REVOCATION OF VOTING RIGHTS

While the Twenty-Fourth and Fourteenth Amendments bar the use of poll taxes for voting, 30 states disenfranchise individuals with felony convictions when they have unpaid fines, fees, restitution, and court debt.⁴⁸ In 16 states, officials have discretion to permit or delay voting rights, but cannot deny them permanently. Seven states indefinitely deny the right to vote for certain cases due to unpaid legal financial obligations. An additional four states exclusively use constitutional clemency to reinstate voting rights. Florida, Arkansas, and Alabama are the only states that require payment of all court debt to be achieved before restoring voting rights, regardless of ability to pay or completed non-financial requirements.⁴⁹

This modern-day poll tax punishes those in poverty and creates barriers to reintegrating into society.⁵⁰ Not only are individuals disenfranchised, but they are also funding the very governments they are prohibited from participating in. In that sense, “taxation by citation” can come without representation.

⁴⁵ “Motor Vehicles Affordability and Fairness Task Force Final Report,” Alan M. Voorhees Transportation Center and New Jersey Motor Vehicle Commission, *State.nj.us*, Feb. 2006, www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf (31 June 2021).

⁴⁶ *Ibid.*

⁴⁷ Joseph Shapiro, “Can’t Pay Your Fines? Your License Could Be Taken,” *NPR.com*, 29 Dec. 2014, www.npr.org/2014/12/29/372691960/cant-pay-your-fines-your-license-could-be-taken%202014 (accessed 10 July 2021).

⁴⁸ Margaret Love and David Schlusell, “Who Must Pay to Regain the Vote? A 50-State Survey,” Collateral Consequences Resource Center, July 2020, www.finesandfeesjusticecenter.org/articles/pay-to-regain-the-vote/ (28 June 2021).

⁴⁹ *Ibid.*

⁵⁰ “Criminal Justice Fact Sheet,” *NAACP.org*, www.naacp.org/resources/criminal-justice-fact-sheet (accessed 1 July 2021).

3.1.3. INCARCERATION

There are multiple channels through which failure to pay outstanding court debts can result in incarceration. While debtors' prisons are outlawed in the United States, individuals may be incarcerated for failure to pay fines and fees. In *Bearden v. Georgia*, the Supreme Court ruled that it is unconstitutional to jail people for nonpayment if they are financially unable to pay their debts. However, the Court's ruling allows for incarceration in cases where individuals "willfully" fail to pay. Too often, this standard relies on subjective determinations of an individual's ability to make payments.

If an individual on a payment plan misses a payment, a court may issue a warrant for their arrest and the individual may be incarcerated until they appear before a judge. In other cases, judges may require regular court appearances until an individual finishes paying their fines and fees. Missing a court appointment may result in an arrest warrant.

Payment of fines and fees can also be a condition of parole or probation. Failure to pay may be considered a technical violation and result in revocation of supervision. One study of individuals on felony probation in Texas found that 26% of the 2,007 individuals examined had their probation revoked for technical violations.⁵¹ Technical violations included non-participation in treatment, failure to pay, and the presence of a positive drug screen. Another similar study found that 26.5% of probationers who experienced revocation had failure to pay fines and fees listed as a reason.⁵²

In some jurisdictions, fines and fees can even be waived in exchange for time in jail. This is sometimes a "choice" on the part of an offender—when they are given an option between paying fines and fees or spending time in jail.⁵³ This choice essentially places a monetary value on each day spent in jail. Other times, incarceration is used as a form of punishment for non-payment. In both instances, individuals are considered to pay off their debts through credits issued for each day spent in jail.⁵⁴

⁵¹ Scott H. Belshaw, "Are All Probation Revocations Treated Equal? An Examination of Felony Probation Revocations in a Large Texas County," *International Journal of Punishment and Sentencing* 7 (2), 2011. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/punisen7&div=11&id=&page=>

⁵² Ebony Ruhland, Bryan Holmes, and Amber Petkus, "The Role of Fines and Fees on Probation Outcomes," *Criminal Justice and Behavior* 47 (10), May 2020. <https://doi.org/10.1177%2F0093854820918877>

⁵³ "State Bans on Debtors' Prison and Criminal Justice Debt," *Harvard Law Review* 129 (4), March 2016. <https://harvardlawreview.org/2016/02/state-bans-on-debtors-prisons-and-criminal-justice-debt/>

⁵⁴ See: Menendez, Crowley, Eisen, and Atchison, "The Steep Cost of Criminal Justice Fees and Fines."

It is important to note that incarceration that results from failure to pay fines and fees makes little financial sense for governments. While the threat of incarceration may incentivize payment, incarceration is extremely costly to taxpayers.

3.2 IMPACT ON LOW-INCOME COMMUNITIES

For lower-income individuals, even relatively small legal expenses can turn into insurmountable challenges that create a cycle of debt.⁵⁵ Approximately four in 10 American adults report that they could not cover an emergency expense of \$400 given their current financial situation.

To incentivize the payment of debt, many states use the threat of parole or probation revocation, or incarceration as punishments.⁵⁶ These punishments make it difficult for individuals to reintegrate into their communities and move past the punishment of their crimes. In order to complete their payments, people are forced to go to extreme measures. For example, in a survey of 1,000 Alabama residents, over 80% of respondents had given up basic necessities like rent, food, medical bills, car payments, and child support to pay their court debt.⁵⁷

Individuals with a criminal record already face tremendous obstacles to reintegrating into society. These “collateral consequences of conviction” can make it difficult to secure employment, housing, and financial services.⁵⁸ When failure-to-pay penalties like driver’s license suspensions or late fees are added, it may become nearly impossible for former offenders to be restored as productive members of society. These consequences are not just limited to low-income individuals—they also impact their families and the wider community.

⁵⁵ “Report on the Economic Well-Being of U.S. Households in 2015,” Board of Governors of the Federal Reserve System, May 2016. www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf (5 July 2021).

⁵⁶ Alicia Bannon, Mitali Nagrecha, and Rebekah Diller, “Criminal Justice Debt: A Barrier to Reentry,” Brennan Center for Justice, 2010. www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf (20 June 2021).

⁵⁷ “Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide,” Alabama Appleseed Center for Law & Justice, 2018. www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf (5 July 2021).

⁵⁸ See: The National Reentry Resource Center, “National Inventory of Collateral Consequences of Conviction.” <https://niccc.nationalreentryresourcecenter.org>

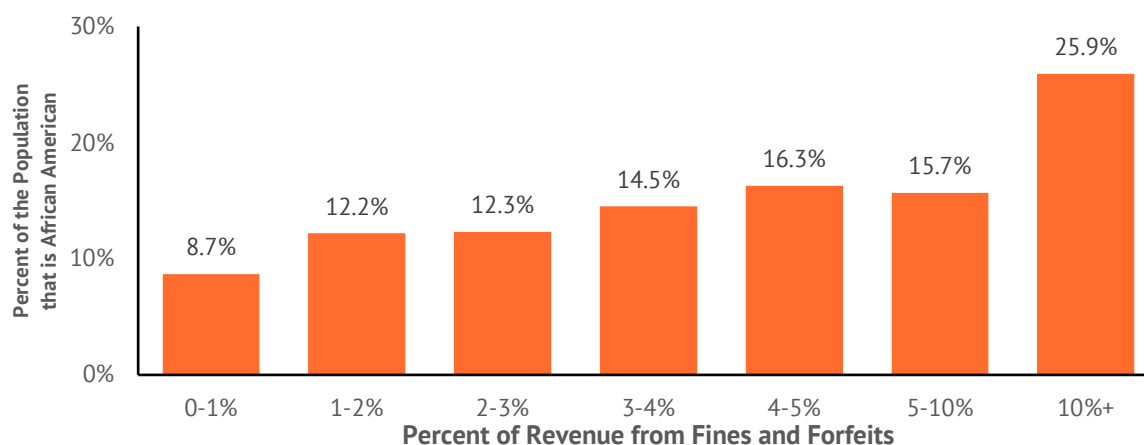
3.3 IMPACT ON RACIAL MINORITY GROUPS

There is evidence that fines and fees have a disproportionate impact on minority communities. In Ferguson, the Department of Justice investigation revealed that African Americans accounted for 85% of vehicle stops, 90% of citations, and 93% of arrests despite comprising only 67% of the city's population.⁵⁹ As the DOJ concluded:

.... the court primarily uses its judicial authority as a means to compel the payment of fines and fees that advance the City's financial interests.... The harms of Ferguson's police and court practices are borne disproportionately by African-Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race.⁶⁰

Ferguson isn't alone. An analysis of the 50 cities with the highest proportion of revenues from fines found "one demographic that was most characteristic of cities that levy large amounts of fines on their citizens: a large African American population."⁶¹ On average, African Americans make up approximately 19% of the population in those cities compared to just 3.8% in the median city nationwide. Beyond these comparisons, the data suggest a positive correlation between the African American population of cities and their reliance on fines and fees revenue (**Figure 8**).

FIGURE 8: AFRICAN AMERICAN POPULATION AND FINES AND FORFEITURES REVENUE



Source: Dan Kopf, "The Fining of Black America," 2016.

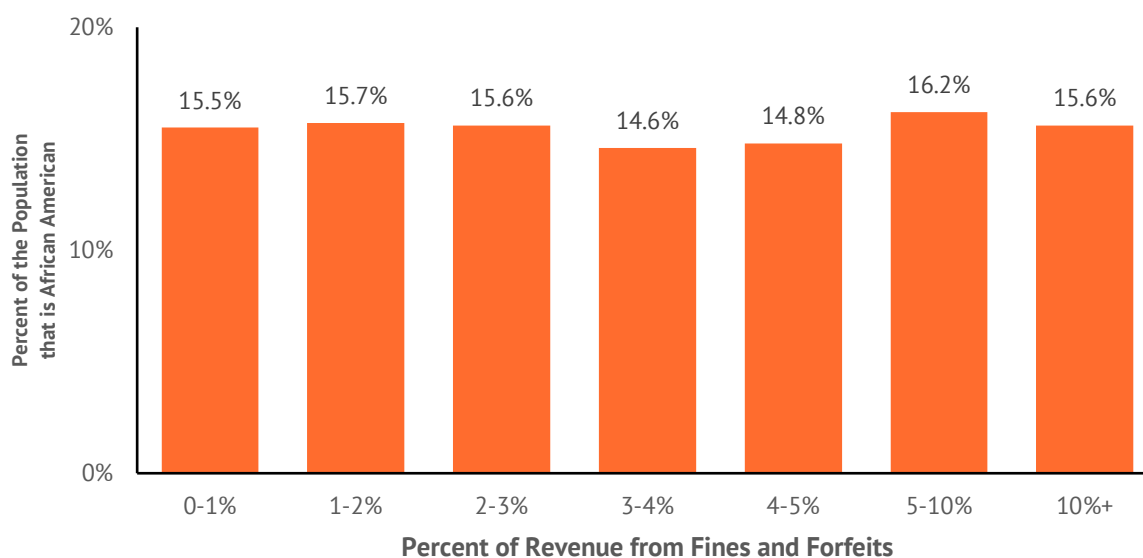
⁵⁹ "Investigation of the Ferguson Police Department," Department of Justice Civil Rights Division.

⁶⁰ Ibid.

⁶¹ Dan Kopf, "The Fining of Black America," Priceonomics, 24 June 2016. <https://priceonomics.com/the-fining-of-black-america/>

Considering that, on average, African Americans have higher rates of poverty and lower incomes relative to other racial groups, it is possible that those factors could be driving the apparent correlation. However, this explanation does not hold up to further analysis. The analysis revealed no relationship between a city's poverty rate and reliance on fines and fees revenue (Figure 9).⁶²

FIGURE 9: POVERTY RATE AND FINES AND FORFEITURES REVENUE



Source: Dan Kopf, "The Fining of Black America," 2016

3.4

IMPACT ON RECIDIVISM, YOUTH, AND FAMILIES

While fines aim to be a punishment for crimes and deter further convictions, they often create adverse consequences such as continued reoffending. This is often due to a lack of financial opportunities or other monetary pressures. A 2018 report by Alabama Appleseed Center for Law and Justice found that 35% of those surveyed committed a second crime to pay off the fines and fees they incurred while in jail.⁶³

To the extent that court debts encourage a return to criminal behavior, subsequent arrests and incarceration can be costly to taxpayers. When Brennan Center for Justice examined the use of fees in the 15 states with the highest prison populations, they found that most

⁶² Ibid.

⁶³ Kevin Bliss, "Pay-to-Stay Fees Impoverish Prisoners, Increase Recidivism,"

had recently increased the number and dollar value of criminal justice fees.⁶⁴ While this is often due to a desire to raise revenues, it comes at the cost of increasing corrections costs for governments and additional debt for prisoners. As the author notes, “no one is considering the ways in which the resulting debt can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public.”⁶⁵

Fines and fees can have significant detrimental impacts on youth and their families. Juvenile offenders are particularly affected by incarceration that takes place in a formative time in their lives. They also tend to lack the resources to gain employment which affects their reentry into society. The financial burdens associated with court debts can strain familial relationships, thereby undermining juveniles’ ability to maintain social ties and effectively reintegrate into society.⁶⁶



... the financial burden associated with fines, fees, and restitution increased the likelihood that juveniles would return to prison within a two-year follow-up period.



A 2017 study examined the effects of financial penalties on recidivism among juvenile offenders.⁶⁷ The authors found that the financial burden associated with fines, fees, and restitution increased the likelihood that juveniles would return to prison within a two-year follow-up period. Based on these results, it would appear the financial penalties are directly opposed to the rehabilitative goals of the juvenile justice system. However, restitution may serve some rehabilitative purposes when executed properly, insofar as juvenile offenders “come to recognize the importance of accountability, develop certain competencies (e.g., work experience, active learning, community service opportunities), increase their empathy

⁶⁴ Bannon, Nagrecha, and Diller, “Criminal Justice Debt.”

⁶⁵ Ibid.

⁶⁶ Leigh R. Shapiro, “The Crippling Costs of the Juvenile Justice System: A Legal and Policy Argument for Eliminating Fines and Fees for Youth Offenders,” *Emory Law Journal* 69 (6), 2020. https://scholarlycommons.law.emory.edu/elj/vol69/iss6/4/?utm_source=scholarlycommons.law.emory.edu%2Felj%2Fvol69%2Fiss6%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages

⁶⁷ Alex R. Piquero and Wesely G. Jennings, “Research Note: Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders,” *Youth Violence and Juvenile Justice* 15 (3), 2017. <https://journals.sagepub.com/doi/abs/10.1177/1541204016669213>

for their victim/s and victims in general, and appreciate their active role in repairing the harm done.”⁶⁸

⁶⁸ Ibid.

PART 4

BEST PRACTICES AND ALTERNATIVES APPROACHES

4.1

INCOME-BASED FINES

Several European countries including France, Germany, Denmark, Sweden, Finland, and Switzerland employ some form of an income-based system for fines. These systems are efficient in the economic sense because they impose the same level of financial penalty on offenders regardless of income.⁶⁹ In this respect, income-based fines are superior to fixed fines that can be devastating to low-income offenders while having a negligible impact on high-income offenders.

Income-based fines, also known as “day fines,” scale fines proportional to the severity of a crime and an individual's income.⁷⁰ Every crime is converted into a unit of financial punishment. For instance, shoplifting would be 20 units while assaults would be 70 units.

⁶⁹ Elena Kantorowicz-Reznichenko, “Day-Fines: Should the Rich Pay More?” *Review of Law and Economics* 11 (3), 2015.

⁷⁰ “Structured Fines: Day Fines as Fair and Collectable Punishment in American Courts,” Vera Institute of Justice, 1995. https://www.vera.org/downloads/Publications/structured-fines-day-fines-as-fair-and-collectable-punishment-in-american-courts/legacy_downloads/1522.pdf

The cost of the unit is then calculated according to an individual's daily income while factoring in their dependents.

In one application of the income-based fine system, two people with no dependents could be charged drastically different fines for the same crime based on their incomes. If Person A has a \$200,000 annual income, their unit value would be \$547 (200,000/365). Person B with a \$30,000 gross income would have a unit value of \$82. As shoplifting is a 20-unit crime, Person A would be fined \$10,940 (547*20) while Person B would be fined \$1,640. While Person A is paying a much higher fine, both individuals would experience the same impact relative to their incomes.

In some cases, income-based fines can result in extreme penalties for wealthy individuals. For example in 2013, a man in Finland was charged 54,024 euros (about \$58,000) for driving 65 mph in a 50-mph zone because his income was 6,559,742 euros (roughly \$7 million) at the time of the incident.⁷¹ He eventually got both tickets appealed and reduced to a mere 5,345 euros. Most countries that use day-fines place an upper limit on the amount that can be charged in such extreme cases. It may also be beneficial to consider an individual's typical annual income, rather than simply relying on their current income. This would account for situations where an individual's income fluctuates substantially year to year.

Staten Island, New York, was the first municipality to experiment with income-based fines in the United States.⁷² In 1988, judges in Staten Island's limited jurisdiction court began testing a system of fines planned and developed by the Vera Institute for Justice. While the project only lasted two years, the overall outcomes were considered favorable. The average fines imposed for penal law offenses rose 25% during the study period even with a statutory maximum fine limitation. This indicates the municipality was creating a higher revenue from the system. There was little impact on the rate of collecting fines, as the new fines were collected at similar rates to the lower valued fixed fines.⁷³

The Staten Island experiment's success led to five additional pilot studies in jurisdictions across the county. Overall, the results of these pilots suggest that income-based fines can

⁷¹ Suzanne Daley, "Speeding in Finland Can Cost a Fortune, if You Already Have One," *New York Times*, Helsinki Journal, 25 April 2015. *NYTimes.com*. <https://www.nytimes.com/2015/04/26/world/europe/speeding-in-finland-can-cost-a-fortune-if-you-already-have-one.html>

⁷² Judith Greene, "The Staten Island Day Fine Experiment," Vera Institute of Justice, 1990. <https://www.vera.org/publications/the-staten-island-day-fines-experiment>

⁷³ Ibid.

maintain or even improve revenue generation while ensuring that low-income individuals are not overly burdened.⁷⁴ There is also some evidence to suggest that well-designed income-based fine systems could reduce government expenditures by decreasing collections costs.⁷⁵

Currently, income-based fines are not used by any municipalities in the United States. While they are more efficient and equitable than fixed fines, their constitutionality may be challenged under the Eighth Amendment's Excessive Fine Clause and Fourteenth Amendment's Due Process Clause.⁷⁶ Simple restrictions can overcome these obstacles and allow flexible financial sanctions to levy consequential financial penalties

4.2

ABILITY-TO-PAY ASSESSMENTS

Ability-to-pay assessments are tools to evaluate an individual's financial situation, the financial burden that a fine would create, and whether those fines should be waived or reduced. Courts across the United States use unique versions of this system to reduce the burden of fines on low-income individuals. A recent report from the Center for Court Innovation identified three common types of ability-to-pay tools used by courts: affidavits, bench cards, and ability-to-pay calculators.⁷⁷

- **Affidavits** are self-reported documents that allow individuals to provide specific financial information to assess their financial situation. Montgomery County, Alabama, for example, has individuals complete an Affidavit of Substantial Hardship independently or with the aid of the public defender's office.⁷⁸ The short document relies on self-reported data such as monthly income, expenses, assets, and government assistance benefits (e.g., Medicaid, food stamps). Often, individuals find the language to be confusing, and find it does not tell the whole story of their

⁷⁴ Beth A. Colgan, "Graduating Economic Sanctions According to Ability to Pay," *Iowa Law Review* 103 (53) (2017). <https://ilr.law.uiowa.edu/print/volume-103-issue-1/graduating-economic-sanctions-according-to-ability-to-pay/>

⁷⁵ *Ibid.*

⁷⁶ Alec Schierenbeck, "The Constitutionality of Income-Based Fines," *The University of Chicago Law Review* 85 (8), Dec. 2018. <https://lawreview.uchicago.edu/publication/constitutionality-income-based-fines>

⁷⁷ The Center for Court Innovation's report provides an overview of each of these systems: "It Takes More Than a Tool To Ensure Fairness: A Snapshot of Ability-to-Pay Tools for Fines and Fees," Center for Court Innovation, 2021. https://www.courtinnovation.org/sites/default/files/media/document/2021/Ability_to_Pay-0621.pdf

⁷⁸ Available at: <https://www.montgomeryal.gov/home/showpublisheddocument/131/635499579582030000>

financial situation. Judges are encouraged to use the affidavit as a starting point to learn the pressures and financial burdens individuals in their court face.

- **Bench cards** are documents that outline the thought process judges should use to determine a person's ability to pay. The steps could include reminders about responsibility, guiding principles, and opportunity to use discretion when determining the cost of the fine. There are also different criteria to consider when determining the cost of the fine. Factors such as percent below poverty guidelines, homelessness, incarceration, resources (i.e., debt, assets), ability to earn and more can provide guidance while the judge determines what they believe to be an appropriate fine amount.
- **Ability-to-pay calculators** are often web-based platforms that use an algorithm to analyze an individual's financial situation or ensure they are not unduly burdened by fines. Washington State's LFO (legal financial obligations) calculator determines a person's income, outlines areas judges may use discretion in levying financial obligations and calculates a suggested amount of fines and fees.⁷⁹ This resource can be used by judges, defendants, prosecutors and more to create a more equitable system.

4.3

NON-FINANCIAL INTERMEDIATE SANCTIONS

It is often the poor, undereducated, or unemployed who are disproportionately impacted by fines in the justice system.⁸⁰ By providing more non-financial intermediate sanctions, such as community service, treatment, electronic monitoring, or community programs, individuals can face consequences that do not produce life-long cycles of debt or incarceration. And these programs may be more effective at reducing recidivism.

In The Netherlands, community service serves as the primary penalty in place of short-term imprisonment, with a maximum penalty of 240 hours of service. A group of researchers gathered data on all 153,252 offenders convicted in 1997 in The Netherlands, with 16,561

⁷⁹ Available at: <https://beta.lfocalculator.org/>

⁸⁰ "Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," The Sentencing Project, 19 April 2018. <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

sentenced to community service and 15,797 to imprisonment. They found that community services reduced recidivism 46.8% more than rates after imprisonment.⁸¹

New York City recently implemented a program called Civil Alternatives as an alternative to fines.⁸² This one- or two-hour online module acts as an intervention for quality-of-life offenses (littering, drinking in public, urinating in public, unreasonable noise, and parks department violations). The community service option provides a meaningful program, in seven languages, for those who cannot pay fines. Three years after launching the program, quality of life infractions dropped by half in the city.⁸³

4.4

MAKING ALTERNATIVES ACCESSIBLE

Innovative technology can reduce the disproportionate impact of fines by making alternative solutions more accessible. Many of these systems could also create alternatives to court appearances, which benefit people who are unable to leave work or face transportation challenges.

In California, the Judicial Council and the state's superior courts recently created an online tool to help individuals receive financial relief from traffic citations. The tool, "MyCitations: Ability to Pay Determinations for Infractions," allows users to request a reduction in their traffic fine, a payment plan, community service in lieu of a fine, or more time to make a payment. Rather than attend a court hearing, a user only needs to look up their citation and fill out a short form related to their financial circumstances. The tool was launched in six pilot courts but will be available in all 58 trial courts by July 2024.⁸⁴ As of January 2021, more than 15,000 ability-to-pay requests were submitted by 10,000 litigants across the six

⁸¹ Hilde Wermink, Arjan Blokland, Paul Nieuwebeerta, Daniel Nagin, and Nikolaj Tollenaar, "Comparing the Effects of Community Service and Short-Term Imprisonment on Recidivism: A Matched Samples Approach," *Journal of Experimental Criminology* 6, 2010. <https://link.springer.com/article/10.1007/s11292-010-9097-1>

⁸² "Civil Alternatives," Center for Court Innovation. <https://www.courtinnovation.org/programs/civil-alternatives> (30 Sept. 2021).

⁸³ Craig McCarthy and Jorge Fitz-Gibbon, "Quality of Life Summonses in NYC Dropped by Half Since 2017 Reforms, Says Report," *New York Post*, 18 Feb. 2020. *NYPPost.com*. <https://nypost.com/2020/02/18/quality-of-life-summonses-in-nyc-dropped-by-half-since-2017-reforms-report-says/>

⁸⁴ "MyCitations: Online Ability to Pay Determinations for Infractions," *Courts.CA.gov*, California Courts: The Judicial Branch of California. <https://www.courts.ca.gov/abilitytopay.htm>

pilot courts.⁸⁵ More than 75% of those requests were approved, resulting in over \$4 million in reduced fines and fees.⁸⁶

In North Carolina, driver's licenses are suspended automatically when traffic fines are not paid. As of 2017, over 20% of Durham County, North Carolina's residents had a suspended driver's license, largely due to high legal costs that they were unable to pay. The municipality chose to create a two-week experiment whereby residents were able to text a number and potentially get their debt erased.⁸⁷ The Durham Driver Amnesty Program resulted in 2,200 applications, 793 individuals deemed eligible, and over 2,500 charges dismissed.⁸⁸ Because the process was online, rather than the previous system of requiring in-court appearances for debt removal, it became more accessible and beneficial to all individuals of the community.

⁸⁵ Blaine Corren, "California Courts Helping Drivers Struggling with Traffic Debt," Judicial Branch of California, California Courts Newsroom, 4 Feb. 2021. <https://newsroom.courts.ca.gov/news/california-courts-helping-drivers-struggling-traffic-debt>

⁸⁶ Ibid.

⁸⁷ "Has Your Driver's License Been Suspended or Revoked?" Durham District Attorney's Office. <https://durhamnc.gov/DocumentCenter/View/17433/Amnesty-Day-Flyer?bidId=>

⁸⁸ "Durham Driver Amnesty Program," Fines and Fees Justice Center, 27 Nov. 2017. <https://finesandfeesjusticecenter.org/articles/durham-driver-amnesty-program/>

PART 5

RECOMMENDATIONS FOR REFORM

Fines and fees have turned many courts into revenue centers for state and local governments. While most governments do not derive a significant portion of their general revenues from fines and fees, some are almost entirely dependent on them. Nonetheless, fines and fees are not a reliable source of revenue. Moreover, the use of fines and fees to directly fund courts, law enforcement agencies, or other government activities can result in undesirable conflicts of interest. In addition to these fiscal considerations, fines and fees have devastating consequences on low-income individuals, racial minority groups, and juveniles and their families.

The following policy recommendations are intended to address the fiscal considerations associated with fines and fees, ensure accountability, and promote fairness within the justice system.

5.1

#1 ELIMINATE USER FEES AND POVERTY PENALTIES

User fees effectively transfer costs away from taxpayers and onto individual users of government services. While user fees are appropriate and desirable in many contexts, they do not make sense in the justice system. The rule of law benefits all members of society, and the users of courts—particularly, defendants—are often those who are least likely to be

able to pay for their operations. Funding law enforcement and court systems through user fees makes access to justice regressive—costing the poor far more relative to their income or wealth than it does the middle class or wealthy. That is fundamentally unjust. Funding the legal system through user fees also reduces the opportunity for lawmakers to weigh funding priorities, rein in excess, and ensure that the system is funded appropriately.

Poverty penalties including interest fees, late fees, payment plan fees, and collection fees are particularly regressive. These fees serve to punish individuals for their financial status rather than for their crimes. This undermines the objective of fairness within the justice system. Moreover, such punitive financial penalties may hinder the ability of former offenders to reintegrate, contributing to high rates of recidivism.

5.2**#2 FULLY FUND COURTS FROM STATE BUDGETS**

Eliminating user fees in the justice system may require states to assume greater responsibility in funding their court systems. Allocating funds from general revenues will protect against potential conflicts of interest. The particular structure of court systems in each state may complicate this process, especially in states without unified court systems. This is an obstacle worth overcoming to ensure that courts are adequately and equitably funded.

5.3**#3 DEVELOP STANDARDIZED TOOLS TO DETERMINE ABILITY TO PAY AND SCALE FINES ACCORDINGLY**

Determination of a defendant's ability to pay fines should not be left solely to the subjective assessment of an individual judge. This can result in wildly different outcomes for otherwise comparable defendants. Establishing standard practices would ensure that individuals are treated equally under the law. Scaling fines according to an individual's ability to pay would also reduce the administrative costs associated with pursuing uncollectable debts.

As discussed in Part 4, affidavits, bench cards, or ability-to-pay calculators could be used to standardize ability-to-pay determinations. Income-based fines, or day fines, could also be used to scale fines according to an individual's financial status. There is room for experimentation among the states in this area, but state law should be clear as to the

factors that are considered when determining an individual's ability to pay.⁸⁹ Defendants should be made aware of these factors and what documentation they will be expected to provide.

5.4**#4 PROVIDE ALTERNATIVES TO MONETARY SANCTIONS**

Indigent defendants should be able to receive alternatives to monetary sanctions. Community service is one possible alternative to fines but may itself prove overly burdensome for some. For example, community service may conflict with work schedules or family obligations. Such conflicts should be avoided, as maintaining employment and social ties are critical to reducing the risk of recidivism. Courts should have the ability to consider a range of alternatives including waivers, job training, and drug or mental health treatment. Incarceration should never be considered an alternative to monetary sanctions, and fees should never be charged for alternatives to monetary sanctions.

5.5**#5 ELIMINATE ALL FINES AND FEES IN JUVENILE CASES**

The objective of the juvenile justice system should be to rehabilitate juvenile offenders and avoid future escalation in their criminality. Fines are a purely punitive measure and do not serve any rehabilitative function. They do, however, place undue financial burdens on youth and their families. Juveniles should be considered indigent by default and their families should not be held responsible for any monetary sanctions they incur.

5.6**#6 END DRIVER'S LICENSE SUSPENSIONS FOR FAILURE TO PAY**

Driver's license suspension is an inefficient and counterproductive penalty for failure to pay fines and fees. There are significant administrative costs associated with the enforcement of suspensions. Driver's license suspensions also inhibit the ability of individuals to secure and maintain employment necessary to fulfill their legal financial obligations.

⁸⁹ The Fines and Fees Justice Center provides guidance on ability to pay assessments, payment plans, and community service: "First Steps Toward Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service," Fines and Fees Justice Center, 17 Nov. 2020. <https://finesandfeesjusticecenter.org/articles/first-steps-toward-equitable-fines-and-fees-practices-policy-guidance-on-ability-to-pay-assessments-payment-plans-and-community-service/>

5.7

#7 COLLECT AND PUBLISH DATA ON COURT DEBT AND COLLECTION PRACTICES

The lack of data on the use of fines and fees undermines transparency, accountability, and fiscal responsibility. Without sufficient information lawmakers, advocates, and other stakeholders are less able to understand the problem and identify possible reforms.

At present, most states do not adequately track the imposition and collection of fines and fees. When information is available, it is often dispersed among local governments, individual courts, and private collections firms. This fact not only undermines the ability of lawmakers to make informed policy and budgetary decisions, but it also contributes to the broader perception that the justice system is unfair and unaccountable. Enabling citizens to access information related to fines and fees would help restore the legitimacy of the justice system and allow them to hold their lawmakers more accountable.

At a minimum, states should collect and publish information including:

- The amount of fines and fees levied annually;
- The revenue generated by fines and fees;
- How fines and fees revenue is allocated; and
- The costs associated with collection.

ABOUT THE AUTHORS

Vittorio Nastasi is director of criminal justice policy at Reason Foundation. His work has been published in *The Wall Street Journal*, *Orange County Register*, *Palm Beach Post*, and *Tallahassee Democrat*, among others. Prior to joining Reason, Nastasi worked with the James Madison Institute and the DeVoe L. Moore Center focusing on land-use regulation, occupational licensing, and criminal justice reform. Nastasi graduated from Florida State University with bachelor's degrees in economics and political science. He is currently a PhD student with the Askew School of Public Administration and Policy at Florida State University. He is based in Tallahassee, Florida.

Caroline Greer is a criminal justice reform policy intern at Reason Foundation. Greer is a junior in the Honors College at the College of Charleston studying economics and data science. She is a Market Process Scholar and alumni of the Honors STEAM Entrepreneurship Living-Learning Community. Greer is based in Virginia.

APPENDIX

The Census Bureau’s survey of state and local government finances has been administered annually since 1957. A census is conducted every five years (years ending in ‘2’ and ‘7’). In the intervening years, a sample of state and local governments is used to collect data. A new sample is selected every five years (years ending in ‘4’ and ‘9’). Even in census years, many values are imputed rather than being collected directly. In our analysis for this report, we excluded any municipality whose “fines and forfeits” value was imputed. We also excluded any municipality that reported zero general revenues or for whom more than 50% of line items were imputed. As a result of those data filters, approximately 8,330 cities, townships, and counties were excluded from our analysis.

