



# FAIR AND JUST PROSECUTION

Promoting justice through leadership and innovation

## ISSUES AT A GLANCE

## Fines, Fees, and the Poverty Penalty

*Fair and Just Prosecution (FJP) brings together recently elected district attorneys<sup>1</sup> as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. In furtherance of those efforts, FJP's "Issues at a Glance" provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office. For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.*

### SUMMARY

This FJP "Issues at a Glance" brief discusses how fines and fees — and other assessments that disparately impact those in low-income brackets — can harm individuals and their communities. It concludes with recommendations and strategies for prosecutors to help to address this "poverty penalty" by changing office policies and practices and advocating for legal reform.<sup>2</sup>

Jurisdictions across the country are increasingly turning to fines and fees to help finance elements of their criminal justice and court systems. These legal financial obligations can include fines for civil traffic infractions, felony-related fines, and court fees. Some of these assessments are levied regardless of guilt. While these charges can appear to be small in isolation, they can in fact impose major burdens, hampering individuals' abilities to support their families and, for the formerly incarcerated, successfully reenter society after release. As many of these charges are imposed based on the alleged violation or conduct — and do not take into consideration an individual's income — they act as a "poverty penalty" or regressive tax, falling more heavily on the poor.

Research has shown that fines and fees yield few long-term benefits for governments. The costs of collecting outstanding debts are high and yield limited revenue, particularly when levied on low-income individuals. Even where net revenue is initially positive, excessive charges can lead

<sup>1</sup> The term "district attorney" or "DA" is used generally to refer to any chief local prosecutor, including State's Attorneys, prosecuting attorneys, etc.

<sup>2</sup> FJP thanks Mitali Nagrecha, Chiraag Bains, and Brook Hopkins of the Criminal Justice Policy Program at Harvard Law School, Marc Levin of Right on Crime, Joanna Weiss of the Laura and John Arnold Foundation, and Lauren-Brooke Eisen of the Brennan Center for Justice for research assistance and ideas on early drafts and predecessor documents that formed the basis of this issue brief. The brief, however, does not necessarily represent the views of these individuals or their employers.

to considerably larger long-term costs as criminal justice debt can increase the likelihood of later engagement in criminal activity.<sup>3</sup>

Prosecutors have a number of tools at their disposal to ensure they are not contributing to these cycles of poverty. These include moving away from these fines and fees as a revenue generator, implementing or asking courts to implement ability to pay determinations before financial charges are levied, declining to seek incarceration for indigent individuals for non-payment, and advocating for legislative reform. Adopting such measures can help to steer the criminal justice system away from criminalizing poverty.

## BACKGROUND AND DISCUSSION

Fines and fees pose considerable burdens on justice-involved individuals, their families, and even governments. This section outlines the negative consequences that can result from the imposition of fines and fees.

### Overview of Legal Financial Obligations (LFOs)

While criminal justice-related fines and fees can have similar deleterious impacts, their original aims and roles are distinct. **Fines** are designed to punish — and deter — illegal behavior. They can be levied in response to civil traffic infractions and misdemeanor and felony convictions, among other offenses. **Fees**, meanwhile, are designed to recoup the costs of operating the justice system. These can include public defender fees, diversion fees, and court fees, among other charges for use of the justice system. They can also include **surcharges**, which fund government services that are not related to criminal justice, including earmarks for state general funds and highway funds.<sup>4</sup> It bears mentioning that money bail — which acts as a de facto fee for liberty when paid via bond — also contributes to criminal justice debt. For more information on bail, see FJP’s “Issues at a Glance” brief on Bail Reform.<sup>5</sup>

### Small Fines, Large Impacts

While many fines and fees impose small individual costs, they can quickly accumulate and amount to insurmountable debts. Adding in court fees, punitive fines, and fees for alternatives to incarceration, costs can stretch into the thousands of dollars.<sup>6</sup> Furthermore, when left unpaid, these charges can accrue interest at rates nearly 10 times standard borrowing rates. In California, for example, the \$100 fine for failing to stop at a red light can grow to \$490 with fees and surcharges, then up to \$815 if the initial deadline is missed. Similarly, in Alabama, private debt collectors can charge up to 30% interest on unpaid debts; in Florida, that number reaches 40%.<sup>7</sup> With nearly

---

<sup>3</sup> Piquero, Alex R. and Wesley Jennings, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders, Youth Violence and Juvenile Justice*, September 14, 2016.

<sup>4</sup> Diller, Rebekah, Alicia Bannon, and Mitali Nagrecha, *Criminal Justice Debt: A Barrier to Reentry*, (Criminal Justice Debt: A Barrier to Reentry), Brennan Center for Justice at New York University School of Law, October 4, 2010, 60–61, available at: <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>.

<sup>5</sup> Fair and Justice Prosecution (FJP), *Bail Reform*, available at: <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.BailReform.9.25.pdf>.

<sup>6</sup> *Criminal Justice Debt: A Barrier to Reentry*. See also, Dewan, Shaila and Andrew W. Lehen, *After a Crime, the Price of a Second Chance*, New York Times, December 12, 2016, available at: [https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html?\\_r=0](https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html?_r=0).

<sup>7</sup> Harvard Law School, *Criminal Justice Debt Reform Builder*, available at: [https://cjdebtreform.org/data-explorer/enforcement-mechanisms?f0=em\\_state:92&f11=type\\_of\\_enforcement\\_mechanism:13](https://cjdebtreform.org/data-explorer/enforcement-mechanisms?f0=em_state:92&f11=type_of_enforcement_mechanism:13).

half of American adults reporting that they could not cover a \$400 emergency expense,<sup>8</sup> even limited charges can contribute to an endless cycle of debt.<sup>9</sup> Courts and justice systems have taken extreme measures to enforce payment orders, including garnishing wages, converting criminal justice debt into civil liens, and intercepting tax refunds.

Impacts extend beyond the financial as well. In many jurisdictions, non-payment of fines and fees can lead to driver's license suspension — even when the underlying offense had no relation to operating a motor vehicle.<sup>10</sup> Indeed, around half of all states suspend drivers' licenses based on criminal justice debt.<sup>11</sup> Stripped of a driver's license, individuals who must drive to be able to work and earn the money to pay that debt can slip into further downward spirals, as being stopped for driving without a license can lead to additional fines and incarceration.

Accumulating debt can also form a de facto “poll tax”; in Alabama, Arizona, Florida, and Virginia, payment of criminal justice debt is a precondition to restoring voting rights after a conviction. This practice raises serious constitutional concerns by effectively disenfranchising individuals based on income and is currently being challenged in litigation.<sup>12</sup>

Finally, unpaid debts can end — often unconstitutionally — in arrest and incarceration. While in *Bearden v. Georgia*<sup>13</sup> the Supreme Court held that debtors' prisons are unconstitutional, and individuals cannot be incarcerated if they truly cannot pay, to this day jurisdictions across the country imprison individuals for outstanding criminal justice debt.<sup>14</sup> Research from the Brennan Center identifies four present-day paths to debtors' prison:

1. Revocation of probation or parole for failing to pay fines, fees, and accumulated criminal justice debt;
2. Direct incarceration for non-payment through civil or criminal enforcement proceedings;
3. Choosing to spend time in jail instead of paying court-imposed debt; and
4. Detention while awaiting ability to pay hearings.

---

<sup>8</sup> Board of Governors, *Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2015*, May 2016, available at: <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

<sup>9</sup> *Criminal Justice Debt: A Barrier to Reentry*, at 13.

<sup>10</sup> *Ibid.*

<sup>11</sup> Levin, Marc, *Written Testimony of Marc Levin, Esq. Policy Director, Right on Crime Initiative at the Texas Public Policy Foundation Hearing on Fines and Fees, U.S. Civil Rights Commission*, March 8, 2017, page 9 (available on request).

<sup>12</sup> *Ibid.* at 29.

<sup>13</sup> 461 U.S. 660 (1983).

<sup>14</sup> *Ibid.* at 19-26.

**“People who have lost their licenses because of financial hardship are not the people we want to be locking up.”**

— 13TH JUDICIAL CIRCUIT (TAMPA, FL) STATE ATTORNEY ANDREW WARREN

Individuals can also be trapped in justice-system involvement after release, as successful completion of probation can be conditioned on payment of all criminal justice debt. In these cases, the poor can see significantly longer periods of supervision.

Research has found these negative impacts extend beyond justice-involved individuals to their families as well. In many cases, families are saddled with both the immediate court-mandated costs of justice system involvement as well as the indirect costs of lost wages and added childcare burdens.<sup>15</sup>

The U.S. Department of Justice (DOJ) has warned that these familial impacts raise constitutional questions, particularly when juveniles are fined. Because of the “special vulnerabilities of children” and because fining lacks a strong deterrent effect — especially where families, rather than the juvenile, will generally be the ones to pay — DOJ has cautioned that fines and fees should be levied only when they meet “the rehabilitative goals of the juvenile justice system.” Charging juveniles for justice-system involvement, a recent DOJ advisory argued, can harm their educational prospects and even increase the likelihood of recidivism.<sup>16</sup>

### Fines and Fees Don’t Make Fiscal Sense

In aggregate, fines and fees often do not yield meaningful financial benefits to jurisdictions for two primary reasons: collections costs are substantial relative to the amounts collected, and criminal justice debt increases future social service and criminal justice costs as individuals struggle to support themselves and their families under significant debt burdens, often resulting in recidivism.

A Vera Institute of Justice study on the impact of such charges in New Orleans found considerable collateral costs. The cost of jailing people in the city who could not pay fines, fees, or bail amounted to \$6.4 million in 2015, compared to the \$4.5 million in revenue obtained — which amounted to just 4% of the annual operating budget.<sup>17</sup> Collections processes — particularly against indigent individuals for smaller sums of money — are expensive as well, and research indicates that these too may fail rigorous cost-benefit analyses.<sup>18</sup> Accounting for staff time — including court costs, prosecution costs, and the costs of extending probation for non-payment, among many other costs — to pursue non-payment significantly offsets any revenue ultimately secured.<sup>19</sup> Notably the actual cost-benefit analysis is difficult to assess precisely. In a 2010 survey of 15 large states, the Brennan Center for Justice found that not a single state regularly tracked the costs of collection.<sup>20</sup>

---

<sup>15</sup> Ella Baker Center for Human Rights, Forward Together, and Research Action Design, *Who Pays? The True Cost of Incarceration on Families*, available at: <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

<sup>16</sup> U.S. Department of Justice, Office for Civil Rights, Office for Access to Justice and Office of Justice Programs, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles*, January 2017, available at: <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

<sup>17</sup> Vera Institute of Justice, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, January 2017, available at: [https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy\\_downloads/past-due-costs-consequences-charging-for-justice-new-orleans-fact-sheet.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy_downloads/past-due-costs-consequences-charging-for-justice-new-orleans-fact-sheet.pdf).

<sup>18</sup> Eisen, Lauren-Brooke, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, Brennan Center for Justice at New York University School of Law, July 31, 2014, available at: [http://www.brennancenter.org/analysis/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate-excessive-fines-clause#co\\_footnoteReference\\_F65404910944\\_ID0ERZ](http://www.brennancenter.org/analysis/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate-excessive-fines-clause#co_footnoteReference_F65404910944_ID0ERZ).

<sup>19</sup> For a list of hidden collection costs, see *Criminal Justice Debt: A Barrier to Reentry* at 11.

<sup>20</sup> *Ibid* at 10.

Even greater, and often unseen, costs emerge from the long-term effects of criminal justice debt. In addition to the issue of increasing recidivism discussed above, fines and fees can contribute to cycles of poverty that end up costing other city, county, and state agencies significant sums. These costs can be borne by corrections departments, from increased probability of recidivism; health and human services departments, from increased poverty, unemployment, and homelessness rates; and any other agency that depends on sales, property, or income tax revenue.

### **Fines are an Ineffective Deterrent and Can Undermine Public Safety**

While some jurisdictions may look to fines to deter unwanted and violent behavior, research has found such fines to have a minimal deterrent effect. Many fines are left unpaid, and when they are paid, the resulting criminal justice debt can inhibit an individual's reintegration into society.<sup>21</sup> The challenges of securing employment with a criminal record, coupled with the burden of criminal justice debt, can block successful reentry.

Additionally, fines are often paid by an individual's family — not the individual charged with the crime — further limiting the deterrent effect a fine might have. Indeed, a recent study found that, even when controlling for offense characteristics and other relevant factors, fines were not deterrents of future criminal behavior, but in fact were associated with an increased likelihood of recidivism.<sup>22</sup>

### **Inaction Exposes Jurisdictions to Litigation**

Throughout the country, jurisdictions are being sued for unconstitutional collections and enforcement actions related to criminal justice debt. In Louisiana, the Southern Poverty Law Center (SPLC) successfully settled a suit against a Bogalusa city court for jailing indigent defendants for failing to pay court debts. The practice — which SPLC argued amounted to the operation of a “modern day debtor's prison” — is widespread, but has been subject to increasing litigation in recent years.<sup>23</sup>

Prosecutors too have been the subject of litigation. In an ongoing civil case in Montgomery, Alabama, plaintiffs allege that the District Attorney threatened or incarcerated indigent defendants who owed fines to the city.<sup>24</sup> In New Orleans, meanwhile, the District Attorney is the subject of a federal civil rights lawsuit for using the threat of fines and imprisonment to coerce witnesses to testify.<sup>25</sup>

### **Conflict of Interest Concerns**

Fines and fees that directly fund criminal justice systems may also pose a conflict of interest. When policy and enforcement decisions are driven by revenue concerns — goals outside the

---

<sup>21</sup> Ibid.

<sup>22</sup> Piquero, Alex R. and Wesley Jennings, *Justice System–Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, Youth Violence and Juvenile Justice, September 14, 2016.

<sup>23</sup> Southern Poverty Law Center (SPLC), *SPLC, Bogalusa City Court reach settlement in debtors' prison case*, September 6, 2017, available at: <https://www.splcenter.org/news/2017/09/06/splc-bogalusa-city-court-reach-settlement-debtors%E2%80%99-prison-case>.

<sup>24</sup> *Brazil Rudolph et al., v. City of Montgomery, et al.*, 16 Civ. 57, United States District Court for the Middle District of Alabama, Northern Division. Available at: [https://www.gpo.gov/fdsys/pkg/USCOURTS-alm-d-2\\_16-cv-00057/pdf/USCOURTS-alm-d-2\\_16-cv-00057-0.pdf](https://www.gpo.gov/fdsys/pkg/USCOURTS-alm-d-2_16-cv-00057/pdf/USCOURTS-alm-d-2_16-cv-00057-0.pdf).

<sup>25</sup> American Civil Liberties Union (ACLU), *Lawsuit Launches Organizations' Nationwide Efforts to Hold Abusive Prosecutors Accountable*, October 17, 2017, available at: <https://www.aclu.org/news/civil-rights-corps-and-aclu-sue-district-attorney-leon-cannizzaro-end-coercion-and-jailing>.

core missions of public safety agencies — the intended checks and balances are undermined.<sup>26</sup> These conflicts can be direct, as was the case in Ferguson, Missouri in 2014, when enforcement financially benefited those tasked with enforcement, or indirect, where state legislatures exert political pressure on justice systems to generate their own revenue. These personal benefits can extend beyond the individual in their private capacity to benefits they would enjoy, directly or indirectly, as employees of a criminal justice agency receiving additional revenue. When the state appears to enforce criminal law to financially sustain itself instead of to advance public safety, trust in government is eroded.<sup>27</sup>

These conflicts raise legal, ethical and policy concerns, and may even have constitutional implications. According to the Criminal Justice Policy Program at Harvard Law School, “[w]hen a decision-maker with the power to arrest, charge, convict, or sentence a defendant would personally benefit as a result of exercising that power,” that conflict would violate a defendant’s right to due process.<sup>28</sup>

### Fines and Fees Contribute to Racial Disparities

After the shooting death of Michael Brown in 2014 in Ferguson, Missouri, the U.S. Department of Justice investigated the city’s police force and court systems. DOJ found that Ferguson relied heavily on fines and fees to operate the local government, and those charges fell disproportionately on African American residents.<sup>29</sup>

Separately, reviewing existing research, the U.S. Commission on Civil Rights (USCCR) found Ferguson to be extreme but not anomalous. Nationally, the excessive reliance on fines and user fees falls most heavily on communities of color and the poor. Additionally, the municipalities that rely most heavily on fines and fees also have the highest average percentage of African American and Latino communities.<sup>30</sup> These fines only compound existing racial disparities and tensions between law enforcement and the communities they serve.

---

<sup>26</sup> Criminal Justice Policy Program, Harvard Law School, and the National Consumer Law Center (NCLC), *Confronting Criminal Justice Debt: A Guide for Policy Reform (Confronting Criminal Justice Debt)*, September 2016, at 7, available at: <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>.

<sup>27</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, (DOJ Ferguson Investigation) 2015, at 6. available at: [https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson\\_findings\\_3-4-15.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf).

<sup>28</sup> *Confronting Criminal Justice Debt*, at 8.

<sup>29</sup> DOJ Ferguson Investigation, at 4-5.

<sup>30</sup> U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications*, 2017, available at: [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2017.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf).

***“It is time to live up to the guarantees of due process and equal protection enshrined in our Constitution and ensure fines and fees are reasonable, proportionate, and transparent.”***

**— MARC LEVIN, POLICY DIRECTOR, RIGHT ON CRIME**

## RECOMMENDATIONS

Prosecutors have a number of avenues to advance criminal justice debt reforms, including advocacy as elected criminal justice system officials and immediate actions in the courtroom and through their office's policies and practices. Meaningful reform will require invoking all of these approaches.

### Advocating for Reform

1. **Avoid conflicts of interest by discontinuing and discouraging the use of fines and fees as a criminal justice or court revenue stream.** Prosecutors, courts, public defenders, and other justice system actors should not use fines and fees as a way to support programs or generate revenue; instead, those functions should be funded through a city and/or state's general fund. Using fees and fines for revenue generation raises serious, and potentially constitutional, conflict of interest concerns.
2. **Support legislation and other reforms to outlaw drivers' license suspension for non-payment.** License suspension is a counter-productive practice that harms an individual's ability to maintain lawful employment, increases the likelihood of arrest for driving without a license, and decreases the probability they will be able to work to pay back criminal justice debt. States across the country have already enacted legislation outlawing license suspension to punish non-payment.<sup>31</sup> DAs can use their leadership positions to support and propel these reform efforts.
3. **Advocate for ability-to-pay determinations prior to the imposition of criminal justice-related fines and before incarceration for non-payment.** Ability to pay determinations can also give guidance on "sliding scale" debts based on an individual's income, using day fines — based on an individual's daily wage — or community service when payment is not possible. Community service should always be remunerated at or above the local living wage.<sup>32</sup>
4. **Seek to limit the long-term effects of fines and fees.** A single fine can grow exponentially with unfair interest rates, and non-payment can result in disenfranchisement. When fines are levied after an ability to pay determination, advocate for interest rates to be limited to fair rates and never above 10%. Except possibly in cases of willful non-payment by individuals who can easily afford to pay, individuals should never be disenfranchised for criminal justice debt and prosecutors can and should take a leadership role in any opposition to such disenfranchisement.
5. **Help facilitate the resolution of outstanding payments.** When individuals have outstanding charges across agencies and/or jurisdictions — such as court costs and speeding tickets — governments should make it easy to resolve all fines and fees at once. This can include going into the community with representatives from various agencies to help individuals obtain a single consolidated — and, if appropriate, reduced — payment.
6. **Advocate for legal representation for indigent clients, even in misdemeanor cases.** Particularly in cases where conviction could bring onerous financial obligations, and always when cases could result in imprisonment, prosecutors should ensure individuals have adequate counsel who can consider the long-term impacts of a plea or conviction.

---

<sup>31</sup> Among states limiting or outlawing drivers' license suspension for failure to pay when an individual is not able to pay are California, Missouri, and Louisiana.

<sup>32</sup> For additional guidance on how to structure community service, see *Criminal Justice Debt: A Barrier to Reentry* at 15.



7. **Use the DA office’s convening power to help promote system change.** While individual and direct advocacy with legislators and justice system actors is powerful, DAs also possess the ability to convene stakeholders to consider these issues and craft concrete solutions. Many of these issues cut across organizational and jurisdictional boundaries; coordinating reforms among disparate groups is essential. DAs should work with other justice system leaders to convene a multi-stakeholder group to address this important and timely issue, if no such body exists.

## Office Policies and Practices

8. **Consider a defendant’s ability to pay before taking positions in relevant court proceedings.** Require line prosecutors to make indigency inquiries before seeking, or declining to object to, fines or fees.
9. **Implement ability to pay determinations in diversion programs.** For diversion programs to reduce the probability of re-offense, they must aid in rehabilitation; contributing to debt does not meet that goal. Consider establishing a “sliding scale” fee structure for diversion programs that need to self-fund, including increasing fees on high-income individuals to offset lost revenue from fee reductions and waivers for low-income individuals.
10. **Implement alternatives to civil citations, including quality of life citations.** Imposing fines on low-income or indigent individuals who cannot pay fails to deter future unwanted behavior, costs court and law enforcement resources, and fails to address the underlying causes of the conduct. An alternative approach can include developing a treatment or services plan in conversation with the individual, which may include evidence-based drug or mental health treatment, housing assistance, or assistance securing government benefits.<sup>33</sup>
11. **Do not prosecute non-payment, and oppose the revocation of drivers’ licenses for non-payment.** Circulate written guidance discouraging prosecuting non-payment and failure to appear at payment-related hearings and direct line prosecutors to oppose revocation of driver’s licenses as a response to non-payment of fines or fees.
12. **Identify and seek to cancel outstanding warrants for non-payment of fines and fees.** Enforcing these warrants is costly, and, if only related to non-payment, diverts valuable resources from advancing public safety.
13. **Consider the impact of mandated fines and fees when making charging decisions.** Where fines and fees are mandated by law, ensure prosecutors are intentional about which charges to file and whether the associated financial obligations and any collateral impacts are deserved and advance public safety in each case.<sup>34</sup>
14. **Do not fine family members, including parents, for offenses they did not commit.** This practice has no deterrent effect and violates the principle that individuals should only be penalized for their own actions.
15. **Develop training for staff** on the impact of fines and fees and how to effectively inquire about ability to pay.
16. **Track and analyze data and racial impact.** Missing and incomplete data obscure the impact

---

<sup>33</sup> For an example, see San Francisco’s quality of life citation model, see: <http://sftreasurer.org/sites/default/files/FINAL%20Fines%20and%20Fees%20Task%20Force%20Recommendations.pdf>.

<sup>34</sup> For additional treatment of intentional charging decisions, see FJP’s “Issues at a Glance” brief on *Addressing Immigration Issues*, available at: <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Immigration.9.25.pdf>.



finances and fees have. Work with courts to track payment rates, demographics of (non-)payment, consequences imposed for non-payment, frequency of ability to pay determinations, usage of fine revenues, and approval and denial of indigency protections.

17. **Track the costs associated with collections and enforcement processes.** Offices should enact budgetary processes to track the true costs associated with collecting fines and fees. Mechanisms to do so can include activity-based costing, a budgeting procedure which more accurately allocates overhead and staff time based on what each activity — such as collecting unpaid fines — requires.<sup>35</sup> Jurisdictions should also consider the opportunity cost of enforcement practices; when prosecutors, court staff, and administrative staff are working on collections, what work is being delayed or otherwise ignored?
18. **Evaluate the benefits of diversion from formal adjudication and waiving of fines and fees.** Waiving or lowering financial obligations, providing alternative payment mechanisms, and eliminating criminal justice system involvement altogether may yield better outcomes than the status quo. Partner with researchers to identify whether, among other outcomes, reduced charges affect employment (and tax payment), dependency on government services, and future justice system involvement.

## RESOURCES

- Brennan Center for Justice at New York University School of Law, *Criminal Justice Debt: A Barrier to Reentry*, at: <https://www.brennancenter.org/publication/criminal-justice-debt-barrier-reentry>.
- Criminal Justice Policy Program at Harvard Law School, *Confronting Criminal Justice Debt: The Urgent Need for Reform*, at: <http://cjpp.law.harvard.edu/publications/confrontingcjdebt>. See also, Criminal Justice Debt Reform Builder, at: <https://cjdebtreform.org/>.
- U.S. Department of Justice, *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees*, at: <https://ojp.gov/docs/finesfeesresguide.pdf>.
- National Center for State Courts, *National Task Force on Fines, Fees and Bail Practices Resource Center*, at: <http://www.ncsc.org/Topics/Financial/Fines-Costs-and-Fees/Fines-and-Fees-Resource-Guide.aspx>.

---

<sup>35</sup> The Economist, *Activity-based costing*, June 29, 2009, available at: <http://www.economist.com/node/13933812>.