

TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR

CIVIL RIGHTS & CONSTITUTIONAL IMPLICATIONS



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SEPT 2017

U.S. COMMISSION ON CIVIL RIGHTS

U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Washington, DC 20425

www.usccr.gov

U.S. Commission on Civil Rights

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
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- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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COVER IMAGE: Activists with Missourians Organizing for Reform and Empowerment (MORE) and Decarcerate STL hold up signs supporting the consolidation of municipal courts as Michael Gunn, a judge in Manchester, speaks during a public hearing for a Missouri Supreme Court group studying municipal court reform on Thursday, Nov. 12, 2015, at the Missouri Court of Appeals in the Old Post Office building in St. Louis. *Photo by Chris Lee, St. Louis Post-Dispatch*

Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications

Briefing Before
The United States Commission on Civil Rights
Held in Washington, DC

Briefing Report

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UNITED STATES COMMISSION ON CIVIL RIGHTS

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Letter of Transmittal

President Donald J. Trump
Vice President Michael Pence
Speaker of the House Paul Ryan

On behalf of the United States Commission on Civil Rights (“the Commission”), and pursuant to Public Law 103-419, I attach our 2017 Statutory Enforcement Report, titled Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications. The report is also available in full on the Commission’s website at www.usccr.gov.

The report examines the Department of Justice’s enforcement efforts regarding municipal court reforms with respect to the targeted imposition of fines and fees. The Commission heard testimony from the Department of Justice, experts, and scholars in the field and a majority of the Commission made findings and recommendations.

Key findings include that unchecked discretion or stringent requirements to impose fines or fees can lead and have led to discrimination and inequitable access to justice when not exercised in accordance with the protections afforded under the Due Process and Equal Protection Clauses of the United States Constitution. In addition, if a jurisdiction’s primary goal is to generate revenue rather than promote public safety, it can create an incentive for law enforcement to issue as many citations as possible, contrary to the pursuit of justice. Nonetheless, many jurisdictions today require or permit courts and municipalities to impose and collect an array of fees for criminal as well as civil justice activities in addition to government programs unrelated to courts.

The recommendations we specifically direct to the Department of Justice, following bipartisan testimony in support, include that the Department of Justice should continue to promote core principles identified in a March 2016 “Dear Colleague” Letter and should investigate additional jurisdictions that appear to impose fines and fees and jail individuals for their failure to pay fines and fees in an unconstitutional manner. Such investigations should address within their scope issues such as fees associated with juvenile behaviors, like truancy and curfew violations assessed against parents and guardians, as well as other municipal fines and fees.

We at the Commission are pleased to share our views, informed by careful research and investigation, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

A handwritten signature in blue ink, appearing to read "C. Lhamon", is positioned below the text "For the Commission,".

Catherine E. Lhamon

Chair

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EXECUTIVE SUMMARY

Congress has tasked the United States Commission on Civil Rights with annually examining “Federal civil rights enforcement efforts in the United States.”¹ This year’s report focuses on the United States Department of Justice’s (“the Department’s”) enforcement efforts regarding municipal court reforms, and fines and fees.² After the shooting death of Michael Brown on August 9, 2014, by a Ferguson, Missouri police officer, the Department began an investigation of the Ferguson, Missouri police force, and municipal court system. The Department’s investigation revealed that the financial relationship between Ferguson’s municipal courts and its police department resulted in the disproportionate ticketing, fining, and jailing of its African American residents. The Department also found evidence of intentional racism in these practices. The investigation brought nationwide attention to these issues. Since then, the Department’s actions to change municipal court practices have included issuing two “Dear Colleague” letters and sponsoring grants to five state jurisdictions.

Municipal ordinance violations can range from parking illegally to having mismatched curtains, or failing to paint one’s foundation or fence a certain color.³ A vast majority of low-level fines are traffic citations, such as speeding and parking tickets.⁴ These violations are usually remedied through monetary fines.⁵ “Fines are intended to deter crime, punish offenders, and compensate victims for losses.”⁶ Many municipalities also add fees for the costs of fine surcharges, court administrative fees, and user fees.⁷ In addition, some municipalities apply late fees, payment plan fees, and interest — aptly referred to as “poverty penalties” — when an individual is unable to pay

¹ 42 U.S.C. § 1975a(c)(1).

² The Commission conducted its examination of this topic through two public briefings held on March 18, 2016, and March 17, 2017. At the first briefing, the Commission heard from legal scholars, national experts, and community representatives as to the historical context of how revenue-generating practices in the municipal courts have evolved and how pervasive these practices are across the county. The Commission also heard from the former Director of the Office of Access to Justice at the Department of Justice. At the second briefing, the Commission heard from the five states awarded grant money for reform, individuals familiar with the Department’s Ferguson investigation, those impacted by the Department’s efforts, and researchers.

³ Joshua A. House, Attorney, Institute of Justice, Written Statement for the U.S. Commission on Civil Rights, Mar. 18, 2016, at 2-3.

⁴ Thomas A. Garrett & Gary A. Wagner, *Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets*, 52 J. L. ECON. 71, 72 (Feb. 2009) (noting that “[a]ccording to the National Center for State Courts (2006), states filed, reopened, or reactivated nearly 55 million traffic violation cases in trial courts in 2004. This is a rate of more than 18,000 cases for every 100,000 U.S. residents, and traffic violation cases accounted for more than half of all state court cases during this year.”).

⁵ Borrowing from the Council of Economic Advisers, we define fines as “monetary punishments for infractions, misdemeanors[,] or felonies.” COUNCIL FOR ECON. ADVISERS, ISSUE BRIEF: FINES, FEES AND BAIL 1 (2015). Of note, this report does not address the issues raised by bail or pre-trial incarceration.

⁶ *Id.*

⁷ ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, THE BRENNAN CENT. FOR JUSTICE, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 6-10 (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

the entirety of the court-ordered assessments.⁸ While fines and fees may be small in nature, they often total hundreds or even thousands of dollars of debt.⁹

“Cash register justice,” “policing for profit,” and “two-tiered criminal justice system” are terms that have been used to describe the excessive use of fines and fees.¹⁰ The rise in the use of fines as the primary enforcement tool against low-level offenses can be attributed to multiple factors. Generally speaking, fines and fees are easier to administer than other forms of punishment and can generate revenue. An increase in policing tactics that focus on low-level violations (such as jaywalking, littering, disorderly conduct, trespassing, or truancy), that might otherwise have gone unenforced, has also resulted in individuals accumulating court debt. Jurisdictions have also become loath to enact new taxes, which along with the recession has resulted in reduced local and state budgets for court systems.

The excessive imposition of fines and fees can damage judicial credibility and the relationships between law enforcement and residents. In the effort to raise revenue through fines and fees, municipalities in effect discount concerns about the judicial system’s role in our “country’s commitment to the principles of fundamental fairness and to ensuring that the scales of our legal system measure justice, not wealth.”¹¹ Chief among these concerns are the harms to due process and judicial ethics issues that arise when states depend too heavily on court fees, potentially conflicting with judicial independence, and diverting attention from courts’ essential functions. Additionally, some state legislatures throughout the country are not properly funding local courts, which leaves local courts to bring in revenue to support their operating budgets, undermining the public’s faith in the justice system.¹² The reliance on revenue from fines and fees distorts incentives and can lead to the misallocation of public safety resources. The recent increase in using private companies to collect fines and fees further exacerbates these issues.

⁸ *Id.* at 1.

⁹ BANNON, *supra* note 7, at 9 (“[F]or example, a Pennsylvania woman convicted of a drug crime incurred 26 different fees, ranging from \$2 to \$345. When her financial obligations are added together, she faces \$2,464 in fees alone, an amount that is approximately three times larger than both her fine (\$500) and restitution (\$325) combined.”).

¹⁰ See Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. REV. 1483, 1483, referring to “cash register justice”; House, *supra* note 3, at 1, referring to “policing for profit”; CRIMINAL JUSTICE POLICY PROGRAM, HARV. L. SCH., CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR POLICY REFORM 1 (2016), <http://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-3.pdf>, referring to a “two-tiered criminal justice system.”

¹¹ Statement of Interest of the United States at 3, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC (M.D. Ala. Jan. 15, 2015).

¹² Mitali Nagrecha, Director, Nat’l Crim. Just. Debt Initiative, Crim. Just. Pol’y Program, Harv. L. Sch., Written Statement for the U.S. Comm’n on Civil Rights, Mar. 17, 2017, at 2.

A 2017 survey found that almost 60 percent of Americans do not have enough money in savings to cover a \$500 emergency.¹³ For people who cannot afford to pay for a citation, the consequences of being in debt can impact credit scores, result in the loss of a driver's license, and lead to incarceration. Jail time can result from a court ordering an individual to appear, and then holding that individual in contempt, and issuing an arrest warrant. Other states allow individuals to "pay" their debt through time in jail.¹⁴ These practices may be unconstitutional in some circumstances and implicate the Equal Protection and Due Process Clauses of the United States Constitution.

The Commission's review of the existing data and research also shows that the impacts of these practices have been borne by communities of color, along with the poor. Municipalities that rely heavily on revenue from fines and fees have a higher than average percentage of African American and Latino populations relative to the demographics of the median municipality. Another study revealed that residents living in the poorest zip codes of a city account for the vast majority of traffic infractions. The residents living in those zip codes were disproportionately African American and Latino.

With the above in mind, the Commission has reviewed the Department of Justice's efforts in holding jurisdictions accountable for constitutional violations that come from financial conflicts-of-interest and the adverse impacts to community policing that can result from jailing community members for the non-payment of fines and fees. The Commission also examined the Department's efforts in issuing "Dear Colleague" letters informing states and localities of best practices for municipal courts, and for imposing fines and fees on juvenile offenders. Finally, the Commission considered the Department's efforts in sponsoring a national taskforce and providing competitive grant money for reform of municipal court practices.

As detailed below, the Commission found that the Department was unaware of the extent to which financial conflicts of interest in the administration, as well as the imposition and collection, of fines and fees existed until its investigation of the City of Ferguson. Although the Department just recently recognized the extent of these issues, the Department did respond quickly and implemented multiple enforcement efforts in a short, two-year period, including the issuance of "Dear Colleague" letters and offering a competitive grant to states and localities. The Department's approach of partnering with states and localities has been well received by those jurisdictions.

Others note that the Department should undertake more pattern or practice investigations of localities and should consider whether to criminally prosecute court actors who willfully jail indigent individuals without appropriate constitutional safeguards. At the same time, the Commission notes the Department's authority to investigate municipal courts is limited to those situations that involve juveniles or where the court's structure and revenue collection overlaps with

¹³ Bankrate, *Nearly 60% of Americans Can't Afford Common Unexpected Expenses*, BANKRATE, Jan. 12, 2017, <http://www.bankrate.com/pdfs/pr/20170112-January-Money-Pulse.pdf>.

¹⁴ BANNON, *supra* note 7, at 23.

law enforcement. Finally, the Commission found that more oversight of private companies who collect fines and fees on behalf of municipalities is needed, as these companies benefit from residents staying in debt. Specifically, Congress should consider whether to require private companies to report to debtors the extent of their debt, interest accumulation, and how long it will take to pay off that debt similar to what credit card collection agencies are required to provide.

In sum, the Commission highlights the following findings and recommendations made herein:

1. Court imposition of fines and fees for criminal and civil justice activities has become a common practice in many jurisdictions.
2. A significant number of low-level fines and fees are for traffic violations.
3. Municipalities target poor citizens and communities of color for fines and fees.
4. Targeting the poor and communities of color for fines and fees undermines public confidence in the judicial system.
5. Revenue generated for courts and municipalities from fines and fees may create conflicts of interest between raising funds and law enforcement.
6. For-profit debt collection increases financial burdens on the poor.
7. Best practices delink revenue collection with budget needs of municipalities and courts.
8. More data is needed to examine the jailing of individuals because of their inability to pay.
9. There are inconsistent policies in determining the ability to pay fines and fees and the consequences for individuals' failure to pay.
10. Lack of counsel, waivers, and adequate community service options exacerbate the consequences of fines and fees.
11. Department of Justice consent decrees have resulted in changes that limit funding of municipalities from unreasonable fines and fees and preserve constitutional rights of individuals.
12. The Department's "Price of Justice" grant program provides innovative ways to determine individuals' ability to pay and to collect fines and fees in a constitutional manner.
13. The Department "Dear Colleague" letter has led to reforms among states and municipalities.
14. The Department should continue to promote core principles identified through its Dear Colleague letter.

15. Congress should enact legislation to give the Department authority to investigate courts inappropriately imposing fines and fees.
16. States and municipalities should create accountability mechanisms concerning the constitutionality of fines and fees, determination of indigency, and alternatives to the imposition of fines and fees.

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CHAPTER 1: INTRODUCTION TO COURT FINES AND FEES

In order to provide context for the Department of Justice’s (“the Department’s”) involvement in municipal courts’ use of fines and fees, this Chapter provides background and a brief history of the rise of fines and fees across the United States.

In most states and municipalities, state and local legislative bodies set court fines and fees. In some states, local courts can set additional fines and fees for low-level, quasi-criminal ordinance violations, misdemeanors, or civil infractions. Many jurisdictions now have an array of fees that courts are required to impose and collect for criminal justice activities as well as government programs unrelated to courts. Since 2010, forty-seven states have increased civil and criminal fees.¹⁵

This recent increase in the imposition of low-level ordinance fines and fees is a result of the confluence of multiple factors. Reductions in state and local court budgets have caused local jurisdictions to fund courts through the imposition and collection of fines and fees. At the same time, many states prohibit local courts from raising taxes without a public referendum, but raising fees usually does not have the same restrictions. These tight budgets were also impacted by the 2008 recession. Many police departments have also increased the ticketing of low-level ordinance violations. Finally, some police departments target certain communities due to intentional racial bias, and when combined with multiple tickets per stop; this practice can result in communities of color being targeted.

Each of these factors alone helps explain how and why a municipality would use fines and fees to generate revenue. Taken together, these factors explain why municipalities began (and continue) to rely on fines and fees to generate revenue.

The Rise of Fines and Fees

At its founding, America moved away from the British model of debtor’s prisons (and the use of fines and fees) towards incarceration and probation. At the time, “incarceration was seen as rehabilitative by promoting reflection and remorse.”¹⁶ In the early and mid-twentieth century,

¹⁵ Nat’l Consumer Law Ctr., Racial Justice and Equal Economic Opportunity Project, *Debt and Democracy: How the Collection of Civil Fees and Fines Contributed to the Unrest in Ferguson* (Jan. 29, 2015) at slide 11, https://www.nclc.org/images/pdf/conferences_and_webinars/webinar_trainings/presentations/2014-2015/debt-and-democracy-slides.pdf. See Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying the Price*, NPR, May 19, 2014, <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

¹⁶ Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons*, 51 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 189, 193 (2016).

model penal codes and sentencing guidelines cautioned against imposing fines and fees.¹⁷ Some judges also viewed fines as “ineffective at impacting the behavior of the rich, for whom fines are too low to have much deterrent value, and essentially unenforceable against the poor, who cannot pay them.”¹⁸

The use of fines and fees to redress low-level offenses increased in the 1980s when some criminologists advocated for increased enforcement for low-level offenses; this approach became known as the “broken windows” theory.¹⁹

The broken windows theory ties minor criminal offenses to larger systems of social disorder. According to this argument, citations criminalizing unwanted (but not necessarily serious) behavior do more than punish and deter petty crimes—they also serve to maintain the social order in a way that discourages violent and high-level crime, benefiting the entire community. A large fine for littering, for example, not only discourages littering but also becomes a principal bulwark against more serious criminal activity by helping maintain the appearance of a law-abiding community.²⁰

By the late 1980s, fines had become “the preferred sanction . . . for low-level municipal ordinance violations and petty misdemeanors.”²¹ This was due in part to the nature of fines: incarceration imposes additional costs on society in the form of prison construction, prison guards, and so on. Generally speaking, fines do not.²² In some instances, a debtor may choose to pay off his or her debt through jail time.²³ In 1986, the Conference of State Court Administrators (COSCA) adopted a set of standards relating to court fines and fees in response to a “burgeoning reliance upon courts to generate revenue to fund both the courts and other functions of government.”²⁴

¹⁷ *Id.* (citing the National Commission on Reform of Federal Criminal Laws strong rejection of fines unless “some affirmative reason indicates that a fine is peculiarly appropriate.” The American Law Institute’s Model Penal Code (1962), the National Council on Crime and Delinquency Model Sentencing Act (1977), and the American Bar Association Standards Relating to Sentencing Alternatives and Procedures (1978) similarly preferred incarceration over fines for most offenses.).

¹⁸ *Id.*

¹⁹ See George L. Kelling & James Q. Wilson, *Broken Windows*, THE ATLANTIC (Mar. 1, 1982).

²⁰ Atkinson, *supra* note 16, at 193-94 (citing *id.*).

²¹ *Id.* at 194 (citing a 1987 study of lower courts that “found fines were imposed in 86% of cases” and noting that “[b]y 1988, forty-eight states authorized some form of correctional fees”).

²² Gary S. Becker, *Crime and Punishment: An Economic Approach*, ESSAYS IN CRIME AND PUNISHMENT 1, 28 (Gary S. Becker and William M. Landes, eds., NBER, 1974), <http://www.nber.org/chapters/c3625.pdf>.

²³ *Id.* at 32-33 (“debtors’ are often imprisoned at rates of exchange with fines that place a low value on time in prison. . . . [S]tatutes [that] permit excessive prison sentences relative to the fines . . . may explain why imprisonment in lieu of fines is often considered unfair to poor offenders, who often must ‘choose’ the prison alternative.”).

²⁴ Carl Reynolds & Jeff Hall, Conference of State Court Administrators, 2011-2012 Policy Paper: Courts are Not Revenue Centers 1 (2012) (citing Conference of State Court Administrators, Standards Relating to Court Costs: Fees, Miscellaneous Charge and Surcharges and a National Survey of Practice (June 1986) (NSDS KF 8995 C6

Some fines and fees are designed to charge individuals for “using” the justice system. And if collected, these fines and fees can help pay the costs of the corrections and criminal justice system.²⁵ Because the cost of running jails often exceeds state and local budgets, many states and municipalities have passed these costs onto individuals (i.e., “usage” costs). “It’s very easy for jurisdictions to pass the cost on to the offender . . . No one wants to raise taxes on the public. Politicians—it’s the last thing they want to do.”²⁶

State laws or state constitutions may also preclude (or make it difficult for) cities, towns, and counties to increase taxes. For example, the Missouri state legislature passed an amendment (known as the “Hancock Amendment”) in 1980 that required municipalities to conduct a citywide referendum before raising taxes.²⁷ Fines and “user” fees, on the other hand, can be raised without these formalities by a city in Missouri.²⁸ As a consequence of these limitations on raising taxes, fines and fees have become one of the easier and faster ways through which local governments can increase revenue.

In 2003, COSCA noted that “State governments today are experiencing the worst fiscal crisis in many decades,” and “many state courts are coping with deep budget cuts that are forcing court closures.”²⁹ While COSCA emphasized that funding state courts is properly a function of the state legislatures, it stated that, “[i]n a tight budget environment, increasing fees and fines by rule may be a viable option” and that “enhanced collection of uncollected fines” and the “suspension of vehicle licenses or registrations” would generate revenue and promote compliance with court

1986 C.4)). The Conference of State Court Administrators is comprised of the state court administrator (or equivalent) for each state along with the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands and the Virgin Islands.

²⁵ The average cost of a state inmate in 2010 was approximately \$30,000. See Tracey Kyckelhahn, Bureau of Justice Statistics, Dep’t of Justice, State Corrections Expenditures, FY 1982-2010 at 4 (rev. 2014), available at <http://www.bjs.gov/content/pub/pdf/scefy8210.pdf>. In total, as of 2010, the costs of incarceration surpass \$48 billion annually. *Id.* at 1. See also Lauren-Brooke Eisen, *Paying For Your Time: How Charging Inmate Fees Behind Bars May Violate The Excessive Fines Clause*, 15 LOY. J. PUB. INT. L. 319 (2014).

²⁶ Joseph Shapiro, *Measures Aimed At Keeping People Out of Jail Punish the Poor*, NPR, May 24, 2014, <http://www.npr.org/2014/05/24/314866421/measures-aimed-at-keeping-people-out-of-jail-punish-the-poor> (quoting George Drake, a private consultant to local governments who sets up ankle monitoring devices).

²⁷ Mo. CONST., art. X, §§ 16, 18 (1980); for additional discussion of the adoption of the amendment, see Michael Atchison, *Hancock Amendment, User Fees, the Plain Meaning Rule, and an Invitation to Challenge Buechner v. Bond*, 57 MO. L. REV. 1373 (1992), <http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3121&context=mlr> (citing *Keller v. Marion County Ambulance District*, 820 S.W. 2d 301 (Mo. 1991)).

²⁸ Atchison, *supra* note 27, at 1374 (noting that in 1991, the Missouri Supreme Court held that “user” fees were not subject to the public referendum). See *id.* at 1377-1380, for a longer discussion of the Missouri Supreme Court’s decision.

²⁹ COSCA, POSITION PAPER ON STATE JUDICIAL BRANCH BUDGETS IN TIMES OF FISCAL CRISIS 2 (2003).

orders.³⁰ COSCA did note there were risks with these approaches, “including the perception of the courts as a ‘pay as you go’ enterprise.”³¹

Some researchers have pointed to the 2008 recession as an additional pressure point for the escalation in the use of monetary sanctions.³² For example, there were reports that Texas was considering offering judges financial incentives (of up to \$50,000) to encourage aggressive collection of court debt.³³ In 2012, COSCA released another policy paper in which it advocated that “this is one problem that does not lend itself to a national summit” and that “[e]ach state’s court leadership must moderate or staunch the legislative impulse (and sometimes its own) to add additional and higher fees.”³⁴

In 2016, COSCA released another policy paper.³⁵ This time, COSCA acknowledged that there are some “spectacular examples of abusive courts motivated to maximize revenue.”³⁶ At present, “[t]here are some 10 million Americans who owe more than \$50 billion in criminal justice debt.”³⁷ In this policy paper, COSCA discusses the national taskforce formation and other efforts by the Department. This report discusses these efforts in more detail below. Part of COSCA’s goal with the release of their latest policy paper was to “advance this national conversation and highlight practices that will enhance [court debt] compliance.”³⁸

Current public opinion weighs against the imposition of fines and fees for those who cannot pay. The 2016 National Center for State Courts (NCSC) Public Opinion Survey asked 1,000 registered voters questions about the courts. A few of the questions in the survey addressed respondents’ attitudes toward fees and fines, and debtors’ prisons. For instance, over 70 percent of respondents

³⁰ *Id.* at 13-14.

³¹ *Id.* at 14.

³² Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 NO. 6 AM. J. SOC. 1753, 1793 n. 30 (2010) (citing John Schwartz, *Pinched Courts Push to Collect Fees and Fines*, N.Y. TIMES, Apr. 7, 2009).

³³ Harris, *supra* note 32, at 1793 (citing Alex Doniach, *Commission Asking General Assembly to Change Collection Laws*, THE COMMERCIAL APPEAL (May 26, 2008)).

³⁴ REYNOLDS, *supra* note 24, at 12-13.

³⁵ Arthur W. Pepin, COSCA, 2015-2016 Policy Paper: The End of Debtors’ Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations (2016).

³⁶ *Id.* at 6 (citing, among others, Hannah Rappley & Lisa Riordan Sevelle, *The Town that Turned Poverty into a Prison Sentence*, THE NATION, Mar. 14, 2014 (how the Harpersville, Alabama court became a “judicially sanctioned extortion racket” ensnaring the poor); Olivia C. Jerjian, *Jail Fail: How Not Paying Your Fines Could Land You Behind Bars*, Am. Crim. L. Rev. (Apr. 27, 2015) (surveying a litany of practices and examples of court debt leading to “debtors’ prisons”), <http://www.americancriminalawreview.com/aclr-online/jail-fail-how-not-paying-your-fines-could-land-you-behind-bars/>; *Last Week Tonight* with John Oliver: Municipal Violations (HBO television broadcast Mar. 22, 2015) (18-minute broadcast story on excessive fines, fees and incarceration for municipal violations), <https://www.youtube.com/watch?v=0UjpmT5noto>).

³⁷ U.S. Comm’n on Civil Rights Briefing Meeting Mar. 17, 2017 (2017) at 161 (statement by Marc Levin, Director, Ctr. for Effective Just. & Right on Crime, Tex. Pub. Pol’y Found.) [*hereinafter* Briefing Transcript 2].

³⁸ PEPIN, *supra* note 35, at 2-3.

disapproved of “imprisoning a defendant who is poor due to an inability to pay court fines and fees.”³⁹

The NCSC survey respondents strongly supported alternatives to incarceration for indigent individuals. For example, over 90 percent of respondents somewhat or strongly supported community service or court-mandated training certification, as opposed to jail; 79 percent of respondents supported allowing judges to modify or waive court fines for those unable to pay; and 76 percent supported allowing judges to set fines and fees based on an individual’s income and the gravity of their offense.⁴⁰ At the same time, 88 percent of respondents strongly or totally agreed that defendants with the means to pay, but who refuse to pay, should be imprisoned.⁴¹ The authors of the report conclude that their “survey presents ample evidence that voters feel imprisonment is inappropriate, or at least a last resort, for non-violent misdemeanors or those awaiting trial, but it can be an appropriate punishment for those who possess the means to pay court fines and fees but refuse to do so.”⁴²

Courts and Police as Tax Collectors

Many people’s experiences with the justice system are based on their interactions with local courts. The current system of assessing and collecting economic sanctions has created distrust. This is especially true because using fees to fund unrelated activities of states and localities “turn[s] courts, clerks, and probation officers into general tax collectors.”⁴³ As Grover Norquist testified, “When you turn policemen into tax collectors, the Romans found when Turkey revolted that they killed all the tax collectors. They’re not popular structures and it’s unfair to police to put them in that position.”⁴⁴

Others note that “[i]t [also] seems that every actor even tangentially related to the criminal justice system has her hand out for recompense.”⁴⁵ The kinds and types of economic sanctions (and fees)

³⁹ Survey, Nat’l Ctr. for State Courts, *The State of State Courts 2016 National Poll Presentation* slide 12 (2016), http://www.ncsc.org/~media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2016_Presentation.ashx.

⁴⁰ *Id.* at slide 13.

⁴¹ Memorandum from GBA Strategies to the Nat’l Ctr. for State Courts on Annual National Tracking Survey Analysis 5-6 (Dec. 12, 2016), http://www.ncsc.org/~media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2016_Survey_Analysis.ashx.

⁴² *Id.* at 5.

⁴³ Neil Sobol, *Charging the Poor: Criminal Justice Debt & Modern Debtors’ Prisons*, 75 Md. L. REV. 486, 523 (2016) (quoting Bannon *supra* note 7, at 30.).

⁴⁴ *Briefing Transcript 2* (statement by Grover Norquist, President, Americans for Tax Reform) at 158.

⁴⁵ Appleman, *supra* note 10, at 1492.

“seem [] both endless and expanding, limited only by the creativity of court officials, judges, . . . private probation companies, and legislatures.”⁴⁶

A large percentage of low-level fines are traffic citations, such as speeding and parking tickets.⁴⁷ Dependence on traffic citations to fund local governments creates an incentive for law enforcement to issue as many citations and fines as possible, regardless of the severity of the offense. Such revenue systems can result in abuse when raising funds replaces public safety as the primary goal of law enforcement.

National Spotlight—The Ferguson Example

One example of such abuse occurred in Ferguson, Missouri.⁴⁸ Reports of racially biased policing—and allegations that the bias caused the shooting death of an African American teenager, Michael Brown, by a white officer,—resulted in the Department of Justice investigating the city’s police and court practices. Among its findings, the Department determined that Ferguson: (i) relied heavily on fines and fees to fund its general operating budget; and (ii) city officials (including municipal court staff) made maximizing revenue through fines and fees a top priority for law enforcement.⁴⁹ The Department’s Ferguson report found that revenue collection, not public safety, was the primary impetus behind the collection of fines and fees, as “[c]ity, police, and court officials for years [had] worked in concert to maximize revenue at every stage of the enforcement process.”⁵⁰

In conjunction with the city’s increasing reliance on fines and fees to fund operations,⁵¹ the Ferguson police routinely conducted stops that had “little relation to public safety and a

⁴⁶ *Id.*

⁴⁷ Garrett, *supra* note 4, at 72 (noting that “[a]ccording to the National Center for State Courts (2006), states filed, reopened, or reactivated nearly 55 million traffic violation cases in trial courts in 2004. This is a rate of more than 18,000 cases for every 100,000 U.S. residents, and traffic violation cases accounted for more than half of all state court cases during the year.”).

⁴⁸ Ferguson is a small city of 21,000 residents located in St. Louis County, Mo. About 67 percent of its residents are African American and 29 percent are white. In addition, about a quarter of Ferguson’s residents live below the federal poverty line. See U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 6 (2015).

http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [*hereinafter* “FERGUSON REPORT”].

⁴⁹ *Id.* at 9-10. The Ferguson Municipal Court is physically and operationally under the supervision of the police chief. The court is housed within the police department, and the court staff reports to the police chief. *Id.* at 8.

⁵⁰ *Id.* at 10.

⁵¹ *Id.* at 9-10 (discussing that over the years, the revenue collected also showed increasing reliance on fines and fees from the enforcement of municipal codes violations. Revenue generated from fines and fees between 2010 through 2013 increased each year with \$1.38 million collected in 2010 and \$2.46 million collected in 2013. Budgeted amounts for fiscal years 2014 and 2015 were \$2.63 million and \$3.09 million, respectively. The \$1.38 million collected in 2010 represented about 12.5 percent of the general revenues for 2010, while the \$3.09 million budgeted in 2015 presents over 23 percent of the budgeted general revenues for 2015.).

questionable basis in law.”⁵² The city council and police squads used words like “volume” and “productivity” to discuss increased stops, citations, fines, and fees. They pressured officers both directly and indirectly to boost their “productivity” and “volume” if they wanted to get raises or promotions.⁵³ Officers who did not generate revenue were subject to less desirable assignments and even discipline.⁵⁴

Ferguson also presents an example of how some municipalities impose increasing fines and fees by focusing on specific communities. The Department found that Ferguson’s municipal court and police practices are due, at least in part, to intentional discrimination, as demonstrated by evidence of racial bias and stereotyping of African American residents by certain Ferguson police and municipal court officials.⁵⁵

This racial bias and stereotyping led to African Americans being pulled over and stopped more frequently than other community members. For example, the Department found that African Americans in Ferguson accounted for 85 percent of vehicle stops, 90 percent of citations, and 93 percent of arrests, “despite comprising only 67 percent of Ferguson’s population.”⁵⁶ The frequency in stopping certain members of the community due to racial bias and stereotyping also led to the issuance of more tickets. For instance, Ferguson officers often issued multiple citations—frequently three or more—at a single traffic stop.⁵⁷ In addition, Ferguson imposed preset fines at or near the top of the list compared with other Missouri municipalities across a large number of offenses.⁵⁸ Between July 1, 2010 and June 30, 2014, the Ferguson Police Department issued more than 90,000 citations and municipal violation summonses.⁵⁹ Compounding the extensiveness of these practices, the court imposed fines and fees without providing a process by which a person could seek a fine or fee reduction on account of financial incapacity.⁶⁰

⁵² *Id.* at 11.

⁵³ *Id.* at 11-12.

⁵⁴ *Id.* at 12. For example, in a March 2013 email the city’s Finance Director told the Police Chief: “[U]nless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. What are your thoughts? Given that we are looking at a substantial sales tax shortfall, it’s not an insignificant issue.” *Id.* at 10. The Police Chief responded that he was considering “different shift schedules” to dedicate more officers to traffic enforcement in the hopes of meeting and exceeding that year’s revenue goal. *Id.* In an April 2014 email, the Finance Director suggested a traffic enforcement strategy to the police chief that would “begin to fill the revenue pipeline.” *Id.* at 13.

⁵⁵ *Id.* at 4-5.

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 7.

⁶⁰ *Id.* at 52-54.

The Department concluded that:

The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the 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.⁶¹

Conflicts from Outsourcing Collections to For-Profit Companies

As more states and localities have turned to privatizing collections, the incentives for these third parties to profit are often in conflict with the goals of the justice system. While not the focus of this report, we briefly discuss the conflicts of interest concern that arises from outsourcing collections of fines and fees. A number of states use additional methods to address outstanding fines and fees accounts, including the use of private collections agencies for collections. Georgia, Missouri, New York, North Carolina, and Washington employ private collections agencies to manage delinquent fines and fees accounts.⁶² There is also "significant within-state variability in the use of private collection agencies in California, Illinois, and Texas." In 2014, Georgia also revised legislation to allow the Administrative Office of the Courts (AOC) to request redress of court debts greater than \$25 through withholding money from debtors' tax returns.⁶³

In many jurisdictions that outsource these services, the private, for-profit company receives its income solely from the fees that it charges. This "offender-funded" model creates financial incentives for private probation companies to keep debtors in the system.⁶⁴ That is, "every person who successfully [pays his or her debts] is a lost source of revenue."⁶⁵ "The entire business model is to pad state punishment with additional fees for whoever can't pay a fine immediately. These fees can amount to double or triple the fine directly imposed by the court."⁶⁶ In addition, private facilities may work without oversight from the court or local government. This may lead to accountability issues and facilitate potential corruption.⁶⁷ "[A] business whose only work is to extract fees . . . is simply a debt collector backed by carceral power."⁶⁸

⁶¹ *Id.* at 3-4.

⁶² Sarah Shannon, Ph.D., Assistant Professor, U. of Ga., Written Statement for the U.S. Comm'n on Civil Rights, Mar. 17, 2017, at 5.

⁶³ Georgia Code, Title 48, Chapter 7, Article 7, § 48-7-160.

⁶⁴ CRIMINAL JUSTICE POLICY PROGRAM, *supra* note 10, at 10.

⁶⁵ Sobol, *supra* note 43, at 523.

⁶⁶ Harv. L. Rev. Assoc., *Policing and Profit*, 128 HARV. L. REV. 1723, 1729 (2015).

⁶⁷ Sobol, *supra* note 43, at 523-24.

⁶⁸ Harv. L. Rev. Assoc., *supra* note 66, at 1729.

The Potential for Constitutional Concerns

In some circumstances, the collection of fines and fees can raise constitutional issues under the equal protection and due process clauses of the U.S. Constitution. Equal protection concerns can arise in the context of incarceration for failure to pay a fine; specifically, whether a court determines that an individual has willfully refused to pay court debt, as opposed to not having the means to pay. Due process concerns arise when courts use fines and fees as a means to generate revenue. As discussed below, the Supreme Court first addressed due process in the context of local courts' fine and fee practices in 1928. When considering whether there is a conflict of interest in the collection of fines and fees, the Supreme Court has looked at the court structure and who is the beneficiary of the monetary remuneration.

Requirement of Ability-to-Pay Determination and Equal Protection

In *Tate v. Short*, the Court held that the Equal Protection Clause of the Fourteenth Amendment “prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.”⁶⁹ In *Tate*, the Supreme Court emphasized that a willful failure to pay a fine was distinguishable from a defendant's inability to pay. It is because of this distinction that courts must first make an inquiry into facts that demonstrate whether the defendant had the ability to pay, had willfully refused to pay, and had access to adequate alternatives to jail for non-payment.

In *Bearden v. Georgia*, an individual's probation was revoked because he did not pay a required fine, despite testifying that he and his wife lacked income and assets and that he had repeatedly tried to obtain work. The Supreme Court held that “depriv[ing] [a] probationer of his conditional freedom simply because, through no fault of his own, he cannot pay a fine. . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment.”⁷⁰

The Supreme Court has provided some guidance on the definition of ability to pay. In *Turner v. Rogers*, the Court held that finding a parent in contempt of court and jailing him or her for unpaid child support payments without inquiring into his or her financial status “violated the Due Process Clause.”⁷¹ The Supreme Court also noted procedures which taken together create safeguards that can reduce the risk of an erroneous deprivation of liberty in the nonpayment context. These include:

1. notice to the defendant that his or her “ability to pay” is a critical issue in the contempt proceeding;

⁶⁹ *Tate v. Short*, 401 U.S. 395, 398 (1971).

⁷⁰ *Bearden v. Georgia*, 461 U.S. 660, 672-3 (1983).

⁷¹ *Turner v. Rogers*, 564 U.S. 431, 449 (2011).

2. the use of a form (or the equivalent) to elicit relevant financial information;
3. an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and
4. an express finding by the court that the defendant has the ability to pay.⁷²

Therefore, in order to comply with the U.S. Constitution, state and local courts must look into a person's ability to pay at sentencing instead of waiting until there is a missed payment. In addition, indigency inquiries must ensure fair and accurate assessment of individuals' ability to pay, provide notice to the individual that ability to pay is critical, allow an opportunity for that individual to be heard about his or her financial circumstances, in some cases provide counsel, and provide alternatives to incarceration for persons unable to pay.⁷³

Conflicts of Interest and Due Process

The dependency of courts and government agencies on revenue generated from criminal defendants can create conflicts of interest.⁷⁴ The practice “can interfere with the judiciary’s independent constitutional role . . . and, in its most extreme form, threaten the impartiality of judges and other court personnel.”⁷⁵ Furthermore, this practice can undermine the legitimacy of the justice system by supporting the perception that the legal system privileges its budget over the needs of justice.⁷⁶

The Supreme Court has considered whether a conflict of interest exists under the Due Process Clause for local courts in four cases: *Tumey v. Ohio*,⁷⁷ *Dugan v. Ohio*,⁷⁸ *Ward v. Village of Monroeville*,⁷⁹ and *Connally v. Georgia*.⁸⁰ In *Ward*, the Supreme Court set out the test for a conflict of interest with regard to fines and fees as:

⁷² *Id.* at 447-48.

⁷³ Letter from Vanita Gupta & Lisa Foster, U.S. Dep’t of Just., C.R. Div., to colleagues on fines and fees (Mar. 14, 2016), <https://www.justice.gov/crt/file/832461/download> [hereinafter Dear Colleague Letter (Mar. 14, 2016)].

⁷⁴ CRIMINAL JUSTICE POLICY PROGRAM, *supra* note 10, at 5.

⁷⁵ Sobol, *supra* note 43, at 523.

⁷⁶ CRIMINAL JUSTICE POLICY PROGRAM, *supra* note 10, at 7.

⁷⁷ *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (holding that subjecting a defendant to a trial before a local judge (the village mayor in this case) who has “a direct, personal, pecuniary interest in convicting the defendant” violated the Due Process Clause of the Fourteenth Amendment).

⁷⁸ *Dugan v. Ohio*, 277 U.S. 61 (1928) (holding that there are no due process violations when a mayor has judicial functions, a fixed salary not dependent on outcomes, and only very limited executive authority was too remote to warrant a presumption of bias toward conviction in prosecutions when the mayor was acting as a judge).

⁷⁹ *Ward v. Village of Monroeville*, 409 U.S. 57, 59 (1972) (holding that even though the local judge (mayor) did not have a direct financial stake in the outcome of the case, the fact that the village was primarily funded by the recoupment of fines and fees violated the Defendant’s due process).

⁸⁰ *Connally v. Georgia*, 429 U.S. 245, 250 (1977) (holding that the fee system governing the issuance of search warrants by justices of the peace was unconstitutional because justices who issued search warrants had a pecuniary interest in the service of the warrant, and thus, were not neutral or detached).

[W]hether the mayor's situation is one "which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused" ⁸¹

In determining whether the funding structure constitutes a conflict of interest or offers "temptation," courts have looked at personal and structural financial conflicts of interest—as determined by who receives the revenue—and whether the judge was exercising administrative functions that might impact or influence her role as a judge. For example, where a mayor or judge was also the chief executive for the village's finances, a federal district court held that holding both positions meant the mayor did not appear impartial.⁸² Courts have also considered whether the amount collected is a substantial part of the local court's overall budget,⁸³ and whether the monies collected go directly into the local court's coffers.

Simply put, constitutional conflicts of interest exist when a decision-maker with the power to arrest, charge, convict, or sentence a defendant would personally benefit as a result of exercising that power. Conflicts of interest can also arise in the absence of such a direct personal conflict where judicial and executive powers are intermingled. Conflicts of interest further arise when raising revenue becomes a dominant aim of the criminal justice system and when actors in the system are forced to rely on fines, fees, and surcharges for funding.⁸⁴

⁸¹ *Ward*, 409 U.S. at 60 (quoting *Tumey*, 273 U.S. at 532).

⁸² *Rose v. Village of Peninsula*, 875 F. Supp. 442, 453 (N.D. Ohio. 1995).

⁸³ Compare *id.* at 451 (finding that 10 percent of the court's budget was collected through fines and fees, and that this percentage was "substantial") with *Wolkenstein v. Reville*, 694 F.2d 35, 43 (2d Cir. 1982) (finding fees imposed "sporadic[ally]" and "occasional[ly]" that add up to 0.5 percent of the total budget are not substantial).

⁸⁴ Per these legal principles, some have suggested that the outsourcing of collections to private companies always violates the due process clause of the Fourteenth Amendment. See Harv. L. Rev. Assoc., *supra note* 66, at 1737-38 (arguing that "when a private probation company decides which violations to enforce based on financial motivations, 'a direct, personal, substantial, pecuniary interest' is the whole reason the arrangement exists" and that this "influence is severe enough" to violate due process).

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CHAPTER 2: EXTENT OF FINES AND FEES THROUGHOUT THE STATES AND IMPACTS ON COMMUNITIES OF COLOR, PERSONS WITH DISABILITIES, AND THE POOR

“Although the concerns we are focused on . . . may be particularly acute in Ferguson—they are not confined to any one city, state, or geographic region. They implicate questions about fairness and trust that are national in scope.”⁸⁵

In this chapter, the Commission discusses the extent of fines and fees practices across states and municipalities, and how these practices disproportionately impact communities of color, the poor, and persons with disabilities. The Commission then discusses how the excessive collection of fines and fees can harm communities of color and their relationship with law enforcement, which increases public safety concerns. Lastly, the Commission discusses the serious consequences that can flow from the inability to pay fines and fees—the potential for driver’s license suspension, incarceration, job loss, and family separation. These consequences are especially detrimental for communities of color and the poor, and there is evidence of these impacts across the states.

Is Ferguson Unique?

While the Department of Justice’s report on Ferguson provides extensive details on the city’s fines and fees practices, the report and other enforcement strategies do not demonstrate whether Ferguson is an anomaly in its practices. Herein, the Commission considers whether Ferguson is unique in terms of: (i) how much the city relied on fines and fees as a percentage of its budget, (ii) why it targeted its African American residents, in particular, and (iii) how it fits within the structure of Missouri’s court system. At the outset, we note that the Department’s extensive investigation resulted in conclusions about racial motivations as a cause of Ferguson’s fines and fees practices cannot necessarily be extrapolated to other municipalities without similar investigations being conducted. Below, we do discuss the racial correlation found with respect to the extent that a municipality relies on fines and fees to fund its court system, and how much it tickets its African American population.

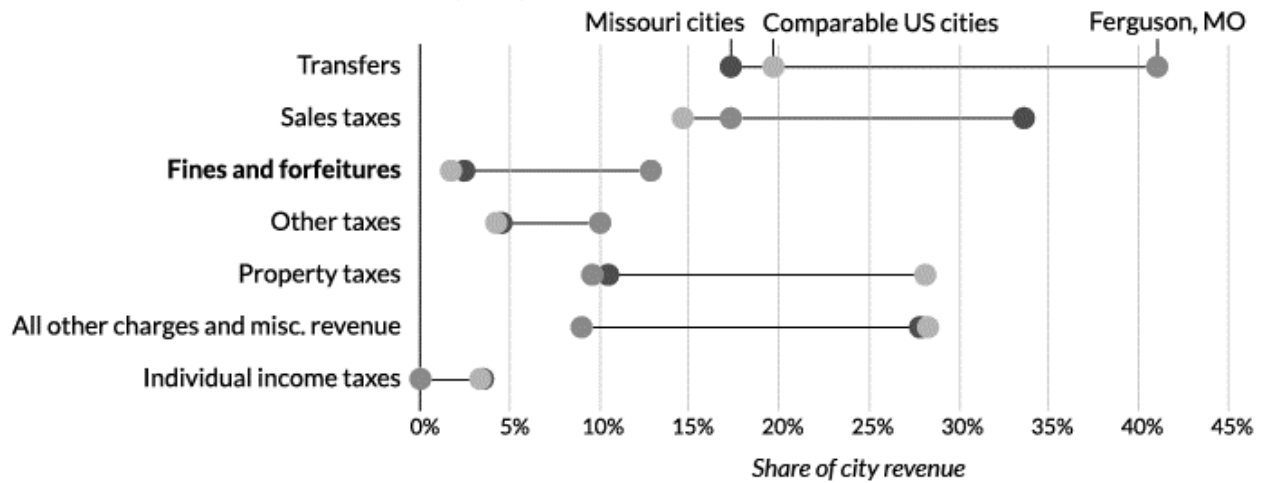
To begin with, researchers at the Urban Institute looked at whether Ferguson’s revenue collection practices were unique. Using Census Bureau data, these researchers compared Ferguson’s collection of revenue against other Missouri jurisdictions and other comparably United States

⁸⁵ Eric Holder, U.S. Attorney General, Dep’t of Just., Update on Investigations in Ferguson, Mo. (Mar. 4, 2015), <https://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri>.

cities. They found that Ferguson’s finances did differ significantly from other comparable cities.⁸⁶ According to the chart below, in 2012, Ferguson acquired about 13 percent of its general revenue from fines, fees, and forfeitures, whereas other Missouri municipalities collected less than three percent, and other comparable United States cities collected less than two percent from fines and fees.⁸⁷ Consequently, Ferguson is somewhat unique to the extent to which it relied on fines and fees to comprise its budget (13 percent). Yet, as discussed below, there are other Missouri municipalities and other United States cities that rely more heavily on fines and fees as a percentage of their court budgets.⁸⁸

Ferguson Revenue Sources Differ from Those of Comparable Cities

Sources of revenue for US city governments (2012)



Source: U.S. Census Bureau, Annual Survey of State and Local Government Finances and Census of Governments.
 Note: Comparable cities are cities with populations between 5,000 and 50,000 people.

URBAN INSTITUTE

At present, there appear to be only two large-scale studies that examine census-defined municipalities (towns and cities) with populations over 5,000, and the proportion of their budget that comes from fines and fees.⁸⁹ After determining the municipalities for comparison, the author

⁸⁶ Tracy Gordon & Sarah Gault, *Ferguson City Finances: Not the New Normal*, URBAN INSTITUTE, Apr. 8, 2015, <http://www.urban.org/urban-wire/ferguson-city-finances-not-new-normal>.

⁸⁷ *Id.* The authors found that Ferguson is unique when compared to cities that have the same racial and ethnic makeup and income.

⁸⁸ *Id.*; Mike Maciag, *Skyrocketing Court Fines Are Major Revenue Generator for Ferguson*, GOVERNING, Aug. 22, 2014, <http://www.governing.com/topics/public-justice-safety/gov-ferguson-missouri-court-fines-budget.html>; Dan Kopf, *The Fining of Black America*, PRICEONOMICS, June 24, 2016, <https://priceonomics.com/the-fining-of-black-america/>.

⁸⁹ As discussed below, a study by Right on Crime examined a smaller subset of larger municipalities, and the extent to which they rely on fines and fees. Chuck DeVore, *Police-Collected Fines, Fees, And Forfeitures: How Does your City Rank?*, FORBES, Oct. 26, 2016, <http://rightoncrime.com/2016/11/police-collected-fines-fees-and-forfeitures-how-does-your-city-rank/>.

of that study, Dan Kopf, utilized the Census’s Survey of Local and State Finances data to compare and contrast what those municipalities that rely heavily on fines, fees, and forfeitures for their local and state budgets have in common.⁹⁰ While forfeiture revenue is included in the Census’s data, according to Kopf, a large portion of the fines, fees, and forfeitures data stems from parking infractions, traffic violations, and missed court appearances. Therefore, for purposes of discussing this study, the Commission uses the nomenclature “fines and fees” instead of listing the forfeiture component each time.

The census data used in this study includes approximately 20,000 municipalities. Of the nearly 4,600 municipalities with a population over 5,000, the median municipality receives less than 1 percent of its revenues from fines and fees. Less than 5 percent of municipalities with a population over 5,000 received five percent or greater of its revenues from fines. And thirty-eight cities (including Ferguson, Missouri) received 10 percent or more of its revenue from fines and fees. The chart below demonstrates that in 2012, seventeen municipalities received a larger share of their revenue from fines and fees than Ferguson, Missouri.

Revenues Were Higher for Thirteen Other Municipalities

Rank	Name	State	Fines as % Revenues	Median income	% in Poverty	% White	% Black	% Hispanic
		Average City	1.4%	\$ 54,651.00	15.6%	78.3%	11.1%	14.0%
1	Saint Ann	Missouri	30.4%	\$34,932	15.1%	74.4%	20.5%	5.1%
2	North Hills	New York	25.6%	\$131,677	1.7%	78.8%	0.5%	1.1%
3	Clarkston	Georgia	24.4%	\$32,710	37.6%	19.2%	60.2%	2.2%
4	Morrow	Georgia	22.7%	\$48,368	14.6%	22.2%	38.1%	3.2%
5	Stone Mountain	Georgia	22.1%	\$48,304	17.2%	17.1%	79.5%	2.9%
6	Doraville	Georgia	20.6%	\$43,311	30.8%	52.0%	10.0%	54.4%
7	Cedarhurst	New York	18.8%	\$77,783	5.2%	86.3%	4.3%	10.0%
8	Riverdale	Georgia	18.7%	\$38,853	18.3%	9.8%	69.4%	9.9%
9	St Johns	Missouri	18.0%	\$36,958	17.0%	69.7%	23.1%	6.9%
10	Willow Springs	Illinois	17.1%	\$70,972	4.8%	94.3%	1.8%	6.5%
11	Great Neck Plaza	New York	15.8%	\$63,418	5.7%	78.6%	1.6%	10.2%

⁹⁰ The Commission’s professional staff reached out to the author regarding the methodology used and the findings of this study. The author shared the underlying data used. The Commission’s professional staff also reviewed the data used in this study as part of writing this report.

Rank	Name	State	Fines as % Revenues	Median income	% in Poverty	% White	% Black	% Hispanic
		Average City	1.4%	\$ 54,651.00	15.6%	78.3%	11.1%	14.0%
12	Riverdale Dark	Maryland	15.7%	\$54,340	13.5%	56.8%	30.5%	48.3%
13	Sunset	Utah	14.5%	\$46,731	18.6%	82.7%	3.2%	21.5%
14	Oakland	Tennessee	14.5%	\$67,106	6.6%	80.1%	17.9%	0.2%
15	Bellefontaine Neighbors	Missouri	14.4%	\$42,434	18.8%	25.6%	70.9%	1.2%
16	Millersville	Tennessee	14.0%	\$49,638	11.8%	93.9%	4.5%	9.2%
17	College Park	Maryland	13.6%	\$60,402	29.3%	63.5%	16.3%	10.5%
18	Ferguson	Missouri	12.9%	\$37,517	22.0%	31.0%	65.0%	0.7%
19	Lake Dallas	Texas	12.8%	\$66,750	4.9%	85.9%	1.5%	18.6%
20	Maryland Heights	Missouri	12.6%	\$55,095	9.9%	70.7%	9.9%	7.5%
21	Snellville	Georgia	12.4%	\$62,537	8.1%	63.8%	27.4%	10.0%
22	Gretna	Louisiana	12.2%	\$35,536	26.2%	49.2%	36.2%	15.4%
23	Dardenne Prairie	Missouri	11.9%	\$100,953	1.7%	91.2%	3.9%	2.4%
24	Laurel	Maryland	11.8%	\$66,355	7.8%	29.5%	50.4%	18.1%
25	Los Fresnos	Texas	11.5%	\$39,149	33.1%	88.1%	1.2%	84.6%

Next, Kopf compared the demographics of the top fifty municipalities and their reliance on fines and fees with all of the municipalities in the study.⁹¹ The chart below illustrates that municipalities that excessively fine their residents have a larger percentage of African Americans and Latinos relative to the demographics of the median municipality. At the same time, there is little difference between the income and poverty rates of the two groups.

⁹¹ Survey, U.S. Census Bureau, Selected Population Profile in the U.S., 2015 American Community Survey 1-Year Estimates, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_S0201&prodType=table.

What Is Different About Cities That Rely On Revenue From Fines?

The Demographics of the Median Municipality and the Top 50 in Terms of Revenue from Fines

Category	All Cities	Top 50 Cities: Revenue from Fines
Percent of Revenues from Fines	0.9%	11.3%
White	84.2%	70.2%
African American	3.8%	18.9%
Hispanic	6.5%	10.1%
Below 50% of the Poverty Level	5.5%	6.0%
Below 100% of the Poverty Level	14.2%	14.5%
Below 200% of the Poverty Level	33.5%	34.9%
Median Income (Average)	\$48,300	\$49,600

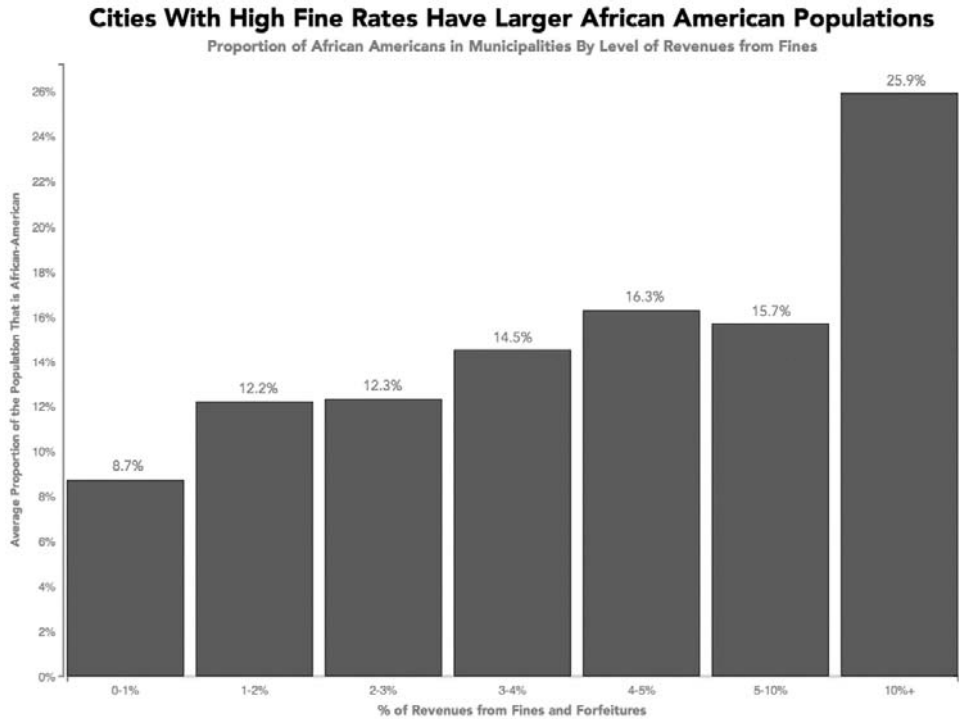
From this analysis and the chart below, Kopf concludes that there is:

[O]ne demographic that was most characteristic of cities that levy large amounts of fines on their citizens: a large African American population. Among the fifty cities with the highest proportion of revenues from fines, the median size of African American population—on a percentage basis—is more than five times greater than the national median.⁹²

The author then considered whether this result could be explained by a municipality's poverty rate and median income, as African Americans, on average, have higher rates of poverty and lower wages relative to other racial and ethnic groups.⁹³

⁹² Kopf, *supra* note 88.

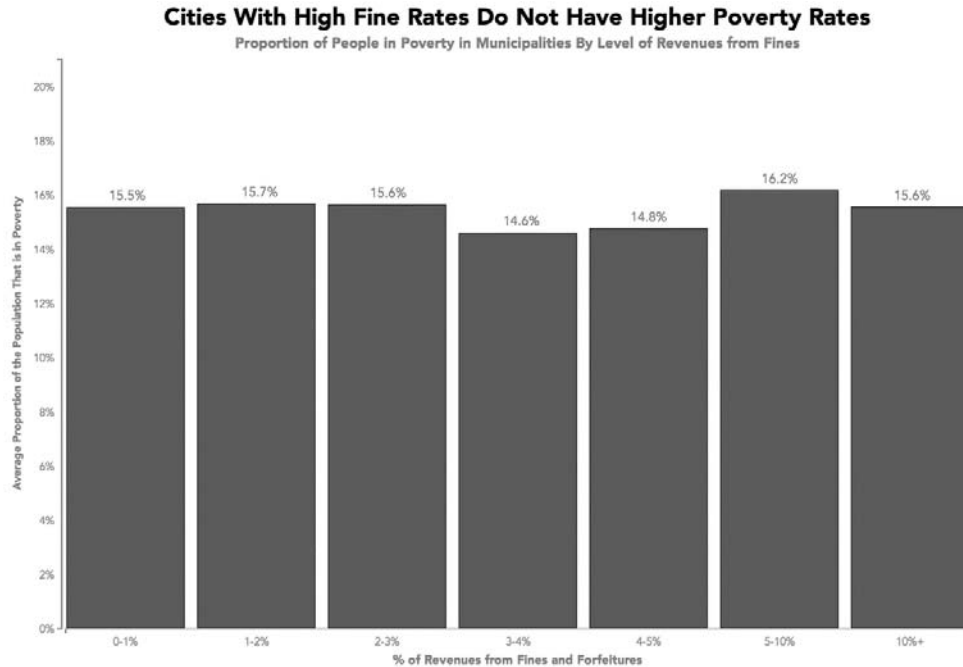
⁹³ Carmen DeNavas-Walk & Bernadette D. Proctor, U.S. Census Bureau P60-252, *Income and Poverty in the United States: 2014, Current Population Reports*, (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>.



As the chart below demonstrates, Kopf argues there is no apparent relationship between a municipality's poverty rate and reliance on fines and fees for revenue, because the poverty rate is about the same across all categories. The author conducted additional analyses to check the robustness of this finding. For instance, Kopf amended the population size as well as the racial and ethnic demographics of the municipalities under study and still claims there is no correlation between a city's poverty rate and the extent to which fines and fees are a significant part of their revenue. This finding reinforces the correlation about race discussed above. At the same time, this finding does not discount the impacts to individuals who are unable to pay their court debt. The impacts of owning court debt and not being able to pay are discussed in detail below.

Kopf further examined the top 100 municipalities in terms of revenue stemming from fines and fees, and geographic location. He found that almost 70 percent of the municipalities on the list are concentrated in only six states: Texas (nineteen cities), Georgia (seventeen cities), Missouri (twelve cities), Illinois (nine cities), Maryland (six cities) and New York (six cities). As the author mentioned, while two Southern states—Texas and Georgia—make up over 36 percent of this list, the issue of excessive fining also occurs in municipalities in several non-Southern states like Illinois, Missouri, and New York.⁹⁴

⁹⁴ Kopf, *supra* note 88.



In sum, while Kopf's study shows a correlation between race and municipalities that obtain a large proportion of their revenue from fines and fees,⁹⁵ there may be other factors such as a court system's structure and source of court funding (as discussed throughout this report) that impact a municipality's decision to excessively fine its residents.

Another study by the Texas Public Policy Foundation and Right on Crime used the same Census data as Kopf to examine how larger municipalities (populations over 250,000) rank in the amount of revenue that is generated from fines and fees.⁹⁶ These data demonstrate that many of the same states that were ranked high on Kopf's analysis of smaller municipalities and the extent to which their revenue is generated from fines and fees also rank high on the Right on Crime list.

Court Structure and Funding

The organization of court systems and state laws can affect the generation of fines and fees in states and municipalities. For instance, some of the variation between states might stem from differences in court structures. Many states have a unified system, in which all courts (including those that adjudicate low-level ordinance violations) fall underneath the State Supreme Court.

⁹⁵ The existence of this correlation between these two factors does not necessarily mean that a municipality with a large African American population is excessively fining its residents. At the same time, there are some municipalities who have a large percent of revenue stemming from fines, fees, and forfeitures, but a small African American population. *See* Kopf, *supra* note 88, scatterplot.

⁹⁶ DeVore, *supra* note 89.

Other court systems, like Louisiana and Missouri,⁹⁷ are not combined, and their lower courts operate independently and fund themselves, in part, through municipal fines and fees. As discussed in other places in this report, these structural differences can result in conflicts of interest.

In contrast, large municipalities in North Carolina (e.g. Greensboro, Raleigh, and Charlotte) collected almost no revenue per capita from fines and fees.⁹⁸ Right on Crime attributes this finding to a North Carolina law that requires that almost all of revenue generated from fines and fees be sent directly to the state’s general fund, which reduces the incentive for municipal agencies to excessively ticket their residents.⁹⁹

The Commission’s staff examined the list of the top 100 municipalities in terms of their reliance on fines and fees found in, Kopf’s article “The Fining of Black America” to identify which type of court structures were prominent on the list and whether those courts fund themselves (or whether they receive some money from the state legislature). According to the charts below, 52 percent of the municipalities on the list are located in states with unified court systems, but 92 percent of these municipalities, regardless of their court structure, had local courts partially or fully fund themselves.¹⁰⁰ Only 8 percent of the municipalities on the list are state funded and have average

⁹⁷ According to a Missouri municipal court judge, “[r]egrettably, the design of Missouri’s municipal courts makes them highly susceptible to pressure to maximize the revenues derived from fines and fees. Fine monies arising from municipal ordinance violations are not disbursed in the same manner as for state law criminal offenses. . . . [C]ities were allowed to keep of instances, governing bodies hire and supervise their own executive branch personnel—the police and prosecutors—but also their judicial branch personnel. These people include municipal judges, many of whom perform some ‘executive branch’ duties in addition to court-related work. Thus were created both the condition and the incentives under which misconduct, corruption, and abuse could thrive.” Hon. Karl DeMarce, Associate Circuit Judge, Circuit Court of Scotland County, Mo., Written Statement for the U.S. Comm’n on Civil Rights, Mar. 17, 2017, at 1.

⁹⁸ The Right on Crime authors adjusted the per capita estimate of fines, fees, and forfeitures by the cost of living in that municipality.

⁹⁹ Article IX, § 7 of the North Carolina statute directs all state agency-collected fines to be funneled into a general fund for state use. The specific text states:

7(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

7(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. N.C. Const. art. IX, § 7.

¹⁰⁰ Commission staff compiled these charts based on information disclosed by each state on the Court Statistics Project page. State Court Structure Charts, http://www.courtstatistics.org/Other-Pages/State_Court_Structure_Charts/ (last visited July 19, 2017). Commission staff reviewed all states’ court system structure charts, and also collected information about how the court with jurisdiction over municipal court ordinance violations is funded. Most municipal courts are locally funded, meaning they must fund themselves. Some municipal

African American and Latino populations of 30 percent and 20 percent, respectively.¹⁰¹ This anecdotal evidence gives credence to the argument that both court system organization and the racial and ethnic makeup of a municipality might influence a municipality's decision to excessively fine its residents.

Unified Court Systems		
Locally Funded	State Funded	Mix: State and Locally Funded
<u>Alabama (3 cities)</u>	<u>Vermont</u>	<u>Florida (1 city)</u>
<u>Georgia (17 cities)</u>	<u>Alaska</u>	<u>Idaho</u>
<u>Kansas (1 city)</u>	<u>Connecticut</u>	<u>Illinois (9 cities)</u>
<u>Michigan (1 city)</u>	<u>Kentucky</u>	<u>Nebraska</u>
<u>New Jersey</u>	<u>New Hampshire</u>	<u>North Carolina (1 city)</u>
<u>North Dakota</u>	<u>Rhode Island</u>	<u>Pennsylvania (1 city)</u>
<u>Oklahoma</u>	-	<u>South Carolina (1 city)</u>
<u>Wisconsin</u>	-	<u>South Dakota</u>
<u>Missouri (12 cities)</u>		<u>Virginia</u>
		<u>Arizona (1 city)</u>
		<u>New York (6 cities)</u>

Not Unified Court Systems		
Locally Funded	State Funded	Mix: State and Locally Funded
<u>Arkansas (2 cities)</u>	<u>California (1 city)</u>	<u>Tennessee (2 cities)</u>
<u>Colorado (1 city)</u>	<u>Maryland (6 cities)</u>	<u>Iowa</u>
<u>Indiana (2 cities)</u>	<u>District of Columbia</u>	
<u>Louisiana (4 cities)</u>	<u>Massachusetts</u>	
<u>Ohio (5 cities)</u>	<u>Minnesota</u>	
<u>Oregon (1 city)</u>	<u>Maine</u>	
<u>Texas (19 cities)</u>		
<u>Utah (2 cities)</u>		
<u>Washington (1 city)</u>		
<u>Nevada</u>		
<u>New Mexico</u>		
<u>Hawaii</u>		
<u>Mississippi</u>		
<u>Montana</u>		
<u>Wyoming</u>		

courts are funded through a hybrid system, whereby the court receives some money from the state legislature and generates any remainder by itself. *Id.*

¹⁰¹ *Id.*

Next, the Commission staff conducted a similar analysis of Right on Crime’s list of per capita fines and fees revenue of large municipalities with populations over 250,000. According to the charts below, approximately 43 percent of the municipalities on the list are located in states with unified court systems. However, in over 70 percent of these municipalities, regardless of their court structure, local courts partially or fully fund themselves.

Unified Court Systems		
Locally Funded	State Funded	Mix: State and Locally Funded
<u>Alabama</u>	<u>Vermont</u>	<u>Florida (4 cities)</u>
<u>Georgia (1 city)</u>	<u>Alaska</u>	<u>Idaho</u>
<u>Kansas (1 city)</u>	<u>Connecticut</u>	<u>Illinois (1 city)</u>
<u>Michigan (1 city)</u>	<u>Kentucky (1 city)</u>	<u>Nebraska (2 cities)</u>
<u>New Jersey (2 cities)</u>	<u>New Hampshire</u>	<u>North Carolina (3 cities)</u>
<u>North Dakota</u>	<u>Rhode Island</u>	<u>Pennsylvania (2 cities)</u>
<u>Oklahoma</u>	-	<u>South Carolina</u>
<u>Wisconsin (1 city)</u>	-	<u>South Dakota</u>
<u>Missouri (1 city)</u>		<u>Virginia (1 city)</u>
		<u>Arizona (4 cities)</u>
		<u>New York (2 cities)</u>

Not Unified Court Systems		
Locally Funded	State Funded	Mix: State and Locally Funded
<u>Arkansas</u>	<u>California (14 cities)</u>	<u>Tennessee (1 city)</u>
<u>Colorado (3 cities)</u>	<u>Maryland (1 city)</u>	<u>Iowa</u>
<u>Indiana (2 cities)</u>	<u>District of Columbia (1 city)</u>	
<u>Louisiana</u>	<u>Massachusetts (1 city)</u>	
<u>Ohio (2 cities)</u>	<u>Minnesota (2 cities)</u>	
<u>Oregon (1 city)</u>	<u>Maine</u>	
<u>Texas (10 cities)</u>		
<u>Utah</u>		
<u>Washington (1 city)</u>		
<u>Nevada (1 city)</u>		
<u>New Mexico (1 city)</u>		
<u>Hawai'i</u>		
<u>Mississippi</u>		
<u>Montana</u>		
<u>Wyoming</u>		

The importance of the role of court structure and funding is bolstered by written and oral testimony received by the Commission. According to a former Department employee, municipal courts should be funded through a state’s general budget and the “idea that [municipal] courts have to

pay for themselves is part of what has gotten us into this problem [of imposing excessive fines and fees].”¹⁰² Another expert, Derek Cohen from Right on Crime, stated “[b]udgeting in anticipation of fines and fees revenue is bad public policy. Necessities must be funded by a stable revenue sources, not subject to fluctuations of law, or offending patterns, but it is not unlawful if uniformly enforced.”¹⁰³ In sum, the evidence above suggests that sending fine and fee revenue to a state’s general fund may reduce the incentive for a municipality to excessively fine its residents.

Lack of Nationwide Data on Costs Associated with Fines and Fees Collection

The Commission heard testimony from several panelists who discussed the lack of data being collected at the municipal, state, and federal level.¹⁰⁴ The absence of data prevents researchers from measuring the costs incurred in pursuing the debt that people owe.¹⁰⁵ As Karin Martin, Assistant Professor of Public Management at John Jay College of Criminal Justice, testified, “[W]e do not have precise data about how much it costs, [what] our current system costs, but every indication is that it is quite costly.”¹⁰⁶ Unless state governments and the federal government require data collection, researchers will continue to rely on grants to fund research on fines and fees.¹⁰⁷ Moreover, accessing the data that currently exists can be challenging.¹⁰⁸ Currently, the best way to capture aggregated State-level data is to, “request the data at the city level or the county level and aggregate it out to the State as possible data.”¹⁰⁹

¹⁰² *U.S. Comm’n on Civil Rights Briefing Meeting Mar. 18, 2016* (2016) 52 (statement by Lisa Foster, Director of the Access to Justice Off., Dep’t of Just.) [*hereinafter Briefing Transcript 1*].

¹⁰³ *Briefing Transcript 2* (statement by Derek M. Cohen, Ph.D., Deputy Director, Ctr. for Effective Justice, TX Pub. Pol’y Found.) at 146.

¹⁰⁴ *Briefing Transcript 1* (statement by Alexes Harris, Professor, U. of Wa.) at 184-85 (noting that “it’s really, really hard to find that at the State level or nationally that allows us to answer” the question of data availability. But, Dr. Harris also highlighted her published 2011 study about Washington State data on fines and fees); *Briefing Transcript 1* (statement by Janene K. McCabe, National Association for Public Defense) at 213 (highlighting that “[W]e have a lot of anecdotal information, right, but the actual hard data is frankly a lot harder to come by.”).

¹⁰⁵ *Briefing Transcript 1* (statement by Karin Martin, Assistant Professor, John Jay C. of Crim. Just.) at 208-9 (explaining that in New York, for example, it costs more than \$400 a day to jail someone for an original fine that may be less than \$400. Alternatively, if the individual does pay the money, there is still “the collateral damage of having collected that money.”)

¹⁰⁶ *Id.* at 208.

¹⁰⁷ *Briefing Transcript 1* (statement by House) at 212; *Briefing Transcript 1* (statement by McCabe) at 213 (noting that “that there are now more entities willing to study [fines and fees] and offering grants so that we can all kind of get involved I think is a great moment for us to all work together.”). *But see*, Consent Decree at 102-3, *U.S. v. City of Ferguson*, No. 4:16-cv-000180-CDP (E.D. Mo. Feb. 10, 2016) (explaining the Ferguson City and Ferguson Police Department’s agreement to collect reliable data about the police department and municipal court that will then be made available to the public).

¹⁰⁸ *Briefing Transcript 1* (statement by Harris) at 205; *See id.* at 226 (recommending that State Court Administrators allow access to the data).

¹⁰⁹ *Id.* at 205.

The Commission also heard testimony from Alexis Harris, Associate Professor of Sociology at the University of Washington, which detailed the kind of data that is needed to capture the pervasiveness of targeted fines and fees and the repetitive impact on individuals within low-income communities of color. Ms. Martin testified that, “[w]e need to know what happens to people who don’t pay [their fines and fees] . . . We need to know how often its failure to appear, how often it’s an inability [to pay] . . . how often probation is revoked and extended, because all of [those] things cost money, and so we need to know that as well.”¹¹⁰ Finally, Ms. Harris added that she is researching jail rosters to find out “[the] percentage of people . . . in jail right now because of non-payment.”¹¹¹

In addition, Janene K. McCabe, Director of Technical Defense for the Colorado State Public Defenders Office, testified that data collection should determine “specifically the fines that are assessed . . . how many fines are actually related to the crime that is being charged and how many are not, how many are there just to support the system itself.”¹¹² Furthermore, Ms. McCabe indicated that data collection could yield information on “how many times a court determines that someone is indigent and assesses no fine . . . how often judges . . . waive fines and fees” and “[whether] there are in fact specific statutes that give monetary incentive[s] requiring courts to collect.”¹¹³

Other Demographics and Fines and Fees

The Commission received testimony detailing how demographic characteristics like race, ethnicity, income, gender, and age are associated with the type and severity of fines and fees imposed on individuals, and the extent of this issue varies across the states. In Washington State, for example, a 2008 report demonstrated that Latinos receive higher fine assessment than non-Latinos for similar offenses.¹¹⁴ “In 2015, the Las Vegas Review-Journal investigated law enforcement data and found that residents living in the seven poorest, statistically African American and Hispanic zip codes account for nearly two-thirds of traffic citations.”¹¹⁵

¹¹⁰ *Briefing Transcript 1* (statement by Martin) at 226-27.

¹¹¹ *Briefing Transcript 1* (statement by Harris) at 227.

¹¹² *Briefing Transcript 1* (statement by McCabe) at 228.

¹¹³ *Id.*

¹¹⁴ Cynthia Delostrinos, Admin. Manager, Wash. St. Admin. Off. of the Cts., Written Statement for the U.S. Comm’n on Civil Rights, Mar. 17, 2017, at 1. The full report is available at https://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.

¹¹⁵ Advisory Memorandum from Nev. State Advisory Comm. on Municipal Fines and Fees in State of Nev. to the U.S. Comm’n on Civil Rights 6 (June 13, 2017); *See* James DeHaven, *Las Vegas’ Low-Income Areas Hit Harder by Parking Tickets, Analysis Shows*, L.V. REV.-J., Jan. 17, 2015, <https://www.reviewjournal.com/local/local-las-vegas/las-vegas-low-income-areas-hit-harder-by-parking-tickets-analysis-shows/>.

Some courts charge for interpreter services when individuals attempt to resolve ordinance violation fines in court. These fees charged for interpreter services adversely impact people with disabilities and those with limited English proficiency. For example, approximately 12 percent of all states allow courts to charge a deaf or hearing-impaired individual for the cost of a sign-language interpreter.¹¹⁶ Because persons with disabilities are in poverty at twice the rate of persons without disabilities,¹¹⁷ paying these fees can adversely impact a disabled individual's ability to resolve fine and fee debt. Additionally, individuals with limited English proficiency often have to pay for their own translators, including in proceedings for debt collection.¹¹⁸ In 2010, the Department issued a letter requiring that courts that receive federal funds must provide interpreters free of charge.¹¹⁹ Since that time, many states have created or revised their language access plans. Yet, based on the 2016 data, many states still charge these types of fees.¹²⁰

Juveniles and Court Fines

Court fines and fees are also imposed on minors in juvenile court. In most jurisdictions, minors are considered persons under the age of 18, who are typically attending high school and likely unemployed. However, court fines and fees are imposed and these fees are typically assessed according to the parents' or guardians' projected ability to pay.¹²¹ The parents and guardians are

¹¹⁶ See Table 5 (compiling 2016 data from the Nat'l Ctr. for Access to Justice at Fordham L. Sch., *Disability Access: Support for People with Disabilities*, JUST INDEX.)

¹¹⁷ Disabled persons aged 18 to 64 represent "15.9 percent of people . . . in poverty compared to 7.8 percent of all people . . ." See CARMEN DENAVAS WALT, BERNADETTE D. PROCTOR & JESSICA C. SMITH, U.S. DEP'T OF COMMERCE, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010 18 (Linda Chen et al., eds., 2011), <http://www.census.gov/prod/2011pubs/p60-239.pdf>. As of 2009 and 2010, disabled American citizens also have lower median incomes and steeper declines in median income than the average American without a disability:

In 2010, 9.5 percent of householders (8.8 million) aged 18 to 64 reported having a disability The median income of these households was \$25,550 in 2010, compared with a median of \$58,736 for households with a householder that did not report a disability. Real median income declined for both types of households between 2009 and 2010. The income of households maintained by a householder with a disability declined by 8.5 percent, compared with a 2.1 percent decline for households maintained by a householder without a disability. *Id.* at 9.

¹¹⁸ See Nat'l Center for Access to Justice at Fordham Law School, *Language Access: Support for People with Limited English Proficiency*, The Justice Index (2016), <http://justiceindex.org/2016-findings/language-access/>.

¹¹⁹ See Letter from Thomas A. Perez, Then-Assistant Attorney General, U.S. Dep't of Justice, Civil Rights Div. to Chief Justices/State Court Administrators (Aug. 16, 2010), http://www.lep.gov/final_courts_ltr_081610.pdf.

¹²⁰ See Tables 2 and 4.

¹²¹ Jessica Feerman, Naomi Goldstein, Emily Haney-Caron & Jaymes Fairfax Columbo, Juvenile Law Center, *Debtor's Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System* at 13 (2016), <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

obligated to pay fines and fees and if they are unable to pay, additional fees are incurred and incarceration becomes a possibility.¹²²

The Juvenile Law Center reviewed laws on fines and fees practices regarding minors in the juvenile system and published its findings in a 2016 report entitled “Debtors’ Prisons for Kids? The High Cost of Fines and Fees in the Juvenile Justice System.”¹²³ This report found that forty-seven states authorize fees for the cost of care (e.g. health care costs, rehabilitative programs), twenty-one states authorize fees for probation and supervision, and thirty-two states authorize fees for evaluation and testing (e.g. mental health evaluations). The tables below enumerate the states with statutes that assess court fines and fees to youth as well as general fines imposed to minors for specific offenses such as truancy and alternative to incarceration programs.

STATUTES IMPOSING COURT COSTS AND FEES ON YOUTH

STATUTE	# OF STATES	STATES
Mandatory	5	Indiana (but may be assessed against parents), Kentucky (but may be assessed against parents), Michigan, Mississippi, Texas
Judicial determination	12	Arkansas, Delaware, Kansas, Maryland, Massachusetts (for certain appeals only), Montana, Ohio (but shall not be held in jail for failing to pay), Oregon, Pennsylvania, South Dakota, Wisconsin, Wyoming

STATUTES IMPOSING COURT COSTS AND FEES ON PARENTS

STATUTE	# OF STATES	STATES
Mandatory	3	Alabama, Indiana, Texas
Judicial determination	18	Arkansas, Georgia, Hawaii, Iowa, Kansas, Kentucky (unless parent is a victim of the offense), Maryland, Missouri, Montana, Nevada, New Mexico, Oregon, Pennsylvania, South Dakota, Tennessee, Wisconsin, Wyoming (witness fees, travel expenses, service of process, other costs)

¹²² The Commission will provide examples of the consequences of an individual’s inability to pay in “Consequences of the Inability to Pay Fines and Fees: Driver’s License Suspensions and Incarceration” section.

¹²³ Feierman, *supra* note 121.

STATUTES IMPOSING FINES ON YOUTH

STATUTE	# OF STATES	STATES
Mandatory	10	California (restitution fine – fine imposed when restitution imposed); Delaware (driving on a revoked license), Idaho (for violation of curfew), Michigan, Mississippi (for youth in work program), Nevada, Oklahoma, Rhode Island (for youth ages 16-18 who habitually spend time in poolrooms, bars, and houses of ill-repute), South Carolina (for youth misrepresenting age at theater), Wisconsin
Judicial determination	40	Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia (for traffic offenses), Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts (for traffic offenses), Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota (for specific vehicular offenses), Ohio, Oklahoma, Oregon (presumptive), Pennsylvania, South Carolina, South Dakota, Tennessee, Texas (for graffiti), Virginia, Washington, West Virginia, Wisconsin (forfeiture), Wyoming

STATUTES IMPOSING FINES ON PARENTS

STATUTE	# OF STATES	STATES
Mandatory	2	Delaware, Nevada
Judicial determination	16	Alabama, Arizona, Arkansas, Massachusetts, Michigan, Mississippi, Nebraska (for child's absenteeism), Nevada (for fine imposed on child under 17), New Hampshire, Oklahoma, Oregon, Rhode Island, Tennessee, Texas (for graffiti), Virginia, Wisconsin

The report found that juvenile fines and fees might increase recidivism, push poor youth further into the juvenile system—and perhaps jail or prison later on—exacerbate existing racial and ethnic inequities within the juvenile system, and magnify both the economic and emotional distress for impoverished families.¹²⁴ Another study found that juvenile fines and fees cause financial hardship to families, causing families to choose between paying court fines and fees or paying for basic needs such as food or rent—and weakening family ties.¹²⁵ In addition, the juvenile fines and fees

¹²⁴ These results are based on survey data of individuals affected by juvenile fines and fees as well as information provided by the Juvenile Center. In particular, analysis of data from California counties revealed that youth of color were punished more harshly, which resulted in higher fines and fees being assessed. See STEPHANIE CAMPOS-BUI ET AL., U.C. BERKELEY L. POL'Y ADVOCACY CLINIC, MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES 10 (Olivia Layug Balbarin ed., 2017), <http://wclp.org/wp-content/uploads/2017/03/State-Juvenile-Fees-Report.pdf>. There is a companion article that presents a case study of a Pennsylvania county that examines the connection between recidivism, fines and, fines, and demographics such as race, ethnicity, and gender. See ALEX R. PIQUERO & WESLEY G JENNINGS, JUVENILE SYSTEM IMPOSED FINANCIAL PENALTIES INCREASE THE LIKELIHOOD OF RECIDIVISM IN A SAMPLE OF ADOLESCENT OFFENDERS (2016), <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>.

¹²⁵ CAMPOS-BUI ET, *supra* note 124, at 10-11.

debt that is incurred has little to do with the rehabilitative purpose of the juvenile system.¹²⁶ This study and others found that the juvenile justice system received little to no net revenue from imposing court fines and fees to minors and their families because the vast majority of these families are indigent.¹²⁷

Damage to Judicial Credibility and Distrust of Police Officers

For the vast majority of people, “a run-in with the municipal courts is the only personal interaction they will have with the justice system.”¹²⁸ Thus, “this interaction shapes public perception of justice and the American legal system.”¹²⁹ Arch City Defenders in Missouri reported community members’ views of the local court system in this way:

Many residents feel that the police and the courts target black residents and try to find something to fine them for. As one defendant said, “They’re searching to find something wrong. If you dig deep enough, you’ll always find dirt.” . . . A group of defendants waiting outside of a municipal court noted that there were no white individuals waiting with them. In fact, one said, “You go to all of these damn courts, and there’s no white people,” while another defendant even ticked off specific municipalities that he thinks engage in racial profiling. He said, “In Dellwood, Ferguson, basically in North County, if you’re black, they’re going to stop you.”¹³⁰

At the Commission’s second briefing, Missouri municipal court Judge DeMarce also acknowledged how racism can compound public corruption:

To close, ultimately what I believe we have is a problem of public corruption, which is made possible by the fact that the cities can retain money that is generated by law enforcement activities and processed through the courts. This is compounded by the fact that the judicial selection process in the municipal courts allows the executive branch complete control with periodic appointment control over who was doing the judging. This created a great temptation. And to the credit of the lawyers and judges of our state, only a minority of the courts fell into it. In certain municipalities and probably most notably in Northern Saint Louis County, places

¹²⁶ ALEXANDRA BASTIEN, ENDING THE DEBT TRAP: STRATEGIES TO STOP THE ABUSE OF COURT-IMPOSED FINES AND FEES 6 (2017), <http://www.policylink.org/sites/default/files/ending-the-debt-trap-03-28-17.pdf>.

¹²⁷ Here the report considers the effort it takes in terms of time, money, and other resources to get an individual to pay a fine or fee. See CAMPOS-BUI ET, *supra* note 124, at 18.

¹²⁸ THOMAS HARVEY, JOHN MCANNAR, MICHAEL, JOHN VOSS, MEGAN CONN, SEAN JANDA & SOPHIA KESKEY, ARCH CITY DEFENDERS, MUNICIPAL COURTS WHITE PAPER 13 (2014), <http://www.archcitydefenders.org/wp-content/uploads/2014/11/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf>.

¹²⁹ *Id.* at 13; see Missouri 2010 Bench Book, § 1.8, at 7 (“Public impression of justice and its administration is formed more in municipal courts than in any other court of the state. The judge as judicial officer will instill in that individual his or her lasting image of our judicial system and this should never be forgotten.”).

¹³⁰ HARVEY, *supra* note 128, at 16. The White Paper then discusses the interview data supporting the “widespread feeling among defendants that the police and courts target black residents.” *Id.* at 17.

like Ferguson, this public corruption issue was compounded by issues of actual racism.¹³¹

Imposing fines and fees can result in community members having less faith in our justice system. And when police officers are handing out the tickets, these practices can lead to distrust. As one former Department employee put it:

When people feel disrespected, or worse, preyed upon by their local court, they may lose faith in the justice system . . . Driving a wedge between officers and residents only make law enforcement's job harder. If residents do not trust the police, they will be less likely to report crime and cooperate as witnesses, leaving the community less safe. In short, there is a public safety rationale for ending unfair fines and fee practices.¹³²

Mr. Marc Levin with Right on Crime echoed these concerns and suggested that the overreliance on fines and fees can foster law enforcement and corrections decisions to being made based on other considerations outside of public safety. Instead, Mr. Marc Levin encouraged municipalities to increase the transparency of how fines and fees are assessed and collected by reporting what percent of the municipal budget is generated from fines and fees, and how those monies are being allocated.¹³³

Consequences of the Inability to Pay Fines and Fees: Driver's License Suspensions and Incarceration

“Perversely, despite the goal to generate revenue, these practices are not systematically documented to actually generate net revenue when taking into consideration serious costs. Those costs include the costs of policing, the costs of jail and incarceration, and the costs of job loss, family separation, and other harms imposed on impacted people and their families.”¹³⁴

The consequences of unpaid fines and fees can be severe. These consequences can include: driver license suspension, which presents a significant barrier to employment; transportation to child care or medical appointments; bad credit reports that can keep a family from renting or purchasing a

¹³¹ *Briefing Transcript 2* (statement by DeMarce) at 92-93.

¹³² Chiraag Bains, Visiting Senior Fellow, Crim. Just. Pol'y Program, Harv. L. Sch., Written Statement for the U.S. Comm'n on Civil Rights, Mar. 17, 2017, at 1-2.

¹³³ Marc Levin, Director, Ctr. for Effective Just. & Right on Crime, Tex. Pub. Pol'y Found, Written Statement for the U.S. Comm'n on Civil Rights, Mar. 17, 2017, at 1; See American Legislative Exchange Council, Resolution on Criminal Justice Fines and Fees (Sept. 12, 2016), <https://www.alec.org/model-policy/resolution-on-criminal-justice-fines-and-fees/>.

¹³⁴ *Briefing Transcript 1* (statement by Choudhury) at 30-31.

home; potentially asking a family to choose between basic needs and paying the fines; and in some cases, jail time.

Driver's License Suspensions

Several studies have found that failure to pay court fines and fees is the primary reason for driver's license suspensions.¹³⁵ The empirical data discussed below suggests that debt-related driver's license suspensions provide little motivation for individuals to comply with court orders to avoid a driver's license suspension.¹³⁶ Instead, in many states and municipalities, suspending a person's driver's license limits or endangers an individual's employment opportunities.¹³⁷

State-specific data demonstrate how the practice of driver's license suspension affects the lived experiences of community members. A survey of suspended New Jersey drivers found that 42 percent of respondents lost their jobs because of their license suspensions, and 45 percent of those who lost their jobs remained unemployed throughout the period of suspension.¹³⁸ Of those who were able to find another job, 88 percent reported a decrease in pay.¹³⁹ In Virginia, one in six drivers had his or her license revoked due to an inability to pay court fines and fees.¹⁴⁰ In Texas, the Driver Responsibility Program (DRP) causes people to have their licenses suspended due to multiple convictions for common moving violations, unless they can afford to pay their fines and fees. The Commission received testimony indicating that programs like DRP can perpetuate poverty and recidivism because individuals are either forced to drive illegally to get to work or to seek job opportunities that do not require a driver's license.¹⁴¹

In California, preliminary data from ten counties indicate that approximately 700 people per month were booked and detained an average of three days in 2015-2016 for driver's license suspensions.¹⁴² Another study conducted by the California Department of Motor Vehicles (DMV) reported that over 4 million driver licenses were suspended in recent years for failure to pay or

¹³⁵ BANNON, *supra* note 7, at 11; REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 20-1 (2010),

<http://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf>; BASTIEN, *supra* note 126, at 14.

¹³⁶ PEPIN, *supra* note 35, at 5; AM. ASS'N OF MOTOR VEHICLE ADM'RS, BEST PRACTICES GUIDE TO REDUCING SUSPENDED DRIVERS 4 (2013), <http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

¹³⁷ BANNON, *supra* note 7, at 28; DILLER, *supra* note 135, at 20-21; BASTIEN, *supra* note 126, at 4.

¹³⁸ PEPIN, *supra* note 35, at 5.

¹³⁹ *Id.*

¹⁴⁰ Statement of Interest of the United States at 4, *Stinnie v. Holcomb*, No. 3:16-CV-00044, 2017 U.S. Dist. LEXIS 35789 (W.D. Va. Mar. 13, 2017), <https://www.justice.gov/crt/case-document/file/917681/download>. This report will discuss this case more in Chapter 3.

¹⁴¹ Levin, *supra* note 133, at 6.

¹⁴² *Briefing Transcript 2* (statement by Martha Wright, Crim. Justice Services, Operations Div., Judicial Council of Cal.) at 28.

appear on a citation—affecting about one in six Californian drivers.¹⁴³ One study found that 92 percent of California zip codes with higher than average driver’s license suspensions rates also had incomes that were less than California’s average household income.¹⁴⁴ At the time of the Commission’s briefing, “at least eight states suspend driver’s licenses based on missed payments, in many cases without considering whether a person had the resources to make payments in the first place.”¹⁴⁵ Subsequently, in June 2017 California Governor Jerry Brown signed a law that would prevent courts in California from suspending driver’s licenses for failure to pay fines.¹⁴⁶

Several studies have found that driver’s license suspension practices are ineffective at reducing non-driving offenses and can raise important public safety concerns.¹⁴⁷ According to a report by the American Association of Motor Vehicle Administrators (AAMVA), a driver’s license suspension for non-driving related offenses is, “‘watered down’ in value; it becomes less serious in the minds of law enforcement, the courts, and the public.”¹⁴⁸ This study also reports that as many as 75 percent of suspended or revoked drivers continue to drive, which calls into question the deterrent value of driver’s license suspension practices.¹⁴⁹ Rather, the practice of suspending driver’s licenses for non-driving related offenses raises important public safety concerns by unnecessarily increasing the number of unlicensed and uninsured drivers on the road.¹⁵⁰

The enforcement of non-safety related driver’s license suspensions requires the Department of Motor Vehicles (DMV) officials and law enforcement to spend a larger fraction of their limited resources pursuing individuals with driver’s licenses that have been suspended for minor offenses and inability to pay fines.¹⁵¹ Drivers suspended for non-driving reasons represent 39 percent of all suspended drivers, and are not the threat to the public as are other suspended drivers.¹⁵² Reducing law enforcement roadside encounters with suspended drivers by up to 39 percent could result in significant time savings, thereby allowing officers to be available for calls for service and other proactive highway safety activities.

¹⁴³ LAW COMMITTEE FOR CIVIL RIGHTS OF THE S.F. BAY AREA ET AL., NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA 10 (2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

¹⁴⁴ LAW COMMITTEE FOR CIVIL RIGHTS OF THE S.F. BAY AREA ET AL., PAYING MORE FOR BEING POOR 3 (2017) <https://www.lccr.com/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>.

¹⁴⁵ BANNON, *supra* note 7, at 24.

¹⁴⁶ Bollag, Sophia. “California to Stop Suspending Licenses for Traffic Fines.” *Associated Press*, June 29, 2017. <https://www.apnews.com/9723bf702b3d4fb0b11d052229b26614/California-to-stop-suspending-licenses-for-traffic-fines>. See also Assem. Bill 103, 2017-2018 Reg. Sess. (Cal. 2017) (amending Cal. Pen. Code § 1463.007).

¹⁴⁷ AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 136, at 4.

¹⁴⁸ *Id.* at 2.

¹⁴⁹ *Id.* at 4.

¹⁵⁰ Data from this study also demonstrates that drivers suspended for traffic safety related reasons are three times more likely to be involved in a crash than drivers suspended for non-driving related reasons. *Id.*

¹⁵¹ LAW COMMITTEE FOR CIVIL RIGHTS OF THE S.F. BAY AREA ET AL., *supra* note 144, at 26.

¹⁵² *Id.* at 8.

Suspended licenses also have an impact on the resources of the courts. According to Judge Pickrel, a municipal judge in Ohio: “If we could streamline things, we wouldn’t see that same people coming back again and again. It would free up resources and allow people to keep working without running the risk of getting arrested.”¹⁵³ Moreover, according to Judge Pickrel:

[G]iving judges the authority to require drivers entangled in fines, court costs, and reinstatement fees to complete a specified number of hours of community service, agree to an installment or payment plan, or limit his/her driving privileges. . . . Judges would then have more time to focus on truly dangerous drivers, and as a result, roadway safety would be improved.¹⁵⁴

The AAMVA study recommends several alternatives to driver’s license suspension that will hold drivers accountable for their actions, but allow them to legally drive, as driver license suspension for non-traffic related offenses has little deterrent value and does not address public safety concerns.¹⁵⁵ It recommends wage garnishment and argues it can be an effective means of collecting fines and fees in some states, as individuals submit a payment as soon as they receive a notice for fear of jeopardizing their employment for a small debt.¹⁵⁶ Some states provide suspension exemptions for the federal child support mandate if the suspension is found to be an impediment to their employment. In Arizona, the state law allows for tax refunds to be intercepted in order to pay court costs.¹⁵⁷ Some states periodically offer amnesty programs and others have an opt out program for federal drug offenses.¹⁵⁸ Eliminating license suspensions for citations unrelated to public safety and tying collection to an individual’s income would likely increase the resolution of fines and fees.

Serving Time in Jail

It is difficult to find national data regarding the extent to which individuals charged with fee-only offenses are jailed because of their inability to pay. A 2014 survey conducted by National Public Radio (NPR), Brennan Center, and the National Center for State Courts (NCSC) found that in Benton County, Washington, 25 percent of the people in jail for misdemeanors on a typical day were there for nonpayment of fines and court fees.¹⁵⁹ In Rhode Island, 18 percent of all defendants jailed between 2005 and 2007 were incarcerated because of court debt; in 2005 and 2006, that

¹⁵³ AM. ASS’N OF MOTOR VEHICLE ADM’RS, *supra* note 136, at 14.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 2-3.

¹⁵⁶ *Id.* at 26.

¹⁵⁷ *Id.* at 28.

¹⁵⁸ *Id.* at 28-29.

¹⁵⁹ NPR, *State-by-State Court Fees* (2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

amounted to twenty-four people per day.¹⁶⁰ Some researchers have concluded that, “[i]t thus appears that non-payment of monetary sanctions may lead to a nontrivial number of warrants, arrests, probation revocations, jail stays, and even prison admissions in locales across the country.”¹⁶¹

Some jurisdictions allow offenders to “choose” jail instead of paying monetary sanctions.¹⁶² For example, in Texas, “15 percent of all convictions for fine-only offenses, where jail is not an [initial] option for punishment, were [satisfied] through jail, while only 3 percent were satisfied through community service options, and less than 1 percent were waived due to indigence.”¹⁶³ For Eileen Dinino, a mother of seven from Pennsylvania, who opted to pay off her child’s truancy fees with incarceration, the payment of the accrued fines and fees ended with her death in jail.¹⁶⁴ Similarly, Jennifer Meyers, a mother from Michigan, who was jailed to pay off a \$500 fee, also died while incarcerated.¹⁶⁵ In sum, some of the harshest costs of raising revenue through fines and fees are borne by poor people who (given the available options) choose jail time.¹⁶⁶

The Commission received testimony that lack of representation tends to increase the danger that people will be incarcerated when they should not.¹⁶⁷ The Massachusetts working group explained: “the appointment of counsel for an indigent person will significantly aid the court in reaching a proper determination and should substantially reduce the number of cases in which a person is erroneously sanctioned.” In addition, the Working Group recommended “requiring judges to appoint counsel to represent an indigent person in a proceeding for the enforcement of fees and

¹⁶⁰ R.I. FAMILY LIFE CTR., COURT DEBT AND RELATED INCARCERATION IN RHODE ISLAND FROM 2005 THROUGH 2007 11 (2008), <https://csgjusticecenter.org/wp-content/uploads/2008/04/2008-RI-CourtDebt.pdf>.

¹⁶¹ Harris, *supra* note 32, at 1787-88.

¹⁶² MARCUS NIETO, CAL. RESEARCH BUREAU, WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA? 25 (2006), <https://www.library.ca.gov/crb/06/03/06-003.pdf>; Peter B. Wood & David C. May, *Racial Differences in Perceptions of the Severity of Sanctions: A Comparison of Prison with Alternatives*, 20-3, *Just. Q.*, 605-631 (2003).

¹⁶³ David Slayton, Admin. Director, Tex. Off. of Ct. Admin., Written Statement for the U.S. Comm’n on Civil Rights, Mar. 17, 2017, at 2.

¹⁶⁴ Maryclaire Dale, *Mother, Jailed for Truant Kids, Found Dead in Cell*, ABC 13 NEWS, June 13, 2014, <http://abc13.com/news/mother-jailed-for-truant-kids-found-dead-in-cell/109740/>. This article notes that “[m]ore than 1,600 people have been jailed in Berks County [Pennsylvania] alone—two-thirds of them women—over truancy fines since 2000,” and that “[l]anguage barriers can also be an issue for letters and phone calls between the parents and school, given that the vast majority of the city and school population is Hispanic.” *Id.*

¹⁶⁵ Nick Wing, *Women Who Suffered ‘Inhumane’ Death in Jail Was Only There Because She Was Poor*, HUFFINGTON POST (Nov. 22, 2016), http://www.huffingtonpost.com/entry/jennifer-meyers-jail-death_us_583474dce4b030997bc162ba.

¹⁶⁶ Appleman, *supra* note 10, at 1526 (“[A]t the bottom of penal pyramid[,] where offenses are pettiest and defendants are the poorest, there is little fairness or due process.”). “Cash register justice, which overwhelmingly affects the poor and the dispossessed, perpetuates the extreme inequities hidden within the criminal justice system.” *Id.* at 1487.

¹⁶⁷ *Briefing Transcript 1* (statement by McCabe) at 173-74; *Briefing Transcript 1* (statement by Nusrat Choudhury, Senior Staff Attorney, ACLU) at 34-35.

finances related to criminal cases whenever incarceration is a possibility.”¹⁶⁸ Some, but not all, states require the appointment of counsel whenever incarceration is a possibility, even in civil proceedings.

Incarceration occurs in some instances because people are arrested for failing to pay a fine or failing to appear in court. In Texas, for example, the Commission received testimony that people were being taken directly to jail when they should have been taken before a magistrate judge for failing to pay or appear.¹⁶⁹ In Mississippi, prior to a settlement, people were jailed for failure to appear warrants when they were arrested outside of normal business hours, a practice that has now been ordered to end so that detention is only used for those who pose a flight risk.¹⁷⁰

Alternatives to Payment: Community Service Is Not a Cure All

Before jailing an individual for nonpayment, the court must conduct an indigency hearing to assess an individual’s ability to pay fines and fees. Once a person has been deemed indigent, alternatives to payment should be established.

Several criminal justice scholars and state court representatives have recommended converting fines and fees into community service. For instance, the Commission received testimony from Judge Karl DeMarce, a Missouri municipal court judge, who stated that in his court system, a person facing a minor traffic violation has to do ten hours of community service within a sixty-day period with any non-profit organization of his or her choosing.¹⁷¹ While 95 percent of individuals who are assigned community service fulfill the requirements, five percent do not. Judge DeMarce later mentioned that usually if the court allows them additional time, the five percent also satisfy their community service obligations.

Granting community service may pose additional challenges for individuals. According to Thomas Harvey, who represents many indigent clients in court, community service is not a viable option for everyone who appears in court. In particular, he highlighted the difficulties that a homeless person or a person without viable childcare options has in completing community service hours.¹⁷² Moreover, he said that there is always going to be a small percentage of people for whom paying court fines and fees or completing community service hours is not a viable option, as the economic burden can be insurmountable.¹⁷³ The Commission’s Nevada State Advisory Committee held a

¹⁶⁸ MASS. TRIAL COURT FINES AND FEES WORKING GRP., REPORT TO TRIAL COURT CHIEF JUSTICE PAULA M. CAREY 14 (2016), <http://www.mass.gov/courts/docs/trial-court/report-of-the-fines-and-fees-working-group.pdf>.

¹⁶⁹ *Briefing Transcript 2* (statement by Slayton) at 46.

¹⁷⁰ *Briefing Transcript 1* (statement by Choudhury) at 74-75.

¹⁷¹ *Briefing Transcript 2* (statement by DeMarce) at 113.

¹⁷² *Briefing Transcript 2* (statement by Thomas Harvey, Co-Founder & Executive Director, Arch City Defenders) at 123.

¹⁷³ *Id.*

briefing on fines and fees and community service was described by some as a problematic alternative to payment for court assessments. One panelist even described it as analogous to sharecropping, as the model permits an individual to “continue to work in order to pay off some kind of debt with a work that is never equivalent to what the debt is,” leaving individuals struggling to break even.¹⁷⁴ This sentiment was echoed by others who described community service option as “indentured servitude.”¹⁷⁵ In sum, community service is a viable alternative to payment for many individuals. But, for those who are most indigent and/or are homeless, even community service is not a viable option.

¹⁷⁴ *Nev. Advisory Comm. to the U.S. Comm’n on Civil Rights Public Meeting: Municipal Fines & Fees in Nev.* (statement by Nicole Austin-Hillery, Director & Counsel, Brennan Ctr. For Justice at NYU) at 163 [*hereinafter Nev. SAC Transcript*].

¹⁷⁵ *Nev. SAC Transcript* (statement by Honorable Egan Walker, Justice, Second Judicial Dist. Ct.) at 165-67.

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CHAPTER 3: FEDERAL REFORM EFFORTS: THE DEPARTMENT OF JUSTICE ACTS

The Department's efforts to address fines and fees began with its 2013-2014 pattern or practice investigation into the City of Ferguson. That investigation expanded to include looking at the City of Ferguson's municipal court practices because of the relationship between the municipal court and the police department. The Ferguson investigation has been described as an "awakening" for the Department as to these unconstitutional municipal court practices.¹⁷⁶

In December 2015, the Department's Office for Access to Justice, Civil Rights Division, and Office of Justice Programs convened a meeting of policymakers, judges, prosecutors, defense attorneys, and advocates to discuss how certain practices with respect to the imposition and enforcement of fines and fees can result in unlawful and harmful conduct. Three months later, in March 2016, the Department issued a package of resources, including a grant solicitation (the "Price of Justice" grants), to state and local courts to support the ongoing work of state judges, court administrators, policymakers, and advocates. Together with the announcement of the grant program and other support, the Department also issued a "Dear Colleague" letter for state and local courts to clarify the legal framework that governs the enforcement of court fines and fees.¹⁷⁷ In September 2016, the Department held a second meeting on these issues in order to highlight positive measures that have been implemented, and identify continuing areas of concern.

Additional Departmental enforcement efforts have taken the form of:

1. the inclusion of provisions addressing whether an ability to pay determination has been made prior to incarcerating an individual, as part of the consent decree resulting from the pattern or practice investigation of the Hinds County Local Jail in Mississippi;¹⁷⁸
2. the filing of a statement of interest in the pending class-action lawsuit case in Virginia regarding the practice of automatically suspending driver's licenses of persons unable to pay court fines and fees;¹⁷⁹
3. the issuance of an advisory "Dear Colleague" letter specifically about fines and fees in the context of juveniles;¹⁸⁰ and

¹⁷⁶ *Briefing Transcript 2* (statement by Bains) at 86.

¹⁷⁷ Dear Colleague Letter (Mar. 14, 2016), available at <https://www.justice.gov/crt/file/832461/download>.

¹⁷⁸ Settlement Agreement Between the U.S. and Hinds County, Miss. Regarding the Hinds County Jail at 40, *U.S. v. Hinds County*, No. 3:16-cv-00489-WHB-JCG (S.D. Miss. June 23, 2016), <https://www.justice.gov/crt/file/883861/download>.

¹⁷⁹ Statement of Interest of the U.S., *Stinnie v. Holcomb*, No. 3:16-CV-00044 (W.D. Va. July 6, 2016), <https://www.justice.gov/opa/press-release/file/909301/download>.

¹⁸⁰ Memorandum from Karol V. Mason & Lisa Foster, U.S. Dep't of Justice, to Recipients of Financial Assistance from the U.S. Dep't of Justice on Levying Fines and Fees on Juveniles on Compliance with Title VI of the Civil Rights Act of 1964 (Jan. 2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

4. the financial support of the Conference of Chief Justices and Conference of State Court Administrators' "National Task Force on Fines, Fees and Bail Practices."¹⁸¹

Below, the Commission provides more detail on these enforcement efforts, and later in Chapter Four, the Commission evaluates the effectiveness of these enforcement efforts in the context of their statutory limitations. Chapter Four also discusses other enforcement strategies that are not being used by the Department and whether these additional measures could assist in ensuring that states and municipalities are not violating Constitutional rights.

Pattern or Practice Investigations: City of Ferguson and Hinds County Jail

Police Department Investigation: City of Ferguson

As mentioned in Chapter One, in March of 2015, the Department released findings from its six-month investigation on the City of Ferguson. The investigation found, "a community where unlawful practices had destroyed public trust in the government and left many people, particularly black residents, feeling under siege by those sworn to protect them."¹⁸² The Department investigation revealed "the root of the distrust and the pattern of unlawful conduct" rested in "the choice to use its municipal court as a revenue generating center," exploiting its poorest citizens and "using police officers as a ticketing and collections agency."¹⁸³ The investigation also uncovered evidence indicating that these racial disparities resulted in part from intentional discrimination that disproportionately harmed African Americans.¹⁸⁴

A fairness hearing was held on April 19, 2016, after which a federal judge entered a negotiated consent decree between the Department and the City of Ferguson. The consent decree calls for a wide range of reforms including, but not limited to: an amnesty program for all open cases initiated prior to January 1, 2014; a reorientation of municipal ordinance codes to ensure that public safety, not revenue, is the primary concern when assessing and enforcing court fines and fees; a requirement that municipal courts inquire about an individual's ability to pay before assessing fines and fees.¹⁸⁵ To ensure lasting reform in Ferguson, the consent decree requires the city to maintain data on all aspects of its law enforcement and municipal court patterns or practices.¹⁸⁶ After these data are collected, the consent decree requires ongoing qualitative and quantitative

¹⁸¹ Lorri Montgomery, *Top National State Court Leadership Associations Launch National Task Force on Fines, Fees and Bail Practices*, NAT'L CNT. FOR STS. CTS., Feb. 3, 2016, <http://www.ncsc.org/Newsroom/News-Releases/2016/Task-Force-on-Fines-Fees-and-Bail-Practices.aspx>.

¹⁸² Bains, *supra* note 132, at 4.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 6.

¹⁸⁵ *Id.* at 7.

¹⁸⁶ Consent Decree between U.S. and City of Ferguson, *supra* note 107, at 118.

research of these practices to ensure that the city is upholding the terms of the agreement.¹⁸⁷ In addition to the assessment of these data by an independent source, the city must publish a summary of these data to the public that will detail trends and analyses of municipal court operations.¹⁸⁸ The collection of these data is vital, as the lack of comprehensive data on fines and fees and court practices is a major hurdle to reform.¹⁸⁹ A former Department employee stated that, “Ferguson is currently working toward compliance with the consent decree. This process will take time and will require not only the commitment of city officials and the Ferguson community, but also the careful oversight and assistance of the independent monitor, federal court, and [the] DOJ.”¹⁹⁰

Jail-Conditions Investigation: Hinds County, Mississippi

In 2015, the Department’s Civil Rights Division announced findings following its investigation of the jail in Hinds County, Mississippi.¹⁹¹ The Department concluded that the county violated the Eighth and Fourteenth Amendments of the U.S. Constitution by failing to protect inmates from physical violence and holding prisoners in jail without confirming that a proper ability-to-pay determination had been conducted.¹⁹² The negotiated consent decree specifically states that the county will not incarcerate a person for failure to pay fines and fees without confirming that a judge has conducted an ability-to-pay inquiry.¹⁹³ Persons incarcerated in the Hinds County Jail also filed a class-action lawsuit against the court system in Jackson, Mississippi.¹⁹⁴ This private lawsuit settled and resulted in the court system being under court order to conduct the ability-to-pay determination.¹⁹⁵

Statement of Interest: Driver’s License Suspensions in Virginia

On November 7, 2016, the Department filed a statement of interest in the *Stinnie v. Holcomb* case. *Stinnie v. Holcomb* is a pending lawsuit alleging that Virginia violates the Constitution by

¹⁸⁷ *Id.* at 106-07 (Section XXI Data Collection) (requiring the City to collect and track municipal court data).

¹⁸⁸ *Id.*

¹⁸⁹ Grover Norquist, President, Americans for Tax Reform, Written Statement for the U.S. Comm’n on Civil Rights, Mar. 17, 2017.

¹⁹⁰ Bains, *supra* note 132, at 8.

¹⁹¹ The Department undertook this investigation pursuant to its pattern or practice authority in the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. Pursuant to this authority, the Department can review conditions and investigate systemic patterns and practices within correctional institutions. *Id.*

¹⁹² Letter from Vanita Gupta, U.S. Dep’t of Justice, Civil Rights Div., to Peggy Hobson Clhoun, Board President, Hinds County Board of Supervisors, and Tyrone Lewis, Sheriff, Hinds County on Investigation of the Hinds County Adult Detention Center (May 21, 2015),

https://www.justice.gov/sites/default/files/crt/legacy/2015/05/21/hinds_findings_5-21-15.pdf.

¹⁹³ Settlement Agreement between U.S. and Hinds County, Miss., *supra* note 178, at 39.

¹⁹⁴ See Class Action Complaint, *Bell v. City of Jackson*, No. 3:15-cv-732 TSL-RHW (S.D. Miss. Oct. 9, 2015), http://umlaw.macarthurjusticecenter.org/uploads/rsmjc-oxford/documents/bell_v_jackson_complaint_100915.pdf.

¹⁹⁵ See Settlement Agreement & Order, *Bell v. City of Jackson*, <https://www.clearinghouse.net/chDocs/public/JC-MS-0024-0001.pdf>.

automatically suspending the driver's licenses of persons who fail to pay court fines and fees. As of 2015, "[a]pproximately . . . one in six [Virginia] drivers are under suspension for nonpayment of fines and court costs."¹⁹⁶ The consequences of the suspension can be devastating, given that people may need to drive to get to work. The Commission also received testimony stating that automatic driver's license suspension makes it less likely that people who have an accumulating debt will ever clear it because driver's license suspensions endanger an individual's ability to get to work.¹⁹⁷ In its statement of interest, the Department took the position that suspending a person's driver's license without giving the person proper notice violates the person's Fourteenth Amendment due process right.¹⁹⁸

Fines and Fees "Dear Colleague" Letter

In March 2016, the Department's Civil Rights Division and Office of Access to Justice sent a "Dear Colleague" letter to State Administrators and Chief Justices in each state.¹⁹⁹ The goal of this letter was to provide greater clarity to the courts on their legal obligations regarding the enforcement of fines and fees. In particular, this letter details best practices regarding the collection of court fines and fees and highlights the importance of due process protections—such as proper notice of fines and fees, as well as court appearance dates—and warns against incarcerating individuals for nonpayment of court fines and fees without properly assessing a person's ability to pay.²⁰⁰

This letter provides seven principles relevant to the enforcement of fines and fees, which are grounded in constitutional principles, and relevant case law:

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;
3. Courts must not condition access to a judicial hearing on the prepayment of fines or fees;
4. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;
6. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and

¹⁹⁶ Statement of Interest *Stinnie v. Holcomb*, *supra* note, 140 at 4.

¹⁹⁷ Norquist, *supra* note 189, at 2; Nagrecha, *supra* note 12, at 2.

¹⁹⁸ Statement of Interest *Stinnie v. Holcomb*, *supra* note, 140.

¹⁹⁹ Dear Colleague Letter (Mar. 14, 2016), available at <https://www.justice.gov/crt/file/832461/download>.

²⁰⁰ *Id.*; see *Briefing Transcript 1* (statement by Foster) at 19-21.

7. Courts must safeguard against unconstitutional practices by court staff and private contractors.²⁰¹

The Criminal Justice Policy Program at Harvard Law School is currently surveying states across the country to see how states have responded to this letter.²⁰² From its preliminary results, the Criminal Justice Policy Program found that the “Dear Colleague” letter has spurred substantial judicial and legislative court reforms, particularly in the form of ensuring due process, equal justice, and attention on the illegal enforcement of fines and fees in certain jurisdictions around the country.²⁰³ In Chapter Four, the Commission will provide additional details on responses from states to the Department’s “Dear Colleague” letter in our evaluation of the Department’s enforcement strategies.

National Task Force Funding

The Department provided funding to establish a National Task Force on Fines, Fees and Bail Practices to address the impact that court fines, fees and bail practices have on communities. The Conference of State Court Administrators (COSCA) and the National Center of State Courts (NCSC) manage this task force. This task force works specifically to draft model statutes, compile and create best practices for the states, and to review and revise suggested guidelines for qualifications and oversight of judges in courts created by local governments or traffic courts.²⁰⁴

The NCSC also published a bench card written by the National Task Force on Fines, Fees, and Bail Practices for states to use in local and state courtrooms.²⁰⁵ The development of a bench card is beneficial since it is unclear in many states how the courts should determine a person’s ability to pay. In addition, the cost of incarcerating an indigent individual may outweigh the fines and fees that are collected from the individual.²⁰⁶ At its February 2017 general business meeting, the Conference of Chief Justices (CCJ) adopted a resolution in support of the bench card and encouraged that the bench card be included in states judicial education curricula for new and experienced judges alike.²⁰⁷ Maureen O’Connor, Chief Justice of the Supreme Court of Ohio

²⁰¹ Dear Colleague Letter (Mar. 14, 2016), available at <https://www.justice.gov/crt/file/832461/download>.

²⁰² Nagrecha, *supra* note 12, at 1. Harvard’s Criminal Justice Policy Program has also launched a 50 state web resources on criminal justice debt, which can be found here: <http://cjpp.law.harvard.edu/news-article/launch-50-state-web-tool-criminal-justice-debt>.

²⁰³ Nagrecha, *supra* note 12, at 1.

²⁰⁴ Montgomery, *supra* note 181.

²⁰⁵ NAT’L TASK FORCE ON FINES, FEES AND BAIL PRACS., LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS, A BENCH CARD FOR JUDGES (2017), http://courthack.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx.

²⁰⁶ BASTIEN, *supra* note 126, at 7.

²⁰⁷ Nat’l Task Force on Fines, Fees and Bail Practices, *Task Force on Fines, Fees, & Bail Practices: New Resources Available*, ST. JUST. INST., <http://www.sji.gov/task-force-on-fines-fees-bail-practices-new-resources-available/> (last visited July 25, 2017).

stated: “No one in America should be sent to jail—or threatened with jail—solely because they are poor. In too many instances, judges are ignoring fundamental rights guaranteed by the Constitution, while local politicians treat the court system as an ATM for their spending priorities. This must change, and this task force is committed to taking steps to ensure justice for all.”²⁰⁸

The bench card clearly instructs judges not to jail an individual for non-payment of court-ordered fines and fees unless the court has had a hearing to determine that: (i) a defendant willfully refuses to pay fines and fees or the failure to pay was not the fault of the individual, and (ii) alternatives to jail are not adequate in a particular situation to meet the state’s interest in punishment or deterrence.²⁰⁹ Moreover, the bench card provides details to judges regarding: the information a judge should provide about the hearing; that the court should allow a defendant to explain their situation in court; and important factors the judge should consider when determining an individual’s “willfulness” regarding nonpayment such as Federal Poverty Guidelines and participation in needs-based, means-tested public assistance programs.

“Price of Justice” Grants

The Department is sponsoring a grant program called “The Price of Justice: Rethinking the Consequences of Justice Fines and Fees” to address issues relating to court fines and fees.²¹⁰ The development of this program was based upon research that demonstrated that poor individuals were being jailed “for failing to pay fines and fees, despite their inability to do so; justice agencies focused less on public safety and rehabilitation than on maximizing revenue; and racial and ethnic disparity in the impacts of criminal justice debt.”²¹¹ The Department received applications from thirteen jurisdictions. Grants were awarded to five recipients for approximately \$500,000 each: the Judicial Council of California, the Missouri Office of State Courts Administration, the Minority and Justice Commission of the Washington State Courts, the Texas Office of Court Administration, and the Judiciary Courts of the State of Louisiana.²¹² The Department also chose a technical service provider to ensure the grantees meet the terms of the grant. The Department’s goal in funding this grant program is to begin “addressing the issue of increas-

²⁰⁸ Montgomery, *supra* note 181.

²⁰⁹ NAT’L TASK FORCE ON FINES, *supra* note 207.

²¹⁰ The Department’s Bureau of Justice Assistance Division held a solicitation webinar to inform potential applicants about the purpose of the grant and requirements of the application. *See* Juliene James, Senior Policy Advisor, U.S. Dep’t of Justice, Bureau of Justice Assistance & Helam Germariam, Counsel, U.S. Dep’t of Justice, Office Of Access to Justice, Webinar: Responding to the FY 2016 BJA Solicitation: Price of Justice (*last visited* July 25, 2017), https://www.bjatrainng.org/sites/default/files/webinar/documents/BJA%20FY%202016%20Price%20of%20Justice%20Solicitation%20Webinar_0.pdf.

²¹¹ Press Release, Dep’t of Justice, Office of Justice Programs, Office of Justice Program Awards Nearly \$3 Million to Reduce Unnecessary Confinement, Save Correction Costs (Sept. 14, 2016), <https://ojp.gov/newsroom/pressreleases/2016/ojp09152016.pdf>.

²¹² *Id.*

ing transparency among stakeholders and justice-involved individuals regarding fines, fees, costs, and consequences for non-payment, as well as how such costs can promote, rather than undermine, rehabilitation, reintegration, and community trust.”²¹³

Juvenile Fines and Fees “Dear Colleague” Letter

In January 2017, the Department released a “Dear Colleague” letter to juvenile justice agencies that suggests juveniles are unfairly burdened with court fees for counseling and several diversion programs.²¹⁴ This letter provides five principles relevant to the enforcement of fines and fees as it relates to juveniles, which are grounded in constitutional principles, and relevant case law:

1. Juvenile justice agencies should presume that young people are unable to pay court fines and fees, and only impose them after an affirmative showing of ability to pay;
2. Before juvenile justice agencies punish youth for failing to pay fines and fees, they must first determine ability to pay, considering factors particularly applicable to youth;
3. Juvenile justice agencies should not condition entry into a diversion program or another alternative to adjudication on the payment of a fee if the youth or the youth’s family is unable to pay the fee;
4. Juvenile justice agencies should collect data on race, national origin, sex, and persons with disabilities to determine whether the imposition of fines and fees has an unlawful disparate impact on juveniles or their families;
5. Juvenile justice agencies should consider whether the imposition or enforcement of fines and fees in any particular case comports with the rehabilitative goals of the juvenile justice system.²¹⁵

In follow-up to the “Dear Colleague” letter about imposing fines and fees on juveniles, on May 15, 2017, the Department completed a compliance review of Sacramento County, California and the Sacramento Superior Court.²¹⁶ Several divisions within the Department opened an investigation of the Sacramento County, California and Sacramento Superior Court to examine whether there was evidence of discrimination on the basis of race, national origin, or age in regards to the assessment and collection of court fees and fines against juveniles. After the Department opened its investigation, on April 11, 2017, the Sacramento County Board of Supervisors “endorsed Resolution No. 2017-0171, which directs the County’s Chief Probation Officer, Public Defender, and Conflict Criminal Defender to stop assessing and collecting fees associated with juvenile detention, supervision, drug testing, electronic monitoring, and representation in

²¹³Press Release, Dep’t of Justice, *supra* note 211.

²¹⁴ Mason, *supra* note 180, at 1.

²¹⁵ *Id.* at 7-10.

²¹⁶ Letter from Michael L. Alston, Director, U.S. Dep’t of Just., Off. for C.R., to Hon. Kevin R. Culhane, Presiding Judge, Sacramento Super. Ct. Hon. Don Nottoli, Chair, Sacramento County Board of Supervisors, on Compliance Review of Sacramento County, California and the Sacramento Superior Court (16-OCR-2156), (May 15, 2017), <https://ojp.gov/about/ocr/pdfs/16-OCR-2156-05152017.pdf>.

delinquency proceedings.”²¹⁷ The Resolution also allows the County to forgive millions in existing debt from juvenile justice system-related fees and fines. Later on May 3, 2017, the Sacramento Superior Court issued a Standing Order that memorialized “the guiding policy of the Sacramento Superior Court [that] judicial officers presiding over juvenile justice cases shall impose costs, fees, and fines at the statutory minimum.”²¹⁸ Because these changes were in congruence with the obligation and recommendations mentioned in the “Dear Colleague” letter to juvenile justice agencies, the Department subsequently closed its compliance review.²¹⁹

²¹⁷ *Id.* at 2.

²¹⁸ Letter from Alston, *supra* note 216, at 3.

²¹⁹ *Id.*

CHAPTER 4: EVALUATING THE DEPARTMENT OF JUSTICE'S ENFORCEMENT EFFORTS

In our recent briefing on fines and fees, many of the panelists spoke about the Department's impact, and some encouraged the Department to do more in addressing court fines and fees reform. In particular, panelists encouraged the Department to issue findings and a report from jurisdictions in addition to Ferguson, to underscore the reality that the harms from reliance on municipal fines and fees are not unique to Ferguson and therefore require further, national, reform.²²⁰ They also recommended that the Department continue operating grant programs in this area²²¹ and called for the Department to coordinate data collection, enforcement and outreach efforts.²²²

The Commission's briefings collected information about and reflected efforts from state and local jurisdictions separate from, but sometimes connected to the Department's efforts. To the extent such efforts have existed, many of the state and local efforts to reform fines and fees have been underway for decades. The Department's March 2016 "Dear Colleague" letter increased the attention surrounding issues regarding fines and fees. This led many states to develop working groups, often appointed by the Chief Justice of that state's Supreme Court. Many of the reports published by these working groups specifically mentioned the seven tenets that the Department mentioned in the letter to state chief judges and administrators. The Commission discusses these reports below.

Voluntary State Reform Efforts After Receipt of the "Dear Colleague" Letter

The Commission received evidence that the Department's enforcement effort, specifically the March 2016 "Dear Colleague" letter, has been the impetus for municipal court reform in some states. For instance, according to testimony from Mitali Nagrecha, Director of the National Criminal Justice Debt Initiative at Harvard Law School, Arkansas created a Joint Committee on Fines, Fees, and Bail. When asked about why Arkansas created the Joint Committee, the Committee Chair stated that:

The DOJ letter had a profound impact on every judge that read it. For those judges that perceived these issues prior to the letter but were unable to generate enthusiasm for change, the letter provided a perfect platform for review and modification of policies and procedures. The letter directly impacted the decision of the Arkansas

²²⁰ *Briefing Transcript 2* (statement by Levin) at 188; *Briefing Transcript 2* (statement by Nagrecha) at 206; Norquist, *supra* note 189, at 5 (favoring "engagement" by DOJ).

²²¹ Neil Sobol, Associate Professor of Law, Tex. A&M U., Written Statement for the U.S. Comm'n on Civil Rights, Mar. 17, 2017, at 14.

²²² Sobol, *supra* note 221, at 1.

Judicial Council to form our joint committee, and the members of the committee have expressed appreciation that the DOJ used the ‘Dear Colleague’ letter to raise awareness through the judiciary of these issues rather than waiting until complaints and lawsuits were filed.²²³

Nagrecha and the Criminal Justice Policy Program surveyed about thirty states to learn what municipal court reforms were taking place around the country. Their findings will be released in a paper in the fall of 2017 called “Recommendations from the Field: Judiciary Led Criminal Justice Debt Reform.” While their findings are not yet available, the author told us that at the time of their research, about 50 to 60 percent of the states seemed to have little mobilization on the fines and fees issue. According to the National Center for State Courts’ website, the following states have not undertaken steps regarding the issue of excessive municipal court fines and fees: Alaska, Kentucky, Hawaii, Montana, and North Dakota.²²⁴

In Texas, David Slayton, Administrative Director of the Office of Court Administration (OCA) testified that the Texas Supreme Court Chief Justice Nathan Hecht directed the OCA to review state practices and make improvement suggestions following the Department’s letter.²²⁵ At the same time, the Office of Court Administration sent the Department’s letter regarding constitutional imposition of fines and fees to all state judges.²²⁶ In addition, Judge Karl DeMarce, Associate Circuit Judge of the Circuit Court of Scotland County, Missouri, testified that the state of Missouri

²²³ Email from Mitali Nagrecha, Director, Nat’l Criminal Justice Debt Initiative, Harv. L. Sch., to LaShonda Brenson, Ph.D., Civil Rights Analyst, U.S. Comm’n on Civil Rights (Apr. 6th, 2017, 3:59 PM) (on file with U.S. Comm’n on Civil Rights) (confirming percentages); see *Briefing Transcript 2* (statement by Nagrecha) at 151-152 (general discussion about her research).

²²⁴ Nat’l Ctr. For State Courts, *Data Visualizations: Fines, Fees and Bail Practices*, TABLEAU PUBLIC (July 18, 2017), https://public.tableau.com/profile/publish/FFBP2_0/ActivitiesByType#!/publish-confirm; See Tables 1-4.

²²⁵ *Briefing Transcript 2* (statement by Slayton) at 19; Bains, *supra* note 132, at 14; Slayton, *supra* note 163, at 2; see Letter from the Tex. Judicial Council to members of the Tex. Judicial Council (Aug. 12, 2016), <http://www.txcourts.gov/media/1435717/tjc-memo-re-public-comments-cip-rules.pdf>.

²²⁶ *Briefing Transcript 2* (statement by Slayton) at 67 (“And, so, when we received the letter, the Chief Justice . . . and I had a discussion about we felt like more information to the Judges was better on this issue and DOJ specifically asked us to send it to all of the Judges in the State and so, we felt like it was incumbent upon us to make sure they all received it.”). See Memorandum from David Slayton, Executive Director, Tex. Judicial Council, Off. of Ct. Admin., to all Tex. Judges, Clerks, Ct. Admins., and Collection Program Staff (on file with U.S. Comm’n on Civil Rights in Targeted Fines and Fees against Low-Income Minorities: Civil Rights and Constitutional Implications Briefing Book Two at 24-25); *Briefing Transcript 2* (statement by Slayton) at 66-67 (“And, it was, honestly, it was very helpful to us to be able to use that [Dear Colleague] letter as part of [our revision process]. You know, these are the—this is the way the federal government thinks about these issues and DOJ thinks about these issues, so we used it to our advantage and I think it was very helpful and very well received by the Judges across the State.”).

developed mandatory minimum standards for courts for imposition of fines and fees, following directly from the Department report on Ferguson.²²⁷

The Commission found that only a few states established task forces or working groups on fines and fees in response to Department's enforcement efforts. Below are examples of states that established task forces on fines and fees after receiving the "Dear Colleague" letter from the Department.

The "Dear Colleague" letter has also been referenced in litigation. A bankruptcy case has cited the Department's Ferguson Report for the proposition that charging juvenile detention costs undermines the perceived integrity of judicial process.²²⁸ Also, plaintiffs challenging automatic license suspensions for failure to pay traffic fines and fees in Solano County, California, cited the "Dear Colleague" letter for its discussion of the unnecessary harms that result from the practice.²²⁹ In addition, the American Bar Association's Commission on the Future of Legal Services issued a report that explicitly endorses the principles in the "Dear Colleague" letter.²³⁰

Arizona's Task Force

On March 3, 2016, Arizona Chief Justice Scott Bales issued Administrative Order No. 2016-16, which established the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies.²³¹ The order authorized judges to mitigate mandatory minimum fines, fees, surcharges, and penalties if the amount otherwise imposes an unfair economic hardship, and further charged the Task Force to:

1. Use automated tools to determine a defendant's ability to pay.
2. Create a Simplified Payment Ability Form when evaluating a defendant's ability to pay.
3. Use means-tested assistance program qualification as evidence of a defendant's limited ability to pay.
4. Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses.

²²⁷ *Briefing Transcript 2* (statement by DeMarce) at 91 ("Many of [the Minimum Operating Standards] were drafted to be directly responsive to concerns raised in the 'Dear Colleague' Letter that was issued by the Department of Justice[.]").

²²⁸ Bains, *supra* note 132, at 15.

²²⁹ See Complaint at 8, *Rubicon Programs v. Superior Court of Cal. County of Solano Case*, No. FCS047212 (Solano Super. Ct. June 15, 2016).

²³⁰ AM. BAR ASS'N, COMM'N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 52 (2016), https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf ("The Commission supports the recent efforts by the Department of Justice to reform harmful and unlawful practices related to the assessment and enforcement of fines and fees.").

²³¹ Order Establishing the Task Force on Fair Justice for All (2016), <https://www.azcourts.gov/Portals/22/admorder/Orders16/2016-16.pdf>.

5. Implement the Phoenix Municipal Court's Compliance Assistance Program statewide.
6. Conduct a pilot program that combines the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program and reinstatement of defendants' drivers' licenses.
7. Test techniques to make it easier for defendants to make timely payments on court-imposed financial sanctions.
8. Seek legislation that would grant courts discretion to close cases and write off fines and fees for traffic and misdemeanor violations after a 20-year period if reasonable collection efforts have not been effective.²³²

In August of 2016, the Task Force issued a report directly responding to the principles enumerated in the "Dear Colleague" letter and mentioned the Ferguson Report.²³³ In addition, the report enumerates over sixty recommendations to improve court fines and fees practices in Arizona.²³⁴

Illinois's Task Force

In 2014, the Access to Justice Act created the Statutory Court Fee Task Force in Illinois.²³⁵ Drawing upon the broad and varied experience of its members, whose numbers included legislators, judges, lawyers, and court clerks, the Task Force developed the package of recommendations contained in its report.²³⁶

The recommendations address the problems summarized in four key findings by the Task Force presented below:

1. The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings.
2. Court fines and fees are constantly increasing and are outpacing inflation.
3. There is excessive variation across the state in the amount of assessments for the same type of proceedings.

²³² *Id.*

²³³ TASK FORCE ON FAIR JUSTICE FOR ALL, JUSTICE FOR ALL: REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON FAIR JUSTICE FOR ALL, COURT-ORDERED FINES, PENALTIES, FEES AND PRETRIAL RELEASE POLICIES (2016), <http://www.azcourts.gov/LinkClick.aspx?fileticket=bmEC0PU-FD8%3D&portalid=74>.

²³⁴ *Id.* at 2-7.

²³⁵ The Access to Justice Act, 705 Ill. Comp. Stat. Ann. 95/25, <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=070500950K25>.

²³⁶ STATUTORY COURT FEE TASK FORCE, ILLINOIS COURT ASSESSMENTS: FINDINGS AND RECOMMENDATIONS FOR ADDRESSING BARRIERS TO ACCESS TO JUSTICE AND ADDITIONAL ISSUES ASSOCIATED WITH FEES AND OTHER COURT COSTS IN CIVIL, CRIMINAL, AND TRAFFIC PROCEEDINGS 3-4 (June 1, 2016), <http://www.ilga.gov/reports/special/Statutory%20Court%20Fee%20Task%20Force%20Report.pdf>.

4. The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic severely and disproportionately affect low- and moderate-income Illinois residents.²³⁷

Massachusetts

In November of 2016, the Massachusetts Trial Court Fines and Fees Working Group issued a report of its investigation into the impact of court fines and fees.²³⁸ The report credits the Department's "Dear Colleague" letter for its discussion of alternatives to incarceration for nonpayment and other procedural protections for those unable to afford fines and fees.²³⁹ These recommendations range from allowing judges to alleviate or eradicate mandatory court fines and fees for poor indigent individuals to using participation in needs-based, means-tested public assistance programs as evidence of an individual's limited ability to pay.²⁴⁰

Other Voluntary Court Reform Efforts

Not all of the voluntary reform efforts are a direct result of the Department's enforcement efforts, as many states and municipalities began to reform their respective court systems before fines and fees reform was part of the Department's efforts. Some states, including Colorado and Ohio, continue to dedicate work towards fixing the problem of excessive municipal court fines and fees. Colorado's Senate voted in favor of "a bill to end the practice of jailing people who cannot afford to pay fines and fees."²⁴¹ Ohio issued a specific bench card that was implemented for all its municipal courts actors to reference.²⁴² There are many efforts underway by these states and others towards voluntarily improving the effects of fines and fees. One scholar noted that, although some developments may have begun prior to the Department's reform efforts, "[t]his does not necessarily mean that the letter has had no effect. The reality may be that the climate in many states was already ripe for such reforms and the Department investigation of practices in Ferguson and

²³⁷ *Id.* at 16-31.

²³⁸ MASS. TRIAL COURT FINES AND FEES WORKING GRP., REPORT TO TRIAL COURT CHIEF JUSTICE PAULA M. CAREY (2016), available at <http://www.mass.gov/courts/docs/trial-court/report-of-the-fines-and-fees-working-group.pdf>.

²³⁹ *Id.* at 2 ("The mission of the Working Group is to review the seven recommendations that the United States Department of Justice Civil Rights Division set forth in a March 14, 2016 "Dear Colleague" letter, concerning court enforcement of fines and fees, and to evaluate (i) whether Massachusetts laws support each recommendation; and (ii) whether the Trial Court is in compliance with each recommendation.").

²⁴⁰ *Id.* at 22-25.

²⁴¹ ACLU, *Bills to Protect the Rights of Poor Defendants in Municipal Court Receive Board Bipartisan Support, Head to the Governor's Desk* (May 3, 2016), <http://aclu-co.org/bills-protect-rights-poor-defendants-municipal-court-receive-broad-bipartisan-support-head-governors-desk/>.

²⁴² SUPREME COURT OF OHIO, OFFICE OF JUDICIAL SERVS., COLLECTION OF COURT COSTS & FINES IN ADULT TRIAL COURTS (2017), <https://www.supremecourt.ohio.gov/Publications/JCS/finesCourtCosts.pdf>.

the subsequent “Dear Colleagues” letter entered into an ‘open window’ for significant ongoing policy change.”²⁴³

Impact of “Price of Justice” Grants

The five grant recipients (Texas, Washington, California, Louisiana, and Missouri) are using their funds to ease the effects of municipal court fines and fees within their respective states through developing pilot programs, collecting data on fines and fees, and making the process of fine and fee collection more transparent. A technical provider, which also received Departmental grants, is working with the grantees on an individual basis, as each site will use the grant money to focus on different ways to improve the resolution of fines and fees in their state (e.g., some sites will focus on their technological needs while others will work to the implementation of an “Ability to Pay” tool). The technical assistance provider for the Price of Justice grant is the Fund for the City of New York’s Center for Court Innovation (CCI).²⁴⁴

The Commission’s professional staff interviewed the technical providers and the feedback received was that the Department has been very active in ensuring the progress of the grant program.²⁴⁵ For example, it held a strategic planning meeting with the technical assistance providers at which it detailed the expectations for the CCI and its partners, and grantees. The grantees and the technical providers have stated that the Department has been very engaged in helping shape this program by providing guidance and feedback.²⁴⁶

Four of the five grant recipients participated in the Commission’s second briefing. During the briefing, the Commission asked those grant recipients how they view the Department’s efforts to reform municipal fines and fees.²⁴⁷ The state grant recipients uniformly responded that the Department “has really become a very close partner to each of the States in making those efforts [the two conferences, role on the National Task Force and the grants].”²⁴⁸ The states preferred this

²⁴³ Shannon, *supra* note 62, at 8.

²⁴⁴ CTR. FOR COURT INNOVATION, <http://www.courtinnovation.org> (last visited Aug. 1, 2017). The following organizations are consulting with CCI on various aspects of the project: Center for Family Policy and Practice (CFPP), City University of New York (CUNY) Institute for State and Local Governance (ISLG), and National Association of Counties (NaCo).

²⁴⁵ Oral communications between the Center for Court Innovation and U.S. Commission staff (on file with the U.S. Commission on Civil Rights).

²⁴⁶ *Id.*

²⁴⁷ *Briefing Transcript 2* (statement by Karen Narasaki, Commissioner, U.S. Comm’n on Civil Rights) at 70 (asking grant recipients “[H]ow important do you feel is it for the Department of Justice to sustain the work that they are doing in this area?” and “[I]s there anything that they [the Department of Justice] should be doing that they’re not doing that would be helpful to your efforts?”).

²⁴⁸ *Briefing Transcript 2* (statement by Slayton) at 71.

role of the Department to other more “adversarial role[s]” to which “[some] State courts might not respond the same way.”²⁴⁹

The Commission’s professional staff also reached out to the other eight applicants for the Price of Justice grants.²⁵⁰ We asked these applicants if they were able to undertake the proposals in their applications in the absence of the grant money, and whether they continue to support the Department’s efforts.²⁵¹ We received responses back from five applicants.²⁵² Four stated they have not yet found an additional source of funding for the reforms proposed in each’s respective application. One was able to secure other funding.²⁵³ All five also supported the Department’s continued funding of grant programs of this kind.²⁵⁴

Below the Commission details the strategic plan of each of the grantees and what efforts their court system intends to make due to receipt of the grant money. The information provided below is based on the information the grantees provided the Commission through written testimony, informal interviews, and publicly available information.

Texas

The structure of Texas courts is complex, and its courts have varying levels of jurisdiction over enforcing fines and fees.²⁵⁵ The Commission received testimony from David Slayton, the Administrative Director of the Texas Office of Court Administration (OCA), that in 2016, Texas courts handled over seven million cases; 80 percent of those cases were traffic citations, which generated over \$1 billion in revenue.²⁵⁶ While the vast majority of these assessments were paid immediately or through a payment plan, 18 percent of these convictions were satisfied by another

²⁴⁹ *Id.* at 70.

²⁵⁰ The other eight grant applicants were: Rutherford County Government Probation and Recovery Services Department; Walworth County, Wisconsin Pretrial Services; City of Lyons, Toombs County, Georgia; The Supreme Court of Ohio; Arkansas Administrative Office of the Courts; Texas Court of Criminal Appeals; City of Tulsa, Oklahoma; and San Francisco Adult Probation Department.

²⁵¹ Emails on file with U.S. Commission on Civil Rights.

²⁵² *Id.* Those responding included: City of Lyons, Toombs County, Georgia; The Supreme Court of Ohio; Arkansas Administrative Office of the Courts; Texas Court of Criminal Appeals; and San Francisco Adult Probation Department.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Slayton, *supra* note 163, at 1.

²⁵⁶ *Id.* More descriptive statistics on Texas courts are reported by clerks through the Judicial Council Trial Court activity and is available at: <http://card.txcourts.gov/default.aspx>.

method—through community service or work programs (2 percent), jail credit (15 percent), and less than 1 percent of these cases were completely waived due to indigency.²⁵⁷

Mr. Slayton explained that after the Department's report on Ferguson was released, the Texas Supreme Court Chief Justice Nathan Hecht directed the OCA to reevaluate court practices in assessing fines and fees in Texas and if necessary, make recommendations for improvement.²⁵⁸ The OCA found issues with the Judicial Council's Collection Improvement Program Rules. In particular:

These rules, meant to provide guidance to the local courts in best practices for ensuring that convicted defendants satisfy their legal financial obligations, placed inflexible time requirements in the collection of payments and did not provide local courts with flexibility to ensure that collections efforts did not result in an undue hardship on defendants and their dependents.²⁵⁹

According to Mr. Slayton's testimony, after the Judicial Council and the OCA discussed these concerns, the Council began an eight-month rules revision process and came across three issues relating to fines and fees in Texas's local courts:²⁶⁰

1. Courts' inability to assess a person's ability to pay fines and fees;
2. Courts' inability to identify appropriate alternatives to pay fines and fees; and
3. Courts' lack of education about the status of law on fines and fee assessment and collection.

The revised rules provided mechanisms to begin to address the aforementioned problems found in the local courts.²⁶¹ According to Mr. Slayton, the Texas OCA is using the grant funds to address three key initiatives to help resolve the issues of fines and fees in local courts. In addition, according to Texas Chief Justice Hecht, these recommendations and changes were made, in part, because of the Department's Ferguson report.²⁶² Texas envisions using the grant funds for those key initiatives as follows:

1. To build an automated tool that will use data available and government resources for judges to assess an individual's ability to pay. This tool would assist Texas judges in determining an individual's ability to pay and make judges more knowledgeable about alternatives to payment for those unable to pay court fines and fees.

²⁵⁷ Note that the jail credit is in lieu of payment, as jail was not initially an option for these fine-only offenses. See David Slayton's testimony for more details. Also, according to their written grant application, individuals rarely satisfied their assessments through community service because of the lack of opportunities available.

²⁵⁸ Slayton, *supra* note 163, at 2.

²⁵⁹ *Id.*

²⁶⁰ During this process, the Texas Office of Court Administration asked for input for stakeholders on how to address these issues. While their revision process faced resistance from stakeholders, it was approved in August 2016 and began effective January 2017. See *Briefing Transcript 2* (statement by Slayton) at 20.

²⁶¹ Slayton, *supra* note 163, at 2.

²⁶² *Id.*; for more information see Letter from the Tex. Judicial Council to members of the Tex. Judicial Council, *supra* note 225, at 2.

2. To build an online tool that will link community service and other alternative to payment options with defendants seeking those opportunities. In their written grant application, the Texas OCA explained that the impetus for this tool is to encourage indigent individuals to use community service opportunities and job training programs to satisfy their fines and fees assessment instead of jail credit. Moreover, their hope is that this tool would decrease incarceration costs related to fine-only offenses and promote accountability, rehabilitation, reintegration, and community trust.
3. To work with judicial education providers, namely the Texas Justice Court Training Center (TJCTC) and the Texas Municipal Courts Education Center (TMCEC), to develop and deliver curriculum to judges across the state regarding statutory provisions and best practices regarding fines and fees. Their hope is the dissemination of this information will result in an appropriate assessment of an individual's inability to pay fines and fees in Texas and incorporate the data analysis tool to ensure that courts' assessments are conducted in a consistent, fair and effective manner.²⁶³

The Texas OCA will conduct monthly progress meetings and monitor compliance with the proposed timeline. In addition, OCA will conduct user surveys with judges, defendants, community organizations, and court personnel to determine the satisfaction with the tools and curriculum. Overall, the OCA expects that the impact of this grant is that fewer persons satisfy their fines and fees assessment through jail credit and instead, increase the number of individuals who opt for community service or waivers to satisfy court assessments.

The Texas Judicial Council has also recommended eighteen specific reforms including notifying the defendant about the consequence of failing to appear in court and clarifying that judges are required to evaluate an individual's ability to pay prior to assessment of fines and fees.²⁶⁴ Bills to enact several of these provisions have been filed in the 2017 legislative session in Texas.²⁶⁵

Washington

The Washington Minority and Justice Commission is charged with investigating issues of racial and ethnic bias in their court system. In 2008, the Washington Minority and Justice Commission released a report entitled "The Assessment and Consequences of Legal Financial Obligations in Washington State," which demonstrated the disproportionate effect fines and fees have on racial and ethnic minorities, especially Latinos, in Washington State.²⁶⁶ Since the data on the relationship between race and ethnicity and fines and fees were limited at that time, the American Civil Liberties Union (ACLU) of Washington and Columbia Legal Services commissioned a more in-

²⁶³ Information gathered from their Price of Justice grant application, Texas's application (on file with the U.S. Comm'n on Civil Rights).

²⁶⁴ Slayton, *supra* note 163, at 3; for more information *see* 1 Tex. Admin. Code §§ 175.1-175.7 (2017), <http://www.flccoc.org/collections/Articles/Texas%20Collections%20Rules.pdf>.

²⁶⁵ *Briefing Transcript 2* (statement by Slayton) at 23.

²⁶⁶ Delostrinos, *supra* note 114, at 1.

depth report in 2014 concerning the issues regarding court fines and fees in Washington State.²⁶⁷ This study found that there is substantial county-level variation in how fines and fees were assessed. In fact, some courts were jailing indigent defendants who failed to pay fines and fees.²⁶⁸ According to the report, in Benton County, Washington, 20 percent of individuals jailed on a given day were serving a sentence because of an inability to pay court fines and fees.²⁶⁹

According to Washington State law, judges are required to inquire about an individual's ability prior to assessing fines and fees.²⁷⁰ The Commission received testimony that some judges are not making these assessments despite the State Supreme Court's ruling.²⁷¹ To help resolve some of these issues the Minority and Justice Commission took the lead and produced bench cards to assist judges in determining a defendant's ability to pay and sponsored several educational trainings for judges on fines and fees. Recently, the Minority and Justice Commission convened to discuss how it is going to further address fines and fees in its state—specifically in regards to ability to pay assessments. According to Cynthia Delostrinos the Washington Minority and Justice Commission has several plans and projects to help resolve the issue of fines and fees using their grant funds from the Department:

1. Bring together all the justice system stakeholders (e.g. court administrators, judges, community organizations) who play a role in court fines and fees to form a working group that will advise the Minority and Justice Commission throughout the grant process.
2. Produce a study that will outline all the laws and practices on fines and fees in Washington State.²⁷²
3. Develop policy recommendations on how they can move forward to address fines and fees practices in Washington State.
4. Develop and pilot a fines and fees calculator, which will serve as a tool to help judges make personalized assessments of an individual's ability to pay. The Ability to Pay calculator was created by a Washington State judge, and the State partnered with Microsoft to further develop the tool.²⁷³

²⁶⁷ *Briefing Transcript 2* (statement by Delostrinos) at 32.

²⁶⁸ Delostrinos, *supra* note 114, at 2. She also explains in her testimony that most of these individuals were indigent to begin with.

²⁶⁹ *Briefing Transcript 2* (statement by Delostrinos) at 33; ACLU & COLUMBIA LEGAL SERVICES, MODERN-DAY DEBTORS' PRISONS: THE WAYS COURT-IMPOSED DEBTS PUNISH PEOPLE FOR BEING POOR 8 (2014).

²⁷⁰ *State v. Blazina*, 182 Wn.2d 827(2015) (holding that the Washington state court must assess an individual's ability to pay before assessing discretionary fines and fees).

²⁷¹ Delostrinos, *supra* note 114, at 2.

²⁷² This Washington working group has created a website (livingwithaconviction.org), which highlights persons living with fines and fees debt and how it is impacting their families. *Briefing Transcript 2* (statement by Delostrinos) at 35.

²⁷³ *Id.* at 35-6. Also, we should note that the California grantees are creating a similar Ability to Pay tool for judges in their state as well. *Id.* ([“California is] modeling off of a calculator that was created by a Judge in Washington State and we’ve actually partnered with Microsoft who is going to be joining us in the project to help develop this calculator tool.”). *Id.* at 36.

California

The Commission received testimony from Martha Wright, the Supervising Analyst of the Criminal Justice Service of the Judicial Council of California, that while her division was working on the “Price of Justice” Grant, the Traffic Advisory Committee to the California Judicial Council had new Rules of Court approved that became effective in May 2017. According to Ms. Wright, these changes include advising individuals of their right to request a determination of ability to pay, sending reminder notices for court appearances, and changes to their online system that make the process of resolving fines and fees more transparent and accessible.²⁷⁴

The Judicial Council of California will use its grant funds to develop and implement an “Ability to Pay” tool to assist judges in assessing an individual’s ability to pay fines and fees. The project consists of establishing and coordinating a working group; conducting a jail study; working with the technical assistance provider, the Center for Court Innovation (CCI), to establish a relevant training schedule; develop an Ability to Pay tool for the Court’s use; and evaluate how well the Ability to Pay tool is working in the piloted California courts.²⁷⁵ The working group is comprised of criminal justice system stakeholders like judges, commissioners, CEOs, District Attorneys, and Public Defenders who will serve as project advisors. They will be assisting in the development of a practical, efficient, and effective tool.²⁷⁶

Initially the Ability to Pay tool will be used in a select number of California courts. Once the Ability to Pay tool is tested in pilot sites, the evaluation of its progress is essential. The evaluation will be based on pre and post assessments of collections, pre and post assessments of defaults, identifying the number of interactions and case completion time, evaluating the staffing required, and implementing a user survey.²⁷⁷ According to Ms. Wright, within the three-year timeline of the grant, the hope is that the Ability to Pay tool will be implemented throughout the court systems in California.²⁷⁸

In addition to addressing issues regarding ability to pay assessments in California, the Judicial Council of California plans to address another key interest of the Department’s, which is lowering correctional costs by minimizing confinement.²⁷⁹ According to Ms. Wright’s testimony, they plan to conduct a jail study to collect data on how many individuals are jailed as a result of failure to

²⁷⁴ *Briefing Transcript 2* (statement by Wright) at 25.

²⁷⁵ *Briefing Transcript 2* (statement by Wright) at 24-25.

²⁷⁶ The Workgroup’s first meeting was held on Feb. 28, 2017, and their second meeting will occur in June or July 2017. *Id.* at 25.

²⁷⁷ Martha Wright, *Written Statement for the U.S. Comm’n on Civil Rights*, Mar. 17, 2017, at 1-2.

²⁷⁸ *Briefing Transcript 2* (statement by Wright) at 26.

²⁷⁹ U.S. DEP’T OF JUSTICE, OFF. OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, OMB NO. 1121-00329, *THE PRICE OF JUSTICE: RETHINKING THE CONSEQUENCES OF JUSTICE FINES AND FEES* (2016), <https://www.bja.gov/funding/JRlpriceofjustice.pdf>.

appear or failure to pay traffic fines and fees.²⁸⁰ Their preliminary data from ten counties indicate approximately seven hundred people per month were booked and detained for an average of three days in fiscal year 2015- 2016 related to a failure to pay and driving with a suspended license.²⁸¹ According to Ms. Wright, the California Judicial Council is going to examine their pilot sites to see why individuals are ending up in jail and how they can reduce jailing indigent individuals by implementing their Ability to Pay tool in California courts.²⁸²

Louisiana

While a representative from the Judicial Council of Louisiana was not able to attend our briefing on March 17, 2017, Sandra Vujnovich, the Judicial Administrator, provided the Commission written testimony. Pursuant to a Louisiana statute, the Judicial Council of Louisiana established the “Standing Committee to Evaluate Requests for Court Costs and Fees” to analyze court cost revenues, and to provide recommendations to the Louisiana State Legislature. While the Committee was working on collecting data on fines and fees in Louisiana prior to the Ferguson report, the Louisiana Judicial Administrator, Sandra Vujnovich, acknowledged that the “Committee included the concerns raised in the [Ferguson] report in its proceedings.”²⁸³

After this, Louisiana’s Legislative Auditor, Daryl Purpera,²⁸⁴ conducted research and found issues with how Louisiana courts were collecting fines and fees.²⁸⁵ The Legislative Auditor’s staff and the Standing Committee worked together to investigate what changes needed to be made to improve the collection of fines and fees in Louisiana, and recommended that the State:

1. Provide a list of all mandatory and discretionary fines and fees that is accessible to the public.
2. Create a system to track assessed and collected fines and fees using the individual’s name and date of payment.
3. Develop statewide best practices for Louisiana courts and ways to implement said practices.
4. Create a statewide guideline on payment plans for fines and fees.
5. Determine when increased fines and fees will no longer result in compliance, with respect to a person’s ability to pay and other financial indicators.

²⁸⁰ *Briefing Transcript 2* (statement by Wright) at 24.

²⁸¹ *Id.* at 28.

²⁸² *Id.*

²⁸³ Sandra Vujnovich, Judicial Administrator, Judicial Council of Louisiana, [Written Statement for the U.S. Comm’n on Civil Rights](#), Mar. 17, 2017, at 1.

²⁸⁴ According to their website, the purpose of the Louisiana Legislative Auditor is to “foster accountability and transparency in Louisiana government by providing the Legislature and others with audit services, fiscal advice, and other useful information.” *History of the Legislative Auditor’s Office*, LA. LEGISLATIVE AUDITOR, <https://www.la.gov/about/history/>. For more information about the La. Legislative Auditor see <https://www.la.gov/>.

²⁸⁵ Vujnovich, *supra* note 283, at 1-2. A copy of the audit report completed by the La. Legislative Auditor can be found at:

[http://app.la.state.la.us/PublicReports.nsf/0/EC68FCD9E9FA8AC486257CAE00699A86/\\$FILE/00038BDE.pdf](http://app.la.state.la.us/PublicReports.nsf/0/EC68FCD9E9FA8AC486257CAE00699A86/$FILE/00038BDE.pdf).

The Judicial Council of Louisiana received the Price of Justice grant and is currently developing a public database of all required and optional fines and fees. According to Ms. Vujnovich, the Council is also in the final stages of creating a tracking system for all assessed and collected fines and fees and developing a publication that details guidance on collecting fines and fees as well as payment plans. The Judicial Council put its efforts in addressing developing statewide best practices on hold because it is waiting for NCSC to release its best practices recommendations and they would like to avoid duplication. The final recommendation is being developed with the assistance of professors at Louisiana colleges and universities.

According Ms. Vujnovich, while the Judicial Council of Louisiana was already working on the changes mentioned above prior to receiving the Department grant, these changes could not be fully accomplished without the grant funds and support from the Department. In addition to the changes mentioned above, the Council plans to use the grant funds to research and develop meaningful alternatives to payment for indigent individuals and to collect better data on fines and fees in Louisiana.²⁸⁶

Missouri

Since Department's Ferguson report and consent decree, there have been several steps to make reforms to Missouri courts. The Commission received testimony that the Missouri Office of State Courts plans to use the Department grant funds to “[develop] a web-based application that allows individuals to access their cases on mobile devices; gives them the option to sign up for text or email notices of hearing and payment days; automates the determination of indigence, and allows judges to refer defendants to payment plans or community service, all without the need to take time off work or away from other priorities to appear in court.”²⁸⁷ The goal of these changes is to create an automated case management system that uniformly processes municipal ordinance violations and provides more transparency to residents about the status of their case.²⁸⁸

In addition, the Supreme Court of Missouri adopted an update to Model Local Rule 69.01, effective September 19, 2016, and developed a strategy to assist the courts in determining a person's ability to pay.²⁸⁹ The effort has several stages:

1. Policy Review, January 2017 through October 2017, where the objective is to, “identify the case types appropriate for processing through the self-represented litigant portal (SRL) and assist with identifying and avoiding unintended consequences of these activities.”²⁹⁰

²⁸⁶ *Id.* at 4.

²⁸⁷ Sherri Pashcal, Ct. Bus. Servs. Director, Mo. Off. of St. Cts. Admin., Written Statement for the U.S. Comm'n on Civil Rights, Mar. 17, 2017, at 4.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 5.

2. Development of a product, “which provides citizens in the St. Louis area with court and case-related information, including information about bus routes, community service and a texting feature.”
3. Development of another product, “Track This Case,” a system that is available for all public cases and where the public may be notified by email of activity on cases.
4. Development of another product, “‘Prosecuting Attorney Portal’ which includes a web-service that allows traffic tickets and violations to be submitted electronically to the proper prosecutor for verification and filing with the courts.”²⁹¹

The program will be tested in selected municipal divisions to ensure that that it is performing as designed. After the appropriate adjustments are made, the goal is to expand the program to the remaining Missouri municipal courts.

Missouri also created the Municipal Division Work Group, which is dedicated to the investigation of municipal court fines and fees and recommending solutions or best practices of the issue to the Missouri Supreme Court.²⁹² As a way to combat excessive municipal court fines and fees, Missouri has also passed new legislation that establishes standards for the municipal courts and police, and limits the amount that St. Louis County can keep from fines and fees.²⁹³ Changes in legislation have also made room for the law to establish minimum standards with which municipalities in St. Louis County must comply with in the next three years.

Impact of Pattern or Practice Investigations and Consent Decrees

As it applies to targeted fines and fees, the Department has used its pattern or practice authority under 42 U.S.C. § 14141 once to investigate Ferguson, Missouri residents’ claim that law enforcement officials and municipal court officials engaged in unconstitutional practices.²⁹⁴ While the Department does not have freestanding authority to investigate courts, the Department was

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Christopher Zoukis, Ferguson, Missouri Under Fire for Revenue-based Criminal Justice System, PRISON LEGAL NEWS, Dec. 6, 2016, at 54, <https://www.prisonlegalnews.org/news/2016/dec/8/ferguson-missouri-under-fire-revenue-based-criminal-justice-system/>.

²⁹⁴ 42 U.S.C. § 14141 reads:

(a) Unlawful Conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officials or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil Action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

able to investigate the Ferguson municipal courts because of the relationship between the municipal courts and the police department. The pattern or practice authority allows the Department to investigate “conduct by law enforcement officials.”²⁹⁵

In contrast (and as mentioned above), the Department could not investigate the court in Jackson, Mississippi as part of its Civil Rights of Institutionalized Persons Act (CRIPA) pattern or practice investigation into the jailing of individuals in the Hinds County Jail. The Department did include provisions in the consent decree with the Jail requiring that the Jail confirm that the court had conducted an ability-to-pay determination. But in order for the court to be required to reform, a private lawsuit was brought to redress the unconstitutional practices being carried out by that court.

Another example of a class-action lawsuit against a court system comes from Biloxi, Mississippi. In that case, a settlement was entered that required the court to provide: (i) consideration of ability to pay at the time of sentencing and again at a memorialized compliance hearing, (ii) advisement of the defendant’s right to be represented by counsel and creation of a full-time public defender’s office to provide counsel at indigency hearings, (iii) use of a bench card to assist the judge in consistently determining indigency and advising defendants of their rights, (iv) consideration by the Court of specified alternatives to incarceration if the defendant is unable to pay, (v) prohibition on the use of for-profit collections, (vi) prohibition on incarceration of indigent people without an ability-to-pay hearing, (vii) prohibition on “pay-or-stay” sentences where a term of incarceration is used to satisfy a monetary obligation, (viii) service of failure-to-appear warrants during business hours when the Court is open whenever possible to avoid unnecessary incarceration, (ix) a rebuttable presumption of inability to pay when a defendant’s income is 125 percent of the federal poverty level or less, or the defendant is homeless, incarcerated, or resides in a mental health facility.²⁹⁶

In sum, the pattern or practice statutory authority is of limited use for redressing municipal court fines and fees. The Commission received testimony noting that if the Department had explicit statutory authority to investigate courts, “you would see more of this work.”²⁹⁷

²⁹⁵ *Id.*

²⁹⁶ Stipulated Settlement Agreement at 4, *Kennedy v. City of Biloxi*, No. 1:15cv348-HSO-JCG (S.D. Miss. Oct. 21, 2015), available at <https://www.aclu.org/legal-document/kennedy-v-city-biloxi-stipulated-settlement-agreement-exhibits-b>.

²⁹⁷ Emails conversation between Chiraag Bains, Visiting Senior Fellow, Criminal Justice Policy Program, Harv. L. Sch., and LaShonda Brenson, Ph.D., Civil Rights Analyst, U.S. Comm’n on Civil Rights (Mar. 10, 2017) (on file with U.S. Commission on Civil Rights). Of note, the Department can conduct a compliance review of courts that receive federal funding if there are indications of discrimination based on race, color or national origin under Title VI of the Civil Rights Act. The Department’s ability to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination by state and local government agencies that receive federal funds, may provide an avenue to explore these options. The Commission did not review the Department’s (or any other department’s) efforts under Title VI in this year’s examination. The Department enforcement efforts have also been featured in recent litigation

A second issue is that the Ferguson investigation, report, and consent decree was, “an awakening for DOJ”—and for many in the country—about these abusive court practices regarding fines and fees. Prior to the Ferguson investigation, “it wasn’t really on DOJ’s radar.”²⁹⁸ The Department, “became more proactive afterward—holding the two convenings, issuing the “Dear Colleague” Letter and the OCR advisory letter, and filing the statement of interest in the Virginia driver’s license case.”²⁹⁹ The Department has only recently (since 2014) been involved in these issues and utilized its practice or pattern authority in two relevant matters. Thus, they are in the, “early stages of a system-wide movement to reform court fines and fee practices.”³⁰⁰

Finally, it is too early to evaluate whether the Ferguson consent decree has changed the practices of the Ferguson municipal courts and the Ferguson police department. For example, while the consent decree requires data collection on the activities of the municipal court, none have been made publically available yet. At the same time, after entry of the consent decree, Missouri did adopt significant legislative changes that limited the level of funding municipalities could receive from traffic fines. In most Missouri municipalities, the limit of funding generated from traffic fines was lowered from 30 percent to 20 percent, but for municipalities in St. Louis County, funding was capped at 12.5 percent.³⁰¹ Missouri Governor Jay Nixon signed legislation that reduced the cap for court fines and fees by 25 percent, and prohibits the practice of jailing indigent individuals.³⁰²

Many advocates see the changes made to Ferguson’s municipal court system as exemplary and suggest that other municipalities and states make similar changes to their respective courts.³⁰³ In particular, these advocates argue for states and municipalities to remove the funding incentives to assess fines and fees unfairly by adopting state laws that require the revenue generated from fines and fees to be sent to a state’s general budget.³⁰⁴ The Ferguson consent decree also contains a “fix-it-tickets” provision.³⁰⁵ The provision provides that

if someone is being pulled over and ticketed for a broken tail light, it may make more sense to ask if they would pay the \$200 to fix the tail light than pay the court

challenges of fines and fees. For example, in holding that debt owed by a mother for her son’s involuntary juvenile detention could be discharged in bankruptcy proceedings, the Ninth Circuit cited to the Ferguson Report for the proposition that the imposition of such costs “undermines the credibility of government and the perceived integrity of the legal process.” *Rivera v. Orange Cnty. Prob. Dep’t (In re Rivera)*, 832 F.3d 1103, 1112 (9th Cir. 2016), <http://cases.justia.com/federal/appellate-courts/ca9/14-60044/14-60044-2016-08-10.pdf?ts=1470848686> (at 19).

²⁹⁸ Email from Bains, *supra* note 297.

²⁹⁹ *Id.*

³⁰⁰ Bains, *supra* note 132, at 13.

³⁰¹ Norquist, *supra* note 189, at 3.

³⁰² *Id.* at 3.

³⁰³ *Id.* at 5.

³⁰⁴ *Id.*; Levin, *supra* note 133, at 6.

³⁰⁵ *Briefing Transcript 2* (statement by Bains) at 114.

\$200 or more. And if they come back and do it within a reasonable amount of time, then the case can go away. And that, of course, has a beneficial effect on public safety.³⁰⁶

One advocate argues against referring to the changes made in Ferguson as reform at all, as many of these changes are consistent with existing constitutional principles that the city, and all others, should already have been abiding by.³⁰⁷ In addition, this advocate argues that these changes in Ferguson, and Missouri in general, were “unimpressive” when you consider what had to happen to get the courts to make the changes.³⁰⁸ Thomas Harvey, Co-Founder of Arch City Defenders, a non-profit that represents clients affected by court fines and fees in Missouri, urges the elimination of courts that prosecute statutory violations that usually stem from poverty in low-income communities of color.³⁰⁹ Moreover, Harvey argues in order to end systemic abuses in the courts, society must accept that the poor cannot be punished into compliance when the violation stems from their poverty. If people are, “too poor to get [their] car registered, it does not matter how many times [they] are punished by being stopped, ticketed, jailed, fined, or given community service; until [their] poverty goes away, [they] cannot comply.”³¹⁰

Criminal Enforcement Against Individual Court Personnel

Another enforcement effort the Department could take is to criminally prosecute an individual court officer, such as a judge or prosecutor. Some advocates argue that judges, court personnel, and corrections staff should be criminally prosecuted (under 18 U.S.C. §§ 241 and 242) for incarcerating people who cannot pay.³¹¹ In addition, some believe such prosecutions would go a

³⁰⁶ *Id.* at 114-15.

³⁰⁷ *Briefing Transcript 2* (statement by Harvey) at 95. (“What we’re calling reform represents promises to either follow already well-established law, or simply accept that poor people exist in your jurisdiction. Should we laud this as progress? To quote Malcom X, if you stick a knife in my back nine inches and pull it out six inches, there’s no progress. If you pull it out all the way out, that’s not progress. Progress is the healing of the wound the blow made. And they haven’t even pulled the knife out, much less healed the wound. They won’t even admit the knife is there.”) *Id.*

³⁰⁸ *Id.* (“These promises seem equally especially unimpressive when you consider what had to happen to get the court to make them. Darren Wilson shot Mike Brown, setting off protests that lasted more than a year. People would not go out on the streets. If the QuikTrip had not been set on fire, we wouldn’t even be having this conversation today.”) *Id.*

³⁰⁹ *Id.* at 99. (“How much more testimony do we need before we have the courage to call for the wholesale elimination of courts that prosecute status violations in low-income communities of color that typically stem from poverty, as if they were actual crimes?”) *Id.* at 98.

³¹⁰ *Briefing Transcript 2* (statement by Harvey) at 99. The practices that Thomas Harvey described here as typically referred to as poverty trap and/poverty penalties. The enforcement mechanism on collecting criminal justice debt disadvantages the poor. Poverty traps like warrants and driver’s license revocations have the paradoxically effect of constraining a person’s ability to earn a living. Poverty Penalties attach extra costs that make the poor systemically pay more.

³¹¹ *Briefing Transcript 1* (statement by Harvey) at 139-141. (“[I]f you prosecuted, if the federal government prosecuted one municipal court judge in St. Louis County, that would change the dynamic forever.”) *Id.* at 140.

long way toward addressing the court fines and fees problems, as they would act as a deterrent for other judges.³¹² Additionally, one advocate argues that the Department should do more than partner with states because there have been little to no consequences for individual judges who continue to jail debtors.³¹³

Opponents of this enforcement strategy acknowledge that while the Department can criminally prosecute judges (and that it might be appropriate in egregious cases), it does not make for a successful intervention strategy overall.³¹⁴ These advocates argue that the targeted fines and fees issue needs much more systemic solutions with attention to incentives and structures—such as the use of fines and fees to generate revenue in the first place.³¹⁵ More fundamentally, these actors do not believe that the abuses we observe relating to fines and fees are usually the result of bad actors deliberately trying to violate people’s rights, but rather well-intentioned judges acting out of ignorance.³¹⁶

Need for Additional Statutory Enforcement Authority

This section explores what additional federal statutory authority Congress could provide to address targeted fines and fees. One suggested approach uses a framework modeled after the manner in which the federal government addresses consumer debt collection abuses and recommends that the federal government take a similar approach to combat issues relating to abuses in court fines and fees.³¹⁷

Briefing Transcript 1 (statement by McCabe) at 175. (“[I]t is important that we establish some sort of safeguard on judges to say if you violate a person’s rights there will be repercussions.”) *Id.*

³¹² *Briefing Transcript 2* (statement by Harvey) at 135 (“I think if there were a single federal prosecution of a judge or a prosecutor for knowingly violating the law, I think one, these courts would be gone because no one would take those jobs because they wouldn’t want to take that risk. There would be very few of them left and it would send a real message that we take this seriously.”) *Id.*

³¹³ *Id.* (“[W]e don’t have accountability. And we have not three years, at least, of judges not only in Saint Louis and Missouri but across the country admitting that they impose fines on people and jail people who they knew couldn’t pay. And the result of that was they got more training and a Bench Card.”) *Id.*

³¹⁴ *Briefing Transcript 1* (statement by Foster) at 65. (“[O]f course, the Department could in the case of a judge who was knowingly violating civil rights, prosecute that judge. That would be our least favorite way of resolving this issue. But we have received some complaints with respect to conduct in individual cases, and we are looking at those as seriously as we look at everything else.”) *Id.* at 65-6; see Email from Bains, *supra* note 291.

³¹⁵ *Briefing Transcript 1* (statement by Foster) at 64.

³¹⁶ *Id.*

³¹⁷ Sobol, *supra* note 215, at 14.

Specifically, a federal statute could be enacted to reduce any abuses in the collection of court debt. Just as federal law provides oversight to limit abusive collection practices in the consumer debt context, legislation could also address collectors of court debt and prohibit:

1. Actual or threatened use of incarceration for failure to pay criminal justice debt based on reimbursement of costs or expenses;
2. Actual or threatened use of incarceration for failure to pay fines or restitution unless a judge specifically determines defendant's ability to pay at a hearing where defendant has an opportunity to be represented by counsel;
3. Use of poverty penalties—interest, late fees, installment charges, and collection charges—that arise solely because an individual does not have the ability to pay debt;
4. Use of quota systems for assessing or collecting criminal justice debt;
5. Use of cash bail as the basis for determining whether those arrested should remain in jail;
6. Use of unregulated private companies, including private probation companies;
7. Communications about collection of criminal justice debt with debtors at their places of employment; and
8. Communications about collection of criminal justice debt with third parties.³¹⁸

“Alternatively, if a federal statute is not adopted,” the same researcher argues that, “the DOJ should adopt guidelines and coordinate enforcement and outreach activities with state and local authorities to address abusive criminal justice debt collection.”³¹⁹

³¹⁸ *Id.* at 10.

³¹⁹ *Id.* at 4.

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CHAPTER 5: FINDINGS AND RECOMMENDATIONS

After reviewing the testimony and briefing materials the Commission received in the course of this investigation, the Commission makes the following findings and recommendations:

FINDINGS

Overview

1. The United States Supreme Court has long recognized that punishing persons for the status of poverty is unlawful.
2. Unchecked discretion or stringent requirements to impose fines or fees can lead to discrimination and inequitable access to justice when not exercised in accordance with the protections afforded under the Due Process and Equal Protection Clauses of the United States Constitution.
3. Many jurisdictions now require courts to impose and collect an array of fees for criminal as well as civil justice activities in addition to government programs unrelated to courts.
4. Many jurisdictions also permit courts and municipalities to impose and collect fees for criminal as well as civil justice activities.
5. A recent increase in the imposition of low-level ordinance fines and fees results from multiple factors including police tactics that emphasize enforcement of low-level infractions, the ease of administration and capability of fines and fees to generate needed revenue, political difficulties in raising taxes, and the recent recession.
6. A large percentage of low-level fines are traffic citations. If a jurisdiction's primary goal is to generate revenue rather than promote public safety, it can create an incentive for law enforcement to issue as many citations as possible, contrary to the pursuit of justice.
7. Seventy of the top 100 municipalities in terms of fines and fees as a percentage of overall municipal revenue are in one of six states – Texas, Georgia, Missouri, Illinois, Maryland, and New York. Two states – Texas and Georgia – include over one-third of these municipalities.
8. In almost every state and the District of Columbia, juvenile courts impose court costs, fines, and fees on youth, their families, or both. These costs may increase recidivism, increase the potential of future jail or prison time, exacerbate racial inequality, and increase the economic and emotional distress of low income families.
9. Research has determined that imposing fines and fees on minors and their families is ineffective as a revenue-generating measure, often because minors in the criminal justice system come from indigent families. Research also shows that imposing these fines and fees increases recidivism and economic and emotional hardship on families.
10. Some courts charge for interpreter services, adversely impacting people with disabilities and those with limited English proficiency. In 2010, the Department of Justice issued a letter requiring courts that receive federal funds to provide interpreters free of charge.

Targeting

1. The best available data reflects that municipal fee targeting tends to aggregate in communities of color and, to a lesser degree, in low-income communities. Targeting means these municipalities exploit their poorest citizens by, among other means, using law enforcement as ticketing and collections agencies to increase municipal revenues as distinct from focusing on public safety and civil compliance.
2. Testimony provided to the Commission indicates that some municipalities across the nation target low-income communities to raise revenue. Even when not intentionally targeted, low-income individuals are disproportionately affected by the growing use and increased cost of fines and fees because an inability to pay fines and fees can have severe consequences, including driver's license suspensions, bad credit reports, and jail time.
3. The targeted imposition of fines and fees on low-income communities and communities of color not only impacts the ticketed individuals within those communities, but also impacts the efficacy of and public confidence in the judicial system as a whole.
4. When people feel disrespected or preyed upon by police, they may lose faith in the justice system. If residents do not trust the police, they will be less likely to report crime and cooperate as witnesses, leaving the community less safe.

Ability to Pay Determination

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an ability to pay determination and establishing that the failure to pay was willful.
2. Jurisdictions throughout the United States operate inconsistent policies and practices related to determining ability to pay and consequences following inability to pay fees.

Conflicts of Interest

1. The dependency of courts and government agencies on revenue generated from criminal and civil justice-involved individuals creates conflict of interest issues.
2. Dependence on traffic citations to fund local governments creates an incentive for law enforcement to issue as many citations and fines as possible, regardless of the severity of the offense. Such revenue systems can result in abuse when raising funds replaces public safety as the primary goal of law enforcement.
3. Outsourcing collections to for-profit companies can increase the amount of money individuals owe and aggravates the significant financial burden on those who owe fines and fees unrelated to a justice purpose.
4. Existing state efforts, including for example article IX, sec. 7 of the North Carolina constitution,³²² can serve as models for how de-linking revenue collection and budgeting

³²² Article IX, sec. 7 of the North Carolina statute directs all state agency-collected fines to be funneled into a general fund for state use. The specific text states:

can minimize the potential for conflict of interest from fee collection and prioritize public safety and law compliance.

Data Availability

1. National data on the extent to which individuals are jailed or otherwise penalized because of their inability to pay fee-only offenses are insufficiently developed.
2. A lack of aggregated data prevents stakeholders from fully capturing the pervasiveness of targeted fines and fees and the repetitive impact on individuals within low-income communities and communities of color. Legislators need to understand this data to make sound decisions when considering new fees and fines.

Fee Alternatives

1. The Supreme Court has held that courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees. Alternatives include indigency waivers, payment plans, and workable community service.
2. When community service is an available alternative, childcare access, employment schedule demands, travel, and other factors can affect its viability for low-income persons.
3. While some courts allow offenders to “choose” jail credit in lieu of paying fines and fees and community service, jail credit is not a good alternative and not a real choice for low-income people who face challenges completing community service.

Counsel

1. Lack of counsel in municipal court cases that involve only fines and fees can exacerbate problems that arise when courts fail to conduct ability to pay determinations and consider fee alternatives for indigent defendants. Counsel can assist in presenting evidence regarding a defendant’s ability to pay fines and fees, negotiating lower fines and fees or alternate payment plans, and making sure the defendant understands the implications of any payment commitments made.

Driver’s License Suspensions

1. Failure to pay court fines and fees often results in driver’s license suspensions.

7(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

7(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (2003 423, s.1.)

2. Driver's license suspensions can perpetuate poverty and increase recidivism by forcing individuals to either lose their job, take a lower paying job that does not require driving, or drive illegally. This prevents people from supporting themselves and their families and improving their own lives.
3. Driver's license suspensions for non-payment of fines and fees also raise public safety concerns by unnecessarily increasing the number of unlicensed and uninsured drivers on the road.
4. Some states suspend driver's licenses for failure to pay fines and fees without determining whether the person has the ability to pay the underlying debt.
5. Department of Motor Vehicle, law enforcement, and court resources are wasted on drivers entangled in unpaid fines and fees, taking limited resources away from dealing with truly dangerous drivers.

Department of Justice Enforcement Actions

1. DOJ's consent decree with Ferguson, Missouri resulted in legislative changes that limited the level of funding municipalities in that state could receive from traffic fines.
2. DOJ's patterns and practices investigation of Hinds County, Mississippi jails resulted in the county agreeing not to incarcerate a person for failure to pay fines and fees without confirming that a judge conducted an ability-to-pay inquiry.
3. In *Stinnie v. Holcomb*, a pending lawsuit in Virginia, DOJ filed a statement of interest positing that the suspension of a person's driver's license without proper notice violates the person's Fourteenth Amendment due process right.
4. In March 2016, DOJ sent a "Dear Colleague" letter to state court administrators and Chief Justices to detail best practices regarding the collection of court fines and fees and highlight the importance of due process protections.
5. DOJ's funding for the National Task Force on Fines, Fees, and Bail Practices resulted in developing bench cards for judges to use as they determine a person's ability to pay. The task force also works to draft model statutes, compile and create best practices for the states, and review and revise suggested guidelines for qualifications and oversight of judges in courts created by local governments or traffic courts.
6. DOJ's "Price of Justice" grant program awarded grants to five state-level jurisdiction recipients for \$500,000 each to address issues relating to court fines and fees.
7. "Price of Justice" grant recipients are using their grant money to focus on different ways to improve the collection of fines and fees in their state (e.g. some sites will focus on their technological needs while others will work on the implementation of an ability-to-pay calculator).

State Reforms

1. Many states and municipalities are working toward reforming their policies and practices related to the imposition of fines and fees.
2. In response to DOJ's "Dear Colleague" letter, several states and local jurisdictions have taken affirmative steps to remedy the issues these jurisdictions have found in the collection of fines and fees. This includes several Chief Justices appointing working groups to make recommendations about the issue of fines and fees in their respective state, which in some cases, has led to the introduction of new legislation or court rules.

RECOMMENDATIONS

Ability to Pay Determination

1. Courts and municipalities should establish a standard for evaluating an individual's ability to pay including a presumption of inability to pay for people who are homeless, incarcerated, confined in a mental health facility, juveniles, or whose income is below the poverty level.
2. Courts and municipalities should have effective, readily available, and readily understandable processes for determining indigency before imposing any fines, including provisions for the appointment of counsel as appropriate. Judges should use bench cards to ensure consistent application of ability to pay standards.

Conflicts of Interest

1. States and municipalities should remove the potential for or existence of conflict of interest incentives to assess fines and fees by, for example, ensuring that the revenue generated from fines and fees redounds to a general budget rather than to fund specific municipal or state activities associated with the fee collection.
2. States and municipalities should eliminate the use of for-profit companies to collect court fines and fees.
3. States should use taxpayer dollars generated by all citizens to fund the expansion of courts or other projects and programs, particularly projects and programs unrelated to the underlying offense, because society as a whole benefits from them.

Data Availability

1. DOJ should coordinate and share publicly data collection and analysis of court fines and fees across the country. Such data collection should include the race, gender, and ability status of persons against whom fines and fees are assessed, to determine whether the assessment practices have a disparate impact on the basis of a protected status.

Driver's License Suspensions

1. States should explore alternatives to driver's license suspensions for non-traffic related offenses.
2. States should not suspend a driver's license for failure to pay fines and fees without determining whether a person has the ability to pay.
3. Judges should have authority to exercise discretion to allow alternatives to driver's license suspensions for drivers who owe court fines and fees.

Fee Alternatives and Payment

1. Once a person has been deemed indigent, alternatives to payment should be made available, including for example converting fines and fees into community service or waiving the fines and fees.

2. Where community service is used as an alternative to paying fines and fees, effective accountability mechanisms should apply to ensure that associated conditions, such as transportation to such service or availability of child care, do not operate as bars to completion of the service and that service opportunities that fit with existing jobs or other such constraints are actually available.
3. Options for payment plans and to pay without having to appear in court should also be available to remove barriers to payment when an individual has the ability to pay.

Counsel

4. Courts and municipalities should establish a program to provide counsel at no cost at the imposition of a fine or fee and at an indigency determination as appropriate.

Department of Justice Enforcement Actions

1. DOJ should continue to promote the seven core principles identified in the March 2016 “Dear Colleague” Letter at page 2:
 - a. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;
 - b. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees
 - c. Courts must not condition access to a judicial hearing on the prepayment of fines or fees
 - d. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees
 - e. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections
 - f. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release
2. Courts must safeguard against unconstitutional practices by court staff and private contractors.
3. DOJ should investigate additional jurisdictions that appear to impose fines and fees and jail individuals for their failure to pay fines and fees in an unconstitutional manner, and where appropriate issue reports to incentivize further, national, reform. Such investigations should address within their scope issues such as fees associated with juvenile behaviors, like truancy and curfew violations assessed against parents and guardians, as well as other municipal fines and fees.
4. DOJ should continue to operate a grant program that helps identify and support the development and sharing of best practices related to lawful, effective municipal practices related to imposition of fines and fees.
5. Congress should enact legislation that gives DOJ explicit statutory authority to investigate courts that impose fines and fees and jail individuals for their failure to pay fines and fees in an unconstitutional manner.

6. The DOJ should enforce its guidance requiring courts that receive federal funds to provide interpreters free of charge.

State Reforms

1. States should review their fines and practices to ensure they are in alignment with the seven core principles identified by the DOJ's March 2016 "Dear Colleague" Letter.
2. States and municipalities should serve warrants issued for failure to appear only when the court is open to avoid overnight incarceration.
3. States and municipalities should create effective accountability mechanisms to ensure that local judges and law enforcement officers across all jurisdictions have access to information (such as through bench cards) regarding the constitutional and statutory limitations on imposing fines and fees, mechanisms for determining indigence, availability of discretion in imposition of fines and fees, and alternatives to imposition of fines and fees.
4. States and municipalities should institute clear and effective procedures to provide notice to individuals of their rights when charged fines and fees, including the right to request appointed counsel, to an ability to pay determination, to fine and fee alternatives, and to legal processes such as compliance hearings.

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COMMISSIONERS' STATEMENTS

Chair Catherine E. Lhamon Statement, in which Vice-Chair Timmons Goodson and Commissioner Kladney Concur

The United States Department of Justice has, in recent years, taken vital leadership steps to eradicate profoundly discriminatory practices some local jurisdictions have visited on their communities by, as the Commission report finds, “using law enforcement as ticketing and collections agencies to increase municipal revenues as distinct from focusing on public safety and civil compliance.”¹ As the Commission report documents, the United States has long outlawed these practices, both because they punish persons for poverty status and because, too often, they discriminate against persons on the basis of race. Nonetheless, many communities persist in violating the law and many other communities fail to operate sufficient controls to ensure that they will not violate the law. The DOJ investigation of Ferguson, Missouri following Michael Brown’s tragic death uncovered—and then lowlighted for the nation—devastating intentional race discrimination from some Ferguson city officials and state and local acceptance of those practices even where persons were not overtly complicit in them. DOJ drew national attention to that one local community’s patently discriminatory practices and led to important planned reforms as well as DOJ generation of national guideposts to avoid repetition of those harms in other communities.

An ugly reality confirmed in the Commission investigation, though, is that the Ferguson practices are not unique and in fact are replicated in varying degrees and formats in cities across the country, with similarly detrimental impacts on communities of color, low income communities, residents with disabilities, and the national confidence in a fair and impartial system of justice. Too many municipalities and local court systems have not yet taken to heart even the most recent lessons from Ferguson and from DOJ, leaving Americans still vulnerable to discrimination. The distrust in law enforcement and the justice system that can result from abusive practices not only harms the targeted communities, but also has broad public safety implications that reverberate throughout entire jurisdictions.

The information the Commission received on this topic confirms an ongoing need for national vigilance that includes DOJ active enforcement and leadership to secure constitutional practices for our nation’s vulnerable residents, to prevent recurrence of Ferguson-like preying on persons and ensure satisfaction of our core civil rights promises. Importantly, scholars and leaders from the political right and left underscore the vitality of DOJ enforcement and leadership in this area, as a means to shore up and secure the baseline on which our national confidence in a fair system of justice rests. The strongly bipartisan consensus confirmed during the Commission’s

¹ U.S. Comm’n on Civil Rights, Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications, 2017 [*hereinafter Report*] at 72.

investigation is that the Department of Justice has been a welcome leader of reform and reassessment in this area and the nation's health depends on DOJ continuation of that leadership—through continued grantmaking, generation of guidance, and litigation—for the foreseeable future. The Department's continuing actions, including their statement of interest in a private Virginia lawsuit regarding drivers' license suspensions² and the investigation into Sacramento County, California juvenile court practices,³ send a critically necessary message of watchfulness for constitutional practices.

Many states and local communities have, to their distinct credit, taken their own steps to correct and prevent unlawful targeted fines and fees. These communities stand to benefit from DOJ support for their efforts, as documented both from recipients of DOJ grant support and participants in DOJ investigations as well as from communities that report insufficient capacity to fulfill their aims in this area in the absence of DOJ support.

And, alarmingly, many communities have not yet taken steps necessary to guard against the ugly harms DOJ documented in Ferguson, Missouri and the Commission confirmed elsewhere through its investigation. Even after the infamous spotlight on injustice the nation witnessed in Ferguson, Missouri, and repeated explanations from the highest court in the land regarding core civil rights protections, we now know concretely that Americans across the nation remain vulnerable in communities that lack sufficient controls to guard against their local government preying on them in discriminatory ways. The core function of the United States Department of Justice is to protect against precisely that danger.⁴ The recommendations contained in this report are vital to continuing what must be a national effort to combat unfair and unconstitutional practices in municipal and state courts across the country. The country's most vulnerable populations depend on it.

² *Report* at 45-46.

³ *Report* at 49-50.

⁴ *See* U.S. Dep't of Justice, About DOJ, <https://www.justice.gov/about> (last visited July 25, 2017) (stating that the Department's mission statement includes "to ensure fair and impartial administration of justice for all Americans").

Vice Chair Patricia Timmons-Goodson Statement, in which Chair Lhamon and Commissioners Adegbile and Kladney Concur¹

Justice, if it can be measured, must be measured by the experience the average citizen has with the police and the lower courts.

— Justice Brennan, 1971.²

Introduction

Among the gravest injustices uncovered by the Department of Justice in Ferguson, Missouri was the finding that the *courts* played a pivotal role in illegally enforcing fines and fees to raise revenue. Such practices ensnared nonviolent citizens in a legal system geared to generating municipal dollars, not public safety. While the entire Ferguson report made alarming reading, the section detailing the due process violations by the courts was the most chilling. Ferguson was constitutionally entitled to a neutral arbiter of justice. What it got was a system where courts and judges served as debt collectors.

As a 28-year veteran of the North Carolina judiciary, I view myself as “an ambassador for the rule of law in a democratic society,”³ with the moral obligation to speak when “our judicial system falls short.”⁴ A fair, impartial, and independent judiciary is essential to the safety, security, and prosperity of this nation.

In 1957, Congress authorized the United States Commission on Civil Rights (the “Commission”) to “inform the development of national civil rights policy and enhance enforcement of federal civil rights laws.”⁵ The Commission is statutorily mandated to report on civil rights issues in the justice system. During its 60 year existence, the Commission has issued a number of reports about the

¹ Chair Lhamon and Commissioners Adegbile and Kladney concur in the spirit and substance of the Vice Chair’s statement while acknowledging that her observations as a former judge are her unique professional judgements regarding the special importance of the issues addressed in this report.

² *Mayer v. City of Chicago*, No. 70-5040 (1971) (referencing Murphy, *The Role of the Police in Our Modern Society*, 26 *The Record of the Association of the Bar of the City of New York* 292, 293 (1971)).

³ Justice Robert H. Edmunds Jr. & L. Neal Ellis Jr., *An Interview with Justice Patricia Timmons-Goodson* [*hereinafter Timmons-Goodson Interview*], 51 *JUDGES J.* 4, 6 (2012).

⁴ *Id.*

⁵ See U.S.C. § 1975a(2)(A) (2013) (The Commission has a duty to “study and collect[] information” concerning “discrimination or denials of equal protection of the laws under the Constitution of the United States because of...national origin ... or in the administration of justice.”).

administration of justice, including police practices.⁶ By this report⁷, the Commission fulfills its Congressional charge to study and collect information relating to the administration of justice.

While the Commission's Report thoroughly presents the complexity of targeting low-income communities of color with fines and fees, this statement focuses attention on the *judicial* obligation to administer justice fairly and impartially. First, the statement presents a historical context for tension between the courts and African Americans. Second, the statement discusses themes that emerged during the Commission's investigation about the complicity of judges in discharging their duties in inequitable ways. Finally, the statement calls for judicial leadership in eliminating the targeting of low-income communities with fines and fees.

Historical and Contemporary Tension between the Courts and African Americans

The courts have been the both the greatest foe and strongest ally of African Americans in their struggle for citizenship. Two seminal cases illustrate this dichotomy. In 1857, the Supreme Court issued the landmark decision in *Dred Scott v. Sandford*, holding that African Americans could not be American citizens, and therefore lacked standing to sue in federal court.⁸ The *Dred Scott* holding is often distilled to the maxim that the black man had “no right which the white man was bound to respect.”⁹

But nearly a century later, in *Brown v. Board of Education*, the Supreme Court held that separate but equal public schools were unconstitutional.¹⁰ The slow implementation of school integration followed. The *Brown* decision was a momentous victory for civil rights. It exemplified the potential positive influence the courts could exercise on the African American community.

Today, statistics show that the African American community places the lowest level of trust in the United States court system. David Rottman and Randall Hansen studied public perceptions of Whites, African Americans, and Latinos regarding courts. They found that while a “majority of recent court users believe that the courts always or usually use fair procedures, African Americans with recent court experience report significantly less fairness than do Whites and Latinos.”¹¹ In 2016, the National Center for State Courts conducted a comparative study that found that 57% of

⁶ U.S. Comm'n on Civil Rights, *Revisiting Who Is Guarding the Guardians? A Report on Police Practices and Civil Rights in America* (Nov. 2000) available at <http://www.usccr.gov/pubs/admin.php>; The Commission's State Advisory Committees have also issued several reports about the administration of justice at the state-level.

⁷ U.S. Comm'n on Civil Rights, *Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications*, 2017 [hereinafter *Commission's Report*].

⁸ *Scott v. Sandford*, 60 U.S. 393, (1857).

⁹ *Id.* at 407.

¹⁰ *Brown v. Bd. of Educ.*, 349 U.S. 294, (1954).

¹¹ David B. Rottman & Randall M. Hansen, *How Recent Court Users View the State Courts: Perceptions of Whites, African-Americans, and Latinos* (2000), available at <http://www.flcourts.org/core/fileparse.php/243/urlt/perceptions2.pdf>.

Americans believe that the race of a judge influences the determination of a case. The data highlighted a significant racial gap: 51% of whites saw some impact, compared to 76% of African Americans.¹²

To appreciate the magnitude of distrust by African Americans towards the court system it is important to contextualize the historical relationship between the courts and the community. Discriminatory policing and sentencing policies, such as the war on drugs, mass incarceration, and the collections of fines and fees have disproportionately affected the African American community for decades.¹³ This disparate impact has resulted in a high level of African American interaction with the court system stemming from policies the community views as fundamentally unfair. Communities of color are “represented at disproportionately high rates in the criminal justice system, but the judges that hear these cases are disproportionately white.”¹⁴

Judicial diversity, or lack thereof, therefore plays a large role in the culture of distrust towards the court system seen in communities of color. African Americans, and minorities in general, believe that they are not represented within the judicial system. People of color represent 38% of the general population, but only 20% of state judges. In 16 states, less than one in ten state judges are people of color.¹⁵ Statistically, therefore, courts are not representative of the population that they serve. This divergence contributes to mistrust: marginalized communities feel that the judges overseeing their cases do not share their interests or values. Therefore, lack of representation on the bench leads to negative perceptions of the court as a whole.

In the past few years the relationship between the criminal justice system and the African American community has largely been defined by the deaths of African American citizens, such as Eric Garner and Michael Brown, along with numerous others, at the hands of police officers. The distrust of police officers extends to the courts when the courts continually exonerate police officers, particularly where video evidence allows observers to draw their own conclusions.¹⁶

¹²National Center for State Courts, *Annual National Tracking Survey Analysis* (2016), available at http://www.ncsc.org/~media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/SoSC_2016_Survey_Analysis.ashx.

¹³ Lisa Foster, Meeting, U.S. Comm’n on Civil Rights, Wash., D.C., Mar. 18, 2016, transcript [hereinafter Briefing Transcript 1], p. 64 (noting that since the 1980s “this wave of new fees and fines and enforcement came into being in conjunction with changes in our criminal justice system.”)

¹⁴ Michele Jawando & Allie Anderson, *Racial and Gender Diversity Sorely Lacking in America’s Courts*, Sep. 15, 2016, available at <https://www.americanprogress.org/issues/courts/news/2016/09/15/144287/racial-and-gender-diversity-sorely-lacking-in-americas-courts/>.

¹⁵ Tracey George & Albert Yoon, *The Gavel Gap: Who Sits in Judgment on State Courts?* (2016), available at <http://gavelgap.org/pdf/gavel-gap-report.pdf>.

¹⁶ Letitia James, *Prosecutors and Police: The Inherent Conflict in Our Courts*, MSNBC, Dec. 5, 2014, available at <http://www.msnbc.com/msnbc/prosecutors-police-inherent-conflict-our-courts>.

These high profile instances have intensified African American distrust of the courts, due to “the perception that the perpetrators of violence face no consequences for their actions...”¹⁷

The events in Ferguson, Missouri present a cautionary tale of the relationship between the criminal justice system and communities of color. Distrust balloons when courts are perceived as operating in conjunction with law enforcement. The issue is further exacerbated when the policed communities are not appropriately represented within the law enforcement or judicial systems.

The Rottman and Hansen study also incorporated questions to gauge whether or not the public supports a changing role for the courts. These questions including queries on topics such as hiring social workers, requiring people to return to court to talk to a judge about progress in a treatment program, taking responsibility for making sure local agencies provide proper help to people with drug/alcohol abuse, and factoring in medical knowledge regarding emotional problems when adjudicating judicial cases.

In each instance, the African American community was more receptive to these proposals than the White or Latino communities.¹⁸ This data illustrates that while the African American community in general has a greater lack of trust in the court system, it also believes in the efficacy of many possible changes that would help make the court more fair and trustworthy moving forward.

The Role of Judges in Unjust Administration

During a review of briefing transcripts and research articles, two themes emerged to explain the degree to which judges are administering fines and fees in unjust ways. I explore these themes below.

1. Some judges use ability to pay hearings as an opportunity to humiliate or to define indigence in a way that harms both the individual and the integrity of the courtroom.

The Commission heard testimony from panelists who detailed how some judges use inability to pay hearings as an opportunity to humiliate people in the courtroom. Jeanine McCabe explained that, “this is something that happens across the country and day in and day out we have judges who are specifically humiliating our clients.”¹⁹ As an example, McCabe recollected a judge telling her client, ““that’s [a] nice pair of earrings,’ ‘did you try and pawn them, and if you didn’t that demonstrates an ability to pay.””²⁰ McCabe added that some judges say “to other clients that’s a

¹⁷ Liz Adetiba & Anna Almendrala, *Watching Videos of Police Brutality Can Traumatize You, Especially If You’re Black*, Huffington Post, Sep. 20, 2016, http://www.huffingtonpost.com/entry/watching-police-brutality-videos_us_577ee9b3e4b0344d514eaa5d (quoting Phillip Atiba Goff).

¹⁸ Rottman & Hansen, *supra note* 11.

¹⁹ McCabe, Briefing Transcript 1, p. 174.

²⁰ *Id.*

nice pair of Nike shoes, they look new, hand them over. And that has actually happened, where clients have been forced to remove their shoes to give it to the court.”²¹

In addition, Alexes Harris testified that “[judges] ask women about their manicures, how much did you spend on your manicure. They ask people about how . . . many packs of cigarettes [they [purchase] is a common way to assess how much money they are wasting each month that could be used towards their legal financial obligations.”²²

These judicial acts should never take place. Humiliation of citizens has no place in the courtroom. One mortifying courtroom encounter can lead to distrust in the courts spanning generations. Too many citizens see justice at a very low level. For it is in the municipal courts around America that distrust is in the atmosphere, rather than the sweet fragrance of justice. A judge’s respect for those who submit to the authority of the court is as essential as the judge’s respect for the law. Both are critical to the legitimacy of the judiciary. Thus, judges must maintain a level of discourse in their courtrooms that balances direct dialogue with respect for the dignity of individuals who appear before them.

2. Many judges may be unaware that imposing fines and fees without an ability to pay hearing is unconstitutional.

The Commission’s Report thoroughly detailed the United States Supreme Court’s guidance about the collection of fines and fees. The Supreme Court has long recognized that punishing persons for the status of poverty is unlawful. In *Tate v. Short*, the Court distinguished between a debtor’s willful failure to pay and their inability to pay and set forth the need for an ability-to-pay inquiry.²³ In *Bearden v. Georgia*, the Supreme Court found that “depriv[ing] a probationer of his conditional freedom simply because, through no fault of his own he cannot pay a fine . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment.”²⁴ Taken together, Supreme Court constitutional doctrine clearly requires lower courts to investigate a person’s ability to pay and to avoid jailing for indigence.

Judges violate the Constitution when they fail to inquire about ability to pay, regardless of a judge’s excuse for the failure. The Commission heard testimony from various panelists debating whether judges willfully ignore the constitution, or simply lack awareness of the constitutional implications of denying an ability to pay hearing. On one hand, “. . . local governments either intentionally flout this clearly established law, are woefully ignorant of it, or simply are unsure how to apply it.”²⁵ On the other hand, Lisa Foster, a former state court judge, who at the time of the March 2016

²¹ *Id.*

²² Alexes Harris, Briefing Transcript 1, p. 182.

²³ Commission’s Report, p. 15 (citing *Tate v. Short*, 401 U.S. 395, 398 (1971)).

²⁴ Commission’s Report, p. 15 (citing *Bearden v. Georgia*, 461 U.S. 660, 672-3 (1983)).

²⁵ Nusrat Choudhury, Briefing Transcript 1, p. 31.

briefing was a DOJ official, recounted an anecdotal story in which the Chief Justice of Texas found that the vast majority of his municipal court judges were “chagrined and completely embarrassed to realize what they were doing was unconstitutional.”²⁶

But what is most glaring is that the U.S. Supreme Court’s decisions regarding enforcing payment are decades old. Lower court judges cannot claim to lack the knowledge of the Supreme Court’s decades-old decisions. Lack of awareness of an individual’s rights still leads to complicity in unjust administration because judges are accountable for knowing the law. As one panelist stated, “ignorance is not [an] excuse and you cannot intentionally deprive people of their constitutional rights when you are supposed to be the very person enforcing them.”²⁷

A Call for Judicial Leadership

I call on judges to provide the leadership necessary to eliminate the targeting of low-income communities of color with fines and fees. In so doing, two areas emerge where judicial leadership might originate.

- 1. Although judges are tasked with administering the very fines and fees that are at issue, the opinions and expertise of judges are necessary to bring about change.**

The Commission heard testimony from several panelists that emphasized how judges are taking a leadership role in developing solutions to the imposition of excessive fines and fees on low-income communities. The Department of Justice and state-level court administrators included judges in comprising working sessions to address the fines and fees issue. Foster detailed the convening of such a working session that included judges and court administrators as well as other stakeholders. According to Foster, the goal of the working session was, “to talk with justice system stakeholders about the issues of fines and fees, to highlight some of the reforms that have already taken place throughout the country, and to talk specifically about what the Department of Justice could do to help state and local courts make needed changes.”²⁸ Other panelists detailed task forces and study groups comprised of judges and state court administrators who are drafting model statutes, court rules, policies, and procedures and serving as a clearinghouse for best court practices.²⁹ Finally, panelists explained that some task forces are “making recommendations that a cannon of ethics apply [to judges] and that all municipal court judges are subject to whatever the state’s disciplinary proceedings are.”³⁰

²⁶ Foster, Briefing Transcript 1, p. 64.

²⁷ McCabe, Briefing Transcript 1, p. 175.

²⁸ Foster, Briefing Transcript 1, p. 17.

²⁹ Harvey, Briefing Transcript, p. 156; Martha Wright, Meeting, U.S. Comm’n on Civil Rights, Wash., D.C., Mar. 17, 2017, transcript [hereinafter Briefing Transcript 2], p. 29; Cynthia Delostrinos, Briefing Transcript 2, p. 34-35.

³⁰ Foster, Briefing Transcript 1, p. 65.

Judges are taking a leadership role in other ways as well. The Commission heard testimony from two panelists about how judges lead when they suspect that fines and fees are harmful but lack authority to provide appropriate recourse. Vikrant Reddy, Senior Research Fellow at the Charles Koch Institute, provided testimony that a small town in Illinois charges a \$30 nonrefundable fee upon arrest. According to Reddy, the dissenting judge wrote that “\$30 while perhaps a modest amount to ‘the governing class in our society including lawyers and judges’ is nevertheless equivalent to the federal minimum wage for more than half a day of work.”³¹ David Slayton, Administrative Director of the Texas Office of Court Administration, testified that Texas Judicial Council is recommending legislative reform which would provide judges the express authority to waive fines and fees.³²

2. Judges must create cultural change in their courtrooms by instituting standards and providing training for all judges regarding the imposition of fines and fees.

The leadership that I call for is actually a cultural shift that must permeate all judges and courtrooms. A cultural shift will ensure that standards are generated via bench cards, guidelines for ability to pay inquiries, and judicial training.

Promising reform is taking place in Mississippi and Texas. Biloxi judges now use a bench card that guides them from the initial appearance to sentencing enforcement. Additionally, Biloxi judges consider ability to pay at the sentencing phase. As Nusrat Choudhury of the American Civil Liberties Union testified, Biloxi judges “will presume that someone is unable to pay when they earn \$125 or lower than the federal poverty guideline, when they are homeless, incarcerated, or reside in a mental health facility.”³³ David Slayton, Administrative Director of the Office of Court Administration in Texas, testified that the Texas Office of Court Administration is building an automated tool to assist judges in determining ability to pay.³⁴

Although disciplining or prosecuting judges may cause a positive effect in bringing about change in some courtrooms³⁵, a better option is to provide judicial training for all judges. Foster argues that there is a need for judicial training because “judges operate in institutions”.³⁶ As an example

³¹ Reddy, Briefing Transcript 1, p. 27.

³² Slayton, Briefing Transcript 2, p. 23.

³³ Choudhury, Briefing Transcript 1, p. 35.

³⁴ Slayton, Briefing Transcript 2, p. 22; see also, Martha Wright, Briefing Transcript 2, p. 29 (discussing how judges are assisting in the development of an automated ability to pay assessment tool).

³⁵ Harvey, Briefing Transcript 1, p. 138 (arguing for the federal government to prosecute a judge as a way to bring about change in the jailing of individuals unable to pay their fines and fees); Foster, Briefing Transcript 1, p. 65 (arguing that prosecuting a judge is the DOJ's least preferred option for dealing with the fines and fees issue); see also, Foster, Briefing Transcript 1, p. 63 (noting that every state has a public commission responsible for disciplining judges or prosecuting judges).

³⁶ Foster, Briefing Transcript 1, p. 64.

of such training, Slayton testified that Texas judicial educators will deliver a curriculum to judges across the state that will present the law and best practices for fines and fees.³⁷

Conclusion

[T]he harm caused by unlawful practices . . . can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape. . . . in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.³⁸

There is a problem when judges violate the constitutional rights of citizens appearing before them. “All the rights secured to the citizens under the Constitution are worth nothing, and are mere bubble, except guaranteed to them by an independent and virtuous judiciary.”³⁹ In order to fulfill their critical mission in a democratic government, judges must accept responsibility and assume the leadership necessary to bring about change.

³⁷ Slayton, Briefing Transcript 2, p. 22.

³⁸ U.S. Department of Justice, *Dear Colleague Letter*, Mar. 14, 2016, p. 1-2 available at <https://www.justice.gov/crt/file/832461/download>.

³⁹ President Andrew Jackson made this statement in a letter to his nephew in 1822.

Commissioner Karen K. Narasaki Statement, in which Vice-Chair Timmons Goodson Concurs

Introduction

Our report only touched on the problematic issue of surcharges¹, which are distinct from fines and fees. Fines are financial penalties imposed for criminal convictions or civil infractions.² Fees are financial obligations imposed in order for the government to recoup associated costs of the criminal justice system.³ Surcharges are also financial obligations, but do not serve any criminal justice function.⁴ Instead, surcharges operate as a “substitute taxation system” that often finances unrelated government functions or state general funds.⁵ In some cases, states have hundreds of both state and local funding streams for fines, fees and surcharges, meaning that lawmakers are likely unaware of the tremendous cumulative impact that surcharges can have.⁶

Surcharges are often imposed on relatively small base fines and for minor violations that can result in a cycle of insurmountable debt and poverty for low-income defendants. For example, in Texas, Devin Mitchell drove her deceased sister’s car, but did not know the car was not insured.⁷ Although she immediately paid the ticket she incurred, she was unaware of the Texas Driver Responsibility Program (DRP), which tacked on a \$250 annual surcharge for the next three years.⁸ Because she failed to pay those surcharges, her driver’s license was suspended, but she still had to drive to work.⁹ Without a license, she could not obtain car insurance or have her car inspected, which led to even more tickets and surcharges.¹⁰ Ms. Mitchell has since paid thousands of dollars towards

¹ Sometimes called assessments.

² CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCH., CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR POLICY REFORM 6 (2016), <http://cjpp.law.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf> [hereinafter CRIMINAL JUSTICE DEBT].

³ *Id.*

⁴ *Id.* at 12.

⁵ *Id.* at 6, 12.

⁶ See MARCUS NIETO, CAL. RESEARCH BUREAU, WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA? 28 (2006), <https://www.library.ca.gov/crb/06/03/06-003.pdf>; MAC TAYLOR, CAL. LEGISLATIVE ANALYST’S OFFICE, IMPROVING CALIFORNIA’S CRIMINAL FINE AND FEE SYSTEM 14-17 (2016), <http://lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf>.

⁷ Steve Blow, *Driver Surcharges Throw too Many Texans into Financial Chaos*, DALLAS NEWS, August 12 2014, <https://www.dallasnews.com/news/news/2014/08/12/driver-surcharges-throw-too-many-texans-into-financial-chaos>.

⁸ *Id.* See also Kendall Taggart & Alex Campbell, *Their Crime: Being Poor, Their Sentence, Jail*, BUZZFEED NEWS, October 7, 2015, https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor?utm_term=.nbn7x9nQ8#.cmB5LVygQ (further examples of exorbitant surcharges under the Texas Driver Responsibility Program).

⁹ Blow, *supra* note 7. Annual surcharges can be assessed for up to three years. Texas Department of Public Safety, Driver Responsibility Program, <http://www.dps.texas.gov/DriverLicense/drp.htm> (last visited July 31, 2017).

¹⁰ Blow, *supra* note 7.

her surcharges, but she lost her job and despite her best efforts, cannot fully pay off what she owes.¹¹

When combined with indigency and jail time for non-payment, surcharges are more concerning than either fines or fees because they can severely punish poor and minority communities for revenue-generation purposes rather than for criminal justice purposes.¹² Accordingly, federal, state, and local governments should work to reform or end surcharge practices.

The Growing Use of Harmful Surcharges

States have increased their reliance on surcharges despite their disproportionate impact on low-income communities of color.¹³ In fact, in some states, surcharges have doubled or even tripled in recent decades.¹⁴ For example, in 1982 the New York enacted mandatory surcharges of \$75 for a felony and \$25 for a misdemeanor.¹⁵ Today, the surcharge stands at \$300 for a felony and \$175 for a misdemeanor, in addition to a \$95 surcharge for violations.¹⁶

Surcharges can be especially worrying because in many cases they directly fund court and law enforcement programs, which can incentivize police officers to increase arrests and tickets and judges to levy fines, fees, and surcharges.¹⁷ For example, in Illinois, all offenses are subject to a mandatory \$30 surcharge that goes to funds for police services, the prosecuting attorney's office, as well as the court itself.¹⁸

Surcharges can also pose a serious problem at the municipal level. For example, Iowa imposes a mandatory 35% surcharge on all criminal penalties, excluding parking violations.¹⁹ The state receives 95% of the revenue, and the county or city receives 5%.²⁰ However, individual cities are

¹¹ *Id.*

¹² *People v. Guerrero*, 12 N.Y.3d 45, 49 (N.Y. 2009) (discussing how surcharges are non-punitive in nature).

¹³ Sarah Shannon, Legal Financial Obligations: Recent Reforms in Eight States, Submitted Written Statement to the U.S. Commission on Civil Rights 3 (2017), available at https://securisync.intermedia.net/us2/s/folder?public_share=kYWfwhhUK2KP_ip3l6zAab&id=LzMtMTctMTcgTXVuY2lwYWwgRmVlcyBCcmllZmluZy9QYW5lbCAzLURhdGEgYW5kIFBvbGljeSBSZWMvU2FyYWggU2hhbm5vbg%3D%3D (select Sarah Shannon-Testimony.pdf).

¹⁴ ALEXES HARRIS ET AL., MONETARY SANCTIONS IN THE CRIMINAL JUSTICE SYSTEM 82 (2017), available at <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf>. Dr. Harris appeared before the Commission on this issue at our 2016 briefing.

¹⁵ *Id.* at 147-8.

¹⁶ *Id.* at 148.

¹⁷ U.S. COMM'N ON CIVIL RIGHTS, TARGETED FINES AND FEES AGAINST LOW-INCOME COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 67 (2017) [*hereinafter* FINES & FEES].

¹⁸ HARRIS ET AL., *supra* note 14, at 81. Also, in Illinois, \$15 of every \$40 in traffic fees goes to various police-related funds. *Id.*

¹⁹ IOWA LEGISLATIVE SERVICES AGENCY, CRIMINAL FINE AND SURCHARGE DISTRIBUTION 1 (2009), available at <https://www.legis.iowa.gov/docs/publications/FT/10573.pdf>.

²⁰ *Id.* at 2.

empowered and incentivized to enact more local ordinances because they receive an additional 5% of the surcharge for violations of local ordinances.²¹

The Discriminatory Impact of Fines, Fees, and Surcharges

Tacking on additional surcharges to already hefty fines adds substantial financial consequences to incarceration and disproportionately punishes poor and minority defendants ticketed for even minor offenses. Surcharges affect poor communities of color the most. Black and Latino men with low levels of education, employment, and wealth are most likely to be caught up in the criminal justice system.²² Not only do people of color account for almost two-thirds of the state prison population, but “incarceration [has] increased most among those whose jobless rates were highest.”²³ As discussed in our report, race correlates with municipalities that rely on fines and fees to obtain a large proportion of their revenue.²⁴

The many nonfinancial consequences of failing to pay can be severe.²⁵ Nonpayment of any legal financial obligation (LFO) can lead to a driver’s license suspension in at least eight of the fifteen states with the highest prison populations.²⁶ Georgia and Washington directly restrict voting rights for nonpayment, while Illinois, Minnesota, Missouri, and New York indirectly do so by incarcerating or extending probation or parole for nonpayment.²⁷ Unpaid LFOs can also lead to bad credit, which can affect one’s employment prospects,²⁸ as well as prevent families from renting or purchasing a home²⁹.

The failure or inability to pay, combined with judicial reluctance to conduct ability to pay determinations, often results in low income people ending up in jail, either involuntarily or because

²¹ *Id.*

²² Shannon, *supra* note 13, at 10.

²³ BRUCE WESTERN, RUSSELL SAGE FOUND., PUNISHMENT AND INEQUALITY IN AMERICA 78 (2014), <http://isites.harvard.edu/fs/docs/icb.topic1458086.files/Western.pdf>.

²⁴ FINES & FEES, *supra* note 17, at 19-20. See also Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 THE JOURNAL OF POLITICS 1090 (2017) (analysis of over 9,000 cities found use of fines to generate revenue is widespread and highly related to the percentage of black residents).

²⁵ FINES & FEES, *supra* note 17, at 35-40.

²⁶ CRIMINAL JUSTICE DEBT, *supra* note 2, at 24. The Commission received testimony that noted that because driving is necessary for many people to get to work, suspending driver’s licenses for nonpayment makes repayment of accumulating debt less likely. FINES & FEES, *supra* note 17, at 36. Additionally our report suggests that failure to pay fines and fees is “the primary reason for driver’s license suspensions.” *Id.* at 36. In 2017, California precluded courts from suspending driver’s licenses for failing to pay fines. *Id.* at 37.

²⁷ CRIMINAL JUSTICE DEBT, *supra* note 2, at 24.

²⁸ Amy Traub & Sean McElwee, Demos, *Bad Credit Shouldn’t Block Employment: How to Make State Bans on Employment Credit Checks More Effective* (2016), <http://www.demos.org/publication/bad-credit-shouldnt-block-employment-how-make-state-bans-employment-credit-checks-more-e>.

²⁹ FINES & FEES, *supra* note 17, at 35-36.

there are no other alternatives.³⁰ In New York and Washington, courts may incarcerate even misdemeanor offenders who fail to pay surcharges.³¹

Increased Reliance on Surcharges is Poor Policy and Not Cost Effective

Surcharges are implicitly and sometimes explicitly levied for the sole purpose of raising state funds.³² For example, Texas initially passed the DRP to fund a statewide transportation network.³³ After the state canceled the project it evenly split DRP proceeds to fund uncompensated care at Texas trauma centers and the state's general revenue fund.³⁴ In Arizona, there is an 83 percent surcharge on original fines and fees, which supports not only criminal justice and DNA testing funds, but also clean elections and medical services funds.³⁵

However, in many cases, when taking into account the costs of policing, jail and incarceration, job loss, family separation, and other harms levied on impacted communities, surcharges and other LFOs may fail to actually generate net revenue.³⁶ For example, in 2012, Tennessee passed a \$450 criminal record expungement surcharge, which was intended to raise \$7 million annually, but only raised an average of \$130,000.³⁷

All of society benefits from the programs funded by these surcharges. With so many unable to pay surcharges, the justice system, and government in general, would be better served if surcharges were diffused among the entire tax base, instead of being tacked on as additional punishments that disproportionately affect the most vulnerable.³⁸

³⁰ *Id.* at 39 (discussing how some offenders “choose” jail instead of paying fines and fees); *Id.* at 73 (“While some courts allow offenders to “choose” jail credit in lieu of paying fines and fees and community service, jail credit is not a good alternative and not a real choice for low-income people who face challenges completing community service.”).

³¹ HARRIS *ET AL.*, *supra note*, 14 at 204, 153.

³² *Id.* at 148. New York's highest court, when upholding the state's mandatory surcharge program, decided that the surcharge scheme was enacted in order to “avert the loss of an estimated \$100 million in State tax revenues.” *Guerrero*, 12 N.Y.3d at 49. The state enacted these surcharges in order to “shift costs of providing services to victims of crime from law abiding taxpayers and toward those who commit crimes.” *Id.*

³³ SCOTT HENSON, TEX. CRIMINAL JUSTICE COALITION, REPEAL TEXAS' DRIVER RESPONSIBILITY PROGRAM AND IDENTIFY ALTERNATIVE FUNDING SOURCES FOR TRAUMA HOSPITALS 1 (2015), *available at* <https://www.texascjc.org/system/files/publications/TCJC%20Fact%20Sheet%20SB%2093%20%28Driver%20Responsibility%20Program%29.pdf>.

³⁴ *Id.*

³⁵ ARIZONA ADMIN. OFFICE OF THE COURTS, COURT SERVS. DIV., PENALTY ASSESSMENT AND SURCHARGE GUIDE 4-5 (2015), *available at* <http://www.azcourts.gov/Portals/27/SurchrgGuide012015.pdf>. The state also charges a flat \$20.00 Probation Assessment, \$13.00 2011 Additional Assessment, and \$2.00 Victims' Rights Enforcement Assessment. *Id.* at 5.

³⁶ FINES & FEES, *supra note* 17, at 31-32.

³⁷ CRIMINAL JUSTICE DEBT, *supra note* 2, at 9.

³⁸ *Id.* at 12.

Necessary Reforms

As we noted in our report, it is easier for states and local jurisdictions to raise funds through LFOs rather than increase general taxes.³⁹ Federal oversight is critical to investigate and end abusive and unconstitutional LFO practices. Our report indicates there are many municipalities that rely heavily on fines, fees, and surcharges.⁴⁰ Municipalities like Ferguson may be the tip of the iceberg.

The Department of Justice's investigative, consent decree, and legal guidance functions have a proven track record of spurring executive, legislative, and judicial reforms to address problematic LFO practices.⁴¹ The Department of Justice must increase this work and must focus more directly on surcharges. Moreover, the Department should continue to provide financial support to working groups such as the National Task Force on Fines, Fees, and Bail Practices to help states develop reasonable laws and policies that further the goals of the criminal justice system while not exploiting our country's most vulnerable populations.

State and local lawmakers should eliminate surcharges entirely and fund the government through the ordinary budget process.⁴² To the extent surcharges are used, lawmakers should ensure that proceeds from surcharges are allocated to the state's general fund instead of specifically to the courts or police in order to reduce the perverse incentive created by surcharges.⁴³ States should also make surcharges discretionary and require judges to assess a defendant's ability to pay before imposing surcharges.⁴⁴

Similarly, courts must enact rules that allow judges to impose payment alternatives, such as waivers or community service⁴⁵, instead of harmful and indiscriminate mandatory surcharges.⁴⁶ Furthermore, courts must adhere to the Supreme Court's holding in *Bearden v. Georgia*, which requires that judges assess whether a defendant is able to pay a fine, but "willfully" refuses to do

³⁹ FINES & FEES, *supra* note 17, at 2, 5, and 7.

⁴⁰ *Id.* at 76.

⁴¹ *Id.* at 64, 74.

⁴² CRIMINAL JUSTICE DEBT, *supra* note 2, at 12.

⁴³ FINES & FEES, *supra* note 17, at 72. California's Legislative Analyst's Office agreed, recommending that the California legislature deposit almost all fine and fee revenue into the state general fund. *See* TAYLOR, *supra* note 6, at 20.

⁴⁴ CRIMINAL JUSTICE DEBT, *supra* note 2, at 16. Texas now allows indigent individuals to apply to waive their surcharges. Tex. Dep't of Pub. Safety, Indigency Program, <https://www.dps.texas.gov/DriverLicense/IndigencyProgram.htm> (last visited July 31, 2017). Appendices A and B list samples of discretionary and mandatory surcharges.

⁴⁵ FINES & FEES, *supra* note 17, at 73.

⁴⁶ CRIMINAL JUSTICE DEBT, *supra* note 2, at 24-5.

so, before imposing jail time for nonpayment.⁴⁷ Courts should also recommend that surcharges be eliminated.⁴⁸

It is clear that surcharges are a harmful and discriminatory method of revenue generation. And like fines and fees, surcharges can create a serious conflict of interest between the goals of the criminal justice system and revenue collection. Therefore, all stakeholders must work together to end unjust surcharges.

⁴⁷ Joseph Shapiro, *Supreme Court Ruling Not Enough to Prevent Debtors Prisons*, NPR, May 21, 2014, <http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons>. Although the Supreme Court requires trial courts to determine whether there was willful nonpayment before imposing jail time, the standards for what constitutes willfulness set by individual judges vary greatly. *Id.* States have also created task forces on fines and fees, including Arizona, Illinois, and Massachusetts. Massachusetts's task force recommended using participation in public assistance programs as evidence of individual inability to pay. FINES & FEES, *supra note 17*, at 55.

⁴⁸ For example, the Supreme Court of Missouri Municipal Division Work Group, which was created in the wake of the Department of Justice's Ferguson investigation, recommended to the Missouri General Assembly to effectively eliminate surcharges by keeping them "at a level sufficient, but no greater than, that required to offset the actual costs of an appropriate proportion of routine court operations, but not the other expenses of municipal government, including without limitation expenses associated with law enforcement and prosecution." MUN. DIV. WORK GROUP, SUPREME COURT OF MO., REPORT OF THE MUNICIPAL DIVISION WORK GROUP TO THE SUPREME COURT OF MISSOURI 8 (2016), <http://www.courts.mo.gov/file.jsp?id=98093> (*hereinafter* REPORT TO THE SUPREME COURT OF MISSOURI). It also recommended the "General Assembly grant to municipalities sufficient taxing authority to cover the reasonable costs of law enforcement." *Id.*

Appendix A:

SAMPLE OF DISCRETIONARY SURCHARGES BY STATE⁴⁹

State	Type of Offense	Surcharge	Fund
MO	Court appearance	\$8, \$10, or \$20, depending on court	Civil Legal Services Fund
MO	All, except traffic violations	\$15, \$30, or \$60, depending on charge	DNA Profiling Analysis
MO	All	\$7.50	Crime Victims' Compensation Fund
MO	All	\$1.00	Independent Living Center Fund
MO	All	\$4.00	Prosecuting Attorneys & Circuit Attorneys Retirement Fund
MO	All	\$2.00	Peace Officer Standard and Training Fund
MO	All	\$1.00	Prosecuting Attorney Training Fund
MO	All	\$3.00	Sheriff's Retirement Fund
MO	All	\$2.00	Brain Injury Fund
MO	All	\$1.00	Motorcycle Safety Trust Fund
MO	All	\$2.00	Spinal Cord Injury Fund ⁵⁰
WA	Misdemeanor & felony	\$250 misdemeanor, \$500 felony	Crime victim assessment surcharge—50% to prosecutor's victim's fund, 50% to county treasurers
WA	Domestic violence	\$100 ⁵¹	

⁴⁹ These data are based on the Harris *et al.* survey of the fines and fees structures of nine states. See HARRIS ET AL., *supra* note 14, at 9-10.

⁵⁰ REPORT TO THE SUPREME COURT OF MISSOURI, *supra* note 48, at 126.

⁵¹ HARRIS ET AL., *supra* note 14, at 202.

Appendix B:

Sample of Mandatory Surcharges by State

State	Type of Offense	Surcharge	Fund
AZ	All, including traffic violations.	83% of base fine.	Criminal Justice Enhancement Fund; Medical Services Enhancement Fund; Clean Elections Fund; Fill the Gap Fund; DNA Fund. ⁵²
CA	All criminal offenses, including traffic violations, except parking violations	\$40/offense ⁵³	Trial Court Trust Fund
CA	All criminal offenses, including traffic violations, except parking violations	\$10 for every \$10 or part of \$10 base penalty	Fish and Game Preservation Fund Restitution Fund Peace Officer's Training Fund Driver Training Penalty Assessment Fund Correction's Training Fund Local Public Prosecutors and Public Defenders Training Fund Victim-Witness Assistance Fund Traumatic Brain Injury Fund ⁵⁴
CA	All criminal offenses	Each county can assess \$7 for every \$10 or part of \$10	General Fund County Treasurer
CA	All criminal offenses	Depending on county, \$2.50–\$7	County Courthouse Construction
CA	All parking offenses	\$2.50	County Treasurer ⁵⁵
CA	All criminal offenses	Determined by County Board of Supervisors	County Criminal Justice Facilities Construction Fund
CA	All criminal offenses	Determined by County Board of Supervisors	County Automated Fingerprint Identification and Digital Image Photographic Suspect Booking Identification System Fund
CA	All criminal offenses	Determined by County Board of Supervisors	County Forensic Laboratory Fund

⁵² ARIZ. ADMIN. OFFICE OF THE COURTS, PENALTY ASSESSMENT AND SURCHARGE GUIDE 4-5 (2015), available at <http://www.azcourts.gov/Portals/27/SurchrgGuide012015.pdf>. The state also charges a flat \$20.00 Probation Assessment, \$13.00 2011 Additional Assessment, and \$2.00 Victims' Rights Enforcement Assessment. *Id.* at 5.

⁵³ CAL. PEN. CODE § 1465.8(a)(1).

⁵⁴ CAL. PEN. CODE § 1464

⁵⁵ CAL. GOV. CODE § 76000

State	Type of Offense	Surcharge	Fund
CA	All criminal offenses	Determined by County Board of Supervisors	County Emergency Medical Services Fund ⁵⁶
GA	All criminal convictions	10% of fine	County Jail Fund
GA	All criminal convictions	5% of fine	Local Victim Assistance Fund
GA	All criminal convictions	\$5	County Law Library
GA	All criminal convictions	Lesser of \$50 or 10% of original fine plus lesser of \$100 or 10% of fine at time of posting bail/bond	Prosecutor Training Fund
GA	All criminal convictions	10% of original fine, plus 10% at time posting bail/bond	Indigent Defense Fund ⁵⁷
IL	All criminal offense convictions	\$30/offense	Police Services Fund for expungement of juvenile records, State's Attorney's Office that prosecuted case, Circuit Clerk Operation and Administrative Fund
IL	All traffic violations	\$15 of every \$40 in fines	LEADS Maintenance Fund; Law Enforcement Camera Grant Fund; Traffic and Criminal Surcharge Fund
IL	All drug and methamphetamine-related offenses	\$220	Trauma Center Fund; Methamphetamine Law Enforcement Fund; Spinal Cord Injury Paralysis Cure Research Trust Fund; Performance-Enhancing substance Testing Fund; Drug Task Force; Prescription Pill and Drug Disposal Fund; Metropolitan Enforcement Groups ⁵⁸
MN	Criminal and petty misdemeanor cases	\$75	Peace Officer Training Account, Department of Natural Resources officer training, general fund ⁵⁹
NY	All felonies	\$300	State Treasury
NY	All misdemeanors	\$175	State Treasury
NY	All violations	\$95	State Treasury
NY	All proceedings in town or village court	\$5 ⁶⁰	State Treasury

⁵⁶ CAL. GOV. CODE § 76100-76104

⁵⁷ HARRIS ET AL., *supra note* 14, at 53-54.

⁵⁸ *Id.* at 81.

⁵⁹ *Id.* at 101.

⁶⁰ *Id.* at 145.

State	Type of Offense	Surcharge	Fund
WA	All misdemeanors, gross misdemeanors, and felonies, except as waived, reduced, or suspended under finding of indigence	\$50	General Fund
WA	All except parking violations	70% of base sanction ⁶¹	General Fund

⁶¹ *Id.* at 203.

Commissioner David Kladney Statement, in which Vice-Chair Timmons Goodson Concurs

Note: As to overarching national issues of the Commission's investigation of fines and fees, I join with the views expressed by our Chair, Catherine Lhamon and Vice-Chair, Patricia Timmons-Goodson. In this statement, I wish to look at what our system has evolved into at the local level by focusing on the system I know best, which operates like many other systems throughout our country.

Fines and fees are nothing new. Municipal courts have been charging fines and fees for years, but recently they have come to national prominence, as this report both explains and exemplifies. As the report discusses, municipal fines and fees are important to the administration of justice because when the system seeks to maximize revenue rather than serve the public good, we all lose.

One of the big problems we have is that people end up incarcerated when they can't pay their fees. That's wrong. Incarceration ruins lives. Just three days of incarceration means a person will likely lose their job, might lose custody of their kids and might lose their housing. We should treat incarceration as a serious consequence, and not just one of the options we have when someone is charged with a traffic offense. We have a system that is reliant on the threat of incarceration to collect fines and fees in order to fund itself. Those who can least afford it bear the consequences.

Thankfully, Nevadans have been looking into this critical issue. In 2015, reporters from the Las Vegas Review-Journal conducted an extensive investigation into the ways fees are used to fund municipal courts.¹ The Nevada Supreme Court has also indicated that it is concerned about the issue.² The legislature has considered several bills that would address areas of concern.³ The Nevada Advisory Committee to this Commission has also investigated the topic and has a number of recommendations specific to our state.⁴ I hope Nevada lawmakers will read both this report and the Advisory Commission's and consider the recommendations we make.

¹ James DeHaven, Las Vegas Municipal Court Criticized for Being "Money Hungry," Las Vegas Review-Journal, April 4, 2015, <https://www.reviewjournal.com/local/local-las-vegas/las-vegas-municipal-court-criticized-for-being-money-hungry/>

² See, e.g., Minutes of the Meeting of the Assembly Committee on Ways and Means and Senate Subcommittee on General Government, Nevada Legislature, Seventy-Ninth Session, February 15, 2017, p. 16-17, available at <https://www.leg.state.nv.us/Session/79th2017/Minutes/Assembly/WM/Final/149.pdf>

³ See, e.g. James DeHaven. Bill would stop Las Vegas court from operating as a "collection agency," Las Vegas Review-Journal, April 18, 2015, <https://www.reviewjournal.com/news/politics-and-government/nevada/bill-would-stop-las-vegas-court-from-operating-as-collection-agency/>

⁴ Nevada Advisory Committee to the U.S. Commission on Civil Rights, Advisory Memorandum, Municipal Fines and Fees in the State of Nevada, June 13, 2017, available at <http://www.usccr.gov/press/2017/06-13-Fines-Fees-Nevada-Memo.pdf>.

Courts rely on revenue from administrative assessments

The problem we face is that the courts are now built around using fees as a revenue stream. Courts aggressively enforce fines and fees because the revenue is crucial. There are several examples of regrettable structures where courts clearly seek money from the people who come through their doors. For example, in Fernley, they are building a new courthouse funded by assessments. A recent news article in the Reno Gazette-Journal quotes a Municipal Court Judge testifying to City Council about the status of funds and how the administrative fees are going to be used in the future.⁵ Originally, assessment fees were only available to large counties.

“After a couple of a years, they (court administrators) estimated they would collect \$25 million in fees,” she said. “So in 1997, the rural areas went, ‘We want a piece,’ and asked to amend the bill so any jurisdiction could get an assessment fee.”

She said the money collected so far has been used to add windows at the reception area. Workstations were installed, and storage cabinets and a table were purchased. Cameras were installed throughout all of the (city’s) city hall as well as a video arraignment system. The next phase is to upgrade the Judge’s chambers to add a new audio-visual system, better acoustics and increase the size of the room.

The Judge stated, “2066 is going to be here in a blink of an eye. It would be wise to put a plan in place for a new court. We are going to outgrow our council chambers.”

A city council person responded, “If this doesn’t work, a court is going to be built, and part of it will be paid out of the court fund, but some of it will be paid out of the general fund. You don’t want us to be telling you how to spend money. You have my absolute trust in managing the court’s money.”

This situation raises the specter of a conflict of interest or a potential conflict of interest. It does not serve justice well to fund courts from fees where judges collect these fees for their own court’s use. Courthouses are public goods. It should fall on taxpayers to fund them. If citizens expect fair and impartial justice, all the citizens should pay court expenses out of the general fund. It is unfair that legislative branches place judges in the position of collecting fees to run their courts and the judicial system.

A headline in the Las Vegas Review-Journal stated, “Drop in traffic tickets has Supreme Court near broke, Chief Justice says.”⁶

⁵ Jessica Garcia, Fernley approves court facility fund, Reno Gazette-Journal, Page: A02, April 26, 2017

⁶ Sean Whaley, Drop in Traffic Tickets has Supreme Court Near Broke, Chief Justice Says, Las Vegas Review-Journal, March 22, 2015, <https://www.reviewjournal.com/local/local-nevada/drop-in-traffic-tickets-has-supreme-court-near-broke-chief-justice-says/>

Courts of limited jurisdiction in Nevada, municipal (city courts) and Justice Courts (county courts) issue multi-millions of dollars in fines and fees each year. They issue verdicts and collect so many fines and fees, that they have become an integral part of financing the Nevada Judicial System. The following figures are not solely compiled from misdemeanor-related fees; however, the 2014 budget for the Nevada court system was \$60 million: \$31 million came from the state general fund and \$29 million from administrative assessment revenue and other funding sources.⁷ In 2016, the total budget was \$62 million, with \$36 million from the general fund and \$25 million from fees and other revenue sources.⁸ The state's funding of the judicial system equates to 1% of the Legislature's total budget appropriation.⁹

This is not a railroad, it is a judicial system, and legislatures around the country should realize this and fully fund court systems.

Consequences of aggressive enforcement fall hardest on people in poverty

The system in Nevada is simple.¹⁰ You get a moving violation, you plead guilty or not guilty. You can hire a lawyer, but if the sentence will not involve jail time a lawyer will not be appointed even if you are indigent. This crucial crossroads means that people of means face a very different system than those who cannot afford a lawyer. Represented or not, you reach an agreement to pay a fine and fee and plead guilty, or you go to trial against the government's lawyer. The judge either finds you guilty (assessing the fine and fee) or not guilty. If you do not pay your fine or fee in time, the Court can issue a bench warrant which has its own fee. If you are identified by law enforcement, the officer is required to arrest you, take you to jail, book you and unless you can pay in full or post bail on the original fine and fee and the warrant fee, you will sit in jail until you get another hearing before a judge.¹¹

For citizens who do not earn sufficient money and have limited job skills, their stay in jail means lost jobs and lost places to live. They do not get a lawyer to argue their indigence. They are at the mercy of the judge as to whether they stay in jail or are released on bail.

⁷ Annual Report of the Nevada Judiciary, Fiscal Year 2014, p.8, *available at* http://nvcourts.gov/Supreme/Reports/Annual_Reports/2014_Annual_Report/

⁸ Annual Report of the Nevada Judiciary, Fiscal Year 2016, p. 5, *available at* http://nvcourts.gov/Supreme/Reports/Annual_Reports/2016_Annual_Report/

⁹ *Id.*

¹⁰ For a description of how the process plays out for people charged with violations, *see* "Las Vegas Municipal Court Criticized for Being 'Money Hungry,'" note 2 above.

¹¹ The pitfalls of Nevada's system have been examined by the legislature. For one example, *see* Minutes of the Meeting of the Assembly Committee on Judiciary, Nevada Legislature, Seventy-Eighth Session, March 30, 2015, *available at* <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/613.pdf>.

As mentioned above, when confronting a minor violation that does not involve jail time you are not entitled to a lawyer. With limited skills and unfamiliarity with the court system, the indigent citizen is required to argue the fine amount and fee amount where a licensed lawyer is opposing and a judge, who routinely rules on these cases, listens and rules. The deck is stacked against the unrepresented.

Failure to pay occurs all the time for many reasons.

In Nevada, even a traffic ticket is a criminal offense.¹² Failure to pay, appear in court, or respond to court phone calls can result in arrest and incarceration. Las Vegas Municipal Court has collected, on average, about \$22 million a year for fines, fees, and assessments over the last five years.¹³ During that same period, only 15% of fines, fees, and assessments were waived or vacated by a judge. 80% of the cases are traffic-related, and almost all traffic-related cases are resolved over the internet or by mail. Because judges are the only authority that can waive fines, fees, or assessments, cases that do not reach a judge cannot be granted waivers.

Although the U.S. Constitution and Nevada state law prohibit incarceration for inability to make a payment, the view from the ground reveals it still happens.¹⁴ When the Las Vegas Review-Journal looked into the Las Vegas Municipal Court in 2015, they found many people were incarcerated for failure to pay. As they said:

An untold number of those defendants who couldn't afford to pay their traffic and parking ticket fees were eventually thrown in the Las Vegas Detention Center, which has not released requested information on inmate offenses and bail amounts. Jail data handed over to the Review-Journal in March show Metro police and city marshals arrested more than 16,400 people on bench warrants in 2014, citing offenses ranging from jaywalking to illegal parallel parking.¹⁵

When the Nevada Advisory Committee to this Commission met and investigated this subject this year, testimony confirmed that people are still being incarcerated for failure to pay, and determinations about whether or not they have the ability to pay are not administered consistently.¹⁶

¹² Id.

¹³ It should also be noted that the Las Vegas Municipal Court is a very small part of Las Vegas. A great majority of what people think is Las Vegas, actually is in Clark County proper where the famous Las Vegas strip is located. A great majority of people live in the county. The statistics listed here were given to the Commission's Nevada Advisory Committee by the court administrator. Testimony of Dana Hlavac, Nevada Advisory Committee to the U.S. Commission on Civil Rights, Transcript of Public Meeting: Municipal Fines and Fees in Nevada, March 15, 2017, p. 15, available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=147607&cid=261>.

¹⁴ *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gilbert v. Nevada*, 669 P.2d 699 (Nev. Sept. 27, 1983).

¹⁵ "Las Vegas Municipal Court Criticized for Being 'Money Hungry,'" note 2 above.

¹⁶ Nevada Advisory Committee Memorandum, note 5 above, at p.9.

Even if not incarcerated, people in poverty who cannot pay their fines and fees face other consequences such as suspension of their driver's license. As this report explains in detail, license suspension severely hampers people's ability to earn a living, support their families and attend to daily needs.

Changes are needed

Most importantly, minor violations should not so severely penalize the financially vulnerable. People should be held responsible for minor violations, but not to the point of being injurious to the toehold they financially have in society. The courts should not be that desperate for money.

Specifically, certain problems have been highlighted regarding the way Nevada (and other states) deal with fines and fees. This is not an exhaustive list, but I point them out here to encourage lawmakers to continue to pursue reforms such as these.

Decriminalize traffic fines

Nevada is one of only thirteen states that treat minor traffic violations as criminal infractions rather than civil penalties. Because minor traffic violations are treated as criminal infractions, warrants are automatically issued, and individuals can be incarcerated, for failure to pay or appear. A bill was introduced in the Nevada state legislature each of the last two sessions to change minor traffic infractions to civil penalties, but it hasn't passed yet over budget concerns.¹⁷ Without the immediate threat of warrants and incarceration, the judiciary was concerned that it wouldn't be able to collect as many outstanding fines, fees, and assessments. Our funding structure has to change.

Compounding fees

As our Nevada Advisory Committee noted:

Administrative assessment fees enforced by the State are required to be paid off before fines. For an individual who has committed multiple offenses, each offense is assigned a separate case and consequently, a separate administrative assessment fee is applied. This compounding of fees may cause increased hardship for indigent defendants to pay off fees even before attempting to pay off the remainder of fines associated to each offense. This is particularly challenging as individuals must pay these fees before they can appeal their case before a judge requesting for an alternative payment option.¹⁸

It is inherently unfair to citizens to have an administrative fee for each transaction arising out of one incident, and to hold people's ability to appeal hostage to these payments. For instance, if a person is found guilty of speeding, following too close, and passing on the right, only one fee

¹⁷ Nevada Advisory Committee Memorandum, note 5 above, at p. 10.

¹⁸ Nevada Advisory Committee Memorandum, note 5 above, at p. 9.

should be assessed, not three. These are not three separate incidents. It's merely a way to jackpot the collections amount for the Court.

Institute a grace period for payment

There is no grace period in Nevada.¹⁹ If an individual is on a payment plan and a payment becomes past due for even one minute, that individual is automatically in warrant status and subject to hundreds of dollars of additional fees on top of the initial violation. This needs to be changed. The people on payment plans are often those struggling to live paycheck to paycheck. Instituting a grace period of even just seven days could go a long way to helping these individuals avoid paying additional fees or ending up in jail. Nevada should strongly consider legislation to implement a grace period.

Warrants

Failure-to-pay warrants have no place in our system.²⁰ Failure-to-appear warrants should be served only when a judge is available to immediately hear the failure to appear, because people should not be sitting in jail over minor violations.²¹

Provide counsel to indigent defendants

As stated above, we should consider whether people need the assistance of counsel if incarceration for non-payment because of inability to pay is a possibility. It can be extremely difficult for people of limited means to navigate the fines and fees system. It would assist them to have public attorneys to represent them at the imposition of a fine and at an ability to pay determination. This additional expense is appropriate when taking someone's freedom and possible livelihood away from them. If people are facing destruction of their lives for a minor traffic violation they need to at least have a lawyer.

Prioritize public safety when assessing points

The purpose of any court is to craft an environment where public safety is paramount. Points on your driving record serve the function of indicating that you have committed an infraction and are a potential threat to public safety.²² But there are law firms that advertise their ability to negotiate fines and court fees, including amending the charge from a moving to a non-moving violation, so that no points are charged to your driving record, but the court still gets its fine and fee. This occurs only if you have the money to hire them. The lack of points assessed, even with collection of a fine and fee for a "non-moving violation," does not serve the public safety aspect of the court

¹⁹ Nevada Advisory Committee Memorandum, note 5 above, at p. 9.

²⁰ Nevada Advisory Committee Memorandum, note 5 above, at p. 11.

²¹ See *Kennedy v. City of Biloxi*, Stipulated Settlement Agreement, March 15, 2016 (S.D. Miss.), available at <https://www.aclu.org/legal-document/kennedy-v-city-biloxi-stipulated-settlement-agreement-exhibits-b>.

²² Demerit Point System, Department of Motor Vehicles, <http://www.dmvnv.com/dlpoints.htm>.

system. It just shows how anxious the municipalities, county governments, and the courts are in seeking the fine and fee money at the end of a case. For the indigent person, the opposite occurs. This person will be assessed the fine, fee and the points because of their inability to hire a lawyer. Courts need to step up and be more concerned about their public safety function to avoid this unfair outcome.

Solutions are available

I have used the Nevada system as an example. However, most every other state conducts its courts' business in similar, if not the same, fashion. Attached is a list of all the assessments contained in the Nevada statutes. The length of this list should give lawmakers pause. Many other states have similar, extensive fee structures.

I was struck by the testimony we received about how Biloxi, Mississippi is addressing this issue following the resolution of the case *Kennedy v. City of Biloxi*.²³ The case sets up a model of how courts of limited jurisdiction should deal with fines, fees and indigency. I would encourage jurisdictions around the country to study the stipulation closely and implement its different protocols and procedures for the benefit of the judicial system, the state's citizens, and the fundamental fairness that is expected in America's courts. I have attached the stipulation of settlement in the case.

Finally, I have attached the excellent report of the Nevada Advisory Commission on this same subject. It describes in more detail the issues presented by the funding of courts through fines, fees, bench warrants and jailing of the indigent.

²³ *Kennedy v. City of Biloxi*, Stipulated Settlement Agreement, March 15, 2016 (S.D. Miss.), available at <https://www.aclu.org/legal-document/kennedy-v-city-biloxi-stipulated-settlement-agreement-exhibits-b>.

Nevada Administrative Assessment Fees:

Misdemeanors: When a defendant pleads, or is found, guilty or guilty but mentally ill of a misdemeanor, including the violation of any municipal ordinance, the judge shall render a judgment against the defendant as an administrative assessment for the following amount (Nev. Rev. Stat. § 176.059):

Fine Amount	Fee
\$5 to \$49.....	\$30
\$50 to \$59.....	\$45
\$60 to \$69.....	\$50
\$70 to \$79.....	\$55
\$80 to \$89.....	\$60
\$90 to \$99.....	\$65
\$100 to \$199.....	\$75
\$200 to \$299.....	\$85
\$300 to \$399.....	\$95
\$400 to \$499.....	\$105
\$500 to \$1,000.....	\$120

The following administrative assessment fees may also be applied: \$10 for the provision of court facilities (Nev. Rev. Stat. § 176.0611), \$7 for the provision of specialty court programs (Nev. Rev. Stat. § 176.0613), and \$3 for obtaining a biological specimen and conducting a genetic marker analysis (Nev. Rev. Stat. § 176.0623).

Administrative assessments do not apply to violations of: (a) ordinances regulating metered parking, or (b) ordinances which are specifically designated as imposing a civil penalty or liability pursuant to Nev. Rev. Stat. § 244.3575 or § 268.019.

Felony or Gross Misdemeanors: When a defendant pleads, or is found, guilty or guilty but mentally ill of a felony or gross misdemeanor, the judge shall render a judgment against the defendant as administrative assessments for \$25 (Nev. Rev. Stat. § 176.062), and for \$3 for obtaining a biological specimen and conducting a genetic marker analysis (Nev. Rev. Stat. § 176.0623). The judgment constitutes a lien, and collection efforts may be undertaken against the defendant pursuant to the laws of the state. (Nev. Rev. Stat. § 176.063.)

The defendant must also pay to the county treasurer or other office assigned to make collections: (a) the costs and fees actually incurred in collecting the fine, administrative assessment, or fee, and (b) a fee payable to the county treasurer in the amount of 2 percent of the amount of the fine, administrative assessment or fee. The total amount of the costs and fees required to be collected

must not exceed 35 percent of the amount of the fine, administrative assessment or fee or \$50,000, whichever is less. (Nev. Rev. Stat. § 176.0635.)

If a fine, administrative assessment, or fee remains unpaid after the time established by the court for its payment, the defendant can be held responsible for a collection fee of up to (Nev. Rev. Stat. § 176.064):

Fine Amount	Maximum Fee
Less than \$2,000.....	\$100
\$2,000–\$4,999.....	\$500
\$5,000 or more.....	10% of the fine

The court may also order a delinquent defendant confined for a period of 1 day for each \$75 of the amount until the fine, administrative assessment, or fee is satisfied. This provision does not apply to indigent persons. (Nev. Rev. Stat. § 176.065 and § 176.075.)

Domestic Violence: If a person is convicted of a battery which constitutes domestic violence pursuant to Nev. Rev. Stat. § 33.018, the court shall order such a person to pay an administrative assessment of \$35. (Nev. Rev. Stat. § 200.485.)

Engaging In or Soliciting Prostitution: Any person who is arrested for a violation of Nev. Rev. Stat. §

201.354 must submit to a test to detect exposure to the human immunodeficiency virus (HIV). If the person is convicted of a violation of § 201.354, the person shall pay the sum of \$100 for the cost of the test. (Nev. Rev. Stat. § 201.356.)

Graffiti: When a defendant pleads or is found guilty of violating Nev. Rev. Stat. § 206.125, § 206.330 or § 206.335, the court shall include an administrative assessment of \$250 for each violation in addition to any other fine or penalty. (Nev. Rev. Stat. § 206.340.)

Driving Under the Influence: If a defendant pleads, or is found, guilty or guilty but mentally ill of any violation of Nev. Rev. Stat. § 484C.110, § 484C.120, § 484C.130, or § 484C.430, and a chemical analysis of his or her blood, urine, breath or other bodily substance was conducted, the court shall, in addition to any penalty provided by law, order the defendant to pay \$60 as a fee for the chemical analysis. (Nev. Rev. Stat. § 484C.510.)

If a defendant who is charged with a violation of Nev. Rev. Stat. § 484C.110 or § 484C.120 that is punishable as a misdemeanor pursuant to paragraph (a) or (b) of subsection 1 of Nev. Rev. Stat. § 484C.400 pleads, or is found, guilty or guilty but mentally ill of that charge, the judge shall render a judgment against the defendant of a \$100 fee for the provision of specialty court programs. (Nev. Rev. Stat. § 484C.515.)

City of Biloxi
STIPULATED SETTLEMENT AGREEMENT AND
RETENTION OF JURISDICTION

This Stipulated Settlement Agreement and Retention of Jurisdiction (hereinafter “Agreement”) is made by and among the City of Biloxi (“Biloxi” or “the City”), John Miller (“Miller”), and Judge James Steele (“Steele”); and Qumotria Kennedy (“Kennedy”), Richard Tillery (“Tillery”), and Joseph Anderson (“Anderson”), (hereinafter referred to individually and collectively as “Plaintiffs”), on behalf of himself and each of his respective heirs, successors, and assigns. Biloxi, Miller, Steele, Kennedy, Tillery, and Anderson are from time to time referred to hereinafter individually as a “Party” and collectively as the “Parties.”

WHEREAS, each of the named Plaintiffs allege that they were incarcerated—Plaintiff Kennedy for five nights from July 30, 2015 to August 4, 2015; Plaintiff Anderson for seven nights from December 27, 2012 to January 3, 2013; and Plaintiff Tillery for fifty nights in April, July and September 2014—in the Harrison County Adult Detention Center because of inability to pay fines, state assessments, fees, court costs, or restitution (collectively, “legal financial obligations” or “LFOs”) imposed by the Biloxi Municipal Court (“Biloxi Municipal Court”) for traffic or misdemeanor offenses, but allegedly were not afforded ability-to-pay hearings or informed of their right to request counsel prior to being jailed, and were not provided court-appointed counsel as indigent people facing possible incarceration for failure to pay LFOs (the “Incidents”);

WHEREAS, Plaintiffs filed a Complaint on October 21, 2015 in the United States District Court for the Southern District of Mississippi, commencing a proposed class action lawsuit entitled *Kennedy, et al., v. The City of Biloxi, Mississippi et al.*, Civil Action No. 1:15-cv- 00348-HSO-JCG (the “Lawsuit”), against Biloxi, Miller, Steele, and Judicial Corrections Services, Inc. (“JCS”), which seeks declaratory and injunctive relief, as well as compensatory damages for the named Plaintiffs, and alleges violations of Plaintiffs’ rights to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution, and right to freedom from unreasonable searches and seizures under the Fourth Amendment as a result of Defendants Biloxi, Miller, and Steele’s alleged policies, practices, and customs that allegedly exhibited deliberate indifference to Plaintiffs’ rights and directly led to Plaintiffs’ jailing for failure to pay LFOs they could not afford;

WHEREAS, on October 21, 2015, Plaintiffs Kennedy and Tillery filed a motion pursuant to Federal Rule of Civil Procedure 23(b)(2) seeking the certification of two proposed classes defined as follows: (1) all people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases (the “Main Class”); and (2) all indigent people who currently owe, or in the future will owe, fines, fees, court costs, or restitution in Biloxi Municipal Court cases (the “Indigent Class”);

WHEREAS, it is the desire of the Parties to resolve all disputes as between and among them and to settle the Lawsuit;

WHEREAS, the Lawsuit shall be dismissed with prejudice as to Defendants Biloxi, Miller, and Steele, expressly on the basis of no finding and no admission of liability, fault, wrongdoing, or responsibility for any of the claims in the Lawsuit, any such liability, fault, wrongdoing, or responsibility being expressly denied by Defendants Biloxi, Miller, and Steele; and

WHEREAS, the Mayor and City Council of Biloxi by resolution adopted December 29, 2015, have increased the budget for the City of Biloxi's Legal Department, which includes operation of the Biloxi Municipal Court, in the additional amount of Two Hundred Fifty-Three Thousand Twenty-Four Dollars (\$253,024) for Fiscal Year 2016 and Three Hundred Forty-Four Thousand Twenty-Four Dollars (\$344,024) on an annual basis for subsequent fiscal years, in order to facilitate the additional duties that the City is voluntarily agreeing to perform according to the terms of this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration passing between the Parties, and intending to be legally bound hereby, it is agreed:

Definitions

The Definitions contained herein shall only apply to this Agreement and shall not apply to any other agreement, nor shall the terms defined herein be used as evidence, except with respect to this Agreement, of the meaning of any of them.

- A. "Claim" shall mean any past, present or future claim, notice, demand, request, inquiry, order, action, right, count, cause of action, lawsuit, cross-complaint, counter-complaint, administrative proceeding, arbitration, mediation, order, judgment, statutory or regulatory obligation, settlement, request for information or allegation of any kind, character or nature arising from or related to the Incidents, whether known, unknown, suspected or unsuspected, whether at law or in equity, and whether sounding in constitutional law, tort, contract, equity, nuisance, trespass, negligence, strict liability or any constitutional, statutory, regulatory, common law or foreign law cause of action of any kind whatsoever, including those which were or could have been asserted in the Lawsuit.
- B. "Settlement Sum" shall mean Seventy-Five Thousand and no/100ths Dollars (\$75,000.00).

Policy Changes

1. Procedures for Legal Financial Obligations and Community Service. Biloxi shall adopt and implement the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service, attached hereto as Exhibit A, and made part hereof, which furthers the protection of: (a) defendants' right to an ability-to-pay hearing prior to jailing

for nonpayment of LFOs; (b) defendants' right to freedom from unreasonable seizures; (c) defendants' right to be represented by counsel in LFO collection proceedings; and (d) indigent defendants' right to court-appointed counsel to defend against possible incarceration for failure to pay LFOs.

- a) Payment Plans. Whenever a person sentenced to an LFO cannot pay the LFO in full on sentencing day, the Biloxi Municipal Court may collect the LFO through a payment plan administered by the Clerk of Court pursuant to the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service. Biloxi agrees to have no minimum for the amount that the Biloxi Municipal Court may order for monthly payments, and to charge no extra fees, costs, or interest upon unpaid LFOs owed by a defendant on a payment plan with the following exception: a surcharge may be imposed on a defendant who chooses to make an LFO payment by credit card or debit card.
- b) Compliance Hearings. The Biloxi Municipal Court shall set a Compliance Hearing for every person who is alleged to have failed to meet the requirements of the Court's imposed sentencing using the Biloxi Municipal Court Order Setting Compliance Hearing, attached hereto as Exhibit A (Form One). The Order will provide the defendant with thirty (30) days notice of the Compliance Hearing date. At all Compliance Hearings concerning nonpayment of LFOs, the Biloxi Municipal Court shall inquire into the defendant's ability to pay and efforts to secure resources, and if the Court finds that the defendant is unable to pay, it shall consider the adequacy of alternatives to incarceration. The Biloxi Municipal Court shall have a default procedure of audio recording Compliance Hearings. In the event audio recording equipment is temporarily not working, the Court shall ensure that the following is documented in writing: (i) the evidence submitted by the defendant concerning ability to pay and efforts to secure resources, (ii) the Court's findings and evidence to support those findings, and (iii) the Court's colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.
- c) Forms and Advisement of Rights. Whenever the Biloxi Municipal Court provides notice of a Compliance Hearing date, it shall also provide the hearing subject a Biloxi Municipal Court Advisement of Rights and Obligations for Legal Financial Obligations and Community Service, attached hereto as Exhibit A (Form Two), and an LFO Inability to Pay Guide, attached hereto as Exhibit A (Form Four).
- d) Bench Card. Whenever the Biloxi Municipal Court seeks to impose LFOs or whenever the nonpayment of LFOs or completion of community service will be addressed in a Biloxi Municipal Court hearing, the Biloxi Municipal Court Judge shall follow applicable law, the procedures set forth in the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A), and the Bench Card, attached hereto as Exhibit B. In particular, the Biloxi Municipal Court Judge must advise hearing subjects of the following rights and information set forth in the Bench Card: (i) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution; (ii) all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs; (iii) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in

- proceedings concerning nonpayment of LFOs; (iv) that any waiver of the right to counsel or the right to court-appointed counsel must be knowing, voluntary, and intelligent; (v) the types of information relevant to determining ability to pay; (vi) the potential penalties that may be imposed if a defendant is found to have willfully failed to pay a fine, fee, court cost, state assessment, or restitution; and (vii) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing.
- e) Determination of Ability to Pay. Whenever the Biloxi Municipal Court is determining the amount of LFOs, establishing an LFO Payment Plan, or addressing the nonpayment of LFOs in a hearing, the Court shall conduct an inquiry regarding the person's ability to pay. If a defendant is represented, the Court shall provide the defendant with adequate time to privately confer with defense counsel on the issue of ability to pay, prior to the Court's ability-to-pay inquiry. During this inquiry, the Court shall use the Affidavit of Indigence, attached hereto as Exhibit A (Form Three), and inquire into the topics listed on the LFO Inability to Pay Guide (Form Four), as well as any other factors considered relevant by the Court. The Court shall also carefully consider the person's responses to each of the questions before making any determination, including a determination regarding ability to pay and whether nonpayment is willful. If a defendant is unable to provide the information requested by the Court during an ability-to-pay inquiry, the Court shall consider allowing the defendant (and, if applicable, counsel) additional time to gather information to respond to the Court's questions. Any determinations that the Court makes regarding ability to pay or willfulness of nonpayment shall be guided by the Bench Card and shall be in accordance with applicable law, including *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983).
- f) Alternatives to Incarceration for Fines, Fees, Court Costs, Restitution, and State Assessments. If the Court determines that a defendant is unable to pay fines, fees, court costs, state assessments, or restitution, Biloxi Municipal Court Judges shall consider alternative methods of achieving the City's interest in punishment and deterrence. Judges shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration. *Bearden v. Georgia*, 461 U.S. 670, 671-72 (1983). These alternatives shall include the following:
- i. Reduction of the amount of fines, fees, court costs, and restitution imposed;
 - ii. Waiver or Suspension of the fines, fees, court costs, and restitution imposed;
 - iii. Community Service credit toward the discharge of fines, fees, state assessments, court costs, and restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
 - iv. Completion of Approved Job Skills Training and Educational Drug

Treatment, Counseling, and Mental Health Programs as an alternative or in addition to community service, toward the discharge of fines, fees, state assessments, court costs, and restitution owed to Biloxi;

- v. Extension of the Amount of Time for payment of fines, fees, court costs, state assessments, and restitution owed to Biloxi; and
 - vi. Any Other Disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.
- g) Pursuant to Miss. Code Ann. § 63-1-53, Biloxi shall report to the Commissioner of Public Safety the failure of any person to pay timely any fine, fee or assessment levied as a result of a violation of Title 63 of the Mississippi Code following a Compliance Hearing concerning the alleged nonpayment.
2. Use of Private Probation Companies for LFO Collection. The City of Biloxi, Mississippi will implement this Agreement without hiring, contracting with, or otherwise using any private probation company after June 1, 2016.
 3. Incarcerating Indigent People. The Biloxi Municipal Court shall immediately cease issuing and enforcing any type of warrant that permits law enforcement officers to arrest and jail a person for nonpayment of a fine, fee, state assessment, court cost, or restitution imposed by the Biloxi Municipal Court, without a pre-incarceration hearing on the defendant's ability to pay, in which defendants' right to legal representation and indigent defendants' right to court-appointed counsel are protected. The Biloxi Municipal Court shall not issue so-called "pay-or-stay" sentences, in which a municipal court judge sentences a person to a specific monetary penalty or, in the alternative, a specific number of days in jail for a misdemeanor offense or conviction of contempt of court without a pre-incarceration hearing on ability to pay and protection of the defendants' right to legal representation and indigent defendants' right to court-appointed counsel.
 4. Suspension of Unpaid LFOs in Cases More Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court shall suspend fines, fees, court costs, and restitution for all Biloxi Municipal Court cases that remain open solely because fines, fees, court costs, or restitution imposed before March 15, 2014 have not been paid in full. The suspension of any LFOs pursuant to this paragraph may only be revoked within two (2) years of the suspension, as set forth in Miss. Code Ann. § 21-23-7(5), and following an individualized determination by the Biloxi Municipal Court that revocation is warranted. If a suspension is revoked pursuant to such procedures, the collection of unpaid LFOs shall be handled in accordance with Paragraphs 5-7 of this Agreement.
 5. Recall of Failure-to-Pay Warrants More Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court shall recall and quash all "failure-to-pay warrants," which consist of: (a) "*capias pro finem*" warrants issued before March 15, 2014 against people charged with nonpayment of LFOs; (b) "*capias*" warrants issued before March 15, 2014, that allege that the subject has not paid a fine, fee, state assessment, court cost, or restitution and/or specify a monetary amount that, if paid, would secure release of the subject from jail; and (c) contempt warrants issued before March 15, 2014, that allege that the subject has not paid a fine, fee, state assessment, court cost, and/or restitution or specify a monetary amount that, if paid, would secure release of the

subject from jail. On or before June 15, 2016, the Biloxi Municipal Court shall waive any post-sentencing fees and court costs associated with the recalled and quashed warrants.

6. Recall of Failure-to-Pay and Failure-to-Appear Warrants Less Than Two-Years Old. On or before June 15, 2016, Biloxi shall identify all people who owe a fine, state assessment, fee, court cost, or restitution imposed by the Biloxi Municipal Court and have an outstanding failure-to-pay warrant issued between March 15, 2014 and the date of this Agreement, and/or an outstanding arrest warrant issued between March 15, 2014 and the date of this Agreement for having failed to appear for a Biloxi Municipal Court hearing concerning alleged nonpayment of LFOs ("failure-to-appear warrants"). On or before June 30, 2016, Biloxi shall recall and quash the aforementioned failure-to-pay and failure-to-appear warrants, and waive any post-sentencing fees and court costs associated with these warrants.
7. Reset Opportunity for People Subject to Recall of Failure-to-Pay and Failure-to-Appear Warrants Less Than Two-Years Old. On or before June 15, 2016, the Biloxi Municipal Court will issue an Order Setting Compliance Hearing to each person who is the subject of a recalled/quashed warrant pursuant to Paragraph 6 of this Agreement in a case that was not suspended pursuant to Paragraph 4 of this Agreement. The Order Setting Compliance Hearing (Form One) will be mailed to the last known address of each person along with an Advisement of Rights and Obligations for Legal Financial Obligations and Community Service (Form Two), an LFO Inability to Pay Guide (Form Four), and the following statement: "You are the subject of a recalled warrant; you have the obligation to appear at the Compliance Hearing set for [DATE]; and when you appear, you will NOT be jailed for nonpayment of a fine, state assessment, restitution, fee, or court cost or for failure to appear at a previously scheduled court hearing concerning nonpayment." In addition, notice shall be posted in English, Vietnamese and Spanish as follows to indicate that reset letters have been sent: (a) on the window and front door of the Biloxi Municipal Court on 170 Porter Avenue in Biloxi; (b) in the Biloxi Municipal Court's courtroom in the Harrison County Adult Detention Center; (c) in the Biloxi Police Station at 170 Porter Avenue in Biloxi; (d) on the City of Biloxi website, including on the following page: <http://www.biloxi.ms.us/departments/municipal-court/>; and (e) in the offices and other spaces used by service providers working with homeless and/or indigent people in Biloxi, as determined by the City, which shall make reasonable efforts to identify such providers. The foregoing provisions of this paragraph notwithstanding, any individuals with outstanding arrest warrants for conduct unrelated to alleged nonpayment or failure to appear for LFO collection proceedings may be arrested when they appear at the Biloxi Municipal Court for a Compliance Hearing. The Biloxi Municipal Court shall not charge any subject of a reset LFO with failure to appear at a Compliance Hearing absent proof that she/he was afforded actual notice of the Order Setting Compliance Hearing, Advisement of Rights and Obligations for Legal Financial Obligations and Community Service, and LFO Inability to Pay Guide. Biloxi shall provide Plaintiffs' counsel with an email copy of each reset notice letter at approximately the same time that notice is provided to the subjects of the warrant recall addressed in Paragraph 6.
8. Release of Individuals Currently in Jail, if any, for Nonpayment of LFOs. On or before April 1, 2016, Biloxi shall identify and release the following individuals, if any currently

exist, from confinement: (a) all people currently incarcerated in the Harrison County Adult Detention Center pursuant to a failure-to-pay warrant issued by the Biloxi Municipal Court, including all warrants described in Paragraph 5 (i.e., people who are “sitting out fines”); and (b) all people currently incarcerated in the Harrison County Adult Detention Center pursuant to the issuance of a “pay or stay” sentence by the Biloxi Municipal Court for a misdemeanor offense or finding of civil contempt. Biloxi shall order and effect the release of all such persons unless the Biloxi Municipal Court determines, on or before April 1, 2016, that an individual is properly held pursuant to an arrest warrant or sentence that is unrelated to any alleged nonpayment of LFOs. Biloxi shall provide Plaintiffs’ counsel by email the names and case numbers for all individuals identified for release as described in this paragraph and all individuals whom Biloxi has determined may be held due to the existence of a valid warrant or sentence unrelated to nonpayment of LFOs. Biloxi shall credit each released person with a reduction in the amount of fines, state assessment, fees, court costs, or restitution owed at the rate of Fifty-Eight Dollars and no/100ths (\$58.00) per day. Biloxi may set a Compliance Hearing for any released person, but if Biloxi does so, it shall provide the person the following information at least thirty (30) days in advance of the Compliance Hearing: (a) notice of the Compliance Hearing date through provision of a Biloxi Municipal Court Order Setting Compliance Hearing (Form One); (b) a Biloxi Municipal Court Advisement of Rights and Obligations For Legal Financial Obligations and Community Service (Form Two); (c) an Affidavit of Indigence (Form Three) to facilitate the gathering of information for purposes of appointing counsel; and (d) an LFO Inability to Pay Guide (Form Four) to facilitate the gathering of information for purposes of determining ability to pay.

9. Secured Money Bonds will not be used to detain persons arrested for any violation that may be prosecuted by Biloxi in its Municipal Court absent an examination by the Biloxi Municipal Court of the defendants’ substantial risk of non-appearance. People arrested will be released on a Release and Recognizance Bond as soon as practicable after booking unless the Biloxi Municipal Court determines that secured money bail is the only pretrial release option that will adequately assure the defendant’s presence at trial.
10. Publication and Dissemination of Procedures. On or before May 15, 2016, Biloxi shall publish and disseminate the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and the Bench Card to all personnel of, or under the control of, the City of Biloxi involved in the imposition and/or collection of fines, fees, state assessments, court costs, and restitution imposed by the Biloxi Municipal Court, including permanent and temporary Biloxi Municipal Court Judges, Biloxi Municipal Court staff, Biloxi public defenders and other defense counsel appointed to represent indigent people in Biloxi Municipal Court proceedings, Biloxi prosecutors, Biloxi Police Department staff, employees of private companies, if any, involved in the supervision of Biloxi Municipal Court probationers, or in the collection of legal financial obligations imposed by the Biloxi Municipal Court. This publication and dissemination shall include prominent placement of the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service in the Biloxi Municipal Court located at 170 Porter Avenue in Biloxi, Mississippi, in the Biloxi Municipal Court courtroom in the Harrison County Adult Detention Center, and on the City of Biloxi website.

11. Changes to The City of Biloxi Website. As of the date of this Agreement, Biloxi has removed the following language from its website, <http://www.biloxi.ms.us/departments/municipal-court/> :

Payment of fines: Fines are due in full on the day of assessment. This will be either the day you plead guilty or the day you may be found guilty. There is never a fine when you are found not guilty. Tickets must be paid in full so that the outcome can be reported immediately to the Department of Public Safety. Larger misdemeanor fines may be paid according to a payment plan but only after an initial payment is made. Depending on the total fine the initial payment is \$50 or \$100 and is due on the date of assessment. Remember that release on a payment plan is a privilege afforded by the Court and a violation of a payment order will result in your immediate arrest.

On or before May 15, 2016, Biloxi shall replace the aforementioned language on its website with the following text:

Payment of fines, state assessments, fees, court costs, and restitution. If you plead guilty or are convicted of a misdemeanor, the Biloxi Municipal Court may impose fines, state assessments, fees, court costs, and/or restitution (“legal financial obligations” or “LFOs”). If you are found NOT GUILTY, the Court will NOT impose an LFO. You may pay the full amount of any LFO imposed upon you for a misdemeanor offense on the day of sentencing. If you are unable to pay in full on sentencing day, the Biloxi Municipal Court may place you on a Payment Plan administered by the Clerk of Court. The Court shall consider your ability to pay when setting the payment schedule.

The U.S. Constitution requires safeguards when collecting LFOs. No person shall be imprisoned for nonpayment of LFOs solely because they are unable to pay. A person may ONLY be jailed for nonpayment of a fine, fee, court cost, state assessment, or restitution following a court hearing where the Court considers the person’s ability to pay, efforts to secure resources, and alternatives to incarceration, and concludes, based on specific evidence, that the person **willfully failed to pay, failed to make sufficient efforts to secure money to pay, or that no adequate alternatives to incarceration exist.**

Your Rights. Any person who has not paid an LFO according to the terms of a Payment Plan has the right to a Compliance Hearing and the right to be represented by legal counsel for defense against possible incarceration for nonpayment of an LFO. If you are indigent, you also have a right to court-appointed counsel at no cost. The **Biloxi Municipal Court Procedures for Legal**

Financial Obligations and Community Service seek to protect these rights and set forth the procedures the Court will follow.

Your Duty. It is your duty to keep the Biloxi Municipal Court informed of your mailing and residence address. As soon as reasonably possible after a change in your mailing and/or residence address, you should complete the Notice of Change of Address and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, by one of the following means: U.S. Mail, (2) hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or (3) email to coacourt@biloxi.ms.us. You may access the Notice of Change of Address form at <http://www.biloxi.ms.us/ChangeOfAddressForm> .

The term “Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service” shall be bold and shall hyperlink to a page providing the full text of the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and Bench Card.

12. **Training.** Within thirty (30) days after Defendants Biloxi, Miller, and Steele publish and disseminate the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service and Bench Card, Biloxi shall train on these documents and the policies, procedures and standards set forth therein all personnel involved in the imposition and collection of LFOs, including all current Biloxi Municipal Court Judges, Biloxi Municipal Court staff, Biloxi public defenders, defense counsel appointed to represent indigent people in Biloxi Municipal Court proceedings, Biloxi prosecutors, Biloxi Police Department staff, employees of private companies, if any, involved in the supervision of Biloxi Municipal Court probationers and/or the collection of legal financial obligations imposed by the Biloxi Municipal Court. Training shall be conducted by qualified third-parties selected by Biloxi, after consultation with Plaintiffs' counsel.
 - a) **Judges.** Biloxi Municipal Court Judges shall attend training on LFO issues during the initial training period in 2016 and again during the City's training period in 2017. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the Bench Card and the Biloxi Municipal Court Procedures for LFO Collection and Community Service, and the forms attached thereto; (iii) the impact of LFOs on indigent people; (iv) procedures required for appointing counsel; (v) standards for evaluating the validity of any waiver of the right to counsel; and (vi) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants. Biloxi shall ensure that copies of all training materials are provided to any new judges, and that new judges are trained on these materials prior to imposing or collecting LFOs.
 - b) **Biloxi Police.** For a minimum of two (2) years, Biloxi Police officers involved in the execution of arrest warrants and in booking people for jail shall attend annual trainings on LFO issues. The training shall address: (i) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants'

- right to an ability-to-pay hearing and to be represented by legal counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; and (ii) the termination of the use of failure-to-pay warrants described in Paragraph 5. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new police officers involved in the in the execution of arrest warrants and in booking people for jail.
- c) Employees of Any Private Company Involved in Supervising Probation and/or LFO Collection, and Biloxi Municipal Court Non-Judicial Staff. For a minimum of two years, Biloxi shall annually train on LFO issues: (i) the employees of Pioneer Credit Recovery, Inc. (if it continues to serve the Biloxi Municipal Court); (ii) the employees of any other private company handling the supervision of probationers or the collection of LFOs imposed by the Biloxi Municipal Court; and (iii) all Biloxi Municipal Court staff who are involved in the supervision of probation or the collection of LFOs imposed by Biloxi Municipal Court and who are not judges, prosecutors, or public defenders. The training shall address: (i) the rights of defendants charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by legal counsel prior to being jailed for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (ii) the standards governing any waiver of the right to counsel; (iii) the impact of LFOs on indigent people; (iv) procedures for imposing LFOs, including Payment Plans; (v) procedures for collecting unpaid LFOs, including Compliance Hearings; (vi) standards for assessing ability to pay including the factors giving rise to a rebuttable presumption of inability to pay; and (vii) alternatives to incarceration for those determined to be unable to pay LFOs, including reduction or waiver of fines, fees, court costs and restitution, as well as community service and approved job skills training and programs in education, counseling, mental health and drug treatment. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new probation officers, non-judicial Biloxi Municipal Court staff, and employees Pioneer Credit Recovery, Inc., and any other private company handling collection of LFOs imposed by the Biloxi Municipal Court.
- d) Court-Appointed Defense Counsel. For a minimum of two (2) years, the public defender(s) and panel attorneys appointed by the Biloxi Municipal Court to represent indigent defendants shall attend annual trainings on LFO issues. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (iii) procedures and standards for assessing ability to pay at the time of imposing LFOs, setting a Payment Plan, and during Compliance Hearings, including the factors giving rise to a rebuttable presumption of inability to pay; (iv) defenses to charges of willful failure to pay LFOs and evidence in support of mitigation; (v) the Bench Card, the Biloxi Municipal Court

- Procedures for LFO Collection and Community Service and the forms attached thereto; (vi) the importance of meeting with clients in advance of sentencing proceedings and Compliance Hearings in order to prepare defenses against the imposition of LFOs and/or a finding of willful failure to pay, and to provide sufficient time to gather evidence in support of defenses and/or mitigation against failure-to-pay charges; (vii) the impact of LFOs on indigent people; (viii) alternatives to incarceration for those determined to be unable to pay LFOs, including the reduction or waiver of fines, fees, court costs, and restitution, as well as community service and approved job skills training and programs in education, counseling, mental health and drug treatment; and (ix) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new public defenders and counsel added to the list of panel attorneys for appointment by the Biloxi Municipal Court.
- e) Prosecutors. For a minimum of two (2) years, prosecutors operating in the Biloxi Municipal Court shall attend annual trainings on LFO issues. The training shall address: (i) the standards set forth in *Bearden v. Georgia*, 461 U.S. 660 (1983); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and *Turner v. Rogers*, 564 U.S. 431 (2011); (ii) the rights of defendants and indigent people charged with nonpayment of LFOs, including defendants' right to an ability-to-pay hearing and to be represented by counsel prior to jailing for failure to pay, and indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration for failure to pay; (iii) the Bench Card, the Biloxi Municipal Court Procedures for LFO Collection and Community Service and the forms attached thereto; (iv) procedures and standards for assessing ability to pay at the time of setting a Payment Plan, including the factors giving rise to a rebuttable presumption of inability to pay; (v) the impact of LFOs on indigent people; (vi) considerations regarding the inclusion of LFOs in plea agreements with indigent defendants; and (vii) alternatives to incarceration for those determined to be unable to pay LFOs, including the reduction or waiver of fines, fees, court costs, and restitution, as well as community service and approved job skills training and programs in education, counseling, mental health and drug treatment. Biloxi shall ensure that copies of training materials are provided to, and reviewed with, all new prosecutors.
13. Public Defense and Appointment of Counsel to the Indigent. Since the filing of this lawsuit, Biloxi has voluntarily provided additional funding to the Biloxi Legal Department and Biloxi Municipal Court and intends to continue providing funding needed to ensure: (a) that every defendant charged with failure to pay LFOs is provided a competent indigence determination using the Affidavit of Indigence for purposes of evaluating whether the Biloxi Municipal Court must appoint counsel to represent the defendant in any Compliance Hearing; (b) that all court-appointed counsel, whether a panel attorney or public defender, provide competent representation (including appeals and *habeas corpus* motions, as allowed by law) to indigent defendants charged with failure to pay LFOs; and (c) sufficient supervision of panel attorneys and public defenders; and (d) data collection.
- a) Public Defense Contracts. Any professional services agreements with public defenders or panel attorneys working on a contract basis and representing indigent

people in the Biloxi Municipal Court shall make clear: (i) that the attorney may be appointed to represent indigent people solely with respect to the issue of nonpayment of LFOs imposed by the Biloxi Municipal Court; (ii) that the attorney is expected and obligated to provide competent representation on LFO issues to any indigent person to whom the attorney is appointed, regardless of whether appointment was specifically in relation to nonpayment of LFOs; (iii) that such representation shall cover the imposition of LFOs, setting of a Payment Plan, and charges of nonpayment of LFOs; that such representation shall be continuing in nature (including appeals and habeas motions, as allowed by law); (iv) that the attorney is expected and obligated to participate in training on LFO issues and review related materials; (v) that the attorney will be supervised by Biloxi regarding the representation of indigent people in relation to LFO issues; and (vi) that the attorney is obligated to provide information, as defined in Paragraph (c) below, to Biloxi regarding such representation.

- b) Supervision. No later than June 15, 2016, Biloxi shall establish procedures for the supervision of counsel appointed to represent indigent people charged with failure to pay LFOs. The supervision shall ensure that: (i) court-appointed attorneys are providing competent representation to indigent people regarding LFO issues, including LFO imposition and alleged nonpayment; (ii) that such representation shall be continuing in nature (including all appeals and habeas motions, as allowed by law); (iii) that adequate data is collected; and (iv) that each court-appointed attorney's caseload does not impede competent representation of indigent defendants.
- c) Data Collection. No later than July 30, 2016, Biloxi shall start collecting the following data concerning cases involving the appointment of counsel to represent indigent people in the imposition and/or collection of LFOs: (i) number of cases to which each court-appointed attorney is appointed; (ii) amount of time spent on each case; and (iii) number of jail visits, motion filings, trials, and investigation requests handled by the attorney for each case.

14. Monitoring and Settlement Compliance.

- a) Within sixty (60) days of implementing the requirements set forth in Paragraphs 1 through 13 above, Biloxi shall provide the U.S. District Court for the Southern District of Mississippi, Southern Division, and Plaintiffs' counsel with a status report sufficient to establish that Biloxi has substantially complied with the requirements detailed above.
- b) Biloxi shall provide the following information to Plaintiffs' counsel on or about the following dates: July 15, 2016; November 15, 2016; March 15, 2017; July 15, 2017; November 15, 2017; and March 15, 2018:
 - i. The case numbers for Biloxi Municipal Court cases in which an individual is placed in jail for nonpayment of an LFO or nonperformance of community service following the Effective Date of this Agreement;
 - ii. All data collected, as defined above in Paragraph 13c, regarding court-appointed counsels' representation of clients in LFO imposition and/or collection proceedings in the Biloxi Municipal Court; and

- iii. All new public defender contracts entered into within the prior six
- iv. (6) months, whether with new public defenders or renewals.

Financial Terms

15. In full and complete satisfaction, compromise, and settlement of the Plaintiffs' claims for damages, attorneys' fees and expenses, and without admitting any liability or fault or wrongdoing, the City and Miller have agreed, in addition to promulgating the policies and procedures stated in this Agreement and attached as Exhibits "A" and "B", to pay a one-time, total sum of Seventy-Five Thousand and no/100ths Dollars (\$75,000.00) for all damages, attorneys' fees and expenses. The City will deliver the Settlement Sum by check made payable to "The American Civil Liberties Union Foundation, Inc." Said check will be delivered by overnight mail to Plaintiffs' attorney, Nusrat Choudhury at the ACLU, 125 Broad Street, 18th Floor, New York, New York, 10004, within thirty (30) business days after the Biloxi City Council adopts a resolution approving all terms of this Agreement at its open meeting on March 15, 2016. Plaintiffs' counsel shall distribute the Settlement Sum as follows: \$14,286 for Plaintiff Kennedy; \$18,367 for Plaintiff Anderson; \$17,347 for Plaintiff Tillery; and \$25,000 for attorneys' fees and expenses. The payment of the above-stated total amount is the entire and only monetary consideration for this Agreement. Each Defendant shall likewise be responsible for his or its own attorneys' fees and legal expenses in connection with the Incidents and the Lawsuit. Plaintiffs made no claim against Judge Steele for damages, attorneys' fees and expenses.

Time Period

16. Unless otherwise stated, Biloxi, Miller, and Steele shall comply with the terms of this Agreement for a minimum of three (3) years.

Dismissal of Lawsuit

17. On March 4, 2016, Magistrate Judge John Gargiulo of the U.S. District Court for the Southern District of Mississippi held a Settlement Conference concerning the Lawsuit at which the Parties reported their agreement upon the policy reforms and financial terms addressed above. On March 7, 2016, the U.S. District Court issued a Final Judgment of Dismissal, which stated in full: "FINAL JUDGMENT OF DISMISSAL: that the above captioned civil action is dismissed with prejudice as to all parties, and that the Court hereby specifically retains jurisdiction to enforce the settlements."
18. The Parties understand the U.S. District Court's March 7, 2016 Final Judgment to indicate that the Court has retained jurisdiction to enforce the terms of this Agreement and the Parties' obligations hereunder.
19. In the event any discrepancy exists between the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A), the Bench Card (Exhibit B) and this Stipulated Settlement Agreement, the terms, conditions, and procedures in the Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service (Exhibit A) shall govern.

20. If Plaintiffs' counsel finds or believes that Defendants Biloxi, Miller, or Steele are not in substantial compliance with any term of this Agreement, Plaintiffs' counsel shall bring the issue to the attention of Defendants' counsel prior to filing a motion seeking appropriate relief with the U.S. District Court for the Southern District of Mississippi, Southern Division. The Parties agree to use their reasonable best efforts to resolve any disputes that may arise.

Release of Defendants Biloxi, Miller, and Steele by Plaintiffs

21. In consideration of the policy reforms and the other covenants contained herein, Plaintiffs do for themselves and for their successors and assigns fully, finally and forever release, acquit, indemnify and hold harmless, and discharge each of the City of Biloxi, Mississippi, and all of its present and former agents, servants, employees, judges, law enforcement officers, departments, elected and non-elected officials, both individually and officially, including, but not limited to, John Miller, James Steele, Mayor Andrew "FoFo" Gilich, all present and former Biloxi City Council members, mayors, judges, and/or employees, subsidiaries, partnerships, successors or predecessor corporations, associations, insurers, attorneys, present and former members, owners, employers, supervisors, superiors, subordinates, coworkers, officers, directors, parents, subsidiaries, underwriters, consultants, subcontractors, and any and all other legal entities ("Releasees"), and covenants not to prosecute or sue Releasees for or on account of any and all Claims, as defined in this Agreement, including, but not limited to, claims of constitutional violations, as well as any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, in admiralty or in equity, that Plaintiffs, their successors and assigns ever had, now have, or hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Agreement, including without limitation any Claims under any federal or state regulation, statute or constitution, or any foreign law, including common law, which were raised or could have been raised in the Lawsuit.
22. It is intended by Plaintiffs and by Defendants Biloxi, Miller, and Steele that this Release shall be complete and shall not be subject to any claim of mistake of fact or law by Kennedy, Tillery, or Anderson, and that it expresses a full and complete settlement of liability claimed and denied, as against Defendants Biloxi, Miller, and Steele, and this Release is intended to avoid litigation and to be final and complete.
23. This Release is the result of a compromise of a disputed claim and is not a finding or an admission of liability, fault, wrongdoing, or responsibility on the part of the parties hereby released, who deny and disclaim such liability, fault, wrongdoing, or responsibility.
24. This Agreement is intended to, and Plaintiffs represent and warrant that each of them will, and hereby do, release and dispose of all liability of Defendants Biloxi, Miller, and Steele, and each of them, to Plaintiffs, and to any of his or her successors, assigns, or immediate family members, that might now or in the future have a claim as a result of any injury sustained by Plaintiffs, or any one of them, as a result of the Incidents, and that Plaintiffs will, and hereby do, release the Releasees from any such claims. Should

any such further claim be made by any person or entity specified in this paragraph for which Defendants Biloxi, Miller, and Steele, or any of them might be liable, directly or indirectly, Plaintiffs agree to defend, hold harmless and indemnify Defendants Biloxi, Miller, and Steele, and each of them, from such claims.

Release of Plaintiffs by Defendants Biloxi, Miller, and Steele

25. In consideration of the General Release and the other covenants contained herein, each of Defendants Biloxi, Miller, and Steele does for itself or himself, and for its or his successors and assigns, fully and forever release and discharge Plaintiffs, and covenants not to prosecute or sue Plaintiffs and any of their successors and assigns for or on account of any and all Claims, as defined in this Agreement, including, but not limited to, claims of constitutional violations, as well as any actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty or in equity, that Defendants Biloxi, Miller, or Steele, ever had, now have, or hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date of this Agreement, including without limitation any Claims under any federal, state, or municipal regulation, statute or constitution, or any foreign law, including common law, which were raised or could have been raised in the Lawsuit; provided however, that the provisions of this release do not bar prosecution and disposition of future violations of criminal law, if any, and provided further as to Plaintiff Kennedy, that enforcement of the Biloxi Municipal Court sentence imposed for the 2015 charge of driving under a suspended license shall be handled according to the new Biloxi Municipal Court Procedures for LFOs and Community Service (attached hereto as Exhibit A).
26. It is intended by Defendants Biloxi, Miller, and Steele, and by Plaintiffs Kennedy, Tillery, and Anderson that this Release shall be complete and shall not be subject to any claim of mistake of fact or law by Defendants Biloxi, Miller, or Steele, and that it expresses a full and complete settlement of liability claimed and denied, as against Plaintiffs and, that this Release is intended to avoid litigation and to be final and complete.
27. This Agreement is intended to, and Defendants Biloxi, Miller, and Steele, each represent and warrant that it or he will, dispose of all liability of Plaintiffs Kennedy, Tillery, and Anderson to it or him, and to any of its or his successors or assigns, that might now or in the future have a claim as a result of any injury sustained by it or him as a result of the Incidents.

Miscellaneous

28. This Agreement will be binding upon and will inure to the benefit of the signatories hereto and their respective successors and assigns.
29. No amendments of this Agreement will be valid unless made in writing and signed by all of the signatories hereto.
30. This Agreement may be executed in duplicate counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto were on the same instrument. Each signatory to the Agreement may execute this agreement by telefax or email of a

scanned copy of the signature page, which shall have the same force and effect as if executed on an original copy.

31. The Parties further agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
32. The Parties represent and warrant that they are not relying on the advice of any other Party, or anyone associated with them, as to legal, tax (income, estate, gift, or otherwise), or other consequences of any kind arising out of this Agreement; that they have not relied on any representations or statements, written or oral, of any other Party, including, but not limited to, any factual representation regarding the Incident, except insofar as those representations or statements are set forth in this Agreement; and that they are knowingly and voluntarily signing this Agreement and are not subject to duress, coercion, or undue influence by any other Party or by anyone else.
33. The Parties understand that they have the right to obtain legal counsel to review and evaluate this Agreement, and attest that they have done so or else have agreed to waive this right.
34. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect.
35. It is the intent of the signatories that no part of this Agreement is to be presumptively construed either against or in favor of any signatory because of the identity of the drafter.
36. Paragraph headings contained herein are for purposes of organization only and do not constitute a part of this Agreement.
37. Any communications or notices to be provided to legal counsel for the parties pursuant to this Agreement will be sent in writing via email or addressed, via commercial overnight delivery service, to the attention of the persons identified below (or as the signatories may subsequently direct in writing):

Qumotria Kennedy:

c/o Nusrat Choudhury, Esq. American Civil Liberties Union 125
Broad Street, 18th Floor New York, NY 10004 Telephone: (212)
519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

Richard Tillery:

c/o Nusrat Choudhury, Esq. American Civil Liberties Union 125
Broad Street, 18th Floor New York, NY 10004 Telephone: (212)
519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

Joseph Anderson:

c/o Nusrat Choudhury, Esq. American Civil Liberties Union 125

Broad Street, 18th Floor New York, NY 10004 Telephone: (212)
519-7876
Fax: (212) 549-2654
Email: nchoudhury@aclu.org

The City of Biloxi:

City of Biloxi
c/o Gerald Blessey, City Attorney 140 Lameuse Street
Biloxi, Mississippi 39530
Telephone: (228) 435-6254
Fax: (228) 435-6129
Email: gblessey@biloxi.ms.us

John Miller:

City of Biloxi
c/o Gerald Blessey, City Attorney 140 Lameuse Street
Biloxi, Mississippi 39530
Telephone: (228) 435-6254
Fax: (228) 435-6129
Email: gblessey@biloxi.ms.us

James Steele:

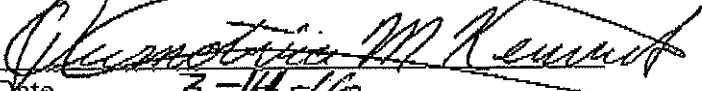
c/o Corban Gunn CORBAN GUNN, PLLC
175 Lameuse Street, Suite C Biloxi, Mississippi 39530
Telephone: (228) 284-6805
Cell: (228) 697-4866
corban@corbangunn.com

38. The Parties further agree to cooperate fully and in good faith to draft and release jointly to the public and press a reasonable and mutually agreeable joint press release that will summarize the basic terms and intent of this Agreement and the court procedures that the City has agreed to implement. The Parties agree to issue the joint press release simultaneously on March 15, 2016, the date of the regular Biloxi City Council meeting at which this Agreement will be approved.
39. This Agreement constitutes the entire agreement and understanding between and among the signatories with respect to the subject matter hereof and supersedes all other prior or contemporaneous oral agreements, understandings, undertakings and negotiations of the Parties.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their own signature or by their duly authorized representatives.

QUMOTRIA KENNEDY


Date 3-14-16

RICHARD TILLERY

Date

JOSEPH ANDERSON

Date

CITY OF BILOXI

By Name

Title

Date

JOHN MILLER

By Name

Title

Date

JAMES STEELE

By Name _____

Title _____

Date _____

Exhibits attached to and made a part of this Agreement:

Exhibit "A": Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service; and Forms One-Four

Exhibit "B": Bench Card

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their own signature or by their duly authorized representatives.

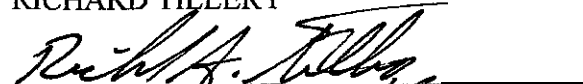
QUMOTRIA KENNEDY

By Name _____

Title _____

Date _____

RICHARD TILLERY


Date 3-14-10

JOSEPH ANDERSON

By Name _____

Title _____

Date _____

CITY OF BILOXI

By Name
_____Title
_____Date

JOHN MILLER

By Name
_____Title
_____Date

JAMES STEELE

By Name
_____Title
_____Date
_____**Exhibits attached to and made a part of this Agreement:**

Exhibit "A": Biloxi Municipal Court Procedures for Legal Financial Obligations and Community Service; and Forms One-Four

Exhibit "B": Bench Card

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their own signature or by their duly authorized representatives.

QUMOTRIA KENNEDY

Date _____

RICHARD TILLERY

Date _____

JOSEPH ANDERSON

Date _____

CITY OF BELOXI, MI

Title Mayor

Date March 15, 2016

JOHN MILLER

Title Chief of Police, City of Beloxi

Date March 15, 2016

JAMES STEELE

Title N/A

Date March 15, 2016

Exhibits attached to and made a part of this Agreement:

Exhibit "A": Biloxi Municipal Court Procedures for Legal Financial Obligations and
Community Service; and Forms One-Four

Exhibit "B": Bench Card

EXHIBIT A**BILOXI MUNICIPAL COURT PROCEDURES FOR****LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE**

No person shall be imprisoned solely because she/he lacks the resources to pay a fine, state assessment, fee, court cost, or restitution (collectively, “legal financial obligation” or “LFO”), or because she/he is unable to perform any required community service.

A person alleged to have not paid an LFO has the right to an ability-to-pay hearing and the right to have legal counsel present for representation to defend against possible incarceration for failure to pay. An indigent person facing possible incarceration for LFO nonpayment has an affirmative right to representation by court-appointed counsel at no cost in LFO collection proceedings.

To protect these and other rights, all Biloxi and private company personnel, if any, involved in LFO collection and evaluation of performance of community service imposed by the Biloxi Municipal Court shall abide by the following policies and procedures.

First Appearance—Appointment of Council

The Court may appoint counsel to represent an indigent defendant charged with a misdemeanor offense punishable by confinement. The Court shall determine indigence for purposes of appointing counsel by using the attached **Affidavit of Indigence** (Form Three) and by considering any other relevant factors.

When the Court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right.

Sentencing**Counsel**

A defendant is entitled to representation by counsel prior to the Court’s decision to impose a sentence of incarceration or probation for the collection of a fine, state assessment, fee, court cost, or restitution—absent a knowing, voluntary, and intelligent waiver of the right to counsel, as confirmed by an on-the-record colloquy with the Court. If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence in the future, on an unrepresented defendant, the Court must conduct an indigence determination by using the attached **Affidavit of Indigence** (Form Three), and by considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

If the Court determines that the defendant is not indigent, it may provide the defendant a continuance to permit retention of counsel. If the defendant seeks to waive the right to counsel at sentencing, the Court must conduct a colloquy to determine that any waiver is knowing, voluntary, and intelligent.

Imposition of Sentence

The Court shall assess ability to pay at sentencing when setting the amount of any fine, fee, court cost, or restitution. The Court's decision to impose jail time shall not be influenced by any finding that the defendant lacks the resources to pay a fine, state assessment, or restitution.

When the Court imposes a sentence that includes an LFO, the Court shall:

1. determine whether the defendant can pay in full that day, or needs additional time;
2. set the terms of a Payment Plan by which LFO payments shall be made to the Biloxi Municipal Court Clerk, if the defendant cannot pay in full on sentencing day;
3. set forth the sentence, including any Payment Plan terms, in a written order indicating the final date by which LFOs must be paid;
4. provide the defendant the attached Advisement of Rights and Obligations Related to Legal Financial Obligations and Community Service (Form Two); and
5. provide the defendant the attached LFO Inability to Pay Guide (Form Four).

No person unable to pay LFOs in full on sentencing day will be charged additional fees, costs, or interest for being placed on a Payment Plan with the following exception: a surcharge may be imposed on a defendant who chooses to make an LFO payment by credit card or debit card.

Advisement of Defendant's Responsibility to Inform the Court of Mailing Address Changes

The Court shall advise the defendant of her/his duty to inform the Court of any future changes to the defendant's mailing address and that failure to attend any future Compliance Hearings due to non-receipt of a hearing notice by mail may result in the issuance of an arrest warrant for failure to appear (FTA).

As soon as reasonably possible after a defendant has a change of mailing address, the defendant shall deliver to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530 the **Notice of Change of Address** (Form Two A). The defendant may deliver the notice by U.S. Mail, by hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or by email to coacourt@biloxi.ms.us. The Notice of Change of Address may be accessed at <http://www.biloxi.ms.us/ChangeOfAddressForm>.

Compliance Hearings

The Court shall set a Compliance Hearing, by using the attached **Biloxi Municipal Court Order Setting Compliance Hearing** (Form One), for every person who is sentenced to LFOs and/or

community service and who is alleged to have failed to meet the requirements of the Court's imposed sentence

The **Order** (Form One) will be sent by regular U.S. Mail to the defendant's last known address with the **Advisement of Rights and Obligations for LFOs and Community Service** (Form Two) and the **LFO Inability to Pay Guide** (Form Four).

The **Order** (Form One) will provide the defendant with thirty (30) days notice of the Compliance Hearing date and time.

If the Court will impose a jail sentence or wishes to preserve its right to impose a jail sentence in the future, the Court shall appoint counsel at no cost to represent an indigent defendant at a Compliance Hearing unless there is a knowing, voluntary, and intelligent waiver of the right to counsel. The Court shall determine indigence by using the attached **Affidavit of Indigence** (Form Three) and by considering any other relevant factors.

If the Court determines that the defendant is not indigent, it may provide the defendant a continuance to permit retention of counsel. The Court will document its finding that the defendant was, or was not, indigent and provide evidence in the record to support any finding of non-indigence.

For indigent defendants, the Court will document that a public defender was appointed for the defendant and appeared with the defendant at the Compliance Hearing or that the public defender was offered and that after the Court conducted a colloquy, the defendant knowingly, voluntarily and intelligently waived his/her right to an attorney.

Hearing Procedures and Standards

The Court must advise defendants of the following information set forth in the **Bench Card**:

1. all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution;
2. all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs;
3. indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
4. that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
5. the type of information relevant to determining ability to pay;
6. the potential penalties if a defendant is found to have willfully failed to pay an LFO; and
7. that any waiver of the right to counsel or the right to court-appointed counsel must be knowing, voluntary, and intelligent.

The defendant must be given an opportunity to present evidence that the amount allegedly owed is not accurate, or is not in fact owed, if the defendant believes that the amount is not correct.

In Compliance Hearings the Court shall consider, and make findings on, the defendant's ability to pay, efforts to secure resources, and, if the defendant is found to be unable to pay, the adequacy of alternatives to incarceration.

The Court will document its actions, findings, and evidence in support of its findings, including the Court's decision on whether the defendant is able to pay LFOs or has willfully failed to pay, whether the defendant made adequate efforts to secure resources, and, if the defendant is found to be unable to pay, whether alternatives to incarceration are adequate to achieve the City's interests in punishment and deterrence.

Ability to Pay

To determine ability to pay, the Court shall use the **Affidavit of Indigence** (Form Three) and inquire on the topics set forth in the **LFO Inability to Pay Guide** (Form Four), as well as any other factors considered by the Court to be relevant.

Any determinations that the Court makes regarding ability to pay or willfulness of nonpayment shall be guided by the **Bench Card**, and applicable law.

If a defendant is represented, the Court shall provide the defendant with adequate time to privately confer with defense counsel on the issue of ability to pay prior to the Court's ability-to-pay inquiry.

During the hearing, the Court shall carefully consider the defendant's responses to each question before making any determination regarding ability to pay and whether nonpayment was willful. If a defendant is unable to provide the information requested by the Court during an ability-to-pay inquiry, the Court shall consider allowing the defendant (and, if applicable, counsel) additional time to gather information to respond to the Court's questions.

The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. There shall be a rebuttable presumption that a person is unable to pay LFOs upon a finding of at least one of the following factors:

1. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Level ("FPL") chart;
2. the defendant is homeless;
3. the defendant is incarcerated; or
4. the defendant resides in a mental health facility.

Efforts to Secure Resources

In inquiring into, and making a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs, the Court shall consider the defendant's efforts to earn money, secure employment, and borrow money, as well as any limitations on the defendant's ability to

engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

Alternatives to Incarceration

If the Court determines that a person is unable to pay fines, fees, court costs, restitution, or state assessments, it shall consider alternative methods of achieving the City's interest in punishment and deterrence as set forth in the **Bench Card**, and shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration. *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983). These alternatives to incarceration shall include the following:

1. Reduction of the amount of fines, fees, court costs, and restitution imposed;
2. Waiver or Suspension of the fines, fees, court costs, and restitution imposed;
3. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
4. Extension of the amount of time for payment of the fines, fees, state assessments, court costs, and restitution imposed;
5. Completion of Approved Job Skills Training and Educational, Drug Treatment, Counseling and Mental Health Programs as an alternative or in addition to community service toward the discharge of fines, fees, state assessments, court costs, and restitution owed to Biloxi; and
6. Any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Imposition of Jail

The Court may not impose jail for failure to pay an LFO without making at least one of the following **written findings based on evidence**:

1. the defendant's failure to pay was willful;
2. the defendant failed to make sufficient bona fide efforts to acquire the resources to pay; and/or
3. the defendant was unable to pay, despite having made sufficient efforts to acquire resources, but alternative methods for achieving punishment or deterrence, including a reduction or waiver of the fine or restitution, an extension of time to pay, community service, and completion of approved programs are not adequate.

The Court may never impose jail solely because a defendant lacks the resources to pay a fine, fee, court cost, state assessment, or restitution.

Collections By Third Party Contractors

The Court may send a case to collections by a third-party contractor if a defendant has failed to make LFO payments in accordance with a Payment Plan and the Court has determined, after holding a Compliance Hearing in accordance with the procedures described herein, that:

1. the defendant has the ability to pay, but has refused or failed to pay the fine, fee, court costs, restitution, or state assessment owed; or
2. the defendant is unable to pay the LFO, but has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay a fine, fee, court cost, state assessment or restitution.

In any civil execution, attachment, and/or wage garnishment proceeding to collect unpaid LFOs, the defendant is entitled to the exemptions and exclusions found in Miss. Code Ann. § 85-3-1.

Failure to Appear

If a defendant fails to appear for a Compliance Hearing after the Court has mailed thirty (30) days notice of the Compliance Hearing to the address provided by the defendant, the Court may issue a warrant for failure to appear (FTA). It is defendant's duty and responsibility to notify immediately the Municipal Court of any change in her/his address.

All efforts must be made to serve the FTA warrant during business hours on a weekday. Upon arrest pursuant to an FTA warrant, the defendant should be brought directly to Municipal Court instead of being taken to the Harrison County Adult Detention Center. At that time, the Court will have the defendant complete an **Affidavit of Indigence** (Form Three) to determine whether the defendant is entitled to court-appointed counsel at no cost. On traffic tickets and other misdemeanor charges that will be fine only, if a defendant is arrested on a weekend, weekday night, holiday, or any other time when Court is not in session, the arresting officer will contact a Biloxi Municipal Court Judge by telephone before transporting the defendant to Harrison County Adult Detention Center, at which time the Judge will authorize release of the defendant on his or her own recognizance until the next Biloxi Municipal Court plea or hearing date.

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES FOR
LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE
FORM ONE

BILOXI MUNICIPAL COURT
ORDER SETTING COMPLIANCE HEARING

170 Porter Avenue, Public Safety Building, First Floor, Biloxi, MS 39530

CASE NUMBER: _____

DEFENDANT NAME: _____

COMPLIANCE HEARING DATE: _____

TOTAL BALANCE DUE: _____

Fines: _____ **State Assessments:** _____ **Fees:** _____

Court Costs: _____ **Restitution:** _____

PAYMENT PLAN SCHEDULE: _____

COMMUNITY SERVICE HOURS REQUIRED AND COMPLETION DATE: _____

OTHER PROGRAM HOURS REQUIRED AND COMPLETION DATE: _____

You have been charged with the failure to pay and/or the failure to complete community service and/or an approved program as required by the Biloxi Municipal Court.

Payment Options

You may pay the Biloxi Municipal Court Clerk the full amount of your fines, fees, state assessments, court costs, or restitution (“legal financial obligations” or “LFOs”) today or at any point prior to your Compliance Hearing. You may also make installment payments according to the Payment Plan Schedule set forth above.

Compliance Hearing

The Court has set the above date for a Compliance Hearing when it will review the status of your payment of any LFOs and your completion of any community service or approved program imposed as part of your sentence.

You will be expected to explain to the Court the reason why you have not complied with the Court’s Order.

If you are unable to pay the Total Balance Due identified above, the Compliance Hearing offers an opportunity for you to discuss your financial situation and explain why you are unable to pay.

If you are unable to complete the community service or approved program in job skills training, education, counseling, mental health, or drug treatment, required by the specified date, you may explain why you are unable to do so.

You may ask the Court to reduce or waive any fine, fee, court cost, or restitution that you were ordered to pay, or to convert any LFO (fine, fee, court cost, state assessment, restitution) to community service or participation in an approved job skills training, education, counseling, mental health, or drug treatment.

If the Court determines you are indigent and cannot afford an attorney, an attorney will be appointed to represent you.

Your ability to pay is a critical issue in this hearing. You should bring with you any records to help explain the reasons for your nonpayment or non-completion of community service, including, but not limited to, pay stubs, utility bills, expenses, federal and state tax returns, documentation of disability status and/or any medical conditions, medical bills, and evidence of efforts to earn or borrow money to satisfy your obligations to the Court and/or to gain paid employment.

Biloxi Municipal Court Judge

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

Attachments:

- Form 2: Advisement of Rights and Obligations for Legal Financial Obligations and Community Service
- Form 2A: Notice of Change of Address
- Form 4: LFO Inability to Pay Guide

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM TWO

BILOXI MUNICIPAL COURT

ADVISEMENT OF RIGHTS AND OBLIGATIONS

FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE*What is a “Legal Financial Obligation” or “LFO”?*

Any fine, fee, state assessment, court cost, or restitution imposed on you by the Court.

Do I have to attend the Compliance Hearing?

THIS HEARING IS MANDATORY. According to the Court records, you have failed to meet the requirements of the Court’s imposed sentence.

You **MUST** attend if you are unable to pay the Total Balance Due or complete the community service hours or participation in any job skills, education, counseling, mental health, or drug treatment required on your **Biloxi Municipal Court Order Setting Compliance Hearing** before the hearing date identified on the Order.

What will happen if I do not attend?

A warrant may be issued for your arrest for failure to appear in court.

Do I have a right to a lawyer?

Anyone may be represented by a lawyer at this Court proceeding. If you are found to be indigent, you have the **RIGHT TO A COURT-APPOINTED ATTORNEY TO REPRESENT YOU AT NO COST** at your Compliance Hearing.

The Court will use an **Affidavit of Indigence** to determine whether you are indigent and have the right to be represented by a court-appointed attorney at no cost.

The Court will provide you the form at the hearing.

What is the benefit of being represented by a lawyer at my Compliance Hearing?

A lawyer can help you assert your rights, prepare and present financial hardship documentation to the Court, and argue against jail and for alternatives to incarceration, if you are unable to pay any fine, fee, state assessment, court cost, or restitution.

Do I have to pay for a lawyer to represent me at the Compliance Hearing?

Yes, unless you are found to be indigent by the Court. If the Court finds you are indigent, the Court will appoint a lawyer to represent you at no cost to you.

If the Court appoints an attorney to represent me, when will the attorney prepare my case?

If the Court appoints an attorney to represent you at the Compliance Hearing, it will set a new date and time for the Compliance Hearing. Before that date, your attorney can help you complete the enclosed LFO Inability to Pay Guide and any other forms that the Court deems necessary, and to gather supporting documents. It is your responsibility to contact your appointed attorney for preparation and conference purposes.

You MUST attend the Compliance Hearing at the new date and time.

What will happen at my Compliance Hearing?

You will be expected to explain to the Court the reason why you have not complied with the Court's Order.

If you report that you are unable to pay LFOs, the Court will use the LFO Inability to Pay Guide and the Affidavit of Indigence, and will consider any other relevant information to inquire and make a decision about your finances.

This inquiry may include, among other things, asking you about your income, bank accounts, expenses (for example: rent, childcare, utilities, food, clothing, medical bills, transportation, etc.), and your property and other assets.

The Court may also inquire about your efforts to obtain money to pay, including your efforts to borrow money, your job search efforts and job skills, and any relevant limitations to your ability to work or secure work, including your disability, homeless status, health and mental health conditions, driving, and transportation limitations.

You should be prepared to present any DOCUMENTS showing your income, efforts to find work, expenses, disability or homeless status, receipt of needs-based public assistance, residence in a mental health facility, other LFOs, health conditions, driving, and transportation limitations.

Based on your ability to pay, you may be ordered to perform community service or be placed on a monthly Payment Plan with the Court.

Can I be JAILED for not being able to pay?

Yes, but there are protections to ensure that you are **NOT JAILED** solely because you are unable to pay LFOs.

1. The Court MAY IMPOSE JAIL for nonpayment of a FINE, FEE, COURT COST, or RESTITUTION ONLY IF it concludes, based on evidence, that:

you **ARE ABLE TO PAY, BUT WILLFULLY FAILED** to pay;

you **FAILED TO MAKE SUFFICIENT EFFORTS** to secure money to pay; or

there are **NO ADEQUATE ALTERNATIVES** to incarceration.

2. The Court CANNOT jail you for LFO nonpayment if you are indigent and you are not represented by a lawyer and have not validly waived your right to counsel.

Can I be jailed for not being able to complete my community service or a required job skill training or program in education, counseling, mental health, or drug treatment?

Yes, but you **CANNOT** be jailed for non-completion of community service or a program **UNLESS** you **WILLFULLY** failed to perform community service or complete the program despite having the ability to do so.

If the Court determines that you have a disability, illness, or other circumstances that would prevent you from performing community service or completing the program, you will not be required to complete it.

What if the terms of my probation require me to pay LFOs or to complete community service or a required program?

Your probation may be revoked and you may be jailed for failing to comply with these terms of your probation **ONLY IF** the Court determines that:

- you have the ability to pay the LFO, or the ability to complete community service and/or the required program, but failed to do so;
- you failed to make sufficient efforts to acquire the resources to pay or perform community service and/or complete the required program;
- even though you are unable to pay, and you made sufficient efforts to acquire resources, the alternatives to incarceration are not adequate.

What if I am unable to pay?

If the Court determines that you are unable to pay **fines, fees, court costs, or restitution**, the Court will consider alternatives to incarceration including reducing, suspending or waiving the amount owed, extending the time to pay, or any other disposition deemed just and

appropriate, in the discretion of the Court. The Court will also consider **converting fines, fees, state assessments, court costs, and restitution** owed to Biloxi to community service or the requirement to complete a training treatment or other program.

What if the “Total Balance Due” amount on my Biloxi Municipal Court Order Setting Compliance Hearing is incorrect?

You may ask the Biloxi Municipal Court Clerk to provide you with a balance history that shows the amount of fines, state assessments, fees, court costs or restitution imposed and the application of any payments you have made.

If you believe the information provided to you is incorrect, you may discuss this with your attorney and raise it with the judge at your Compliance Hearing.

What if I change my mailing address before I pay my LFO in full or complete my required program?

As soon as reasonably possible after a change of mailing address, you should complete the **Notice of Change of Address** (Form Two A) and deliver it to the Biloxi Municipal Court Clerk at 170 Porter Avenue, Biloxi, Mississippi 39530, either by U.S. Mail, by hand delivery to the Biloxi Municipal Court Administrator/Clerk's office, or by email to coacourt@biloxi.ms.us. The **Notice of Change of Address** may be accessed at <http://www.biloxi.ms.us/ChangeOfAddressForm>.

IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM TWO A

NOTICE OF CHANGE OF ADDRESS

The undersigned defendant hereby gives notice to the Biloxi Municipal Court of the following change of my residential and, if different, mailing addresses:

Previous Residential Address

New Residential Address

Previous Mailing Address

New Mailing Address

Telephone Number

Email Address (if any)

SIGNATURE

DATE

**RETURN THIS FORM TO THE OFFICE OF THE BILOXI MUNICIPAL COURT
CLERK AT 170 PORTER AVENUE, BILOXI, MISSISSIPPI 39530 EITHER BY
HAND-DELIVERY, BY U.S. MAIL, OR BY EMAIL TO coacourt@biloxi.ms.us.**

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES

FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

FORM THREE

AFFIDAVIT OF INDIGENCE

IN THE MUNICIPAL COURT OF THE CITY OF BILOXI, MISSISSIPPI

CITY OF BILOXI

v.

Case No. _____

Defendant

Name: _____

Residential Address: _____

City: _____ State: _____ ZIP: _____

1. Public Benefits/ Government Assistance received based on indigence:

- SSI WIC Food Stamps/SNAP TANF Medicaid CHIP
 AABD Needs-based VA Pension Pregnant Women Assistance Benefits
 LIS in Medicare ("Extra Help") Refugee Settlement Benefits Emergency Assistance
 County Assistance, County Healthcare, or General Assistance (GA) Public Housing
 Community Care via DADS Low-Income Energy Assistance
 LIS in Medicare ("Extra Help")
 Child Care Assistance under Child Care and Development Block Grant
 Other _____

2. Employment Status:

- a) Do you have a job? _____
 b) How much do you make per hour? \$_____. _____
 c) How many hours do you work per week? _____

Employer's Name: _____

Employer's Address: _____

City: _____ State: _____ ZIP: _____

- d) If you don't have a job, how long have you been unemployed? _____

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES

FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

3. Monthly Income

Total Work Income (salary, wages, tips, commissions, overtime, allowances) (pre- tax)	\$ _____
Spousal Work Income	\$ _____
Alimony Received	\$ _____
Child Support Received	\$ _____
Unemployment Compensation	\$ _____
Social Security/ Pension / Retirement	\$ _____
Trusts	\$ _____
Veteran's Benefits	\$ _____
Other Income from Family Members (not spousal income or child support)	\$ _____
Dividends or Interest Payments	\$ _____
Life Insurance Payments	\$ _____
Rental Income	\$ _____
Worker's Compensation	\$ _____
Disability	\$ _____
Union Payments	\$ _____
Gifts	\$ _____
Inheritance	\$ _____
Income Tax Refund	\$ _____
Other Income not on list	\$ _____
Total Monthly Income	\$ _____

3a. Other Income Not Received Monthly

Type of Income	\$ _____
Total Other Income	\$ _____

4. Assets

Cash on Hand	\$ _____
Real Property (home/land)	\$ _____
Non-Homestead Real Property	\$ _____
Dividends, Interest, Royalties	\$ _____
Motor Vehicle(s) Value	\$ _____
Certificates of Deposit	\$ _____
Boats	\$ _____
Stocks/Bonds	\$ _____
Savings Accounts	\$ _____
Checking Accounts	\$ _____
Money Market Accounts	\$ _____
Trusts	\$ _____
Other Assets Not on List	\$ _____
Total Assets	\$ _____

5. Liabilities and Debts

Motor Vehicle	\$ _____
Home	\$ _____
Other Real Property	\$ _____
Child Support Paid	\$ _____
Student Loans	\$ _____
Credit Cards	\$ _____
Medical Bills	\$ _____
Other	\$ _____
<i>Total Liabilities and Debts</i>	\$ ____ _

6. Monthly Expenses

Rent/ House Payments	\$ _____
Food and Supplies	\$ _____
Utilities	\$ _____
Clothing	\$ _____

Medical and Dental	\$ _____
Insurance	\$ _____
School and Child Care	\$ _____
Vehicle Payments	\$ _____
Travel/ Commute	\$ _____
Wages Withheld by Court	\$ _____
Debt Payments (student loan, credit card, etc.)	\$ _____
Other Expenses (Describe)	\$ _____
LFOs in other cases (fines fees, state assessments, court costs, or restitution)	\$ _____
<i>Total Monthly Expenses</i>	\$ ____ _

EXHIBIT A (continued)

BILOXI MUNICIPAL COURT PROCEDURES

FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE

7. Family and Dependents

- e) Do you have any children residing with you? Yes _____ No _____
If so, how many? _____ Age(s)? _____
- f) Including yourself, how many people in your household do you support? _____
Marital Status (check one):
Married __ Single __ Separated __ Widowed __ Divorced __
Spouse's Name: _____
Spouse's Address: _____
City: _____ State: _____ ZIP: _____
- g) Does your spouse have a job? _____ Where? _____
- h) Are you less than 18 years old? _____ If yes, please provide the following:
Father's name: _____ His monthly income \$ _____
Mother's name: _____ Her monthly income \$ _____

8. Please Read and Sign the Following:

I am unable to pay court costs. I verify under penalty of perjury that the statements made in this affidavit are true and correct. I understand the Court may require verification of the information provided above. I agree to immediately report any change in my financial status to the court.

I also understand and agree that the Court may mail important notices to me at the address I provided above and that I have a duty to immediately inform the Court of any change in my address. Failure to do so could result in my failure to receive important notices and lead to the issuance of a warrant for my arrest.

 Your Signature

 Date

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

EXHIBIT A (continued)

**BILOXI MUNICIPAL COURT PROCEDURES FOR
LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE**

FORM FOUR

LFO INABILITY TO PAY GUIDE

Name: _____
 Attorney Name: _____
 Case Number: _____
 Address: _____
 City: _____ State: _____ ZIP: _____

INCOME

Approximate Monthly Amount

Do you have a job? _____ Your wages/salary: _____
 \$ _____
 How much do you make per hour? _____
 How many hours do you work per week? _____ Occupation: _____
 Employer's name, address and phone number: _____

 How long worked there: _____
 Spouse/partner's monthly wages/salary: \$ _____
 Unemployment Compensation Received: \$ _____
 If you don't have a job, how long have you been unemployed? _____
 Social Security/Pension/Retirement Received: \$ _____
 Worker's Compensation: \$ _____
 Disability: \$ _____
 Union Payments: \$ _____
 Gifts: \$ _____
 Trusts: \$ _____
 Alimony Received: \$ _____
 Child Support Received: \$ _____
 Income from Family Members: \$ _____
 Stocks/Bonds: \$ _____
 Rental Income: \$ _____
 Dividends or Interest: \$ _____
 Life Insurance Payments: \$ _____
 Inheritances: \$ _____

Income Tax Refund:\$ _____
 Monthly amount received from public assistance programs:\$ _____
 Basic Food (SNAP) WIC SSI Pregnant Women Assistance Benefits Medicaid
 CHIP Poverty-Related Veterans' Benefits Temporary Assistance for Needy Families
 Refugee Settlement Benefits Aged, Blind or Disabled Assistance Program Public
 Housing Other: _____
 Other sources of income:\$ _____

APPROXIMATE TOTAL MONTHLY INCOME: \$ _____

MONTHLY EXPENSES

	Approximate Monthly Amount
Wages (garnishments) taken from your paycheck:	\$ _____
Rent/mortgage (your share):	\$ _____
Utilities (electricity, water, garbage, telephone, etc.):	\$ _____
Food: Travel/Commute:	\$ _____
Travel/Commute:	\$ _____
Health care (out-of-pocket medical/dental costs, prescriptions, insurance, debt payments):	\$ _____
Child support, spousal maintenance, and loan payments:	\$ _____
Child Care and School:	\$ _____
Vehicle Payments:	\$ _____
Court-ordered fines, fees, and restitution—monthly payment amount:	\$ _____
Credit cards and other debt payments:	\$ _____
Other basic living costs (diapers, clothing, etc.) Describe:	\$ _____

APPROXIMATE TOTAL MONTHLY EXPENSES: \$ _____

ASSETS

	Approximate Monthly Amount
Cash on Hand:	\$ _____
Checking Accounts:	\$ _____
Savings Accounts:	\$ _____
Money Market Accounts:	\$ _____
Dividends, Interest, Royalties:	\$ _____
Certificates of Deposit:	\$ _____
Stocks/Bonds:	\$ _____
Trusts:	\$ _____
Other: :	\$ _____

APPROXIMATE TOTAL ASSETS: \$ _____

OTHER ASSETS

	Approximate Value
Real Property (home/land) :	\$ _____
Non-Homestead Real Property:	\$ _____
Motor Vehicle(s):	\$ _____
Boat(s):	\$ _____
APPROXIMATE TOTAL OTHER ASSETS: \$ _____	

CURRENT OUTSTANDING DEBTS

	Approximate Amount
Credit cards, personal loans, and other installment debt:	\$ _____
Motor Vehicle:	\$ _____
Home: :	\$ _____
Other Real Property:	\$ _____
Outstanding legal financial obligations (LFOs), including other cases:	\$ _____
Outstanding medical care debt:	\$ _____
Child support arrears:	\$ _____
Outstanding Student Loans:	\$ _____
Other outstanding debt (describe:	\$ _____
APPROXIMATE TOTAL CURRENT DEBT: \$ _____	

PERSONAL INFORMATION

Are you less than 18 years old? _____ If yes, please provide the following:

Father's Name: _____ His monthly income? \$ _____

Mother's Name: _____ Her monthly income? \$ _____

Incarceration for this and/or other offenses: _____

Anticipated length of incarceration for this and/or other offenses: _____

In addition to myself, I financially support _____ person/people. Age(s): _____

Marital Status (Check One) Married _____ Single _____ Separated _____ Widowed _____ Divorced _____

Spouse's Name: _____

Spouse's Address: _____

Does your spouse have a job? _____

EXHIBIT A (continued)

**BILOXI MUNICIPAL COURT PROCEDURES
FOR LEGAL FINANCIAL OBLIGATIONS AND COMMUNITY SERVICE**

Your highest level of education or vocational training, area of study:

Brief description of employment history and approximate salary/wages over the past three years:

Description of the impact of LFO payments on your immediate family (include any information regarding housing, employment, child care, transportation, and any additional information you believe to be relevant):

Impact of incarceration or jail time on your ability to pay your LFOs:

Your efforts to borrow money:

If unemployed, what efforts have you made to obtain employment upon being assessed with the fines, fees, state assessments, court costs, and/or restitution?

When was the last time you looked for a job?

Why didn't you pay the fine and costs from any money received?

Other facts the court should know regarding future ability to pay fees and fines (if a disability or health or mental health condition has impeded your ability to secure employment or earn money, please request permission to approach the bench and tell the judge, if you would like judge to know).

**IT IS YOUR DUTY AND RESPONSIBILITY TO NOTIFY IMMEDIATELY THE
MUNICIPAL COURT OF ANY CHANGE IN YOUR ADDRESS.**

EXHIBIT B

BENCH CARD

Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service

The U.S. Constitution and Mississippi law require safeguards when collecting fines, state assessments, fees, court costs, and restitution (collectively, “legal financial obligations” or “LFOs”)⁴⁵⁰ All Biloxi Municipal Court (“BMC”) Judges shall abide by the procedures described below.

RIGHT TO COUNSEL**FIRST APPEARANCE:**

When a person is brought before the Biloxi Municipal Court, and charged with a misdemeanor, the Court shall provide the defendant an opportunity to sign an **Affidavit of Indigence** stating that he or she is indigent and unable to employ counsel.⁴⁵¹

The court shall use the **Affidavit of Indigence**, and any other relevant factors, to evaluate whether the defendant is entitled to counsel.

The court may appoint counsel to represent an indigent defendant charged with a misdemeanor punishable by confinement.⁴⁵²

When the court determines that representation is required at the plea, trial, sentencing, or post-sentencing stage of the proceedings, it must appoint counsel to represent an indigent defendant, unless there is a knowing, voluntary, and intelligent waiver of the right to counsel.⁴⁵³

⁴⁵⁰ *Bearden v. Georgia*, 461 U.S. 670, 672 (1983) (“If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court *must* consider alternative measures to punishment other than imprisonment.”) (*Emphasis added*); Miss. Code Ann. §§ 21-23-7; 25-32-9; 63-1-53; 99-15-26; 99-37-11.

⁴⁵¹ Miss. Code Ann. § 25-32-9.

⁴⁵² Miss. Code Ann. §§ 21-23-7; 25-32-9

⁴⁵³ Miss. Code Ann. § 25-32-9.

SENTENCING:

A defendant is entitled to the assistance of counsel **before** being sentenced to incarceration or probation for the collection of a fine, fee, court cost, state assessment, or restitution, unless there is a knowing, voluntary and intelligent waiver of the right to counsel.⁴⁵⁴

If the Court contemplates imposing incarceration or probation on an unrepresented defendant, or wishes to preserve its right to impose a jail sentence or probation in the future, the Court must conduct an indigence determination by using the **Affidavit of Indigence**, and considering any other relevant factors, to evaluate whether the defendant is entitled to court-appointed counsel at no cost.

COMPLIANCE HEARING:

The court must inform every person charged with failure to pay an LFO of:

- (1) all defendants' right to representation by legal counsel in any proceeding concerning nonpayment;
- (2) indigent defendants' right to court-appointed representation at no cost when facing possible incarceration for failure to pay LFOs.

The Court must appoint counsel to represent indigent people who face the possibility of incarceration due to nonpayment of an LFO, including in Compliance Hearings and Probation Revocation Hearings, unless there is a knowing, voluntary, and intelligent waiver of that right.

WAIVER OF RIGHT TO COUNSEL:

The Court **may not** accept a written or oral waiver of any right to court-appointed counsel without **FIRST** informing the defendant of the nature of the charges, of the defendant's right to be counseled regarding her/his plea, and the range of possible punishments, and ensuring that any waiver is knowing, intelligent, and voluntary.

If a defendant/probationer seeks to waive his or her right to counsel, the court must conduct a colloquy on the right to inform the defendant:

- (1) **that the indigent defendant has a right to a court- appointed attorney or public defender at no cost;**
- (2) **that any fee normally charged for representation by a court-appointed attorney shall be waived for indigent defendants; and**
- (3) the nature of the charges against the defendant, of defendants' right to be counseled regarding his or her plea, and the range of possible punishments.

⁴⁵⁴ *Alabama v. Shelton*, 535 U.S. 654, 658 (2002).

IMPOSITION AND COLLECTION OF LFOs**SENTENCING**

The Court shall assess ability to pay when setting the amount of any fine, fee, court cost, or restitution.⁴⁵⁵ The Court should consider:

- (1) the defendant's financial resources and income;
- (2) the defendant's financial obligations and dependents;
- (3) the defendant's efforts and ability to find and engage in paid work, including any limitations due to disability or residence in a mental health facility;
- (4) outstanding LFO obligations in other cases or to other courts;
- (5) the length of the defendant's probation sentence, if any;
- (6) the goals of deterrence, retribution, and rehabilitation;
- (7) the Affidavit of Indigence; and
- (8) any other factor or evidence that the Court deems appropriate.

The Court shall also consider the ability to perform community service when setting any community service requirements.

Fines, Fees, Court Costs, and Restitution:

If the defendant is unable to pay, the Court should consider:

- (1) Reduction of the amount of fines, fees, court costs, and restitution imposed;
- (2) Waiver or Suspension of the fines, fees, court costs and restitution imposed;
- (3) Community Service credit toward the discharge of fines, fees, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
- (4) Extension of the amount of time for payment of the fines, restitution, fees, and court costs imposed;
- (5) Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (6) Other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

⁴⁵⁵ ⁶ *Bearden v. Georgia*, 461 U.S. 660, 669–70 (1983) (“[W]hen determining initially whether the State’s penological interests require imposition of a term of imprisonment, the sentencing court can consider the entire background of the defendant, including his employment history and financial resources.”).

Mandatory State Assessments:

If the defendant is unable to pay, the Court should consider:

- (1) extending the defendant's time to pay;
- (2) requiring the defendant to perform community service to satisfy the state assessment fees;
- (3) requiring the completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- (4) imposing any other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

The Court may not reduce or suspend any mandatory state assessments, including those imposed under Miss. Code Ann. § 99-19-73.

Jail: The Court's decision to sentence a defendant to jail shall NOT solely be based on any finding that the defendant is unable to pay a fine, state assessment, court costs, fee, or restitution.

After setting the amount of any LFOs, and Community Service, and Program Requirements the Court shall:

- (1) Determine whether the defendant can pay LFOs in full, or needs additional time;
- (2) Set the terms of a Payment Plan by which LFO payments shall be made to the BMC Clerk, if the defendant cannot pay in full on sentencing day;
- (3) Set forth the sentence in a written order indicating the final date for payment of LFOs and performance of community service, and any Payment Plan terms;
- (4) Provide the defendant the **Advisement of Rights and Obligations Related to LFOs and Community Service, Notice of Change of Address form, and LFO Inability to Pay Guide.**

REPORT OF NONPAYMENT

Warrants: The court shall not issue any warrant directing arrest for alleged LFO nonpayment absent a Compliance Hearing as described below.

The Court shall hold a Compliance Hearing for defendants who are sentenced to LFOs, community service and/or training, treatment, counseling and mental health programs and who are alleged to have failed to meet the requirements of the Court's sentence.

The Court shall provide at least 30 days notice of a Compliance Hearing through use of the **Biloxi Municipal Court Order Setting Compliance Hearing**. The Court shall also provide the **Advisement of Rights and Obligations Related to LFOs and Community Service** and the **LFO Inability to Pay Guide** when providing notice of a Compliance Hearing.

COMPLIANCE HEARING

Compliance Hearings will be audio recorded. In the event audio recording equipment is temporarily not working, the Court shall ensure that the case record includes: 1) the evidence submitted by the defendant, and 2) written documentation of the Court's findings, supporting evidence, and colloquy concerning ability to pay, efforts to secure resources, alternatives to incarceration, and the right to counsel.

Hearing Procedures and Standards

The Court must advise defendants of:

- (1) all defendants' right to an ability-to-pay hearing prior to jailing for nonpayment of fines, fees, state assessments, court costs, or restitution;
- (2) all defendants' right to be represented by legal counsel for defense against possible incarceration for failure to pay LFOs;
- (3) indigent defendants' right to court-appointed counsel at no cost to defend against possible incarceration in proceedings concerning nonpayment of LFOs;
- (4) that ability to pay, efforts to secure resources, and alternatives to incarceration are critical issues in a Compliance Hearing;
- (5) the type of information relevant to determining ability to pay; and
- (6) the potential penalties if a person is found to have willfully failed to pay an LFO.

The Court must provide defendants an opportunity to present evidence that the amount allegedly owed is not accurate or not in fact owed if the defendant believes the amount is not correct.

As part of determining whether the failure to pay was willful and whether incarceration can be imposed, the Court shall:

1. **Inquire into, and make a determination on, ability to pay LFOs**, by considering the totality of the circumstances, including the defendant's income, assets, debts, other LFO obligations, and any other information the Court deems appropriate. The Court shall use the **Affidavit of Indigence** and the **LFO Inability to Pay Guide** to conduct this inquiry.

The Court shall find that a defendant is unable to pay LFOs when, in consideration of the totality of the circumstances, it finds that the payment of LFOs would impose substantial hardship on the defendant or the defendant's dependents, including children and elderly parents. The Court shall make a rebuttable presumption that a person is unable to pay LFOs when:

- a. the defendant's annual income is at or below 125% of the federal poverty level for his or her household size according to the current Federal Poverty Level ("FPL") chart;
- b. the defendant is homeless;
- c. the defendant is incarcerated; and/or
- d. the defendant resides in a mental health facility.

2. Inquire into, and make a determination on, the reasonableness of a defendant's efforts to acquire resources to pay LFOs.

The Court shall take into account efforts to earn money, secure employment and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors.

3. If the Court determines that a defendant is unable to pay, the Court will consider and make a determination on the adequacy of alternatives to incarceration for nonpayment of fines or restitution, including:

- a. Reduction of the amount of fines, fees, court costs, and restitution imposed;
- b. Waiver or Suspension of the fines, restitution, fees, and court costs imposed;
- c. Community Service credit toward the discharge of fines, fees, state assessments, court costs, or restitution owed to Biloxi. Biloxi Municipal Court Judges shall not impose a fee for those who participate in community service. Biloxi Municipal Court Judges will attempt to provide sufficient variety of opportunities for community service to accommodate individuals who have physical or mental limitations, who lack private transportation, who are responsible for caring for children or family members, or who are gainfully employed;
- d. Extension of the amount of time for payment of the fines, restitution, fees, state assessments, and court costs imposed;
- e. Completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service; and
- f. Imposing other disposition deemed just and appropriate, in the discretion of the Court, pursuant to applicable law.

Judges shall be guided by the Supreme Court's recognition that the government's "interest in punishment and deterrence can often be served fully by alternative means" to incarceration.⁴⁵⁶

The Court will document its actions and findings and evidence in the record supporting its findings.

⁴⁵⁶ *Bearden v. Georgia*, 461 U.S. 670, 671–72 (1983).

IMPOSING JAIL FOR FAILURE TO PAY

The Court may impose incarceration following a Compliance Hearing if it makes one of the following findings, supported by evidence:

- (1) a defendant has willfully refused to pay the fine, fee, court cost, state assessment, or restitution when she/he has the means to pay;
- (2) a defendant has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure resources in order to pay the fine; or
- (3) the defendant is unable to pay, despite making sufficient efforts to acquire the resources to pay, and alternative methods for achieving punishment or deterrence are not adequate.⁴⁵⁷

THIRD PARTY COLLECTIONS

The Court may send a case to collections by a third-party contractor if a defendant has failed to make LFO payments in accordance with a Payment Plan and the Court has determined, after holding a Compliance Hearing in accordance with the procedures described herein, that:

- (1) the defendant has the ability to pay, but has refused to pay the fine, fee, court costs, restitution, or state assessment owed;
- (2) or the defendant is unable to pay the LFO, but has failed to make sufficient bona fide efforts to seek employment, borrow money, or otherwise secure the resources in order to pay a fine, fee, court cost, state assessment, or restitution.

In any civil execution, attachment, and/or wage garnishment proceeding to collect unpaid LFOs, the defendant is entitled to the exemptions and exclusions found in Miss. Code Ann. § 85-3-1.

Collecting Fines, Fees, State Assessments, Court Costs, and Restitution

<u>Permitted Methods of Collection</u>	<u>Impermissible Methods of Collection</u>
<ul style="list-style-type: none"> • Voluntary Payment • Payment Plan Administered by Court • Community Service (except restitution owed to a party other than Biloxi) • Execution of Civil Judgment • Collection by Third Party Contractors following Compliance Hearing and Court determination as described above. 	<ul style="list-style-type: none"> • Imposing Jail at Sentencing • Issuance of Failure-to-Pay Warrants Upon Report of Nonpayment • Forfeiture of Confiscated Money • Imposing “pay or stay” sentence

⁴⁵⁷ ⁸ *Id.* at 668–69.

**Nevada Advisory Committee to the
U.S. Commission on Civil Rights**

The Nevada Advisory Committee to the U.S. Commission on Civil Rights submits this advisory memorandum regarding the potential for disparate impact on the basis of race, color, or other federally protected category in the enforcement of municipal fines and fees. The Committee submits this advisory memorandum as part of its responsibility to study and report on civil rights issues in the state of Nevada and to supplement the 2017 statutory enforcement report. The contents of this advisory memorandum are primarily based on testimony the Committee heard during public meetings on March 15, 2017 held simultaneously in Las Vegas and Reno.

This advisory memorandum begins with a brief background on the topic to be considered by the Committee. It then presents an overview of the testimony received. To conclude, this memorandum identifies recommendations for addressing civil rights concerns directed to various stakeholders at the federal and state level. In recognition of the Commission's continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers findings and recommendations for addressing this problem of national importance.

**Nevada Advisory Committee to the
U.S. Commission on Civil Rights**

Wendell Blaylock, *Chair, Nevada Advisory Committee, Las Vegas*

Bob Beers, Las Vegas

Kathleen Bergquist, Las Vegas

Sondra Cosgrove, Las Vegas

Carol Del Carlo, Incline Village

Debra Feemster, Sparks

David Fott, Las Vegas

Emma Guzman, Reno

Kara Jenkins, Las Vegas

Kay Kindred, Las Vegas

Theresa Navarro, Reno

Jon Ponder, Las Vegas

Matthew Saltzman, Las Vegas

Ed Williams, Las Vegas

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Nevada Advisory Committee to the U.S. Commission on Civil Rights

Date: June 13, 2017

Subject: Municipal Fines and Fees in the State of Nevada

On March 15, 2017, the Nevada Advisory Committee (Committee) to the U.S. Commission on Civil Rights convened public meetings held simultaneously in Las Vegas and Reno to hear testimony to examine the potential for disparate impact on the basis of race, color, or other federally protected category in the enforcement of municipal fines and fees. The following advisory memorandum results from the following sources: (i) testimony provided during the March 15, 2017 meeting of the Nevada Advisory Committee, (ii) supplementary testimony provided during a March 29, 2017, meeting of the Nevada Advisory Committee, and (iii) written testimony and comment submitted to the Committee during the thirty-day public comment period. It begins with a brief background of the topic to be considered by the Committee. It then presents an overview of the testimony received. To conclude, this memorandum identifies recommendations for addressing civil rights concerns directed to various stakeholders at the federal and state level. This memo, including the recommendations within it, was adopted by the Committee on May 25, 2017.

Background

The shooting death of unarmed teenager Michael Brown by police in Ferguson, Missouri, on August 9, 2014, started a national conversation on policing which led to a report released by the

U.S. Department of Justice (DOJ), Civil Rights Division analyzing the practices of the Ferguson Police Department. Among its findings, the report revealed that Ferguson's law enforcement efforts were focused on generating revenue by enforcing municipal fines and fees at the expense of ensuring public safety needs.⁴⁵⁸ Further, the report found that the practice of raising revenue through the court system challenges the independent role of the judiciary, shifts the essential functions of the courts, and adversely impacts the most vulnerable communities, especially those living in or near poverty.⁴⁵⁹ To address these issues, the DOJ issued five resources, four of which

⁴⁵⁸ U.S. DEP'T OF JUSTICE, C.R. DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 42 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf [*hereafter* INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT].

⁴⁵⁹ *Ibid.*

were addressed to chief justices and state court administrators,⁴⁶⁰ and one addressed to recipients of financial assistance from various federal agencies dealing with juvenile justice matters.⁴⁶¹ These resources are:

1. Dear Colleague Letter⁴⁶² from the Civil Rights Division and the Office for Access to Justice to provide greater clarity to state and local courts regarding their legal obligations with respect to the enforcement of court fines and fees.
2. Announcement of \$2.5 million in competitive grants⁴⁶³ through the Bureau of Justice Assistance (BJA) to state, local or tribal jurisdictions that, together with community partners, want to test strategies to restructure the assessment and enforcement of fines and fees.
3. BJA support for the National Task Force on Fines, Fees, and Bail Practices that will be responsible for drafting model statutes, court rules and procedures, and development of an online clearinghouse of best practices.
4. A resource guide compiled by the Office of Justice Programs Diagnostic Center that highlights issue studies and other publications related to the assessment and enforcement of court fines and fees.
5. Advisory letter for recipients of financial assistance to remind them of their constitutional and statutory responsibilities related to collecting fines and fees from youth involved with the juvenile justice system. Akin to the Dear Colleague Letter, this correspondence offers recommendations to improve the administration of juvenile fines and fees.

The U.S. Constitution along with other federal law protect citizens from government systems that raise revenue from its citizens. The Due Process Clause of the Fourteenth Amendment⁴⁶⁴ bars criminal adjudication by individuals who have a financial stake in cases they decide.⁴⁶⁵ Secondly, the Equal Protection Clause of the Fourteenth Amendment ensures that no state shall deny any persons “the equal protection of the laws.”⁴⁶⁶ The Eighth Amendment to the U.S. Constitution forbids the excessive levying of fines.⁴⁶⁷ Finally, the Title VI of the Civil Rights Act of 1964, as

⁴⁶⁰ Press Release, U.S. Dep’t of Justice, Off. of Pub. Aff., Justice Department Announces Resources to Assist State and Local Reform Fine and Fee Practices (Mar. 14, 2016), <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices> (last visited April 10, 2017).

⁴⁶¹ ⁴ U.S. DEP’T OF JUSTICE, ADVISORY FOR RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE U.S. DEP’T OF JUSTICE

ON LEVYING FINES AND FEES ON JUVENILES (2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

⁴⁶² ⁵ Letter from the U.S. Dep’t of Justice (Mar. 14, 2016), <https://www.justice.gov/crt/file/832461/download> (last visited April 10, 2017).

⁴⁶³ ⁶ U.S. DEP’T OF JUSTICE, OFF. OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, THE PRICE OF JUSTICE: RETHINKING THE CONSEQUENCES OF JUSTICE FINES AND FEES (2016), <https://www.bja.gov/funding/JRIPriceofJustice.pdf> (last visited April 10, 2017).

⁴⁶⁴ ⁷ U.S. CONST. amend. XIV, § 1.

⁴⁶⁵ ⁸ See *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 883-884 (2009).

⁴⁶⁶ ⁹ U.S. CONST. amend. XIV, § 1.

⁴⁶⁷ ¹⁰ U.S. CONST. amend. VIII.

amended, prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance.⁴⁶⁸¹

The Committee is aware that the U.S. Commission on Civil Rights (Commission) is presently studying the issue of municipal fines and fees and the effectiveness of DOJ's enforcement efforts. To fulfill this study, the Commission has invited its advisory committees to consider undertaking studies on the civil rights implications of the enforcement of municipal fines and fees. As such—and in keeping with their duty to inform the Commission of: (i) matters related to discrimination or a denial of equal protection of the laws and (ii) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress, the Committee submits the following findings and recommendations to the Commission regarding the potential for disparate impact on the basis of race, color, or other federally protected category in the levying of fines and fees Nevada. These findings and recommendations are intended to highlight the most salient civil rights themes as they emerged from the Committee's inquiry. In recognition of the Commission's continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers findings and recommendations, along with supplementary resources, as topics of reference for the Commission's 2017 statutory enforcement report. The complete meeting agenda, minutes, and transcripts are included in Appendix A and B for further reference.

Overview of Testimony

The Committee approached this project from a neutral posture and sought input from local, state, and national stakeholders representing various perspectives on the topic. During the March 15, 2017 Committee meetings in Las Vegas and Reno, the Committee heard testimony regarding potential disparities in the administration of fines and fees on the basis of race or color,⁴⁶⁹ as well as recommendations to address any related concerns regarding equal protection and the right to due process of law. The Committee heard from government officials and law enforcement who have specific knowledge of the administration of fines and fees; policy experts who offered the national, state, and local trends; and community members directly impacted by municipal fines and fees. The Committee also heard testimony from elected officials and community advocates on their efforts to address disparate impact of fines and fees affecting individuals of federally protected classes. To accommodate a scheduled panelist who was unable to attend the live hearing, the Committee heard from a policy expert who analyzes fines and fees levied on juveniles and their families on March 29, 2017. In addition, the Committee received written statements offering supplemental information on the topic.⁴⁷⁰ Notably, despite several outreach attempts, no other State officials or State representatives were able to participate to explain the fiscal matters

⁴⁶⁸ 42 U.S.C. § 2000(d). (2012).

⁴⁶⁹ Testimony was also heard on the treatment of individuals with mental health issues and their interaction with the law enforcement and the court system.

⁴⁷⁰ Written testimony submitted can be found in Appendix D.

related to fines and fees or matters related to potential reform efforts. Additionally, Chief Justice James Hardesty of the Nevada Supreme Court was invited to provide testimony, but due to his involvement with the Nevada Advisory Commission on the Administration of Justice and the National Task Force on Fines and Fees, and Bail Practices, he was unavailable to provide comments related to state efforts. It is within this context that the Committee presents the findings and recommendations that follow.

Findings

The section below provides findings received and reflects views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand. A brief biography of each panelist and his or her credentials can be found in Appendix C.

1. Testimony indicated the following concerns regarding a severe deficit of demographic data collection and tracking:
 - a) Nevada courts and law enforcement are not required to collect demographic information regarding who utilizes the court system and who interacts with law enforcement. Information is not recorded and readily accessible from the courts regarding who (i) have paid off fines and fees, (ii) are on a payment plan, (iii) were given the alternative to perform community service in lieu of paying off fines and fees, and (iv) was given a hearing and of what type. Similarly, law enforcement do not maintain demographic information for individuals (i) with a bench warrant as a result of the inability to pay, (ii) who are being held in jail as a result of inability to pay and for how long, and (iii) who are being stopped and for what violations.⁴⁷¹ As such, it is not possible to monitor or assess the potential for disparate impact on the basis of race, color, disability, or other federally protected category.
 - b) Widely used case management databases by courts and law enforcement are largely outdated and do not have the appropriate fields to enter demographic categories. Efforts to upgrade these systems would require significant funding. This poses a challenge for potential state reform efforts that would require courts and law enforcement to collect demographic information.⁴⁷² Additionally, there is concern regarding how a potential statewide system upgrade would be funded as taxes are largely unpopular among Nevada residents.⁴⁷³

⁴⁷¹ Public Meeting: Municipal Fines & Fees in Nev.: Hearing Before the Nevada Advisory Committee to the U.S. Commission on Civil Rights 180 lines 13-20 (Nev. 2017) (statement of Amy Rose, Legal Director, American Civil Liberties Union, Nev.), <https://database.faca.gov/committee/meetingdocuments.aspx?flr=147607&cid=261> [*hereafter* Transcript].

⁴⁷² Transcript (statement of Leisa Moseley, Founder, The Action Company) 105 lines 9-23.

⁴⁷³ Transcript (statement of Dustin Marcello, Esq., Def. Att’y, Pitaro & Fumo Law) 218 line 23-219 line 16; Transcript (statement by Hannah Brown, President Emeritus, Urban Chamber of Commerce) 219 lines 17-23.

- a) Incomplete, missing, and inaccurate demographic data shared between courts and law enforcement⁴⁷⁴ make it difficult to ascertain the extent to which disparate impact affects a federally protected category. However, an advocate warned that if data driven law enforcement efforts are pursued as a result of collecting demographic information, it may be used to reinforce racial profiling in predominantly minority communities.⁴⁷⁵
2. There is consensus in research and testimony that explains individuals impacted by fines and fees are overwhelmingly poor. While there is insufficient demographic data collected by law enforcement and the courts⁴⁷⁶ to assess whether federally protected categories of individuals are impacted, research and testimony indicate there is reason for concern.
 - a. In 2015, the Las Vegas Review-Journal investigated law enforcement data and found that residents living in the seven poorest, statistically African-American and Hispanic zip codes account for nearly two-thirds of traffic citations.⁴⁷⁷
 - b. According to the Kenny Guinn Center for Policy Priorities, North Las Vegas—a city with a high rate of poverty and high concentration of minority communities—collected \$10.7 million in fines, fees, and assessments out of the \$13.2 million originally imposed.⁴⁷⁸
 - c. A 2002 study, Commissioned by the Nevada Legislature, found that African-American and Hispanic residents in Nevada are more likely to be pulled over for traffic stops than White residents. African-American residents also were more likely to be searched statewide. Across all participating law enforcement agencies, African-American drivers were searched at a high rate, more than twice the rate of White drivers (9.5 percent to 3.9 percent).⁴⁷⁹
 - d. According to a report written by the Juvenile Law Center, youth of color were more likely than their White counterparts to have unresolved fines or fees after closed cases, which relate to higher recidivism rates. It notes that the fees structures that include a failure to pay requirement may contribute to racial disparities in the juvenile justice system nationally.⁴⁸⁰

⁴⁷⁴ 17 Transcript (statement of Dana Hlavac, Ct. Adm., L.V. Mun. Ct.) 12 lines 16-20.

⁴⁷⁵ Transcript (statement of Marcello) 205.

⁴⁷⁶ 19 Transcript (statement of Hlavac) 11 lines 14-13 line 2.

⁴⁷⁷ James DeHaven, *Poor Residents Take Brunt of Planned Vegas Muni Court Payments*, L.V. Rev. J, Jun. 15, 2015, <https://www.reviewjournal.com/local/local-las-vegas/poor-residents-take-brunt-of-planned-vegas-muni-court-payments/>.

⁴⁷⁸ Transcript (statement of Megan Rauch, 114 lines 5-14.

⁴⁷⁹ RICHARD C. MCCORKLE, NEVADA OFFICE OF THE ATT'Y GEN. & U. OF NEVADA., LAS VEGAS., DEP'T OF CRIM. JUSTICE, A.B. 500 TRAFFIC STOP DATA COLLECTION STUDY: A SUMMARY OF FINDINGS (U. of Nev., Las Vegas, Dept. of Crim. Just. 2003); *Blacks, Hispanics in Nevada More Likely to be Pulled Over for Traffic Stops*, Las Vegas Sun, Jan. 31, 2003, <https://lasvegassun.com/news/2003/jan/31/blacks-hispanics-in-nevada-more-likely-to-be-pulle/>.

⁴⁸⁰ ALEX R. PIQUERO & WESLEY G. JENNINGS, JUSTICE SYSTEM—IMPOSED FINANCIAL PENALTIES INCREASE THE LIKELIHOOD OF RECIDIVISM IN A SAMPLE OF ADOLESCENT OFFENDERS (Youth Violence and Juvenile Just. 2016).

- e. The National Council on Crime and Delinquency conducted a study on racial and ethnic disparities in the U.S. Criminal Justice System and found that African-Americans comprise 13 percent of the population but 28 percent of those arrested and 40 percent of those incarcerated. Notably, African-Americans are also almost five times more likely than White defendants to rely on indigent defense counsel.⁴⁸¹
3. Out of eight possible fines and fees, Nevada youth and their families are required to pay up to six types of fines and fees as they move through the juvenile justice system. Of the six fines and fees, three are mandatory and the remaining are made by judicial determination.⁴⁸² Collection of these legal financial obligations raise concerns about (i) its practicability as youth have limited or no access to money, (ii) its rehabilitative purpose, and (iii) its disparate impact on youth of color in the justice system.⁴⁸³
 4. Testimony indicated the following concerns regarding due process of law in imposing and resolving fines and fees:
 - a) The use of counsel to challenge fines and fees is costly. In many cases, the fee amount is significantly more than the actual fine. It is often not logical to hire an attorney to represent the individual, especially if the individual is indigent, because the legal costs would be too expensive.⁴⁸⁴ As a result, defense lawyers have turned away individuals dealing with high fines and fees which leave individuals with few options to address their debt.⁴⁸⁵
 - b) In some cities, traffic commissioners are appointed by city council members to address minor traffic violations and conduct indigency inquiries. These individuals have the authority to waive a defendant's rights to trial and allow him or her to pay for the fine and fee, or determine alternative payment options.⁴⁸⁶ Without judicial oversight, it is difficult to ensure that these duties are done in a manner consistent with due process and equal protection. Additionally, this may pose a conflict as there is no political recourse if a defendant feels these individuals dealt with their case unfairly.⁴⁸⁷
 - c) Data indicating the sources of fines and fees revenue contributing to the operating budgets of courts is limited. The first and only time that the Nevada Judicial Branch produced a report clearly presenting its funding sources and operations was in 2003.⁴⁸⁸

⁴⁸¹ Christopher Hartney & Linh Vuong, *Created Equal: Racial and Ethnic Disparities in the U.S. Criminal Justice System* (National Council on Crime and Delinquency 2009), <http://www.nccdcrc.org/nccd/pdf/CreatedEqualReport2009.pdf> (last visited April 14, 2017).

⁴⁸² Transcript (statement of Rauch) 109 lines 1-24.

⁴⁸³ 26 Nevada Advisory Committee to the U.S. Commission on Civil Rights Meeting Minutes, March 29, 2017 (Nev. 2017) 5-6 (statement by Jessica Feierman, Associate Director, Juvenile Law Center) <https://database.faca.gov/committee/meetingdocuments.aspx?flr=147671&cid=261> [hereafter Transcript 2].

⁴⁸⁴ Transcript (statement of Marcello) 195 line 16-196 line 19.

⁴⁸⁵ Transcript (statement of Joseph Maridon, Esq., Las Vegas) 245 lines 6-11.

⁴⁸⁶ Transcript (statement of Bill Zihlmann, Ct. Admin., Henderson Muni Ct.) 29 lines 18-22.

⁴⁸⁷ ³⁰ Transcript (statement of Marcello) 197 lines 8-10.

⁴⁸⁸ 31 SUP. CT OF NEVADA, CT. FUNDING COMMISSION, NEVADA JUDICIAL FUNDING RESOURCES AND OPERATIONS DURING FISCAL YEAR 2003, A REPORT OF THE SUP. CT. OF NEVADA CT FUNDING COMMISSION, iv (2005) https://nvcourts.gov/AOC/Documents/Court_Funding_Commission_Report/ (last visited April 5, 2017).

- Strikingly, 71 percent of collected fines and 100 percent of state-mandated administrative assessments funded municipal courts.⁴⁸⁹
- d) State-mandated administrative assessment fees are used to pay for special projects such as upgrading case management systems⁴⁹⁰ and operating specialty courts.⁴⁹¹ For the City of Las Vegas, in particular, administrative assessment fees are used to pay for the construction of the Regional Justice Center until the year 2045.⁴⁹²
 - e) To address unsuccessful attempts at recovering originally imposed fines and fees, cities across the state use varying collection methods such as organizing “warrant amnesty” events,⁴⁹³ offering payment plan options, and outsourcing to private collection agencies.⁴⁹⁴ Local media reporting brought attention to the increased revenue flowing into the courts, which advocates warn exacerbates community and police tensions.⁴⁹⁵
 - f) As cities struggle to collect from citizens, especially juveniles and/or indigents, panelists questioned the sustainability of the State’s long-standing fiscal model to fund city agency operations through fines, fees, and administrative assessment fees.⁴⁹⁶
5. Testimony indicated the following concerns regarding the ability-to-pay determination and equal protection of the law in resolving fines and fees:
- a) *Gilbert v. Nevada*⁴⁹⁷ the Nevada Supreme Court ruling held that an individual should be given an opportunity to explain his or her inability to pay before being jailed, in what is known as “Gilbert hearing.” However, some judges across the state may still not allow individuals to explain their financial circumstances and are continuing to sentence them to jail for failure to pay.⁴⁹⁸

*The report was created by the Commission of the Supreme Court of Nevada to assess the level of funding and resources in, and services offered by, each court within the Nevada Court system. It noted, “Never before in the history of Nevada has anyone known at any particular point in time, by any estimate, the cost of operating the courts in Nevada or what we get for our money.” A Message from Deborah A. Agosti, Senior Justice and Chair of Court Funding Commission.

⁴⁸⁹ Transcript (statement of Dr. Nancy E. Brune, Executive Director, Kenny Guinn Center for Pol’y Priorities) 111 line 10-112 line 7.

⁴⁹⁰ Transcript (statement of Dexter Thomas, Ct. Admin., Reno Just. Ct.) 45 lines 18-21.

⁴⁹¹ Transcript (statement of Hlavac) 14 lines 17-22.

⁴⁹² *Ibid.*, lines 12-16.

⁴⁹³ Transcript (statement by Thomas Harvey, Executive Director, ArchCity Defenders) 147, line 12 -148 line 11; Transcript (statement by Thomas) 45 line 22-46 line 8.

⁴⁹⁴ Transcript (statement by Zihlmann) 30 lines 23-25.

⁴⁹⁵ Transcript (statement by Harvey) 147 line 12-149 line 7.

⁴⁹⁶ Transcript (statement by Marcello) 206 line 6 -207 line 1; Transcript 2 (statement by Feierman) 5 ¶ 4.

⁴⁹⁷ See *Gilbert v. State*, 669 P.2d 699 (Nev. Sept. 27, 1983).

⁴⁹⁸ Written Testimony before the Nevada Advisory Committee to the U.S. Commission on Civil Rights, March 15, 2017, (Nev. 2017) 13 (statement by Jeffrey Barr, Esq.).

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=147607&cid=261> [*hereafter* Written Testimony]; Transcript (statement by Jesiah Dechanel, Las Vegas) 238 line 19- 241 line 13.

* A 73-year-old Nevada woman was jailed for 21 days for failure to pay for fines and fees over a civil lawsuit with her neighbor. She initially was given the option to perform community service to pay down the amount, but due to her health condition and the extreme desert heat, it was out of the question. While in jail, she was among others who faced a similar burden of inability to pay down their fines and fees.

- b) Nevada law does not provide a grace period for individuals on payment plans. Therefore, individuals who are late on fines and/or fees payments can still be arrested, even if past payments were made on time.⁴⁹⁹ Individuals who are arrested in this way may be victims of an unconstitutional deprivation of liberty.
 - c) Administrative assessment fees enforced by the State are required to be paid off before fines. For an individual who has committed multiple offenses, each offense is assigned a separate case and consequently, a separate administrative assessment fee is applied.⁵⁰⁰ This compounding of fees may cause increased hardship for indigent defendants to pay off fees even before attempting to pay off the remainder of fines associated to each offense. This is particularly challenging as individuals must pay these fees before they can appeal their case before a judge requesting for an alternative payment option.
 - d) Community service is not a widely used payment alternative across courts,⁵⁰¹ but if granted, the pay-off for performing community service is paltry. In Las Vegas, one hour of community service equates to ten dollars.⁵⁰² This alternative may leave individuals, especially those with unpredictable work schedules and/or are minimum wage earners, struggling to pay off their fines and fees. Similarly, it causes an additional financial and scheduling burden on parents who must pay and arrange for childcare while they perform community service.
6. State officials and lawmakers have been involved in reform efforts that address fines and fees, but little progress has been made to date.
- a) In the last two legislative sessions, lawmakers attempted to address the classification of traffic violations. Thirty-seven states across the country consider these violations civil matters. In Nevada, traffic violations are treated as criminal infractions which are subject to a bench warrant for failure to appear in court. Due to its contentious language surrounding reclassification and its implications regarding the sustainability of court operations, legislation to decriminalize traffic violations into a civil matter was unsuccessful.⁵⁰³ In its recent legislative session, a concurrent resolution was introduced in the Nevada Assembly that directs the Nevada Legislative Commission to conduct an interim study concerning treating certain traffic and related violations as civil infractions and is awaiting Senate approval.⁵⁰⁴
 - b) The Nevada Advisory Commission on the Administration of Justice is currently reviewing the State's administration of fines and fees practices by identifying areas for reform consideration and is an active member of the National Task Force on Fines and Fees, and Bail Practices. At this writing, the Nevada Advisory Commission on the Administration of Justice has not released any official statements or findings related to their review.

⁴⁹⁹ Transcript (statement by Moseley) 85 lines 12-18.

⁵⁰⁰ Transcript (statement by Marcello) 201 lines 2-10.

⁵⁰¹ Written Testimony (statement by Michael Bluestein, Las Vegas) 15.

⁵⁰² Transcript (statement by Rauch) 114 lines 23-25.

⁵⁰³ Transcript (statement by Michele Fiore, Former Assemblywoman, District 4) 78 line 3-80 line 2.

⁵⁰⁴ Assemb. Con. Res. 9, 79th Leg., Reg. Sess. (Nev. 2017).

<https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?BillName=ACR9> (last visited May 11, 2017).

Recommendations

The recommendations below are not listed by preference of suggested action.

1. The U.S. Commission on Civil Rights should issue a formal request to the U.S. Department of Justice to:
 - a) Require consistent and complete reporting of demographic information by state and local courts and law enforcement. Where possible, such data should include, but are not limited to: (i) race, (ii) color, and (iii) veteran status. Such data should reference the zip code where the violation occurred and type of violation. Additionally, this information should be made publicly available, and disaggregated by court cases.
 - b) Require the Department to keep their commitment to supporting state judges, court administrators, policy makers and advocates in ensuring justice for all people, regardless of their financial circumstance, by upholding its initial guidance and resources. This entails keeping the “Dear Colleague” letter visible and available on the Department of Justice website and recirculating it to state and local courts.
 - c) Continue funding the grant program, *The Price of Justice: Rethinking the Consequences of Justice Fines and Fees*, administered by the BJA, in the next fiscal year in hopes that Nevada and other states may have the opportunity to compete for funding. In addition, the Committee recommends that grantees are given the opportunity to showcase their strategies to states to support best practice sharing.
 - d) Require that individuals be afforded the right to court-appointed counsel.

2. The Commission should issue a formal recommendation to the Governor and State of Nevada Legislature urging the state to:
 - a) Require mandatory annual reporting of revenue generated from fines and fees to be submitted to the Administrative Office of the Courts as was done in 2003.
 - b) Increase annual funding for the Administrative Office of the Courts grant program⁵⁰⁵ to ensure courts can address their infrastructural technology needs.
 - c) Eliminate the use of failure-to-pay warrants and any associated fees.
 - d) Institute mandatory training of all judges, court staff, law enforcement, prosecutors and public defenders on the use of the bench card.⁵⁰⁶
 - e) Develop and implement clear standards for court administrators and judges to determine an individual’s inability to pay.
 - f) Institute a limitation on jail for nonpayment.
 - g) Commission a state study to identify alternative funding streams which courts may use to operate to reduce the dependency on revenue collected from fines and fees.
 - h) Submit report to all municipal and justice courts for review

⁵⁰⁵ Sup. Ct. of Nevada, Admin. Office of the Courts, AOC Grant Program Overview, Projects & Programs Page, http://nvcourts.gov/AOC/Programs_and_Services/AOC_Grant_Program/Overview/ (last visited April 5, 2017).

⁵⁰⁶ NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES, CONFERENCE OF CHIEF JUSTICES & CONFERENCE OF ST. CT. ADMIN., *LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS: A BENCH CARD FOR JUDGES* (2017) http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx (last visited April 5, 2017).

Appendices to Nevada Advisory Committee's Memorandum

- Hearing Agenda & Minutes
- Hearing Transcripts
- Panelist Profiles
- Written Testimony

Appendix A
NEVADA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON
Civil Rights Municipal Fines and Fees Hearing

March 15, 2017

Opening Remarks and Introductions (9:00 am–9:15 am)

Government and Law Enforcement Panel (9:15 am–10:30 am)

Dana Hlavac, Court Administrator, Las Vegas Municipal Court

Bill Zihlmann, Court Administrator, Henderson Municipal Court

Earl Mitchell, Constable, City of Henderson Township

Sam Diaz, Commission Officer and Government Liaison, and Kelly McMahill, Lieutenant, Las Vegas Metropolitan Police Department

* Dexter Thomas, Court Administrator, Reno Justice Court

Elected Officials Panel (10:45 am–11:45 am)

* Dina Neal (D), Assemblywoman, District 7

Michele Fiore (R), Former Assemblywoman, District 4

* Leisa Moseley, Founder, The Action Company

Break (11:45 am–1:15 pm)

Policy Experts Panel (1:15 pm–2:30 pm)

* Egan Walker, Justice, Second Judicial District Court

Jessica Feierman, Associate Director, Juvenile Law Center

Dr. Nancy E. Brune, Executive Director and Megan Rauch, Director of Education Policy, Kenny Guinn Center for Policy Priorities

Nicole Austin-Hillery, Director and Counsel, Brennan Center for Justice at New York University

Thomas Harvey, Executive Director, ArchCity Defenders

Advocates and Community Members Panel (2:45 pm–4:00 pm)

Amy Rose, Legal Director, American Civil Liberties Union, Nevada

Alex Cherup, Vice President, National Association for The Advancement Of Color People, Las Vegas

Dustin Marcello, Defense Attorney, Pitaro & Fumo Law

Hannah Brown, President Emeritus, Urban Chamber of Commerce

Open Forum (4:15 pm–5:00 pm)

Closing Remarks (5:00 pm–5:15 pm)

* Panelists joining via teleconference in Reno, Nevada

NEVADA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON

CIVIL RIGHTS MEETING MINUTES

March 15, 2017

The Nevada Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened at two locations to hear testimony to determine if the use of municipal fines and fees disproportionately affect members of a federally protected class and to identify what solutions exist to remedy its impact. The primary location was at the Nevada Department of Employment, Training and Rehabilitation at 2800 E. St. Louis Ave., Las Vegas, NV 89104 and at Nevada Department of Employment, Training and Rehabilitation at 1325 Corporate Blvd., Reno, NV 89502 via video conference. Wendell Blaylock chaired the meeting and performed the initial roll call of committee members present. The meeting was open to the public and took place from 9:00 AM to 4:39 PM PDT.

State Advisory Committee Members:

Present:

- Sondra Cosgrove
- Carol Del Carlo
- Wendell Blaylock
- Theresa Navarro (in Reno)
- David Fott
- Kay Kindred
- Jon Ponder
- Kathleen Bergquist
- Kara Jenkins

Absent:

- Emma Guzman
- Bob Beers
- Matthew Saltzman
- Debra Feemster
- Ed Williams

Commission Staff present:

- David Mussatt, Supervisory Chief, Regional Programs Unit
- Ana Victoria Fortes, Civil Rights Analyst
- Angelica Trevino, Support Specialist
- Carolyn Allen (in Reno), Administrative Assistant

Members of the Public present:

- Lonnie Feemster
- Pat Lynch
- Joseph Maridon
- Lucy Hood
- Jo Cato
- Gloria Yasal
- Jesiah Yasal

Meeting Notes/Decisions Made:

The Committee heard testimony from the following individuals according to the agenda noted:

Opening Remarks and Introductions (9:00 am–9:15 am)

Government and Law Enforcement Panel (9:15 am–10:30 am)

- Dana Hlavac, Court Administrator, Las Vegas Municipal Court
- Bill Zihlmann, Court Administrator, Henderson Municipal Court
- Earl Mitchell, Constable, City of Henderson Township
- Sam Diaz, Commission Officer and Government Liaison and Kelly McMahill, Lieutenant, Las Vegas Metropolitan Police Department
- *Dexter Thomas, Court Administrator, Reno Justice Court

Elected Officials Panel (10:45 am–11:45 am)

- *Dina Neal (D), Assemblywoman, District 7
- Michele Fiore (R), Former Assemblywoman, District 4
- *Leisa Moseley, Founder, The Action Company

Policy Experts Panel (1:15 pm–2:30 pm)

- *Egan Walker, Justice, Second Judicial District Court
- Dr. Nancy E. Brune, Executive Director and Megan Rauch, Director of Education Policy, Kenny Guinn Center for Policy Priorities
- Nicole Austin-Hillery, Director and Counsel, Brennan Center for Justice at New York University
- Thomas Harvey, Executive Director, ArchCity Defenders

Advocates and Community Members Panel (2:45 pm–4:00 pm)

- Amy Rose, Legal Director, American Civil Liberties Union, Nevada
- Alex Cherup, Vice President, National Association for The Advancement Of Color People, Las Vegas
- Dustin Marcello, Defense Attorney, Pitaro & Fumo Law
- Hannah Brown, President Emeritus, Urban Chamber of Commerce

Open Forum (4:15 pm–5:00 pm)

Closing Remarks (5:00 pm–5:15 pm)

- * Panelists joining via video conference in Reno, Nevada

Also invited to testify were Nevada Supreme Court Justice James Hardesty, Associate Director for the Juvenile Law Center Jessica Feierman, and Partner for Ashcraft & Barr LLP Jeffrey Barr were unable to attend.

Testimony focused on determining if the use of municipal fines and fees disproportionately affect members of a federally protected class. It also discussed what solutions exist to remedy its impact.

At the conclusion of testimony given on each panel, Committee members had the opportunity to ask questions of the panelists.

No decisions were made and no votes taken. A transcript of the proceedings will be available and included with meeting records within 30 days.

Public Comment:

During the Open Forum session listed on the above agenda, the meeting welcomed for comments from members of the public. During the session, testimony was received from:

- Lonnie Feemster
- Pat Lynch
- Joseph Maridon
- Jesiah Yasal

Written testimony from members of the public will continue to be accepted until April 14, 2017. For more information contact the USCCR Western Regional Office at (213) 894-3437.

Adjournment:

Meeting adjourned at 4:39 PDT.

Appendix B

Nevada Advisory Committee March 15 Briefing Transcript

The full transcript of the Nevada Advisory Committee to the U.S. Commission on Civil Rights Hearing held on March 15, 2017 is available at

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=147607&cid=261>

Nevada Advisory Committee March 29 Briefing Transcript

The full transcript of the Nevada Advisory Committee to the U.S. Commission on Civil Rights Public Meeting held on March 29, 2017 is available at

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=147671&cid=261>

Appendix C

Nevada Advisory Committee March 15 Briefing Panelists Biographies

The Panelists' Biographies of the Nevada Advisory Committee to the U.S. Commission on Civil Rights Hearing held on March 15, 2017 is available at

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=147607&cid=261>

Appendix D

Nevada Advisory Committee March 15 Public Briefing Written Testimony

The full written testimony for the Nevada Advisory Committee to the U.S. Commission on Civil Rights Public Hearing on Municipal Fines and Fees in the State of Nevada, held on March 15, 2017 is available at

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=147607&cid=261>

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Commissioner Gail Heriot Statement

This is a subject about which there is significant bipartisan agreement.¹ There is a problem with over-reliance on fees and fines by some small municipalities, particularly some in Georgia, Illinois, Maryland, Missouri, New York, and Texas.² There is also a completely separate problem with ill-considered procedures for dealing with individuals who can't pay. These are issues that need to be addressed.

Doing so won't be as easy as one might hope. While the first problem may be reasonably clear-cut, the second is very hard. I am not sure that everyone fully appreciates the difficulties.

I have only a few scattered thoughts on these matters:

(A) Are There Cities and Towns in the United States Where Conflicts of Interest Have Led to a Culture of Revenue Maximization? If So, What Should Be Done?

The Commission heard considerable evidence that some cities and towns derive large portions of their budget from fees and fines. These cities and towns therefore have a stronger-than-average financial interest in aggressive enforcement of whatever statutes or regulations on the books that

¹ In this respect, it is rather like the civil forfeiture issue, which cuts across ordinary left/right divisions. See e.g., American Civil Liberties Union, *Policing Shouldn't Be for Profit*, available at <https://action.aclu.org/policing-for-profit> (last accessed July 24, 2017); John Malcolm, *Civil Asset Forfeiture: Good Intentions Gone Awry and the Need for Reform*, The Heritage Foundation, available at <http://www.heritage.org/crime-and-justice/report/civil-asset-forfeiture-good-intentions-gone-awry-and-the-need-reform> (last accessed July 24, 2017). It was therefore surprising to many commentators, including me, to see the Department of Justice announce that it would increase its use of civil asset forfeiture—a move that made many experts across the political spectrum uneasy, including some ordinarily ideologically aligned with the polices of the Department of Justice under Attorney General Sessions. See, e.g., Matt Ford, *The Bipartisan Opposition to Sessions's New Civil Asset Forfeiture Rules*, The Atlantic Monthly, July 19, 2017, available at <https://www.theatlantic.com/politics/archive/2017/07/sessions-forfeiture-justice-department-civil/534168/> (quoting Republican Senator Mike Lee, Republican members of Congress Justin Amash and Darrell Issa, and representatives from libertarian and conservative-leaning nonprofits criticizing the new DOJ policy). In this Statement, I do not discuss the civil forfeiture issue, which I believe raises many additional due process questions. Even though some of what gets called “fines and fees” in the statistics quoted in this report is actually forfeitures, forfeitures are beyond the scope of the report.

² It is hard to say how widespread the problem is. Statistics on this phenomenon are getting tossed around a lot—perhaps a bit too promiscuously. When researchers talk about “fees,” it is important to be sure they are always talking about the same thing. Court fees that are added to fines for violations of the municipal code are one thing. Fees for services like dog licenses and trash removal are quite another. I see no harm in allowing the latter to become a significant portion of a municipality's budget, so long as the services are priced appropriately.

will generate fines. The more fines and fees they collect, the more money they have at their disposal.³

This can be a formula for mischief. And at least in its more extreme forms, it may pose intolerable conflicts of interest. A town that has its coffers filled can afford generous salaries and benefits for its public employees. If it can fill those coffers with money that voters perceive as coming from “outsiders”—either out-of-towners caught in speed traps⁴ or local violators—so much the better from the point of view of elected officials. The usual political pressure on officials to keep the costs of government reasonably low is blunted. Out-of-towners don’t vote, so they cannot easily do anything about unfair enforcement. The story with local violators (and alleged violators) is a little different. They tend to be disproportionately young and concerned with matters other than politics. Most can vote, but they often don’t and hence tend to have little political clout. The danger inherent in this incentive structure is the aspect of the problem about which there is the greatest agreement.

The now-notorious case of Ferguson, Missouri is the example about which we have the greatest amount of information, although it does not appear to be the worst offender. According to the Department of Justice’s Ferguson Report, 20% of the city’s budget came directly from fees and

³ The problem is exacerbated when the individuals who make enforcement decisions are compensated for their services in direct proportion to their level of collections. We did not receive any testimony of this kind. At times in history, however, this has certainly gone on. *See* *Tumey v. Ohio*, 273 U.S. 510 (1927). Another way in which the problem may be exacerbated is by putting the municipal officer who is primarily responsible for dealing with the municipality’s financial situation in a position to decide on the guilt of innocence of an individual. *See* *Ward v. Village of Monroeville*, 409 U.S. 57 (1972). Again, we did not see evidence of this. What we did see was a city finance director attempting to influence a municipality’s efforts to enforce the law.

⁴ There is a long history of cities and municipalities of structuring their taxes so as to ensure that the share paid by non-residents is maximized. Exorbitant hotel taxes are the most obvious form for this to take hold in the modern world. According to the Meetings and Conventions Magazine, as of 2012, the cities with the steepest hotel taxes were New York City (18.27%), Nashville (17.76%), Houston (17%), and Indianapolis (17%). *See* Sarah J.F. Braley, *Ten U.S. Cities with the Highest Hotel Taxes*, Meetings and Conventions Magazine (February 1, 2012), available at <http://www.meetings-conventions.com/Newsline/10-U-S—Cities-With-the-Highest-Hotel-Taxes/>. There is nothing amiss about charging hotel guests for the costs of the government-provided services they enjoy during their visit. But it would take a naïf to believe that hotel taxes like those in New York City, Nashville, Houston and Indianapolis properly account only for those costs. The key factor here is that out-of-towners don’t vote, and actual voters are only too happy too happy to push municipal costs onto them.

I suspect that a significant share of the fees and fines discussed in this report are not levied against municipal residents, but against others. We are told that traffic fines are the most popular kind of fine. That is consistent with my suspicion, since some of those driving through Ferguson probably live elsewhere. Many of those out-of-towners probably live in nearby municipalities, and sometimes these nearby municipalities also attempt to foist a disproportionate share of their expenses onto non-residents. The result can be a self-defeating game in which no municipality sees it as in its individual interest to ease up on the levying of fines and fees, since the benefit of its doing so accrues disproportionately to non-residents. Yet for all the municipalities in the region to do so may be in interest of the residents as a whole.

finer. But the strong reliance on fees and fines was not just a Ferguson thing. Records show that eight nearby towns relied on fines and fees for greater than 30% of their revenue. The tiny town of Calverton Park, which lies immediately to Ferguson's northwest and has a population of less than 1500, relied on fees and fines for 60% of its budget.

Ferguson's notoriety came about in an unusual way. This medium-sized St. Louis suburb (population 20,846) came to the nation's attention in connection with the death of Michael Brown. When a Ferguson police officer shot and killed 18-year-old Brown on August 9, 2014, rumors spread that Brown had been unarmed (which turned out to be true) and that he had been shot without provocation (which turned out to be false).⁵ Brown was an African American while the police officer who shot him was white. For a while, "Black Lives Matter" became the rallying cry of both peaceful and not-so-peaceful protesters. Things got sufficiently out of hand that the Missouri National Guard had to be called in to re-establish order. All during this period, the police officer who shot Brown had to hide for fear of his losing his life.

Shortly after Brown's death, the Department of Justice's Civil Rights Division ("CRT") announced that it would undertake an investigation into Brown's death. After it had gathered the evidence, however, it made the determination that federal charges were not appropriate. As far as I have been able to determine, the police officer had done nothing wrong.

But CRT's investigators did not stop there. They were also understandably concerned about another question: Why were Ferguson residents so resentful of police? Why were they so prepared to believe the worst of them? Why did Ferguson erupt like a tinderbox after Brown's death?

Evidence uncovered during the investigation may give us *part* of the answer: Some in Ferguson apparently view the police as their tormentors rather than their protectors. According to residents who spoke to CRT investigators,⁶ officers seem to want to issue as many citations as possible to Ferguson residents (as well as others). The violations are often traffic violations of varying degrees of seriousness—from parking violations, to driving without a properly functioning tail light to speeding to drunk driving. Also included were non-traffic violations like failure to mow one's lawn.

Many of these violations are punishable only by fines and not by jail time or even by a suspended license. But if a violator fails to show up for his court date or fails to pay his fine, things get more

⁵ See, e.g., Department of Justice Report Regarding the Criminal Investigation Into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson, March 4, 2015, available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

⁶ It is not clear from the report how many citizens CRT spoke to or how those citizens were selected. A "town meeting" convened to discuss problems with the Ferguson police department will obviously attract a different crowd from a door-to-door solicitation or a telephone poll.

serious. A suspended license or jail time can indeed result for the violator who ignores these responsibilities.

One can see how this can be daunting for anyone without the funds to pay the initial fine (or even anyone on a tight budget)—especially if they perceive Ferguson authorities to be concerned primarily with revenue-raising rather than with public safety and keeping the peace. Not everybody has an extra \$300 in his pocket or bank account with which to pay a fine. And when a fine is increased on account of nonpayment, those with an inability to pay may begin to feel overwhelmed. Similarly, not everybody can easily arrange to appear in court at a time fixed by the police. For those fortunate enough to have a job, many are not in a position to tell their employer that they need to take a day off to appear in court. If they end up serving jail time for failure to pay the fine or to appear in court, they may lose their jobs. If their license is suspended, they may not be able to get to work. If they are desperate to keep their jobs and therefore risk driving to their job sites without a license, they may wind up in jail.

When a resident sees fines, warrants and other sorts of penalties mounting, it is easy to see how he might feel alienated from the police. When one has outstanding arrest warrants, one does not call the police when one is a victim of crime. It's too risky. Such a resident will worry every time he gets behind the wheel of a car that he might get pulled over, and that if he does, he may wind up in jail. He will worry every time he passes a police officer on the street.

The Ferguson Report summarized the situation in Ferguson this way:

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.

The evidence does indeed show that Ferguson officials may sometimes be motivated more by the desire to raise revenue than to keep the peace. Or at least that is what I have been led to believe it shows. On more than one occasion, the City Finance Director apparently attempted to exhort the Police Chief to increase ticket writing. In March of 2010, for example, he wrote that "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year.... Given that we are looking at a substantial sales tax shortfall, it's not an insignificant issue." In response, the Police Chief took the position that additional police officers would allow the police department to achieve its \$1.5 million target. He stated that he would be willing to consider adjusting shift schedules, so as to "place more officers on the street, which in turn will increase traffic enforcement per shift." That proposal was in fact executed.

Later, in March of 2013, the City Finance Director wrote to the City Manager, "Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try." FR at 2.

The Ferguson report further states, "Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership." FR at 2.

On March 27, 2017, I requested that the Commission's General Counsel obtain the emails I have quoted, so that I could see them in context. Unfortunately, I am told that when she contacted them CRT officials declined to cooperate with the Commission. This is more than just annoying given that CRT has a statutory duty to cooperate with the Commission.⁷

I'll assume for the purposes of this Statement that the actual emails would not have revealed anything to rebut the notion that Ferguson police operated in a "culture of revenue maximization." Could this culture account for all the resentment that erupted against the police in Ferguson? Maybe. But it seems more likely that it is just part of the problem. There were reports that the large majority of those arrested in Ferguson for participating in violence were non-residents. So too were many of the peaceful protesters.⁸ This tends to cut against the argument that the main source of the resentment was fines and fees. Ferguson was a magnet for resentment. Nevertheless, the fines and fees issue is important and needs to be addressed.

How might one remedy such a problem? Put differently, how could the finances of a city like Ferguson be restructured to encourage it to focus on promoting safety and order rather than maximizing revenue? One possibility is to put a ceiling on the proportion of a city's finances that can be funded through fees and fines. If a particular city's collections exceed that ceiling, the money could then go into the state's general revenue fund. Alternatively, revenue collected

⁷ 42 U.S.C. 1975b(e).

⁸ Jason Rosenbaum, *Who Are the Protesters Getting Arrested in Ferguson?*, npr.com (August 21, 2014) available at <http://www.npr.org/2014/08/21/342207432/who-are-the-protesters-getting-arrested-in-ferguson>.

Since the protests erupted, people in Ferguson have insisted that the troublemakers are not from this community. Capt. Ron Johnson, the highway patrolman in charge of security here, said as much earlier this week.

"I am not going to let the criminals that have come out here from across this country and don't live in this community define this neighborhood and define what we're going to do to make it right," Johnson says.

In fact, of the 51 people who were arrested Tuesday night and Wednesday morning, only one person was from Ferguson. The rest were from surrounding towns and faraway cities such as Des Moines, Iowa, Chicago and New York.

See also 78 Arrested Overnight, Most from Missouri, Arrest Records Show, nbcnews.com (August 19, 2014), available at <http://www.nbcnews.com/storyline/michael-brown-shooting/78-arrested-overnight-most-missouri-arrest-records-show-n184036>. This article recounts that of 78 arrested, 18 were from out of state, including from some from Brooklyn, Washington, D.C., and San Diego. It states that the rest were from Missouri, but do not report whether they were from Ferguson or other towns.

through fees and fines could be shared between the city and the state's general revenue fund, perhaps 20%-80%. Either approach (and there are an infinite number of other ways to structure this) will reduce the incentive for city officials to see fees and fines primarily as a means to raise revenue rather than primarily as a means to serve the cause of justice.

Some states—including North Carolina and North Dakota—already require cities and towns to transmit any revenues from fines and fees directly into the state's general revenue funds.⁹ It is extremely unlikely that cities and towns in those states have a problem with any “culture of revenue maximization.” They have no incentive to levy fines and fees simply to raise money.

Note that conflicts of interest between city officials and citizens will still exist. They always do. City officials always have some incentive to fill the city's coffers, whether they do so through taxes or through fees and fines.

(B) Whose Job Is It to Undertake the Necessary Reforms to Eliminate the Incentives Creating the “Culture of Revenue Maximization?”

The Supreme Court is unlikely to find that Ferguson violated the Constitution by financing 20% of its budget by fines and fees. That, of course, is irrelevant to the question of whether it is a problem that needs to be fixed. Many policies are seriously flawed and yet do not violate the Constitution. But it does bear on whether this is a problem that the federal government should take the lead in solving. The State of Missouri is the appropriate candidate for looking into this problem.

Two Supreme Court cases help illustrate where the Supreme Court has gone in the past. First is *Tumey v. Ohio*, 273 U.S. 510 (1927), a Prohibition Era case. At the time, Ohio law permitted mayors to sit as judges over cases involving certain, relatively minor offenses. Defendant Tumey had been convicted of unlawfully possessing intoxicating liquor in a court presided over by the Mayor of the Village of North College Hill. On the Mayor's orders, Tumey was fined and jailed.

But it turned out that the Mayor had a clear conflict of interest. As village finances were structured, the Mayor would get a significant portion of the fines collected (in this case \$12 out of the \$100 fine).¹⁰ On the other hand, if he had acquitted the defendant, he would have received no compensation for his services as judge at all.

In 1927, \$12 would have been worth \$168 in 2017 dollars. The mayor was said to have derived approximately \$100 (\$1400.02 in 2017 dollars) a month from fines over the course of seven months (in addition to his salary). *Id.* at 531-532.

The Supreme Court, in an opinion by Chief Justice Taft, held that the Fourteenth Amendment's Due Process Clause forbids a defendant from having his liberty or property placed in jeopardy

⁹ N.C. Const. art. IX, § 7; N.D. Const. art. IX, § 2, N.D.C.C. § 29-27-02.1.

before a judge with a “direct, personal, pecuniary interest in convicting [him].” *Id.* at 523. The Court based its opinion in part on legal history. It took pains to point out that “[t]here was . . . no usage at common law by which justices of the peace or inferior judicial officers were paid fees on condition that they convicted the defendants, and such a practice certainly cannot find support as due process of law in English precedent.”¹¹

Note that the situation complained in the Ferguson Report (and in this report) is neither so direct nor so gross a conflict of interest. Nobody received a direct, personal, pecuniary benefit at the time he made a decision to impose a fine or fee. Instead, the conflict of interest was more diffuse. The leaders of Ferguson, a jurisdiction that derives a large portion of its revenue from fees and fines, likely pushed its employees to issue citations impose fines. Municipal judges and court employees may have been similarly motivated. But while a culture of revenue maximization may have resulted, the situation is not directly analogous to *Tumey*. I therefore doubt Chief Justice Taft would have been quick to hold the Ferguson situation and the facts of *Tumey* to be directly analogous.

The facts of *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), may be a little closer. In *Ward*, Ohio law permitted mayors to sit as judges over cases involving certain traffic offenses and a few other municipal ordinance violations. This time the problem lay in the fact that the Monroeville mayor was responsible for village finances, and Monroeville derived a considerable portion of its revenues fees, fines and forfeitures imposed by the mayor’s court.

Plaintiff Ward had been found guilty of two traffic offenses by the Mayor of Monroeville and fined \$50 for each. Almost half of the village’s tiny budget, which hovered around \$50,000, came from the fines, fees, and forfeitures imposed by the mayor.

This was not the *Tumey* case. The Monroeville mayor did not receive a “cut” of the fines he imposed. But the mayor’s interest in making the city’s ends meet was nevertheless arguably very strong.

The Supreme Court, in a 7-2 opinion, held that the proper standard is “whether the mayor’s situation is one ‘which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him no to hold the balance nice, clear and true between the State and the accused.’” 409 U.S. at 60 (quoting *Tumey*, 273 U.S. 532). “Plainly,” it concluded, “the ‘possible temptation’ may . . . exist when the mayor’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor’s court.” *Id.*

¹¹ *Tumey* at 524, citing *Bonham's Case*, 8 Coke, 118a; s.c. 2 Brownlow and Goldesborough's Rep. 255; *City of London v. Wood*, 12 Modern Rep. 669, 687; *Day v. Savage*, Hobart 85, 87; *Hesketh v. Braddock*, 3 Burrows 1847, 1856, 1857 and 1858.

The Ferguson situation is not *Ward v. City of Monroeville*. Neither the Finance Director nor the City Manager was issuing citations or adjudicating cases. The Department of Justice's Dear Colleague Letter appears to agree with my belief that this is unlikely to be enough to find Ferguson's over-reliance on fees and fines to be unconstitutional. It makes no claim that a municipality that derives 20% (or any specific percentage) of its income from fines and fees is acting unconstitutionally.

If I am right that this is not a constitutional violation, then in the absence of a federal statute governing the situation, it is up to the State of Missouri, not the federal government, to attempt to eliminate the culture of revenue maximization.

What about other potential constitutional objections to the practices of jurisdictions like Ferguson? Did Ferguson violate the Constitution by jailing individuals (or revoking their driver's licenses) for failure to pay a fine before conducting a hearing on their ability to pay? What about jailing them (or revoking their driver's licenses) for failure to appear in court? These are important but very different questions from the one addressed in this section of my statement. But they will often depend on the facts of the specific case. I will therefore leave them for others.

(C) What is the Right Level of Enforcement of Ferguson's Municipal Code?

The answer to this question is easy: *I don't know*. It is an inherently political question that should be decided in large part by processes of representative democracy. There isn't a perfect one-size-fits-all solution.

What is important is not to presume to tell Ferguson what level of enforcement is best for it. Rather, the State of Missouri should be reducing the incentive of municipalities to see fees and fines first and foremost as means for revenue raising. Once that link is broken, it should let Ferguson find its own way.

The body of this report refers in passing to the work of George L. Kelling and James Q. Wilson in their landmark article in *The Atlantic*, *Broken Windows*, which the report describes this way:¹²

¹² George L. Kelling and James Q. Wilson, *Broken Windows*, *The Atlantic* (March 1, 1982). In the article, Kelling and Wilson recount an experiment by Stanford psychologist Philip Zimbardo:

Philip Zimbardo, a Stanford psychologist, reported in 1969 on some experiments testing the broken-window theory. He arranged to have an automobile without license plates parked with its hood up on a street in the Bronx and a comparable automobile on a street in Palo Alto, California. The car in the Bronx was attacked by "vandals" within ten minutes of its "abandonment." The first to arrive were a family—father, mother, and young son—who removed the radiator and battery. Within twenty-four hours, virtually everything of value had been removed. Then random destruction began—windows were smashed, parts torn off, upholstery ripped. Children began to

“According to this argument, citations cracking down on unwanted (but not necessarily serious) behavior do more than just punish and deter petty crimes—they also serve to maintain the social order in a way that discourage violent and high-level crime, benefitting the entire community. A large fine for littering, for example, not only discourage littering but also becomes a principal

use the car as a playground. Most of the adult “vandals” were well-dressed, apparently clean-cut whites. The car in Palo Alto sat untouched for more than a week.

If you are thinking, “Well, of course, the Bronx is a high-crime area, Palo Alto is not,” hold off for a moment. Kelling and Wilson continued:

Then Zimbaro smashed part of [the Palo Alto car] with a sledgehammer. Soon, passersby were joining in. Within a few hours, the car had been turned upsidedown and utterly destroyed. Again, the “vandals” appeared to be respectable whites.

Untended property becomes fair game for people out for fun or plunder and even for people who ordinarily would not dream of doing such things and who probably consider themselves law-abiding. Because of the nature of community life in the Bronx—its anonymity, the frequency with which cars are abandoned and things are stolen or broken, the past experience of “no one caring”—vandalism begins much more quickly than it does in staid Palo Alto, where people have come to believe that private possessions are cared for, and that mischievous behavior is costly. But vandalism can occur anywhere once communal barriers—the sense of mutual regard and the obligations of civility—are lowered by actions that seem to signal that “no one cares.”

We suggest that “untended” behavior also leads to the breakdown of community controls. A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery; in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers.

At this point it is not inevitable that serious crime will flourish or violent attacks on strangers will occur. But many residents will think that crime, especially violent crime, is on the rise, and they will modify their behavior accordingly. They will use the streets less often, and when on the streets will stay apart from their fellows, moving with averted eyes, silent lips, and hurried steps. “Don't get involved.” For some residents, this growing atomization will matter little, because the neighborhood is not their “home” but “the place where they live.” Their interests are elsewhere; they are cosmopolitans. But it will matter greatly to other people, whose lives derive meaning and satisfaction from local attachments rather than worldly involvement; for them, the neighborhood will cease to exist except for a few reliable friends whom they arrange to meet.

Such an area is vulnerable to criminal invasion. Though it is not inevitable, it is more likely that here, rather than in places where people are confident they can regulate public behavior by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped. That the drunks will be robbed by boys who do it as a lark, and the prostitutes' customers will be robbed by men who do it purposefully and perhaps violently. That muggings will occur.

bulwark against more serious criminal activity by helping to maintain the appearance of a law-abiding community.”¹³

A brief summary of Kelling & Wilson’s thesis might be “sweat the small stuff, like graffiti, littering and aggressive panhandling, and you’ll find it helps take care of the serious crime as well.” Law-abiding citizens who might otherwise stay indoors will come out if they perceive their surroundings to be reasonably orderly. Once they feel safe enough to come out of their homes, their very presence is a deterrent to crime. Kelling & Wilson themselves describe their thesis this way:

[A]t the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend to agree that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in rundown ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing. (It has always been fun.)

The citizen who fears the ill-smelling drunk, the rowdy teenager, or the importuning beggar is not merely expressing his distaste for unseemly behavior; he is also giving voice to a bit of folk wisdom that happens to be a correct generalization—namely, that serious crime flourishes in areas in which disorderly behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window. Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.

Given the tight time constraints under which the Commission must operate, it is difficult to elaborate fully in this report on Kelling and Wilson’s approach to crime control, which is often called “Fixing Broken Windows.” The report seems to suggest that the use of fines spiked in response to the recommendations of Kelling & Wilson and that the problems addressed in this report thus had their genesis in the Fixing Broken Windows approach. Kelling & Wilson do not actually emphasize fines in their analysis, but I am willing to accept *arguendo* the notion that the Fixing Broken Windows approach leads to increased use of fines. Kelling & Wilson emphasize the importance of removing graffiti as soon as it goes up, of ensuring that litter is picked up, of preventing drunks from sleeping in train stations, and preventing aggressive panhandlers from

¹³ Draft Report at 6 (*quoting* Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons*, 51 *Harv. Civil Rights–Civil Liberties L. Rev.* 189, 193-94 (2016)).

accosting others. Some, but not all of this may ultimately be enforced by fines, but fines are not emphasized over other enforcement mechanisms. By associating the Fixing Broken Windows approach primarily with fines, this report suggests it is partly responsible for the excessive reliance on fees and fines that we see today.

But the report should also point out that the Fixing Broken Windows approach has been credited with being a major contributing factor to the dramatic decrease in crime that has taken place over the last 25 years.

Murder is down more than 50% since its height in 1980.¹⁴ The victimization rate for other violent crimes with a firearm—assaults, robberies, and sex crimes—was 75% lower in 2011 than in 1993.¹⁵ Violent crime generally fell about 50% between 1991 and 2015.¹⁶ This is an achievement of epic proportions and no one has benefited from it more than the poor, since they are particularly likely to live in high-crime neighborhoods.

To be sure, the Fixing Broken Windows approach was not the only factor in the overall decrease in crime. A large bit of the credit must go to what now gets criticized as a “too high” incarceration rate. Americans became less tolerant of violent criminals and began locking them up for longer periods of time. Technological breakthroughs allowing law enforcement to identify guilty parties more easily probably also helped. Another significant bit of credit (if it can be called that) goes to pure demographics. For whatever reason, violent crime is disproportionately committed by the young. As the nation ages, it gets more peaceful.

Not everyone agrees that the Fixing Broken Windows approach contributed significantly to the decrease in crime. I have not delved deeply enough into the empirical literature on this point to have a fixed opinion. But the connection between order and crime seems intuitive to me. People judge the dangerousness of a neighborhood not by examining the FBI statistics for violent crimes, but by the things they can see and hear themselves. Is there litter everywhere? Do the homes look cared for? Are there broken windows? Are drunks lying in the street? Do aggressive panhandlers follow you down the street in a threatening manner? When a neighborhood seems dangerous, the

¹⁴ S.A. Sumner, J.A. Mercy, L.L. Dahlberg, S.D. Hillis, J. Klevens, and D. Houry, *Violence in the United States: Status, Challenges, and Opportunities*, 31 *Journal of the American Medical Association* 478, June 4, 2015, available at <https://www.ncbi.nlm.nih.gov/pubmed/26241599>.

¹⁵ D'vera Cohn, Paul Taylor, Mark Hugo Lopez, Catherine Gallagher, Kim Parker, and Kevin Maass, *Gun Homicide Rate Down 49% Since 1993 Peak: Public Unaware*, Pew Research Center, May 7, 2013, available at <http://www.pewsocialtrends.org/2013/05/07/gun-homicide-rate-down-49-since-1993-peak-public-unaware/>

¹⁶ Max Ehrenfreud, *We've Had a Massive Decline in Gun Violence in the United States. Here's Why*, The Washington Post, December 3, 2015, available at https://www.washingtonpost.com/news/wonk/wp/2015/12/03/weve-had-a-massive-decline-in-gun-violence-in-the-united-states-heres-why/?utm_term=.91e607238e02.

elderly stay indoors. Other law-abiding adults don't go out after dark or walk about only in pairs. Eventually, those who are up to no good own the streets.

If cities like Ferguson make a judgment that it should "sweat the small stuff" in order to combat serious crime, it should have that option, so long as its policing practices are otherwise within the law. I do not mean by this that I approve of every regulation that is thought to promote good order. Some are silly and should be stricken from the municipal codes in which they appear. We heard testimony from Institute for Justice attorney Joshua House that one can be fined in Pagedale, Missouri for curtains that do not match. If this is true, I certainly disapprove. But I would support Ferguson if, free from the incentives that created the culture of revenue maximization, it chooses to enforce a reasonable level of orderliness. Ferguson's citizens are, on the whole, less prosperous than the citizens of nearby Frontenac, Ladue and Town & Country. But that shouldn't mean they are less entitled to a safe and orderly neighborhood.

(D) Are the Jurisdictions, Like Ferguson, That Rely Heavily on Fines and Fees Motivated by Race?

There isn't a lot of evidence on this topic. This report cites a study by Dan Kopf of 4500 cities and towns with populations of at least 5000. That study found that, while the poor are not disproportionately represented in the top 50 towns that over-rely on fees and fines, African Americans are. Kopf's evidence of substantial racial disproportionality is, however, rather shaky (and racial disproportionality is, of course, not the same thing as racial discrimination).

Let's start with his finding that the median city or town that over-relies on fines and fees is not disproportionately poor. Some are surprised by this. In thinking of the over-reliance issue, they had imagined a very poor town financing its budget with fines and fees levied on its own very poor residents. I might have made the same mistake, but if so, I was being naïve. Fining people who have no money has never been a good strategy for filling a municipality's treasury. If I may rely on a well-worn metaphor: Blood cannot be squeezed from a turnip.

On the issue of racial disproportionality, Kopf found that African Americans make up only 3.8% of the population of the median city or town in the study. By contrast, looking only at the top 50 cities and towns that over-rely on fees and fines for their budgets, he found a much larger figure. For those cities and towns, the median proportion of African American residents was 18.9%

Why is the gap between the 18.9% figure and the 3.8% figure so great? First, there is a strange anomaly in Kopf's figures. He gave us the median African American population for the top 50 users of fines and fees out of 4600 cities and towns. But why the top 50? Why not the top 100? He had the data for that. Moreover, all one has to do is scan the next 50 on his list to see that he would have gotten a very different result. So I made the calculation myself: The median proportion of African American residents in the next 50 cities and towns was only 5.35%. For the combined top 100, the median proportion would have been 10.5%.

That is still well above the 3.8% median figure he found for all the cities and towns he studied. But one must bear in mind that 3.8% is a surprisingly low figure given that African Americans are 13.6% of the population.¹⁷ What appears to be driving it is the fact that Kopf uses medians rather than means (or weighted means that takes into consideration the population of each city or town). For a variety of reasons, looking at medians alone can be misleading in this context. The key to understanding this is to remember that African Americans are a minority, they are not distributed evenly across all cities and towns, and they are disproportionately found in very large cities and older suburbs. Consider the following hypotheticals:

1. Imagine that African Americans are 45% of the population. Imagine further that the population lives in 100 equally-populated towns and that racial separation is complete with 45 towns totally African American and 55 towns totally white. In that case, the median city would be 0% African American, despite the fact that 45% of the population is African American.
2. The effect in Hypothetical (1) is the result of racial separation. But that is not the only factor that can cause the use of medians to be misleading. Another factor is the size of cities combined with the fact that African Americans tend to be disproportionately found in larger cities and older suburbs. Imagine again that African Americans are 45% of the population. Imagine further that the population as a whole is concentrated in 10 perfectly integrated mega-cities of 10,000,000 and that each of these mega-cities is 45% African American and 55% is white. In addition, suppose that there are 12 tiny towns with populations of 5000 each in which everyone is either white, Native American or Hispanic. In such a case, the median city or town is again 0% African American, only because there are more tiny towns than mega-cities. Nevertheless, 99.9% of the population lives in the perfectly-integrated mega-cities.

If Kopf had used weighted means instead of medians, he would have found that among the top 100 cities and towns that over-rely on fines and fees, the population is 16.84% African American. Note that this figure is lower than Kopf's median figure for the Top 50 over-relying cities and towns, but higher than my median figure for the Top 100 over-relying cities and towns.

That figure should be compared to the weighted mean African American population for the 4500 cities and towns in Kopf's study. Alas, I do not have the manpower to calculate that figure. But the correct figure can't be too far off of 13.6%, which is the figure for the nation as a whole (12.6% alone + 1% in combination). The appropriate figure is likely to be a bit higher, since Kopf excluded rural areas and small towns. I would estimate around 14.6%.¹⁸

¹⁷ According to the 2010 Census, 13.6% of the population identifies as African American either alone or in combination with some other race (12.6% alone + 1% in combination).

¹⁸ The reason it should be a bit over 13.6% rather than dead on 13.6% is that the Kopf list excludes towns with a population under 5000 and rural areas. African Americans are under-represented in small towns and rural areas. According to a 2012 report by the Housing Assistance Council, African Americans make up only 8.2% of the

Looking at it this way, African Americans are only slightly overrepresented in the cities and towns that can fairly be said to rely excessively on fees and fines—16.84% vs. 14.6%. One important explanatory factor is this: Kopf concedes that six states—Georgia, Illinois, Maryland, Missouri, New York and Texas—account for two-thirds of the top 100 cities and town that over-rely on fees and fines.

These aren't just any states. Interestingly, two of the six states (Georgia and Maryland) are in the top four states for proportion of population that is African American. All six are in the top nineteen. On the other hand, twenty-seven states are not represented on his "Top 100" list at all. That includes the seven states with the smallest percentage of African Americans.

This difference alone may account for whatever race disproportionality Kopf's figures might show. The only question that leaves us whether the fact that these six states are the worst offenders is what causes the race disproportionality or whether race is what causes these states to be the worst offenders.

I suspect it is the former. It's true that all six are in the top nineteen for African American population, but so are Delaware, Mississippi, North Carolina, and Virginia. Yet those states aren't represented in the "Top 100" list *at all*, much less over-represented on it.

So what is the correct explanation for the dominance of Georgia, Illinois, Maryland, Missouri, New York, and Texas? I don't know for sure. But I do have advice for researchers attempting to find out: Look for the towns that find fines and fees an easier way than taxes to raise money. Especially look for towns that are seeking to circumvent limitations on their taxing authority.

As noted above, some states like North Carolina and North Dakota, require municipal fines and fees to be deposited into the state's general revenue account.¹⁹ Cities and towns in those states cannot possibly be among the worst offenders for relying on fees and fines, because they can't raise money that way. They don't get to keep the money they acquire through fines and fees.

Which cities and towns are likely to be among the worst offenders? In an earlier era, prior to the advent of the interstate highway system, one might have looked for a small rural town along a well-traveled highway. A speed trap along such a road was a clever, but inappropriate, way to raise

nation's rural and small town population (and thus a correspondingly larger percentage of the rest of the nation). Using figures from that report, I was able to calculate that one could add about one extra percentage point over and above the national average to arrive at the percentage of African Americans in the non-rural, non-small town parts of the country. Note that this is a rough calculation. I was able to look only at individuals who describe themselves as African American alone (and not those who identified as African American plus some other race). Also the definition of "small town" was not given in the report. It may differ from the towns too small to be included in Kopf's study. See Housing Assistance Council, Rural Research Brief (April 2012), *available at* http://www.ruralhome.org/storage/research_notes/rrn-race-and-ethnicity-web.pdf.

¹⁹ See text and *note supra* at n.10.

money without having to make voters (who are usually taxpayers too) unhappy. But the interstate highway system has caused such highways to be largely deserted by out-of-state travellers.

These days it is a little different (and more complicated). In trying to determine which municipalities will go overboard on fines and fees, look for those with heavy state-imposed limits on their taxing authority, causing them to resort to fees and fines in order to circumvent those limits.

Consider the case of Illinois. The State of Illinois is well-known among those who study local government as the state with the largest number of often-overlapping political entities—cities, towns, counties, school districts, park districts, mosquito abatement districts, etc. It has 6393, while the state with the second highest has only 5147.²⁰ The reason is that Illinois has long had very complicated and strict (but ineffective) limits on local taxing authority. One way around these limits has been the proliferation of local governments, each with its own taxing authority and its own limit on that authority.²¹ A plausible alternative way to circumvent Illinois' efforts to protect taxpayers from over eager local authorities may be to rely on fees and fines.

Can the cases of Georgia, Maryland, Missouri, New York and Texas be explained in a similar manner? I don't know. I note, however, that Missouri is one of those states in which cities and towns that wish to raise property taxes must put their proposal to a popular referendum. If researchers are interested in understanding what is driving municipalities to view fines and fees as a way to raise revenue, they could do worse than looking into limitations on taxing authority.

If I am right that the cities and towns most likely to over-rely on fines and fees are in states that place significant limits on their taxing authority, different people will likely react differently. Those who favor higher taxes will see it as a vindication of their belief that limits on taxing authority are bad. Those who favor lower taxes will see it as an illegitimate end run around the limits they have put into place—one more loophole that needs to be closed.²² I tend to be in the latter camp.

²⁰ Governing the States and Localities: Local Governments by State, available at <http://www.governing.com/gov-data/number-of-governments-by-state.html>.

²¹ James M. Banovetz, *Illinois Home Rule: A Case Study in Fiscal Responsibility*, 32 J. Regional Analysis & Policy 79, 80-81 (2002) (“Illinois students of local government routinely attribute Illinois’ unusually large number of local governments to the need to evade statutory restrictions on municipal taxing powers so that services demanded by the public could be provided”).

²² The latter group tends to be at a disadvantage when it comes to designing limitations on taxing authority. They are less likely to be local government insiders and hence less likely to know the various ways local governments may attempt to circumvent these limits.

(E) Should Violators Who Cannot Pay Their Fines Be Left Alone?

Some people are surprised that one can land in jail for failing to pay a fine when one could not have been jailed for the underlying offense. They shouldn't be. The imposition of a fine is not just a polite request. It is an order. If the order is deliberately ignored, the stakes will be raised, until it is complied with.

These days the stakes tend to be raised bit by bit, and that is a good thing. In less gentle times the gloves might come off more quickly. But no government that eschews force as a matter of policy can long maintain the peace. This is precisely why everyone should prefer limited government, carefully confined to those areas for which the power to coerce is appropriate. Where coercion is undesirable, government is also undesirable.²³

The problem of the individual who cannot pay a fine is special. Such a person is not being obstinate. He can't pay. He doesn't have the money. He therefore is not morally culpable for the failure to pay.²⁴ As the Findings to this Report put it (without citation), "The United States Supreme Court has long recognized that punishing persons for the status of poverty is unlawful."²⁵

But that is not the same thing as saying he should not suffer any consequences for his actions. He remains morally culpable for the original wrong that led to the assessment of the fine. There has simply been a failure of remedy. If fines don't work in his particular case, something else needs to be devised.²⁶

²³ Congressman Barney Frank used to say, "Government is simply the name we give to the things we choose to do together." See, e.g., Ross Douthat, *Government and Its Rivals*, N.Y. Times (Jan. 28, 2012). But what distinguishes government from the thousands of voluntary societies that are part of the American way of life—from the NAACP and the Lions Club to the Sierra Club—is that it is not voluntary. A more accurate statement would thus be, "Government is the name we give to the things that will, if necessary, be enforced with an iron fist."

²⁴ Careful thinkers will insist that I point out that it is possible for an individual to be morally culpable for his state of financial embarrassment. He may have rented an apartment that is more than he can afford. Alternatively, he may have quit his job in fit of a pique with no prospects for getting another. But sorting out those who are culpably unable to pay from those who are not is very difficult and at some point it becomes too difficult for fallible institutions like the judiciary.

²⁵ I won't even try to deal here with the thorny problem of figuring out who is telling the truth when they assert that they cannot pay a fine, except to say that the only way to get this right is to have a municipal code that provides equally unpleasant penalties for those who are incapable of paying a fine. That will eliminate the incentive to claim an inability to pay falsely. Those who imagine that wrongdoer who cannot afford to pay a fine should be let off the hook entirely will, among other things, find that the number of individuals who claim they cannot pay increases over time.

²⁶ In addition, the impecunious wrongdoer may be morally culpable for the failure to inform the authorities of his ability to pay. It does not follow from the fact that an individual has no money that he has no moral agency. Even a

That may mean that the codes that are being enforced must be amended to provide penalties other than fines for violations. Those alternative penalties should be real alternatives—neither more nor less harsh than the fines already prescribed in the code. If the penalty selected would almost never be chosen by a wrongdoer who has the resources to pay a fine, it is likely too harsh. If it would nearly always be chosen by a wrongdoer who has options, it is likely too lenient.

When we discuss individuals who cannot pay fines, we may be talking about millions of people.²⁷ It would be foolish to send a message to those millions that so long as they avoid engaging in the most egregious of misbehavior—murder, robbery, arson, burglary and the like—they will be above the law. If Kelling & Wilson were correct (and I believe the weight of the evidence is behind them) that low-level, but nevertheless illegal, disorderly conduct creates fertile ground for more serious crime, then there needs to be some way to enforce the laws against low-level misconduct against everyone, not just those who have the resources to pay fines. Even if they are not correct, low-level misconduct—from riding the bus without paying the fare, to littering, to traffic violations—is bad in itself.

In some ways, devising appropriate penalties for low-level misconduct is more difficult than doing so for serious crime.²⁸ It must be neither too harsh nor too lenient. And it must be effective against the rich and poor, the young and old, and the weak and strong.

Over the course of history, all sorts of penalties for low-level misconduct have been employed. Some of them are looked down upon by many today, often for good reason. For example, the pillory and the stocks were used for hundreds of years to detain wrongdoers and subject them to public ridicule. Public floggings were another method and are still used in some parts of the world. It would be understatement to say that all these examples have drawbacks. What's more interesting to remember is that, in addition to those drawbacks, they had advantages: They were quick to administer and (unless something went awry) did not interfere with the wrongdoer's future ability to support himself through his own efforts. Contrast them with the practice of cutting off the hands of thieves and other petty criminals, which in most instances would reduce them to beggar status.

person who cannot afford a fine can be expected write a letter, make a phone call or otherwise inform the authorities of his inability to pay a fine (or to appear in court), if he is properly instructed of the need for doing so.

²⁷ According to the 2016 survey cited in the body of this Report, 63% of Americans do not have enough money in savings to cover a \$500 emergency. That overstates the number of persons who cannot pay a fine. Data from the Federal Reserve show that about 72% of Americans have at least one credit card. Some of those who don't have credit cards, have access to cash from their parents, and others can pay a fine if they are given a few months to do so. Nevertheless, the number of Americans who cannot afford to pay a \$500 fine and still pay for food and rent is large.

²⁸ For serious crime, the standard punishment for most of history has been execution. Banishment was another possibility (though in some situations, banishment was almost as likely as execution to result in death). Long-term imprisonment was viewed as impractical by societies that could just barely feed and care for their law-abiding members. Modernity brought prosperity and with it greater ability to build prisons and house prisoners there for long periods of time.

More importantly, contrast them with jailing or even revoking a driver's license at least when those penalties do not try to accommodate the wrongdoer's employment situation.

Much was made in our briefing about the problems that are created by jailing a wrongdoer for relatively low-level misconduct or by revoking the wrongdoer's driver's license, either of which can jeopardize his ability to retain his job. This is a very real concern. It is not in the interest of the community to someone guilty only of minor misconduct to lose his job and become a public charge. That will only lead to greater problems.

But what is the modern, enlightened substitute for the pillory, the stocks or floggings? No doubt some people thought it was driver's license revocations until it was brought to their attention how this can lead to job loss. Others may have thought that fines were the solution until the issues discussed in this report were brought to their attention.

Weekend jail (or jail scheduled around the wrongdoer's work schedule) is a possibility. But there are logistical problems. When a police officer runs across an individual with an outstanding arrest warrant, it is far easier and more reliable to take him to jail then and there, rather than to schedule jail for a later time. Not all such wrongdoers will show up at the appointed time. Moreover, jails are expensive. If they must be large enough to accommodate large numbers on weekends and only small numbers on weekdays, they will be that much more expensive.

Weekend driver's license revocation is another possibility. Or even weekend community service. But at least with the latter there are problems. It is not easy to come up with thousands of weekend jobs that need to be done and to supervise them properly.

One might hope that technological fixes can smooth the way toward workable and humane penalties. For example, perhaps vehicles owned by an individual whose license has been revoked for all purposes except driving to his place of employment can be programmed to send a signal to police if it is being driven anywhere but work. Or perhaps such "fixes" would be rejected by the public as too invasive of individual privacy. The Commission took no evidence on these matters. And I am certainly in no position to discuss them.

The one thing that is clear is that if fines are an unworkable way to penalize those without the ability to pay, that can't be the end of the story. Alternatives are necessary.

Commissioner Peter N. Kirsanow Statement

There is much in this report and in the findings and recommendations with which I agree. No one likes paying fines and fees, the impact of which can sometimes be significant, especially on the poor. I agree that it is pointless to jail an impoverished person who does not have the money to pay a fine. After all, he is not going to be able to make money to pay the fine while he is in jail.

My primary disagreement with this report is that I believe it is something of a stretch to bring this within the Commission's purview. DOJ has authority under 42 U.S.C. § 14141 to investigate when it believes law enforcement has engaged in a pattern or practice of conduct that deprives individuals of constitutional or legal rights.¹ The Commission is supposed to evaluate how well DOJ is enforcing the *civil rights* laws, i.e., laws enacted to afford equal protection to individuals regardless of their race, color, sex, age, national origin, etc. In this instance, I believe we paid insufficient attention to whether there is a violation of civil or constitutional rights at all.

DOJ's Dear Colleague letter lists a number of practices regarding fines and fees that it says local courts must follow in order to meet constitutional requirements.² These requirements go far beyond those the Supreme Court required in *Bearden* or any other case. DOJ overreached in the Dear Colleague letter by strongly suggesting that many individuals required to pay fines and fees are entitled to counsel³, when the precedents it cites actually state that counsel is only required in misdemeanor cases when a sentence of incarceration is imposed⁴, not when incarceration is possible, and that there may be *some* civil proceedings in which an individual is entitled to counsel.⁵ But the Supreme Court explicitly stated in the latter that there was no automatic entitlement to counsel in a civil case, even when incarceration is possible.⁶ The right to counsel is far more cabined than the Dear Colleague Letter suggests.

DOJ also exaggerates the supposed lack of due process in at least some states' suspension of driver's licenses.⁷ One would be forgiven for assuming, based on the Dear Colleague Letter, that the assessed fines and fees that result in license suspension are for piddling civil matters. The Department's Statement of Interest in *Stinnie v. Holcomb*, regarding Virginia's suspension of

¹ 42 U.S.C. § 14141

² U.S. Dep't of Justice, Civil Rights Division, Office of Access to Justice, Dear Colleague Letter [*hereinafter* "Dear Colleague Letter"], March 14, 2016, at 2, <https://www.justice.gov/crt/file/832461/download>.

³ Dear Colleague Letter at 5-6.

⁴ *Scott v. Illinois*, 440 U.S. 367, 373-74 (1979) ("the Sixth and Fourteenth Amendments to the United States Constitution require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense.").

⁵ *Turner v. Rogers*, 564 U.S. 431 (2011).

⁶ *Id.* at 448.

⁷ Dear Colleague Letter at 6-7.

driver's licenses for failure to pay fines and fees, would lead one to believe the same thing and also that the suspensions occur with almost no due process or judicial involvement.⁸ This is not the case. As Judge Moon explains in his opinion dismissing the complaint⁹, the provision of the Virginia code challenged by the plaintiffs requires the trial judge to *immediately* suspend the driver's license of a person *convicted* of a violation of law until the person has paid any fines or fees that are part of the sentence.¹⁰ The suspension of the driver's license is part of the sentence meted out by the judge, and thus the defendant has been afforded the due process he is constitutionally owed. However, the statute also provides for a thirty-day grace period before the suspension goes into effect, during which time the individual can pay the financial penalty in full and avoid the suspension.¹¹ Because this is part of a criminal proceeding, the defendant has also had the opportunity to make his case to the judge regarding why he should suffer a lesser financial penalty, which would of course include factors such as indigency. The relevant statute also includes a reference to another Virginia statute that provides for installment or deferred payment plans for those who must pay fines and fees.¹² In other words, Virginia provides almost all the protections that DOJ recommends in the Dear Colleague Letter. This suggests to me that DOJ's real objection is to *any* suspension of licenses at all. DOJ is free to think that is an unwise policy choice, and I may even agree in many cases, but it is not a constitutional or civil rights violation.

DOJ should not be imposing standards regarding the imposition of fines and fees that are mostly based on the Department's own view of good policy. That is not the Department's role. Something

⁸ Statement of Interest of the United States, *Stinnie v. Holcomb*, No. 3:16-CV-00044, Nov. 7, 2016 (W.D. Va.), available at <https://www.justice.gov/opa/press-release/file/909301/download>.

⁹ Judge Moon dismissed the case for lack of jurisdiction based on the *Rooker-Feldman* doctrine, which "holds that lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments," *Stinnie v. Holcomb* at *11, quoting *Thana v. Bd. of License Commissioners for Charles City, MD*, 827 F.3d 314, 319 (4th Cir. 2016). Judge Moon also dismissed the complaint for lack of standing and because *Holcomb* was entitled to Eleventh Amendment immunity. *Id.* at *15-19.

¹⁰ *Stinnie v. Holcomb*, 2017 WL 963234, at *6 (W.D. Va. 2017).

¹¹ Va. Code Ann. § 46.2-395(B)

[W]hen any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement under § 19.2-354 that is acceptable to the court to make deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the defendant's driver's license shall thereby be restored. If the person has not obtained a license as provided in this chapter, or is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

¹² Va. Code Ann. § 19.2-354.

that is mostly absent from both the Dear Colleague Letter and the Commission's report is the importance of federalism and self-government. These are policy choices made by states and municipalities. The right of the people to make such choices, absent intentional racial discrimination, is the bedrock of our system of government. The law is primarily made by the people of the states and the cities, not DOJ. But DOJ is using the Dear Colleague Letter and its enforcement authority to place new requirements on state and municipal courts that are only vaguely grounded in the law.

My primary concern is that, absent disparate treatment, of which there is precious little record evidence¹³, this strains to be a civil rights issue within the Commission's purview. These practices fall more heavily upon the poor, and the poor are more likely to be black and Hispanic. Understood. But not every disparity is a civil rights issue. Other issues may be, and often are, at play. We have adduced little evidence that the collection of fines and fees is driven in most cases by anything other than the financial need of cities. We can think that is an unwise way to collect revenues, but that is not perforce a civil rights issue. It is a good government issue. And we are the U.S. Commission on Civil Rights, not the U.S. Commission on Good Government.

¹³ For example, DOJ's Ferguson report says, "Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014." (Ferguson report *at* p. 62) This disparity is unsurprising when you take into account that given the rapid demographic transformation Ferguson has experienced over the past 25 years, the African-American population is likely younger and poorer than the white population. It is a well-known that young people, particularly young men, are more likely to commit crimes than older people. The only direct evidence of racial bias presented in the Ferguson report consisted of emails that exhibited racial bias. Seven emails were specifically described in the Ferguson report, although the report claims that DOJ found many other emails that exhibited racial, ethnic, or "other" bias. I suspect these seven emails were the most egregious offenders. (Ferguson report *at* 72) Although they are of course offensive and inappropriate, seven emails sent between 2008 and 2014—i.e., one per year—are hardly evidence of rabid racial bias in the Ferguson police department and municipal government.

TABLES

Table 1: States With Fines and Fees Reports:

State	Fines and Fees Report Citation
ALABAMA	
ALASKA	
ARIZONA	<p><u>Justice for All: Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies</u> (Arizona Task Force on Fair Justice for All) (2016)</p> <p><u>Report: Report on the Results of the Arizona Judiciary Pilot Collections Project</u> (Arizona Supreme Court AOC) (March, 2011)</p>
ARKANSAS	<p><u>Arkansas General Assembly: Legislative Criminal Justice Oversight Task Force Report</u> (December, 2016)</p>
CALIFORNIA	<p><u>Improving California's Criminal Fine and Fee System</u> (January, 2016)</p> <p><u>Making Families Pay: The Harmful, Unlawful, And Costly Practice Of Charging Juvenile Administrative Fees in California</u> (Article brings to light the issue of Juvenile Administrative Fees in relation to fines and fees) (March, 2017)</p> <p><u>Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California</u> (Lawyers' Committee for Civil Rights of the San Francisco Bay Area) (2015)</p> <p><u>Report: Get to Work or Go to Jail</u> (UCLA Labor Center) (2016)</p> <p><u>Report: Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People</u> (Human Rights Watch) (April, 2017)</p> <p><u>Report: Paying More for Being Poor: Bias and Disparity in California's Traffic Court System</u> (May, 2017)</p> <p><u>Report: Report on Fines and Fees and Bail Practices</u> (Commission on the Future of California's Court System) (2017)</p> <p><u>Report: Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California</u>, (Lawyers' Committee for Civil Rights of the San Francisco Bay Area) (April, 2016)</p>

State	Fines and Fees Report Citation
COLORADO	<p><u>ACLU of Colorado: Bills to Protect the Rights of Poor Defendants in Municipal Court Receive Broad Bipartisan Support, Head to the Governor's Desk</u> (2016)</p> <p><u>Report: Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option</u> (PJI) (October, 2013)</p>
CONNECTICUT	
DISTRICT OF COLUMBIA (D.C.)	<p><u>Study: Case Study on the Practice of Pretrial Services and Risk Assessment in Three Cities</u> (The Urban Institute) (December, 2011)</p>
DELAWARE	<p><u>Report: A Report on Bail & Pretrial Detention</u> (Delaware Access to Justice Commission) (October, 2015)</p>
FLORIDA	<p><u>Brennan Center for Justice: The Hidden Costs of Florida's Criminal Justice Fees</u> (March, 2010)</p> <p><u>Paper: Why Crime Doesn't Pay: Examining Felony Collections in Volusia County, FL</u> (ICM Fellow, Don K. Murphy) (May, 2015)</p>
GEORGIA	<p><u>Report: Profiting from The Poor</u> (Human Rights Watch) (July, 2008)</p> <p><u>Report: Report of the Georgia Council on Criminal Justice Reform</u> (February, 2016)</p>
HAWAII	<p><u>Report: Hawai'i Access to Justice Commission Annual Reports (2016)</u></p>
IDAHO	
ILLINOIS	<p><u>Criminalizing Poverty Through Fines, Fees, and Cost</u> (Created a task force in regards to investigating solutions on fines and fees) (October, 2016)</p> <p><u>Stop Forcing Illinois' Poor to Pay Excessive Court Fines, Fees, And Costs</u> (Released Statement on Excessive Court Fines, Fees, and Costs by the Collaboration of Justice) (May, 2016)</p> <p><u>Report: Circuit Court of Cook County Pretrial Operational Review</u> (Administrative Office of the Illinois Court) (March, 2014)</p> <p><u>Report: Cook County Bond Court Watching Project Final Report</u> (Reclaim Campaign Bond Court Watching Project) (February, 2016)</p> <p><u>Report: Statutory Court Fee Task Force Report</u> (Illinois Court Assessments) (June, 2016)</p>

State	Fines and Fees Report Citation
INDIANA	<u>Report: The Right to Counsel in Indiana, Evaluation of Trial Level Indigent Defense Services</u> (Sixth Amendment Center) (January, 2016)
IOWA	<u>Study: Alternatives to Pretrial Detention: Southern District of Iowa (PJI)</u> (June, 2010)
KENTUCKY	<u>Report: Investigating the Impact of Pretrial Detention on Sentencing Outcomes</u> (The Arnold Foundation) (November, 2013) <u>Study: Kentucky Pretrial Risk Assessment Validation Study</u> (JFA Institute) (October, 2010)
KANSAS	
LOUISIANA	<u>Punishing Poverty Through Prison Costs City Millions, Study Finds</u> (Article discussing the findings of the Vera Institute of Justice and the research that showed bail, fines and fees cost the city significantly more than they bring in) (January, 2017) <u>How Bail, Fines, and Fees Impact Poor Communities in New Orleans</u> (Vera Institute of Justice report) (July, 2016) <u>Project: New Orleans Pretrial Services</u> (Vera Institute) (July, 2014) <u>Report: Court Watch NOLA 2015 Data & Statistics</u> (CWN) (September, 2016) <u>Report: Louisiana's Debtors Prisons: An Appeal to Justice</u> (ACLU) (August, 2015)
MAINE	<u>Report of the Intergovernmental Pretrial Justice Reform Task Force</u> (Task Force) (December, 2015)
MARYLAND	<u>Report: Baltimore Behind Bars: How to Reduce the Jail Population, Save Money and Improve Public Safety</u> (JPI) (June, 2010) <u>Report: Finishing the Job: Modernizing Maryland's Bail System</u> (Abell Foundation) (Summer, 2016) <u>Report: Maryland's Parole Supervision Fee: A Barrier to Reentry</u> (Brennan Center for Justice) (March, 2009) <u>Report: Testimony to Maryland House of Delegates on Fixing Parole Fee Exemption System</u> (March, 2011) <u>Report: The High Cost of Bail: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions</u> (MD Office of the Public Defender) (November, 2016)

State	Fines and Fees Report Citation
	<u>Study: Case Study on the Practice of Pretrial Services and Risk Assessment in Three Cities</u> (The Urban Institute) (December, 2011)
MASSACHUSETTS	<u>Massachusetts Trial Court: Fines and Fees Working Group</u> (November, 2016) <u>Report: Criminal Fines and Fees</u> (MA Senate Committee on Post Audit and Oversight Report) (November, 2016) <u>Report: Fine Time Massachusetts: Judges, Poor People, and Debtors' Prison in the 21st Century</u> (MA Senate Post Audit and Oversight Committee) (November, 2016) <u>Report: Inmate Fees as a Source of Revenue: Review of Challenges</u> (Special Commission to Study the Feasibility of Establishing Inmate Fees, Executive Office of Public Safety and Security) (July, 2011) <u>Report: Punishing Poverty: The High Cost of Probation Fees in Massachusetts</u> (Prison Policy Initiative) (December, 2016)
MICHIGAN	<u>Report: Ability to Pay Workgroup</u> (Michigan Supreme Court State Court Administrative Office) (April, 2015) <u>Fines, Fees, Costs, and Rates</u> (State of Michigan Court Report on Fines and Fees Inequalities) (2014)
MINNESOTA	<u>Report: Minnesota Supreme Court Task Force on Racial Bias in the Judicial System</u> (May, 1993) <u>Task Force: Pretrial Release Initiative Workgroup Recommendations</u> (August, 2016)
MISSISSIPPI	<u>State of Mississippi: Office of The State Auditor Report</u> (July, 2013) <u>Profiting from Probation</u> (Article brings to light America's "Offender-Funded" Probation Industry) (February, 2014)
MISSOURI	<u>Report of the Municipal Division Work Group to the Supreme Court of Missouri</u> (Created Work Group with a Municipal Court Fines and Fees Division) (March, 2016) <u>Report: Audit of 21st Judicial Circuit, City of Ferguson, Municipal Division</u> (Office of Missouri State Auditor) (April, 2017) <u>Report: Investigation of the Ferguson Police Department</u> (DOJ) (March, 2015) <u>Report: Summary of Audit Findings Judiciary—Municipal Divisions</u> (Office of Missouri State Auditor) (July, 2016)

State	Fines and Fees Report Citation
	<u>Study: Missouri Municipal Courts: Best Practice Recommendations</u> (NCSC) (November, 2015)
MONTANA	
NEBRASKA	<u>The ACLU of Nebraska: Unequal Justice</u> (December, 2016) <u>Report: Reducing Failure to Appear in Nebraska: A Field Study</u> (NE Public Policy Center) (September, 2010)
NEVADA	
NEW HAMPSHIRE	<u>Report: N.H. Judges Illegally Jail Poor People Who Can't Pay Fines</u> (September, 2015) <u>Report: Debtors' Prisons in New Hampshire</u> (ACLU) (January, 2017)
NEW JERSEY	<u>Report: Exclusive Inside the Municipal Court Cash Machine</u> (Asbury Park Press) (2015) <u>Report: Inside Out: Questionable and Abusive Practices in New Jersey's Bail-Bond Industry</u> (NJ Commission of Investigation) (May, 2014) <u>Report: Report of the Joint Committee on Criminal Justice</u> (3 Branch Joint Committee) (March, 2014)
NEW MEXICO	<u>Report: Assessment of The Second Judicial District Court Pretrial Services Office</u> (New Mexico Sentencing Commission) (February, 2014)
NEW YORK	<u>Report: NYC Collected \$1.9B In Fines, Fees Through 2015</u> (March, 2016) <u>Report: N.Y. Independent Budget Office Analysis on Pre-Trial Detainees</u> (May, 2017)
NORTH CAROLINA	
NORTH DAKOTA	
OHIO	<u>Collection of Fines and Court Costs in Adult Trial Courts</u> (Bench Card) (September, 2015) <u>Report and Recommendations of the Supreme Court of Ohio Task Force on the Funding of Ohio Courts</u> (Supreme Court of Ohio) (November, 2015) <u>Report: How Ohio's Debtors' Prisons Are Ruining Lives and Costing Communities</u> (ACLU) (March, 2016)
OKLAHOMA	<u>A Journey into Debt</u> (January, 2015)

State	Fines and Fees Report Citation
	<u>Report: The Cost Trap: How Excessive Fees Lock Oklahomans Into the Criminal Justice System without Boosting State Revenue</u> (Oklahoma Policy Institute) (February, 2017)
OREGON	<u>OSB Court Fees Task Force Initial Report</u> (June, 2010) <u>Report to the Joint Interim Committee on State Justice System Revenues : State of Oregon</u> (National Center for States Courts Report) (2010)
PENNSYLVANIA	<u>Report: Criminal Justice in the 21st Century: Improving Incarceration Policies and Practices in Allegheny County</u> (Criminal Justice Task Force) (November, 2016) <u>Report: Pennsylvania Supreme Court's Amendments Upon the Recommendation Re: Incarceration for Failure to Post Summary Case Collateral</u> (Criminal Procedural Rules Committee) (April, 2015)
RHODE ISLAND	<u>Report: Court Debt and Related Incarceration in Rhode Island from 2005 through 2007</u> (Rhode Island Family Life Center) (April, 2008) <u>Report: Justice Reinvestment in Rhode Island, 2016</u> (CSG's Justice Center) (June, 2016)
SOUTH CAROLINA	
SOUTH DAKOTA	
TENNESSEE	<u>Report: Liberty & Justice for All: Providing Right to Counsel Services in Tennessee</u> (Indigent Representation Task Force) (April, 2017) <u>Report: Tennessee's Court Fees and Taxes: Funding the Courts Fairly</u> (Report of the Tennessee Advisory Commission on Intergovernmental Relations) (January, 2017)
TEXAS	<u>Report: A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes</u> (Texas Office of Court Administration) (March, 2009) <u>Report: Criminal Justice Committee</u> (Texas Judicial Council) (October, 2016) <u>Report: No Exit, Texas: Modern-Day Debtors' Prisons and the Poverty Trap</u> (ACLU) (November, 2016)

State	Fines and Fees Report Citation
	<p><u>Report: Pay or Stay: The High Cost of Jailing Texans for Fines & Fees</u> (Texas Applesed and the Texas Fair Defense Project) (February, 2017)</p> <p><u>Report: Study of the Necessity of Certain Court Costs and Fees in Texas</u> (Texas Office of Court Administration) (September, 2014)</p>
UTAH	
VERMONT	
VIRGINIA	<p><u>Report: Driven Deeper into Debt, Unrealistic Repayment Options Hurt Low-Income Court Debtors</u> (Legal Aid Justice Center) (May, 2016)</p>
WASHINGTON	<p><u>Washington State: Minority and Justice Commission</u> (Minority and Justice Commission) (June, 2016)</p> <p><u>The Assessment and Consequences of Legal Financial Obligations in Washington State</u> (Research Report) (August, 2008)</p>
WEST VIRGINIA	
WISCONSIN	<p><u>Ticket to Nowhere: The Hidden Cost of Driver's License Suspensions</u> (August, 2015)</p> <p><u>The Cost of Unpaid Municipal Citations</u> (June, 2015)</p> <p><u>Report: Report on Fines, Forfeitures, Surcharges in Wisconsin</u> (WI Supreme Court's Planning and Policy Advisory Committee) (December, 2002)</p> <p><u>Task Force: Chief Judges Subcommittee on the Use of Jail for Non-Payment</u> (2016)</p>
WYOMING	

Table 2: States With Pilot Programs and/or Initiatives Related to Fines and Fees

State	Programs
Alabama	<u>Mobile Municipal Court Reform</u> (Aug. 2014) <u>Amnesty Days</u> (Mar. 2015) <u>Bench Card for Alabama Judges</u> (Nov. 2015) <u>Rocket Docket, Time-to-Pay, Jail Work Program</u> (2014-2016) <u>Online Ticket Payment</u>
Alaska	<u>Traffic and Criminal Software (TraCS)</u> (Sept. 2011)
Arizona	<u>Warrant Resolution Court</u> (Jun. 2016) <u>Compliance Assistance Program</u> (Nov. 2016) <u>Online Ticket Payment</u>
Arkansas	<u>Johnson Amnesty Week</u> (Mar. 2015) <u>Rogers Amnesty Week</u> (Dec. 2015) <u>Online Ticket Payment</u>
California	<u>Processing “Quality of Life” Violations</u> (May 2002) <u>Infractions Amnesty Program</u> (Jun. 2015–Apr. 2017) <u>Financial Justice Project</u> (Oct. 2016) <u>Online Ticket Payment</u>
Colorado	<u>Court Date Notification Program</u> (Mar. 2006) <u>Online Ticket Payment</u>
Connecticut	<u>Indigency Declaration Form</u>
Delaware	<u>Online Ticket Payment</u>
Florida	<u>Operation Fresh Start</u> (Mar. 2016) <u>Walk In Drive Out</u> (Sept. 2016) <u>Operation Green Light</u> (Oct. 2014) <u>Spring Into Savings</u> (Feb. 2017) <u>TraCS</u> <u>Online Ticket Payment</u>
Georgia	<u>Indigent Fee Waiver Form</u> (Jan. 2005) <u>DeKalb County Ticket Amnesty Program</u> (Apr. 2010) <u>Fulton County Traffic Amnesty</u> (Nov. 2011) <u>Decatur Amnesty Program</u> (Feb. 2017–May 2017) <u>Atlanta Warrant Amnesty Program</u> (Apr. 2017–May 2017) <u>Online Ticket Payment</u>
Hawaii	<u>eTraffic</u> (2013)

State	Programs
Idaho	<u>Indigency Fee Waiver Form</u> (Feb. 2005) <u>Online Ticket Payment</u>
Illinois	<u>Parking Ticket Amnesty Program</u> (Sept. 2002–Oct. 2002) <u>Ticket and Tax Amnesty Program</u> (Oct. 2005–Oct. 2016) <u>Parking and Red-Light Amnesty Program</u> (Dec. 2008–Feb. 2009) <u>St. Clair Warrant Amnesty Day</u> (July 2010) <u>Indigency Fee Waiver Form</u> (Sept. 2014) <u>TraCS</u> (Mar. 2015) <u>Chicago Ticket Amnesty Program</u> (Nov. 2015–Dec. 2015) <u>Lake County Amnesty Program</u> (Jun. 2016–July 2016) <u>Online Ticket Payment</u>
Indiana	<u>Fee Waiver Form</u> (Oct. 2010) <u>Online Ticket Payment</u>
Iowa	<u>TraCS</u> (1994) <u>Davenport Overdue Ticket Amnesty Program</u> (Jun. 2014–Aug. 2014) <u>Court Debt Amnesty Program</u> (Sept. 2010–Nov. 2010) <u>Online Ticket Payment</u>
Kansas	<u>Wichita Amnesty Week</u> (Apr. 2013) <u>One-Time-Only Three-Day Amnesty Program</u> (Oct. 2011) <u>BAIID Fee Reduction Form</u> (Apr. 2015) <u>Clean Slate Day</u> (Oct. 2016) <u>Online Ticket Payment</u>
Kentucky	<u>Trigg County Amnesty Program</u> (Aug. 2014) <u>Rocket Docket Initiative</u> (Aug. 2015) <u>Online Ticket Payment</u>
Louisiana	<u>Lafourche Warrant Amnesty</u> (Jun. 2014) <u>Stand With Dignity Warrant Clinic</u> (Mar. 2017) <u>Baker City Warrant Amnesty Program</u> (Apr. 2017) <u>Shreveport City Online Ticket Payment</u>
Maine	<u>Fee Waiver Affidavit</u> (Mar. 2013) <u>Online Ticket Payment</u>
Maryland	<u>Indigency Fee Waiver Form</u> (Aug. 2016) <u>Warrant Second Chance Program</u> (Jan. 2017) <u>Online Ticket Payment</u>
Massachusetts	<u>Indigency Fee Waiver</u> (Mar. 2003)

State	Programs
	<u>Online Ticket Payment</u>
Michigan	<u>Court Collection Program</u> (Jan. 2010) <u>Dearborn Traffic Amnesty Program</u> (May 2013–June 2013) <u>Online Court Resolution Initiative</u> (July 2014) <u>Ability to Pay Benchcard</u> (Apr. 2015) <u>Berrien County Warrant Amnesty Program</u> (Sept. 2016) <u>36th District Court Seasonal Promotion</u> (Dec. 2016) <u>Indigency Fee Waiver Form</u> (Jun. 2017) <u>Online Ticket Payment</u>
Minnesota	<u>Driver Diversion Pilot Program</u> (Aug. 2009) <u>TraCS</u> (Mar. 2017) <u>Warrant Forgiveness Day</u> (May 2017) <u>Online Ticket Payment</u>
Mississippi	<u>Ridgeland Amnesty Period</u> (Feb. 2014–Mar. 2014) <u>Jackson Amnesty Days</u> (Feb. 2016) <u>Yazoo City Amnesty Day</u> (Mar. 2016) <u>Gulfport Warrant Amnesty Day</u> (Jun. 2016) <u>Vicksburg Annual Amnesty Period</u> (Feb. 2017) <u>Moss Point Amnesty Period</u> (Mar. 2017–May 2017) <u>Online Ticket Payment</u> <u>Biloxi Municipal Court Benchcard</u>
Missouri	<u>Kansas City Amnesty Program</u> (Oct. 2003) <u>St. Louis Metropolitan Area Amnesty Project</u> (Aug. 2014) <u>St. Louis Warrant Amnesty Program</u> (Oct. 2014) <u>Online Ticket Information</u>
Montana	<u>Online Ticket Payment</u>
Nebraska	<u>Online Ticket Payment</u>
Nevada	<u>Traffic Amnesty Program</u> (Nov. 2008–Feb. 2009) <u>North Las Vegas Amnesty Program</u> (Jan. 2012) <u>One-Time Amnesty Program</u> (Oct. 2015–Mar. 2017) <u>Online Ticket Payment</u>
New Hampshire	<u>Indigency Declaration Form</u> (July 2011) <u>Online Ticket Payment</u>
New Jersey	<u>Fugitive Safe Surrender–NJ Southern Region</u> (Apr. 2012) <u>Fugitive Safe Surrender Program</u> (Nov. 2013)

State	Programs
	<u>Online Ticket Payment</u>
New Mexico	<u>Safe Surrender Program</u> (Oct. 2016) <u>Online Ticket Payment</u>
New York	<u>TraCS</u> (1999) <u>Staten Island Day-Fine Project Evaluation</u> (July 2013) <u>Nassau County Traffic Ticket Amnesty Program</u> (Feb. 2014–May 2014) <u>Traffic Fine Reduction Request</u> (Jun. 2014) <u>Manhattan Clean Slate Event</u> (Nov. 2015) <u>City of Troy Parking Ticket Amnesty Program</u> (May 2016–Jun. 2016) <u>Southampton Town Parking Violation Amnesty Program</u> (Jun. 2016–July 2016) <u>Forgiving Fines: The NYC Amnesty Program</u> (Sept. 2016–Dec. 2016) <u>Online Ticket Payment</u>
North Carolina	<u>Amnesty on Parking Tickets</u> (Jan. 1996–Feb. 1996) <u>TraCS</u> (Feb. 2014) <u>Online Ticket Payment</u>
Ohio	<u>Cincinnati Parking Fine Amnesty Program</u> (Mar. 2011) <u>Toledo Amnesty Program</u> (Apr. 2015–Jun. 2015) <u>Adult Court Benchcard</u> (Sept. 2015) <u>Juvenile Court Benchcard</u> (Jun. 2016) <u>Online Ticket Payment</u>
Oklahoma	<u>Oklahoma County District Court Amnesty Program</u> (Apr. 1989–May 1989) <u>Del City Amnesty Period</u> (Mar. 2003–Apr. 2003) <u>Durant Warrant Amnesty Program</u> (Oct. 2010) <u>Warr Acres Ticket Amnesty Program</u> (Nov. 2010–Dec. 2010) <u>Glenpool Amnesty Program</u> (Mar. 2013–Apr. 2013) <u>Tulsa Parking Ticket Amnesty</u> (Jan. 2014–Feb. 2014) <u>Tulsa and Broken Arrow Amnesty Week</u> (Mar. 2014) <u>Moore Warrant Amnesty Program</u> (Aug. 2014) <u>Glenpool Amnesty Program</u> (Jan. 2015–Feb. 2015) <u>Tulsa Municipal Court Warrant Amnesty Period</u> (May 2015) <u>Online Ticket Payment</u>
Oregon	<u>Suspended Drivers Amnesty Program</u> (Feb. 2010–Apr. 2010) <u>Clean Slate Program</u> (Aug. 2016–Oct. 2016)

State	Programs
	<u>Online Ticket Payment</u>
Pennsylvania	<u>Crawford County Amnesty Week</u> (Aug. 2010) <u>Resolution Applauding Traffic Amnesty Programs</u> (Mar. 2011) <u>Easton Parking Ticket Amnesty</u> (Jun. 2016) <u>Online Ticket Payment</u>
Rhode Island	<u>Central Falls Amnesty Program</u> (Feb. 2014–Apr. 2014) <u>Online Ticket Payment</u>
South Carolina	<u>Annual Driver Suspension Eligibility Week</u> (Mar. 2015) <u>Online Ticket Payment</u>
Tennessee	<u>Drive While You Pay Program</u> (July 1999) <u>Annual Memphis Amnesty Program</u> (July 2008) <u>Indigent Fee Waiver</u> (Aug. 2012) <u>Online Ticket Payment</u>
Texas	<u>Houston 2007 Amnesty Program</u> (May 2007–Jun. 2007) <u>Houston Amnesty Program</u> (May 2009) <u>Montgomery County Amnesty Program</u> (Jun. 2009) <u>Freeport Amnesty Program</u> (Jan. 2010–Jan. 2016) <u>Amnesty for Texas</u> (Jan. 2011–Apr. 2011) <u>Houston 2013 Amnesty Program</u> (Jan. 2013–Feb. 2013) <u>Brazos County Warrant Amnesty Program</u> (Feb. 2013–Mar. 2013) <u>Texarkana Amnesty Program</u> (Oct. 2015) <u>Manor Amnesty Program</u> (July 2015–Aug. 2015) <u>Indigence Checklist</u> (Nov. 2015) <u>Tom Green County Warrant Amnesty Night</u> (Nov. 2016) <u>Austin Warrant Amnesty Program</u> (Feb. 2017–Mar. 2017) <u>Great Texas Warrant Roundup</u> (Feb. 2017) <u>Sullivan City Warrant and Ticket Amnesty Program</u> (Jun. 2017)
Utah	<u>Taylorville Warrant Amnesty</u> (July 2003) <u>Lehi Amnesty on Failure-to-Appear</u> (Sept. 2005) <u>Ogden Misdemeanor-Warrant Amnesty</u> (Apr. 2006) <u>Salt Lake City Parking Ticket Amnesty</u> (Aug. 2016–Oct. 2016) <u>Online Ticket Payment</u>
Vermont	<u>Rutland Parking Ticket Amnesty</u> (Feb. 2011–Apr. 2011) <u>DLS Amnesty Program</u> (Mar. 2015) <u>TraCS Pilot Program</u> (Mar. 2016)

State	Programs
	<u>Three-Month Ticket Amnesty Program</u> (Sept. 2016–Nov. 2016) <u>Online Ticket Payment</u>
Virginia	<u>Drive-To-Work Program</u> (2007) <u>Drive-To-Work Program</u> (2007) <u>Drive-To-Work Program</u> (2007) <u>Resolution in Support of Community Service Program</u> (May 2012)
Washington	<u>Re-licensing Amnesty Program</u> (May 2009–Jun. 2009) <u>Statewide Debt Reduction Program</u> (May 2009–Jun. 2009) <u>Gig Harbor Arrest-Warrant Amnesty</u> (Dec. 2011) <u>King County Re-licensing Program</u> (Feb. 2017) <u>Spokane Re-licensing Program</u> (2017)
Washington, D.C.	<u>Ticket Amnesty Program</u> (Aug. 2011–Jan. 2012) <u>Online Ticket Payment</u>
West Virginia	<u>The Amnesty Program</u> (Sept. 2013)
Wisconsin	<u>TraCS</u> (Jun. 2015) <u>Indigency Fee Waiver Form</u> (Feb. 2016) <u>Warrant Withdrawal Wednesday</u> (Nov. 2016) <u>Online Ticket Payment</u>
Wyoming	<u>Sheridan Amnesty Program</u> (Jan. 2011) <u>Online Ticket Payment</u>

Table 3: States With Ability-To-Pay Standards

State	Ability-To-Pay Standards
Alabama	<u>Collection of Fines and Court Costs Benchcard</u> (Nov. 2015) <u>Alabama Rules of Criminal Procedure</u>
Alaska	<u>Determination of Indigency</u>
Arizona	<u>Community Service for Inability to Pay</u>
Arkansas	<u>Alternative Public Work for Inability to Pay</u> (2010) <u>Determination of Method to Pay</u> (2010)
California	<u>Driving Without a License—Reduction of Fine</u> (Jul. 2009) <u>Request to Waive Court Fees</u> (Sept. 2015) <u>Ability to Pay Determinations for Infraction Offenses</u> (Jan. 2017)
Colorado	<u>Ability to Pay Investigation</u> (Sept. 2002) <u>Motion to File Without Payment</u> (Oct. 2015) <u>Ability-to-Pay Hearing, Undue Hardship Determination</u> (Jun. 2014)
Connecticut	<u>Affidavit of Indigency, Fee Waiver</u> (Aug. 2015) <u>Ability to Pay Determinations</u> (2017) <u>Community Service as an Alternative</u> <u>Superior Court Judge’s Power to Remit a Fine</u>
Delaware	<u>Application and Affidavit to Proceed In Forma Pauperis</u> (Jun. 2015) <u>Recoupment of Defense Costs</u>
Florida	<u>Application for Determination of Civil Indigent Status</u> <u>Public Work or Community Service for Inability to Pay</u> (2011) <u>Determination of Indigent Status</u> (2012)
Georgia	<u>Indigent Fee Waiver Form—Conasauga</u> (Jan. 2005) <u>Determination of Restitution</u> (2010) <u>Determination of Fines, Fees, and Restitution</u> (2015)
Hawaii	<u>Criteria for Imposing Fines</u> (1986) <u>Community Service as an Alternative</u> (1993) <u>Court Judges’ Power to Waive, Reduce, or Remit Court Costs</u> (2007)
Idaho	<u>Determination of Indigency</u> (1967) <u>Determination of Inability to Pay</u> (1977) <u>Indigency Fee Waiver Form</u> (Feb. 2005)
Illinois	<u>BAIID Fee Coverage</u> (Jan. 2014) <u>Indigency Fee Waiver Form</u> (Sept. 2014) <u>Determination of Fine</u> (Jan. 2016)
Indiana	<u>Fee Waiver</u> (Oct. 2010)

State	Ability-To-Pay Standards
	<u>Indigency Hearing</u> <u>Determination of Inability to Pay</u>
Iowa	<u>Community Service as an Alternative</u> (1999)
Kansas	<u>Motion to Proceed Without Prepayment of Fees</u> (Oct. 2007) <u>Criteria for Imposing Fines</u> (Jul. 2011) <u>Docket Fee Waiver Requirements</u> (Jul. 2014) <u>BAIID Fee Reduction Form</u> (Apr. 2015)
Kentucky	<u>Determination of Felony Fines</u> (Jul. 1994) <u>Definition of “Poor Person”</u> (Jul. 1996)
Louisiana	<u>Determination of Indigency</u> (2007)
Maine	<u>Criteria for Imposing Fines</u> (2003) <u>Determination of Indigency</u> (Jul. 2010) <u>Fee Waiver Affidavit</u> (Mar. 2013)
Maryland	<u>Ability to Apply for Fine Reduction</u> (2010) <u>Indigency Fee Waiver Form</u> (Aug. 2016) <u>Waiver of Fees Due to Indigency</u> <u>Waiver of Court Costs in a Criminal Case</u>
Massachusetts	<u>Affidavit of Indigency and Request for Waiver</u> (Mar. 2003) <u>Determination of Indigency</u> <u>Community Service as an Alternative</u>
Michigan	<u>Criteria for Imposing Fees</u> (2006) <u>Tools and Guidance for Determining and Addressing an Obligor’s Ability to Pay</u> (Apr. 2015) <u>Waiver/Suspension of Fees and Costs</u> (May 2016) <u>Ability to Pay Benchcard</u> (Feb. 2017) <u>Payment Plan Calculator</u>
Minnesota	<u>Community Service as an Alternative</u>
Mississippi	<u>Biloxi Municipal Court Procedures for LFO & Community Service</u> (Mar. 2016) <u>Hardship Waiver</u> (2016) <u>Use of Interlock Device Fund for Indigent Persons</u> (2016) <u>Community Service as an Alternative</u>
Missouri	<u>Determination of Ability to Pay for Counsel</u> (1991) <u>Motion and Affidavit in Support of Request to Proceed as a Poor Person</u> (July 2015) <u>Criteria for Imposition of Fines</u> (Aug. 2016)

State	Ability-To-Pay Standards
Montana	<u>Determination of Ability to Pay for Counsel</u> <u>Determination of Ability to Pay</u>
Nebraska	<u>Installments of Fines and Costs</u> <u>Waiver of Probation Fees</u>
Nevada	<u>Reduction of Excessive Fine</u> (1983) <u>Waiver or Reduction of Fee</u> (1995)
New Hampshire	<u>Waiver of Court Costs and Fees</u> (Jan. 1986) <u>Determination of Financial Ability</u> (Jul. 1989) <u>Motion to Waive Filing Fees</u> (Jan. 2011) <u>Indigency Declaration Form</u> (July 2011) <u>Sentencing Procedures</u>
New Jersey	<u>Criteria for Imposing Fines and Restitutions</u> (1978) <u>Revocation of Fine</u> (1978) <u>Community Service as an Alternative</u> (2009) <u>Defendant's Right to Apply for Fee Waiver</u> (2013)
New Mexico	<u>Determination of Indigency</u> (1968) <u>Paying Fines, Fees, or Costs in Installments</u> (1971)
New York	<u>Fee Waiver; Poor Person's Relief</u> (May 2004) <u>Traffic Fine Reduction Request</u> (Jun. 2014) <u>Criteria for Imposing a Fine</u> <u>Ignition Interlock Device Fee—Waived or Through a Payment Plan</u>
North Carolina	<u>Remission of a Fine or Costs</u> (1977) <u>Modification of a Fine or Costs</u> (1977) <u>Criteria for Imposing a Fine</u> (1977)
North Dakota	<u>Criteria for Imposing a Fine</u> <u>"Reasonable Assigned Work" as an Alternative</u>
Ohio	<u>Ability-to-Pay Hearing</u> (Sept. 2002) <u>Imposing Financial Sanction Criteria</u> (2003) <u>Community Service as an Alternative</u> (2004) <u>Financial Disclosure/Affidavit of Indigency</u> (Jan. 2012) <u>Collection of Fines and Court Costs in Adult Trial Courts</u> (Sept. 2015) <u>Financial Sanctions & Obligations in Juvenile Court</u> (Mar. 2016)
Oklahoma	<u>Oklahoma Indigent Defense Act</u> <u>Pauper's Affidavit</u> <u>Hearing to Determine Ability to Pay</u>
Oregon	<u>Standards for Imposing Fines</u> (2011)

State	Ability-To-Pay Standards
	<u>Power of Court to Waive Fines</u> (2011) <u>Fee Deferral or Waiver Application and Declaration</u> (Nov. 2012) <u>Determination of Ability to Pay</u> (2015)
Pennsylvania	<u>Criteria for Imposing a Fine</u>
Rhode Island	<u>Determination of Ability to Pay</u> (2008)
South Carolina	<u>Schedule for Fine Payment</u> (1973) <u>Waiver or Reduction of Fee, Affidavit of Inability to Employ Counsel</u> (2007)
South Dakota	<u>Waiver of Filing Fees and Service Costs</u> (1975) <u>Affidavit of Indigency Form</u> (Nov. 2010)
Tennessee	<u>Uniform Civil Affidavit of Indigency</u> (Apr. 2001) <u>Motion to be Declared Indigent and Waive Fine and Court Costs</u> (July 2014)
Texas	<u>Indigence Checklist</u> (Nov. 2015) <u>Statement of Inability to Afford Payment of Court Costs</u> (May 2016) <u>Indigency/Incentive Application for Reduction of Surcharges</u> (Mar. 2016) <u>Ignition Interlock Device Payment Plan</u> (Jan. 2017)
Utah	<u>Determination of Indigency</u> (2006) <u>Motion and Affidavit Supporting Motion to Waive Fees</u> (Apr. 2009)
Vermont	<u>Determination of Ability to Pay</u> (1991) <u>Community Service as an Alternative</u> (2009)
Virginia	<u>Determination of Ability to Pay</u> <u>Waiver of Fee for Indigent Individuals</u>
Washington	<u>Determination of Indigency</u> (1989) <u>Motion and Declaration for Waiver of Civil Filing Fees and Surcharges</u> (Feb. 2011) <u>Reference Guide: Legal Financial Obligations, Dispositional Orders</u> (Sept. 2015) <u>Reference Guide on Legal Financial Obligations</u> (Oct. 2015) <u>Determination of Ability to Pay</u>
Washington, D.C.	<u>Motion for Waiver of Fees</u> (Aug. 2009) <u>Motion for Waiver of Prepayment of Court Fees and Costs</u>
West Virginia	<u>Fees and Allowances for Poor Persons</u> (2011) <u>Determination of Indigency</u>
Wisconsin	<u>Determination of Indigency</u> (1995) <u>Petition for Waiver of Fees and Costs</u> (Feb. 2011)

State	Ability-To-Pay Standards
	<u>Indigency Fee Waiver Form (Feb. 2016)</u> <u>Community Service as an Alternative</u>
Wyoming	<u>Determination of Need</u>

Table 4: States With Changed Laws and/ or Court Rules on Fines and Fees:

State:	Changed Laws and/or Court Rules on Fines and Fees:
ALABAMA	<u>Rule 26.11: Rules of Criminal Procedure; Fines and Restitution</u>
ALASKA	<u>Alaska SB 91: Omnibus Criminal Law & Procedure; Corrections (2016)</u>
ARIZONA	
ARKANSAS	
CALIFORNIA	<u>Budget: 2017-18 Governor's Budget (Eliminates Driver's Licenses Suspensions for Unpaid Traffic Tickets and Court Fees) (January, 2017)</u> <u>SB-881: Vehicle Violations: Payment of Fines (September, 2016)</u> <u>Proposed SB 185 Crimes: Infractions (January, 2017)</u> <u>Rule 4.105: The California Rules of Court (June, 2015)</u> <u>Rules Proposal Traffic and Criminal Procedure: Infraction Procedure Regarding Bail, Fines, Fees, and Assessments; Mandatory Courtesy Notice; and Ability-to-Pay Determinations (December, 2016)</u>
COLORADO	<u>HB 16-1311: Concerning Court Orders Requiring Payment of Monetary Amounts (June, 2016)</u> <u>HB16-1309: Right to Counsel in Municipal Court (May, 2016)</u>
CONNECTICUT	<u>Proposed HB 7044: An Act Concerning Pretrial Justice Reform (2017, Current)</u> <u>Proposed Amendment, Section 52-259b: Waiver of Fees and Payment of the Cost of Service of Process for Indigent Party (2017, Current)</u>
DISTRICT OF COLUMBIA (D.C.)	
DELAWARE	
FLORIDA	
GEORGIA	<u>Enacted HB 1116: Dekalb County; State Court; Provide for the Payment of Costs (March, 2016)</u> <u>Enacted HB 310: Penal Institutions and Revenue (February, 2015)</u> <u>Enacted SB 367: Georgia Council Justice Reform; Provide for Comprehensive Reform (February, 2016)</u>

State:	Changed Laws and/or Court Rules on Fines and Fees:
	<u>Yearly Reports from the Georgia Council on Criminal Justice Reform</u>
HAWAII	<u>Hawai'i Supreme Court Rule 21: Access to Justice Commission Created (2008)</u> <u>Rule 2.2: Rules of the Circuit Courts of the State of Hawai'i, Costs and Fees to be Collected by the Clerk</u> <u>Amendments Statutes: 607-3, 607-5.6(b), 706-605(6), 706-641, 706-648 (2016)</u>
IDAHO	<u>Appellate Rule 23: (January, 2013)</u>
ILLINOIS	<u>Proposed HB 2591: Creates the Criminal and Traffic Assessment Act (2017)</u> <u>Amendment to M.R.3140 Rule 298: Supreme Court of Illinois (September, 2014)</u>
INDIANA	<u>Order Adopting Criminal Rule 26 (Effective as of January, 2018)</u>
IOWA	<u>Senate File 2316: An Act Relating to the Collection of Delinquent Court Debt and Associated Installment Agreements (April, 2016)</u>
KENTUCKY	
KANSAS	<u>SB 403: Limitations on Municipal Revenue Generation through Traffic Citations (Proposed in 2016)</u>
LOUISIANA	<u>Ordinance 2016-3: Ordinance by the Town of St. Francisville, Louisiana to Assess a Collection Fee on Debts Referred to Collection Agency (March, 2016)</u> <u>HB92: Repeals the Warrant Recall Fees Collected to Fund a Misdemeanor Jail in East Baton Rouge Parish (June, 2016)</u>
MAINE	<u>Proposed LD 1190 (2017) An Act Regarding Driver's License Suspensions for No Driving-Related Violations (May, 2017)</u> <u>SP 666 2016 An Act to Implement the Recommendations of the Intergovernmental Pretrial Justice Reform Task Force (March, 2016)</u>
MARYLAND	<u>Amendment to Maryland Rule 4-216: Attorney's General Frosh's Advice Letter to Five House of Delegates Members (October, 2016)</u> <u>Legal Memorandum to Attorney General Frosh: Maryland's Wealth-Based Pretrial Detention Scheme (October, 2016)</u>

State:	Changed Laws and/or Court Rules on Fines and Fees:
	<u>Maryland Rule 4-216.1 and Amendments to Current Rules: Pretrial Release</u> (February, 2017)
MASSACHUSETTS	<u>JUD 1005 Amendment to Senate Budget Discretionary Imposition of Probation Fees and Victim Services Surcharges on Probationers</u> (July, 2016) <u>House Bill 2359: An Act to Reduce the Criminalization of Poverty</u> (June, 2017) <u>Senate Bill 777: An Act to Reduce the Criminalization of Poverty</u> (June, 2017)
MICHIGAN	<u>Michigan Court Rules 6.425(E)(3): Incarceration for Nonpayment</u> (2016)
MINNESOTA	<u>Chapter 83 S.F. No. 802: (Including Various Provisions Establishing the Court's Collections Program, Eliminating the Sentencing Option of Imposing Jail or Prison Time if a Fine is Not Paid, and Giving Defendants the Right to Contest a Referral to Collections Based on Inability to Pay)</u> (2009)
MISSISSIPPI	<u>HB 711: Clarify Which Courts have Jurisdiction to Revisit Bonds that are Excessive</u> (July, 2016) <u>Proposed HB 1033: Re-Entry Council; Implement Certain Recommendations Thereof</u> (Effective as of July, 2017)
MISSOURI	<u>Rule 37.04: Supervision of Courts Hearing Ordinance Violations and Minimum Operating Standards For Missouri Courts: Municipal Divisions</u> (September, 2016) <u>SB 5: Modifies Distribution of Traffic Fines and Court Costs Collected by Municipal Courts</u> (August, 2015) <u>SB 572: Modifies Various Provisions Regarding Municipalities and Counties</u> (August, 2016)
MONTANA	
NEBRASKA	<u>LB 259: Adopt and Change Competency and Financial Ability Provisions Relating to Court Proceedings as Prescribed</u> (May, 2015)
NEVADA	
NEW HAMPSHIRE	<u>New Hampshire Rule of Criminal Procedure 29(E) Payment of Fines</u> (October, 2016) <u>Proposed SB 200 (2017) Relative to Incarceration for Nonpayment of an Assessment or Nonperformance of Community Service</u> (Effective as of August, 2017)

State:	Changed Laws and/or Court Rules on Fines and Fees:
NEW JERSEY	<u>Senate Bill 2850: Increases Number of Superior Court Judgeships</u> (January, 2017)
NEW MEXICO	<u>SJR 1/Amendment 1: Denial of Bail for Certain Felonies, Constitutional Amendment</u> (2016) <u>Uniform Fines and Fees for Civil Traffic Violations Implemented</u> (May, 2017)
NEW YORK	<u>City Council Proposal Int. No. 1373: Instructing NY Criminal Justice Agency to Inform Judges of a Defendant's Economic Resources</u> (2016)
NORTH CAROLINA	<u>Mecklenburg County's Pretrial Services Eligibility Policy</u> (2015)
NORTH DAKOTA	
OHIO	<u>R.C. 2947.14: Hearing on Ability to Pay Fine</u> (2002)
OKLAHOMA	<u>SB 340: Fines and Costs; Allowing Certain Discretion for Repayment</u> (2017) <u>SB 342: Criminal Justice Reform; Creating Task Force to Analyze Fines, Fees, and Court Costs</u> (May, 2017) <u>SB 689:Criminal Procedure; Certain Sentencing Provisions</u> (2017) <u>SB 793: Criminal Justice Reform; Creating Corrections and Criminal Justice Oversight Task Force</u> (2017)
PENNSYLVANIA	<u>Amendments to Pa.Rs.Crim.P. 431, 441, 452, 456, 461, and 1033: Criminal Procedure Rules Update</u> (July, 2015) <u>Proposed HB 2043: Court Fines & Fees for the Poor</u> (May, 2016)
RHODE ISLAND	<u>Rhode Island General Laws § 8-15-9.3: Amended to Require the Judiciary's Director of Finance to Post Online the List of Names of Individuals with Unpaid Fines or Outstanding Payment Warrants</u> (2016) <u>Superior Court and District Court Rules of Criminal Procedure Rule 32 Amending the Standard of Proof Necessary to Revoke Bail to Preponderance of the Evidence</u> (April, 2016)
SOUTH CAROLINA	
SOUTH DAKOTA	
TENNESSEE	<u>House Bill 880/Senate Bill 1084: Creating a Court Fee and Tax Advisory Council</u> (2017)

State:	Changed Laws and/or Court Rules on Fines and Fees:
	<u>Proposed Senate Bill 802/House Bill 1173: Fines and Penalties (Effective as of January, 2018)</u>
TEXAS	<u>Art. 103.0033: Collection Improvement Program (January, 2017)</u> <u>Proposed SB 1338: Pretrial release of Defendant and Funding for Judicial Continuing Legal Education (May, 2017)</u> <u>Proposed SB 1913: Relating to the Administrative, Civil, and Criminal Consequences (May, 2017)</u> <u>Texas Judicial Council Legislative Proposals (2017)</u>
UTAH	
VERMONT	<u>Enacted H.270: An Act Relating to Pretrial Screenings and Assessments (May, 2015)</u> <u>Enacted H.571: An Act Relating to Driver's License Suspensions and Judicial, Criminal Justice, and Insurance Topics (May, 2016)</u> <u>Enacted S.171: An Act Relating to Eligibility for Pretrial Risk Assessment and Needs Screening (May, 2016)</u>
VIRGINIA	<u>Passed HB 2386/SB 854: Unpaid Court Fines, etc.; Increases Grace Period for Collection (April, 2017)</u> <u>Proposed Legislation: Report to the General Assembly and Supreme Court of Virginia (Judicial Council of Virginia) (2015)</u> <u>Rule 1:24: Requirements for Court Payment Plans for the Collection of Fines and Costs (November, 2016)</u> <u>Rule 3B:2: Uniform Fine Schedule (December, 2016)</u>
WASHINGTON	<u>Proposed HB 1783: Concerning Legal Financial Obligations (2017)</u>
WEST VIRGINIA	<u>Enacted SB 634: Second Chance Driver's License Act (March, 2016)</u>
WISCONSIN	<u>Rock County: Changes Court Procedures for Fines</u>
WYOMING	

Table 5: States and Citations for Providing Interpreters Free of Charge

State	Provides Interpreter Free of Charge for Debt Collections Matters	Citation for Provision of Free Service	Citation for Charging Interpreter Fee
Alabama	No		Ala. Code Title 15, § 15-1-3(d) ("If the interpreter is appointed by another authority, the fee shall be paid out of funds available to that appointing authority. Nothing in this section shall prohibit the court from taxing the costs of the interpreter against one or more of the parties for immediate payment or from requiring reimbursement to the state at a later date. - See more at: http://codes.findlaw.com/al/title-15-criminal-procedure/al-code-sect-15-1-3.html#sthash.r8rBJHee.dpuf .").
Alaska	Yes	Admin. Rule 6 (b) ("The court system will provide and pay for the necessary services of an interpreter during proceedings in court for all parties, witnesses, and victims with limited English proficiency in all cases . . .").	
Arkansas	No		

Arizona	Yes	*See Administrative Order 2011-96 re: establishing Language Access Plans to address translation services, https://www.azcourts.gov/Portals/22/admorder/Orders11/2011-96.pdf	
California	Yes	* “It’s imperative that courts provide an interpreter to all parties who require one.” Cal. Gov. Code § 68092.1. If insufficient funds, interpreters will be prioritized as set forth in Cal. Evidence Code § 756(b) (essentially prioritizes family law and unlawful detainer).	
Colorado	No		
Conn.	No		
Delaware	No		
District of Columbia	No		
Florida	No		
Georgia	Yes	Use of Interpreter for non-English Speaking and Hearing Impaired Persons, App. A.II, http://www.georgiacourts.org/files/INTERPRETERS%20RULES_FINAL_07_03_12.pdf	
Hawaii	Yes	HI Rule for Certification of Interpreters, Rule 1.3, http://www.courts.state.hi.us/docs/court_rules/rules/csli.pdf ; Judiciary Policy #12, http://www.courts.state.hi.us/services/language_assistance_services.html ; CSSLI Rule 14.1, http://www.courts.state.hi.us/docs/court_rules/rules/csli.htm .	

Idaho	Yes	<p>Idaho Code 9-205: “INTERPRETERS. In any civil or criminal action in which any witness or a party does not understand or speak the English language, or who has a physical disability which prevents him from fully hearing or speaking the English language, then the court shall appoint a qualified interpreter to interpret the proceedings to and the testimony of such witness or party.”</p> <p>http://legislature.idaho.gov/idstat/Title9/T9CH2SECT9-205.htm; ICAR 52(a): “Statement of Policy. It is the policy of the Supreme Court and the intent of these rules to secure the rights, constitutional and otherwise, of persons who, because of a non-English-speaking cultural background or physical impairment, are unable to understand or communicate adequately in the English language when they appear in the courts or are involved in court proceedings, or are otherwise seeking access to the courts.”</p> <p>https://www.isc.idaho.gov/icar52 ; ICAR 52(b)(5): “‘Court proceeding’ means any civil, criminal, domestic relations, juvenile, traffic, or other in-court proceeding in which a non-English-speaking person is a principal party in interest or a witness.”</p> <p>https://www.isc.idaho.gov/icar52</p>	
Illinois	Yes	<p>See Ill. Sup. Ct. Language Access Policy, Sections III and V, http://state.il.us/court/CivilJustice/LanguageAccess/Language_Access_Policy.pdf</p>	
Indiana	No		

Iowa	Yes	<p>https://ujs.sd.gov/media/committees/11_2010_Powerpoint.pdf; Iowa Code Ann. § 622A.2 (West) states that “Every person who cannot speak or understand the English language and who is a party to any legal proceeding or a witness therein, shall be entitled to an interpreter to assist such person throughout the proceeding.”</p> <p>“Legal proceeding” is defined as “any action before any court, or any legal action preparatory to appearing before any court, whether civil, criminal, or juvenile in nature; and any proceeding before any administrative agency which is quasi-judicial in nature and which has direct legal implications to any person.” Iowa Code Ann. § 622A.1 (West)</p>	
Kansas	Yes	<p>Cf. K.S.A. 75-4351 (c); http://www.ksrevisor.org/statutes/chapters/ch75/075_043_0051.html (“A qualified interpreter shall be appointed in the following cases for persons whose primary language is one other than English, or who is a deaf, hard of hearing or speech impaired person: . . . (c) in any civil proceeding, whether such person is the plaintiff, defendant or witness in such action; . . .”).</p>	

Kentucky	Yes	Kentucky Rules of Administrative Procedure AP Part IX, Procedures for Appointment of Interpreters. See Section 4. Appointment of and Requests for Interpreters (providing that any party, juror, witness or non-party, in any court proceeding, is entitled to have the court appoint a qualified interpreter if (a) such person is deaf or hard of hearing, (b) such person cannot communicate in English, or (c) in the opinion of the court, has another disability which will prevent said person from properly understanding the nature of the proceedings or will substantially prejudice his or her rights). <i>Available at</i> http://courts.ky.gov/courts/supreme/Rules_Procedures/201103.pdf	
Louisiana	No		
Maine	No		
Maryland	Yes	http://mdcourts.gov/courts/courtlanguageservices.html (“Court interpreters are provided for litigants and witnesses in civil, criminal, and juvenile proceedings and are paid for by the Administrative Office of the Courts.”); Rule 1-333(b)(2), (c), http://www.courts.state.md.us/rules/rodocs/ro186supp.pdf .	
Massachusetts	Yes	M.G.L. c. 221C.	
Minnesota	Yes	Minn. Gen. R. of Prac. 8.02(a).	
Mississippi	No		

Missouri	Yes	See MCR 1.111(B)(1) (“If a person requests a foreign language interpreter and the court determines such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that foreign language interpreter services are necessary for a person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter for that person if the person is a witness testifying in a civil or criminal case or court proceeding or is a party.”) “Case or court proceeding” is defined as “any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding, including any matter conducted by a judge, magistrate, referee, or other hearing officer.” MCR 1.111(A)(1).	
Missouri	Yes	Section 476.803.1, RSMo; http://www.courts.mo.gov/page.jsp?id=182	
Montana	No		
Nebraska	Yes	Neb.Rev. Stat.25-2403 (“In any proceeding the presiding judge shall appoint an interpreter to assist any person unable to communicate the English language for preparation and trial of his or her case.”); Neb. Ct R. § 6-703, Appointment of Interpreters, https://supremecourt.nebraska.gov/supreme-court-rules/2256/§-6-703-appointment-interpreters	
Nevada	No		

New Hampshire	No		
New Jersey	Yes	<p>Directive #3:04 http://www.judiciary.state.nj.us/directive/personnel/dir_03_04.pdf - Standard 1.2 - The judiciary should generally assign interpreters to interpret all phases of court-connected proceedings for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part, is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony</p> <p>Standard 1.3 - The judiciary should use only interpreters registered with the New Jersey Administrative Office of Courts. In the unusual case in which any other interpreter is required, the judge or hearing officer should conduct a voir dire consistent with New Jersey Rule of Evidence 604 and administer the interpreter's oath.</p>	
New Mexico	Yes	NM Supreme Court Rules 1-103, 2-113 3-113, 5-122, 6-115, 7-114, 8-113, 10-167 and 12-315.	
New York	No		
North Carolina	No		
North Dakota	No		

Ohio	Yes	Rule 88 of the Rules of Superintendence requires the use of a certified interpreter in all case types and in all languages, where reasonably available. The Ohio Revised Code mandates that judges, in all case types and for all languages, make a determination of indigency and if indigency is confirmed, it requires the judge to waive the interpreter fee, http://codes.ohio.gov/orc/2311.14 .	
Oklahoma	No		
Oregon	Yes	ORS 45.275(1): “The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary: (a) To interpret the proceedings to a non-English-speaking party; (b) To interpret the testimony of a non-English-speaking party or witness; or (c) To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.” http://www.oregonlaws.org/ors/45.275	
Pennsylvania	Yes	204 Pa. Code § 221.201(c)	
Puerto Rico	Yes	Administrative Order 10, October 27, 2007. Act. No. 136-1996	

Rhode Island	Yes	Supreme Court Executive Order 2012-05 ; Language Access Plan, https://www.courts.ri.gov/Interpreters/englishversion/PDF/Language_Access_Plan.pdf , page 8 (“The Executive Order requires the court to assign a certified or qualified interpreter in all proceedings involving an LEP party or witness. A court proceeding is defined by Supreme Court Executive Order 2012-05 as ‘[a]ny hearing, trial or other appearance before any court in this state in an action, appeal or other proceeding, including any matter conducted by a judicial officer.’”).	
South Carolina	No		
South Dakota	No		
Tennessee	Yes	TN Supreme Court Rule 42	
Texas	No		
Utah	Yes	Utah Code Jud. Admin. § 3-306 (“Except as provided in paragraphs (4)(B), (4)(C) and (4)(D), if the appointing authority determines that a . . . person who will be bound by the legal proceeding has a primary language other than English and limited English proficiency, the appointing authority shall appoint a certified interpreter in all legal proceedings. A person requesting an interpreter is presumed to be a person of limited English proficiency.”),	

		https://www.utcourts.gov/resources/rules/ucja/ . Sections 4(B), 4(C), and 4(D) provide for non-certified interpreters when certified interpreters are unavailable.	
Vermont	Yes	Proposed rule change: https://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROPOSEDVRC43%28f%2945%28a%29%284%2945%28b%29%281%29VRAP24%28a%29%281%29%28B%29%28iii%29.pdf .	
Virginia	Yes	www.courts.state.va.us/courtadmin/aoc/djs/programs/interpreters/manuals/lep/chapter04.pdf (“The court or magistrate is responsible for locating certified or otherwise qualified interpreters for proceedings. Each court should designate specific individuals to coordinate language access services for all cases that require them.”).	
Washington	No		
Wisconsin	Yes	Wis. Stat. 885.38(1-2), (3.a), (8.a.1)	
West Virginia	Yes	*Internal policy	
Wyoming	No		