

A report to the Laura and John Arnold Foundation

Monetary Sanctions in the Criminal Justice System

A review of law and policy in California, Georgia, Illinois, Minnesota,
Missouri, New York, North Carolina, Texas, and Washington

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EXECUTIVE SUMMARY

Introduction

Monetary sanctions have always been part of the U.S. criminal justice system. Today they are receiving new attention, as recent social, political, and legal developments have raised questions about how they affect poverty, racial and socioeconomic inequality, and the fair and efficient administration of justice. This summary report draws on evidence culled from reviews of statutes and case law in nine states to draw attention to the policies and practices that govern the imposition, enforcement, and implications of legal financial obligations.

Context

Over forty years ago, the U.S. Supreme Court affirmed equal protection under the law for criminal defendants unable to pay their legal financial obligations and prohibited the use of imprisonment for unpaid legal financial obligations.¹ In recent years, and after four decades of unprecedented growth in the criminal justice system, there is rising interest in the topic of legal financial obligations. Following the police killing of Michael Brown, Jr. in Ferguson, Missouri, the U.S. Department of Justice undertook an investigation of the Ferguson Police Department and concluded that “Ferguson law enforcement efforts are focused on generating revenue.”² At the state level, The Ferguson Commission Report drew attention to the pervasiveness of legal financial obligations in and around St. Louis County, Missouri, and how they work as an exploitative municipal revenue source and a force of unequal justice.³ Related scholarship has identified legal financial obligations as a key feature of the contemporary criminal justice system. Conceptualized variably as a dimension of punishment, an opportunity for restorative justice, and a source of revenue, legal financial obligations both widen the net of, and intensify the entanglements with, the criminal justice system.⁴ In the spring of 2016, the Department of Justice issued an historic “Dear Colleague” letter regarding the enforcement of criminal justice fines and fees. Affirming the rights of due process and equal protection, the letter outlined a set of principles to “help judicial actors protect individuals’ rights and avoid unnecessary harm.”⁵

Key Findings

The United States lacks a single coherent set of laws, policies, or principles governing the imposition and enforcement of legal financial obligations. Much like other aspects of the criminal justice system, the policies and practices governing legal financial obligations are set by federal, state, and local governing and administrative bodies. Even the terminology used to describe legal financial obligations varies across jurisdictions. Throughout this report, we use the term “legal financial obligations” to refer to fines, restitution, fees, costs, and surcharges imposed on individuals who come into contact with the criminal justice system. Our review of legal statutes and case law in nine states including California, Georgia, Illinois,

1 *Williams v. Illinois*, 339 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); and more recently *Bearden v. Georgia*, 461 U.S. 660 (1983).

2 U.S. Department of Justice, Civil Rights Division. 2015. *Investigation of the Ferguson Police Department*. Available on-line at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

3 The Ferguson Commission. 2015. *Forward through Ferguson: A Path Toward Racial Equity*. Available on-line at: http://3680or2khmk3bzkp33juiea1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf

4 Harris, Alexes. 2016. *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation. Harris, Alexes, Heather Evans, and Katherine Beckett. 2011. “Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment.” *American Sociological Review* 76(2): 1-31. Harris, Alexes, Heather Evans, and Katherine Beckett. 2010. “Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S.” *American Journal of Sociology* 115(6): 1755-99.

5 Gupta, Vanita and Lisa Foster. March 14, 2016. “Dear Colleague.” Washington, D.C.: U.S. Department of Justice. Available on-line at: <https://www.justice.gov/crt/file/832461/download>.

Minnesota, Missouri, New York, North Carolina, Texas, and Washington generates the following insights:

- Legal financial obligations are **routinely imposed** for misdemeanor and felony criminal justice involvement.
- Unpaid legal financial obligations can trigger **additional sanctions** that vary in scope and severity; for example:
 - Relatively small fines assessed for minor offenses may result in large total financial obligations due to the **accumulation of fees, costs, and surcharges**.
 - Unpaid legal financial obligations can grow over time as **interest and other payment penalties** accrue.
 - Unpaid legal financial obligations can have **non-justice related consequences** including the suspension of, or inability to renew, a driver's license.
 - Unpaid legal financial obligations can **extend supervision and trigger other forms of criminal justice involvement**, including incarceration.
- State statutes stipulate the **imposition and enforcement** of legal financial obligations.
- Several key aspects of the imposition and enforcement of legal financial obligations **vary across states and within them**, including:
 - The **legal frameworks** guiding the imposition of legal financial obligations.
 - The **types** of legal financial obligations including fines, restitution, fees, costs, and surcharges.
 - The laws governing **enforcement and collection strategies**, including the role of private collection agencies and private correctional supervision.
- Legal financial obligations create a range of **stakeholders**, which vary by state. These **agencies, funds, and purposes** are the recipients of the fines, fees, and other costs collected by the courts.
- There are **active legal challenges** to the laws and practices governing legal financial obligations.

Implications for Research and Policy

These and other empirical observations about the legal structures governing the imposition and enforcement of legal financial obligations across and within the nine states included in our study raise important questions for future research. They also help to identify opportunities and challenges for policy change in this landscape.

- The statutes and rules governing legal financial obligations are **remarkably complex**, are included in a **wide variety of state legal codes**, and commonly involve a **broad and diverse set of stakeholders** who benefit from or support their imposition. These observations highlight the challenges and opportunities for effecting policy change and also invite further research into the role of key stakeholders in the construction of policymaking.
- Formal statutes and rules governing legal financial obligations may not adequately represent **how they are imposed and enforced** through the daily activities of policing agencies, courts, or supervisory agencies. Stipulated statutes and fee schedules frequently provide **allowances for discretion** in their imposition and enforcement. More attention must be paid to how the law is **practiced** and how legal financial obligations are **interpreted** by those who impose and enforce them.

- Some aspects of legal financial obligations are articulated as forms of **punishment** and are included in state legal codes alongside other sentencing conditions like prison or jail time and community supervision. Other aspects of legal financial obligations are articulated as **cost recovery or fees for service** and are found in state transportation codes, health and safety codes, or administrative codes. The **stated rationale** for legal financial obligations may affect **perceptions of the legitimacy** of the criminal justice system and the administration of justice.
- In some states, collections from legal financial obligations are an important source of **revenue** for both justice and non-justice related activities. The centrality of user fees to support the criminal justice system raises important questions about the **necessity of legal financial obligations** for public safety, the **expense** of the criminal justice system, and the **alternative funding strategies** available for the administration of justice systems.
- There is explicit recognition in statutes and policy of **differential ability to pay**. Allowances for **judicial discretion, payment plans, and alternative sanctions** highlight the importance of considering **alternative and proportional punishment**.
- The imposition and enforcement of legal financial obligations involves **many dimensions of the justice system**. Greater attention to **coordination** between policing agencies, courts, and supervisory agencies within and across jurisdictions may shed light on mechanisms to enhance the effective and efficient administration of justice, as well as the ways in which legal financial obligations extend the reach of the criminal justice system and intensify its impact on individuals, families, and communities.

Next Steps

There is growing interest in legal financial obligations and their consequences. The evidence presented in this report reflects what we have learned from reviews of written policy and case law. It is important to note, however, that the laws and policies reviewed in this document are rapidly changing in response to political, social, and legal pressures. In particular, states and municipalities are exploring changes in the amounts assessed at sentencing, amnesty programs, and other reforms directed toward reducing the centrality of legal financial obligations in the administration of justice. Although there are numerous active legal challenges to the enforcement of legal financial obligations, the features that define legal financial obligations also raise important questions about the extent and durability of these efforts at reform. First, the statutes and rules governing legal financial obligations are varied, multi-layered, and complex. Second, the rationale for legal financial obligations is similarly multifaceted, including retributive, deterrent, restorative, and revenue generating dimensions. Third, there is a diverse group of stakeholders interested in various aspects of legal financial obligations and their interests often diverge.

In the next phases of our research, we plan to turn our attention to how the law is practiced on the ground and with what effect. We will conduct courtroom ethnographies to observe sentencing and sanctioning hearings regarding legal financial obligations. We will interview actors involved in the administrative of justice, including judges, prosecutors, defense attorneys, clerks, community correction officers, and others. We will gather data on the characteristics of people who are assessed legal financial obligations to investigate for whom and how legal financial obligations may extend or intensify criminal justice contact. Finally, we will interview people who have been assessed legal financial obligations to better understand how these obligations impact their ability to (re)integrate into society and meet their daily needs. Rigorously examining these different aspects of their imposition and enforcement will show us how legal financial obligations affect the efficient, effective, and fair administration of justice, as well as the poverty and inequality of citizens and their communities.

INTRODUCTION

Monetary sanctions have always been part of the U.S. criminal justice system. Today they are receiving new attention, as recent social, political, and legal developments have raised questions about how they affect poverty, racial and socioeconomic inequality, and the fair and efficient administration of justice. This summary report draws on evidence culled from reviews of statutes, administrative rules and policies, and case law in nine states to draw attention to the policies and practices that govern the imposition, enforcement, and implications of legal financial obligations.

Over forty years ago, the U.S. Supreme Court affirmed equal protection under the law for criminal defendants unable to pay their legal financial obligations and prohibited the use of imprisonment for unpaid legal financial obligations.¹ In recent years, and after four decades of unprecedented growth in exposure to the criminal justice system, there is rising interest in the topic of legal financial obligations. Throughout this report, we use the term “legal financial obligations” to refer to fines, restitution, fees, costs, and surcharges imposed on individuals who come into contact with the criminal justice system. Although much attention has been drawn to the most intensive form of criminal justice supervision, incarceration, even minor contacts with the criminal justice system can trigger legal financial obligations.

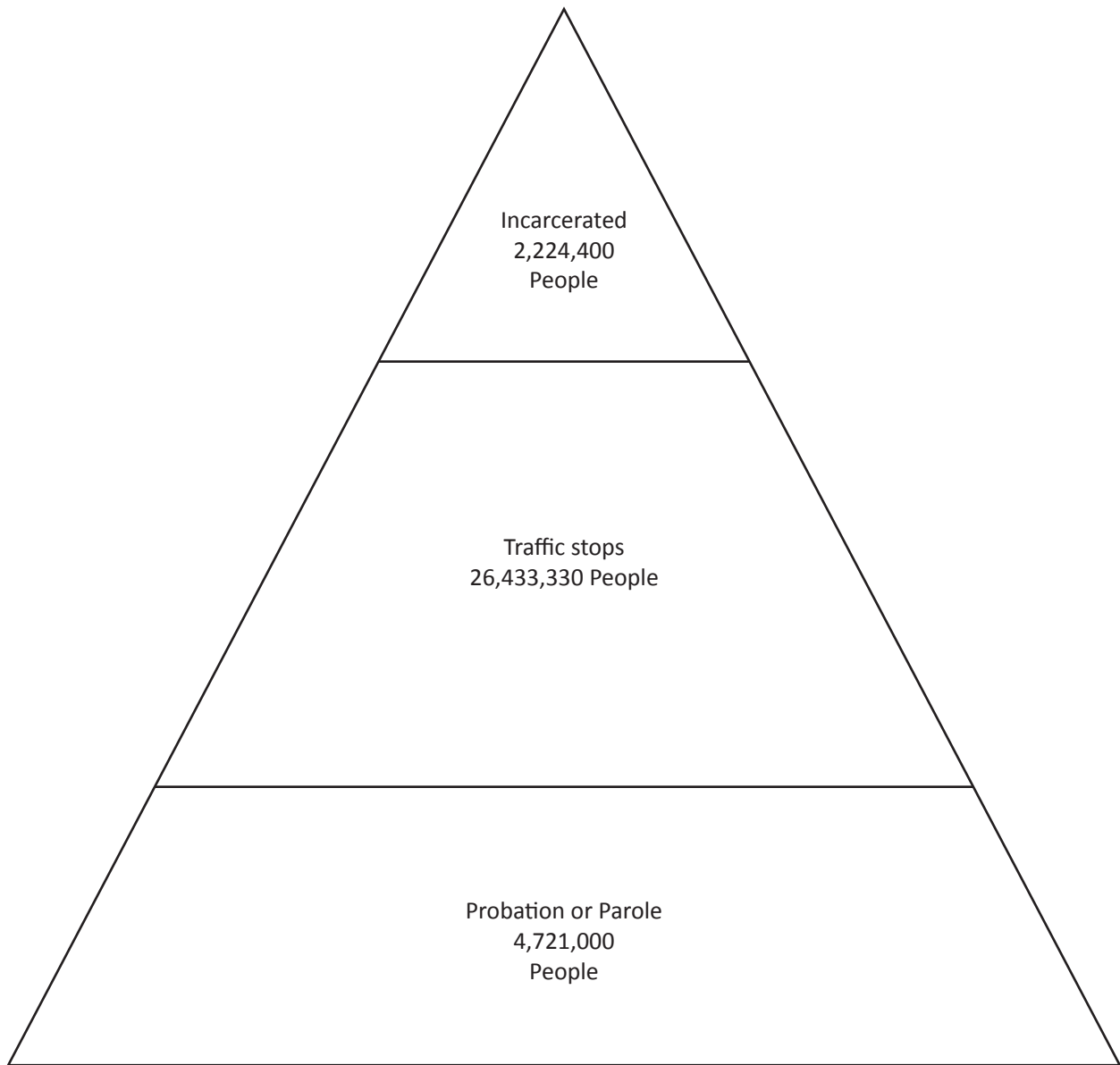
The number of people incarcerated in the United States grew rapidly over recent decades so that by the end of 2014, over 2.2 million people, or nearly 1 in 100 American adults, were confined in federal, state, and local prisons and jails. Other forms of criminal justice supervision such as probation or parole have also grown. At the close of 2014, 4.7 million people were under the surveillance of probation or parole agencies.² While incarceration and community supervision (i.e., parole and probation) touch the lives of an inordinate number of Americans (when compared historically or internationally), an even greater number of people encounter the criminal justice system through routine traffic stops. Data from the Bureau of Justice Statistics show that in 2011, 26.4 million adults reported being pulled over in a traffic stop by police. Approximately half of them received a citation.³ Figure 1 illustrates the wide reach of the criminal justice system through traffic stops in comparison to the more narrow, but intensive, reach of the criminal justice system through probation and parole supervision, and, most acutely, incarceration.

1 *Williams v. Illinois*, 339 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); and more recently *Bearden v. Georgia*, 461 U.S. 660 (1983).

2 Kaeble, Danielle, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. 2016. “Correctional Populations in the United States, 2014.” Washington, D.C.: Bureau of Justice Statistics. NCJ 249513.

3 Langton, Lynn and Matthew Durose. 2013. “Police Behavior during Traffic and Street Stops, 2011.” Washington, D.C.: Bureau of Justice Statistics. NCJ 242937.

Figure 1. Exposure to Different Types of Criminal Justice Contact



Sources: Langton, Lynn and Matthew Durose. 2013. "Police Behavior during Traffic and Street Stops, 2011." Washington, D.C.: Bureau of Justice Statistics. NCJ 242937. Kaeble, Danielle, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. 2016. "Correctional Populations in the United States, 2014." Washington, D.C.: Bureau of Justice Statistics. NCJ 249513.

The U.S. Department of Justice's investigation of the Ferguson Police Department documented how traffic stops escalate into incarceration through the mechanism of legal financial obligations. They found the following: "In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees."⁴ Conceptualized variably as a dimension of punishment, an opportunity for restorative justice, and a source of revenue, legal financial obligations both widen the reach of the criminal justice system and intensify the entanglement in the justice system of people with criminal justice contact.⁵ In the spring of 2016, the Department of Justice issued an historic "Dear Colleague" letter regarding the enforcement of legal fines and fees. Affirming the rights of due process and equal protection, the letter outlined a set of principles to "help judicial actors protect individuals' rights and avoid unnecessary harm."⁶

It is in this context that we conducted a review of legal statutes, administrative rules and policies, and case law in nine states to examine the legal, policy, and administrative guidelines that frame the imposition, enforcement, and implications of legal financial obligations. The review includes attention to legal statutes, administrative rules and policies, and case law from California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas, and Washington. Our team of researchers includes professors and graduate students at nine research universities located in the states in which we conducted our study. We are sociologists, legal scholars, policy analysts, demographers, and criminologists and we share an interest in better understanding legal financial obligations within our respective states and in comparison to other states.

The United States lacks a single coherent set of laws, policies, or principles governing the imposition and enforcement of legal financial obligations. Much like other aspects of the criminal justice system, from policing to the imposition of custodial sentences, the policies and practices governing legal financial obligations are set by federal, state, and local governing and administrative bodies. Even the terminology used to describe legal financial obligations varies across jurisdictions. In this review, our aim is to **describe** the key legal and policy conditions that frame legal financial obligations and highlight key points of **similarity and difference** across our nine states of interest. It is our hope that this review can identify productive **avenues for future research** in related areas and identify **opportunities and challenges for policy change and legal practice** in related domains.

METHODOLOGY

This report summarizes the findings from reviews of legal statutes, administrative rules and policies, and case law in nine states and select jurisdictions within them. These nine states represent a sizable portion of the U.S. population, are geographically diverse, and provide important variation in criminal justice policy and practice.

4 U.S. Department of Justice, Civil Rights Division. 2015. *Investigation of the Ferguson Police Department*. Available on-line at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

5 Harris, Alexes. 2016. *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation. Harris, Alexes, Heather Evans, and Katherine Beckett. 2011. "Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment." *American Sociological Review* 76(2): 1-31. Harris, Alexes, Heather Evans, and Katherine Beckett. 2010. "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary U.S." *American Journal of Sociology* 115(6): 1755-99.

6 Gupta, Vanita and Lisa Foster. March 14, 2016. "Dear Colleague." Washington, D.C.: U.S. Department of Justice. Available on-line at: <https://www.justice.gov/crt/file/832461/download>.

Table 1 shows that 43 percent of adults under community-based supervision and 36 percent of adults incarcerated in prisons and jails in the U.S. are located in these nine states.⁷ Table 1 further illustrates variability in the number and rate of persons under correctional supervision in these states. In Missouri, 65,800 adults are under the supervision of probation and parole agencies (or “community supervision”) compared to nearly 500,000 adults in both Georgia and Texas. The rate of community supervision is lowest in New York, where 960 per 100,000 adults are under the supervision of probation or parole agencies. Community supervision is most prevalent in Georgia where 6,430 out of every 100,000 adults, or more than 6 percent of the adult population, are under the surveillance of probation and parole agencies. Turning to incarceration, Table 1 shows that the number of people incarcerated in these states ranges from 16,200 in Minnesota to over 200,000 people in California and Texas. The adult incarceration rate ranges from 390 per 100,000 adults in Minnesota to 1,190 per 100,000 adults, or over one percent of the adult population, in Georgia.

Table 1. Estimated number and rate of persons supervised by U.S. adult correctional systems, selected states, 2014.

| Jurisdiction | Number of persons on probation or parole | Community supervision rate (per 100,000 adult residents) | Number of persons in prison or local jail | Incarceration rate (per 100,000 adult residents) |
|-----------------------------|--|--|---|--|
| California | 382,600 | 1,280 | 207,100 | 690 |
| Georgia | 491,800 | 6,430 | 91,000 | 1,190 |
| Illinois | 151,800 | 1,530 | 67,200 | 680 |
| Minnesota | 104,300 | 2,490 | 16,200 | 390 |
| Missouri | 65,800 | 1,400 | 43,700 | 930 |
| New York | 149,100 | 960 | 77,500 | 500 |
| North Carolina | 99,300 | 1,290 | 54,300 | 710 |
| Texas | 496,900 | 2,480 | 219,100 | 1,090 |
| Washington | 104,000 | 1,890 | 30,900 | 560 |
| Sampled states total | 2,045,600 | 2,054 | 807,000 | 767 |
| U.S. total | 4,708,100 | 1,910 | 2,188,000 | 890 |

Source: Kaeble, Danielle, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. 2016. “Correctional Populations in the United States, 2014.” Washington, D.C.: Bureau of Justice Statistics. NCJ 249513.

We began our analysis by reviewing state statutes and related administrative rules and policies governing legal financial obligations within each of the nine states. Each state team proceeded in slightly different ways to identify the relevant portions of state law, but the aim of the project was to identify and code **all statutes related to legal financial obligations** and review related administrative rules and policies. Statutes governing legal financial obligations are not confined to state criminal codes but instead are found in a variety of state legal and administrative codes and policies. Some states required a more extensive reading of state statutes to discover the full range of statutes governing legal financial obligations. In others, codes governing legal financial obligations were relatively well delineated within the criminal code. In each state, we made a concerted effort to identify and code all statutes relevant to the imposition, enforcement, or implications of legal financial obligations.

Once a statute or administrative rule was identified, it was coded on the basis of a number of characteristics. We identified the statute number, where it appeared in the state code, and summarized the text of the statute. We included information about the year in which it was passed and last amended. In addition, we

⁷ Kaeble, Danielle, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. 2016. “Correctional Populations in the United States, 2014.” Washington, D.C.: Bureau of Justice Statistics. NCJ 249513.

coded each statute to indicate whether it constituted a fine or fee, whether it applied to juveniles, whether it stipulated alternatives to payment, and any additional details about implications for nonpayment. As we have learned more about the nuances of legal financial obligations, we have become more attentive to the different types of legal financial obligations, their meaning, and respective administrative rules and guidelines governing their imposition, enforcement, and implications.

Our second task involved a careful reading of legal cases challenging the imposition and enforcement of legal financial obligations within each of the respective states. Several of the foundational cases establishing, or affirming, the importance of due process and equal protection for persons assessed legal financial obligations were initiated in our respective states. As the names imply, *Williams v. Illinois* was initiated in Illinois, *Tate v. Short* had its origins in Texas, and *Bearden v. Georgia* was initially heard in Georgia.⁸ Those states have continued to spawn challenges to legal financial obligations and similar challenges have been filed in the other six states included in our review. We have attempted to find and provide reviews of active legal challenges as well as legal decisions governing legal financial obligations. We summarize the insights from these cases in this overview, while the state reports provide additional detail about legal arguments as available.

Finally, we reviewed local county and municipal codes within selected jurisdictions to document how local laws relate to state systems of legal financial obligations. The administration of justice and the organization of the courts varies across the nine states included in our study in important ways that influence the relevance of local authorities in policymaking. Within each state, we selected at least six local jurisdictions for further review. A number of factors went into choosing the local jurisdictions. Jurisdictions were chosen to maximize variation in local contexts within states, while at the same time we attempted to include politically and demographically important locales. More information about the selected jurisdictions is included in the individual state policy briefs that follow. Within each jurisdiction, relevant local codes were identified in those states that allow for them and they were coded using the same criteria used in our review of state statutes. Summary information about local codes is provided, where relevant, both within this report and in additional detail in the relevant state reports.

The findings we report here primarily come from data gathered using reviews of state statutes and administrative rules, case law, and local codes. Our assessment of the landscape of legal financial obligations across these states has also benefitted from insights we have gleaned from state and local government reports, academic books and papers, news reports, and related documents produced by legal advocacy organizations. When possible, we supplement these data with other types of data about legal financial obligations and characteristics of the population made publicly available by state auditors, the United States Department of Justice and Bureau of Justice Statistics, and the United States Census Bureau.

The next few pages of this report summarize key descriptive features of legislation and administrative rules and policies governing legal financial obligations and draw attention to what we consider to be important similarities and differences across the nine states we studied. Following this review of the landscape of legal financial obligations across states, we provide detailed reviews of laws and policies for each of the states and selected jurisdictions within each state.

KEY FINDINGS

Our review of the legal framework governing legal financial obligations across nine states generates six broad empirical insights. (1) Legal financial obligations are **routinely imposed**; (2) unpaid legal financial obligations can **trigger additional sanctions** that vary in scope and severity; (3) the imposition and enforcement of legal financial obligations is **stipulated in state statutes**; (4) key aspects of the imposition and enforcement of legal financial obligations **vary across states and within them** such as their legal frameworks, the centrality of different types, and laws governing enforcement and collection; (5) legal financial obligations create a range

⁸ *Williams v. Illinois*, 339 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971); and more recently *Bearden v. Georgia*, 461 U.S. 660 (1983).

stakeholders, which vary by state; and, (6) there are **active legal challenges** to legal financial obligations.

Routine Imposition

The most basic insight of our research is that legal financial obligations are routinely imposed for misdemeanor and felony criminal justice involvement in all of the states included in our review. State statutes and codes commonly list fines, fees, and costs associated with different criminal sanctions and types of criminal justice involvement. In Georgia, North Carolina, and Washington, state statutes and codes offer a Schedule of fees and costs that are mandatory and cannot be waived. Texas law stipulates maximum fines and minimum fees for felony and misdemeanor criminal offenses. In Minnesota, the maximum fine amounts for felony offenses are set by statute and a Statewide Payables List specifies fine amounts for petty misdemeanor and some misdemeanor offenses.

TYPES OF ROUTINE LEGAL FINANCIAL OBLIGATIONS

While the imposition of fines, fees, and other costs is routine, the language across and even within states varies. “Fines” and “restitution” are two categories of legal financial obligations that have the most consistent definitions, whereas “costs,” “surcharges,” “fees” and “assessments” are terms that are used with less precision across and within states. Hence, it is necessary to describe and define the types of legal financial obligations we have considered, before turning to our main findings. We use the term “legal financial obligations” to refer to fines, restitution, fees, costs, surcharges, and assessments imposed on individuals who come into contact with the criminal justice system. These are variably understood as punishments prescribed by state statute and local codes, restitution for victims of crime, user fees or costs meant to recoup system expenses or pay for services rendered, and surcharges levied for a variety of reasons. They represent both punishment sentenced upon conviction for criminal offenses as well as the incidental costs and charges allowed by state and local law.

Fines

Fines represent a punishment imposed upon conviction for a criminal offense. All states allow fines and many require courts to impose fines upon criminal conviction. Fine amounts are generally specified for broad classes of felonies or misdemeanors, but may be specified at higher or lower levels for particular offenses. In general, felony penalties are legislated by states; local governments may define additional misdemeanor violations and penalties in addition to those defined in state law. With the exception of mandatory fines, **judges wield considerable discretion** in setting the amount of a sentenced fine. Judges are also generally able to consider whether defendants are indigent when determining whether to assess fines, although in some states this is only the case if the defendant explicitly requests such consideration.

Restitution

Restitution is sentenced to compensate victims for losses or damages as a result of a particular offense. These damages could include damage to property, medical expenses, child support, or other costs recognized by the court caused by the offense. Judges often have wide latitude in sentencing restitution, although it is mandatory in some jurisdictions. Failure to pay restitution in some jurisdictions can be sufficient grounds for the revocation of parole or probation. All nine states reviewed allow for the sentencing of restitution, but states vary in whether and how they prioritize funds for crime victims. Restitution payments are prioritized in California, Georgia, Missouri, Minnesota, and North Carolina; those states direct payments to restitution before resolving other outstanding legal financial obligations. Washington law specifies that restitution accounts should take priority, but prior research shows that some county clerks prioritize an annual \$100 collection surcharge before directing payment to restitution accounts.⁹ In New York, the payment of restitution and surcharges take precedence over the payment of fines.

Fees and costs

User fees and costs are charged to people with criminal justice contact to offset the expenses associated with the administration of justice or for services provided by courts or policing or supervisory agencies.

9 Harris, Alexes. 2016. *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation.

These include, but are not limited to, court costs, probation costs, fees for screening and use of public attorneys, costs associated with the prosecution of a case, and costs of incarceration. States often set general frameworks for the imposition of fees; in some states, local jurisdictions can impose additional user fees. Fees and costs are assessed in relation to offense types, resources used, and services provided.

Surcharges

Surcharges (sometimes called “assessments”) are proportional or flat charges imposed on broad categories of convictions. Like fees and costs, surcharges are often used to fund criminal justice and other government services. Surcharges are generally directed to particular funds for designated purposes such as law enforcement training, indigent defense, or jail and prison construction. For example, California imposes a 20 percent criminal conviction surcharge; Georgia allows for a 10 percent or \$50, whichever is least, peace officer and prosecutor training surcharge; Minnesota imposes a surcharge for local law libraries; New York enables a \$300 felony surcharge, and Washington imposes a \$250 Victim Penalty Assessment for all misdemeanor convictions and a \$500 Victim Penalty Assessment for all felony convictions.

Additional Sanctions Triggered by Unpaid Legal Financial Obligations

One particularly important empirical finding from our work that comports with recent public discussions emphasizing the durability of legal financial obligations is that **unpaid legal financial obligations can trigger additional sanctions that vary in scope and severity due to the accumulation of fees, costs, and surcharges.** Legal financial obligations for even minor infractions, like traffic tickets, can become a gateway to more serious engagement with the criminal justice system.

In particular, relatively small fines assessed for minor offenses may result in large total financial obligations.

As an illustration, Table 2 outlines the fines, fees, and surcharges stipulated in state legal codes and administrative rules for a first conviction for driving with a license suspended from unpaid tickets, a relatively common offense. Similar guidelines structure legal financial obligations for other offense types.

Table 2. Legal financial obligations and time to full payment for driving with suspended license. Totals due immediately, and if paid in monthly \$50 on-time payments.

| State | Fine | Fees | Surcharges | Added charges | Amount due at sentencing | Total paid, \$50 monthly payments | Months until paid |
|----------------|--------------|----------------------------|-----------------|----------------------------|--------------------------|-----------------------------------|-------------------|
| California | \$300-\$1000 | \$4, Incarceration costs | \$60-200 | 12% interest, \$946-\$2276 | \$1310 - \$3480 | \$1310 - \$5983 | 31-120 |
| Georgia | \$500-\$1000 | \$0 | \$405-\$805 | - | \$905 - \$1805 | \$905 - \$1805 | 19-37 |
| Illinois | \$0-\$2500 | \$310, Incarceration costs | \$85-\$1022.50 | - | \$395 -\$3832.50 | \$395 -\$3832.50 | 8-77 |
| Minnesota | \$200 | \$3-\$13 | \$75 | \$0 | \$279.50 - \$289.50 | \$279.50 - \$289.50 | 6 |
| Missouri | \$150-\$500 | \$12, Incarceration costs | \$19.50-\$44.50 | \$25 | \$206.50 - \$582.50 | \$206.50 - \$582.50 | 5-12 |
| North Carolina | \$0-\$200 | \$125.50 | \$35.50 | 4% interest | \$188 - \$388 | \$214.52 - \$431.31 | 5-9 |
| New York | \$200-\$500 | \$50 | \$83 | - | \$333-633 | \$333-\$633 | 7-13 |
| Texas | \$0-\$500 | \$62.10 | \$0-\$300 | \$25 | \$62.10-\$862.10 | \$87.10-\$887.10 | 2-18 |
| Washington | \$0-\$1000 | \$200 | \$250 | 12% interest, \$100 annual | \$450 - \$1450 | \$686.85 - \$2222.88 | 14-45 |

The mandatory minimum fine for driving with a suspended license varies from \$0 in Illinois, North Carolina, and Texas to \$500 in Georgia, and the maximum fine varies from \$200 in Minnesota and North Carolina to \$2,500 in Illinois. Further, in some jurisdictions, fines – which fulfill the punitive purpose of the criminal justice system – are relatively minor in comparison to fees, costs, and surcharges. Because fines are discretionary, fees, costs, and surcharges amount to between 11-100% of the total legal financial obligation for driving with a suspended license in Texas. In North Carolina, they contribute between 38-100% of total obligations and in Washington 31-100%. Fees, costs, and surcharges can adopt particular significance for minor infractions, like traffic tickets, where fines may be small but mandated fees, costs, and surcharges accumulate into a much larger, and sometimes unmanageable, legal financial obligation.

Unpaid legal financial obligations can also grow over time as interest and other payment penalties accrue. If a person who has been assessed legal financial obligations is unable or unwilling to pay sentenced amounts immediately and in full, they may encounter additional penalties. These additional obligations include collection charges, interest, non-payment charges, per-payment charges, and charges for setting up payment plans. To provide just a few examples, North Carolina charges 4 percent interest on all outstanding debt. Texas charges \$25 if legal financial obligations are not paid in full within 30 days of sentencing. Washington charges 12 percent annual interest, plus a \$100 annual collection fee for outstanding legal financial obligations. In contrast, most non-restitution court debt in Minnesota does not accrue interest, although non-payment triggers late payment penalties and, ultimately, a collection fee equal to 20 percent of the total debt.

Additionally, unpaid legal financial obligations have non-justice related consequences including the suspension of, or inability to renew, a driver's license and, in some states, restrictions on voting rights. In all nine states, nonpayment or late payment of monetary sanctions can lead to driver's license suspension, revocation, or denial of renewal (see Table 3 for a review). For example, Texas allows municipalities to deny the renewal of a driver's license in the event that a person fails to satisfy a judgment ordering payment of fines or costs. In Illinois, Georgia, New York, Missouri, and Washington, such consequences are limited to legal financial obligations associated with motor vehicle or traffic-related infractions. Reinstating a driver's license can be costly. In Missouri, the state allows additional fees ranging from \$20 to \$150, and in Texas people are required to pay a \$30 fee before reinstatement. In New York, "termination of suspension" fees range from \$50 to \$100.

Georgia and Washington restrict voting for nonpayment of legal financial obligations. People convicted of a felony in Georgia cannot vote until all legal financial obligations are paid. In Washington, failure to make three payments in a twelve-month period can lead to a revocation of voting rights. The court can also revoke voting rights if they determine that a person has willfully failed to comply with the terms of payment. In several of the states we studied, nonpayment of legal financial obligations does not explicitly restrict the right to vote, however voting restrictions can result from additional sanctions associated with or triggered by nonpayment. In Missouri, Illinois, and New York, nonpayment of legal financial obligations can be considered a violation of conditions of supervision which can potentially lead to an extension of supervision or revocation of probation and parole. In Minnesota, probation can be extended for up to five years for unpaid restitution and probation can be revoked for failure to pay for mandatory conditions of probation. Thus, the nonpayment of legal financial obligations can lead to the loss of voting rights in states where individuals cannot vote while incarcerated or under other forms of criminal justice supervision. In the remaining states, nonpayment of fines and fees either do not appear to restrict voter eligibility or the laws are unclear on this point.

| Table 3. Collateral consequences of unpaid legal financial obligations, by state. | | |
|--|---|---|
| State | Driver’s License Restriction <i>For nonpayment of...</i> | Voting Rights Restriction <i>Voting rights...</i> |
| California | any legal financial obligations | not restricted during probation, nonpayment does not affect voting |
| Georgia | only vehicle/traffic-related sanctions | restricted for unpaid legal financial obligations |
| Illinois | only vehicle/traffic-related sanctions | indirectly restricted through incarceration for nonpayment |
| Minnesota | any legal financial obligations | indirectly restricted only for unpaid restitution or by extending probation supervision for nonpayment of probation-required services |
| Missouri | only vehicle/traffic-related sanctions | indirectly restricted through potential parole or probation extension for nonpayment |
| North Carolina | any legal financial obligations | not clearly defined |
| New York | only vehicle/traffic-related sanctions | indirectly restricted through potential parole or conditional discharge extension for nonpayment |
| Texas | any legal financial obligations | not clearly defined |
| Washington | only vehicle/traffic-related sanctions | restricted upon failure to make three payments in a 12-month period or willful nonpayment |

In addition to collection surcharges and fees, states and municipalities impose other penalties for non-payment of fines that can increase the cost of a criminal offense. These collection strategies include the transfer of outstanding court debt into civil judgments, garnishment of wages or tax returns and liens on assets and property. Select states – New York, North Carolina, Georgia, California and Missouri – have authorized transferring debt from court costs and fines into civil judgments in order to expand potential collection procedures. In New York, Georgia, and Illinois, wage garnishments can be used as a means to induce payment of outstanding balances. In New York, pending Assembly Bill A4766 would allow income to be garnished directly from the employer and increases the amount that can be withheld from wages to 50 percent. In Illinois, a wage garnishment order allows the court to collect wages, salaries, commissions, and bonuses from a person with outstanding legal debt on a weekly basis. Apart from wage garnishment, Missouri, Minnesota, Texas, North Carolina and Illinois allow for outstanding monetary sanction balances to be transferred into liens on incoming tax returns as well as assets and property in order to cover the costs owed to the court. In Illinois, the court can issue an order of withholding and seize a percentage of the person’s assets until the order is released. In select municipalities, these collection strategies have also been implemented to secure payment. In the city of Chicago, for instance, state income tax refunds have been seized to settle unpaid debts. Further, a person’s estate and property can be used as bond to pay defaulted legal financial obligations. The levied property is advertised and sold even if the defendant is currently in custody and serving jail time for non-payment. State’s attorneys can even sue a person with outstanding legal debt for delinquency or retain private collection agencies to collect default legal financial obligations.

Georgia has implemented a “pay-only probation” system that transfers monetary sanction debt that cannot

be paid on the day of sentencing for misdemeanor and traffic offenses to private probation companies. These private probation companies do not provide any other service except collecting court debt, and they can charge fees of their own to do so, up to 3 months or longer if needed to monitor compliance with community service.

However, states have also implemented policies that allow people assessed legal financial obligations to gain or earn credit towards the amount owed through community service or incarceration. Illinois allows people with legal debt to apply credit to their monetary sanctions at a rate of \$5 per day for time served prior to trial. California specifies that one day of imprisonment can satisfy no more than \$125 in monetary sanctions. Missouri allows people with legal debt to “sit out” in jail for a \$10 per day credit toward their monetary sanctions. Texas stipulates that provisions must be made for alternative methods of payment such as community service or receiving credit for jail time served. Many counties in Washington allow people with legal debt to perform community service for credit toward their monetary sanctions at an hourly rate equivalent to the state minimum wage, but often require a per-day fee to exercise this option. There is similar county-level variation in Minnesota, where adults may earn \$128 per 8-hour day toward their debt in Hennepin County (Minneapolis), but may not pay off fines with community service in Ramsey County (St. Paul).

Codified in State Statutes

State statutes stipulate the imposition and enforcement of legal financial obligations. The scope of the legal statutes varies by state. Texas law includes a schedule of fines as well as specific details on over 100 distinct criminal court costs and fees. California has the most extensive catalog of laws and codes governing the imposition and enforcement of legal financial obligations that span the Penal Code, Health and Safety Code, Business and Professions Code, Welfare and Institutions Code, and Vehicle Code, among others. Summary information about state statutes and relevant administrative rules are presented in state reports.

Variability across States

Key aspects of the imposition and enforcement of legal financial obligations vary across as well as within states. We have identified three primary dimensions of variability in the policies and practices governing legal financial obligations. First, **legal frameworks** such as court organization and provisions for judicial discretion differ in ways that are likely to contribute to variability in the imposition and enforcement of legal financial obligations across states and within them. The organization of the courts is not uniform and varies across states in ways that shape local influence on policies and practices governing legal financial obligations. California, Illinois, and Texas have centralized court systems in which administrative rules and policies are dictated by a centralized governing board. In other states, local laws play a larger role in modifying the parameters of legal financial obligations set by state systems.

In addition, the extent to which states allow for judicial discretion in the assessment and enforcement of legal financial obligations varies. Judicial discretion is differently emphasized in respective state statutes in relation to stipulated minimum or maximum assessments and with respect to aspects of enforcement. In New York, legal financial obligations like restitution are capped in the penal law code but judges retain discretion to exceed stipulated maximums for a variety of reasons. In some jurisdictions, the ability to pay legal financial obligations **must** be considered at the time of sentencing. In others, the burden rests on the person sentenced to request a hearing regarding their ability to pay. In still others, the ability to pay may only become relevant after people default on their legal financial obligations at which time the court may need to determine whether nonpayment was “willful” and thus subject to additional sanctions. In Missouri, state statutes instruct courts to consider the financial resources of a defendant when making judgments, but a formal assessment or documentation is not required. Judges in Washington have the discretion to assess whether people with legal financial obligations are capable of making minimum monthly payments. Texas has a clearly articulated standard for the determination of indigence for court-appointed counsel, but judges retain discretion in determining eligibility to pay legal financial obligations.

The second fundamental way in which legal financial obligations vary across states is with respect to the **centrality** of different types of legal financial obligations including fines, restitution, fees, costs, and

surcharges. Table 2 uses the example of driving with a suspended license to illustrate the centrality of fines in California, Georgia, Missouri, and New York; the salience of fees in Illinois, Missouri, North Carolina, and Texas; and the importance of surcharges in California, Georgia, Illinois, and Washington. Each type of legal financial obligation is present in the codes of each state, but they vary in relation to how frequently they are imposed and how much they contribute to the total amount of legal financial obligations. Although Table 2 shows legal financial obligations associated with just one type of offense, our review of evidence from nine states suggests that the salience of different types of legal financial obligations varies in systematic ways across states.

The third key dimension of variability in legal financial obligations centers on the laws governing **enforcement and collection** strategies, including the role of private collection agencies and private correctional supervision. North Carolina, Minnesota, and Missouri have established payment and collections systems that operate for all state jurisdictions. In North Carolina the payment system for most court-related costs and fines for infractions and misdemeanors is payNcticket. Missouri operates the “Fine Collection Center” which centralizes the collection of payments for uncontested traffic, conservation, and watercraft offenses. California uses courts and clerks as the main center of collections. Similarly, in Texas collections are handled locally within each court or supervisory agency although some jurisdictions employ private collection agencies for assistance especially with past-due accounts. In Washington and Georgia collections can be handled within local jurisdictions by private collection agencies. In Illinois, individual counties have the authority to contract with a private agency, therefore, the practice varies by county.

If and when an account becomes delinquent, a number of states employ additional methods including enlisting private collections agencies to enhance collections. Washington, Missouri, North Carolina, Georgia, and New York employ private collections agencies to handle outstanding balances for fines, fees and court costs. Minnesota’s statewide court information system automatically forwards delinquent accounts to the Department of Revenue for collections. There is significant within-state variability in the use of private collection agencies in California, Illinois, and Texas.

Stakeholders of Legal Financial Obligations

Legal financial obligations have retributive, deterrent, restorative, and revenue generating capacities. Regarding revenue, a key indicator of a state’s priorities is how legal financial obligations are “earmarked.” Our review has identified various **purposes** to which the funds collected from legal financial obligations are distributed, and the **stakeholders** that such distribution of funds creates.

In some states, collections from legal financial obligations are an important source of **revenue** for both justice and non-justice related activities. Evidence suggests that legal financial obligations are sufficiently large and/or widespread to generate a significant revenue stream in some jurisdictions. Table 4 displays total criminal justice revenues from fines and forfeits – defined in the federal survey as “receipts from penalties imposed for violations of law and civil penalties” – in 2013, the most recent year available. Total state and local collections from fines and forfeits ranged from \$110,629,000 in Minnesota to over \$2.6 billion in California, and nearly as much in New York. Standardizing for total state population shows a similar story, with Minnesota reaping the lowest per capita revenue from fines and forfeits (\$20.41), and New York reaping the highest (\$109.83). These criminal justice revenues are a relatively small proportion of states’ own-source revenue, which refers to money collected by state governments through such mechanisms as property, income, corporate, and sales taxes, licensing fees, special assessments, tuition, and all other general state sources, except federal aid and transfers. They constitute over 1% of general revenue only in the states of Georgia, New York, and Texas, and, again, are a very trivial revenue source in Minnesota. It should be noted, however, that revenue from fines and forfeits represents only a portion of total revenue generated from legal financial obligations. In other words, Table 4 significantly underestimates total revenue associated with legal financial obligations because these federally collected data do not include revenues generated by fees, costs, or surcharges, which we showed above to be a key source of revenue in some states.

Table 4. Revenue generated by fines and forfeits, state plus local government revenues 2013

| State | Total fines and forfeits revenue | Fines and forfeits revenue per capita | Fines and forfeits as percent of own-source revenue |
|----------------|----------------------------------|---------------------------------------|---|
| California | \$2,605,676,000 | \$67.98 | 0.89% |
| Georgia | \$578,236,000 | \$57.87 | 1.17% |
| Illinois | \$773,943,000 | \$60.08 | 0.86% |
| Minnesota | \$110,629,000 | \$20.41 | 0.27% |
| Missouri | \$230,089,000 | \$38.07 | 0.72% |
| New York | \$2,158,268,000 | \$109.83 | 1.05% |
| North Carolina | \$403,262,000 | \$40.95 | 0.72% |
| Texas | \$1,596,861,000 | \$60.38 | 1.06% |
| Washington | \$294,056,000 | \$42.18 | 0.62% |

Source: 2013 Annual Survey of State and Local Government Finance, U.S. Census Bureau.

The designated purpose of fines, fees, and surcharges varies by states. For example, in several states, court fees and/or surcharges are used to fund public or indigent defense. North Carolina, Texas, and California wrap public defense funding into their mandated court costs and fees. North Carolina charges \$60 for indigent defense and \$2.45 for state legal aid. Missouri, Minnesota, Georgia, and Washington use surcharges to fund public defense. Minnesota has a public defender co-payment of \$75. In Illinois criminal defendants are charged up to \$500 for a misdemeanor, \$5000 for a felony, and \$2500 for appealing a conviction for any offense class for court-appointed counsel. This fee applies even if the defendant is acquitted of all charges. Georgia has a \$50 application fee and a surcharge of 10 percent or \$100, whichever is least, is added to all fines to fund indigent defense.

As another example, corrections revenue is a product of jail and probation fees as well as electronic monitoring and intervention fees. In Missouri, intervention fees are charged to all persons on probation or parole. Jail fees range from \$10 per day in North Carolina to \$100 per day in Washington, and probation fees range from \$23 per month to \$30 per month in Georgia and Missouri, respectively. Below, we review and discuss some of the primary recipient agencies and stakeholders in the disbursement of legal financial obligations.

LAW ENFORCEMENT

Law enforcement agencies are substantial stakeholders in the assessment and collection of monetary sanctions. Many states fund training programs, pension and retirement funds and operating costs for law enforcement officers through the fees and surcharges assessed by the court. For instance, in Illinois and Washington, there are fee schedules for counties and municipalities which detail charges for serving a warrant or placing a lien on property or assets. In Minnesota, judges are statutorily required to add a \$75 surcharge in criminal and petty misdemeanor cases in addition to base fees. The funds generated by these surcharges support law enforcement training, and contribute to the state's general fund. For each \$75 surcharge, \$9.75 goes to the peace officers' training account. In North Carolina, the base court costs and fees include \$2 per case for law enforcement training and certification, \$6.25 per charge for the law enforcement officer retirement and insurance benefits fund and \$1.25 for the Sheriff's supplemental pension benefits fund.

In addition, most states report sheriff's fees collected for a variety of services including serving warrants or liens. Most of these fees have additional mileage fees, depending on the nature and distance of the service. The fee schedules are often written within the state statutes and codes, however, the practice of assessment often varies by individual counties. While individual fees are nominal, they are often assessed for most infraction and misdemeanor cases, thereby resulting in a substantial revenue stream for local sheriff's offices.

LEGISLATURES

The legislature represents both a stakeholder as well as a driver of change and reform in regards to the

assessment of fines and fees. On the one hand, state legislatures are often the arbiters of the statutes and codes that codify monetary sanction practice and procedure. On the other hand, the legislature also represents a significant stakeholder in the imposition of monetary sanctions based on the revenue generated from the assessment and collection of the fines, fees, costs and surcharges. Many states increased sanctions during time of fiscal downfall, with the legislature often pressed to find innovative sources of revenue to cover budget deficits. As national attention has become more critical of monetary sanctions, state legislatures in many of the states we studied have followed suit, reviewing current practices and revising or eliminating fines and fees and surcharges.

For example, in Illinois the legislature passed the Access to Justice Act in 2013, and in 2014 created the Statutory Court Fee Task Force charged with reviewing the system of monetary sanctions in the state in both civil and criminal proceedings. The Task Force's 2016 report found that the process of levying fines and fees in Illinois represented a "byzantine system" that passed more and more of the costs onto users, with disproportionate negative impacts on low- and moderate-income residents. The report recommended a complete overhaul of the statutory infrastructure authorizing court fines, fees, costs, and surcharges.

In Missouri, due to the response to the Department of Justice's Ferguson Commission Report in Missouri, the 2015 Missouri Legislature introduced a number of revisions to state statutes that limited the extent to which local governments could fund themselves using traffic fines. Mack's Creek Law (RSMO 479.359) dropped the annual general operating revenue that could be collected from traffic fines from 30 percent to 20 percent, and limited these fines even more in St. Louis County (12.5 percent). The legislature prohibited confinement for traffic violations or for failure to pay fines (RSMO 479.353). These laws were revised in May 2016, reducing the maximum fee for minor traffic violation fines and putting limits on fines for municipal ordinance violations.

Similarly, in New York, the legislature has been active in revising statutes relevant to legal financial obligations. In contrast to treating fines, fees, and costs as sources of revenue, Assembly Bill A10042 in the 2015-2016 legislative session took into account the cost side of LFOs. Since the imposition of a fine often later results in incarceration or supervision when the fine is not paid, the bill requires "the court to consider the cost to the state or locality of any imprisonment, post-release supervision or probation component of a defendant's sentence when imposing a fine under the penal law." While reducing or eliminating sanctions has not been common practice nationally, these two examples represent a depiction of state legislatures wrestling with the challenges of expansive criminal justice procedures and their cost along with potential monetary and social burdens for those who are routed through the system.

ADDITIONAL STAKEHOLDERS

The landscape surrounding fines and fees results in various additional stakeholders invested in the implementation and distribution of the revenue collected. As the practice of assessing monetary sanctions has grown, so has the list of potential agencies and parties interested in how the money is ordered, collected and allocated. For instance, in North Carolina, local departments of education were largely dependent on the revenue stream from the "improper equipment fee" that could be assessed for a variety of motor vehicle infractions and misdemeanors.

In addition, many states report crime victims' assistance fees, separate from restitution, that make present and future crime victims interested stakeholders in the collection of fines and fees. For example, in Georgia, the fine is five percent of the original fine for a local victim assistance fund. In California, judges may also order defendants convicted of violating protection orders in domestic violence cases to make payments of up to \$5,000 to a battered women's shelter. States such as Georgia, Missouri and California also have fees that funnel into brain and spinal injury funds. In Georgia, this fee is ten percent of the original fine, and is only assessed for reckless driving or driving under the influence offenses. Missouri has two separate surcharges for spinal and brain injury, respectively, which have a two dollar surcharge for all criminal cases and infractions. Crime labs, which receive fees that range from \$125 in Washington to \$600 per case in North Carolina, also represent interested parties in the collection of sanctions. The state statutes and codes reflect multiple stakeholders beyond these listed, which signifies not only the importance of exploring the assessment and

distribution of monetary sanctions, but also how these stakeholders influence the implementation and perpetuation of monetary sanctions.

All states report the distribution of court-ordered fines, fees and costs to courtroom-related procedures. Texas, for instance, has a consolidated court cost that encompasses a judicial support fee, jury reimbursement fee and restitution installment fee. California operates the Trial Court Trust Fund, which supports all trial court operations. Each county makes quarterly payments to the fund equal to the fines and penalties received by the state General Fund. In North Carolina, the distribution of court-ordered fines, fees and restitution is split among a number of agencies that range from the State Treasurer – which disburses fees collected for the Law Enforcement Retirement System – to the Department of Justice – which disburses state lab and expunction fees – to the Department of Correction for confinement and electronic monitoring fees. There is also distribution to local governments for both courtroom and jail facilities as well as law enforcement operations.

Several key provisions in the California Penal Code also direct assessments to guarantee funding levels for specific state and county programs, including such funds as: the Fish and Game Preservation Fund, the Restitution Fund, the Peace Officers' Training Fund, the Driver Training Penalty Assessment Fund, the Corrections Training Fund, the Local Public Prosecutors and Public Defenders Training Fund, the Victim-Witness Assistance Fund, and the Traumatic Brain Injury Fund.

The funds to which fines, fees and costs are allocated depends upon the state-wide specifications as well as the offense being charged. For instance, in California, all defendants pay to a Brain and Spinal Injury Fund. In Georgia, only those driving under the influence must pay to that fund. In Illinois, those driving under the influence plus all drug-related offense pay a \$5 fee to the similar fund, the "Spinal Cord Injury Paralysis Cure Research Trust Fund."

Many states have implemented victims' assistance funds that range in distribution from a per-case surcharge to percentage of the original fine to a flat fee. In Washington, the penalty is remitted from the court clerk to the county treasurer. Each county then deposits 50 percent of the money it receives per case into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

Minnesota provides a clear example of the stated distribution of funds based on location and type of prosecution. Generally speaking, fine receipts are split between the town or city in which the offense occurred and the state general fund, assuming that the case was prosecuted by a municipal or city attorney and not the county attorney. The specific split between the locality and the state depends on the location. But if the county attorney prosecutes the case, then the entire fine amount is credited to the state's general fund. There are, however, exceptions to this formula for certain offenses. For example, 70 percent of the fine in a case involving most types and levels of assault and criminal sexual conduct is specifically allocated to local victim assistance programs in the county in which the offense occurred, and the remaining 30 percent is allocated to the state general fund. Fines in controlled substance cases are distributed in a similar manner, with 70 percent allocated to local drug abuse prevention or intervention programs and 30 percent to the state general fund. Importantly, in the state of Minnesota the majority of court fines collected do not serve to benefit the persons or units who are in authority to impose them, reducing the potential incentive of large fine amounts for personal or local gain.

LEGAL CHALLENGES

There are a number of recent and active legal challenges to the laws and practices governing legal financial obligations. As monetary sanctions have become an increasingly common fixture in criminal justice processing, the constitutionality of costs, fines, fees and surcharges has been challenged. Many such challenges center on issues surrounding penalties for non-payment, as well as challenges to specific fines and fees and the practices of state courts. This section will provide a brief overview of the major legal challenges that have occurred nationally, as well as cases that have been adjudicated locally in the nine chosen states. The cases are organized by subsection: Non-payment and ability to pay, courts costs, fees, fines, and public probation. The legal challenges discussed below represent examples from each of the states, but it is far from

an exhaustive or comprehensive listing of all legal challenges to monetary sanctions.

NON-PAYMENT

Nationally, much of the attention in legal challenges has been on the issue of non-payment and subsequent penalties and punishments that arise from defaulting on ordered costs, fines, fees and restitution. Sanctions for non-payment are often challenged as an unequal and unjust “poverty penalty,” effectively sanctioning individuals based on their inability to pay.

The punishments for non-payment range from incarceration to extended sentences and the revocation of probation. One of the first cases to be adjudicated by the Supreme Court on monetary sanctions, *Williams v. Illinois* (1970) established that people with legal debt could not be constitutionally imprisoned beyond the maximum statutory duration because they are financially unable to pay a fine. Before this challenge, it was common practice for courts to sentence a defendant to jail for non-payment of fines and fees because the inability to pay was viewed as failure to comply with court orders or contempt of court. In *Williams v. Illinois*, the Supreme Court found this practice unconstitutional due to the undue burden placed on the indigent.

Subsequent cases such as *Bearden v. Georgia* (1983) established that a sentencing court cannot properly revoke a defendant’s probation for failure to pay fines or restitution, unless that person was in a position to pay, but “willfully” chose not to do so. In *Bearden*, the Supreme Court noted the failure of the trial court to determine whether the defendant had made efforts to pay and if alternatives to incarceration were available. *Bearden* represented a major challenge to the monetary sanctions system, questioning the practice of increasing sanctions, especially for the indigent and unemployed.

Courts have been reluctant to extend *Bearden*. In California, *People v. Medeiros* (1994) established that if a defendant in California courts could not pay fines and fees, the court could only extend probation to the maximum time permitted by law. In Minnesota, in *State v. Morrow* (1992) the defendant was unable to pay for a residential sex offender program as part of his conditional probation sentence. Because the defendant could not pay for treatment, his probation was revoked and the prison sentence reinstated. The Minnesota Court of Appeals affirmed the decision, ruling that in the absence of alternative funding sources the state’s penological interest must take priority. Also in Minnesota, in *State v. Brown* (2016), another defendant convicted of criminal sexual conduct was sentenced to probation and a stayed prison sentence under the condition that he complete sex offender treatment. Homeless and unemployed, Brown was unable to pay an initial \$200 fee, plus a \$42 co-payment for each treatment session. The revocation was affirmed by the Court of Appeals in a 2-1 split decision, following the rationale in *Morrow*.

Two Washington cases establish criteria for assessing willful non-payment and any subsequent penalties for the inability to pay. In *Washington v. Bower* (1992), the practice of penalizing people who said that they were unable to pay monetary sanctions was challenged. The Washington Court of Appeals, Division I, determined that, while the state needed to establish noncompliance with the sentencing conditions of the court, it was the defendant’s burden to present evidence of his inability to pay and reasons why he should not be sanctioned. *Washington v. Nason* (2010) questioned the constitutionality of incarcerating non-paying defendants. Relying on *Bearden*, the court partly struck down the auto-jail policy, finding that the court did not hold hearings to allow defendants to present their reasons for nonpayment. The court also found, however, that jailing for nonpayment was permissible when the court determined that a defendant had willfully refused to pay.

The challenges to punishments for non-payment often center on establishing if the defendant had the ability to pay court costs and fees, as well as arguing the unfairness of the extra penalty on those who have been deemed indigent and should therefore not be subject to punishments beyond their given sentence. For example, in *Tate v. Short* (1971), the Supreme Court established that states could not impose a fine as a sentence and then convert that fine into a jail term due to non-payment when the defendant was deemed indigent. *Tate*, however, allowed for courts to order incarceration if the person with legal debt could be determined to have the means to pay, and was therefore a “willful nonpayer.”

Cases involving ability to pay have subsequently arisen in our study states. In *North Carolina v. Crews* (1974),

the Supreme Court of North Carolina vacated a judgment for \$1,000 in counsel fees when the defendant, Crews, did not have an opportunity to demonstrate his indigence. In California, *People v. McMahan* (1992) placed the burden on the defendant to raise the issue of ability to pay. Previously, assessing the ability to pay was not part of the regular course of ordering fines and fees. However, in *People v. Corrales* (2013), the California Supreme Court ruled that the trial court should consider whether the defendant has the ability to pay the applicable penalties and surcharges that result from required probation programs. *Missouri v. Peterson* (2008) challenged components of the Missouri Incarceration Reimbursement Act (MIRA), which sought to reimburse the state for incarceration costs via court-ordered fines. The Missouri Supreme Court upheld the constitutionality of the practice, but contended that the attorney general failed to investigate and offer proof that the defendant could pay some minimum amount upon release from prison. As a result of Peterson's lawsuit, hearings must now be held if a person with legal debt challenges the attorney general's findings regarding their ability to pay.

Washington v. Stone (2012) addressed due process rights in Washington State. The defendant had been denied a defense attorney in a show cause hearing to determine how willful he was in not paying his LFOs. The Washington Court of Appeals found that the court violated Stone's fundamental due process rights by failing to inquire about his ability to pay and denying him the right to an attorney prior to incarcerating him for willful nonpayment.

As it stands, most states continue to allow the incarceration of non-paying defendants. The U.S. Supreme Court and state courts have established the constitutionality of imprisoning people with legal debt if sentencing judges hold hearings to determine the reason for their nonpayment and find that their nonpayment is "willful."

COURT COSTS

As noted above, court costs are often mandated by statute, and are therefore difficult to challenge in the courts. Many such challenges center on either the discretion involved in assessing costs, the amount ordered, or the types of costs assessed. For instance, in *State v. Patterson* (2012), the defendant argued that a North Carolina trial court failed to exercise discretion when he was ordered to pay court costs mandated by general statutes. The court agreed that the trial court costs ordered exceeded those permissible according to the statute. The court vacated the portion of the judgment that related to court costs and the case was remanded to the trial court for resentencing. In other states, defendants have challenged the cost of trial-related expenses. In *Washington v. Diaz-Farias* (2015), the court upheld an earlier decision (*Washington v. Marintorres* (1999)) that non-English speaking defendants should not be responsible for costs associated with a language interpreter, and that imposition of such costs violates the equal protection statute.

FINES VERSUS FEES

Legal challenges against monetary sanctions tend to focus on fees rather than fines, as fines are generally considered punishment and courts may lack discretion in imposing them. For example, in *People v. White*, (2002) an Illinois appellate court ruled that fees are "a collateral consequence of the defendant's conviction" and thus to be expected. While fees are generally seen as administrative rather than punitive, they compound the punitive financial effects of fines, making them subject to appeal and constitutional review.

The legal challenges to fees range in scope, but most concern whether particular fees may be imposed and the amount of such fees. Some of the most common challenges involve jail, probation and supervision fees. For instance, in *North Carolina v. Rowe* (2013), Rowe argued that the trial court lacked authority to order him to pay all but \$10 of the \$2,370 in jail fees he had been assessed. The appeals court agreed and vacated the trial court's judgment.

In Illinois, there have been numerous challenges to probation fees as well as defendants not being properly credited for pre-incarceration credit. In *People v. Wynn* (2013), the defendant challenged his fees, including probation fees that were charged when he was not serving probation, and a public defender fee. Because his arguments were directly in line with state statute, the appellate court granted the majority of his requests with the exception of the public defender fee. This ruling shows how local practices often do not align

with state statutes. Similarly, in *People v. Higgins* (2014), an Illinois appellate court ruled that fees should be imposed by the trial court and not the circuit clerk. In North Carolina, fees for indigent defense were challenged in *State v. Webb* (2004). Here, the defendant alleged that a \$50 appointment fee for indigent counsel violated the equal protection clause of the Fourteenth Amendment. The Supreme Court of North Carolina found that the statute and fee violated both the U.S. Constitution and the North Carolina state constitution, and that those who were charged such a fee would be due a refund by the state. Such penalties restrict access to resources such as indigent counsel or treatment programs on the basis of indigence, thereby prioritizing payment of court costs and fees over the protection of judicial rights.

Laboratory and DNA collection fees have been another avenue for legal challenge in the states. These fees are typically levied for certain types of crimes in which either bodily fluids or illicit substances are tested in the course of securing a conviction. Defendants often challenge such fees on the basis of necessity and ability to pay, especially for those with multiple convictions. For instance, in *Washington v. Mitchell* (2016), Mitchell objected to the DNA collection fee and other legal financial obligations being assessed without inquiring about his ability to pay. The court of appeals upheld Mitchell's conviction for possession and failed to offer relief for the monetary sanctions, finding that indigence was not relevant for the fees he was assessed (see also *State v. Riojas* (2016)). Conversely, a similar assessment of lab fees was not upheld in the California Court of Appeals in *People v. Sharret* (2011). In *Sharrett*, the court held that the criminal lab analysis fee constituted punishment, and should therefore not be imposed if the underlying offense is stayed.

Challenges are also arising to new fees designed to recapture costs associated with prosecution. Such fees can range from technology and telecommunications charges to facilities fees for the use of the building. In Minnesota, for example, allowable court fees include expert witness fees/travel, trial exhibits, blood testing, subpoenas, and even investigation costs incurred by a drug task force based on the outcomes of several legal challenges (*State v. Alvarez* (2012); *State v. Lopez-Solis* (1999); *State v. Kujak* (2002)). In California, the courtroom security fee was challenged in both *People v. Wallace* (2004) and *People v. Alford* (2007), with courts finding in both cases that such fees are permissible and considered punitive in nature. Such fees can be imposed even if the conviction itself is stayed (*People v. Crittle* 2007) and the trial court has no discretion to stay this fee, nor generally to fail to impose it (*People v. Woods* 2010).

Several challenges in Minnesota courts have targeted fees for public or indigent defense. *State v. Cunningham* (2002) affirmed a \$28 public defender co-payment based on the fact that the statute provides judges with the discretion to waive the co-payment. *State v. Tennin* (2004) directly challenged the amended version of the statute, and the Minnesota Supreme Court held that the amended version was, in fact, unconstitutional.

In North Carolina, *Richmond County Board of Education v Cowell* (2015) challenged the distribution of a \$50 improper equipment offense surcharge. In previous state statutes, the revenue from the collection of this surcharge was designated exclusively to counties for maintaining public schools. However, in 2012, the statute shifted revenue to a fund administered by the state to pay counties for the State Misdemeanant Confinement Fund. The Court upheld the argument that the General Assembly of the State legislature exceeded its constitutional powers by enacting legislation that would divert the funds meant for public education to the State Confinement Fund.

PRIVATE PROBATION

Among our sampled states, challenges to private probation have only arisen in Georgia, which is one of about a dozen states to establish a private probation system. The challenges to this private system involve civil rights infringements in assessing the ability to pay as well as incarceration for non-payment. For instance, in *Thompson v. DeKalb County* (2015), the Supreme Court of Georgia found that the defendant's constitutional right to an indigency hearing was violated when he was placed on pay-only probation for a traffic fine, and subsequently incarcerated for inability to pay. In *Johnson v. Georgia* (2011), the Appellate Court reversed the revocation of probation for the defendant because it was based on the failure to pay general fines, costs and fees assessed by the court. In addition, the trial court did not assess the ability of the defendant to pay nor make a finding as to the defendant's willingness to pay. Additional details regarding these cases in Georgia can be found in the Georgia state report.

IMPLICATIONS FOR RESEARCH AND POLICY

These and other empirical observations about the legal structures governing the imposition and enforcement of legal financial obligations across and within the nine states included in our study raise important questions for future research. They also help to identify opportunities and challenges for policy change in this landscape.

The statutes and rules governing legal financial obligations are remarkably complex, are included in a wide variety of state legal codes, and commonly involve a broad and diverse set of stakeholders who benefit from or support their imposition. These observations highlight the challenges and opportunities for effecting policy change and also invite further research into the role of key stakeholders in the construction of policymaking.

Formal statutes and rules governing legal financial obligations may not adequately represent how they are imposed and enforced through the daily activities of policing agencies, courts, or supervisory agencies. The fact that defendants frequently successfully challenge their fees and surcharges is one indication that local practices do not always follow the law as it is written by legislators. Moreover, stipulated statutes and fee schedules frequently allow for discretion in their imposition and enforcement. More attention must be directed toward understanding how the law is practiced and how legal financial obligations are interpreted by those who impose and enforce them.

Some aspects of legal financial obligations are articulated as forms of punishment and are included in state legal codes alongside other sentencing conditions like prison or jail time and community supervision. Other aspects of legal financial obligations are articulated as cost recovery or fees for service and are found in state transportation codes, health and safety codes, or administrative codes. The stated rationale for legal financial obligations may affect perceptions of the legitimacy of the criminal justice system and the administration of justice.

In some states, collections from legal financial obligations are an important source of revenue for both justice and non-justice related activities. The centrality of user fees to support the criminal justice system raises important questions about the necessity of legal financial obligations for public safety, the expense of the criminal justice system, and the consideration of alternative funding strategies for the administration of justice systems.

There is explicit recognition in statutes and policy of differential ability to pay. Allowances for judicial discretion, payment plans, and alternative sanctions highlight the importance of considering alternative and proportional punishment.

The imposition and enforcement of legal financial obligations involves many dimensions of the justice system. Attention to coordination between policing agencies, courts, and supervisory agencies within and across jurisdictions may shed light on mechanisms to enhance the effective and efficient administration of justice and the ways in which legal financial obligations extend the reach of the criminal justice system and intensify the involvement of citizens who have contact.

CONCLUSION

There is growing interest in legal financial obligations and their consequences. The evidence presented in this report reflects what we have learned from reviews of written policy and case law. It is important to note, however, that even the laws and policies reviewed in this document are already changing in response to political, social, and legal pressures. States are exploring reductions in sentencing amounts, amnesty programs, and other reforms aimed at curbing the centrality of legal financial obligations in the administration of justice. There are numerous active legal challenges to the enforcement of legal financial obligations. At the same time, the features that define legal financial obligations also raise important questions about the extent and durability of reform efforts. The statutes and rules governing legal financial obligations are complex. There are a diverse group of stakeholders interested in various aspects of legal financial obligations. The rationale for legal financial obligations is multifaceted, including retributive, deterrent, restorative, and revenue generating dimensions.

In the next phases of our research, we turn our attention to how the law is practiced on the ground and with what effect. We will conduct courtroom ethnographies to observe sentencing and sanctioning hearings regarding legal financial obligations. We will interview actors – judges, prosecutors, defense attorneys, clerks, community correction officers, and others – involved in the administrative of justice. We will gather data on the characteristics of people who are assessed legal financial obligations to investigate for whom and how legal financial obligations may extend or intensify criminal justice contact. Finally, we will interview people who have been assessed legal financial obligations to better understand how these obligations impact their ability to (re)integrate into society and meet their daily needs. Rigorously examining these different aspects of imposition and enforcement will show us how legal financial obligations affect the efficient, effective and fair administration of justice, as well as the poverty and inequality of citizens and their communities.

This overview has highlighted some of the key similarities and differences across the nine states considered in this research. The state reports that follow give additional detail that will further elaborate on these variations and points of overlap. The state reports also give evidence about variation across jurisdictions *within* states, which adds an additional layer of complexity to understanding and possibly reforming the system of legal financial obligations.

MONETARY SANCTIONS IN CALIFORNIA

Prepared by Anjuli Verma, Bryan L. Sykes, Marnie Mattei, Hayden Sugg, Nicole Carbonel, Sar Vang, and Nicole Phillips.

On any given day in courtrooms across the state of California, one can observe a routine that has become familiar in the everyday business of criminal justice: A predictably steady stream of individuals who have been convicted of a crime file through the courtroom to hear their sentences; as one person after another stands before the bench, regardless of whether convicted of a serious felony or a petty misdemeanor, the judge repeats a long list of fines, fees and legal financial obligations that must be paid as part of the sentence. While some of these monetary sanctions may be imposed in lieu of prison or jail time, the judge imposes many in addition to spending time behind bars. While ordinary to the attorneys, court reporters, bailiffs and others who participate in day-to-day criminal case processing, anyone in court for the first time may be surprised and confused by the lengthy itemized bill routinely handed down to people convicted of a crime.

California has the largest court system in the nation, with more than 2,000 judicial officers and approximately 19,000 court employees who process nearly 8.5 million cases at any given time, serving over 38 million people (Judicial Council of California 2015a). Monetary sanctions statutes are spread across all of California's 29 legislative codes and levy some form of legal financial obligation on individuals convicted of a crime or regulate budgetary allocations for the revenues generated. In 2010, California spent more than \$7.9 billion on corrections or more than \$47,400 per inmate (Henrichson and Delaney 2012). This staggering sum is eclipsed by the 2016-2017 Fiscal Budget of almost \$13.3 billion in state funds for corrections and rehabilitation, representing 7.8% of the state budget (California Department of Finance 2016: 9). More than \$3.7 billion in total funding was allocated to the Judicial Branch during the 2016-17 fiscal year, with approximately 1.4% (\$1.7B) received directly from the state General Fund (California Department of Finance 2016: 60; Judicial Council of California 2016a).

Cases begin in one of the 58 superior, or trial, courts located in each of California's 58 counties. Three types of criminal cases are prosecuted in the state of California: Infractions, misdemeanors and felonies (Judicial Council of California 2016b). An *infraction*, many of which are traffic-related, is a minor violation. The punishment for infractions is usually a fine, and if the defendant pays the fine, there is no jail time. A *misdemeanor* is a crime with a maximum punishment of either six months or one year in a county jail, and/or a fine, typically not to exceed \$1,000. Examples of misdemeanors include petty theft, vandalism and driving with a suspended license. A *felony* is the most serious kind of crime. If found guilty, the defendant can be sent to jail or prison for a year or more, or even receive the death penalty for very serious crimes. Defendants convicted of felonies are usually sent to state prison for sentences of 16 months or more. Examples of felonies include robbery, murder, rape and the sale of illegal drugs.

As in other states nationally, the consequences of a criminal conviction in California, regardless of crime type, include a range of possible legal financial obligations (see e.g., Bannon, Nagrecha & Diller 2010; McLean & Thompson 2012; *Not Just a Ferguson Problem* 2015). *Fines* are imposed as monetary modes of punishment for law violations. *Fees*, distinct from fines, are charged to people who have been convicted of a crime as payments owed to various government entities that incurred costs in processing their criminal case. *Penalty assessments*, for late- or non-payment of fines and fees, may be charged in the form of accruing interest rate payments, surcharges and collection fees. *Restitution* payments are imposed to recover the costs incurred specifically by victims as the result of a crime. Finally, *special assessments* are based on the concept of an "abusers fee" (Nieto 2006:1), in which those who break certain laws help finance programs related to decreasing such violations.

Fines

California law provides a complex statutory framework for judges to impose **fines** for felony and misdemeanor criminal law violations by adults, mainly specified throughout the state's Penal Code (PEN), Health & Safety Code (HSC) and Vehicle Code (VEH). Fines for adult felony offenses currently range from \$300 to \$10,000, and misdemeanor fines range from \$150-\$1,000 (PEN §1202.4). These fines are mandatory; however, courts may exercise discretion in the amount imposed within the specified range, as well as how to calculate fines where an individual is convicted of multiple criminal counts. For example, under PEN §1202.4, the court may calculate the fine by multiplying the minimum fine amount (i.e., \$300 for a felony) times the number of years in prison, times the number of felony counts (Central California Appellate Program 2016, fn 9). Health and Safety Code violations, which include drug offenses, specify a maximum fine of \$70 for each convicted count of drug possession (HSC §11350(c)). For those convicted of drug sale-related offenses and granted probation instead of imprisonment, the minimum fine is \$1,000 for the first offense and \$2,000 for the second offense (HSC §11350(d)). Vehicle Code violations entail fines ranging from \$390-\$1,000 for a first or second offense, and \$1,105-\$5,000 for two or more violations (VEH §23554; §23560; §23566(a); §23566(b)). Judges may also impose fines for Welfare and Institutions Code violations by juveniles (WIC §202(e)(1)), where parents/guardians are ultimately responsible for payment (WIC §207.2(b)).

Fees

Separate from fines, California law statutorily authorizes the assessment of a range of **fees** incurred during the course of processing a criminal case, many of which are also specified in the state's Government Code. For example, the Government Code mandates fees covering the actual administrative costs associated with arrest and/or county jail booking if the person is ultimately convicted of a criminal offense (GOV §29550; §29550.2). Fees are also imposed on defendants with publicly-appointed attorneys (PEN §987.5(a); §987.8), and on probationers for the cost of court-ordered drug testing and the "reasonable cost of probation services" (PEN §1203.1(a)(b)), just to name a few examples. Judges may also impose fees on juveniles for a range of legal services for which parents/guardians are ultimately responsible for payment (WIC §903.15). These fees include public legal counsel, transportation of the child between custodial facilities, anti-gang classes and many more items (WIC §903.15; §207.2(b); §727.7).

Penalty Assessments

The statutory mechanisms for enforcing the payment of fines and fees through **penalty assessments** are also located across multiple state codes (see LAO 1998). For every fine and fee imposed for all criminal offenses, the Penal Code specifies a \$20 penalty assessment (PEN §1465.8). In addition, a 20% state surcharge is added to the base fine if payment is not received according to the terms set by the court (PEN §1465.7). The Penal Code provides for imprisonment as an alternative to satisfying fines (but not restitution orders) and specifies that one day of imprisonment can satisfy no more than \$125 in monetary sanctions (PEN §1205). One study reported that 10% of those owing monetary sanctions in several California jurisdictions opted for jail time instead of paying fines (Nieto 2006). In addition, under the Vehicle Code, one's driver's license may be suspended for "willful failure to pay" a fine (VEH §40509.5(b)).

Restitution

Voters approved Proposition 9 (2008), the "Victims' Rights and Protection Act," also known as "Marsy's Law," which specified and enhanced guidelines for victim restitution payments under California law. The Penal Code provides that once a dollar amount of **victim restitution** has been ordered by the court, it is enforceable as if it were a civil judgement (PEN §1214; Judicial Council of California 2012). This order means that if the convicted does not pay restitution according to the terms established in the judgment, the court can enforce this contract on behalf of the victim according to the state's civil procedure rules. Enforcement of the judgment may include placing a lien on one's house and garnishing wages (*Order for Victim Restitution* 2015; Judicial Council of California 2012). Juveniles may also be ordered to pay restitution to victims who incurred financial costs as a result of their law violations; as with fines and fees, the juvenile's parents/guardians are ultimately liable for payment (WIC §202(f)).

Special Assessments

Statutes also define a multitude of **special assessments**, which add fees based on particular crime types to existing fines, fees, penalty assessments and restitution orders (see Nieto 2006). For example, the Government Code specifies a \$5 assessment for every \$10, or a fraction thereof, per criminal fine, for funding the operation of DNA fingerprinting (GOV §76104.7; see also GOV §76000; §76104.6; §70372). Judges may also order defendants convicted of violating protection orders in domestic violence cases to make payments of up to \$5,000 to a battered women’s shelter (PEN §273.65(h)(1)). Several key provisions in the Penal Code also direct assessments to guarantee funding levels for specific state and county programs (PEN §1464; §1465.7; §1465.8).

Table 1 illustrates the range of monetary sanctioning statutes in California by offering some selected examples.

Table 1: Selected Examples of Monetary Sanctions in California Law

| Statute | Type | Amount | Description |
|---------------------------|------|---|---|
| PEN §1202.4 | Fine | \$300-\$10,000 (felony); \$150-\$1,000 (misdemeanor) | Mandatory for all criminal offenses |
| HSC §11350(c) | Fine | \$0-\$70 | Defendant possessing a controlled substance |
| HSC §11350(d) | Fine | \$1,000 minimum for first offense; \$2,000 minimum for second offense | Defendant convicted of drug sale-related offenses and granted probation |
| WIC §202(e)(1); §202.7(b) | Fine | Not specified | Juvenile offenders; Parent/guardian financially liable |
| VEH §23554; §23560 | Fine | \$390-\$1,000 | For first and second violations |
| VEH §23566(a); §23566(b) | Fine | \$1,015-\$5,000 | For two or more violations, or, acted negligently causing proximate harm to others than driver + two or more violations |
| GOV §29550 | Fee | “Actual administrative costs” | Any person arrested by a county, if the person is convicted of a criminal offense, relating to arrest and booking |

| | | | |
|------------------------------------|-------------------------------|--|--|
| GOV §29550.2 | Fee | “Actual administrative costs” | Any person booked into county jail by any governmental entity, if the person is convicted of a criminal offense |
| PEN §987.5(a); §987.8 | Fee | “Reasonable cost of representation” | Defendants with court-appointed attorneys |
| PEN §1203.1(a)(b) | Fee | “Actual cost”; “Reasonable costs” | Probationers, for the “actual cost” of court-ordered drug testing and the “reasonable cost of probation services” |
| WIC §903.15; §207.2(b); §727.7 | Fee | Not specified | Juvenile offenders; Legal services including public counsel, transportation and anti-gang classes; Parent/guardian financially liable |
| PEN §1465.8 | Penalty assessment | \$20 penalty assessment added to every fine | For all criminal offenses |
| PEN §1465.7 | Penalty assessment | 20% state surcharge added to the base fine | For all criminal offenses |
| PEN §1205 | Penalty assessment | One day of imprisonment can satisfy up to \$125 in fines | Not applicable to restitution orders |
| PEN §1214 | Restitution | Lien on property; garnishing wages | Restitution order is enforceable as a civil judgement |
| WIC §202(f) | Restitution | Financial costs demonstrated by victim | Juvenile; Parent/guardian financially liable |
| GOV §76104.6(a)(1) GOV §76104.7 | Special assessment | \$5 assessment for every \$10 or fraction thereof | For all criminal fines; to fund DNA fingerprinting |
| PEN §1464 | Special or Penalty assessment | \$10 assessment for every \$10 or fraction thereof | For all criminal fines; Specifies percentage of revenues directed to the State Penalty Assessment Fund and apportioned across eight state funding programs ¹ |

California's Statutory Framework for Monetary Sanctions¹

The legal framework for this constellation of monetary sanctions in California is not limited to the state's Penal Code. The Evidence Code, for example, contains a number of "hidden" fees for court services, such as the "reasonable costs" that expert witnesses may incur as part of a defendant's case—copying legal documents at \$0.10/page, for instance (EVID §1158(e)). Many fees ordered in the criminal context are enforced in the same manner as judgements in civil actions, where late- or non-payment cannot be enforced through incarceration (i.e., GOV §27712); however, as with other kinds of financial obligations, delinquent criminal fee payments may appear on one's credit report, having significant, negative effects on a person's credit score, and can result in property liens and wage garnishments. Provisions in the Vehicle Code illustrate how criminal and civil financial obligations become interrelated through complex liability law, where one set of monetary sanctions is imposed for the crime of operating a vehicle under the influence of drugs or alcohol (i.e., VEH §23152(A)), and another set of financial obligations are imposed for the ensuing costs of towing and impoundment and property damage (i.e., VEH §16029), all of which may be at once governed by relevant statutes in the Civil Code, Code of Civil Procedure, Government Code, Insurance Code, Revenue and Taxation Code and Streets and Highways Code.

Still other code sections contain monetary sanctions that criminally enforce an array of regulatory violations ranging from watering one's lawn during a state-declared drought, which incurs a fine of \$500/day (WAT §1058.5(d)), or hunting and fishing without the proper license, punishable by a \$250-\$2,000 fine and/or up to one year in county jail (FGC §12002.1), to larger-scale violations like election fraud, punishable by a fine of up to \$25,000 and/or up to one year in jail (ELEC §2173(a)), and tax evasion, wherein failure to file taxes can result in up to \$20 million in penalties (RTC §830(c)). A smattering of monetary sanctions can also be found in code sections such as the Business and Professions Code, which imposes a \$50 criminal fine on retail store owners for failure to retrieve shopping carts found outside the premises of large shopping complexes (BPC §22435.7(f)), and the Education Code, which authorizes criminal fines of up to \$500 for willfully disturbing any public school or public school meeting (EDC §32210).

In some instances, California law prohibits or limits the imposition of monetary sanctions. For example, the monetary sanctions for tax evasion may be cancelled if the taxpayer's evasion is found to be inadvertent and due to error (RTC §4985.2), and interest penalties may be removed if a person's failure to make timely tax payments is due to a disaster (RTC §6593). The Vehicle Code specifically authorizes counties to operate amnesty programs for delinquent fines and bail amounts imposed for civil infractions or criminal misdemeanor vehicular violations (VEH §42008(c); §42008.5(d)). In some cases, victim restitution orders are prohibited from including damages for pain and suffering and limited only to payments recovering loss of earnings and out-of-pocket expenses incurred as a direct result of the crime (i.e., FAM §6342(b); WIC §202(f)); also, restitution fines are not subject to certain penalty assessments under PEN §1202.4(e). The Corporations Code exempts corporations with gross annual revenues of under \$10,000 from an array of criminal fines for financial fraud (CORP §8321(b)). The Penal Code also prohibits individuals convicted of commercial bribery, which violates both Insurance Code and Penal Code statutes (INS §12404; PEN §641.3), from being subjected to the monetary sanctions contained in both code sections (PEN §641.4(e)). The Penal Code also prohibits the imposition of additional civil monetary penalties (which can be as high as \$10,000) on financial institutions that are criminally prosecuted in state or federal court for failing to report specified financial transactions (PEN §14162(a)). Legal prohibitions or limits on the imposition of legal financial obligations may also apply to special assessments. In the case of defendants who violate domestic violence protection orders, PEN §273.65(h)(1) directs the court to make a determination of the ability to make payments to a battered women's shelter and to void such assessments if they would impair victim restitution or court-ordered child support payments.

1 State funding programs specified under PEN §1464(1)-(8): (1) the Fish and Game Preservation Fund, (2) the Restitution Fund, (3) the Peace Officers' Training Fund, (4) the Driver Training Penalty Assessment Fund, (5) the Corrections Training Fund, (6) the Local Public Prosecutors and Public Defenders Training Fund, (7) the Victim-Witness Assistance Fund, and (8) the Traumatic Brain Injury Fund.

Revenue Stream

California's process of collecting and distributing revenue generated from LFO's is, like many states, complex. California's 58 counties vary as to which organization is responsible for the collection of sanctions once they are set by the trial courts. Complicating matters further, once delinquent, other collection agencies, including the Franchise Tax Board (FTB) and private vendors, may become involved (to varying degrees) depending on the county where the offense occurred. Upon collection, state law dictates a formula-based distribution process for each individual fine, fee, penalty assessment, special assessment or restitution payment to more than 50 state and numerous county- and city-level funds (LAO 2016). The formula varies by offense type, with specific programs being funded by revenue from specific offenses. There are 215 California code sections [sic] that govern this intricate formula for the distribution of more than \$2 billion annually (LAO 2016).

COLLECTION PROCESS

According to California law, counties are responsible for the collection of LFO's, though they may delegate some or all of the collection back to the courts. The Judicial Council—charged with overseeing the collection process—reports that the trial court is the primary collection agency in 2/3 of California counties (LAO 2014). Counties and courts are allowed discretion in their collection practices, particularly where delinquent court-ordered debt is concerned (defined as more than 10 days late on a payment). Counties vary widely in their utilization of the FTB and private collection vendors, and 11 of these vendors have contracts with the Judicial Council to collect delinquent payments (LAO 2014).

The California Research Bureau was asked to review the system in 2005 and found problems with accounting accuracy at the county level. The increase in LFO's has led to a corresponding increase in the complexity of their collection. Court clerks and county auditors were required to maintain 4 separate accounts (2 state, 1 Judicial Council and 1 local penalty) from which monthly payments to 15 state and county funds were made (Nieto 2006).

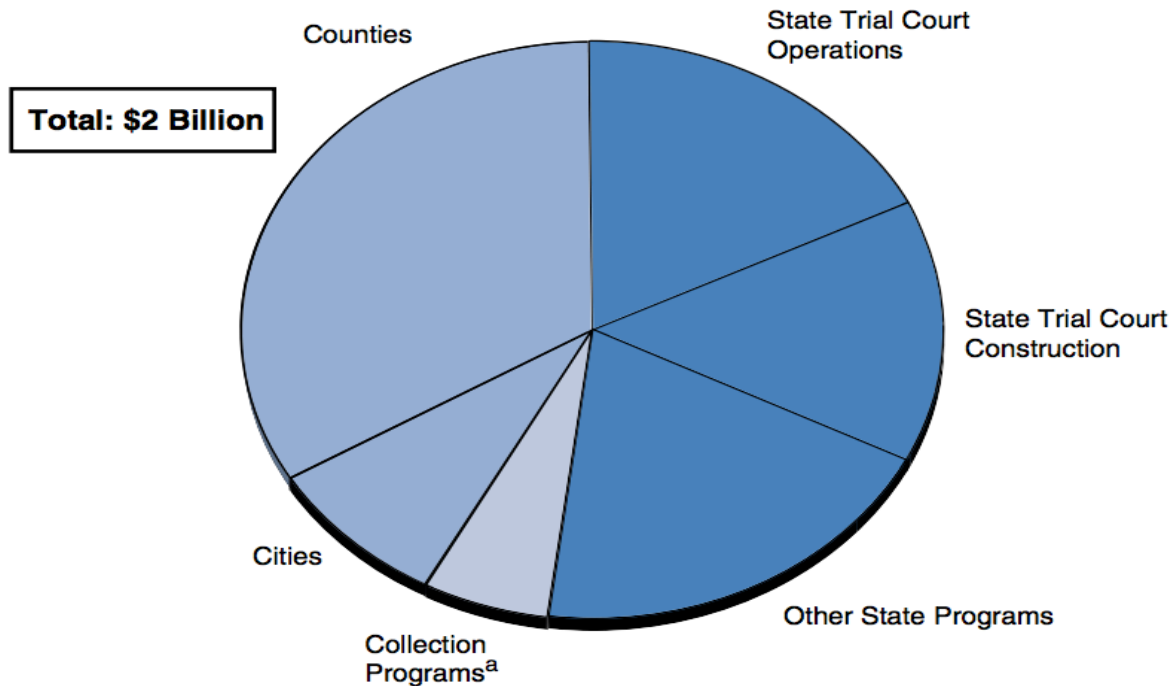
Revenue Distribution between Local and State Government

Once collected, the revenue follows a similar path towards the programs it will fund. Figure 1 illustrates the dispersal of revenue between the state, counties, cities and collection agencies in 2013-2014 (LAO 2016). The county records the revenue it receives, calculating the share it will keep for deposit into county and city funds—roughly 42% of the \$2 billion total annual revenue from LFO's, or \$820 million in 2013-2014 (LAO 2014). Much of the counties' share is directed back into the courts (\$660 million) to fulfill their maintenance-of-effort (MOE) obligations to the state for trial court construction and maintenance. Local lawmakers then disperse the remaining \$160 million into multiple county and local funds, varying by county. More than half of the collected revenue, over \$1 billion, is submitted to the State Controller's Office for distribution into state funds.

Figure 1: The Distribution of Monetary Sanctions to the State, Counties, Cities and Collection Agencies, California 2013-2014

Half of Fine and Fee Revenue Distributed to the State

2013-14



^a Split between courts (state government) and counties (local government) depending on who is actually collecting delinquent payments.

Source: LAO, 2016

The formula that governs into which of the 50 plus state and county programs the revenue is directed varies by offense type and the form of LFO. Table 2 offers a view of the multitude of programs funded by two offenses. The base fine for a violation is distributed into the County and/or City General Fund and then into various other funds. Added to the base fine are numerous penalties, surcharges, restitution payments and special assessments, each distributed into funds largely financed by those LFOs. For some offenses—alcohol and drug related and domestic violence—special charges are assessed as “abuser fees”, directed to county programs intended to reduce those offenses, and are their sole financial support (Nieto 2006).

These fines and assessments often inflate the overall cost of an infraction. For example, a \$35 moving violation during 2015 amasses significant fees and assessments in in California Traffic Court. Although the base fine is \$35 for a minor traffic infraction, the actual cost after fees and assessments balloons to \$238. Should the motorist fail to appear or fail to pay the citation by the due date, an additional \$325 in fees and assessments are added, resulting in an \$563 traffic citation (Not Just a Ferguson Problem 2015: 10).

Table 2: Two Examples of Fines and Fees for Minor and Misdemeanor Offenses and their Distribution to Recipient Funds

Examples of Distributions to State and Local Funds

| Fine and Fee/Recipient Fund | Stop Sign Violation (Infraction) | DUI Violation (Misdemeanor) |
|---|---|--|
| Base Fine | | |
| County and/or City General Fund | \$34.30 | \$264.60 |
| Restitution Fund—DUI Additional Restitution Allocation | — | 19.60 |
| Local DUI Lab Test Special Account | — | 49.00 |
| Local DUI Alcohol Program Special Account | — | 49.00 |
| Trial Court Improvement and Modernization Fund | 0.70 | 7.80 |
| State Penalty Assessment | | |
| State Penalty Fund (subsequently distributed to 9 other state funds) | \$27.44 | \$267.54 |
| County General Fund | 11.76 | 114.66 |
| Trial Court Improvement and Modernization Fund | 0.80 | 7.80 |
| County Penalty Assessment | | |
| Courthouse Construction Fund ^a | \$8.82 | \$86.00 |
| Criminal Justice Facilities Construction Fund ^a | 8.82 | 86.00 |
| Maddy EMS Fund ^a | 3.92 | 38.22 |
| DNA Identification Fund ^a | 1.96 | 19.11 |
| Automated Fingerprint Identification Fund and Digital Image Photographic Suspect Identification Fund ^a | 3.92 | 38.22 |
| Trial Court Improvement and Modernization Fund | 0.56 | 5.46 |
| Court Construction Penalty Assessment | | |
| Immediate and Critical Needs Account ^a | \$7.84 | \$76.44 |
| State Court Facilities Construction Fund ^a | 11.76 | 114.66 |
| Trial Court Improvement and Modernization Fund | 0.40 | 3.90 |
| Proposition 69 DNA Penalty Assessment | | |
| County or State DNA Identification Fund | \$3.92 | \$38.22 |
| Trial Court Improvement and Modernization Fund | 0.08 | 0.78 |
| DNA Identification Fund Penalty Assessment | | |
| DNA Identification Fund | \$15.68 | \$152.88 |
| Trial Court Improvement and Modernization Fund | 0.32 | 3.12 |

| | | |
|---|-----------------|-------------------|
| EMS Penalty Assessment | | |
| Maddy EMS Fund | \$7.84 | \$76.44 |
| Trial Court Improvement and Modernization Fund | 0.16 | 1.56 |
| EMAT Penalty Assessment | | |
| EMAT Act Fund | \$3.92 | \$3.92 |
| Trial Court Improvement and Modernization Fund | 0.08 | 0.08 |
| State Surcharge | | |
| State General Fund | \$7.00 | \$78.00 |
| Court Operations Assessment | | |
| Trial Court Trust Fund | \$40.00 | \$40.00 |
| Conviction Assessment Fee | | |
| Immediate and Critical Needs Account | \$35.00 | \$30.00 |
| Night Court Fee | | |
| Court Facilities Trust Fund (State) and Night Court Session Fund (County) | \$1.00 | \$1.00 |
| Restitution Fine | | |
| State Restitution Fund | — | \$147.00 |
| Trial Court Improvement and Modernization Fund | — | 3.00 |
| DUI Lab Test Penalty Assessment | | |
| County Special Account | — | \$49.00 |
| Trial Court Improvement and Modernization Fund | — | 1.00 |
| Alcohol Education Penalty Assessment | | |
| Alcohol Abuse and Prevention Fund | — | \$49.00 |
| Trial Court Improvement and Modernization Fund | — | 1.00 |
| County Alcohol and Drug Program Penalty Assessment | | |
| County Special Account and General Fund | — | \$100.00 |
| Totals | \$238.00 | \$2,024.00 |

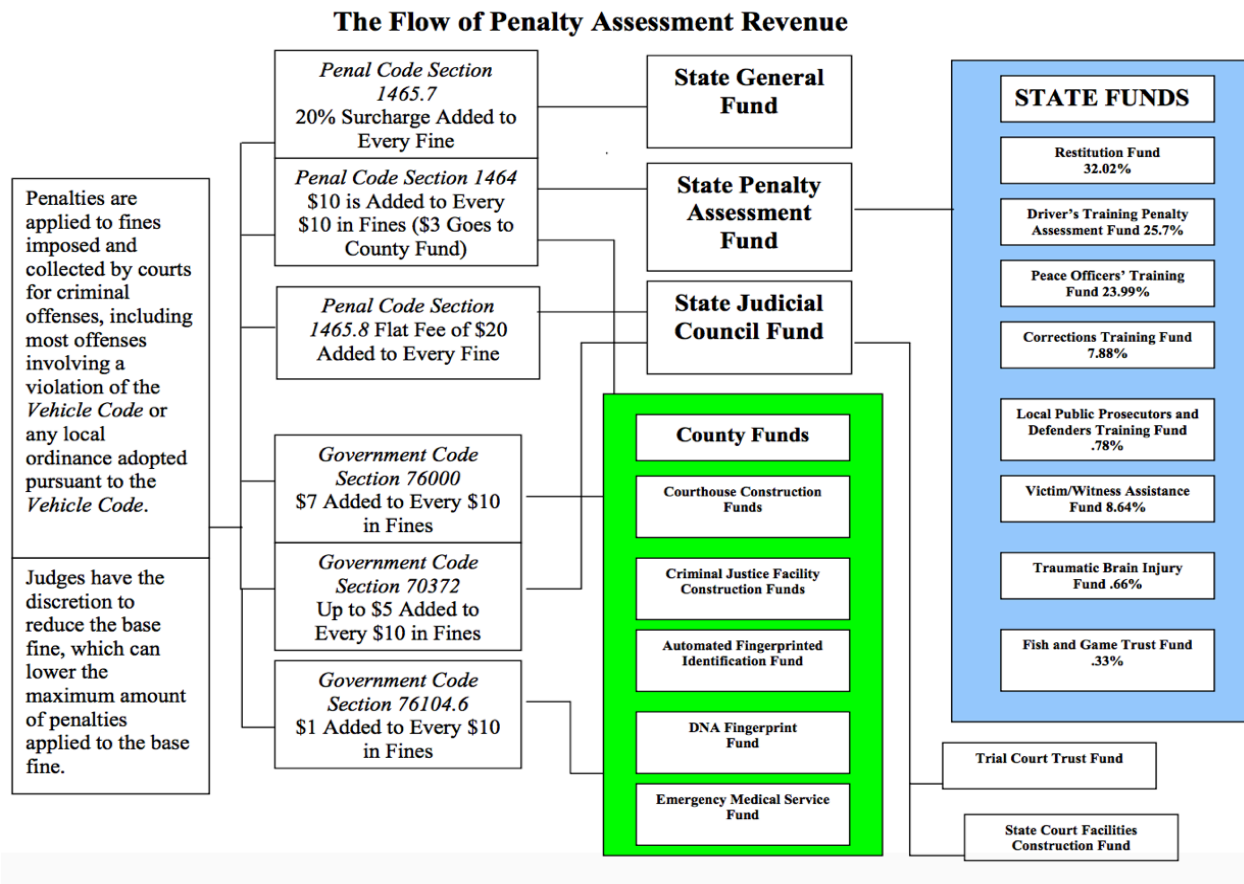
a. Total does not necessarily equal.

PENALTY ASSESSMENT DISTRIBUTION

Penalty assessments (including surcharges, special assessments and fees and excluding the base fine and restitution) make up the bulk of the total charges for the offenses in Table 2 above. In particular, these types

of LFO's are statutorily-sanctioned state and county revenue generators. Enacted for the specific purpose of financing county and state programs, penalty assessments are distinct from fines and restitution which are intended to punish and compensate victims, respectively (Bannon, Nagrecha & Diller 2010). Revenue from penalty assessments supports criminal justice operations at the county level—courthouse and detention facility construction and security, collection of DNA and identification services and emergency medical services—as well as numerous state funds (Nieto 2006). Figure 2 displays an illustration of the California code sections that authorize these assessments, the complex formula that applies to each offense and the programs and services funded by them.

Figure 2: The Flow of Penalty Assessment Revenue



Source: Nieto 2006

Penalty assessments of this type (enacted to fund county and state criminal justice and other operations) have increased in number and amount levied since their origin over 55 years ago (Nieto 2006). California voters, through voter initiatives, have sanctioned some of these increases. One such initiative, Proposition 69, was passed in 2004 and authorizes the imposition of fees to support training of correctional officers, peace officers, public defenders and district attorneys, as well as the expansion of DNA collection and testing programs. In 2015, the total collected by California counties as a result of this fee was roughly \$16.7 million: \$12.6 million was allocated to counties to fund their programs and \$4.2 million was allocated to the state (see *County DNA Identification Fund Annual Reports* from the California Department of Justice Office of the

Attorney General 2015).

PARTIAL PAYMENT DISTRIBUTION

The funding stream formula becomes even more complex when distributing revenue from partial payments of LFO’s, occurring when a person convicted of an offense opts to utilize a payment plan or becomes delinquent in their payment and agencies are only able to recover a portion of the overall LFO. The result is a hierarchy among recipients to determine which funds will be satisfied first, ultimately exposing those at the bottom to a lack of funding. Figure 3 illustrates this hierarchy. Restitution to victims takes precedence, followed by delinquent collection costs recovery by collection agencies and then state, court and county funds (LAO 2014).

Figure 3: The Hierarchy of Payment Distribution

State Law Specifies How Installment Payments Must Be Distributed

| Distribution Priority | Category | Major Beneficiaries | Number of Applicable Code Sections ^c |
|-----------------------|---|--------------------------------------|---|
| 1 | Victim Restitution | Victim and State | 6 |
| 2 | Cost Recovery of Delinquent Collection Costs | Collection Program (court or county) | 1 |
| 3 | State Surcharge | State | 1 |
| 4 | Fines and Penalty Assessments ^a (prorated across category) | State, Court, and County | 156 |
| 5 | Fees and Reimbursements ^b (prorated across category) | Court and County | 48 |

^a Example of fines and penalty assessments include the base fine and the State Penalty Assessment.

^b Examples of fees and reimbursements include the Parole/Probation Supervision Fee and the Traffic Violator School Fee.

^c Additional statutes may apply (such as fees for services).

Source: LAO, 2014

An overall cost/benefit analysis of the current system and subsequent reforms have been recommended (LAO 1988; LAO 2014; Bannon, Nagrecha & Diller 2010; Nieto 2006). Comparison of the costs of collection to the amount actually collected is hindered by the inaccurate record-keeping of overwhelmed court and county clerks—a simplified system is suggested (LAO 2014). The impact of tactics used for delinquent legal debt collection are proposed as hidden costs: suspension of driver’s license and a \$300 civil assessment for nonpayment (*Not Just a Ferguson Problem* 2015); an additional 15% surcharge for debtors more than one month late on a payment (Evans 2014); and levies upon assets by the FTB for payments more than 90 days delinquent (Nieto 2006). Increased incarceration costs due to debtors choosing jail in lieu of accruing more legal debt and the effect of legal debt upon recidivism and reentry should factor into the analysis (Evans 2014). Finally, assessing the toll that more than \$10 billion of uncollected LFO debt has upon California citizens, employers, communities and court operations is essential (*Not Just a Ferguson Problem* 2015).

Collateral Consequences for Failure to Pay

California residents who fail to pay their monetary sanctions face consequences that can create a cycle of

debt and threaten employment stability. One such consequence is the loss of driving privileges. Over 11% of all state driver's licenses are located in California, and there are more licensed drivers in California – almost 25 million – than in Texas and Pennsylvania combined (Federal Highway Administration, 2013). In traffic cases, a judge, or referee appointed by the Department of Motor Vehicles, may consider a defendant's ability to pay (Judicial Council of California 2015b: iv-v; VEH §42003).

“Willful failure to pay” fines and fees can result in the revocation and suspension of both personal and commercial driver's licenses (VEH §40509.5(b)). When an individual fails to pay or misses a monthly payment, the courts will suspend an individual's driver license. Currently, more than 4.2 million California drivers have their licenses suspended, and more than \$10 Billion in court-ordered debt remains uncollected (Not Just A Ferguson Problem 2015). Without a driver's license, employers may reject qualified applicants because they do not possess a valid means of transportation, and the loss of driving privileges may compromise the pursuit and continuity of employment. The loss of employment compounds one's inability to pay down his or her monetary sanctions, often leading to an endless cycle of arrest, incarceration, and legal debt accumulation (Bannon, Nagrecha, and Diller 2010; Not Just A Ferguson Problem 2015).

On June 24, 2015, Governor Brown signed into law Senate Bill 85, which allows for a one-time mandatory eighteen month statewide amnesty program for unpaid traffic and non-traffic infraction tickets (Judicial Council of California 2015c). This amnesty program is aimed at drivers who lost their licenses for failure to appear and for failure to pay. The program offers to reduce the total cost of unpaid traffic violations by 50-80% and the runs from October 1, 2015 through March 31, 2017. To qualify for the reduction, applicants must have an unpaid ticket issued on or before January 1, 2013; have made their last payment on or before September 30, 2015; must not owe restitution to a victim on any case in the county where the violation occurred; receive specified public benefits or has an income 125% or less of the current poverty line; and have no outstanding misdemeanor or felony warrants in the county where the violation occurred. Within the first seven months of the program, over 104,100 drivers had their licenses resolved, resulting in more than \$18.8M in revenue collected (Judicial Council of California 2016c). More than 4.9 million accounts are eligible for the amnesty program, and revenues are estimated to be worth more than \$4.0B (Judicial Council of California 2016c).

Since the implementation of the amnesty program, California courts have been inundated with applications seeking financial relief. The large response to the partial forgiveness and payment plan program has resulted in slow processing times. In January 2016, State Senator Hertzberg introduced Senate Bill 881, which proposes to amend the amnesty program and VEH § 42008.8 (Senate Bill No. 881 2016). This bill mandates that courts review, issue, and file appropriate certifications within 90 days of an applicant seeking amnesty relief. Senate Bill 881 passed both legislative chambers in late August 2016, and Governor Brown is currently deciding whether to sign or veto this legislation (Senate Bill No. 881 2016).

Poverty is often the prevailing reason why offenders fail to make specified payments (*Not Just A Ferguson Problem* 2015). California has one of the highest poverty rates in the nation, with over one-fifth of its residents (or nearly 8.0 million people) living in poverty during 2015 (Renwick and Fox 2016). When Californians fail to submit monthly payments, incarceration and other legal sanctions are imposed as civil penalties. Once the initial payment deadline has passed, California adds an additional \$300 for failure to pay by the specified date (Bannon, Nagrecha, and Diller 2010).

Additionally, individuals convicted of a felony are ineligible to vote while incarcerated and on parole. Voting rights are automatically restored upon completion of parole, and people on probation can vote (see ELEC §2201). Although a number of states condition the restoration of voting rights on the repayment of criminal justice debt (Bannon, Nagrecha, and Diller 2010), California does not restrict the voting rights of individuals with monetary sanctions. However, California may have a *de facto* disenfranchisement policy if incarceration for failure to pay coincides with an election cycle.

Legal Landscape and Challenges

Monetary sanctions in California should be understood alongside major transformations concerning courts,

revenue and corrections. In 2015, the Department of Justice (DoJ) released a report on municipal court practices in one jurisdiction (Ferguson, MO) that highlights the ways in which minor municipal code violations result in multiple arrests, jail time, fines, and fees (Department of Justice 2015: 42). Yet, structural changes among California courts during the late twentieth century has, to some extent, eradicated the development of monetary sanctions at the municipal level, thereby constraining the application of legal financial obligations to existing state law. Standardized interpretations of legislative codes, systematic applications of monetary sanctions, and reliable systems of revenue collection have increased the Court’s budgetary reliance on these funding streams.

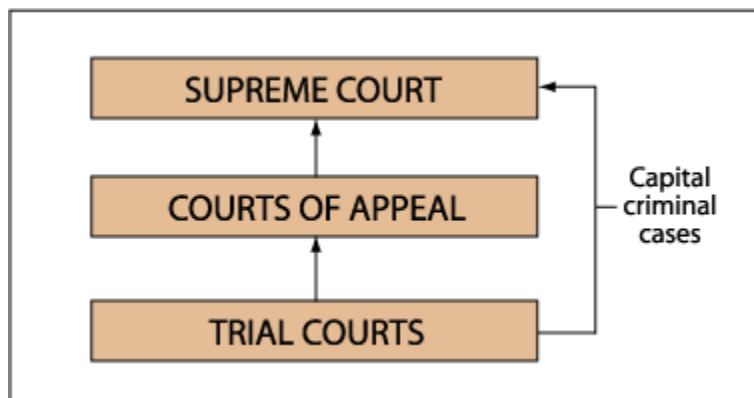
TRIAL COURT UNIFICATION

During the 1995-1996 California Legislative Session, Senator Bill Lockyer (D) introduced Senate Constitutional Amendment 4 (SCA 4) after extensive discussions with, and proposed amendments from, the state Judicial Council. One amendment to SCA 4 removed a statewide mandate to unify trial courts; instead, SCA 4 allowed local trial courts in individual counties to decide whether they wanted to unify. In June 1996, the California Legislature passed SCA 4. The proposed constitutional amendment was then subject to voter approval before taking effect throughout the state.

On June 2, 1998, California voters passed SCA 4 as Proposition 220. Proposition 220 provided for the voluntary unification of the superior and municipal courts in California counties where a majority of the Superior and Municipal Court judges approved the creation of a unified Superior Court. By January 2001, all 58 California Counties unified their municipal and superior court operations, thereby abolishing municipal trial courts throughout California. Court unification improved services to the public through the reallocation of judicial and staff resources; expanded programs like drug courts, domestic violence courts, and services to juveniles; and standardized local rules, policies, and procedures across courts and counties (Judicial Council of California 2005). Figure 4 presents the overall court structure in California.

Proposition 220 also created an Appellate Division in each unified Superior Court to hear matters previously reviewed by the superior court’s appellate department. However, each of the 58 trial courts falls within one of six districts that constitutes the California Courts of Appeal. Each district court is responsible for hearing appeals from lower trial courts within its jurisdiction. Figure 5 shows the spatial allocation of trial courts to specific appellate districts.

Figure 4: California Court Structure



Source: The Judicial Council of California

Figure 5: California Appellate Districts



Source: The Judicial Council of California

The need for stable and consistent funding among California trial courts resulted in the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850, Statutes of 1997). The Act consolidated the operational costs of trial courts at the state level, and this legislation capped the counties' general purpose revenue contributions to trial court costs for the 1994-95 fiscal year. Yet, each county trial court retains control over facility, revenue collection, and local judicial benefit costs. The contributions from each county are allocated to the Trial Court Trust Fund, which supports all trial court operations. Fines and penalties collected by each county are retained or distributed according to the Act. Each county makes quarterly payments to the Trial Court Trust Fund equal to the fines and penalties received by the state General Fund in 1994-95, adjusted by the amount collected for specific fines and fees received during the 2003-2004 fiscal year (California Department of Finance, 2015).

A key outgrowth of trial court unification was a standardized "Statewide Civil Fee Schedule" and a "Uniform

Bail and Penalty Schedule” for all California Superior Courts, which is updated and published annually by the Judicial Council of California, Administrative Office of the Courts.² The dissemination of statewide fee and bail schedules aims to facilitate more uniformity in case processing across jurisdictions, as well as a starting point for developing more centralized mechanisms for collecting court-ordered debt (LAO 2014). However, each of the state’s 58 county Superior Courts may add miscellaneous fees or modify certain monetary sanctions within the parameters laid out by state law. Under the “Total Bail” concept, which the Judicial Council adopted on January 1, 1989, total bail is for the first offense, and must be followed under PEN §1269(b). Yet, trial courts have discretion to suspend the minimum sentence, including fines and penalties (Judicial Council of California 2015b: iv; PEN §1203, PEN §1203.1, and PEN §1203b).

DEVELOPMENTS IN CASE LAW

The U.S. Constitution and federal case law provide the overarching framework for the monetary sanctions and financial obligations that courts can legally impose (see e.g., Mann 1992). However, within those parameters, California state case law has developed based on legal challenges concerning: to whom (and for which crimes) monetary sanctions may apply; how amounts are calculated; how monetary sanctions may be enforced; whether the ability to pay is dispositive; whether it is mandatory that judges impose the monetary sanction; and how previous amendments to monetary sanction amounts affect current cases (see generally, Central California Appellate Program 2016).

Determining ability to pay

According to case law, prior determination of defendant’s ability to pay is not a predicate to levy of the fine upon conviction. The burden is on the defendant to raise the issue of ability to pay (*People v. McMahan* 1992). When determining whether the defendant has the ability to pay program fees (in this case, a \$150 drug program fee), the trial court should also consider whether the defendant has the ability to pay the applicable penalties and surcharge. (*People v. Corrales* 2013).

Mandatory or discretionary imposition

A courtroom security fee does not implicate ex post facto principles because it is not considered punitive in nature (*People v. Alford* 2007; *People v. Wallace* 2004). It can be imposed even if the conviction itself is stayed under PEN §654 (*People v. Crittle* 2007). The trial court has no discretion to stay this fee under PEN §654, nor generally to not impose it (*People v. Woods* 2010). However, a court security fee cannot be imposed for juvenile adjudications of wardship because they are not considered “criminal convictions” under law (*Egar v. Superior Court* 2004).

What constitutes a penalty vs. fee

In *People v. Sharret* (2011), the California Court of Appeals held that the criminal lab analysis fee under (HSC 11372.5) constituted punishment. Accordingly, if the penalty for the offense to which it attaches is stayed pursuant to PEN §654, the fee must also be stayed.

Enforcement of monetary sanctions

In *Bearden v. Georgia* (1983), the U.S. Supreme Court ruled that debtors may be incarcerated for “willful” nonpayment of legal debt, and under *People v. Mc Garry* (2002), a judge can convert assessed fines and penalties into jail time.

Probation terms

If a defendant cannot pay fees and fines, the court can extend probation to the maximum time permitted by law, but not beyond that, and must discharge probation (*People v. Medeiros* 1994). However, under *People v. Sisco* (2005), a defendant may consent to extend probation. Under California case law, payment cannot be made a condition of probation (*People v. Bradus* 2007; *People v. Hart* 1998).

2 The Statewide Civil Fee Schedule (Effective January 1, 2016) is available at: <http://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-20160101.pdf>. The Uniform Bail and Penalty Schedule (2016 Edition) is available at: <http://www.courts.ca.gov/documents/2016-JC-BAIL.pdf>.

Calculating penalty assessments

There are a number of complexities involved in calculating penalty assessments. For example, the usual penalties should be added to the \$10 fine (*People v. Knightbent* 2010), however the fine itself can be imposed just once for any single case, not per count (*People v. Crittle* 2007).

Ex post facto considerations

The California Supreme Court recently held that a restitution order violated the *ex post facto* clause of the U.S. Constitution. The trial court had applied the law of restitution in effect at the time of the defendant's sentencing, rather than the law in effect at the time of the defendant's crimes. The restitution order violated the statutory maximum as defined by the statutes applicable at the time of the defendant's crimes (*People v. Souza* 2012).

Local Contexts

California's statutory framework for monetary sanctions as laid out in the 29 state legislative codes gives local Superior Court judges discretion about whether to impose monetary sanctions at all in some cases, and in other cases, about the specific amounts to impose within prescribed ranges. State law provides for areas where counties may—but are not required to—impose their own monetary sanctions (see e.g., *People v. Robertson* 2009). For example, depending on the county where a defendant was sentenced, the local Board of Supervisors may or may not have opted to impose a fee to cover the administrative costs of collecting restitution fines. Shasta County is one county in which the Board of Supervisors passed a resolution in 2001 to impose a 10 percent fee (Shasta County Bd. of Supervisors Res. No. 2001-175).

At the same time, the "Statewide Civil Fee Schedule" and the "Uniform Bail and Penalty Schedule," which grew out of trial court unification, promulgate standardized applications of this statutory framework for all California Superior Courts. Therefore, the local monetary sanctions "law on the books" as written in county and municipal codes, and in the information published on Superior Court websites, appears remarkably uniform across counties.

However, the state consists of multiple, distinct microclimates that vary demographically and politically, alongside varying local norms of criminal justice (e.g., Verma 2015; 2016). The actual day-to-day practice in local courts—the "law in action"—is, therefore, likely to differ substantially from the laws written on the books and in official policy statements, as well as across jurisdictions. While the existence and extent of variation among California's local monetary sanctions regimes remains a question for future research, profiles of six Superior Court jurisdictions are presented below to illustrate the potential salience of diverse local contexts for the administration of monetary sanctions on the ground.

POTENTIAL JURISDICTIONS

Stratified random sampling was employed to select six potential superior courts for ethnographic observation. Potential jurisdictions were selected to capture regional and demographic variation across the state, as well as variation in the number and prevalence of criminal case filings, while at the same time, representing the sanctions imposed for the majority of defendants in California. Based on calculating the Composite Filing Rate (CFR)³ for all 58 counties, one county was selected from the lowest tercile (Fresno County, CFR = .57); three counties were selected from the middle tercile (Los Angeles County, CFR = 1.02, San Diego County, CFR = 1.03, and Orange County, CFR = 1.10); and two counties from the upper tercile (Alameda County, CFR = 1.47 and Mono County, CFR = 4.87). More than half (50.3%) of California criminal filings occur in these six counties, and these six counties account for 49.3% of California residents. These trial courts fall within five of six California Appellate Districts (see Figure 5). Table 3 describes the characteristics of these potentially selected California jurisdictions.

3 The CFR is calculated as the *number of filings per percentage point of poverty* per 10,000 residents in county (c) during year (t). It is a standardized, per capita measure of county punitiveness.

Table 3: Characteristics of Select California Jurisdictions

| | Population | # Criminal Filings | Poverty Rate | CFR | % Black | % Hispanic | % Asian | % Voting Republican | State (Adult) Corrections Facility |
|---------------------|------------|--------------------|--------------|------|---------|------------|---------|---------------------|------------------------------------|
| State of California | 37,253,956 | 6,096,084 | 15.9 | 1.03 | 5.7 | 38.2 | 13.3 | 37.1 | Yes |
| Fresno County | 930,450 | 136,797 | 26.0 | 0.57 | 4.8 | 51.2 | 9.5 | 50.6 | Yes |
| Los Angeles County | 9,818,605 | 1,775,280 | 17.8 | 1.02 | 8.0 | 48.1 | 13.8 | 28.8 | Yes |
| San Diego County | 3,095,313 | 457,858 | 14.4 | 1.03 | 4.7 | 32.7 | 11.1 | 46.4 | Yes |
| Orange County | 3,010,232 | 412,053 | 12.4 | 1.10 | 1.5 | 34.0 | 18.5 | 53.0 | No |
| Alameda County | 1,510,271 | 277,412 | 12.5 | 1.47 | 11.5 | 22.6 | 27.0 | 18.7 | No |
| Mono County | 14,202 | 5,874 | 8.5 | 4.87 | 0.3 | 27.1 | 18.5 | 44.8 | No |

Note: The number of criminal filings for 2015 was derived from the Judicial Council of California, Administrative Office of the Courts. Population totals and the poverty rate were obtained from the 2010 U.S. Census to approximate the most recent years of court filings. However, the population percentages for black, Asian, and Hispanic residents represent the 5-year estimates from the 2010-2014 American Community Survey. The percentage Republican refers to voting in the 2012 Presidential Election. The CFR is calculated as the number of filings per percentage point of poverty per 10,000 residents in county (c) during year (t). It is a standardized, per capita measure of county punitiveness.

Fresno County

Fresno County is located in the Central Valley of California in the heart of the state’s farming and agricultural industrial region. More than half of the population is Hispanic, and over one-quarter of the total population lives below the poverty line. With more than 50% voting Republican in the 2012 Presidential Election, Fresno is one of the state’s most politically conservative counties. Despite its population of nearly one million, however, the number of criminal filings in the Fresno County Superior Court (136,797 in 2015) is relatively small as compared to the other selected jurisdictions. In addition to the Superior Court, which has five branches within the city of Fresno, the county operates a Juvenile Delinquency Court, also located in the city of Fresno. Pleasant Valley State Prison, a 640-acre minimum-to-maximum security state prison, is located in Fresno County’s city of Coalinga. By the close of the first quarter during fiscal year 2015-16, Fresno County Superior Court collected almost \$7.8 Million in revenues from criminal fines and penalties (Judicial Council of California 2015d). Judges in Fresno may exceed the “Total Bail” amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

Los Angeles County

Los Angeles is the state’s most populous county, with nearly ten million residents. Almost ten percent of the population is Black, and nearly half is Hispanic. With a poverty rate of almost 18 percent, Los Angeles County falls within the middle third of California’s poorest counties. The county is strongly Democratic leaning, with only 28.8% of voters supporting the Republican candidate in the 2012 Presidential Election. Almost one-

third of the state's nearly six million criminal filings occur within the Los Angeles Superior Court (1,775,280 in 2015). The Los Angeles County Superior Court operates 24 adult criminal courthouses and eight juvenile delinquency courthouses, which are located across 12 local districts throughout the county. In addition, the county has an appellate court that oversees Superior Court cases from within the local districts, as well as separate civil, family law, juvenile dependency, mental health, probate, small claims, and traffic courts. One male-only minimum-to-maximum state prison, California State Prison, is located over 760 acres of Los Angeles County, in the city of Lancaster. Los Angeles Superior Court collected more than \$56.3 Million in fines and penalties during the first quarter of the 2015-16 fiscal year (Judicial Council of California 2015d). L.A. County judges may exceed the "Total Bail" amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

San Diego County

San Diego, located along the U.S.-Mexico border, is one of the state's most populous counties, with over three million people. Thirty-three percent are Hispanic, and nearly half of the county's voters supported the Republican candidate in the 2012 Presidential Election. San Diego County's poverty rate (14.2) is mid-range among California counties. More than 450,000 criminal filings took place in 2015 within the San Diego County Superior Court, which has eight adult branches in addition to a juvenile court. One state prison is located in San Diego County, the Richard J. Donovan Correctional Facility, which is designated for people incarcerated with severe mental illness, developmental disabilities and/or who are being treated in community hospitals throughout the county. During the first quarter of the 2015-16 fiscal year, San Diego County Superior Court amassed nearly \$21.9 Million in fines and penalties (Judicial Council of California 2015d). Judges in San Diego may exceed the "Total Bail" amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

Orange County

Orange County, also one of the state's most populous jurisdictions, is located between San Diego and Los Angeles counties. The poverty rate (12.4%) is lower in Orange County than in either neighboring jurisdiction, and a greater percentage of voters (50.3%) supported the Republican candidate in the 2012 Presidential Election. Hispanics make up just over one-third (34.3%) of the county's more than three million residents, while Blacks comprise just 2.1% of the total population. Unlike the aforementioned counties, no state adult correctional facilities are located in Orange County. The Orange County Superior Court processed 412,053 criminal filings in 2015 and collected over \$21.3 Million in fines and penalties during the first quarter of the recent fiscal year (Judicial Council of California 2015d). Orange County judges may not exceed the "Total Bail" amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

Alameda County

Alameda County is in Northern California on the East Bay of San Francisco and holds a population of just over 1.5 million people. Its voters are decidedly Democratic leaning, with only 18.7% favoring the Republican Presidential candidate in 2012. Similar to Orange County in Southern California, approximately 1-in-8 residents live below the poverty line in Alameda County. Unlike the other jurisdictions presented here, Alameda has one of the most racially and ethnically diverse populations of any county in the state; more than 12% of its population is Black, and 22.7% is Hispanic. Just over 275,000 criminal filings took place within the Alameda County Superior Court in 2015. No state prisons are located in Alameda County. During the first quarter of the 2015-16 fiscal year, Alameda County Superior Court collected \$11.9 Million in revenue (Judicial Council of California 2015d). Judges in Alameda County may not exceed the "Total Bail" amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

Mono County

Mono County is located on California's Northeastern border with Nevada and has the smallest and least racially and ethnically diverse population of the selected jurisdictions. Its 14,402 residents are predominately White, with Hispanics comprising 27.9% and Blacks comprising less than one percent of the total population. Mono County has one of the lowest poverty rates in the state (8.5 percent) and the lowest among the counties profiled here. Nearly 45% of the county's voters lean Republican. In 2015, there were only 5,874

criminal filings in the Mono County Superior Court. However, the number of criminal filings appears disproportionately high given the county's relatively small population. The county has no state correctional facilities. During the 2015-16 fiscal year, Mono County Superior Court collected approximately \$440,200 in criminal fines and penalties by the end of the first quarter (Judicial Council of California 2015d). Mono County judges may exceed the "Total Bail" amount under the Traffic Infraction Bail and Penalty Schedule (Judicial Council of California 2015b: v).

While the monetary sanctioning laws and policies published on the Superior Court websites of each of these six counties appear virtually identical, local variations in population size, prevalence of criminal filings, poverty rates, racial and ethnic make-up, political leanings, and geographical co-existence of state correctional facilities stand to shape monetary sanctions *in practice* as much as the law on the books in California.

CONCLUSION

We find that every section of the California Legislative Code contains at least one provision for the imposition of monetary sanctions. The amount of revenue generated from these criminal fines and penalties vary tremendously among California County Superior Courts. Los Angeles County Superior court has collected more than \$56.3 Million in monetary sanctions during the first quarter of the 2015-16 fiscal year, compared to counties like Mono, whose superior court has amassed less than half a million dollars in revenue within the same timeframe.

The sprawling statutory mechanisms by which monetary sanctions may be imposed invoke multiple areas of life, with the potential to shape how individuals, as well as their children and families, interact with governmental departments, agencies and institutions – both within and beyond the criminal justice system. The shape of these interactions can have consequential effects for economic and labor market participation, residential and family stability, health, educational attainment and criminal recidivism (Department of Justice 2015; Evans 2014; Gordon & Glaser 1991; Harris 2016; Harris, Evans & Beckett 2011; 2010; Lott, Jr. 1998).

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MONETARY SANCTIONS IN GEORGIA

Prepared by Sarah Shannon and Brittany Martin

The State of Georgia, like other states across the nation, imposes fines, fees, and surcharges in the punishment of criminal offenses. Yet certain features set Georgia's system of monetary sanctions apart from that of other states. Most notably, traffic offenses are considered criminal in Georgia and can trigger not only substantial monetary sanctions but also time served on misdemeanor probation. Local jurisdictions are allowed by Georgia law to contract with private probation companies to supervise misdemeanor (but not felony) probationers. More than 30 private probation companies are currently under contract with Georgia counties and cities. Georgia's misdemeanor probation system has garnered significant attention in recent years from the media, courts, and the legislature due to the practices of these private companies, including excessive fees and the improper use of incarceration for unpaid sanctions. Because of a high volume of traffic cases throughout the state, many people are sentenced to "pay only probation" when they are unable to pay their fines, fees, and surcharges at sentencing, requiring supervision and additional fees until their court debt is paid. In the analysis that follows, we describe the primary components of Georgia's system of monetary sanctions as prescribed by Georgia law, including the practices of private probation companies.

Georgia Court Structure

Georgia's court system has five classes of trial-level courts which operate at the county or judicial district level, as shown in Figure 1. There are 49 judicial districts in the state, each of which has at least one superior court judge. Superior courts are the state's only general jurisdiction courts and handle all felony-level cases. Several types of limited jurisdiction courts handle misdemeanor cases ranging from traffic to more serious non-felony offenses.

State courts are limited jurisdiction courts that operate within 70 counties and process misdemeanors and traffic offenses in those counties. All 159 counties have a magistrate and a probate court. In counties with no state court present, probate judges oversee traffic violations; otherwise, these courts handle primarily civil matters. Magistrate courts process county ordinance violations, misdemeanor deposit account fraud (bad checks), preliminary hearings, issuance of summons, arrest warrants, and search warrants (but do not hold jury trials).

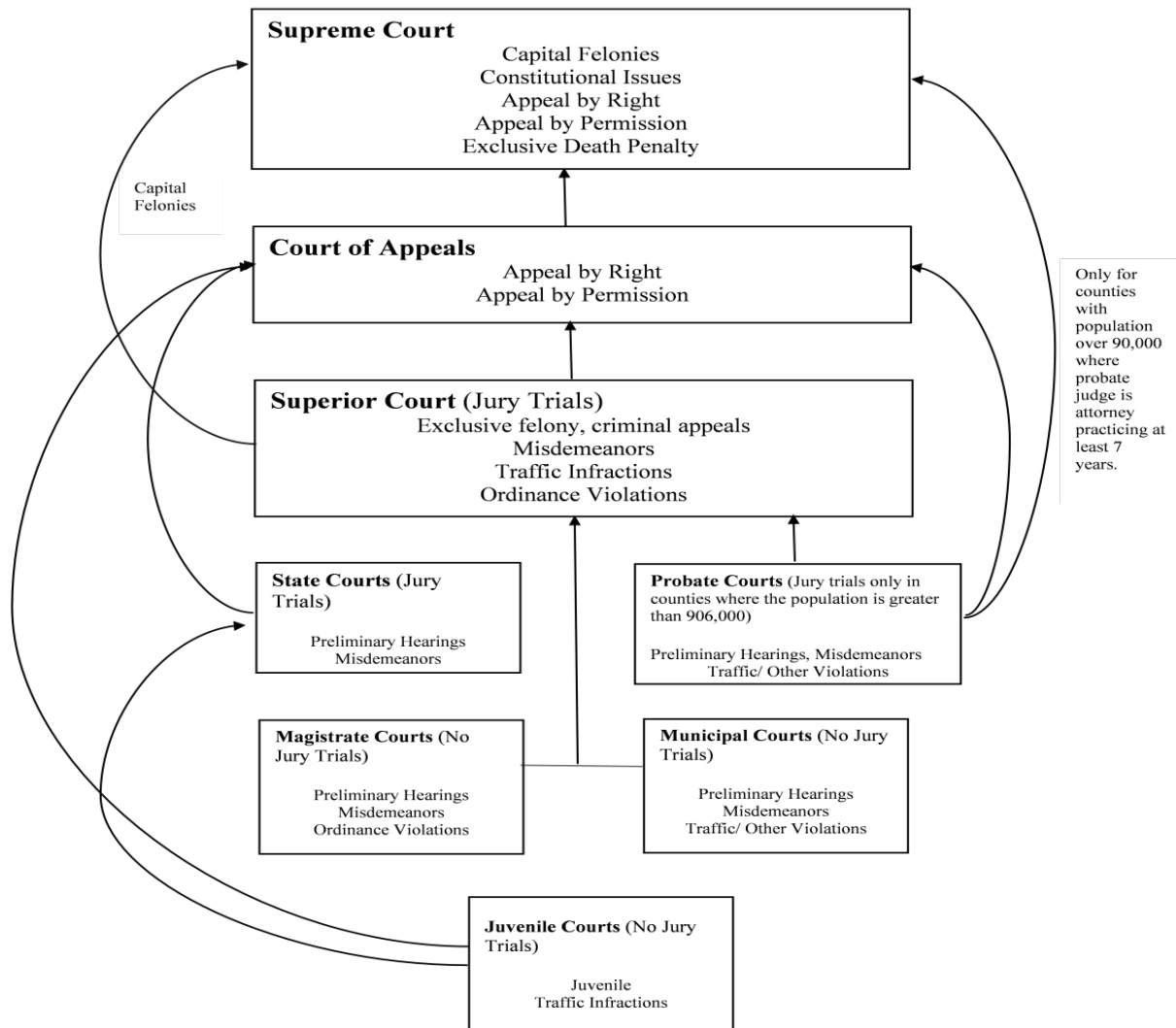
Juvenile courts handle criminal cases that involve the neglect of children under 18, delinquent and unruly offenses committed by children under 17, and traffic violations committed by juveniles. The superior courts holds jurisdiction over certain violent felonies committed by juveniles, including murder, voluntary manslaughter, rape and other sexual offenses, and armed robbery committed with a firearm. According to O.C.G.A. section 15-11-8, parent(s) of a child whose case is brought to juvenile court who are not indigent may be ordered to pay the court fees.

In addition to district- and county-level courts, Georgia has approximately 400 municipal courts that operate at the city level. Municipal courts process cases that involve traffic offenses within the city's jurisdiction, municipal ordinance violations, and in some instances low-level misdemeanor offenses such as possession of small amounts (one ounce) of marijuana.

A person accused of a misdemeanor or felony offense will likely have their first appearance in the magistrate court in the county where the incident took place, since these courts typically handle criminal preliminaries. The individual's case will then proceed to state court (for misdemeanors, if the county has a state court) or superior court (for felonies, or misdemeanors where a state court is not present) for trial. Traffic offenses are handled either in state court, probate court, or municipal court depending on the jurisdiction. Regardless of which court or courts a defendant encounters, he or she will undoubtedly incur a broad range of monetary sanctions, including fines, surcharges, fees, and correctional costs.

Figure 1. Georgia Court System

Georgia Court System: Criminal Cases



Note: arrows represent appellate routes.

As shown in Table 1, Georgia courts handled a total of 2.6 million criminal cases in 2014 (the most recent year data are available). The vast majority of these cases (2 million) were for traffic offenses, which are considered misdemeanors in Georgia. Other misdemeanors made up nearly 248,000 of the remaining cases, followed by about 132,000 felony cases, 127,000 ordinance violations, and 80,000 probation revocations.

Table 1. Criminal Cases in Georgia Courts, 2014

| Court | Felony/ Bindover | Misdemeanor | Traffic | Ordinance Violation | Probation Revocation | Total by court |
|--------------|-----------------------------|--------------------|------------------|--------------------------------|---------------------------------|---------------------------|
| Superior | 88,047 | 31,508 | n/a | n/a | 47,473 | 167,053 |
| State | n/a | 96,226 | 415,704 | n/a | 32,923 | 544,853 |
| Probate | n/a | 8,504 | 203,769 | n/a | n/a | 212,273 |
| Magistrate | n/a | 17,632 | n/a | 31,574 | n/a | 49,206 |
| Municipal | 44,289 | 93,964 | 1,407,475 | 95,911 | n/a | 1,641,639 |
| Total | 132,336 | 247,834 | 2,026,948 | 127,485 | 80,396 | 2,614,999 |

Source: Judicial Council of Georgia

Not surprisingly in light of the high volume of traffic offenses, municipal courts processed 1.6 million criminal cases in 2014, followed by state courts with over 500,000 and probate courts with over 200,000 cases, both of which also handle a significant number of traffic cases. Superior courts handled 167,000 felony and misdemeanor cases. Magistrate courts in Georgia saw the fewest number of criminal cases largely due to their very limited jurisdiction (criminal preliminaries are not included in these counts).

Base Fines For Criminal Offenses

The O.C.G.A. explicitly prescribes base and maximum fines for many offenses to be followed by all courts in the state. Table 2 presents some examples for different offense levels. For misdemeanors generally, judges can impose up to \$1,000 and/or confinement in a county jail or correctional facility for up to 12 months unless otherwise prescribed by law (O.C.G.A. § 17-10-3 (2015)). For misdemeanors of a high and aggravated nature generally, judges can impose a fine up to \$5,000 and/or confinement in a county correctional facility or jail for up to 12 months unless otherwise prescribed by law (O.C.G.A. § 17-10-4 (2015)). There are some instances in which fines for certain offenses exceed these limits. For example, pimping and pandering are considered misdemeanors of a high and aggravated nature. But if the offense involves a person under age 16, the convicted party will be guilty of a felony and fined a maximum of \$100,000 and/or sentenced to between 10 and 30 years in prison.

Many felony offenses in Georgia are punished by mandatory prison sentences (or death in the case of capital offenses). For those sentenced to felony probation, regardless of the offense, a judge can impose a fine up to \$100,000 unless otherwise specified by law (O.C.G.A. § 17-10-8). According to the Georgia Department of Community Supervision, the average felony probationer in Georgia owes \$2,396 in fines, fees, and surcharges (personal communication).¹ Some specific fines are assigned by offense in the legal code. For example, people convicted of arson can be fined up to a maximum of \$50,000 for first degree, \$25,000 for second degree, and \$10,000 for third degree (O.C.G.A. § 16-7-60 (2015)). A judge can impose a fine up to \$100,000 for home invasion in the first and second degree (O.C.G.A. § 16-7-5 (2015)).

Fines for traffic offenses, which are considered criminal in Georgia, vary widely. Base fines for speeding range from \$25 (for 5-9 miles over the speed limit) to \$1,000 (for 35 mph or more over the speed limit). In 2008, Georgia passed the “Felony Driving Law”² (SB 350; O.C.G.A. § 40-5-121 (2015)) which added stiffer penalties for driving without a valid license. Under this law, a first conviction (misdemeanor) can invoke a minimum

1 This total does not include restitution.

2 This law has been criticized for disproportionately punishing people of color generally, and Latino immigrants in particular. See <http://www.vice.com/read/how-georgias-drivers-license-law-turns-latinos-into-felons>

fine of \$500 and a maximum fine of \$1,000, in addition to a mandatory two days to 12 months in jail. A second or third conviction within five years constitutes a high and aggravated misdemeanor and entails a sentence of between \$1,000 and \$2,500 in addition to a mandatory 10 days to 12 months in jail. A fourth (or more) conviction within five years is a felony offense and can invoke a \$2,500 to \$5,000 fine and mandatory imprisonment of between five and 10 years.

Table 2. Examples of Base Fines for Criminal Offenses in Georgia

| Offense Type | Incarceration | Minimum Fine | Maximum Fine |
|---|----------------------|---------------------|---------------------|
| Misdemeanor (generally) | <12 months | n/a | \$1,000 |
| Misdemeanor (high/aggravated, generally) | <12 months | n/a | \$5,000 |
| Felony (if sentenced to probation) | n/a | n/a | \$100,000 |
| Felony (varies by offense; examples below) | | | |
| Arson (1 st degree) | 1 – 20 years | n/a | \$50,000 |
| Home invasion (1 st degree) | 10 – 20 years | n/a | \$100,000 |
| Drug trafficking (e.g. cocaine) | 10 years minimum | n/a | \$1,000,000 |
| Traffic (varies by offense; examples below) | | | |
| Driving without valid license (1 st) | 2 days - 12 months | \$500 | \$1,000 |
| Driving w/o valid license (2 nd -3 rd) | 10 days - 12 months | \$1,000 | \$2,500 |
| Driving w/o valid license (4 th +)) | 5 to 10 years | \$2,500 | \$5,000 |

Surcharges and Fees

In addition to fines, defendants are also charged a wide array of surcharges and fees for criminal procedures, specific beneficiary funds, court costs, sheriffs’ fees, and jail costs as mandated by the state’s legal code.

Growth in Fees and Surcharges

Like other states, the Georgia legislature has expanded the number and scope of fees and surcharges applied in criminal cases over time. In 1983, the legislature passed a bill to fund the Peace Officer and Prosecutor Training Fund (POPTF), which had been established via a constitutional amendment in 1978, using a 10 percent surcharge on all fines and forfeitures. This fund collected \$287 million between 1984 and 2003.³ The County Jail Fund (10 percent surcharge) was established via a state constitutional provision (Article III, Section IX, Paragraph VI) in 1989.

Additional surcharges were added in the 1990s, including the Drug Abuse Treatment and Education Fund (50 percent of original fine) enacted in 1990, an additional fee for DUI compensation to victims to be paid to the Crime Victims Emergency Fund (CVEF) passed in 1992, and the Local Victim Assistance Fund (LVA) established in 1995. In 1998, Georgia voters ratified Senate Bill 110 in a referendum establishing the Brain and Spinal Trust Fund to be supported by a surcharge added to all DUI fines.

The 2000s brought further expansion of monetary sanctions in Georgia. Perhaps the most influential was the passage of House Bill 1EX (HB 1EX) which appointed the Georgia Superior Court Clerks’ Cooperative Authority (GSCCCA) as the central collecting and remitting agent for certain surcharges and fees, as well as certain additional penalties and bonds in criminal cases. HB 1EX amended the O.C.G.A. in titles related to criminal procedure, the court system, penal institutions, and law enforcement agencies (Titles 15, 17, 35, and 42) in order to consolidate and organize the collection of fees and surcharges in criminal cases. As part of this reform, the GSCCCA is allowed to retain 1 percent (up to \$500,000) of the total funds it collects each fiscal year to support its work (O.C.G.A. § 15-21A-5). HB 1EX also established the Indigent Defense Fund surcharge

3 Georgia Association of Chiefs of Police. 2012. “Analysis of the Peace Officer and Prosecutor Training Fund” (White Paper). Available http://www.gachiefs.com/wp-content/uploads/2016/05/POPTF_WhitePaper.pdf

to fund indigent defense in the state.

Since 2005, the Georgia legislature has passed further legislation to add new surcharges and fees, increase the amounts of fees and surcharges, and expand the circumstances under which existing monetary sanctions can be assessed. Passed during the 2005-2006 legislative session, Senate Bill (SB) 226 created the Georgia Drivers' Education Commission ("Joshua's Law") and added a new surcharge of 5% of the original fine added to all traffic violations to fund the program (O.C.G.A. § 15-21-179). House Bill (HB) 1245 (2008) increased the surcharge to be added at the time of posting bail or bond from \$50 to \$100 (or 10 percent of the original amount of the bail or bond, whichever is less) for the peace officer and prosecutor training fund as well as indigent defense funds (O.C.G.A. § 15-21-73). This bill also extended the applicability of the \$50 indigent application fee to superior and juvenile courts as well as added to the offenses eligible for the 5 percent surcharge for the Drivers' Education Commission (GDEC). This surcharge was subsequently reduced to 1.5 percent in 2013 via SB 231.⁴ This is the only case that we are aware of in which a surcharge has been *reduced*.

Georgia's "Super Speeder" law took effect in 2010, which added a \$200 fee on top of the base fine for people convicted of speeds exceeding certain limits. In 2012, HB 1176 added several offenses that incur the 50 percent Drug Abuse Treatment and Education Fund (DATE) surcharge (O.C.G.A. § 15-21-100). This bill also increased the maximum fee that prosecutors can charge those enrolled in pretrial intervention and diversion programs from \$300 to \$1,000 (O.C.G.A. § 15-18-80). Also in 2012, HB 351 increased the assessment for the Probate Judges Retirement Fund to \$3.00 in every criminal or quasi-criminal case, including traffic (O.C.G.A. § 47-11-51). HB 870, passed during the 2014 session, added reckless driving to the list of offenses to incur the 10 percent surcharge for the Brain and Spinal Injury Trust Fund (O.C.G.A. § 15-21-151). Finally, in 2016, SB 367 added an additional offense to incur the 50% DATE surcharge (O.C.G.A. § 52-7-12, operating watercraft under the influence). In November 2016 Georgia voters approved a constitutional amendment to assess additional financial penalties for people convicted of certain sex crimes in order to fund the Safe Harbor for Sexually Exploited Children Fund.

Collection of Fees and Surcharges

According to data provided by the GSCCCA, courts throughout the state of Georgia in 2014 collected a total of \$537,678,554 in reportable and remittable funds. This is a 20% increase over 2005, at which time GSCCCA reports that courts collected \$448,616,314 in reportable and remittable funds.

The typical flow of revenue from fees and surcharges includes initial deposit of funds into a bank account that is separate from the city or county general fund (O.C.G.A. § 15-21-3). From there, each jurisdiction is required to submit monthly payments to the specific beneficiary funds as required by law. Some beneficiary funds are first remitted to the Georgia Superior Court Clerks' Cooperative Authority per HB 1EX, which then sends payments to the beneficiaries. These include the Brain and Spinal Injury Trust Fund, Crime Lab Fee, Crime Victims Emergency Fund, Driver Education and Training Fund, Indigent Defense Application Fee, and the Peace Officers, Prosecutors and Indigent Defense Fund. Other funds are remitted to the beneficiary directly but reported to GSCCCA. These include the City General Fund, County General Fund, County Jail Fund, Peace Officers Annuity and Benefit Fund, Drug Abuse Treatment and Education, Indigent Defense Application Fee (local), Law Library, Local Victim's Assistance Program, Probate Retirement Fund, probation fees, restitution, and the Sheriffs Retirement Fund. Some funds are paid to the state general fund, such as felony probation supervision fees and the Sex Offender Registration fee.

The law stipulates a priority list for payments to beneficiaries to comply with O.C.G.A. § 15-6-95 and with the provisions of O.C.G.A. § 15-21A-4(a). Restitution is always the first priority when partial payments are made. After restitution, the first beneficiary to receive partial payments is the Peace Officers' Annuity and Benefit Fund followed by the Clerk's Retirement Fund/Probate Judges' Retirement Fund.

⁴ According to media reports, the state stopped funding the GDEC program from 2010 to 2014 but kept collecting the surcharges, funneling the funds collected (\$73 million) into the State General Fund instead of the Driver Education and Training Fund: <http://www.wsbtv.com/news/local/2-investigates-lawmakers-funnel-millions-drivers-e/33399821>.

Surcharges as Required by Georgia Law

As shown in Table 3, several surcharges are assessed in every criminal conviction, regardless of offense type. These are the County Jail Fund (10% of original fine), Local Victim Assistance Fund (5% of original fine), County Law Library (\$5.00), the Peace Officer, Prosecutor Training Fund (lesser of \$50 or 10% of original fine, plus lesser of \$100 or 10% of original fine at posting bail/bond), and the Indigent Defense Fund (10% of original fine; additional 10% at posting bail/bond).

Additional surcharges are assessed only for specific offenses on top of those charged in every conviction as noted above. For example, in every case involving reckless driving or driving under the influence of drugs or alcohol (DUI) a surcharge of 10% of the original fine is assessed for the Brain and Spinal Injury Trust Fund (O.C.G.A. § 15-21-149). DUI convictions also incur an additional surcharge of the lesser of \$26 or 11% of the original fee for a DUI victims' compensation fund. People convicted of many drug and alcohol-related offenses are charged an additional 50% of the original fine to be paid to the Drug Abuse Treatment and Education Fund (DATE) (O.C.G.A. § 15-21-100). Georgia's "Super Speeder" law (O.C.G.A. § 40-6-189) requires that speeding cases involving speeds over 75 mph on a two-lane road or 85 mph or more on any road or highway in the State of Georgia incur a surcharge of \$200 in addition to the base fine and all other fees or surcharges. Failure to pay this surcharge within 120 days will result in license suspension.

Notably, at least two of these surcharges do not directly fund the criminal justice system or court actors. The funds collected from the Brain and Spinal Injury Trust Fund surcharge is forwarded from the GSCCCA to the Georgia Office of Treasury and Fiscal Services (OTFS), which then gives all of the money to the Brain and Spinal Injury Trust Fund to support the Brain and Spinal Injury Trust Commission. The Commission started in 1999 with the goal of financially assisting survivors of traumatic injuries. Since then, the commission has awarded 4,398 grants worth more than \$18.5 million to Georgians with traumatic brain and spinal injuries. Similarly, the money collected from the DATE surcharge can be used for functions beyond the criminal justice system, including drug abuse treatment or education programs.

Table 3. Surcharges in the Official Georgia Code Annotated

| Surcharge Title | Surcharge Amount | O.C.G.A. | Notes |
|--|--|--|--|
| Brain and Spinal Injury Trust Fund | 10% of the original fine | HB 870 ; Article 9 of Chapter 21 of Title 15; 15-21-151; 15-21-149 | reckless driving; driving under the influence of alcohol or drugs; |
| Crime Victim Emergency Fund (CVEF) | Unclaimed restitution within two years | 17-14-18 | |
| Drug Abuse Treatment and Education Fund (DATE) | 50% of the original fine | 15-21-100 | For any offense prohibited by Code Section 16-13-30, 16-13-30.1, or 16-13-31 |
| DUI – compensation to victims (paid to CVEF) | Lesser of \$26.00 or 11% of the original fine. | 15-21-112 | For a violation of Code Section 40-6-391 |
| Jails and Construction | 10% of the original fine | 15-21-93 & 15-21-94 | Applied in all cases |
| Law Library (county) | \$5.00 | 36-15-9 | Applied in all cases |
| Local Victim Assistance Fund | 5% of the original fine | 15-21-131 | Applied in all cases |

| | | | |
|---|---|----------|--|
| Peace Officers Annuity and Benefit Fund | \$3 dollars for any fine or bond forfeiture of \$4.00 - \$25.00; \$4 dollars for \$25.00 - \$50.00; \$5 dollars for \$50.00 - \$100.00; 5% of any fine or bond forfeiture of more than \$100.00. | 47-17-60 | Taken out of base fine; not an add-on |
| Peace Officer, Prosecutor Training Fund, and Indigent Defense Fund | The lesser of \$50.00 or 10% of the original fine; plus an additional 10% of the original fine. The lesser of \$100.00 or 10% of the original fine; plus an additional 10% of the original fine at posting of bail/bond | 15-21-73 | Applied in all cases |
| Probate Court Judge's Retirement Fund | \$3.00 | 47-11-51 | Applied to cases heard in probate court |
| Sheriff's Retirement Fund | \$2.00 | 47-16-60 | Taken out of base fine; not an add-on |
| "Super Speeder" – driving 75 mph or more on a two-lane road or at 85 mph and above on any road or highway | \$200.00 added to original fine | 40-6-189 | Failure to pay within 120 days of official notice will result in the suspension of the offender's license or driving privileges. |
| Superior and State Court Clerk Retirement Fund | \$2.00 | 47-14-50 | Taken out of base fine; not an add-on |

Fees and Court Costs

Contact with the court system in Georgia can also trigger various fees for court costs and other services, as shown in Table 4. A person convicted of a crime can be charged the full costs of the trial at the prosecutor's discretion via lien against her/his property from the date of arrest (O.C.G.A. § 17-11-1). Magistrate courts can charge up to \$70.00 for court fees for conviction (O.C.G.A. § 15-10-81). There are also a wide array of sheriff's fees, ranging from \$1.00 for each juror summoned, to \$25.00 for executing and returning any warrant (O.C.G.A. § 15-16-21). Clerk fees in superior and state courts include \$1.00 per page copying fees and a required minimum of \$100 total charged for court costs in any criminal case (O.C.G.A. § 15-6-77).

Anyone who applies for indigent defense must pay a \$50 application fee unless it is waived by the judge (O.C.G.A. § 15-21A-6). People convicted of DUI or family violence more than once must pay a \$25 photo publication fee as a repeat offender (O.C.G.A. § 40-6-391; O.C.G.A. § 16-5-26). Failure to pay the "Super Speeder" surcharge within 120 days will result in drivers' license revocation, requiring a reinstatement fee of \$50 after the surcharge has been paid (O.C.G.A. § 40-6-189).

Table 4. Fees and Court Costs in the Official Georgia Code Annotated

| Fee Title | Fee Amount | O.C.G.A. | Notes |
|--|---|---|---|
| Clerk fees (superior court) | \$3.00 – entering and docketing bills of indictment, presentments, no-bills, accusations; \$1.00 per page copies of appeal for capital felony; clerk’s certificate \$1.00; \$100 minimum assessed as court costs in any criminal case (surcharges additional); \$2.00 for each cross-indexed instrument | 15-6-77 | No requirement of refund when overage is less than \$15. Paid to county treasury unless otherwise specified by law. |
| Clerk fees (counties with populations in unincorporated areas of 350,000+) | \$25.00 | 15-6-77.3 | Advance fee on each civil and criminal appeal |
| Clerk fees (counties with populations of 550,000+) | 1) \$4.50 2) \$1.50 | 15-6-77.1 | (1) Service in entering and docketing bills of indictment, presentment, no bills, accusations, indictment or accusation record (2) Entering any record on minutes, not otherwise specified, per page |
| Drivers’ license reinstatement fees | \$25 – child support non-compliance; \$200 - DUI (1 st offense); \$90 - Failure to appear; \$200 – no insurance (1 st); \$300 – no insurance (2 nd); \$200 – no valid license (1 st); \$300 – no valid license (2 nd); \$400 – no valid license (3 rd); \$50 - Super Speeder | 40-5-54.1; 40-5-121; 40-6-189; 40-5-84; 40-5-56 | Paying in-person vs. by mail adds \$10 to the base fee |
| DUI photo publication | \$25 on all 2 nd and subsequent DUIs | 40-6-391 | Publication of photo of DUI repeat offender |
| Family violence photo publication | \$25.00 | 16-5-26 | Publication of photo of repeat offender: fee for 2 nd and subsequent convictions under the Family Violence Act. |

| | | | |
|---|---------------------------------------|----------|---|
| Indigent Defense Fund Application Fee | \$50.00 | 15-21A-6 | Any person who applies for or receives legal defense services under Chapter 12 of Title 17 shall pay; unless waived by the court. |
| Magistrate court fees for conviction | Not more than \$70.00 | 15-10-81 | |
| Prosecution costs if convicted | Varies; lien on property of defendant | 17-11-1 | |
| Sex Offender Registry Fee | annual \$250.00 | 42-1-12 | |
| Sheriffs Fees - Attending persons taken by warrant to judge's chamber | \$4.50, for each time | 15-16-21 | |
| Sheriffs Fees - Conducting prisoner before judge or court to and from jail | \$4.50, for each time | 15-16-21 | |
| Sheriffs Fees - Executing and returning any warrant | \$25.00 | 15-16-21 | |
| Sheriffs Fees - Executing a warrant of escape | \$10.00 | 15-16-21 | |
| Sheriffs Fees - Removing prisoner when habeas corpus is sought | \$15.00 | 15-16-21 | |
| Sheriffs Fees- Removing prisoners under habeas corpus when no mileage is paid | \$15.00, per day | 15-16-21 | |
| Sheriffs Fees - Serving any citation issued | \$25.00 | 15-16-21 | Pursuant to Article 10 of Chapter 10 of this title relating to bad check prosecutions or any warrant |
| Sheriffs Fees - service in every criminal case before a judge or a judge and jury | \$10.00 | 15-16-21 | |

| | | | |
|---|---------|----------|-----------------------------|
| Sheriffs Fees - Summoning each juror | \$1.00 | 15-16-21 | Grand or trial in any court |
| Sheriffs Fees – summoning each witness | \$10.00 | 15-16-21 | |
| Sheriffs Fees – Taking bonds in criminal cases | \$20.00 | 15-16-21 | |

Correctional Costs

In addition to court fines, fees, and surcharges, defendants may be responsible for costs related to correctional supervision. Table 5 lists these costs, which range from daily fees for electronic home monitoring, monthly probation supervision fees, and fees for specific post-conviction programs as required by the court. While most of these costs apply post-conviction to individuals sentenced to probation or incarceration, at the prosecutor’s discretion, defendants can be diverted pre-conviction to a pretrial intervention and diversion program. The defendant can be charged up to \$1,000 total for the program (O.C.G.A. § 15-18-80).

PROBATION COSTS

Georgia law requires that all felony-level probationers be supervised by the state Department of Community Supervision. According to the O.C.G.A. (42-8-34), felony probationers are to be charged a fee of \$23.00 per month and a one-time charge of \$50.00 for the Crime Lab Fee, as shown in Table 5. Any individual serving under active probation must pay a \$9.00 fee per month into the Georgia Crime Victims Emergency Fund (O.C.G.A. 17-15-13).

Further fees are attached to specific conditions of probation. Probationers required to participate in a day reporting center are charged \$10 per day for each day they are required to report. DUI probationers must pay an additional one-time \$25 fee to be paid into the state general fund. If the court orders a family violence intervention program as a condition of probation for a family violence offense, the convicted person is required to pay for the program (on a sliding fee scale if deemed indigent). Similarly, people on probation for failure to pay child support can be sentenced to a diversion center, which incurs a fee of not more than \$30 per day.

Technology used to supervise probationers convicted of some offenses also incurs additional costs. Ignition interlock devices required for all repeat DUI convictions can cost a defendant up to \$100 for installation and an additional \$50 to \$100 per month for lease (O.C.G.A. § 42-8-110). Providers of these devices may also charge the defendant a security deposit. Electronic home monitoring costs \$5.25 a day and GPS costs an additional \$8.75 a day (O.C.G.A. § 42-8-35).

Georgia is one of about a dozen U.S. states to allow the use of private probation companies to supervise some probationers (misdemeanor only). In fact, Georgia law explicitly disallows the state from supervising any misdemeanor probationers, who must be supervised by local or private entities instead (O.C.G.A. § 17-10-3). In 1991, Georgia revised its legal code to allow judges of county and municipal courts to enter into contracts with private corporations to provide probation supervision and provide money collections services for misdemeanor probationers with unpaid court debt (O.C.G.A. § 42-8-100). Counties or municipalities may opt to establish a public probation system in lieu of private companies if they so choose. Felony probationers may not be supervised by private companies (O.C.G.A. § 42-8-100).

Table 5. Correctional Costs in the Official Georgia Code Annotated

| Cost Title | Cost Amount | O.C.G.A. | Notes |
|---|--|-----------------|--|
| Crime Victim Compensation Fee | \$9.00 per month | 17-15-13 | In every case where an individual is serving under active probation |
| Diversion Center and Program fee | < \$30.00 per day or the actual per diem cost of maintaining the respondent | 42-8-130 | |
| Drug testing fees | Not specified | 42-8-35 | levels set by regulation of the Board of Community Supervision |
| Electronic Monitoring Fees | Electronic monitoring \$5.25 a day GPS costs \$8.75 a day | 42-8-35 | |
| Family violence intervention program | Varies; Unless the defendant is indigent, the cost shall be borne by the defendant. If indigent, sliding scale. | 42-8-35.6 | as condition of probation for family violence defined in Code Section 19-13-10 |
| Ignition interlock devices | Up to \$100 for installation and between \$50-\$100 per month for the lease. Prices vary by geographic location. | 42-8-110 | May also charge a security deposit for the safe return of the ignition interlock device as a condition of probation under this order. |
| Incarceration – deductions from inmate accounts for some expenses | Varies | 42-5-55 | To repay costs of: damage to property, medical treatment and prescription medications (unless severe mental illness as defined by department, pregnancy, or chronic illness), escape, quelling riot inmate involved in. No deductions when inmate account is \$10 or less. |
| Incarceration – fee to establish and manage inmate account | \$1.00 per month | 42-5-55 | |
| Pretrial Intervention and Diversion Program | <\$1,000 | 15-18-80 | At prosecutor’s discretion in lieu of prosecution |

| | | | |
|--|---|---------|---|
| Probation (felony only) | \$23.00 per each month under supervision, and a one-time fee of \$50.00 (Crime Lab Fee) | 42-8-34 | Condition of probation, release, or diversion |
| Probation System (DUI; Controlled substance) | \$25.00 | 42-8-34 | |
| Probation System - day reporting center | \$10.00 per day for each day required to report | 42-8-34 | |

Georgia courts can sentence people convicted of misdemeanors to “pay only probation” solely because they are unable to pay the fines and fees owed at the time of sentencing (O.C.G.A. § 42-8-103). The only service provided by probation officers in this case is collection of payments toward the debt. The statute specifies that supervision fees for pay-only probation must not exceed three months of ordinary probation supervision fees and that collection of any probation supervision fee terminate as soon as all court-imposed fines and surcharges are paid in full. However, in the event that pay-only probationers’ debt is converted to community service, the court can reinstate supervision fees in order to monitor compliance with the community service obligations (O.C.G.A. § 42-8-103(a),(c)). A probation officer must file a motion within 30 days to terminate a defendant’s probation sentence early once all moneys owed are paid (O.C.G.A. § 42-8-103(b)).

According to Georgia’s Department of Community Supervision there are currently 31 private probation companies operating in the state. Information is not publicly available on supervision fees and other costs assessed by these companies; however media reports from Georgia cite monthly supervision fees between \$25 and \$45 in addition to start-up fees (\$15) and daily fees of \$7 to \$12 for electronic monitoring.⁵ According to the Council of State Government Justice Center (2016), private probation companies in Georgia collected \$121 million in fines, fees, restitution, and other payments.

As detailed in the legal challenges section below, legal cases have been brought against private probation companies for a variety of practices, including undue incarceration for non-payment and requiring drug testing of probationers not ordered by the court. In 2015, in response to the growing number of legal cases filed against private probation companies in the state, the Georgia legislature (HB 310) created the Board of Community Supervision to provide oversight to misdemeanor probation in the state. The bill also codified requirements for “pay-only probation.”

Incarceration costs

Georgia law allows the state to recoup some costs of incarceration from inmates (O.C.G.A. § 42-5-55). These are limited to deductions from the inmate’s commissary account to repay costs of damage to property, medical treatment, prescription medications (except in the case of severe mental illness, pregnancy, or chronic illness), escape, and quelling a riot if the inmate is involved. Such deductions are not allowed when the inmate’s account balance is \$10.00 or less. The Department of Corrections also assesses a \$1.00 per month service fee for establishing and managing inmate accounts.

Restitution

Defendants in Georgia can be assessed restitution to compensate victims of crime. The statute requires that the sentencing judge take several factors into consideration when setting restitution, including the defendant’s financial resources, earnings, and obligations (O.C.G.A. § 17-14-10). Georgia law also stipulates that until all restitution has been paid, reviews are to be completed twice a year to ensure that progress is being made toward full payment (O.C.G.A. § 17-14-14). Whenever an individual makes partial payments on legal financial obligations, restitution is always paid first. The O.C.G.A. does not prescribe a maximum amount of restitution that can be assessed by a judge.

The Crime Victims Restitution Act was passed by the Georgia legislature in 2005 (House Bill 172) requiring parolees to pay restitution while under state supervision. According to the Georgia State Board of Pardons

5 See Hodson 2015 and Rappeleye 2012.

and Paroles' policy, restitution payments should begin 90 days after release from prison, with a minimum of \$30.00 per month submitted to the Georgia Department of Corrections. According to the Crime Victims Restitution Act failure to pay restitution in full by the time set by the court can be enforced by a writ of fieri facias (levy, foreclosure, garnishment), or any other form of debt collection allowed by law (HB 172).

Interest

We were unable to locate any general provision for the collection of interest on past due monetary sanctions in Georgia. Probate courts are permitted by statute to collect 5% interest on the principal amount of delinquent court debt per month, beginning after 60 days past due. This is capped at no more than 25% of the principal; however, the court can also require interest at the rate of 7 percent per year that the funds are overdue (O.C.G.A. § 47-11-51). Court debt does not go dormant during periods of incarceration (O.C.G.A. § 17-10-20), meaning that the ordinary provisions in the O.C.G.A. regarding dormancy of debt after seven years if no effort is made to execute a judgement do not apply to people who are incarcerated (O.C.G.A. § 9-12-60).

Penalties for Nonpayment

For debtors on probation, penalties for non-payment can include revocation (and imprisonment, assuming the non-payment is "willful") as well as "tolling," which means having one's probation sentence paused and extended until the debt is paid (up to the maximum time allowed by law for confinement for the offense). Both of these practices have been the subject of legal challenges in recent years, as we discuss in section two. Georgia statute requires the court to inquire into ability to pay and "make express written findings" that the individual has willfully failed to pay and has "not made sufficient efforts to pay" (O.C.G.A. § 42-8-102(f)(2)(A)). If the judge determines that failure to pay was willful, an individual's probation sentence can be revoked in its entirety or up to 120 days, whichever is less.

If a monetary judgement goes unpaid, the court can issue a writ of execution (writ of fieri facias, or fi. fa.) against the person whose payments are delinquent (O.C.G.A. § 17-10-20). This allows for a levy and/or foreclosure of property in order to pay the delinquent judgement. If the judge sets a certain amount of time for the debt to be paid, a writ of execution cannot be filed until that time period has expired. Probation officers may also file a sworn affidavit with the court that details how much is overdue and what the agency has done to attempt to collect it (O.C.G.A. § 42-8-34.2). Once the court signs off on the affidavit, the clerk of the sentencing court can then file a writ of fieri facias. A writ of fieri facias for payment of court debt in Georgia is transferrable and can be sold to a third party like any other debt.

Another mechanism for collection of overdue court debt is via garnishment of the defendant's bank account or employer (O.C.G.A. § 17-10-20). The Solicitor of the court files the garnishment as a lawsuit against the debtor's bank account or employer (the garnishee). Further, Georgia law allows the Administrative Office of the Courts to request recoupment of court debts greater than \$25.00 via withholding money from debtors' tax returns (O.C.G.A. § 48-7-160). The legislature passed HB 1000 in 2014 adding courts to the list of agencies that can pursue this form of debt collection. According to the *Atlanta Journal-Constitution*, 11 courts throughout the state took part in a pilot of the "Tax Refund Intercept Project" in 2015, including the Atlanta Municipal Court and the Fulton County State Court.⁶ The Department of Community Supervision and the juvenile court are also allowed to request repayment of debt (e.g. probation fees and restitution) via garnishment of tax returns.

Relief from Financial Responsibility

According to the Georgia Indigent Defense Act of 2003, the relevant public defender's office determines whether a defendant is indigent for the purpose of legal representation (O.C.G.A. 17-12-80) The law leaves it to the court to decide whether or not an individual can afford to pay for monetary sanctions (Roberson v.

6 See Teegardin 2016.

State 2016).⁷

When sentencing people to misdemeanor probation, Georgia law requires the court to assess individuals' ability to pay when setting fines, fees, and restitution (O.C.G.A. § 17-14-10(a); 17-14-7; 42-8-102(c); 42-8-102(e)). According to the statute, if the court finds that a defendant is unable to pay or demonstrates significant financial hardship, the court must waive, reduce, or convert to community service the fines, fees, and surcharges. "Significant financial hardship" is defined as "a reasonable probability that an individual will be unable to satisfy his or her financial obligations for two or more consecutive months" (O.C.G.A. § 42-8-102(e)(1)(c)). Further, the court is directed to *presume* significant financial hardship when the defendant has a developmental disability (defined under O.C.G.A. § 37-1-1), is totally or permanently disabled (O.C.G.A. § 49-4-80), earns less than 100 percent of the Federal Poverty Guidelines, or has been released from confinement within the past 12 months and was incarcerated for at least 30 days prior to release. There is no similar provision for felony defendants.

If an individual's misdemeanor probation sentence is revoked in its entirety, all court debt owed is also "negated by a defendant's imprisonment" (O.C.G.A. § 42-8-105(f)). If the probation balance is only partially revoked, then the court must determine how much of the unpaid debt the probationer will owe after release from prison based on the probationer's ability to pay as described in O.C.G.A. § 42-8-102(f).

Defendants for either felony or misdemeanor offenses can seek relief of financial responsibility through translation of some or all of the debt to community service as permitted by Georgia law (O.C.G.A. § 17-10-1(d); 42-8-102(d)). Under this provision, one hour of community service is equal to one hour of paid labor at minimum wage. Defendants can request to pay their court debt via this mechanism either before or after sentencing.

We did not find any allowances in the Georgia legal code for such practices as "pay to sit" (substituting time in jail for debt) as exists in other states.

Collateral Consequences

People convicted of felony offenses in Georgia are not allowed to vote until completion of sentence, including payment of any fines, fees, and surcharges (Ga. Const. Art. II, Section 1, Paragraph 3).

In general, Georgia courts are not allowed to suspend a person's drivers' license for failure to pay court debt. The court is, however, allowed to suspend a defendant's drivers' license for failure to appear (O.C.G.A. § 40-5-56(a)). If an individual has been given a set time to pay monetary sanctions and does not attend court as required after that time has expired, this constitutes failure to appear and the license can be suspended.

Exceptions to this rule apply in convictions for select traffic offenses. Failure to pay the "Super Speeder" fee within 120 days of official notice will result in drivers' license suspension. An additional reinstatement fee of \$50 applies once the Super Speeder fee is paid (O.C.G.A. § 40-6-189). People who lose their drivers' licenses as a result of convictions for various traffic offenses also must pay substantial reinstatement fees in addition to other fines, fees, and surcharges (see Table 4). Failure to pay child support can also result in loss of driving privileges, with a \$25 reinstatement fee charged once the debt is paid (O.C.G.A. § 40-5-54.1).

LEGAL CHALLENGES

In 1983, *Bearden v. Georgia* established the precedent for "willfulness" of payment for defendants in criminal cases. The defendant was convicted of burglary and theft and sentenced to probation and \$750 in fines, fees, and restitution. He was ordered to pay \$200 within two days of his sentencing and the remaining \$550

⁷ Indigence is defined in the O.C.G.A. (17-12-2) along various thresholds depending on offense severity. A person charged with a misdemeanor offense, a municipal or county violation, or violation of probation must earn less than 100 percent of the federal poverty guidelines to be deemed indigent. In the case of juvenile defendants charged with a misdemeanor, her/his parents must earn less than 125 percent of the federal poverty guidelines for their child to qualify as indigent. A defendant charged with a felony offense must earn (in the case of a juvenile defendant his or her parents must earn) 150 percent or less of the federal poverty guidelines to be deemed an indigent defendant.

within four months. After becoming unemployed, Bearden informed his probation officer that he would be unable to make the subsequent payment and a hearing was held to establish his unemployment and his lack of income and assets. However, his probation was revoked and he was incarcerated for contempt. The U.S. Supreme Court held that a sentencing court cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence that he was responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence (pp. 461 U.S. 664674). As a result of this case and subsequent Supreme Court cases, courts in the U.S. have determined that prior to incarcerating a defendant for nonpayment a judge must hold hearings to determine whether the defendant has failed to make payments and whether the defendant has "willfully" chosen not to make payments.

MONETARY SANCTIONS LEGAL CHALLENGES

There have been many legal cases within the state of Georgia challenging the use of monetary sanctions. In one example, *Bailey v. State* (1999), Charles Bailey was convicted of driving with a suspended license and no proof of insurance and was sentenced to fines totaling \$1,203. Bailey appealed this sentence because the trial court had sentenced him to more than \$25 for the no proof of insurance even though he attempted to show his proof of insurance to the traffic court judge who refused to consider the evidence. Under O.C.G.A. § 40-6-10 (4), "if the person receiving a citation under this subsection shows to the court... that required minimum insurance coverage was in effect at the time the citation was issued, the court shall return the driver's license upon payment of a fine not to exceed \$25". The Georgia Court of Appeals vacated the sentence on the conviction for no proof of insurance and remanded the case back to trial court for resentencing.

In 2001, a Michael Barraco appealed his sentence to the Court of Appeals of Georgia because, he claimed, the trial court did not apply O.C.G.A § 15-21-73 (a) (1) (Surcharge for the Peace Officer and Prosecutor Training Fund) properly. Barraco was charged \$75 under this code section because the trial court applied this surcharge to both the fine and court fees. The appeal states that this misuse of a court surcharge is an excessive penalty and exceeds the money cap set by the Georgia Code (a sum equal or lesser than \$50.00 or 10% of the fine). The court of appeals found in favor of Barraco and directed the trial court to resentence the defendant (*Barraco v. State* 2001).

William Rouse challenged his \$650 fine after his probation was revoked in 2002, citing O.C.G.A § 42-8-36(b), which states "any unpaid fines, restitution, or any other moneys owed as a condition of probation shall be due when the probationer is arrested but, if the entire balance of his probation is revoked, all the conditions of probation, including moneys owed, shall be negated by his imprisonment" (*Rouse v. The State* 2002). However, Court of Appeals of Georgia ruled that the fine was not assessed as a condition of Rouse's probation, but rather was part of the mandatory sentence for driving under the influence (O.C.G.A. § 40-6-391), therefore O.C.G.A. § 42-8-36(b) did not apply.

In 1991, Julia Findley was found guilty of two counts of theft by taking and 106 counts of forgery and was sentenced to concurrent five year terms for the thefts and two consecutive ten year terms for the forgeries. The trial court also allowed for probation of the sentences after five years when the total restitution (\$52,000) was paid. The court stipulated that Findley make weekly payments of \$100 to pay the restitution in the allotted time. In 1996, the court revoked 30 days of probation because of failure to pay restitution in a timely matter. In 1998, the court revoked the entire balance of the probated sentence due to failure to pay restitution to the victim. Findley initiated habeas corpus hearings in which the habeas court concluded the revocation was excessive based on precedent set in cases such as *Glover v. State* (2000). However, the Supreme Court of Georgia (*Chatman v. Findley* 2001) reversed the habeas court, noting that because Findley's restitution was re-imposed as a special condition of probation in 1996, revocation in 1998 due to failure to pay was permitted by O.C.G.A. § 42-8-34.1 (c) (*Chatman v. Findley* 2001).

INDIGENT DEFENSE LEGAL CHALLENGES

Challenges have also been brought related to indigent defense. For example, in 2009, Johnathan Thomas appealed his conviction of criminal trespassing on three different grounds, including the trial court's denial of indigence. He argued that the trial court considered the income of his mother and step-father when

determining whether or not he was indigent. The Court of Appeals of Georgia rejected Thomas' appeal, ruling that the determination of indigence lies at the discretion of the trial court and that determination is not subject to review (Thomas v. State 2009).

Sharon Leavell was convicted of a DUI and failing to maintain her lane but appealed her conviction to the Court of Appeals of Georgia on the grounds that the trial court denied her request for transcripts free of charge. The court ruled on March 19, 2015 that since it could find whether the trial court determined Leavell to be indigent, the trial court's denial of a free transcript was vacated and the case was remanded back to the trial court to determine if Leavell was indigent (Leavell v. State 2015). The court also cited the opinion of Thomas v. State (2009).

In March of 2014, Necole "Nick" Roberson was convicted of misdemeanor family violence, simple battery. Roberson appealed, asserting that she was unable to pay the fines and fees required. She requested to obtain a transcript of the trial without charge due to her indigence but the court was skeptical because during the trial she had testified that she recently "moved into a nice house." The trial court denied her motion. The Court of Appeals cited the Indigent Defense Act of 2003, stating that the relevant public defender's office determines whether a defendant is indigent for the purpose of legal representation (O.C.G.A.17-12-80) but there is no provision in the statute that other court costs are covered under the public defender's determination of indigence. This law leaves the decision of whether or not an individual can afford to pay for fines, fees, and surcharges to the court (Roberson v. State 2016).

PRIVATE PROBATION LEGAL CHALLENGES

Many of the more recent legal challenges to monetary sanctions in Georgia revolve around private probation companies, typically brought to the Supreme Court of Georgia on charges of civil rights infringements. For example, in 2015 Kevin Thompson was placed on pay-only probation for a traffic fine. The initial fine with added probation fees totaled \$838, which Thompson was unable to pay and was incarcerated as a result of a probation revocation. Upon appeal, the Supreme Court of Georgia found that the Thompson's constitutional right to an indigence hearing was violated (Thompson v. DeKalb County, Georgia et al. 2015).

In another case (Johnson v. State, 707 S.E.2d 373 (Ga. Ct. App. 2011)), Blake Anthony Johnson pled guilty to possession of marijuana in 2008 and was sentenced to eight years on probation and ordered to pay a fine in the amount of \$1,500. He was ordered to pay court costs of \$110 and a monthly probation supervision fee of \$32. In 2009, the state filed a petition to modify or revoke Johnson's probation due to alleged failure to pay court-ordered fines, costs, and fees. Two months later, Johnson pled guilty to possession of marijuana with intent to distribute and sentenced to ten years on probation, with the same conditions imposed as in his previous conviction. Again, the state filed a petition to modify or revoke Johnson's probation due to failure to pay. The Court of Appeals of Georgia found that,

"In the instant case, as in Bearden v. Georgia, although Johnson entered a negotiated plea, he was sentenced to general fines, costs, and fees. Thus, in order to revoke his probation based solely on the failure to pay these costs, the trial court was required to make a finding as to Johnson's willfulness, and if it concluded that Johnson was not at fault, it was required to consider other punishment alternatives, which it did not do. Therefore, we reverse the revocation of probation and remand this case to the trial court for further proceedings consistent with the law" (Johnson v. State, 707 S.E.2d 373 (Ga. Ct. App. 2011)).

In 2001, Victor Dickey was convicted of theft for taking over \$160,000 from his employer. The negotiated plea agreement sentenced him to ten years on probation. Additional conditions attached to Dickey's sentence included payment of restitution. When Dickey violated the restitution order, the court revoked his probation. Dickey's counsel responded to the revocation by claiming that the restitution was not paid because the defendant was incarcerated and unable to pay. Counsel also argued that the Court is not permitted to revoke probation based on the inability to pay, citing Bearden v. Georgia. However the trial court rejected this argument stating that the defendant knowingly entered into a contract, by agreeing to the plea bargain, which required the defendant to pay \$100,000 in restitution by August 15, 2001 (Dickey v. State, 570 S.E.2d

634 (Ga. Ct. App. 2002).

Five cases have been brought to-date against Sentinel Offender Services, a large private probation company that operates in multiple counties in Georgia. The cases have addressed issues of unlawful incarceration, tolling (extending probation for non-payment), and imposition of non-court ordered drug testing fees. Two cases from Richmond County illustrate this litigation against unlawful incarceration. In 2008, Hills McGee, a veteran living on \$243/month in veteran's benefits, was convicted of public drunkenness and obstruction of a police officer and was sentenced to pay a fine of \$270 and probation. He was placed under the supervision of Sentinel Offender Services, which required additional fees. Although his fine could have been converted into community service, Sentinel required McGee to continue making payments, filing a warrant for revocation of probation when McGee failed to pay. The court found that McGee had violated the terms of his probation and ordered the Sheriff of Richmond County to hold him in custody for two months or until he paid \$186 to Sentinel. On January 27, 2010, the Superior Court of Richmond County held a habeas corpus hearing and McGee was released from the sheriff's custody due to improper incarceration for inability to pay (11-14077 - Hills McGee v. Sentinel Offender Services, LL). Similarly, in 2012, Kathleen Hucks, was arrested for failing to pay additional private probation fees to Sentinel. Judge Daniel Craig of the Richmond County Superior Court ruled that Hucks had been incarcerated illegally (Hucks v Sentinel Offender Services 2012).

One of the most influential cases against Sentinel, *Glover v Sentinel Offender Services* 2014, led to changes in the O.C.G.A. effective in 2015 regarding tolling of probation sentences. Although the court concluded that Georgia's statute did not allow for the tolling of misdemeanor probation sentences at that time, the private probation statutory scheme has since been amended to include tolling provision for misdemeanor probation. Tolling allows the court to pause an individual's probation term if a probationer is not compliant with the terms of the sentence, including paying monetary sanctions. This extends the length of the sentence until these obligations are met, but not beyond the maximum time of confinement allowed by law (O.C.G.A. § 42-8-102).

In March of 2016, another case regarding misdemeanor tolling was brought to the Georgia Supreme Court against Sentinel Offender Services. In this case the majority opinion found that tolling is authorized by Georgia code for privately misdemeanor probated sentences (*Glover v Sentinel Offender Services*, 2014; *Anderson v Sentinel Offender Services* 2016).

Lastly, Sentinel Offender Services has also been sued for requiring people on probation for minor traffic offenses to submit to and pay for drug tests that were not ordered or authorized by any court. This case also alleged that Sentinel coerced the defendant to pay fees using threats of immediate incarceration for non-payment at the sole discretion of the probation officer. The court found that both of these actions by Sentinel and one of their probation officers, Stacy McDowell-Black, violated the United States Constitution and Georgia Law (*Sanders Luse and Ligocki v Sentinel Offender Services and Stacy McDowell-Black* 2016).

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF SELECTED JURISDICTIONS

To examine local variation, we present information from six jurisdictions in Georgia that range in population size and other social and legal characteristics: Fulton County (Atlanta), Dooly County (Vienna) and Whitfield County (Dalton). This section details select demographic characteristics, socio-legal context, and any evidence available online regarding court policies and practices in regards to monetary sanctions in these jurisdictions. Table 6 summarizes characteristics of each jurisdiction, including population size, race, ethnicity, poverty, per capita revenues collected via monetary sanctions, as well as jail expenditures per capita. Figure 2 compares per capita fines, forfeits, and court fees revenue by jurisdiction.

FULTON COUNTY

Fulton County is located in northwest Georgia with a population size of 967,100 people, making it the most populous of the 28 counties that comprise the Atlanta metropolitan statistical area (MSA). The racial demographic breakdown of Fulton County is roughly split between Whites (47 percent) and African Americans (44 percent). About 8 percent of Fulton County's population reports Latino ethnicity. The poverty rate in Fulton County is about 18 percent, on par with the state average (18.5 percent). The electorate in

Fulton County tends to vote more Democratic than the state as a whole (64 percent of Fulton registered voters chose Obama in 2012 versus 45.5 percent for Georgia voters overall).

Table 6. Characteristics of select Georgia jurisdictions

| | Population | Poverty Rate | Percent African American | Percent Latino | Fines, forfeits, and court fees per capita | Jail expenditures per capita |
|------------------|------------|--------------|--------------------------|----------------|--|------------------------------|
| State of Georgia | 9,907,756 | 18.5 | 30.4 | 9.1 | 31.5 | 56.98 |
| Dooly County | 14,443 | 27.9 | 49.5 | 6.7 | 263.4 | 187.3 |
| Fulton County | 967,100 | 17.8 | 43.5 | 7.7 | 17.7 | 75.8 |
| Whitfield County | 103,132 | 20.1 | 3.8 | 32.6 | 47.4 | 61.7 |
| City of Atlanta | 440,641 | 25.2 | 52.4 | 5.6 | 57.4 | n/a |
| City of Dalton | 33,336 | 26.8 | 8.2 | 46.3 | 40.7 | n/a |
| City of Vienna | 3,880 | 35.8 | 64.1 | 9.1 | 16.2 | n/a |

Note: Population, poverty, and population composition data from 2014 American Community Survey 5 year averages, U.S. Census Bureau. Revenue data from 2014 Georgia Department of Community Affairs, Reports of Local Government Finances.

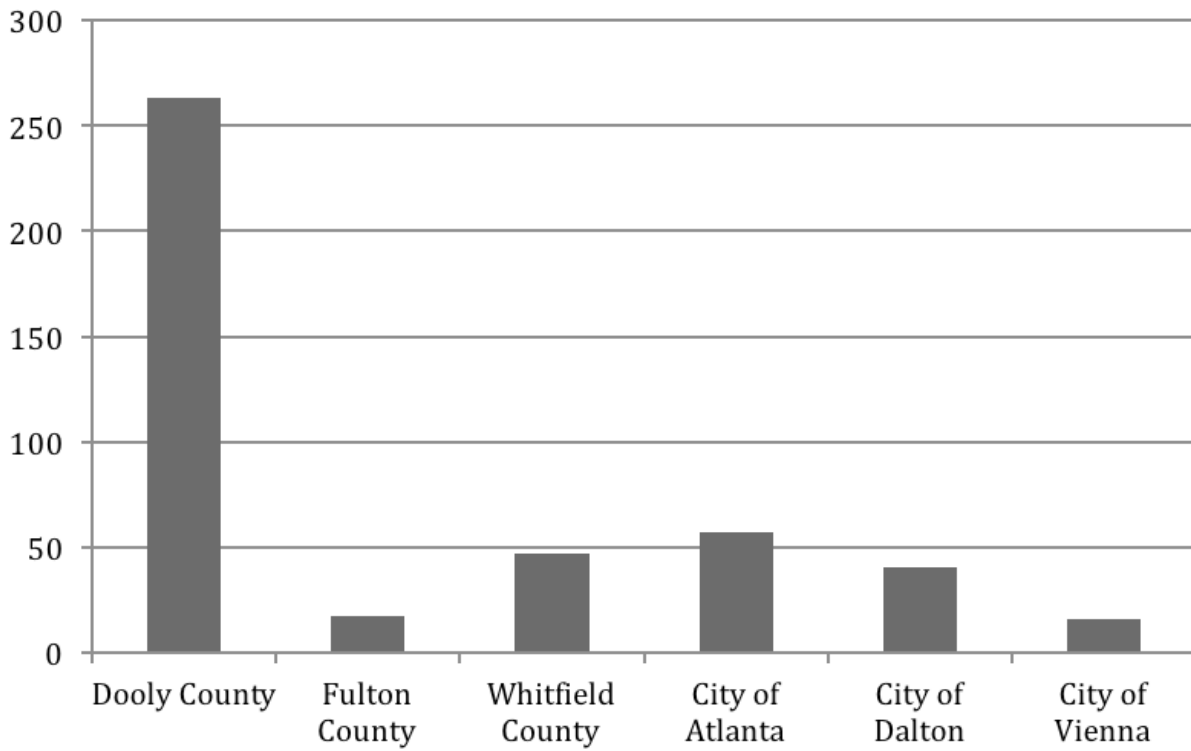
Fulton County is part of the Atlanta Judicial Circuit (5th Judicial Administrative District). The Superior Court of Fulton County handles all felony criminal cases for the county. In 2015, the Fulton Superior Court resolved 8,128 criminal cases according to the court’s annual report. Additional courts of limited jurisdiction that process criminal cases in the county include the State Court of Fulton County (misdemeanors and traffic violations), the Magistrate Court of Fulton County (arrest warrants, warrant applications, first appearance hearings, preliminary hearings), and the DUI Court (operated within the state court), which is a specialty court that provides 24 months of post-conviction, judicially-supervised treatment for those with multiple DUI infractions. There is a \$750 fee required for participation in Fulton County’s DUI Court.

According to the Georgia Department of Community Affairs, Fulton County collected \$17,649,258 in revenue from court fines, fees, and forfeitures in 2013, which comprised 2.6 percent of the county’s own source revenues. This is lower than the average for counties of similar size in Georgia (3.7 percent). Fulton County spent \$112.2 million on sheriff department and jail operations combined in 2014. These expenditures comprised 17.4 percent of the county’s budget for that fiscal year.

City of Atlanta

Atlanta is the capitol of the state of Georgia. Although the Atlanta metropolitan area is quite large, the city proper is home to only 440,641 residents out of nearly 6 million people metro-wide. Atlanta’s population is 52.4 percent African American and 5.6 percent Latino. The poverty rate in Atlanta is 25.2 percent, higher than the state and Fulton County as a whole. Atlanta’s unemployment rate is 6.3 percent.

Figure 2. Fines, fees, and forfeits revenue in select Georgia jurisdictions per capita



Source: 2014 Georgia Department of Community Affairs, Reports of Local Government Finances.

The Atlanta Municipal Court, like other municipal courts in the state, handles traffic violations that occur within its jurisdiction as well as city ordinance violations. The court operates several special programs, including a Community Court that uses a restorative justice framework to respond to “quality of life crimes” such as prostitution, disorderly conduct, panhandling, and low-level drug offenses. The Teens Learning Control (TLC) program is an education program for teen drivers between age 17 and 21 who are convicted of driving offenses and possession charges. The court also offers clinical services for mental and chemical health assessments, as well as classes in anger management and conflict resolution.

In 2014, the Atlanta Municipal Court reported/remitted a total of \$33.3 million in fees to the GSCCCA (see Table 7). According to the Georgia Department of Community Affairs, Atlanta collected \$26.2 million in revenue from court fines, fees, and forfeitures in 2014, which constitutes 3 percent of the city’s own source revenues (average for similar sized cities is 3.3 percent), as shown in Figure 3. The Atlanta Municipal Court had created a warrant amnesty program in 2016. According to the court this program was a “goodwill gesture” to individuals who have failed to appear for their court dates and face arrest of other penalties. This program was active for a limited time, from April 1st until May 13th, and was created to clear the thousands of active warrants. Under the program outstanding warrants issued before January 1, 2015 were cancelled and the contempt fee for failure to appear was waived.

Table 7. Funds Collected in Georgia and Select Jurisdictions, 2014

| Court | Remittable | Reportable | Total |
|-----------------------------------|---------------------|----------------------|----------------------|
| Fulton County Juvenile Court | \$7,992 | 35,970 | \$43,962 |
| Fulton County Magistrate Court | \$1,437,637 | \$5,404,296 | \$6,841,933 |
| Fulton County Probate Court | \$139,711 | \$1,480,281 | \$1,619,992 |
| Fulton County State Court | \$1,174,503 | \$4,520,861 | \$5,695,365 |
| Fulton County Superior Court | \$350,151 | \$5,476,571 | \$5,826,722 |
| Atlanta Municipal Court | \$3,054,192 | \$30,303,958 | \$33,358,151 |
| Whitfield County Juvenile Court | \$2,588 | \$45,031 | \$47,619 |
| Whitfield County Magistrate Court | \$86,179 | \$380,175 | \$466,354 |
| Whitfield County Probate Court | \$163,027 | \$1,020,781 | \$1,183,808 |
| Whitfield County Superior Court | \$329,560 | \$807,545 | \$1,137,105 |
| Dalton Municipal Court | \$107,421 | \$597,555 | \$704,975 |
| Dooly County Juvenile Court | \$220 | \$1,104 | \$1,324 |
| Dooly County Magistrate Court | \$12,524 | \$69,841 | \$82,365 |
| Dooly County Probate Court | \$459,968 | \$2,915,350 | \$3,375,318 |
| Dooly County Superior Court | \$42,542 | \$117,754 | \$160,297 |
| Vienna Municipal Court | \$13,194 | \$68,886 | \$82,080 |
| Total All Georgia Courts | \$90,657,831 | \$447,020,722 | \$537,678,554 |

Source: GSCCCA

DOOLY COUNTY

Dooly County is located in central Georgia with a population of about 14,000 people. About half of the residents of Dooly County are African American (51 percent) and about 6 percent report Latino ethnicity. The unemployment rate in Dooly County is 8.5 percent and about 30 percent of the population lives in poverty. Dooly residents tend to vote Democratic; only forty-six percent of registered voters chose Romney in 2012. Agribusiness and related industries are the key economic drivers in Dooly County, which includes growing cotton and peanuts, as well as a Tyson Foods poultry plant. One of Georgia's 30 state prisons is located in Dooly County. Dooly State Prison is a medium security facility that houses adult male inmates and has a fully operational farm that ships produce to other state prison facilities.

Dooly County is part of the Cordele Circuit of Georgia's Eighth Judicial District. The Superior Court with jurisdiction over felony cases from Dooly County is located in Cordele, GA (Crisp County). The Dooly County Magistrate Court and Probate Court operate out of the courthouse in the City of Vienna, the county seat. Traffic offenses are handled by the Dooly County Probate Court. Dooly County spent about \$5.6 million on county sheriff and jail operations in 2014 (\$396 per capita; over twice the rate of similar sized counties). These expenditures make up 37 percent of the county's operating budget.

According to data from the Georgia Department of Community Affairs, Dooly County collected \$4 million in fines, fees, and forfeitures in 2013, which made up 27 percent of the county's own source revenue, the highest rate among our selected jurisdictions (see Figure 3 below). This rate is nearly five times higher than the average for counties of similar size (6 percent).

City of Vienna

The City of Vienna is home to 3,380 residents, most of whom (64 percent) are African American. About 9 percent of Vienna residents report Latino ethnicity. The poverty rate of 35.8 percent in Vienna is the highest among our focal sites in Georgia and nearly twice the state average. Vienna's unemployment rate is 5.9 percent.

The City of Vienna operates a municipal court, however it lacks a dedicated website and so very little information is available online. According to the Georgia Department of Community Affairs, the Vienna Municipal Court collected \$62,000 in revenue from court fines, fees, and forfeitures in 2014. This made up 3.3 percent of the city's budget that year, which is lower than the average for similar-sized cities (9.5 percent).

WHITFIELD COUNTY

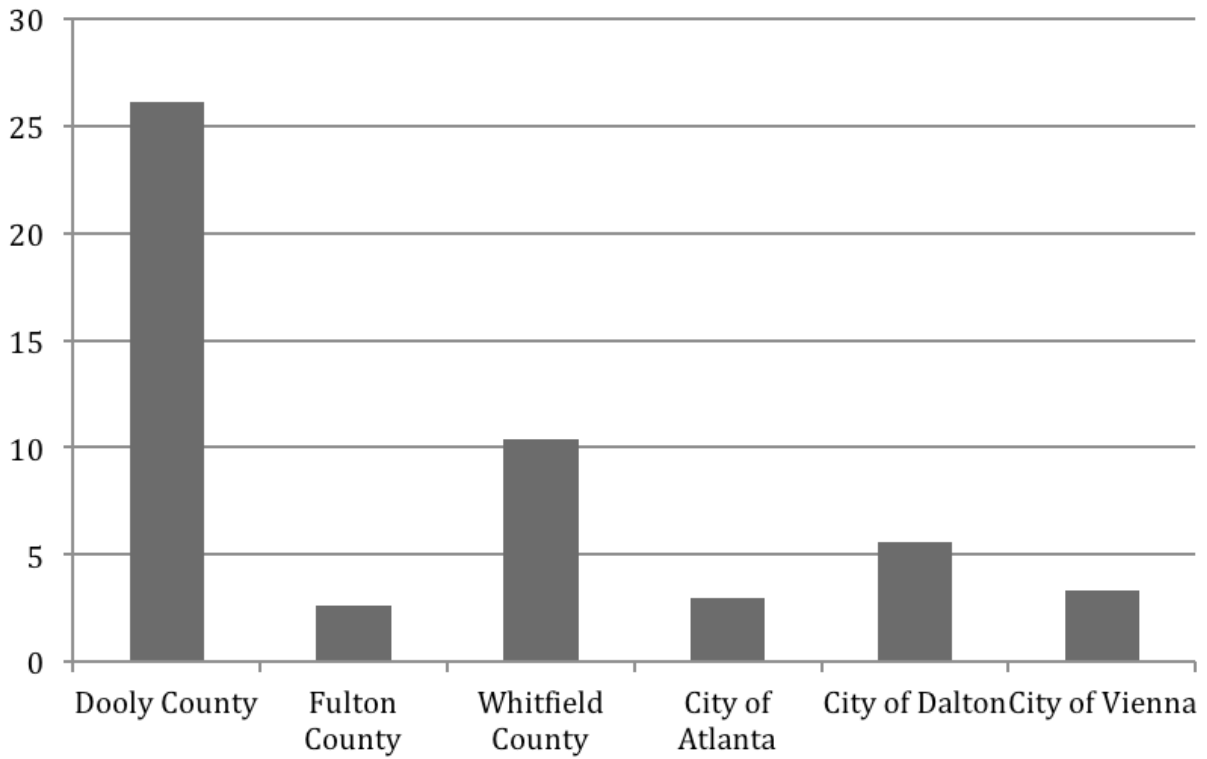
Whitfield County is located in the northwestern corner of Georgia, just south of Chattanooga, TN on Interstate 75. Whitfield is a moderately sized county, with a population of about 103,000. The county is 92 percent white (as compared to the state average of 62 percent), but 33 percent of the population reports Latino ethnicity, the highest rate of any county in the state. Voters in Whitfield County tend to vote Republican; 72 percent of registered voters chose Romney in the 2012 presidential election (vs. 53 percent of voters statewide). Poverty in Whitfield County is slightly lower than the state average (14 vs. 18 percent) but the unemployment rate is slightly higher compared to the state as a whole (6.7 vs. 5.4 percent). The primary industry in the area is carpeting and floor coverings. According to the Bureau of Labor Statistics, 33 percent of the labor force (18,000 workers) in Whitfield County is employed in manufacturing.

Three trial courts have jurisdiction in Whitfield County, including the Conasauga Circuit Superior Court, Whitfield County Probate Court, and the Magistrate Court of Whitfield County. All of these courts operate out of the Whitfield County Courthouse in the City of Dalton. The Whitfield County Probate Court oversees traffic offenses for the county. The Magistrate Court of Whitfield County processes search and arrest warrants, criminal preliminaries (misdemeanor and felony), and county ordinance violations. The Superior Court handles misdemeanor and all felony-level cases.

Whitfield County spent \$12.3 million on county sheriff and jail operations in 2014 (\$119 per capita; lower than the average \$155 for similar sized counties). These costs comprise 24 percent of the county's budget. According to data from the Georgia Department of Community Affairs, Whitfield County collected \$3.2 million in revenues from fines, fees, and forfeitures in 2013. This constitutes 7.5 percent of the county's own source

revenues for that year, which is about twice the average (3.8 percent) for counties similar size in Georgia (population 100,000 or above).

Figure 3. Fines, fees, and forfeits revenue in select Georgia jurisdictions as percent of total revenues



Source: 2014 Georgia Department of Community Affairs, Reports of Local Government Finances.

City of Dalton

The City of Dalton is the county seat of Whitfield County with a population of about 33,000 people. Eight percent of Dalton's residents are African American and nearly one-half (46 percent) of Dalton residents report Latino ethnicity. The poverty rate in Dalton is 27 percent and unemployment stands at 7 percent. Dalton's city motto is "The Carpet Capital of the World."

The Dalton Municipal Court handles all misdemeanor traffic and criminal cases (with some exceptions) that occur within the city limits of Dalton, including code enforcement cases and city ordinance violations. In 2013, Dalton collected \$1.3 million in revenues from fines, fees, and forfeitures. This made up 5.6 percent of the city's own source revenues, a rate on par with the average for Georgia cities of similar size (6 percent).

ADDED MONETARY SANCTIONS IN COUNTY AND MUNICIPAL CODES

The sections below discuss how county and municipal codes, as well as public documents provided by the courts and clerks in these jurisdictions describe their monetary sanctions. By and large, the fines, fees, and surcharges assessed in the county-level courts appear to be as dictated by the O.C.G.A., at least according to the fee schedules available online. Municipal courts impose several additional fines and fees as compared to county courts. In this section we provide a few examples of additional fines and fees beyond those in the state code for traffic and municipal code violations in these jurisdictions.

FINES

For failure to appear in court for traffic violations, Georgia law allows judges to impose a fine up to \$200 or confinement in jail for up to three days in addition to suspending driving privileges until proof of payment is received and an additional restoration fee is paid (O.C.G.A. 40-13-63 (2010); O.C.G.A. 40-5-56 (2010)). The courts in our study vary in the amount they impose, according to published fee schedules online. Whitfield County Probate Court charges defendants who fail to appear for traffic offenses \$30 and possible suspension of driving privileges. Dalton Municipal Court charges defendants \$130 for contempt if they appear late on their court date. For failure to appear, the Dalton Municipal Court assesses defendants a \$130 fine for contempt and the suspension of driving privileges. The court may also issue a warrant for the defendant's arrest. The City of Vienna municipal code allows judges to impose a fine of up to \$75 for contempt.

The Municipal Court of Atlanta's Bond Schedule (available online) specifies 21 additional city code violations not specified by the O.C.G.A. with base fines ranging from \$25 (for missing/faulty brakes on a bicycle) to \$500 (for various restrictions on trucks and buses). Once applicable fees and surcharges are added, the total monetary sanctions assessed for these city ordinance violations range from \$38 to \$710 per offense. Most of these additional violations relate to traffic.

In Dalton, several additional offenses are specified in the municipal code, including defacement of property, graffiti, loitering, and various traffic restrictions. Defacement of property carries a possible fine of \$100 to \$1,000 (Ord. of 4-19-1999(1), § 1(15-36—15-38); Ord. No. 01-02, § 1(15-33(a)(3)), 3-5-2001). Loitering is punishable by a fine between \$5.00 and \$200 for each offense (Code 1983, § 15-19). Fines for graffiti range from \$200 to \$1,000 for each violation, plus community service and repayment to the property owner at the judge's discretion.

The municipal code of Vienna allows for judges to impose a fine of up to \$1,000 and imprisonment or community service not to exceed 180 days for any offense for which no specific penalty is otherwise specified in the code or in state law (Code 1980, § 1-1-5). Vienna's code also allows for a fine between \$105 and \$362 and between 8 and 24 hours of community service for public indecency (Ord. of 7-27-09(2)). The use of "jake brakes" is also unlawful in Vienna and subject to a fine of up to \$500 (Ord. of 10-23-07). Vienna's municipal code permits judges to assign those convicted of any code violation to a "city work gang" as an alternative to a fine or imprisonment, for a period of up to 60 days (Code 1980, § 4-13).

USER FEES

In addition to the fees and surcharges dictated by the O.C.G.A., several jurisdictions impose their own user fees for various court services. The DUI Court of Fulton County charges program fees for participants: an initial clinical evaluation fee of \$95 and a weekly fee of \$50, in addition to any other fees and fines assessed by the

court. The Fulton County DUI Court Program Handbook notes that anyone owing more than \$350 at the end of any phase of the program will not be allowed to advance to the next phase, nor will anyone owing fees at the end of treatment receive the certificate of completion. During the first 90 days, participants do not have to report to probation or pay probation fees (the program is 24 months long in total).

The Municipal Court of Atlanta assesses an additional Victims and Witnesses Assistance Program surcharge of \$3.00 to nearly every offense, except for seatbelt and texting while driving violations (S.B. 498/2004, § 6, 5-17-04). The Atlanta municipal court also assesses an additional 15 percent surcharge to be paid into the city jail fund (S.B. 498/2004, § 7, 5-17-04). The City of Dalton Municipal Court assesses a \$75 fee for any violation of a city ordinance or state statute (in which the base fine is \$30 or more) to cover court administrative costs (Ord. No. 04-06, § 1, 12-16-2003; Ord. No. 06-01, § 1, 1-17-2006).

Each court utilizes online payment companies that assess additional convenience fees for payment. Even courts within the same jurisdiction may use a completely separate service. Dalton and Vienna municipal courts use an online service called Government Window to collect traffic fines and fees. The web interface notes that a service fee will be charged but no amount is provided without entering a specific citation number. Whitfield County Probate Court contracts with EZ Courtpay for online payment of traffic fines. According to information provided online from another county in Georgia, EZ Courtpay charges anywhere from \$1.00 to \$45.00 in processing fees, depending on the amount of the fine (minimum transaction is \$5.00, \$1,500 maximum).⁸ Dooly County Probate Court contracts with payyourtix.com for the online payment of traffic fines. Payyourtix.com notes that a processing fee is charged but does not specify an amount without providing a citation number. The Magistrate Court of Whitfield County and the Superior Court contract with nCourt for online fee payments, which entails a \$20 processing fee.⁹ Fulton County courts appear to use their own online payment portal, but the Atlanta Municipal Court uses CourtView Justice Solutions. We were unable to locate information on service fees for this company.

PRIVATE PROBATION

Each jurisdiction in our analysis contracts with a different private company to provide misdemeanor probation supervision. None of these jurisdictions use public probation departments for misdemeanor supervision. Fulton County courts assign misdemeanor cases to Judicial Correction Services, while the Atlanta Municipal Court uses Sentinel Offender Services. Both of these companies have faced significant lawsuits in Georgia and Alabama in recent years.

Misdemeanor probation cases for Dooly County are supervised by a private company called Judicial Alternatives of Georgia, Inc. (JAG) Probation located in Cordele, GA. JAG holds reporting hours at the Dooly County Courthouse once a week. Specific information is not provided regarding fee amounts on JAG's website, but the FAQs page does note that "non-reporting" probationers are not charged supervision fees. The Southern Center for Human Rights, which regularly litigates cases related to private probation in Georgia, recently filed a complaint to the Georgia Board of Community Supervision on behalf of a client convicted of driving without insurance in Dooly County. The complaint alleges that JAG filed a probation revocation warrant for the client despite the fact that she had already paid \$550 on a \$705 fine and had regularly reported by phone to her JAG probation officer (as demonstrated by her phone records). According to this complaint, JAG did not keep accurate records of the client's payments or reporting. JAG also charged this client \$360 up-front for a year's worth of supervision fees. As a result of the revocation, the client spent seven days in jail and was only released after her mother drove from the Atlanta area to Dooly County to pay an additional \$155 of the client's debt.

We were not able to locate any information online about misdemeanor probation supervision for the Vienna Municipal Court.

8 Located online from Henry County: <http://henrycountyprobatecourt.com/Portals/0/CardProcessingFees.pdf>

9 See court websites: <https://www.ncourt.com/OrigEfile/Forms/GA/Fees.aspx?Juris=GAWhitfield>; and <https://www.ncourt.com/x-press/x-onlinepayments.aspx?juris=6696CD17-BFB0-4106-B816-5E0D103763D1>

In Whitfield County, misdemeanor probation cases are referred to Georgia Probation Services, Inc. The company does not have a website and the county court website provides only a phone number. Alternative Probation Services, Inc. (APS) oversees misdemeanor probation cases for the City of Dalton. According to Chattanooga's *Times Free Press* (February 22, 2011), the Dalton City Council authorized the municipal court to contract with APS in February, 2011 despite the fact that doing so would deprive the city of \$379,000 in potential revenue from probation fees and electronic monitoring. According to the *Atlanta Journal Constitution* (February 28, 2015), a compliance report conducted in 2013 found that APS did not provide adequate employee oversight, resulting in large caseloads for probation officers and administrative staff performing tasks only probation officers were authorized to do. The report also found that the company's contract with Dalton did not include a necessary provision for addressing indigent clients.

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MONETARY SANCTIONS IN ILLINOIS

Prepared by Mary Pattillo and Brittany Friedman

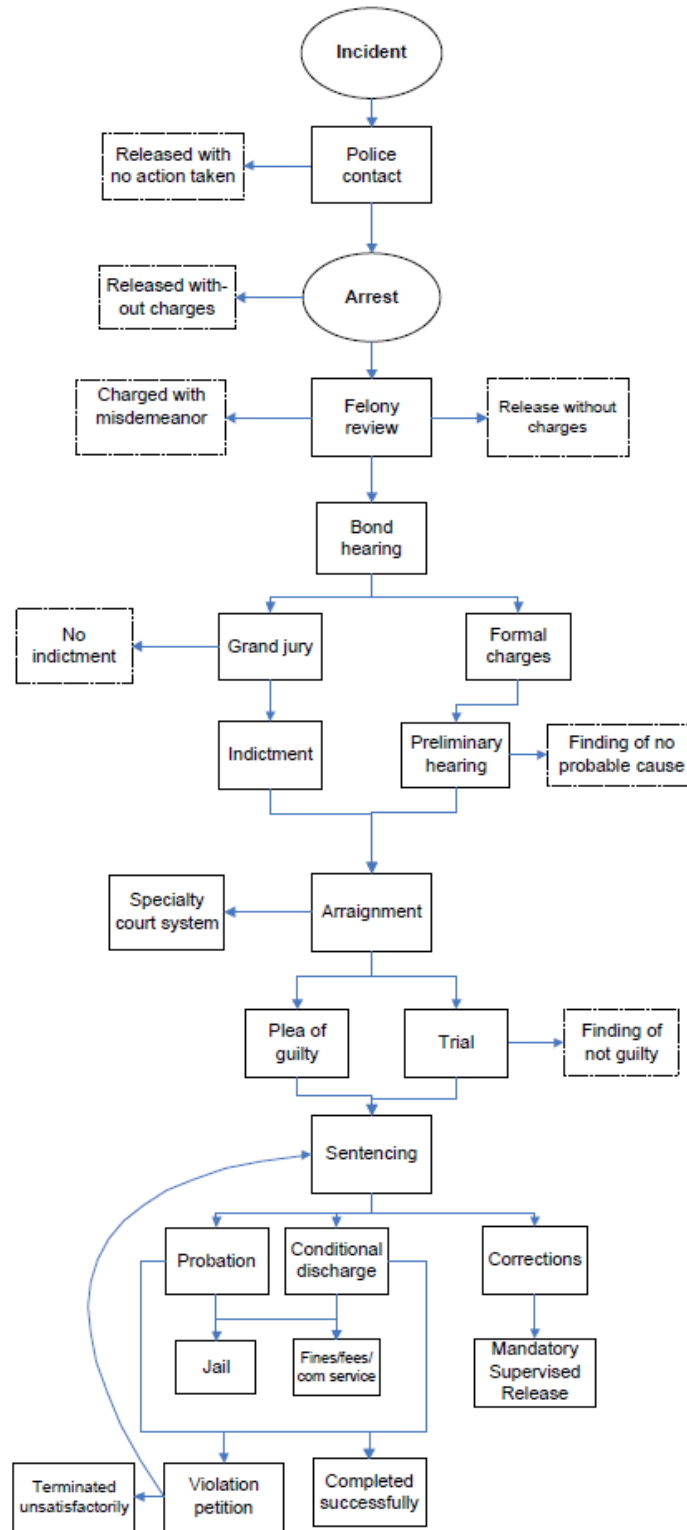
Introduction

Upon entering the criminal justice system in Illinois, a person encounters a series of commonplace processes and routines, some more anticipated than others. The process begins with an incident and police contact and may progress to an arrest, indictment, possible conviction, and sentencing (see Figure 1). These terms and practices are generally considered public knowledge and expected by the average citizen. What remains shrouded in mystery and deceptively scattered throughout the Illinois legal code is a system of legal financial obligations (LFOs) that magnifies the already serious consequences of contact with the criminal justice system.

Similar to other states, Illinois imposes offense-specific fines, fees, assessments, interest, surcharges, and restitution on people convicted at the felony, misdemeanor, petty, traffic, and ordinance levels. Cases are handled in a Circuit Court in the county where the offense took place (see “Demographic and Legal Characteristics of Selected Jurisdictions” section for further discussion of the structure of the Illinois courts). While fines are punitive, fees compensate the state for labor and services. Assessments are mainly tied to drug-related offenses and encourage participation in drug treatment and/or community service programs. Surcharges are added financial penalties for certain crimes, and they are also sometimes levied for late or non-payment of fines and fees, which is also the function of interest charges. Unlike the above charges, which go to various state funds, restitution compensates the victim for their loss, yet it receives little priority in Illinois because defendants are not required to pay restitution first before other LFOs.¹

1 730 ILCS 5/5-5-6; 725 ILCS 120/4(a10). DUI and methamphetamine-related accidents requiring an emergency response incur restitution not to any victim, but to compensate the State Police and local law enforcement agencies (625 ILCS 5/11-501.01(i); 720 ILCS 646/90(C)).

Figure 1. Felony Processing in Illinois



Illinois is one of many states in the process of taking a hard look at the fees and other costs associated with criminal justice contact. Legal advocacy organizations have conducted significant research on monetary sanctions in Illinois. The Sargent Shriver National Center on Poverty Law, which is located in Chicago, called the system of legal financial obligations in Illinois “ad hoc,” and concluded, “The time has come to rationalize the financial obligations in the criminal justice system.”²

In 2013, the Illinois legislature passed the Access to Justice Act, and in 2014 the Act called for the creation of the Statutory Court Fee Task Force charged with reviewing the system of monetary sanctions in the state in both civil and criminal proceedings. The Task Force issued its report in June of 2016.³ The report was strongly critical of the current system of monetary sanctions. It found that the process of levying fines and fees in Illinois represented a “byzantine system” that passed more and more of the costs onto users, with costs that have far outpaced inflation, with extreme variation across jurisdictions, and with disproportionate negative impact on low- and moderate-income residents.

The report recommended a complete overhaul of the system and provided detailed language for a proposed statute that “would codify in one place all of the current assessments imposed in connection with the disposition of traffic or criminal charges” (p3). The proposed statute would create a schedule of fees and costs that would be uniform statewide, with no discretion at the county circuit court level, and would also set uniform statewide fines and fees in minor traffic offenses. A companion statute would introduce sliding scale fee waivers for low- and moderate-income defendants; this population currently gets very little special consideration in Illinois law as it relates to the costs of the criminal court process.

Taking up these recommendations would represent a major departure from the current situation that places considerable administrative burdens on court clerks, that is opaque to defendants, and that adds costs that are often unrelated to the specific case at hand and to the courts in general, costs that many citizens will never be able to pay. While the report generated little sustained media attention in the state, one outlet reported that two of the legislators who were members of the Task Force planned to introduce legislation in 2017 to enact the report’s recommendations.⁴

Fines and Surcharges

Because they are designed to punish the defendant for their crime, fines alone can reach thousands of dollars and are categorized as *discretionary* or *mandatory*. When imposing *discretionary* fines, the court not only considers the specific details of the case, but also the defendant’s financial resources and whether the fine will interfere with paying restitution.⁵ There are two types of discretionary fines levied against defendants: general fines based on offense *class*, where courts can sentence per offense up to \$25,000 for all felonies,⁶

2 Marie Claire Tran-Leung. 2010. “Assessing the Ad Hoc Nature of Financial Obligations Arising in the Illinois Criminal Justice System.” *Journal of Poverty Law and Policy* 43: 440:447. research.policyarchive.org/22092.pdf. Also see Marie Claire Tran-Leung. 2009. “Debt Arising From Illinois’ Criminal Justice System: Making Sense of the Ad Hoc Accumulation of Financial Obligations.” <http://povertylaw.org/sites/default/files/files/webinars/criminaldebt/debt-report.pdf>. Also see Alicia Bannon, Mitali Nagrecha, and Rebekah Diller. 2010. “Criminal Justice Debt: A Barrier to Reentry.” Brennan Center for Justice. <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>

3 “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.” Report submitted by the Statutory Court Fee Task Force. June 1, 2016. www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf

4 “Illinois’ court fees rising to cover special programs,” *St. Louis Post-Dispatch*, July 10, 2016. http://www.stltoday.com/news/state-and-regional/illinois-court-fees-rising-to-cover-special-programs/article_78d55e9b-ccea-559c-8c9e-fda73a6f8188.html

5 730 ILCS 5/5-9-1(d-1); 730 ILCS 5/5-9-1(d-2)

6 730 ILCS 5/5-4.4-50.

\$2,500 for Class A Misdemeanors,⁷ and \$1,500 for Class B or C Misdemeanors;⁸ and those based on offense *type*, where judges can use their discretion to sentence additional fines.

Discretionary fines based on offense type differ in that they tend to include specialized conditions and, like mandatory fines, are frequently earmarked for state funds. For example, domestic violence related offenses have an additional fine set at a fixed rate of \$200; however, upon request of the victim or the victim’s representative, the court has the discretion to determine if the fine will impose an undue burden on the victim and potentially lessen or waive the fine as a result.⁹ If sentenced, domestic violence fines are sent to the State Treasurer and used for the Domestic Violence Shelter and Service Fund and the Sexual Assault Services Fund.

Unlike discretionary fines, courts are required to sentence mandatory fines according to state statute even if it is apparent the defendant lacks the necessary financial resources. In other words, waivers cannot be granted for mandatory fines in the case of indigence or inability to pay. Mandatory fines are less common than discretionary fines. They are offense specific, set at fixed amounts, and often earmarked for state funds. Table 1 outlines the mandatory fines and surcharges related to those fines in Illinois.

7 730 ILCS 5/5-4.5-55(e).
8 730 ILCS 5/5-4.5-60(e); 730 ILCS 5/5-4.5-65(e).
9 730 ILCS 5/5-9-1.5.

Table 1. Mandatory Fines and Surcharges in the Illinois Compiled Statutes (ILCS)¹

| Title | Fine/Surcharge | ILCS | Fund |
|---|--|--|---|
| Additional fine for vehicle code, misdemeanor, & felony convictions | \$50 \$75 \$100 | 725 ILCS 240/10(b) | Violent Crimes Victims Assistance Fund |
| Traffic & Criminal Conviction Surcharge | \$15 for every \$40 in fines | 730 ILCS 5/5-9-1 (C) | LEADS Maintenance Fund; Law Enforcement Camera Grant Fund; Traffic and Criminal Surcharge Fund |
| Drug-Related and Methamphetamine Offenses Fine | Equal or above street value of drug seized | 730 ILCS 5/5-9-1.1(a); 730 ILCS 5/5-9-1.1-5(a) | Not specified in statute |
| Additional Surcharges for Drug-Related and Methamphetamine Offenses | \$220 | 730 ILCS 5/5-9-1.1(b); 730 ILCS 5/5-9-1.1-5(b) | 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 |
| Domestic Battery Surcharge (if general domestic violence fine is sentenced) | \$10/per penalty imposed | 730 ILCS 5/5-9-1.6 | Domestic Violence Shelter and Service Fund; Circuit Clerk Operation and Administrative Fund |
| Arson Fine | \$500 | 730 ILCS 5/5-9-1.12 | Fire Prevention Fund; Circuit Clerk Operation and Administrative Fund |
| Child Pornography Fine | \$500 | 730 ILCS 5/5-9-1.14 | Unit of local or state government whose law enforcement conducted case; Circuit Clerk Operation and Administrative Fund |
| Sex Offender Fine | \$500 | 730 ILCS 5/5-9-1.15 | Sex Offender Investigation Fund; Circuit Clerk Operation and Administrative Fund |

| | | | |
|---|---|--|---|
| Additional surcharge added to any criminal offense conviction | \$30/offense | 730 ILCS 5/5-9-1.17 | Police Services Fund for expungement of juvenile records; State's Attorney's Office that prosecuted case; Circuit Clerk Operation and Administrative Fund |
| Streetgang Fine | \$100 | 730 ILCS 5/5-9-1.19 | State Police Streetgang-Related Crime Fund; Circuit Clerk Operation and Administrative Fund |
| Violation of Parole | \$25 | 730 ILCS 5/5-9-1.20 | IL Department of Corrections Parole Division Offender Supervision Fund; Circuit Clerk Operation and Administrative Fund |
| DUI Fine | \$750 first offense \$1000 second offense | 625 ILCS 5/11-501.01(f) | Law enforcement agency that made arrest; General Revenue Fund |
| Additional DUI Surcharges | \$905; \$50 for Roadside Memorial Fund may be waived if full restitution is paid. | 730 ILCS 5/5-9-1(C-5); 730 ILCS 5/5-9-1(C-7); 705 ILCS 105/27.5(e-1); 705 ILCS 105/27.5(f) | Trauma Center Fund; Spinal Cord Injury Paralysis Cure Research Trust Fund; Roadside Memorial Fund |
| | \$35 | 705 ILCS 105/27.5(d) | |
| Serious Traffic Violation Surcharge | | | Fire Prevention Fund; Fire Truck Revolving Loan Fund; George Bailey Memorial Fund; Circuit Court Clerk Operation and Administrative Fund |

¹Table 1 includes all mandatory fines and related surcharges ordered upon conviction. Domestic violence and sexual assault fines that can be waived if they pose an undue burden on the victim are not included. Drug assessments are not included because they are eligible for community service in lieu of payment. Fees are not included.

Mandatory fines are triggered by a type of conviction and some are only imposed if the defendant is already sentenced to other fines. For example, DUI offenders are automatically fined \$750 for the first offense and \$1000 for subsequent offenses (see Table 1). Whenever a fine is imposed during sentencing, DUI and drug-related offenses also trigger additional mandatory surcharges (discussed in Table 1), and fees and assessments (discussed further in the next section), ranging from an additional \$105 fee for DUI convictions to an additional \$170 fee for drug-related offenses, not including laboratory and analysis fees. Every person convicted of a drug offense is charged an additional assessment designed to encourage participation in drug treatment programs or community service. For instance, Class X Drug Felonies must also pay an additional \$3,000, which goes toward the Drug Treatment Fund; however, the court may suspend payment of the assessment if the defendant agrees to enter a drug treatment program and agrees to pay for all or part of the treatment. The defendant may also petition the court to convert all or part of the assessment into community service at a rate of \$4 per hour until the assessment is accounted for. Overall, DUI and drug-related offenses accrue high total LFO amounts, from the mandatory fines at least equal to the amount of drugs seized, to the additional assessments and fines based on offense class or the number of offenses. The mandatory nature of these additional fees blurs the line between the punitive and statutory component of the fine and the pay-for-use component of the fee.

In another example of compounding mandatory fines, each time a person is fined for a criminal or traffic offense the defendant must pay a \$15 additional penalty for every \$40 fined (see Table 1). Since 1998, the amount of this surcharge has more than tripled, from \$4 to \$15. This surcharge is known as the Traffic and Criminal Conviction Surcharge and is applied when a person is already fined at sentencing. The fact that this mandatory surcharge is added to “every fine imposed” when someone is found guilty in “criminal, traffic, local ordinance, county ordinance, and conservation cases (except parking, registration, or pedestrian violations)”¹⁰ means that these \$15-per-\$40 fines add up to be the highest grossing revenue fund of the State Treasurer (where most criminal justice fines and fees are directed) in every year but one – when there was a special assessment on power companies – since 2000. In 2015, this fund had revenue of \$16,895,736. In a similar example, an additional \$100 fine for felonies, \$50 for vehicle code violations, and \$75 for misdemeanors is applied to every conviction to support the Violent Crime Victims Assistance Fund, which had revenue of over \$9M in 2015.¹¹

Fees and Repaying the System

Like many fines, fees are also allocated to state funds. The State Treasurer collects a significant portion of the fees imposed in the criminal justice system. In 2013, the State Treasurer collected \$81 million primarily related to fees sent to the Treasurer from circuit courts.

In theory, fees are used to reimburse the government for services within the criminal justice system, fund improvements in the court clerks’ offices, defray the cost to the county of operating the courts, fund corrections operations, and support state and county general expenditures. In this way, fees function mostly as user costs, where those who come in contact with the criminal justice system subsidize public services that were once overwhelmingly funded by taxes. A person incurs fees throughout all phases of his or her trial and continues to accumulate fees if sentenced to incarceration, community supervision, or parole.

Court Fees

Defendants encounter court fees first, which compensate the court for prosecution and are divided into three types: circuit clerk fees, attorney fees, and lab fees. Circuit clerks collect fees primarily to cover labor costs once a guilty judgment or conviction is reached. The majority of circuit clerk fees are filing fees for various motions that take place throughout a trial. For instance, every case begins when the state’s attorney files a complaint against a defendant with the circuit clerk. State statute sets parameters for how much counties can charge for court fees based on the county’s population. The statute defines small counties as those with a population under 500,000, medium counties are between 500,000 and 3,000,000, and Cook County, the only

10 730 ILCS 5/5-9-1 (C).

11 See data reported by Illinois Comptroller at <http://www.apps.ioc.state.il.us/office/ResearchFiscal/PublicFeeRptSQL/Report/PublicReportMenu.cfm>

large county, has over 3,000,000 inhabitants. Table 2 highlights filing fees by offense class and county size. In addition to these fees, there are a host of other filing fees pertaining to court procedure such as motions to vacate, court appearances, and changes of venue.

Table 2. Filing Fees by Offense Class and County Size

| Offense Class | Small Counties ¹ | Medium Counties ² | Cook County ³ |
|--------------------|-----------------------------|------------------------------|--------------------------|
| Minor Traffic | \$10 | \$20 | \$30 |
| Business and Petty | \$25-75 | \$50-75 | \$75-110 |
| Misdemeanor | \$25-75 | \$50-75 | \$75-110 |
| Felony | \$40-100 | \$80-125 | \$125-190 |

Fees such as the court automation fee and the court document fee offset the expense of establishing and maintaining automated record keeping and document storage in circuit clerk offices. Counties can also charge a payment services fee up to \$5 to cover the cost of payments made via credit card or third party guarantors.¹² Though most courtrooms do not provide childcare, as of 2008 courts can charge up to \$10 for a children’s waiting room fee in order to offset the cost of providing a designated area for the children of litigants, witnesses, and those entering the courtroom.¹³

Those convicted of criminal, serious traffic, drug, and DUI violations face additional fees at sentencing that function more as penalties than user costs. For instance, DUI offenders incur added fees for violating the Illinois vehicle code: two DUI fees, the serious traffic violation fee, and two fees for violating the criminal code, totaling over \$400.¹⁴

In conjunction with circuit clerk fees, defendants are also charged attorneys’ fees, which include both legal representation fees and state’s attorney fees. Indigent defendants are guaranteed the right to legal representation in a criminal proceeding according to the U.S. Constitution; however, this does not mean states cannot attempt to recoup the costs of court-appointed counsel so long as they provide a hearing for the defendant’s ability to pay and waive or adjust the amount accordingly. Illinois charges up to \$500 for misdemeanors, \$2500 for appealing a conviction for any offense class, and \$5000 for felonies.¹⁵

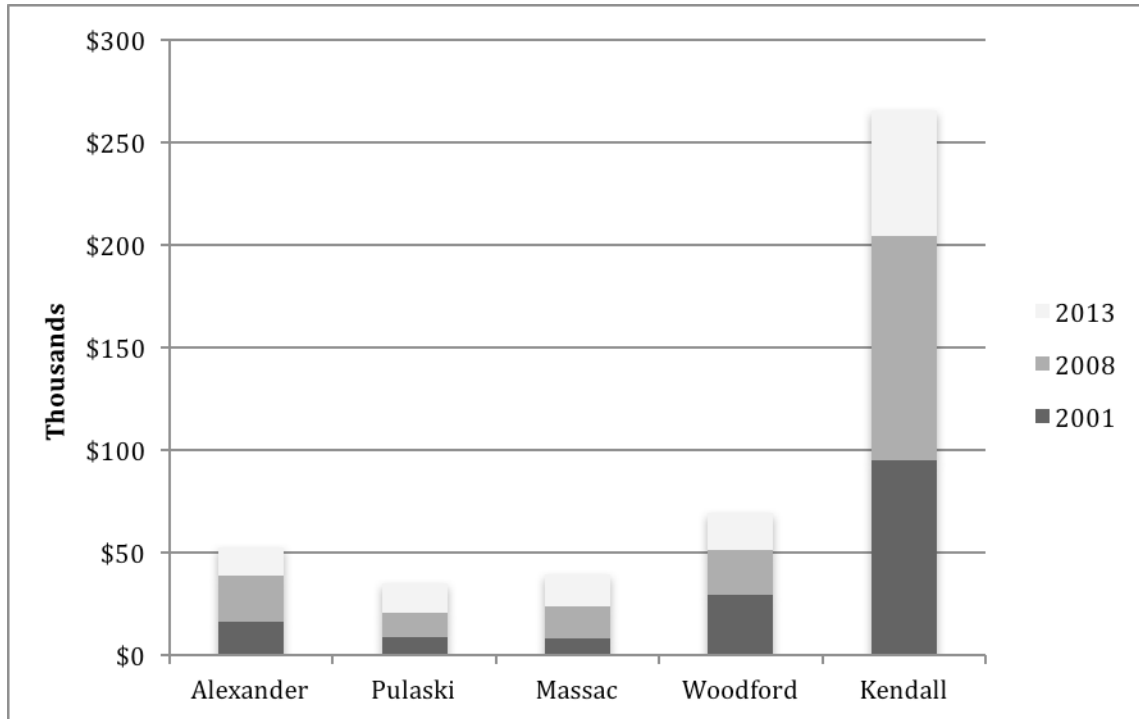
Upon conviction, the court will also enter a judgment requiring the defendant to pay the costs of prosecution. These costs include those incurred by the Sheriff for serving arrest warrants, transporting the offender across counties, and for transporting the offender in the case of extradition. Convicted defendants must pay the costs of prosecution even if they are indigent.¹⁶ Thirty days after the judgment is entered, the clerk must report if any fines or the costs of prosecution remain unpaid, which creates a lien on the offender’s property. The levied property is advertised and sold in the same manner as civil cases even if the defendant is currently in custody for the fines or costs. Unless a court ordered payment schedule is implemented, the clerk may add interest to the delinquency in the amount of 5% after 30 days, 10% after 60 days, and 15% after 90 days.¹⁷

State’s attorneys are also entitled to reimbursement for the costs of prosecution and do not have to take into account the defendant’s ability to pay. The statute only states that these fees are to be collected from the defendant “if possible.” For small and medium sized counties, the fee is \$30 per conviction for cases punishable by imprisonment and \$15 for all other cases unless the case is assigned to an associate judge. If so, the fee is \$10.¹⁸ For Cook County, the fee is \$60 per conviction for cases punishable by imprisonment, \$30 for all other cases, and \$20 for those assigned to an associate judge.¹⁹ State’s attorneys also charge a number of other user fees such as the automated record fee and have the ability to place a lien on any delinquent

12 705 ILCS 105/27.3.
 13 705 ILCS 105/27.7.
 14 705 ILCS 105/27.5; 705 ILCS 105/27.6.
 15 725 ILCS 5/113-3.1.
 16 725 ILCS 5/124A-5.
 17 725 ILCS 5/124A-10.
 18 55 ILCS 5/4-2002(a).
 19 55 ILCS 5/4-2002.1(a).

fees until they receive payment from the offender.²⁰ Figure 3 highlights income from all state’s attorney fees for the selected counties discussed in the County Overview section. Cook County (which includes the City of Chicago) is not shown because it is significantly larger and brings in significantly more revenue than the other counties, and would thus distort the scale. Cook County charged \$1.2M, \$2.3M, and \$1.9M in State’s Attorney’s fees in 2001, 2008, and 2013, respectively. However, as Figure 3 shows, the total amount of these fees is quite modest in the smaller counties, for example, only \$14,000 in Alexander County in 2013.

Figure 3. Revenue from State’s Attorney Fees by Select Counties



Data: Administrative Office of Illinois Courts Annual Reports, 2001-2013.

Defendants must also pay the laboratory fees associated with their prosecution, including the criminal laboratory fee, the chemical blood test fee, and the DNA analysis fee. Those convicted of cannabis, methamphetamine, steroids, or controlled substance violations are charged a criminal laboratory fee of \$100 per offense. Yet unlike most fees, the defendant may petition the court regarding the laboratory fees citing inability to pay.²¹ Juvenile offenders also incur this fee and can petition the court to waive the fee due to lack of financial resources; however, parents or guardians may be required to pay all or part of the fee on the juvenile’s behalf.²² For DUI violations, the criminal laboratory fee increases to \$150.²³ Fees deposited into local crime laboratory funds or the State Crime Laboratory Fund may be used to cover the costs of analyzing controlled substances, to purchase and maintain equipment for performing analyses, and to provide continuing education and professional development training for lab forensic scientists.²⁴ The chemical blood test fee is also mandatory for DUI convictions, and there is no relief mechanism for inability to pay. Offenders subject to a chemical or blood test are liable for the expense up to \$500 even if they do not consent to the

20 55 ILCS 5/4-2002; 55 ILCS 5/4-2002.1.

21 730 ILCS 5/5-9-1.4(b).

22 730 ILCS 5/5-9-1.4(C).

23 730 ILCS 5/5-9-1.9.

24 730 ILCS 5/5-9-1.4.

procedure.²⁵

The DNA analysis fee is deposited into the State Offender DNA Identification Fund and only charged to those convicted of felonies or sex crimes as a way to pay for DNA analysis, maintaining forensic science equipment, and developing employee training. When it was created in 1998, this fee was \$500, only applied to sex crimes, and could be waived for inability to pay. In 2002, the fee was decreased to \$200 and made mandatory for a wider array of offenses (e.g. home invasion, murder, juvenile felonies); however, the statute clearly states that if the defendant cannot pay this mandatory fee at sentencing, they can enter a 24-month payment plan. They also cannot be incarcerated for delinquency if this is the only LFO they have not paid. The statute was later amended in 2012 and the fee has remained at \$250 since then.²⁶

Corrections Fees

Upon conviction, offenders are charged corrections fees to reimburse the Illinois Department of Corrections (IDOC) for incarceration expenses, a policy referred to nationally as “Pay to Stay.”²⁷ It can cost as much as \$30,000 a year to incarcerate a single inmate.²⁸ In addition to basic bed and board, expenses include college tuition for classes attended while incarcerated, work release, dental and medical costs, and probation fees. Rates vary by institution because the IDOC calculates the reimbursement rate by averaging the per capita cost per day for inmates at a specific institution. Failure to cooperate and accurately disclose financial information at sentencing or throughout the incarceration period will influence parole decisions and potentially decrease an offender’s sentence credit up to 180 days. Further, when the director of the institution knows or reasonably believes the inmate has assets that may be used to satisfy the reimbursement or if they believe the inmate has assets derived from gang-related activity, they may report the inmate to the Attorney General, who can sue to recover the reimbursement.²⁹

Counties may also seek reimbursement for jail costs and the state’s attorney can sue to acquire an inmate’s assets to recoup the expenses.³⁰ For example, in 2014 former inmate Joecephus Mitts settled a federal civil rights lawsuit against Illinois because the state failed to adequately treat his cancer while he was incarcerated. Soon after, IDOC sued Mitts for almost \$175,000 for the cost of his imprisonment even though the state agreed in the civil rights suit to not attempt to recoup any settlement funds. The suit was eventually dismissed and IDOC maintains they overlooked the settlement clause preventing the suit. Between 2010 and 2015, Illinois sued over 31 former inmates or parolees and recovered more than \$500,000.³¹

Counties can even deduct funds from an inmate’s commissary account to put toward incarceration expenses and reduce an outstanding balance.³² In order to increase county revenue, some counties are even charging jail booking fees and daily boarding fees. The federal courts have supported local jurisdictions’ ability to charge such fees. In 2014, the federal Seventh Circuit Court of Appeals ruled against a man in Woodridge, Illinois, part of which is in Cook County, who was challenging the imposition of a \$30 booking fee on people arrested and taken into custody in Woodridge.³³

For those sentenced to probation, conditional discharge, or supervised community service, the court imposes a \$50 per month fee unless the defendant’s financial resources warrant a lesser fee.³⁴ For instance, Cook

25 625 ILCS 5/11-501.01(j).

26 730 ILCS 5/5-4-3.

27 Lauren-Brooke Eisen, “Charging Inmates Perpetuates Mass Incarceration,” *Brennan Center for Justice*, 2015.

28 “Executive Summary on Excessive Court Fines, Fees, and Costs,” *Chicago Appleseed Fund for Justice*, May 2016, 1.

29 730 ILCS 5/3-7-6.

30 730 ILCS 125/20(a).

31 “Pay to Stay: Jails regularly charge inmates for food, basic services,” *RT News*, December 1, 2015, accessed June 2, 2016, <https://www.rt.com/usa/324196-inmates-pay-fees-incarceration/>.

32 730 ILCS 125/20(a); 730 ILCS 125/20(a-5).

33 See *Markadonatos v. Woodridge*, 2014 U.S. App. LEXIS 13856 (7th Cir. 2014).

34 730 ILCS 5/5-6-3(i).

County bases their probation fee amount (\$20-\$50) on the number of dependents and the annual gross income.³⁵ Sex offenders must pay additional fees to cover the costs of treatment, assessment, evaluation, and monitoring. The court uses discretion to develop the fee amount according to an offender's ability to pay or their need for a payment plan.³⁶ Those sentenced to court supervision are liable for the costs of mandatory drug or alcohol testing and for the costs of electronic monitoring devices according to the person's ability to pay such costs as determined by the judge. The standard costs for drug tests and electronic monitoring are set by the county board and the Chief Justice.³⁷

Penalties for Nonpayment

While Illinois law includes automatic fee waivers for indigent litigants in the *civil* courts, there are no such automatic waivers on the *criminal* side, and only a few explicit instructions to consider indigence when levying fines and fees. Indeed, the law does not even include an official definition of indigence in criminal cases. In civil cases, indigence includes those receiving means-tested federal benefits such Supplemental Security Income or Temporary Assistance to Needy Families or those earning less than 125% of the federal poverty line. The recently completed report of the Statutory Court Fee Task Force proposed the enactment of a "Criminal Assessment Waiver Statute" that would set that same definition of indigence as qualifying for criminal fee waivers, and offer partial fee waivers (from 25% to 75% of the full amount) for defendants earning up to 200% of the federal poverty line, upon application of the defendant. Such waivers would not cover violations of the Illinois vehicle code or punitive fines or restitution. The proposed statute would also instruct Circuit Clerks to post signs advising the public and defendants of the following: "If you are unable to pay the required assessments you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."

As it currently stands, however, many defendants do not have the means to pay the fines and fees and thus enter into arrears. The penalty for nonpayment manifests in many different forms. Failure to pay LFOs results in default and is punishable by jail time, surcharges, interest, wage garnishment, and release to credit card reporting agencies. Consistent with the Supreme Court ruling in *Bearden*, Illinois courts cannot use prison as a means of enforcing the payment of LFOs, but they can use jail time for what is described as "willful nonpayment."³⁸ What constitutes willful nonpayment is quite vague and left up to judiciary discretion. On such discretion, a Brennan Center report offered the following anecdote: "For example, a public defender in Illinois observed that rather than evaluating a person's assets and obligations, one judge simply asked everyone if they smoked. If they smoked and had paid nothing since the last court date, he found willful nonpayment and put them in jail without doing any further inquiry."³⁹ If a court determines a person willfully refused to pay their LFOs, they can sentence the person to up to 30 days in jail if they were convicted of a misdemeanor, and up to 6 months for a felony. Interestingly, debtors jailed for delinquent accounts cannot be confined with other prisoners and paying the fines, fees, and costs will immediately entitle the offender to be released.⁴⁰ In this way, jail time serves to punish the offender for nonpayment and cannot be used as a relief mechanism in place of payment; that is, unlike in other states, people who do not pay their LFOs in Illinois cannot "Sit it Out" to satisfy their debt.⁴¹ In cases where the court determines that the offender did not willfully disregard their LFOs, the judge may enter an order reducing the amount, completely revoking the unpaid portion, or allowing additional time for payment by adjusting the payment plan.⁴²

In addition to possible jail time, the court can charge interest and seize assets. A finding of willful

35 Cook County Probation Fee Guide. None of the other selected counties posted a standard sliding probation fee schedule.

36 730 ILCS 5/5-6-3(i-5).

37 730 ILCS 5/5-6-3.1(g)

38 730 ILCS 5/5-8-6(d).

39 "Criminal Justice Debt: A Barrier to Reentry," p 21

40 730 ILCS 125/11.

41 730 ILCS 5/5-9-3(a-b); Article 1 Section 14 IL Constitution.

42 730 ILCS 5/5-9-3(c).

nonpayment allows the court to charge a surcharge equal to 30% of the delinquent amount and an annual interest rate of 9%.⁴³ The court can also issue an order of withholding and seize a percentage of the person's assets until the order is released, while also issuing a wage garnishment order that allows them to collect wages, salaries, commissions, and bonuses from the offender on a weekly basis.⁴⁴ Circuit Clerks can intercept state income tax refunds to settle unpaid court debts,⁴⁵ a power extended to municipalities – and thus to the municipal administrative adjudications systems – school districts and other agencies in 2012.⁴⁶ Further, a person's estate and property can be used as bond to pay defaulted LFOs. The levied property is advertised and sold even if the defendant is currently in custody and serving jail time for delinquent LFOs.⁴⁷ If necessary, state's attorneys can even sue the offender for delinquency or retain private collection agencies to collect default LFOs.⁴⁸

In some states, delinquency can also impact a person's civil liberties, yet Illinois is somewhat more lenient when it comes to this issue. In Illinois, voting privileges are not revoked as punishment for defaulting; however, a person who is incarcerated cannot vote and thus if they are jailed for court debt delinquency, they are not able to vote.⁴⁹ Defaulting on LFOs will not affect one's driver's license as it does in some states. Instead, only defaulting on certain Vehicle Code LFOs justifies revoking a person's driver's license.⁵⁰

Relief From Financial Responsibility

As discussed earlier, statutes regarding certain fines and fees provide relief mechanisms allowing the court to waive or lessen the amount after considering a person's financial resources. To concretely lessen the financial burden that LFOs can pose, state statute allows for a pre-sentencing credit that only applies to bailable offenses when the defendant cannot supply bail. Essentially, after conviction an offender can receive a credit of \$5 for each day they were jailed prior to sentencing so long as they were not incarcerated for sexual assault.⁵¹ This credit serves as an important relief mechanism for low-income defendants who are more likely to lack the funds necessary to make bail and consequently remain incarcerated throughout their trial. Since the defendant has no choice but to remain incarcerated because they do not have the resources to make bail, the pre-sentencing credit differs somewhat from "sit-it-out" arrangements in which a person "chooses" to remain in jail in order to pay off monetary sanctions. The pre-sentencing credit does not apply to fees or certain mandatory fines earmarked for key state funds, and thus the person is still likely to have substantial legal debt upon conviction or release.

Community service as a relief mechanism is even more restricted than the pre-sentencing credit because it only applies to drug assessments. Defendants sentenced to pay a drug assessment may petition the court to convert all or part of the assessment into court-approved community service at a rate of \$4 per hour. The statute is clear that community service is not authorized as an alternative method of payment for any other financial obligation.⁵²

In some cases, a person's fines can be revoked or they can receive a refund for costs, fines, and fees they already paid. Except for offenses violating Chapter 15 of the Illinois Vehicle Code, which pertain to vehicle size and weight limits, the court may revoke a discretionary fine or any amount unpaid or modify the payment

43 730 ILCS 5/5-9-3(e).

44 730 ILCS 5/5-9-4; 735 ILCS 5/12-803.

45 705 ILCS 105/27.2b

46 Public Act 097-0632; Peter White, "Due Process Denied: Illinois' New Scheme to Take Your Tax Refund," *Liberty Justice Center*, February 23, 2012, <https://www.illinoispolicy.org/due-process-denied-illinois-new-scheme-to-take-your-tax-refund/>, accessed June 2, 2016.

47 725 ILCS 5/124A-10.

48 730 ILCS 5/5-9-3(e).

49 10 ILCS 5/3-5.

50 625 ILCS 5/6-306.5; 625 ILCS 5/6-306.5(h); 625 ILCS 5/6-208; 625 ILCS 5/7-307.

51 725 ILCS 5/110-14.

52 720 ILCS 550/10.3(e).

method.⁵³ Additionally, if a person’s conviction is reversed, they are no longer liable for the costs, fines, and fees associated with their prosecution or the costs accrued during their detention, with the exception of court-appointed counsel fees. Yet, the refund is not automatic and the burden remains with the exonerated person. They must submit a request to the clerk’s office and attach to the application a court order demonstrating their right to collect a refund.⁵⁴

Legal Challenges

Historically, Illinois is an important state in setting legal precedent on the issue of nonpayment of monetary sanctions. In 1970, the U.S. Supreme Court ruled unanimously in favor of Willie E. Williams, who had been convicted of petty theft in Illinois and sentenced to one year in prison and a \$500 fine. When he had not paid the fine after his year of incarceration, he was sentenced to remain in prison to pay off his debt at a rate of \$5 for each day incarcerated. The court found Illinois’ practice was in violation of the Equal Protection Clause of the Fourteenth Amendment and that states could not imprison indigent defendants longer than their maximum prison sentences simply because they were poor.⁵⁵

Legal challenges against monetary sanctions in Illinois tend to focus on fees rather than fines because courts have the right to use fines as punishment.⁵⁶ As *People v. Sturgess* (2006) shows, fines are also difficult to challenge because the courts often lack discretion over whether to impose mandatory fines.⁵⁷ The various costs associated with prosecution also often withstand appeal because they are considered a consequence of conviction. In *People v. White*, (2002) an appellate court ruled that costs are “a collateral consequence of the defendant’s conviction” and thus to be expected.⁵⁸

Fees on the other hand are costly to the defendant even though they are not supposed to serve a punitive purpose. They compound the financial effects of fines, making them subject to appeal and constitutional review. For instance, in *People v. Wynn* (2013), the defendant challenged his fees, including the probation fees that were charged when the defendant was not serving probation, the Children’s Advocacy Center fee, delinquency fees on the grounds they were based on an incorrect balance amount, and the public defender fee because the court did not hold a hearing determining his ability to pay; also, he claimed the court did not subtract his \$5 per day pre-sentencing credit from the account balance. Because his arguments were directly in line with state statute, the appellate court granted the majority of his requests. This case shows that the translation of state law into the actual imposition of fees is not straightforward and may be done erroneously.⁵⁹

Defendants frequently challenge fees on the grounds that they were charged excessively or in error. In *People v. Williams* (2013), Williams alleged that numerous fees were wrongfully charged to his account, greatly increasing his balance. For example, he did not receive a pre-sentencing credit for his 345 days spent in custody and he was wrongly charged a bond supervision fee even though he was never released on bond. In *People v. Higgins* (2014), the appellate court ruled that fees should be imposed by the trial court and not the circuit clerk.⁶⁰ Instead, the circuit clerk merely collects fees (does not impose them), with the exception of a few types of fees such as the court automation fee. Above all, defendants who are credible in the eyes of the appellate court and focus their appeal mainly on fees and not discretionary fines or costs are more likely to

53 730 ILCS 5/5-9-2.

54 725 ILCS 5/124A-15.

55 *Williams v. Illinois*, 399 U.S. 235 (1970)

56 *People of the State of IL v. Jones*, 5th Division, August 10 2007, 5. “So far as the defendant who is subject to the monetary fine is concerned, due process requires only that the punishment imposed be rationally related to the offense on which he is being sentenced.”

57 *People v. Sturgess*, 2006, 364 IL App. (3d) 107, (1st Dist.).

58 *People v. White*, 2002, 333 IL App. (3d) 777, 781 (2d Dist).

59 *People v. Wynn*, 2013 IL App (2d) 120575.

60 *People v. Higgins*, 2014 IL App (2d) 120888.

successfully challenge their LFOs.⁶¹

Within the state, there have also been several rulings regarding the seizure of offenders' assets by the prison system in order to pay for the costs of incarceration. In one example an inmate had saved over \$11,000 from wages earned in his prison job. The state claimed he owed \$455,203.14 for the costs of his incarceration. An Illinois lower court found that "Correctional officials in Illinois had the right to attach funds that a prisoner saved from his wages while incarcerated over a period of decades to recover the cost of his incarceration." The inmate appealed and the appeals court rejected his argument that the state had already levied a 3% tax on his wages to pay for his incarceration, and thus was not entitled to collect more. However, this decision was overturned in the Illinois Supreme Court, which found "that prison wages from which partial deductions have been made should not be the subject of further recovery attempts by the state."⁶²

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF SELECTED JURISDICTIONS

Overview

Matters of criminal justice in Illinois are handled at the Circuit Court level, which is "the court of original jurisdiction."⁶³ There are twenty-four (24) judicial circuits in the state (See Figure 4). Most of these circuits are multi-county circuits, but there are also six single-county circuits, all located in the Chicago metropolitan area (Cook, DuPage, Kane, Lake, McHenry and Will Counties). A Chief Judge presides over each of the 24 Circuits, and each of Illinois' 102 counties has a circuit court, courthouse, state's attorney, and court clerk. Felony and misdemeanor cases begin within the county-level courthouse of the Circuit Court (also sometimes called the "trial court"). It is the county-level Circuit Court that collects fines, fees and other costs and disburses them to the appropriate state, county, and local funds and agencies.⁶⁴ Any general matters of law or appeals would move up to the Judicial Circuit, then to the Court of Appeals, and finally to the Illinois Supreme Court. This unified court system in Illinois was authorized under Article VI of the Constitution of 1970. There are no decentralized municipal courts with final jurisdictional authority (see more on municipalities below). As one reporter who was comparing Illinois and Missouri writes, "Some of my buddies seem surprised when I explain that my home state [of Illinois] has no equivalent [of municipal courts]... if people in Missouri happen to be looking for another way to do things, they can see one with just a very short drive across a bridge..."⁶⁵

In 2014, there were 2,930,986 new cases filed (including civil and criminal) in the circuit courts of Illinois; \$179,441,119 in fees and other revenues to the courts; and \$1,613,499,979 in fines, penalties, assessments, forfeitures and other disbursements (not including maintenance child support disbursements).⁶⁶

61 Credible meaning they are in good standing if incarcerated or are making reasonable effort to pay outstanding balances.

62 See list of cases on inmate funds at <http://www.aele.org/law/Digests/jail62.html>. In particular, *People ex rel. Dep't of Corr. v. Hawkins*, #3-09-0418, 2010 Ill. App. Lexis 621, 402 Ill. App. 3d 204 (3rd Dist.) and *People ex rel. Illinois Department of Corrections v. Hawkins*, 2011 IL 110792 at www.illinoiscourts.gov/opinions/supremecourt/2011/june/110792.pdf.

63 <http://www.illinoiscourts.gov/CircuitCourt/CCInfoDefault.asp>

64 See <http://www.illinoiscourts.gov/general/proceed.asp>

65 Pat Gauen, Sept. 4, 2014, "Illinois' unified courts aren't run by towns that collect fines," *St. Louis Post-Dispatch*, http://www.stltoday.com/news/local/columns/pat-gauen/illinois-unified-courts-aren-t-run-by-towns-that-collect/article_5bd2cc9f-a710-501f-8577-d557c0b90d9e.html

66 2014 Annual Report of the Illinois Courts, <http://www.illinoiscourts.gov/SupremeCourt/AnnualReport/2014/StatsSumm/default.asp>

Figure 4. Judicial Circuits and Counties in Illinois



County-level circuit courts have the ability to recoup their costs through a range of fees. For example, a circuit clerk may require convicted persons to reimburse the county for expenses incurred by their confinement, and the State’s Attorney may sue to recover the expenses. However, these discretionary financial charges must fall within the offender’s ability to pay.⁶⁷ In another example, counties can fine jurors from \$3 to \$20 for not showing up on time or misbehaving during jury service. These revenues go directly to the county’s general fund.⁶⁸ County Sheriffs also have state statutory authority to charge fees for things such as serving a subpoena, arrest warrants, summons, or orders of judgement (\$10 in counties with population under 1,000,000 and \$35 in counties over 1,000,000).⁶⁹ Some of these fees and fines can be paid on-line through a third-party website Judici.com, which works with 76 of the 102 counties in Illinois.

Administrative Hearings

There are no municipal judicial courts in Illinois. There is, however, a system of administrative adjudications and hearings at the municipal and county levels authorized in the state Constitution, the Illinois Municipal Code, and the Illinois Administrative Procedure Act.⁷⁰ Municipalities and counties that are “home rule units,” by reason of having a population of over 25,000 people have the ability to set up administrative adjudication systems for matters of ordinance violations. Administrative hearings were created to decrease the caseloads of the circuit courts by diverting cases where plaintiffs (usually the municipality, county, or agencies of those units) are seeking civil penalties only, meaning a fine only. Administrative hearings officers cannot impose a penalty of incarceration. The administrative hearing system allows the circuit courts to handle more substantive matters, such as criminal cases and cases where the penalty is imprisonment. Administrative hearings officers in home rule units have the authority to levy fines of up to \$50,000.⁷¹ Municipalities or counties that are not home rule units have the authority to levy fines of up to \$750, and imprisonment for failure to pay such fines cannot exceed six months for any one offense.⁷²

The City of Chicago, for example, refers to its Department of Administrative Hearings as “an independent quasi-judicial body” that adjudicates matters related to “the public health, safety, welfare, morals, and quality of life of the residents of the City of Chicago.”⁷³ In Chicago, this department hears cases involving such things as building code violations, recycling violations, obstructions of the public way, sale of cigarettes to minors, police-issued tickets for curfew violations or trespassing, and moving vehicle violations caught on the city’s automated red-light cameras. Counties often have administrative adjudication systems as well. For instance, the Department of Administrative Hearings in Cook County hears matters of ordinance violations for the departments of Revenue, Building and Zoning, Animal Control, Environmental Control, Highways, Public Health, Forest Preserve and Sheriff Overweights. In other municipalities the list is similar, including such things as animal leash violations, bicycle tickets, and fire code violations. Dozens of municipalities use the third-party services of violationspayment.com, Inc. to collect municipal fines and fees. Municipalities can also bring lawsuits and use private collections agencies to collect defaulted payments (charging all legal and collections fees to the defendant), and can charge fees to defendants, such as a fee of up to \$20 for bail processing. Citizens have a right to appeal the findings in these administrative cases to the county-level circuit court.

The system of administrative adjudication imposes fines and other costs that represent an added layer to the official judicial court system in Illinois. Regarding this non-judicial domain, the Statutory Court Fee Task Force concluded the following: “Illinois residents appearing in front of administrative law hearing officers may encounter similar financial challenges and barriers to those appearing in the circuit courts as many municipalities, in particular, are increasingly using administrative hearings to collect revenue from residents.

67 55 ILCS 5/3-15016

68 55 ILCS 5/3-3023

69 55 ILCS 5/4-5001, 55 ILCS 5/4-12001

70 Article VII of the Illinois State Constitution, 65 ILCS 5/ and 5 ILCS 100/, respectively

71 65 ILCS 5/1-2.1-4

72 65 ILCS 5/1-2-1

73 <http://www.cityofchicago.org/city/en/depts/ah.html>

While it often appears to the public that administrative hearings are a part of the court system, the fines, fees, or other costs collected through administrative hearings are not used to fund the court system, are outside the control of the state judiciary, and are beyond the scope of this Report” (p. 8).

Counties and County Circuit Courts

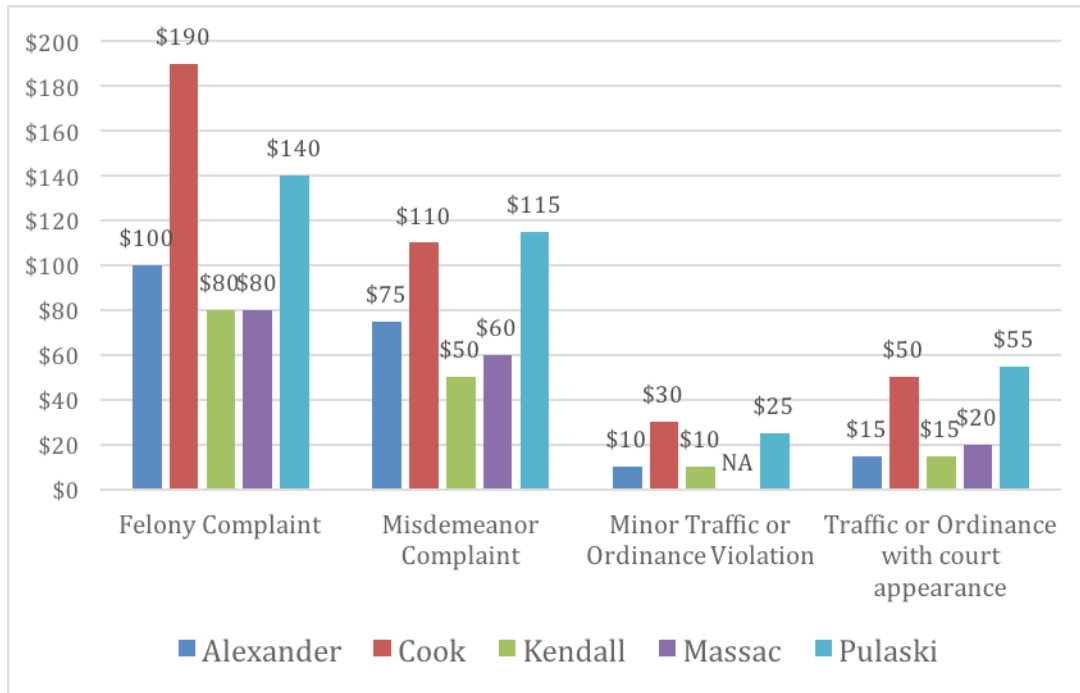
Overall, the parameters for judicial fines and fees is set at the state level within the Illinois Compiled Statutes. These laws authorize circuit courts, counties (e.g. sheriffs and other parts of the criminal justice apparatus), and municipalities to assess fees within a certain range, which are then imposed at the county level. In this report, we use information from six Illinois counties to illustrate the organization of the court system and the range of LFOs.

These six counties were selected based on population size, variation in race and socioeconomic profiles, political party voting patterns, and location (see Figure 4). Alexander, Pulaski, and Massac are within the smallest tercile of counties in Illinois by population size and in the southern part of the state; Woodford is in the middle tercile and in the middle of the state; and Kendall and Cook counties fall among the largest third of counties in population and are located in the northeastern part of the state, where the majority of the state population lives. Since Illinois does not have municipal courts, only two cities were selected for illustration. These cities – Chicago and Skokie – are within Cook County and have circuit courthouse locations.

Figure 5 shows the variance of the costs and fees assessed upon conviction in five of the six sample counties for four offense types – felony complaints, misdemeanor complaints, minor traffic and ordinance offenses, and minor traffic/ordinance offenses that require a court appearance. For felony complaints, the Illinois statute allows small counties to charge between \$40 and \$100; medium sized counties to charge between \$80 and \$125; and large counties to charge between \$125 and \$190.⁷⁴ As shown in Figure 5, Cook County (a large county) and Alexander County (a small county) charge the maximum allowed (\$190 and \$100, respectively), whereas Massac and Kendall (both small counties in the statutory definition) charge \$80, less than the allowable maximum. Pulaski County (also a small county) charges above the allowable maximum, at \$140. It’s possible that Pulaski County includes other standard fees (e.g., court automation fee) when it lists its fees for each offense given that its fees are higher than other counties of its size. Or it’s possible that Pulaski County is charging this amount in error. This would align with the finding of the Statutory Court Fee Task Force, which concluded that “the current system of imposing, collecting, and disbursing court assessments...creates an administrative nightmare for court clerks” (p. 16).

74 705 ILCS 105/27.1a(w-1a), 705 ILCS 105/27.2(w-1a)

Figure 5. Variation in Costs and Fees by County by Offense Type



¹Data for Woodford County not shown. The Woodford Circuit Court Clerk reported in a phone conversation that fines and fees for Criminal and Quasi-Criminal Offenses are at the discretion of the judge. ²These fines are only assessed if there is a conviction or sentence for supervision.

Cook County

Cook County is home to Chicago and many suburbs in the northeast corner of the state of Illinois. It has the largest population in the state, at over 5 million residents, or roughly 40% of the state’s population. The poverty rate in Cook County (17.7%) is higher than the IL state poverty rate of 14.4%, which is about equal to the U.S. poverty rate overall (14.8%). Cook County voters lean heavily Democratic, with Republicans capturing less than 25 percent of the presidential vote in 2012. Cook County has the largest African American population of all counties in the U.S., and has a larger proportion of African Americans than other counties in the state of IL. It also has the fourth largest Latino population of all U.S. counties, and also has a higher Latino proportion than other IL counties. The proportion Asian in Cook County (7.2%) is higher than in the state of IL (5.3%) and higher than in the U.S. overall (5.8%).

Cook County is a single county circuit named the Cook Judicial Circuit, or the Circuit Court of Cook County of the State of Illinois. It is the largest circuit court in the state. It is a unified circuit court with six (6) geographic districts. These districts do not have constitutional or judicial autonomy but rather they exist to handle the case volume of the entire circuit. There are seven main courthouses (two in Chicago and five in the suburbs of Chicago), and several other satellite locations. In 2014, there were over 1.2 million new cases filed (civil and criminal) in the Cook County Judicial Circuit, with over \$80M in fees and other revenue collected, and over \$495M imposed in fines, penalties, assessments, forfeitures and other disbursements.

Cook County ordinances authorize the Clerk of the Cook County Circuit Court to collect many of the fees set out in the Illinois Compiled Statutes. Among those fees are the common ones, such as the Court Automation Fee (\$25), the Court Document Storage Fee (\$25), and the Electronic Citation Fee (\$5). There are others, however, that are unique to the Cook County Circuit Court. For example, Illinois law allows for the establishment of teen courts in counties with population over \$3,000,000, of which Cook is the only such

county,⁷⁵ and the county has accordingly established a \$5 fee to fund such a court, as well as additional fees to fund a special mental health and drug court.⁷⁶ Similarly, the Cook County Circuit charges to those filing civil cases the state authorized \$10 fee to cover the cost of a Children’s Waiting Room.⁷⁷

Outside of fees that are charged and go back to the Cook County Circuit Court, Cook County charges Law Enforcement and Probation fees. For example, a \$10 fee is assessed by the Cook County Circuit Court upon conviction for a criminal violation. The Clerk of the Circuit Court then remits these fees to the County for the County Jail Medical Costs Fund, which makes payment for medical services rendered to people under the custody of the Cook County Department of Corrections. Moreover, defendants who are reasonably able to pay for medical care provided while under supervision (either on their own or through insurance or other benefit programs) are required to reimburse the County for such costs.⁷⁸

Probation fees in Cook County are on a sliding scale and pegged to a probationers number of dependents. For example, a probationer earning \$25,000/year with 2 dependents would pay a \$25 monthly probation fee, whereas someone earning \$35,000 with the same number of dependents would pay \$40.⁷⁹ The Illinois state statute sets probation fees at \$50/month, but allows courts to waive the fee entirely or set lower fees based on a probationers’ ability to pay.⁸⁰

While the Cook County Circuit Court collects fines and fees, it has also offered a one-time amnesty for those with delinquent court debt. In October of 2015, Cook County Circuit Court Clerk Dorothy Brown held an “Amnesty Week,” in which overdue fees on delinquent LFOs (but not the fines and fees themselves) were waived, and delinquent payments were accepted during extended office hours at most of the locations of the Circuit Court. Brown announced, “I learned about a similar amnesty program that was held in Florida earlier this year, and knew that it was a great idea.”⁸¹

City of Chicago

Chicago is the largest city in Cook County and in the state of Illinois. With over 2.7 million residents, just over 1 in every 5 Illinoisans lives in the city of Chicago. Relative to Illinois, Chicago has higher proportions of African Americans (31.5 percent) and Latinos (28.9 percent), but about the same proportion of Asians (5.7%). Its poverty rate (31.5 percent) is more than twice the state poverty rate.

The City of Chicago comprises the First Municipal District, which is a non-autonomous geographic unit of the Cook County Judicial Circuit. The First Municipal District operates 23 branches or other specialized courts located in 10 locations throughout the city (e.g. courts for felony traffic arrests, misdemeanor juries, felony preliminary hearings, evictions, etc).

Compared to the other selected jurisdictions, Chicago is unique in that its municipal code contains over 200 additional fines. Most of these infractions will be handled at the administrative hearings level, unless requiring incarceration or appealed. Fines are found throughout the code, ranging from \$50 to \$500 for blaring loud music from a vehicle to \$750 to \$3000 and imprisonment for soliciting prostitution. Fines are categorized according to subject matter, such as ‘public morals,’ ‘public peace and welfare,’ or ‘weapons,’ to name a few. The penalty amount is either discretionary and chosen from an authorized range, or mandatory and set according to the number of offenses (e.g. \$1500 1st offense and \$5000 subsequent offenses). For

75 705 ILCS 105/27.5(e6); 55 ILCS 5/5-1101(e)

76 Ord. No. 05-O-11, 2-1-2005, Ord. No. 05-O-15, 3-1-2005, Ord. No. 06-O-39, 10-17-2006

77 Ord. No. 09-O-11, 1-13-2009

78 Ord. No. 05-O-19, 3-15-2005; Ord. No. 10-O-48, 9-1-2010

79 See <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/337/GENERAL-ADMINISTRATIVE-ORDER-NO-05-09-STANDARD-PROBATION-FEE-GUIDE.aspx>

80 730 ILCS 5/5-6-3(i)

81 Anna Aguillard, Sept. 29, 2015, *The Cook County Record*. <http://cookcountyrecord.com/stories/510640439-cook-county-circuit-court-clerk-to-waive-late-charges-on-fees-fines-oct-5-9>. A year later, the Circuit Court Clerks of Lake County and Fulton County, IL followed suit with similar amnesty programs that forgave interest or waived the 30% collections fees.

instance, soliciting prostitution is a violation of the chapter entitled “Public Morals” and the fine amount increases with each subsequent offense, while indecent exposure is a violation of the same chapter but the penalty amount is discretionary and ranges from \$100 to \$500 per offense. Often, fine amounts are not only per offense but also per day the violation remains, such as the \$25 to \$50 fine per offense/per day for placing spikes on a railing or fence. Fines can also include additional community service or jail time or these penalties can be sentenced in lieu of a fine. For example, gang loitering carries with it a fine of \$100 to \$500 for the first offense and/or up to 6 months imprisonment. Even if a particular offense does not list a specific fine, most chapters conclude with a violation clause stating, “any person violating any provisions of this chapter, where no other penalty is specifically provided, shall be fined not more than [amount] for each offense.”⁸²

City of Skokie and northern suburbs

The city of Skokie is the seat of the Second Municipal District of the Cook County Circuit Court. The Second Municipal District includes the towns of Deerfield (part), Des Plaines, Evanston, Glencoe, Glenview, Golf, Kenilworth, Lincolnwood, Morton Grove, Niles, Northbrook, Northfield, Park Ridge, Skokie, Wilmette, and Winnetka; and the Townships of Evanston, Maine (part), New Trier, Niles, Northfield (part), and Wheeling (part). While Table 3 lists the demographics for the city of Skokie, the Second Municipal District includes a very diverse array of suburbs by race and socioeconomic status. For example, Winnetka is 93% non-Hispanic White with a poverty rate of 2%; Morton Grove is 62% White and 28% Asian with a poverty rate of 6.8%; Des Plaines is 68% White and 17% Hispanic with a poverty rate of 7.3%; and Evanston is 61% White and 18% Black with a poverty rate of 13.9%.

Table 3. Characteristics of selected Illinois jurisdictions¹

| | Population | Poverty Rate | Percent African American | Percent Latino | Fines, Fees and Assess. per capita |
|------------------|------------|--------------|--------------------------|----------------|------------------------------------|
| State of IL | 12,859,995 | 14.4 | 14.7 | 16.7 | \$139 |
| Cook County | 5,238,216 | 17.1 | 24.2 | 25 | \$110 |
| Chicago City | 2,712,608 | 22.7 | 31.5 | 28.9 | NA |
| Skokie City | 65,056 | 11.7 | 6.3 | 10.5 | NA |
| Kendall County | 123,355 | 5.4 | 6.7 | 16.9 | \$141 |
| Woodford County | 39,227 | 6.3 | .7 | 1.4 | \$144 |
| Massac County | 14,766 | 20.7 | 5.8 | 2.6 | \$68 |
| Alexander County | 6,780 | 35.6 | 36.6 | 2.1 | \$114 |
| Pulaski County | 5,678 | 23 | 32.3 | 1.9 | \$502 |

¹County population, poverty, and population composition data from 2014 data reported in Census Bureau QuickFacts at www.census.gov/quickfacts/. City Data come from 2010-2014 American Community Survey 5-Year Estimates, U.S. Census Data. Fines, Fees, and other Assessments from the Annual Report of the Illinois Courts: Statistical Summary-2014. The figure was calculated by summing Clerk Fees; Fines, Penalties, Assessments, and Forfeitures (Minus Maintenance and Child Support); Fees of Others; and Miscellaneous Disbursements and dividing by total state or county population.

Kendall County

Kendall was the fastest growing county in the nation from 2000 to 2010, more than doubling its population in those ten years.⁸³ It is part of the expanding Chicago metropolitan area, located about 80 miles SW of Chicago. The county has the 2nd lowest poverty rate (5.4 percent) of all counties in Illinois, while also having the 6th largest Latino population (16.9 percent). Its Asian and Black populations are below the state average. It leaned slightly Republican in 2012.

Kendall County is part of the Twenty-Third Judicial Circuit of Illinois. There are two counties in the Twenty-Third Judicial Circuit – Kendall and DeKalb – that are about the same size in terms of population and have similar racial demographics, although the poverty rate in DeKalb County is nearly twice that of Kendall County. DeKalb County operates its own court and has its own clerk, but one chief judge presides over the Twenty-Third Judicial Circuit as a whole. The Kendall County court is located in the city of Yorkville (pop. 16,921), but Oswego (pop. 30,355) is the largest city in the county. In 2014, there were 16,612 new cases filed in Kendall County. The Circuit Clerk charged just under \$1M in fees and other revenue, and collected fines, penalties, assessments, forfeitures and other disbursements of over \$17M.

Kendall County retains the services of Harris & Harris Collection Agency to recoup past due fines and fees. The County charges a 30% delinquency amount on the unpaid balance pursuant to Illinois statute. Harris & Harris are also allowed by statute to assess a collection fee of their own.

As in the rest of the state, there are no municipal courts in the county nor within the Twenty-Third Judicial Circuit. However, both Yorkville and Oswego have administrative adjudication and hearings processes. Yorkville's website clearly differentiates this level from circuit court matters: "The United City of Yorkville offers Administrative Adjudication as an alternative to court. This process addresses a wide range of cases involving violations of municipal ordinances that were previously heard in the Kendall Circuit Court. Such hearings, which take place at Yorkville City Hall, expedites resolutions, reduces litigation expenses, and allows the Circuit Court to focus on more serious offenses. These hearings are also more convenient for residents who wish to contest a ticket or citation."⁸⁴

WOODFORD COUNTY

Woodford County is located near the center of the state of Illinois. Despite its rather small population (39,227 people) it nonetheless falls on the high end of the middle tercile of counties by population. It is well below the mean Illinois county population of 128,094, but above the median county population of 29,662. In other words, Illinois has many very small counties, and a few very big counties (like Cook County) that create a wide dispersion of county populations.

Woodford is within the Peoria metropolitan area, which is the headquarters of the heavy equipment manufacturer Caterpillar. Woodford, however, is not a suburb of Peoria; the county's website describes it as "rural." Peoria is also part of a different judicial circuit. The county seat of Woodford County is Eureka (pop. 5,295), home to Eureka College, the alma mater of Ronald Reagan. Woodford is over 95% White and has a low poverty rate (6.3%) relative to the state. In 2012, Woodford had the 9th highest Republican vote percentage of all counties in Illinois.

Woodford County is part of the Eleventh Judicial Circuit, which also includes the counties of Ford, Livingston, Logan, and McLean (where the Judicial Circuit is located). The Woodford County Circuit Court is located in Eureka. There are no municipal courts in the county nor within the Eleventh Judicial Circuit, nor does Eureka have an administrative hearings structure. In 2014, there were 5,837 new cases filed in Woodford County. The County charged \$277,197 in fees and other revenue, and collected fines, penalties, assessments, forfeitures and other disbursements of roughly \$5.6M.

83 U.S. Census. 2011. "Population Distribution and Change: 2000 to 2010." U.S. Census Briefs. C2010BR-01. <https://www.census.gov/prod/cen2010/.../c2010br-01.pdf>

84 <http://www.yorkville.il.us/215/Adjudication-Hearings>

Massac, Alexander, and Pulaski Counties

Massac, Alexander, and Pulaski Counties are three very small counties by population size, with a combined 27,244 residents. Along with six other counties – Jackson, Johnson, Pope, Saline, Union, and Williamson (where the main judicial circuit is located) – they are all part of the First Judicial Circuit of Illinois. They are adjacent counties at the very southern tip of Illinois, bordered by Missouri and Kentucky. This area is known informally as Little Egypt, as much for the confluence of the Mississippi and Ohio rivers as for historical political alliances made with southern states on the issue of slavery.

Cairo, Illinois, a city that has had turbulent race relations,⁸⁵ is located in Alexander County. The racial composition is mostly Black and White, with almost no Latinos. The Black populations in Alexander (36.6%) and Pulaski (32.3%) counties are more than twice the state average, while Massac has a small Black population relative to the state (only 5.8%). Less than 3% of the population of these counties is Latino, and the Asian population is less than .5%.

Combined, the three counties had 758 new criminal cases and 30,310 new traffic cases filed in 2014 (out of 32,721 civil and criminal cases in total). In other words, traffic cases made up 75% (Massac County) to 97% (Pulaski County) of all new cases filed (92% in Alexander County), compared to 61%, 62%, and 70% in Cook, Kendall, and Woodford counties, respectively. This may be partially explained by the handling of very minor traffic offenses in municipal administrative hearings in the latter three counties.

These three counties share some services and have some joint operations. For example, it is not uncommon for 911 calls in Alexander County to go through Pulaski County. This arrangement was particularly important when county budget cuts in October 2015 forced the layoffs of half of the Alexander County sheriff's deputies. Fees and other revenues to the Circuit Clerk in the three counties combined to \$564,039 in 2014, while disbursements of fines, penalties, assessments, forfeitures and other disbursements were just over \$4.6M.

Conclusion

Like other states, Illinois uses fines, fees, and other assessments in the criminal justice system as revenue sources for non-judicial purposes. While many of the targeted initiatives are worthy funding priorities (e.g., the Domestic Violence Shelter and Service Fund, the Foreclosure Prevention Program Fund, the County Law Library Fund, and the Spinal Cord Cure Trust Fund), they are often unrelated to the alleged offense committed by the person who pays these costs. Moreover, the burden of these rising costs falls disproportionately on low- and moderate-income defendants. The Illinois legislature has recognized these facts in recent years. The June 2016 Statutory Court Fee Task Force Report is a major step towards uncovering a system of legal financial obligations that had been opaque and widely uneven across jurisdictions. Even more importantly, the report proposed steps towards making the system more comprehensible and just. The question remains what will come of these calls for reform.

85 See, e.g. Cairo, Illinois: a symbol of racial polarization. A report by United States Commission on Civil Rights, 1972. <https://archive.org/details/cairoillinoisym00unit>

MONETARY SANCTIONS IN MINNESOTA

Prepared by Robert Stewart, Veronica Horowitz, and Christopher Uggen

Minnesota's judicial branch consists of three levels, the District Court, the Court of Appeals, and the Supreme Court, but this structure was only recently implemented. For most of its history, Minnesota counties featured a disjointed variety of limited jurisdiction courts, including municipal, probate, and conciliation courts, funded by the counties that operated alongside general jurisdiction, district-level courts funded by the state (Klaversma et al. 2012; Dosal 2007).

Beginning in the early 1970s, Minnesota initiated a decades-long effort to reform the judicial branch. The reform effort sought to unify the judicial branch by improving judicial organization and administration and stabilizing funding, thus effectively establishing it as a co-equal branch of state government (Dosal 2007). During the first phase of judicial reform, the functions of the multiple county courts were consolidated into a unified county court within each county. That was followed by the second phase in the 1980s when the unified county courts and their functions were absorbed by the already existing district-level courts, streamlining the judiciary's operations and organizational structure. The final phase took place over sixteen years (1989-2005) as funding responsibility was incrementally transferred from the individual counties to the state (Klaversma et al. 2012; Dosal 2007).

Today, District Courts serving the 10 judicial districts in Minnesota (Figure 1) have original jurisdiction over all civil and criminal cases (Minn. Const. art. VI sec. 3). These include violations of state statutes and local ordinances, and matters of local or state law. There are three criminal offense levels in Minnesota and one civil offense level (see Table 1). Felonies are the most serious criminal offenses that can include incarceration for at least one year and one day (M.S. § 609.02 subd. 2). Gross misdemeanors are intermediate-level crimes that can carry up to one year in jail (M.S. § 609.03 subd. 2). Misdemeanors are low-level crimes that can include a sentence of up to 90 days in jail (M.S. §§ 609.02 subd. 3). Petty misdemeanors are civil offenses, not criminal, and are thus notailable offenses.

There are several offenses in Minnesota in which subsequent offenses can elevate the offense level. For example, a first-time driving while impaired charge (assuming the blood-alcohol concentration is above the legal limit but less than double the legal limit, or 0.16) is classified as a fourth-degree DWI in Minnesota, a misdemeanor offense (M.S. §§ 169A.20 subd. 1; 169A.27 subd. 2). Second and third DWI offenses within ten years of the first DWI are then charged as gross misdemeanors (M.S. §§ 169A.26; 169A.25). A fourth and any subsequent DWI offense within 10 years are then charged as felonies (M.S. § 169A.24). Other examples of increased offense levels for subsequent offenses can be found in assault and domestic assault statutes (M.S. §§ 609.224; 609.2242).

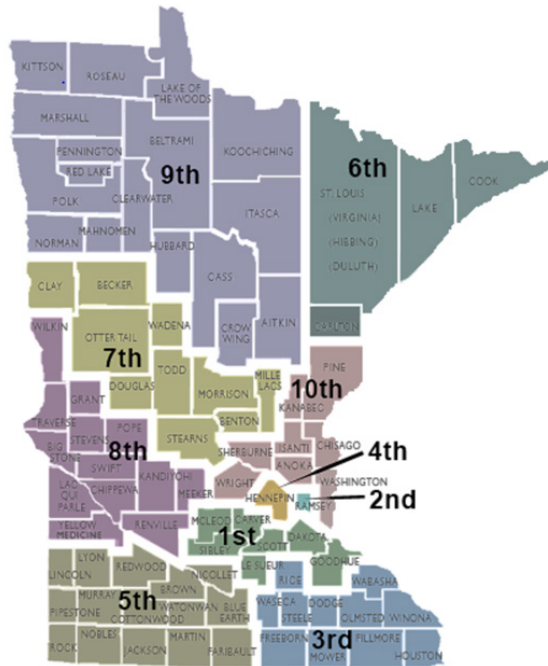


Figure 1: Minnesota Judicial Districts

In a typical case in Minnesota, a defendant’s total financial obligation (or “court debt” as defined in M.S. § 480.015 subd. 10(b)) consists of five main components, which we will discuss in turn:

1. a base fine
2. surcharges
3. court fees
4. correctional fees
5. restitution

Below, we outline each financial obligation in more detail. We also provide the legal and/or historical context when appropriate to demonstrate how the nature of these financial obligations have shifted or changed over time.

Base Fine

The base fine serves as the direct punishment or penalty for the statute or ordinance violation. Specific fine amounts are not generally set by statute, but rather by a uniform fine schedule (“Statewide Payables List”) or by the presiding judge. Depending on the offense and/or the offense level, however, state statute may set minimum and maximum fine amounts.

Statutory offenses in Minnesota are classified into three criminal levels (felonies, gross misdemeanors, and misdemeanors) in addition to petty misdemeanors, which are classified as civil offenses (see Table 1). Felony-level offenses, the most serious, carry a possible sentence of more than one year in prison if executed (M.S. § 609.02 subd. 2). Maximum fine amounts for felony offenses are fixed by an individual offense’s controlling statute, and the highest maximum fine in current statute is \$1,000,000 for 1st degree controlled substance crime (M.S. § 152.021), concealing criminal proceeds (M.S. § 609.497), and racketeering (M.S. § 609.904). If a maximum sentence is not otherwise fixed by statute, the maximum fine is \$10,000 (M.S. § 609.03). Gross misdemeanors are intermediate level criminal offenses that can carry a maximum sentence of one year in jail

and/or a \$3,000 fine (M.S. §§ 609.03 subd. 2; 609.02 subd. 4). Misdemeanors, the lowest criminal offense level, can be sentenced to a maximum of 90 days in jail and a \$1,000 fine (M.S. §§ 609.02 subd. 3; 609.02 subd. 3). Petty misdemeanors, which are civil and not criminal violations, carry a maximum fine of \$300 (M.S. § 609.02 subd. 4a). In most cases, felonies and gross misdemeanors are prosecuted by the county attorney and misdemeanors and petty misdemeanors are prosecuted by the city or municipal attorney, unless the city or municipality has contracted with the county to handle all prosecutions (M.S. § 484.87 subd. 3).

According to statute, the minimum fine courts must impose for misdemeanor, gross misdemeanor, and felony level offenses is no less than 30 percent of the maximum fine allowed by law (M.S. § 609.101 subd. 4). But there are notable exceptions. In Minnesota, public defender eligibility is outlined in (M.S. § 611.17). A defendant can qualify for a public defender in two ways. First, any defendant who either receives means-tested government benefits or has a dependent residing with them who receives such benefits is deemed eligible for a public defender. Second, the court makes a determination based on the defendant’s current income and liquid assets about whether the applicant would be able to pay the reasonable costs charged by private council in that same judicial district. If the defendant qualifies for a public defender, is indigent, or payment would create an undue hardship, the court may reduce the fine to no less than \$50 (M.S. § 609.101 subd. 5(b)). Additionally, since 2001, district court judges have also had the option to allow the defendant to perform community service in lieu of paying a fine (Laws of Minn. 2001, c. 71, sec. 4).

Counties, cities, and municipalities also have the authority to establish penalties for ordinance violations, but only the Legislature has the authority to establish felony- or gross misdemeanor-level sentences (M.S. § 609.015). The maximum penalty for an ordinance violation is equivalent to that of a misdemeanor (M.S. §§ 366.01 subd. 10; 368.01 subd. 22; 375.53; 412.231).

Table 1. Offense Levels in Minnesota Statute (M.S. § 609.02)

| | Incarceration | Minimum Fine | Maximum Fine |
|-------------------|--|---|--------------------------------------|
| Felony | Minimum 1 year and 1 day in prison if executed (M.S. § 609.02 subd. 2) | 30% of maximum fine (M.S. § 609.101 subd. 4(1)) | Fixed by individual criminal statute |
| Gross Misdemeanor | Up to one year in jail (M.S. § 609.03 subd. 2) | 30% of max fine, or \$900 (M.S. § 609.101 subd. 4(2)) | \$3,000 (M.S. § 609.02 subd. 4) |
| Misdemeanor | Up to 90 days in jail (M.S. § 609.02 subd. 3) | 30% of max fine, or \$300 (M.S. § 609.101 subd. 4(2)) | \$1,000 (M.S. § 609.02 subd. 3) |
| Petty Misdemeanor | N/A | N/A | \$300 (M.S. § 609.02 subd. 4a) |

The Judicial Council, the administrative policy-making authority of the judicial branch, has established the *Statewide Payables List* of payable petty misdemeanor and some misdemeanor offenses (M.S. § 609.101 subd. 4; Minn. R. Crim. P. 23.03 subd. 2(1)). The *Statewide Payables List*¹ specifies fine amounts for all petty misdemeanors and particular misdemeanors that can be paid in lieu of a court appearance. Individuals who pay their fine without an appearance waive their rights to a trial and counsel and a plea of guilty is entered. If the citation is for a misdemeanor level offense with a fine amount of \$300 (the maximum amount for a petty misdemeanor) or less, the level of *offense* remains a misdemeanor upon payment of the fine (M.S. § 609.095 states that only the Legislature has the authority to define offenses), but the level of *sentence* is deemed a petty misdemeanor pursuant to Minn. R. Crim. P. 23.02. Put differently, by waiving their rights and forgoing a court appearance by paying a fine, Minnesotans with the means can, for all intents and purposes, avoid a

1 The *Statewide Payables List* is published online annually, the current (2016) version can be found here: http://www.mncourts.gov/mncourtsgov/media/scao_library/Statewide%20Payables/2016-Traffic-Criminal-Payables-List-Effective-1-1-2016.xls

potential criminal record because petty misdemeanors are not classified as crimes.

How fine monies are allocated depends on a few factors, including where the offense or violation occurred, who prosecuted the offense, and in some cases the offense itself. Generally speaking, fine receipts are split between the town or city in which the offense occurred and the state general fund, assuming that the case was prosecuted by a municipal or city attorney and not the county attorney. The specific split between the locality and the state depends on the location (see Table 2; M.S. §§ 484.841; 484.85; 484.90). But if the county attorney prosecutes the case, which includes most gross misdemeanors and all felonies, then the entire fine amount is credited to the state's general fund.

Table 2. Fine allocation formula by location and prosecution

| County (if prosecuted by city or municipal attorney | City/ Municipality | State General Fund |
|---|-----------------------|-----------------------|
| Hennepin County | 80% | 20% |
| Ramsey County | 50% | 50% |
| St. Paul | 66⅔% | 33⅓% |
| Any city/municipality other than St. Paul | 50% | 50% |
| All other counties | 66⅔% | 33⅓% |
| If parking violation | 100% | 0% |
| If prosecuted by county attorney | 0% | 100% |

There are, however, exceptions to this formula for certain offenses. For example, 70 percent of the fine in a case involving most types and levels of assault and criminal sexual conduct is specifically allocated to local victim assistance programs in the county in which the offense occurred, and the remaining 30 percent is allocated to the state general fund (M.S. § 609.101 subd. 2). Fines in controlled substance cases are distributed in a similar manner, with 70 percent allocated to local drug abuse prevention or intervention programs and 30 percent to the state general fund (M.S. § 609.101 subd. 3). Importantly, though, felony fines collected in Minnesota go to the state general fund and therefore do not benefit local units who are in authority to impose them, reducing the potential incentive of imposing large fine amounts for departmental or local gain. However, fine receipts from ordinance violations and lower-level offenses may benefit the local jurisdiction, especially in larger cities. In addition, some cities such as Minneapolis, also have administrative fines for low level traffic and parking offenses where the entire amount collected may go to the city. While such offenses tend to be fairly minor they could impact a large number of people and generate significant revenue.

Surcharge

On top of the base fine, Minnesota judges have been statutorily required to add a surcharge in criminal and petty misdemeanor cases since 1999. The amount of the surcharge has steadily risen since first being introduced, increasing from \$25 (1999), to \$35 (2002), to \$60 (2004), to \$72 (2006), and finally to the current amount of \$75 (2009) (Laws 1998, c. 367, art. 8, § 5; Laws 2001, 1st spec sess., c. 9, art. 18, § 15; Laws 2003, 1st spec. sess., c. 2, art. 8, § 6; Laws 2005, c. 136, art. 14, § 4; Laws 2008, c. 363, art. 12, § 11). The Legislature clarified in 2009 that this surcharge may only be imposed once in cases with more than one offense (M.S. § 357.021 subd. 6). Statute also allows Ramsey County to add an additional \$1 that goes to a special fund that supports Ramsey County's petty misdemeanor diversion program (M.S. § 357.021 subd. 7(d)). There is a separate surcharge for parking violations, which increased from \$3 when it was first introduced in 2003 to the current amount of \$12 (Laws 2003, 1st spec sess., c. 2, art. 8, § 6; Laws 2009, c. 83, art. 2, § 22).

The funds generated by these surcharges support law enforcement training, and contribute to the state's general fund. For each \$75 surcharge, \$9.75 goes to the peace officer training account (Minnesota Board of Peace Officer Standards and Training), \$0.25 goes to officer training for the Department of Natural Resources, and \$65 goes to the state's general fund for a variety of spending priorities (M.S. § 357.021 subd. 7). The entire \$12 parking surcharge, on the other hand, goes directly to the general fund.

Statute also provides for certain surcharges for specific offenses. For example, defendants facing driving under

the influence or related charges who are required to receive a chemical use assessment also face a chemical dependency assessment surcharge of \$25, which can only be waived if the court makes written findings that the surcharge would create an undue hardship or the defendant is indigent (M.S. § 169A.70 subd. 1). If the present driving under the influence case is the defendant's second or more within five years, then the surcharge increases to \$30. Funds raised from this surcharge are forwarded to the general fund.

Court Fees

A third component that adds to a defendant's total financial obligation is court fees. These can include county sheriff fees, controlled substance fees, felony fees, and others that vary widely from county to county. Many of these fees are set by county boards rather than state statute. But a few court fees have been created by the state legislature, such as the law library fee which provides for each county's law library board of trustees to set a fee amount that goes to support the county law library (M.S. §§ 134A.09; 134A.10). This fee varies from county to county, ranging from a low of \$0 to a high of \$18, with a median of \$10 (Minnesota Department of Administration 2016). And although Minnesotans convicted of felonies are required to provide DNA following conviction, there is not DNA fee (M.S. § 609.117 subd. 1).

Many defendants in Minnesota courts utilize the services of a public defender and are thus liable for the \$75 public defender co-payment, though that co-payment may be reduced or waived by the court. Except for a short period from 2003-2007, the co-payment has not actually gone to support public defense; rather it has been contributed to the state's general fund (Laws 2003, 1st Sp., c. 2, art. 3, § 4; c. 23, § 6; Laws 2007, c. 61, § 4; M.S. § 611.17). Individuals are eligible for a public defender if they either receive means-tested government benefits, or the court determines, based on a four-page, detailed financial statement submitted under oath, that they would be unable to pay for a private attorney (M.S. § 611.17). Statute makes clear that the co-payment is a civil obligation and cannot be made a condition of probation.

The public defender co-payment was originally \$28 when first implemented in 2002 but allowed judges to waive the co-payment at their discretion (Laws 2002, c. 220, art. 6, § 13). The constitutionality of this required co-payment was affirmed by the Minnesota State Court of Appeals in *State v. Cunningham* (Minn. 2002) based on the fact that the statute provides judges with the discretion to waive the co-payment.

In the midst of a budget crisis in the early 2000s, however, Minnesota began to prioritize user fees over direct taxes as a way to fill budget shortfalls at the urging of then-Governor Tim Pawlenty. The 2003 special session serves as a good example of this shift when the Legislature changed course by removing the judge's discretion to waive the co-payment and drastically increasing the co-payment amounts to \$200 for a felony charge, \$100 for a gross misdemeanor charge, and \$50 for a petty misdemeanor charge (Laws 2003, 1st Sp., c. 2, art. 3, § 4; c. 23, § 6). This move and others faced stiff opposition from the State Court Administrator's Office (SCAO), which maintained the view that the judiciary should not be self-funding. Instead, the SCAO argued that, in line with the ongoing shift from county-level to state-level responsibility, it is the Legislature's obligation to fund the courts through the general fund (Dosal 2007).

Almost immediately after the amended law went into effect, however, it was challenged in court. The Minnesota Supreme Court granted accelerated review to a certified question of law in *State v. Tennin* (Minn. 2004) which specifically challenged the amended version of the statute version that did not include discretion for the district court to waive the co-payment. Based on the United States Supreme Court's *Fuller v. Oregon* decision (1974), Chief Justice Kathleen A. Blatz of the Minnesota Supreme Court held that the amended version was, in fact, unconstitutional. In response, the Legislature revised the statute to reflect its previous language that included judicial discretion to waive the co-payment and returned the amount to \$28 for all criminal cases (Laws 2007, c. 61, § 4). Two years later the co-payment was raised to its current amount of \$75 (Laws 2009, c. 83, § 47).

Court fees can also include the costs of prosecuting the case, in whole or in part, that would be recoverable if it had been a civil action (M.S. § 631.48; *State v. Lopez-Solis* [Minn. 1999]). These fees are to be paid to whichever subdivision of government prosecuted the case and are thus considered a reimbursement to the state or local government unit rather than a punishment (*State v. Lopez-Solis* [Minn. 1999]). These costs

can include expert witness fees/travel, trial exhibits, blood testing, subpoenas, and even investigation costs incurred by a drug task force (*State v. Alvarez* [Minn. 2012]; *State v. Lopez-Solis* [Minn. 1999]; *State v. Kujak* [Minn. 2002]). State's attorney fees, grand jury costs, medical examiner costs, translator fees, and transcript fees, on the other hand, are not recoverable (*State v. Lopez-Solis* [Minn. 1999]). A sentencing judge is also not required to determine whether the defendant has the ability to pay before imposing prosecution costs (*State v. Lopez-Solis* [Minn. 1999]).

Correctional Costs

The fourth potential component of a defendant's total financial obligation associated with criminal justice involvement is local correctional fees. The controlling statute, which became law in 1992, explicitly states that correctional fees shall be used as a supplement "to defray costs associated with correctional services," but they "may not be used to supplant existing local funding" (M.S. § 244.18 subd. 2; subd. 6). The statute allows for correctional fees to be charged for services such as community service work placement and supervision, restitution collection, supervision, court ordered investigations, or any other court ordered service provided by the local community corrections agency (M.S. § 244.18 subd. 1). These most often take the form of probation supervision fees, but also include electronic home monitoring, alcohol and drug testing, and other costs related to criminal justice involvement.

For the first thirteen years, only those "persons convicted of a crime and under the supervision and control of the local correctional agency" were liable for these correctional fees (Laws 1992, c. 571, art. 11, § 9, subd. 2). But the 2005 Public Safety Omnibus bill (Laws 2005, c. 136, art. 13, § 7) removed "convicted of a crime" from the statute, allowing for individuals under any type of supervision, whether it be pre- or post-conviction, to be assessed these correctional fees.

Correctional fee amounts are set by each local correctional agency. These agencies also have the authority to waive payment of these fees for individuals who are indigent or for whom "the prospects of payment are poor" (M.S. § 244.18 subd. 4). The correctional agency may also convert correctional fees to community service work for those who may have difficulty paying.

Those sentenced to serve time in a local jail or workhouse may also be liable for the cost of their confinement (M.S. § 641.12 subd. 3). Commonly referred to as "pay for stay," this amendment to statute was added in 2002 (Laws 2002, c. 322, § 1). The statute, however, was not entirely clear on whether a defendant can be billed for both the pre-conviction and post-conviction periods, or just the post-conviction period. It read, "A county board may require that an offender convicted of a crime and confined in the county jail..." A civil suit sought to clarify its meaning, eventually being heard by the Minnesota Supreme Court. The Court zeroed in on the word "offender," stating,

Because offender's modifies the expenses listed, the statute permits a county to require payment only for an offender's expenses. Stated differently, the statute does not authorize counties to require payment for a nonoffender's expenses. (Jones v. Borchardt 2009 [emphasis in original])

The Minnesota Supreme Court went on to explain that a person does not become an offender until they have been convicted of a crime, thus they held that a county can only charge confinement costs post-conviction. But only a few months after the Court's decision, the Legislature passed a bill which replaced the word "offender" with "person," allowing counties to charge for days before and after conviction as long as the individual was convicted (Laws 2010, c. 318, § 2).

For counties that choose to charge for confinement costs, the per day cost is determined by the county board of commissioners, and is in addition to whatever booking fee has been established (M.S. § 641.12). A 2008 amendment later added an option for counties to also charge for serving on a sentence-to-serve work crew (Laws 2010, c. 215, art. 11, § 19). Individuals granted work release by the court are also required to pay a daily boarding fee (M.S. § 631.425), but this is in place of, and not in addition to, the "pay for stay" fee.

Many defendants may also be required to pay other costs that are not directly to a local corrections agency,

but are associated with a requirement of their probation or release. These may include payments for chemical dependency treatment, drug testing, electronic home monitoring, or sex offender treatment.

Restitution

As in other states, victims of crime can be compensated for losses through restitution. The restitution process, as outlined in M.S. § 611A.04, is a component of the criminal juvenile delinquency sentencing process. The restitution order may also be postponed until some point after sentencing if the extent of the losses is not known at the time of the hearing and the defendant is sentenced to some period under correctional control (e.g. probation or incarceration). If restitution is included as part of an individual's total financial obligation, any payments are first applied to restitution before any other type of legal debt, including fines, fees, or surcharges (M.S. § 609.10 subd. 2(b)).

Interest

Most types of court debt in Minnesota do not accrue interest, so the financial obligation does not increase over time unless sent to collections (M.S. § 549.09 subd. 1(b)(3)). Restitution, however, does accrue interest (M.S. § 611A.04 subd. 3), with the interest rate depending on the restitution amount. The annual interest rate for orders of restitution at \$50,000 or below is based on either rounding up to the yield of a one year U.S. Treasury bill to the nearest whole percent, or four percent, whichever is greater (M.S. § 549.09 subd. 1 (c)(1)). Restitution orders over \$50,000 accrue at ten percent interest yearly.

Penalties for Non-Payment

Non-payment penalties can occur before or after conviction. If a defendant fails to appear in court, the ensuing process differs by offense classification. In petty misdemeanor and payable misdemeanors on the *Statewide Payables List*, if the defendant does not appear in court or pay the financial obligation by the court date, the court administrator will assess a \$5 late penalty and send a notice giving the defendant 30 days to appear (MSCAO 2014b). If the defendant does not appear within 30 days, the court administrator will assess a second late penalty of \$25. If the present offense is a petty misdemeanor, then the court administrator will "administratively enter a guilty plea and conviction." If the present offense is a payable misdemeanor, then the court administrator *cannot* administratively enter a guilty plea. Instead, the judge or hearing officer will decide whether to reschedule the court date, send a notice to appear, or issue a bench warrant, but a guilty plea *cannot* be administratively entered, which is also the process for non-payable misdemeanor, gross misdemeanor, and felony cases where a defendant fails to appear.

Additionally, if a defendant in a petty misdemeanor or payable misdemeanor case fails to appear after the second late penalty, Minnesota State Court Administrator Policy (2014b) requires that the court administrator recommend to the Department of Public Safety (DPS) that the defendant's driver's license be suspended. DPS will then notify the defendant that they have 30 days within which to appear in court or face suspension. If the defendant does not appear within that time period, then DPS will suspend the defendant's driver's license until the defendant makes a court appearance (M.S. § 169.92). Although this may not appear significant on its surface, for many Minnesotans this can transform a civil situation into a criminal one. As an example, suppose a defendant was cited for not wearing a seatbelt, a petty misdemeanor that totals \$100 (fine plus surcharge). She does not appear in court and is not able to pay the fine. Eventually her license is suspended, though she has to drive to get to work. She's then pulled over on her way to work because of her suspended license and is charged with driving after suspension, a misdemeanor crime. What started as a petty misdemeanor seat belt ticket has turned into a criminal offense.

Court fines, court fees, surcharges, and restitution become debt following a conviction and are due on the date of conviction or the day they are imposed, unless the court administrator or judge has established another due date or a payment plan (MSCAO 2014a). Unlike many other states, failure to pay debts owed to the court – even willfully – cannot lead to incarceration or extended criminal justice supervision for Minnesota defendants. The only exception to this is restitution; outstanding restitution can be cause for a sentencing judge to impose a one-year extension to a defendant's probation (M.S. § 609.135 subd. 2(g)). A second one-year extension may also be requested if necessary. Moreover, restitution is *never* written off and stays active until paid off, even after collection efforts have ceased (M.S. § 609.104 subd. 2(c)).

If the defendant does not pay the debt by the due date or misses a payment, the debt become delinquent. The court administrator allows for a grace period that's either 90 or 120 days, depending on the type of case (MSCAO 2014a). If payment is not made by the end of the grace period, the debt will automatically be forwarded to collections as long as the balance is greater than \$25.

The exclusive debt collector for Minnesota courts is the Minnesota Department of Revenue's Revenue Recapture Program (M.S. § 270A). Minnesota courts do not use private collections agencies. The Revenue Recapture Program withholds an individual's state tax refund and applies it to any outstanding debt. A collection fee of 20 percent of the total debt is also added to the outstanding balance. When money is obtained, the order in which it is applied to outstanding debt is as follows: state taxes, child support, court-ordered criminal restitution, health care, claims by other agencies in Minnesota (which includes court ordered LFOs, student loans, with the oldest debts paid first), claims from government agencies in other states, and lastly, IRS claims (DOR 2016).

Defendants who are incarcerated in state prison are also subject to court debt and additional surcharges. Incoming funds sent to a person incarcerated in a state prison are subject a 10 percent confinement surcharge and a 10 percent restitution surcharge (if applicable) per transaction (MN DOC Policy 300.100 F.1(f)).

Outside of incarceration, non-restitution outstanding legal financial obligations remain active for 10 years after the due date or after the end of probation, whichever is longer (Judicial Council 2013; M.S. § 609.104 subd. 2(a)). After the active period, the legal debt is written off and the case is closed. The legislature also explicitly prohibits a sentencing court from extending a defendant's probation period for failing to pay a court debt other than restitution (M.S. § 609.104 subd. 2(d)). Among the 9 states we examined, this type of debt forgiveness is unique to Minnesota.

That said, during this 10-year period tax refunds will be taken and put towards this debt. In addition, while the debt is written off it remains a mark on a person's credit score beyond this 10-year period. Also in Minnesota, through indirect channels (the inability to pay for mandated treatment) an indigent defendant can in fact be incarcerated. This issue is detailed further in the legal challenges section below.

Legal Challenges

The U.S. Supreme Court has held that indigence should not be used as a justification for incarceration, primarily on equal protection and due process grounds. In *Williams v. Illinois* (1970), the court ruled that a defendant cannot be incarcerated for a period longer than the statutory maximum, regardless of whether the additional jail time was imposed to satisfy an outstanding fine.² The next year in *Tate v. Short* (1971), the Court reversed a Texas decision that converted an indigent defendant's fine to jail time for an offense that, by statute, was only punishable by a fine. Then, in *Bearden v. Georgia* (1983), the Supreme Court held that a court cannot revoke an individual's probation solely because of an inability to pay a fine.

However, the Minnesota Court of Appeals decision in *State v. Morrow* (1992) demonstrated that the *Bearden* decision does not necessarily extend indirectly to conditions of probation. In that case, the defendant had pled guilty to three counts of criminal sexual conduct, which carried a presumptive prison sentence under the Minnesota Sentencing Guidelines. The defense requested a departure from the guidelines, and for the defendant to instead be placed on probation so that he could participate in residential sex offender treatment. The judge stayed the prison sentence and conditioned probation on the defendant's participation in treatment. Because the county in which he resided would not fund his treatment, and the probation officer and defendant were not successful in finding alternative funding sources, the defendant could not afford the cost of the program. The judge revoked his probation and executed the prison sentence.

² Defendant Williams was unable to pay his \$505 legal financial obligation (\$500 fine plus \$5 court cost) after serving a year in jail, the maximum statutory sentence for his offense. Because he was unable to pay his financial obligation after his year in jail, the sentencing court directed that he serve additional jail time to "work off" his court debt at a rate of \$5. Thus he was imprisoned for 101 days longer than the statutory maximum for the offense. The Court vacated the judgment ruling that states cannot incarcerate individuals for periods longer than the statutory maximum.

The Minnesota Court of Appeals affirmed the district court’s decision. It held that the state’s penological interest must take priority. Because the defendant was judged to be at high-risk to reoffend without intensive treatment, and he couldn’t afford it nor could he find an alternative funding source, incarceration became the next best option.

A more recent example can be found in the recent unpublished Court of Appeals opinion in *State v. Brown* (2016). Similar to Morrow, Brown had been convicted of criminal sexual conduct. He was sentenced to probation and a stayed prison sentence with the special condition that he complete sex offender treatment. Having just been released from jail, he was homeless and unemployed, but he did enroll in college and obtain health insurance. However, in order to begin the sex offender intake process, he had to be able to pay an initial \$200, plus a \$42 co-payment for each treatment session.

Mr. Brown worked with his probation officer to try to raise the funds for treatment. He was able to get a subsidy from his county of residence for part of the cost, and his probation officer made a number of suggestions for how to pay the remaining balance, including “applying at temporary employment agencies or selling plasma.” He was not able to raise the necessary funds, so he was brought to court on a probation violation. Ultimately, the district court found that his probation violation was “intentional or inexcusable”³ because he was “dragging [his] feet.” The revocation was affirmed by the Court of Appeals in a 2-1 split decision under the same *Morrow* rationale.⁴

Monetary Sanctions and Collateral Consequences

In Minnesota, those convicted of a felony are not legally permitted to vote until they are off correctional supervision (including not just incarceration, but probation and post-release supervision as well). It is felony probation that accounts for the vast majority of the disenfranchised population in the state, 41,581 people in 2014 compared to only 10,119 persons in prison for instance (Uggen, Schneider, Stewart, 2016). Minnesota statute prohibits the extension of probation because of unpaid fines and fees (M.S. § 609.104 subd. 2(d)). Therefore, there are only two plausible, albeit indirect and relatively rare ways that monetary sanctions could impact the right to vote.

The first indirect path is through restitution. While probation cannot be extended because of unpaid court fines or fees, it can be extended for outstanding restitution (M.S. § 609.135 subd. 2(g)). In *State v. Barrientos* (2013), the Minnesota Supreme Court held that probation could be extended up to 5 years for outstanding restitution provided this did not extend probation for a term beyond the statutory maximum. As long as a person is on probation they cannot legally vote, so in theory unpaid restitution could prohibit an otherwise-eligible person from voting for up to 5 years.

The second indirect path is through probation conditions with costs attached. As described above, in *State v. Morrow* (1992) the Minnesota Court of Appeals held that a defendant’s probation could be revoked and their sentence executed for failure to meet the conditions of their probation even if that failure was caused by an inability to pay for services as the state’s penological interests were paramount. Hence, through special probation conditions such as sex offender treatment, a person could remain under correctional control for an extended period of time—therefore prohibiting them from voting.

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF SELECTED JURISDICTIONS

After reviewing the legal landscape of monetary sanctions in Minnesota, we present a brief demographic

3 “[B]efore probation be revoked, the court must 1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that need for confinement outweighs the policies favoring probation.” (*State v. Austin*, 295 N.W.2d 246, 250 [Minn. 1980])

4 The dissenting judge, Chief Judge Edward J. Cleary, objected to the claim that the defendant intentionally or inexcusably violated his probation. He pointed to the difficulty of simply surviving when homeless and unemployed and scoffed at the probation officer’s suggestion that the defendant sell his blood to pay for treatment: “Putting aside the offensive nature of requiring a man to sell his blood or face prison time, any funds that appellant might acquire in such a manner would presumably be needed to cover other living expenses as well. (*State v. Brown*, A15-1484, 2016 WL 1290973, at *6 (Minn. Ct. App. Apr. 4, 2016)).

profile of the courts and communities in 6 jurisdictions, highlighting the varying use of monetary sanctions and the operations of the criminal justice system.

1. Hennepin County, the state's largest city of Minneapolis, and its suburbs of Edina and Brooklyn Park
2. Beltrami County, a northern Minnesota county with a large American Indian population, and the city of Bemidji
3. Steele County, a predominantly White southern Minnesota county with relatively high fine amounts, and the city of Owatonna
4. Ramsey County, which includes the state's second largest city and state capital of St. Paul
5. Anoka County and the city of Anoka, now a populous northern suburb, but also the childhood home (and likely inspiration) for Garrison Keillor's Lake Wobegon
6. Dakota County and the southern suburbs of Hastings and Apple Valley

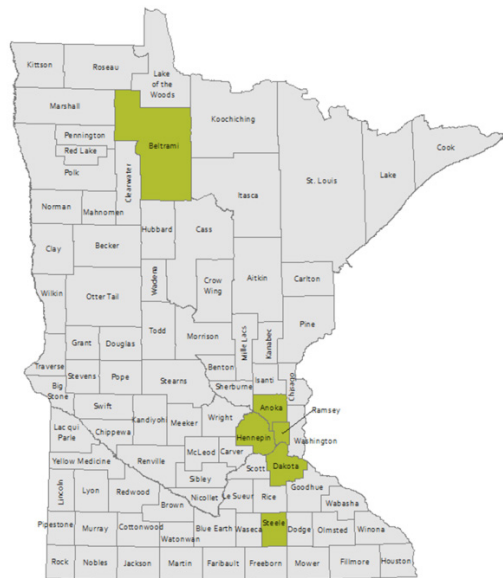


Figure 2: Selected Counties in Minnesota

Before presenting each city and county individually, we first show some basic descriptive information on key indicators. First, the poverty rate is lowest (7 to 8 percent) in the suburban counties of Anoka and Dakota, about 10 percent in Steele County, and in the mid-teens in the urban counties of Hennepin and Ramsey. The highest rate of poverty is found in Beltrami County.

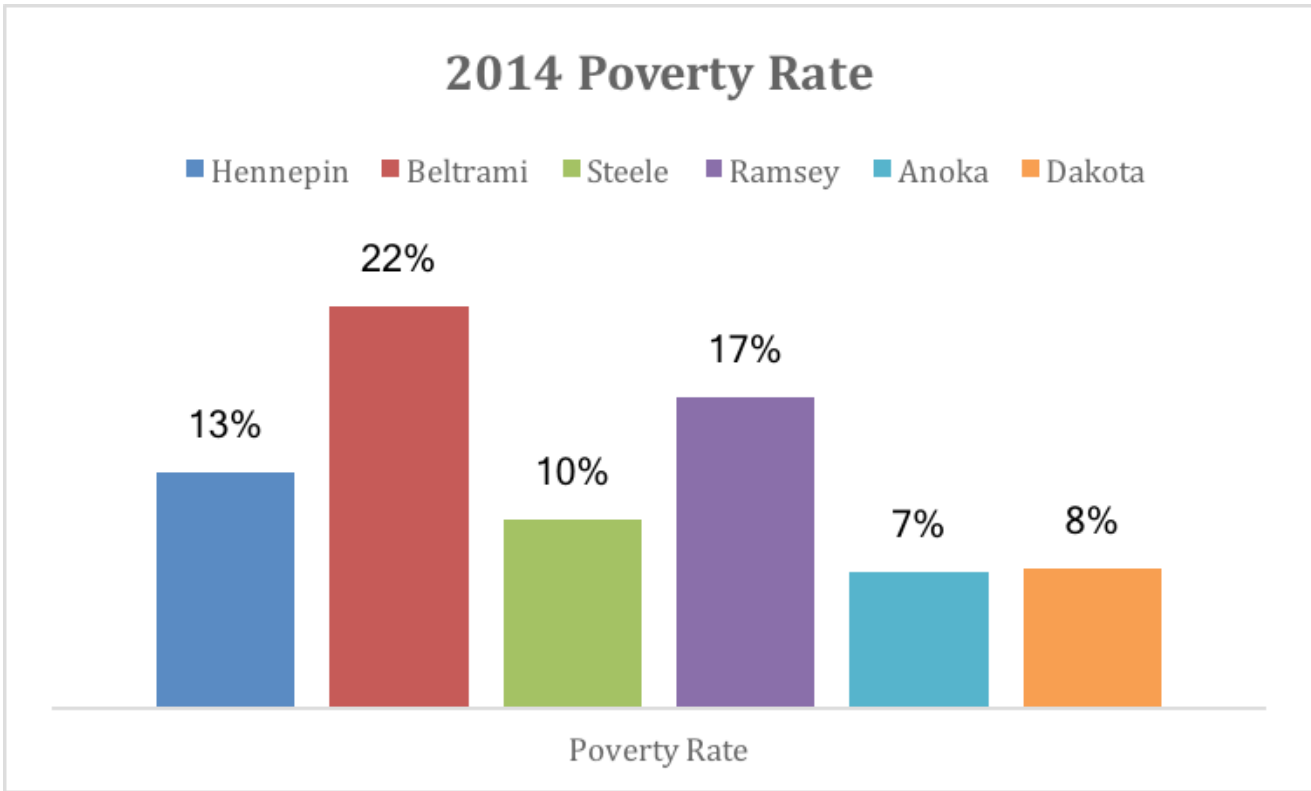


Figure 3: Poverty in Selected Minnesota Counties (American Community Survey, 2014)

Minnesota is a predominantly White state with a low rate of incarceration but great racial disparities in incarceration and in punishment more generally. The figure below shows differences in racial composition among those who do *not* identify as non-Hispanic Whites. While Whites make up the majority of the population in each county, the second largest group varies significantly across these counties. African Americans are the largest non-White group in Hennepin and Anoka Counties, American Indians are the largest such group in Beltrami County, those of Hispanic ethnicity are the second largest group in in Steele and Dakota Counties, and Asians represent a sizeable proportion of the residents of Ramsey County.

2014 Non-White Racial and Ethnic Composition

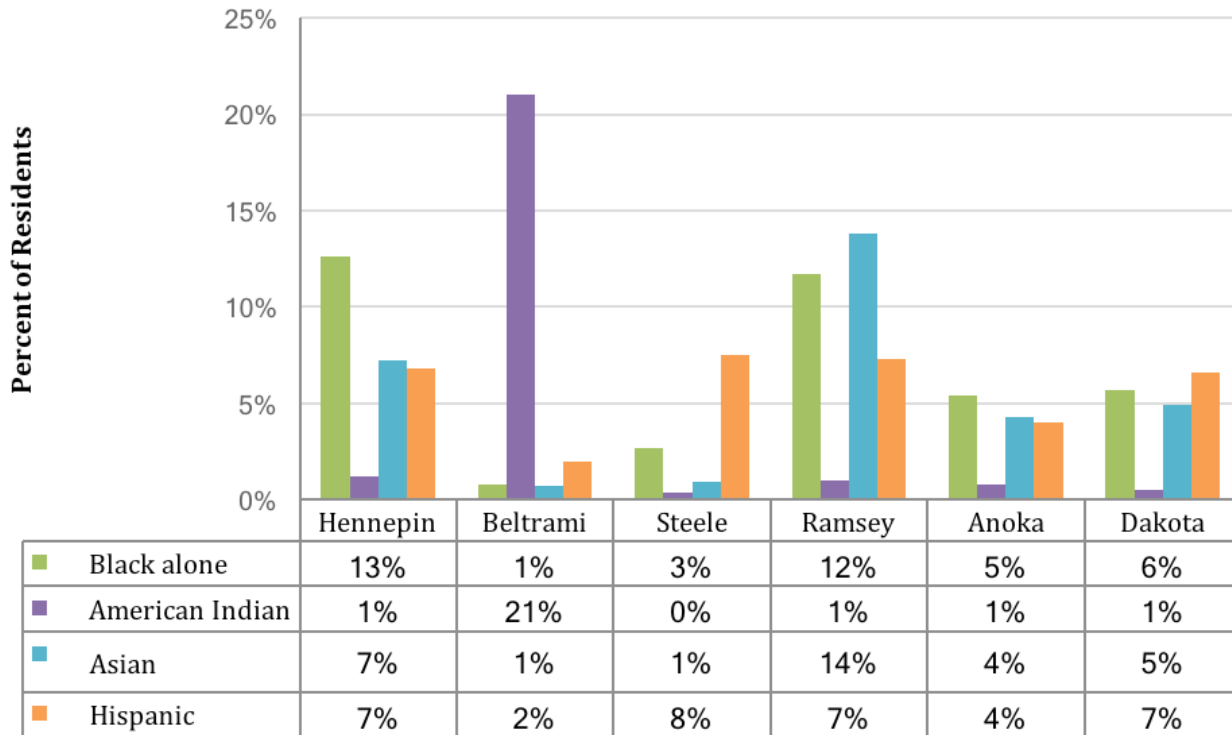


Figure 4: Non-White Racial Composition in Selected Minnesota Counties (American Community Survey, 2014)

While the percent of revenues that come from fines and forfeitures across the state of Minnesota are low, ranging from 0% in Dakota and Steele Counties to .2% in Beltrami, Ramsey, and Anoka Counties (detailed in table 3), the per capita revenues varies significantly across the state. In Steele and Dakota counties for example the revenues from fines and fees in 2013 were less than \$0.50 per person. In Beltrami County, on the other hand, per capita revenues were about \$2.75.

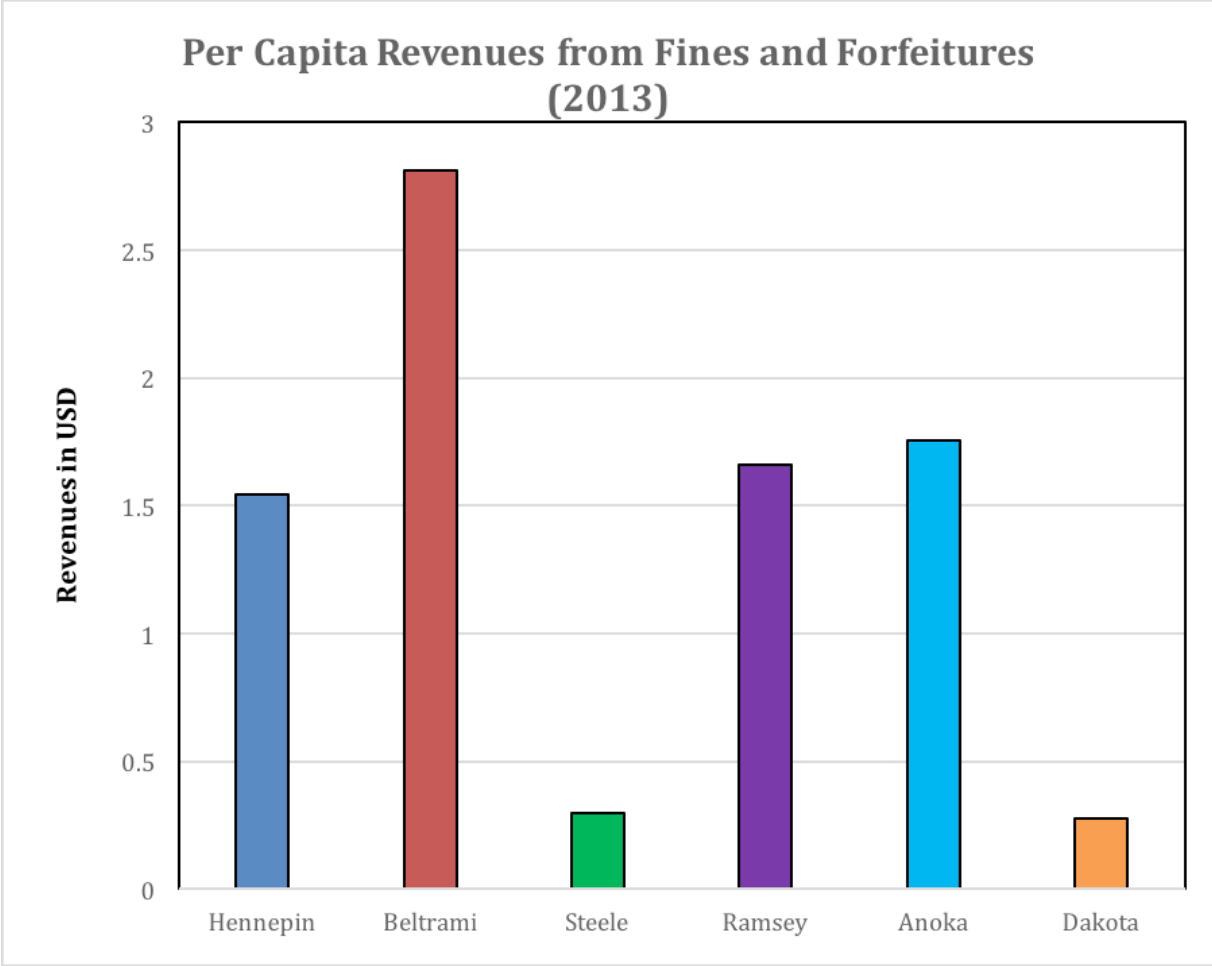


Figure 5: Per Capita Revenue from Fines and Forfeitures in Selected Counties (Office of the State Auditor, 2013)

Following a narrative description of these counties, we will offer a more complete statistical portrait of demographic and social characteristics of counties (in Table 3) and cities (in Table 4).

HENNEPIN COUNTY

Hennepin County is the most populous county in Minnesota. According to the most recent census, its population is 1,212,064 with about 13 percent of residents living in poverty. It is relatively more diverse than other counties in Minnesota: about 70 percent of residents identify as non-Hispanic White, 13 percent as Black, 7 percent as Asian, 7 percent as Hispanic, and about 1 percent as American Indian. Approximately 7 percent identify as Hispanic. Residents of Hennepin tend to vote Democratic, with more than 62 percent of voters choosing Barack Obama in the 2012 election. Hennepin County alone encompasses the entire 4th judicial district in the state of Minnesota. In addition, all persons under supervision in this county are supervised by the state's Community Corrections Act.

In Hennepin County, fines and forfeits totaled \$1,873,560 in 2013, making up a small percentage of total county revenues (0.1 percent), and the per capita expenditures on public safety in 2013 were \$15.37. An increasing percentage of Hennepin County cases are now seen in specialized courts, including Drug Court, Veterans Court, DWI Court, Criminal Mental Health Court, GIFT (Prostitution) Court, and HOMES (chronically homeless) Court. Racial disparity in sentencing is severe in Hennepin County, as it is throughout the state. Cases with Black defendants accounted for 57 percent of felony convictions, 4 percent American Indian, and only 33 percent White.

Minnesota is a sentencing guidelines state, but Hennepin County judges have frequently departed from those guidelines. About 35 percent of cases with presumptive prison sentences are sentenced to probation instead of prison. Moreover, Hennepin County judges handed down prison sentences that are shorter than prescribed by the guidelines in more than half of cases.

City of Minneapolis

Minneapolis is the major city in Hennepin County and the largest city in the entire state, with a population of 407,207. There is significant racial and ethnic diversity in the city, with White non-Hispanics comprising 60.3 percent of the population, 18.6 percent of residents identify Black, 2 percent identify as American Indian, 5.6 percent identify as Asian, and 10.5 percent identify as being of Hispanic ethnicity. A substantial portion of Minneapolis residents speak a language other than English at home (20.4 percent). Eighty-nine percent of Minneapolis city residents over 25 years old are high school graduates, and 47 percent have a bachelor's degree. The median household income in Minneapolis is \$50,767 with a per capita income of \$32,232. The city has a relatively high rate of poverty with 22.6 percent of the population living in poverty. In 2015 the city collected \$7,659,000 in fines and forfeits which made up less than 1 percent (.95) of the city's revenues. The per capita expenditures on public safety in Minneapolis are \$632 per person in 2015.

City of Edina

Edina is among the more affluent suburbs in the state, home to the oldest shopping mall in the United States. Its population of 49,596 residents is predominately White non-Hispanic (86.6 percent) with a Black population of 3 percent, an American Indian population of .2 percent, an Asian population of 6.1 percent and 2.3 percent of residents of Hispanic ethnicity. About 12 percent of Edina residents speak a language other than English in their home. This city is highly educated, with 98 percent of Edina residents having completed high school, and 68 percent of the city over age 25 holding a bachelor's degree. The residents also have high incomes with a median household income of \$86,968 and per capita income of \$61,438. Only 4.2 percent of residents live in poverty. In 2015, Edina collected \$950,000 in fines and forfeits, which made up about 1.86 percent of their total revenues, and spent \$16,900,644 on public safety, which amounted to per capita spending of \$340.77.

City of Brooklyn Park

The city of Brooklyn Park is a much more diverse suburb of 30,729 residents. Approximately 46 percent of residents identify as non-Hispanic White, 26 percent identify as Black, 14.3 percent identify as Asian, .8 percent identify as American Indian and 9.6 percent are of Hispanic ethnicity. A sizeable portion of Brooklyn Park residents (28 percent) speak a language other than English in their homes. In contrast to Edina, only 19.8 percent of residents over age 25 have a bachelor's degree, and 83.3 percent completed high school. The income in Brooklyn Park is low compared to the rest of Hennepin County and the state of Minnesota. The median household income in Brooklyn Park is \$45,198 and the per capita income is \$20,822. About one in five

residents of Brooklyn Park are in poverty. In 2015 the city of Brooklyn Park collected \$348,500 in fines and forfeits, which comprises about 1.23 percent of the cities revenues. The per capita spending on public safety in Brooklyn Center was \$332.72 in 2015.

BELTRAMI COUNTY

Beltrami County is home to portions of both the Leech Lake and Red Lake reservations, home of the Leech Lake band of Ojibwe and the Red Lake Band of Chippewa respectively. Beltrami County has a population of 45,644 persons and a high rate of poverty (22 percent). It has a large American Indian population (21 percent), with a small Black population (1 percent) and Asian population (1 percent). Seventy-three percent of the population in Beltrami County identifies as White non-Hispanic, and 2 percent are of Hispanic ethnicity. The county leans Democratic with 54 percent of the voters supporting Barack Obama in the 2012 election. Located in the northwest portion of the state, Beltrami County is one of many counties that make up the 9th judicial district. All of those under legal supervision in Beltrami are supervised by the state Department of Corrections.

In 2013 Beltrami County only collected a total of \$128,293 in fines and forfeitures which made up .2 percent of total revenues for the county, while the per capita spending on public safety was \$27.74. In Beltrami County, American Indians make up almost half (48 percent) of those convicted of felonies. Three percent of those convicted of felonies in Beltrami are Black, 48 percent are White, and 1 percent are of Hispanic ethnicity. While 37 percent of those who would have been presumptively sentenced to prison under the sentencing guidelines are instead sentenced to probation, only 8 percent of those sentenced to prison received shorter prison terms than the guidelines recommended. Beltrami is comprised of 86 townships, with 116,000 acres of lakes and 459,000 acres of state forest lands.

City of Bemidji

The population of the city of Bemidji is 14,453. Relative to the state, the city has a large American Indian population (11.3 percent). The city also has a Black population of 1.2 percent, an Asian population of 1.4 percent, a White non-Hispanic population of 80.5 percent, and in terms of ethnicity 1.9 percent of the city is Hispanic. In Bemidji only 4.9 percent of residents speak a language other than English in their homes. In terms of education, 89.4 percent of Bemidji residents over the age of 25 have completed high school, and 30.3 percent have a bachelor's degree. Also noteworthy, the city of Bemidji is home to Bemidji State University. This public institution has a student population of over 5,000. This student population is likely to impact the fines and fees collected from various ordinance violations, especially those relating to alcohol.

The city residents have a relatively low income and high rate of poverty. The median household income is \$33,197, the per capita income is \$18,543, and 23.9 percent of residents are in poverty. In 2015 the city of Bemidji collected a total of \$193,000 in fines and forfeits which totaled to 1.27 percent of the cities total revenues. The city spent \$4,717,277 on Public Safety in 2015 (per capita this was \$ 326.39 per resident).

STEELE COUNTY

Steele County, in southern Minnesota, has a population of 36,473, with 10 percent living in poverty. Steele is a predominantly White county with 88 percent of the population being White non-Hispanic. Three percent of Steele County residents are Black, one percent Asian, and eight percent are of Hispanic ethnicity. Steele County leans Republican politically. In the 2012 election only 46 percent of voters favored Barack Obama. Steele County is located in the Southeastern part of the state of Minnesota and is one of many counties in the 3rd judicial district. Adult felons in Steele County are supervised by the Minnesota Department of Corrections, but adults supervised for lesser offenses and juveniles are supervised by the county.

In 2013 Steele County collected only \$128,293 in fines and forfeitures which totaled less than 1 percent of their revenues. Per capita spending on public safety is \$7.81. Seventy percent of those convicted of a felony in Steele County are White, 11 percent are Black, 1 percent is Asian, and 17 percent are of Hispanic ethnicity. In Steele County 42 percent of persons who would presumably be sent to prison under the sentencing guidelines are instead sentenced to probation, but of those sentenced to prison only 8 percent received shorter prison terms than the guidelines recommend.

City of Owatonna

Owatonna is the major city and county seat of Steele County, with a population of 25,625. About 87 percent of residents are White non-Hispanic, 3.8 percent of the Owatonna population identify as Black, .9 percent identify as Asian, and .3 percent identify as Native American. Seven percent of the Owatonna population is of Hispanic ethnicity. Slightly less than 10 percent (9.9) of residents speak a language other than English in their homes. In terms of educational attainment, 92 percent of residents over age 25 have completed high school, and 27.6 percent have a bachelor's degree. The median household income is \$52,790 and the per capita income is \$27,467. The percent of Owatonna residents living in poverty is 11.8 percent. In 2015 the city of Owatonna collected \$174,900 which was less than 1 (.81) percent of the cities total revenues. In terms of expenditures, Owatonna spent \$6,360,540 on public safety in 2015 which was a per capita amount of \$248.22.

RAMSEY COUNTY

Ramsey County has a population of 532,655 people and a relatively high poverty rate of 17 percent. It has a large Asian population compared to the rest of the state (14 percent). Twelve percent of the Ramsey County population identifies as Black, one percent identifies as American Indian, and 74 percent identifies as White non-Hispanic. Seven percent of residents are of Hispanic ethnicity. The county is primarily politically Democratic, with 66.33 percent of the county voting for Barack Obama in the 2012 election. Ramsey County comprises the entire 2nd judicial district, and all of those under criminal supervision in the county are supervised under the Community Corrections Act.

In 2013 Ramsey County collected a total of \$884,816 in fines and forfeitures, which made up .2 percent of the counties revenues that year, and the per capita spending on public safety was \$5.20. As in the rest of the state, the racial disparity in sentencing in Ramsey County is great. Whites made up 39 percent of those convicted of a felony in Ramsey County, while Blacks made up 47 percent. American Indians made up 3 percent of those convicted of a felony, Asians 6 percent, and those of Hispanic ethnicity made up 6 percent as well. Sentencing in Ramsey County is relatively lenient. Of those who would have been presumptively sentenced to prison under the Minnesota Sentencing Guidelines, 24 percent received a dispositional departure, and of those who are sentenced to prison, 40 percent received shorter prison terms than are prescribed by the guidelines.

City of St. Paul

The second twin city, located in Ramsey County, is the capital city of St. Paul. St. Paul has a population of \$297,640 residents, and compared to the rest of the state is fairly diverse. The St. Paul residents who identify as White non-Hispanic make up 55.9 percent of the population, Black residents make up 15.7 percent, Asian residents make up 15 percent, and American Indian residents comprise 1.1 percent of the population. In terms of ethnic diversity, 9.6 percent of St. Paul residents identify as Hispanic. A sizeable portion (27.3 percent) of the city's residents speak a language other than English in their home. 38.6 percent of St. Paul residents over age 25 have obtained a bachelor's degree, and 86.4 percent of residents over age 25 have completed high school. The median household income for St. Paul residents is \$48,258 and the per capita income is \$26,268. The rate of poverty is fairly high, with 23 percent of residents living in poverty. In 2015, the City of St. Paul collected a total of \$4,017,498 in fines and forfeits. This revenue only accounted for a small fraction of the cities total revenues (1.1 percent). In 2015 the city spent \$175,750,677 on public safety, with a per capita spending of \$590.48.

ANOKA COUNTY

Anoka County has a population of 341,864 and has a relatively low rate of poverty compared to the rest of the state (7 percent). The majority of Anoka residents identify as White non-Hispanic (83 percent), while only 5 percent identify as Black, 1 percent are American Indian, 4 percent identify as Asian, and 4 percent are of Hispanic ethnicity. Politically, Anoka County leans Republican, with 48 percent voting for Obama in the 2012 election. All those under criminal supervision in the county are under the Community Corrections Act. Anoka is one of many counties in the 10th judicial district of Minnesota.

Fines and forfeitures collected in Anoka County in 2013 totaled \$600,202, making up .2 percent of the county

revenue that year. The per capita spending on public safety in Anoka County is \$9.76. Approximately 79 percent of those convicted of a felony in Anoka are White, while 15 percent are Black. American Indians made up 2 percent, and Asians made up 2 percent of those who received a felony conviction. Those of Hispanic ethnicity also made up 2 percent of those convicted of a felony in Anoka County. The percent of Anoka County residents who received probation sentences when the sentencing guidelines would have presumably sent them to prison was 35 percent in 2013. Of those who received prison sentences, only 5 percent received sentences shorter than those suggested by the guidelines.

City of Anoka

The city of Anoka was the childhood home (and likely inspiration) for Garrison Keillor's fictitious town of Lake Wobegon. Today, Anoka has a population of 17,276. About 86 percent of Anoka residents are White non-Hispanic, 4.7 percent are Black, 1 percent are American Indian, and 1.8 percent are Asian. There is little ethnic diversity, with only 4.2 percent of the population of Hispanic ethnicity. Seven point eight percent of residents speak a language other than English in their home. Regarding education, 90 percent of the residents over the age of 25 have completed high school and 20.6 percent have a bachelor's degree. The median household earnings for residents in the city of Anoka is \$47,408 and per capita income is \$25,942. Twelve point nine percent of residents live in poverty. In 2015, the city of Anoka collected \$138,500 in fines and forfeits which made up less than 1 percent (.85) of the city's revenues. Per capita public safety expenditures in 2015 are \$310.83.

DAKOTA COUNTY

Dakota County has a total of 412,529 residents, with a poverty rate of 8 percent. Most Dakota County residents are White non-Hispanic (81 percent), while 6 percent are Black, 5 percent are Asian, and 1 percent are American Indian. Those of Hispanic ethnicity made up 7 percent of the county. Dakota County is pretty divided politically, with about 50 percent of residents voting for Barack Obama in the 2012 election. All adults supervised by the criminal justice system in Dakota County are supervised under the Community Corrections Act. Dakota County, located on the Eastern border of the state of Minnesota, is one of many counties in the 1st judicial district.

Dakota county collected very little in fines and forfeits during 2013, only \$113,171 or less than 1 percent of county revenues. The county also spends relatively little on public safety, at \$4.76 per capita. Racial disproportionality in convictions is pervasive in Dakota County, as it is throughout the state, where 24 percent of those convicted of a felony in Dakota County are Black, 3 percent are American Indian, 3 percent are Asian, 6 percent are of Hispanic ethnicity, and the remaining 65 percent are White. Of those who would have presumptively been sentenced to prison under the Minnesota Sentencing Guidelines, 36 percent received a probation term. Of those who are sentenced to prison in 2013, 25 percent received prison sentences shorter than those presumed to be given based on the guidelines.

City of Hastings

The City of Hastings has a population size of 22,566. Racially and ethnically, Hastings is pretty homogeneous. 92.7 percent of residents identify as White and non-Hispanic. Only 1.6 percent of residents are Black, .5 percent are American Indian, and less than 1 percent are Asian (.9 percent). 2.6 percent of residents are of Hispanic ethnicity. Only 4.2 percent of Hastings residents speak a language other than English in the home. Regarding education, most (94 percent) Hastings residents over age 25 completed high school, and 27 percent hold a bachelor's degree. In the City of Hastings, the median household income is \$64,119 and the per capita income is \$30,897. The poverty rate is fairly low at 7.5 percent. In 2015 the city of Hastings collected \$96,500 in fines and forfeits; which made up less than a half of a percent (.47) of the city's total revenues. Per capita spending on public safety was \$349.91 in 2015.

City of Apple Valley

The City of Apple Valley has a total of 50,487 residents. Most Apple Valley residents are White and non-Hispanic (81.94 percent), 5.5 percent are black, 5.3 percent are Asian, and .4 percent are American Indian. Regarding ethnicity, 4.9 percent of Apple Valley residents are Hispanic or Latino. 11.5 percent of residents speak a language other than English in their homes. A sizeable portion (44 percent) of residents over age 25

have a bachelor's degree, and 95.8 percent have completed high school. Residents in the city of Apple Valley have high earnings relative to the Minnesota average, with a median household income of \$80,609 and a per capita income of \$38,444. The poverty rate in this city is also low (6.9 percent). In 2015 Apple Valley collected \$248,000 in fines and forfeits, which comprised less than 1 percent (.96) of the cities total revenues that year. Public safety expenditures, on the other hand, are \$11,076,885 in 2015, per capita this was the equivalent of \$217.85 per resident.

Descriptive Tables

Tables 3 and 4 summarize this descriptive information for the 6 counties and the cities within them.

Table 3. Demographic and Social Characteristics of Six Minnesota Counties⁵

| | Hennepin (Minneapolis) | Beltrami (Bemidji) | Steele (Owatanna) | Ramsey (St. Paul) | Anoka (Anoka) | Dakota (Apple Valley & Hastings) |
|--------------------------------------|-----------------------------------|-------------------------------|------------------------------|------------------------------|--------------------------|---|
| Population (2014) | 1,212,064 | 45,644 | 36,573 | 532,655 | 341,864 | 412,529 |
| Poverty Rate (2014) | 13% | 22% | 10% | 17% | 7% | 8% |
| Race of Population | | | | | | |
| White alone | 76% | 74% | 95% | 70% | 87% | 86% |
| Black alone | 13% | 1% | 3% | 12% | 5% | 6% |
| American Indian | 1% | 21% | 0% | 1% | 1% | 1% |
| Asian | 7% | 1% | 1% | 14% | 4% | 5% |
| Hispanic | 7% | 2% | 8% | 7% | 4% | 7% |
| Non-Hispanic | 70% | 73% | 88% | 74% | 83% | 81% |
| Race of Felony Convictions | | | | | | |
| White | 33% | 48% | 70% | 39% | 79% | 65% |
| Black | 57% | 3% | 11% | 47% | 15% | 24% |
| American Indian | 4% | 48% | 1% | 3% | 2% | 3% |
| Asian | 2% | 0% | 0% | 6% | 2% | 3% |
| Hispanic | 4% | 1% | 17% | 6% | 2% | 6% |
| Other | 0% | 0% | 0% | 0% | 0% | 0% |
| DEPARTURES⁵ (2013) | | | | | | |
| % No disp dep | 82% | 89% | 82% | 88% | 87% | 87% |
| % Agg disp dep | 5% | 4% | 6% | 4% | 5% | 4% |
| % Mit disp dep | 35% | 37% | 42% | 24% | 35% | 36% |
| % No dir dep | 46% | 92% | 92% | 57% | 90% | 71% |
| % Agg dir dep | 3% | 0% | 0% | 3% | 0% | 4% |
| % Mit dir dep | 51% | 8% | 8% | 40% | 5% | 25% |
| REVENUES (2013) | | | | | | |
| Fines/Forfeits | 1,873,560 | 128,293 | 10,847 | 884,816 | 600,202 | 113,171 |
| Total Revenues | 1,318,743,976 | 62,311,702 | 41,313,484 | 587,901,893 | 284,537,716 | 302,012,950 |
| F/F as % of Rev. | 0.1% | 0.2% | 0.0% | 0.2% | 0.2% | 0.0% |
| EXPENDITURES (2013) | | | | | | |
| Police/Sherriff | 90,695,217 | 4,082,846 | 3,240,966 | 55,995,715 | 34,027,154 | 18,653,513 |
| Corrections | 102,653,126 | 3,334,727 | 4,859,450 | 62,054,072 | 20,281,204 | 16,569,393 |
| Other Public Safety | 18,631,554 | 1,266,231 | 285,623 | 2,767,638 | 3,337,418 | 1,961,824 |
| Total Expenditures | 1,424,165,736 | 69,119,852 | 40,050,824 | 625,763,189 | 297,976,705 | 288,394,520 |
| P.C. Public Safety | 15.37 | 27.74 | 7.81 | 5.20 | 9.76 | 4.76 |

⁵ The presumptive sentences for felony convictions in Minnesota are determined by the Minnesota Sentencing Guidelines. Nevertheless, judges have limited discretion to depart from the recommended guidelines. Two types of departures can be issued: dispositional departures, when an individual whose presumptive sentence is prison is sentenced to probation or vice versa, and durational departures, involving a prison term outside of the range specified by the guidelines. When the departure is more punitive than the guidelines this is considered an aggravated departure; a mitigated dispositional departure occurs when the sentence is less punitive than the guidelines.

Table 4. Demographic and Social Characteristics of Selected Minnesota Cities

| | Minneapolis | Edina | Brooklyn Center | Bemidji | Owatonna | St. Paul | Anoka (City) | Hastings | Apple Valley | Minnesota |
|--|-------------|-------|-----------------|---------|----------|----------|--------------|----------|--------------|-----------|
| <i>Population, 2014</i> | | | | | | | | | | |
| Population estimate | 407207 | 49596 | 30729 | 14453 | 25625 | 297640 | 17276 | 22566 | 50487 | 5457173 |
| <i>Race and Hispanic Origin, 2010</i> | | | | | | | | | | |
| % Black or African American alone, %, (a) | 18.6 | 3 | 25.9 | 1.2 | 3.8 | 15.7 | 4.7 | 1.6 | 5.5 | 5.2 |
| American Indian and Alaska Native alone, %, (a) | 2 | 0.2 | 0.8 | 11.3 | 0.3 | 1.1 | 1 | 0.5 | 0.4 | 1.1 |
| Asian alone, %, (a) | 5.6 | 6.1 | 14.3 | 1.4 | 0.9 | 15 | 1.8 | 0.9 | 5.3 | 4 |
| Hispanic or Latino, %, (b) | 10.5 | 2.3 | 9.6 | 1.9 | 7.3 | 9.6 | 4.2 | 2.6 | 4.9 | 4.7 |
| White alone, not Hispanic, % | 60.3 | 86.6 | 45.9 | 80.5 | 86.6 | 55.9 | 86.1 | 92.7 | 81.4 | 83.1 |
| <i>Families & Living Arrangements</i> | | | | | | | | | | |
| Language other than English spoken at home, % of persons age 5 years+, 2010-2014 | 20.4 | 11.9 | 27.9 | 4.9 | 9.9 | 27.3 | 7.8 | 4.2 | 11.5 | 10.9 |
| <i>Education, 2010-2014</i> | | | | | | | | | | |
| HS graduate or higher, % of persons age 25 years+ | 89.0 | 98.0 | 83.3 | 89.4 | 91.8 | 86.4 | 90.0 | 93.8 | 95.8 | 92.3 |
| Bachelor's degree or higher, % of persons age 25 years+ | 47.0 | 67.9 | 19.8 | 30.3 | 27.6 | 38.6 | 20.6 | 26.7 | 44.4 | 33.2 |
| <i>Income and Poverty, 2010-2014</i> | | | | | | | | | | |
| Median household income | 50767 | 86968 | 45198 | 33197 | 52790 | 48258 | 47408 | 64119 | 80609 | 60828 |
| Per capita 12 mo. income | 32232 | 61438 | 20822 | 18543 | 27467 | 26268 | 25942 | 30897 | 38444 | 31642 |
| Persons in poverty, % (2014) | 22.6 | 4.2 | 20.1 | 23.9 | 11.8 | 22.9 | 12.9 | 7.5 | 6.9 | 11.5 |

(a) Includes persons reporting only one race

(b) Hispanics may be of any race, so also are included in applicable race categories

(c) Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

ADDED MONETARY SANCTIONS IN COUNTIES

Felony-Level Fines

While fines for felony level offenses are set by state statute, the imposition of such fines is not equally distributed across Minnesota. Similarly, Minnesota prison sentences are set by sentencing guidelines, and reasons for departure from these guidelines must be given by the sentencing judge, but the same is not true for fines. Ranges and minimums are set by state statutes, but judges retain great discretion regarding the financial penalties to impose at sentencing. In addition, judges are able to both impose fines and stay fines, and they often stay the entire amount of the fine. According to preliminary analysis of felony-level fines imposed, the courts in Hennepin County tend to impose relatively few fines and courts in Steele County impose the heaviest fines, with the remaining counties falling between these two extremes.

Other legal financial obligations.

Those who become involved in the criminal justice system in Minnesota nevertheless have significant legal financial obligations beyond the fines imposed at sentencing. There are many additional fines and fees clients may be expected to pay depending on the county in which they were convicted and the conditions of their release. In table 5 we show some of these county-varying correctional costs. We selected items for table 5 when we were able to find the same (or comparable) costs for many of our selected counties published in local fee schedules, so that across-county comparisons could be made. As noted previously, state statute in Minnesota (M.S. § 244.18 subd. 2; subd. 6) authorizes counties to set their own correctional costs.

One area where in which we find significant between-county variation is in probation supervision fees. As shown in Table 5 below, the cost imposed for felony-level probation supervision ranges from \$175 for public defender clients in Hennepin County to \$300 for their counterparts in Beltrami and Steele County. In Anoka, the fee is \$335 per file, and in Ramsey County the fee for adult felony probation supervision is \$300 per charge. In Dakota County, the cost is \$349 and non-public defender clients in Hennepin County pay \$350. The probation fees for misdemeanors also vary across the counties. In Dakota County, those sentenced to probation for a gross misdemeanor must pay \$349. In Hennepin the fee for non-public defender clients is \$300, with public defender clients paying half that fee (\$150). In Anoka the fee is \$230 per file, and in Ramsey the fee is \$300 per charge. In Beltrami the fee is \$200 and in Steele the fee is \$200 a year. Finally, the fees for regular misdemeanor probation show similar variation across counties. In Ramsey the fee is \$300 per charge, and in Anoka the fee is \$140 per file. The Beltrami fee for a regular misdemeanor is the lowest, at \$100. In Hennepin the fee is \$125 for public defender clients and doubled for non-public defender clients (\$250), and for Steele County residents the fee is \$150 a year. In Dakota regular misdemeanants on probation pay a \$266 fee.

In addition to probation, some clients pay fees associate with required conditions of release, either pre- or post-conviction. Some must submit to drug tests, others must undergo alcohol testing, and many are required to pay both. These types of tests take different forms in different counties and cost different amounts as well. For instance, in Hennepin County the drug testing fee is \$100 (or \$50 for public defender clients) whereas in Anoka County the cost is \$19 pre-trial and \$65 post-sentencing per file. In Steele County clients pay a yearly fee of \$25. In Beltrami, drug tests cost \$5 and appealed drug tests cost \$25 (when a client contests the results and sends the test in for further analysis to prove they have remained clean). The price of alcohol testing also varies. For instance in Steele County the price of alcohol testing is \$10 or \$11/day, but in Anoka the fee is \$15/day for SCRAM. In Dakota County on the other hand, alcohol monitoring can cost from \$13.50 to \$19 per day. In Beltrami each portable breath test costs \$10.

For those in custody there are a number of fees that also vary by county in Minnesota. Anyone taken to jail is charged a booking fee. In both Steele and Ramsey County the fee is lowest, at \$20. In Beltrami, Anoka, and Dakota Counties this fee is \$25. And lastly, in Hennepin County the booking fee is \$35. In addition, sometimes persons serving time in jail are permitted to leave the jail for work (work release) and return to sleep so that they can serve their time without losing their employment and income. The price for this privilege illustrates how much geography matters. In Ramsey County non-employed persons may participate in job search during the day on work release for a fee of \$6 per day. For those who have a job, this fee is \$16 per day, and for

those who work or live out of the county the fee is \$25 per day. The same prices apply to those on electronic home monitoring in Ramsey County. By contrast, those living in Dakota County must pay \$25/day for work release or electronic monitoring, but those who work outside the county while serving a Dakota County sentence must pay \$115/day. In Beltrami County the work release fee is only \$20 and the price of electronic home monitoring ranges from \$15-\$17 per day. Steele County charges between \$14 and \$16 per day for both electronic home monitoring and work release. In Hennepin County, the price for both work release and electronic home monitoring is \$20 per day. Some of these counties also charge prisoners per night in jail when they are sentenced (noted earlier as “pay for stay”) both Dakota and Steele Counties charge \$20 per day. Anoka County charges residents \$21 per day dramatically increasing the cost for out-of-county inmates (\$50/day).

Persons in custody in different facilities across the state also pay different sanctions for services they receive while in custody such as medical care. For instance, Beltrami and Dakota County defendants must pay a \$10 copay to see a doctor while in jail. The fee to see a doctor in Hennepin County, on the other hand, is \$5. It costs \$6 for reading glasses and \$20 for new prescriptions in the Dakota County jail. In the Beltrami County jail, however, inmates are charged the actual cost of the prescription.

As all of these examples suggest, the costs of criminal justice system involvement can vary greatly depending on what types of conditions are imposed, and where a person is living and located when they are arrested. In addition, many of the aforementioned fees are required for conditional bail, meaning a person not yet convicted may still be forced to pay for work release to keep their job, or alcohol testing to not be held in jail indefinitely until court. Such policies are likely to keep the most disadvantaged incarcerated, especially in cases like Dakota County where the \$175 electronic monitoring fee must be paid for the week prior to beginning, and at the beginning of each subsequent week in order to remain on the program and out of custody.

Added monetary sanctions in county and city ordinances

Monetary sanctions in the form of traffic citations in the state of Minnesota have recently come under scrutiny. After Philando Castile was killed during a traffic stop by a Saint Paul police officer, information about the frequency with which he was stopped and cited by local police came to light. The following graphic (Figure 6), published by NPR, visually depicts Philando’s many encounters with police as well as the fines he was assessed for fairly low level driving related offenses.

For the most part, persons throughout the state pay the same amounts for petty misdemeanors, misdemeanors, and gross misdemeanors. This is a result of the statewide payables list (Minn. Stat. § 609.101, subd. 4(2); Minn. R. Crim. P. 23.03) which sets the financial penalties for all traffic and criminal offenses that do not require a court appearance. The list is set by Judicial Council Policy 506.1. The entire statewide payables list for 2016 can be found [online](#).

The payables list is extensive (a 45-page spreadsheet). A few examples of what are likely frequent offenses included in the list are common traffic violations such as speeding (169.14, subd. 5) where fines range from \$40 for speeding between 1 and 10 miles over the limit to \$150 for 31 miles above the limit and up (with a \$75 surcharge), driving the wrong way down a one-way 169.18, subd. 6(a) which comes with a \$100 fee, or failing to stop at a stop sign (169.20, subd. 3(b)) which costs \$50.

However, the statewide payables list also includes many potentially less likely violations such as MN statute 4626.1355 which states that “floor coverings must facilitate easy cleaning” with a \$220 fine and a \$75 surcharge. (Minn. Stat. § 169.82, subd. 1(b) which includes a \$100 fee and \$75 surcharge if the connection between a vehicle and a towing vehicle exceeds 15 feet, and 4626.1615 which includes a \$320 fee and \$75 surcharge for improper reuse of toxic medical containers.

While the statewide payables list is quite comprehensive, a few local ordinances exist that specify certain monetary sanctions in select jurisdictions in the state of Minnesota, many of which seem to be set in Hennepin County. For instance, in Minneapolis ordinance sets a \$108 fee plus a \$75 surcharge for curfew violations (those under age 17 in a public space after 10pm). Also in Hennepin County, 25.2.02(f) states

that “Accumulation of decaying animal or vegetable matter” is a criminal offense with a financial sanction amount set by the discretion of the courts. In Steele County small litter such as a can or bottle comes with a fee of \$181, and in Ramsey County a person in custody is charged \$5.95 each time money is added to their commissary account and \$15 for fingerprinting to name a few.

Another place we see between-county variation is in community service rates. In Hennepin County, for instance, a person can be Sentenced to Service (STS) in lieu of fines or fees and can get \$128 towards their fines for an 8 hour work day (including travel time). While you can often do community service in lieu of fines you cannot pay fines in place of community service when the service is your sentence. In contrast, in Ramsey County, adults cannot pay off fines with community service. However, for reporting and statistical purposes Ramsey County estimates each hour of work as worth \$10. In addition, those who are required to do STS in Ramsey County must pay a \$10 copay per day, a \$10 rescheduling fee if they have to miss a scheduled day, and a \$10 no call/unexcused absence fee. The STS fees cannot be waived by a judge. Dakota County also charges a fee for STS of \$11.25 per day, but there is a maximum of \$220 per person.

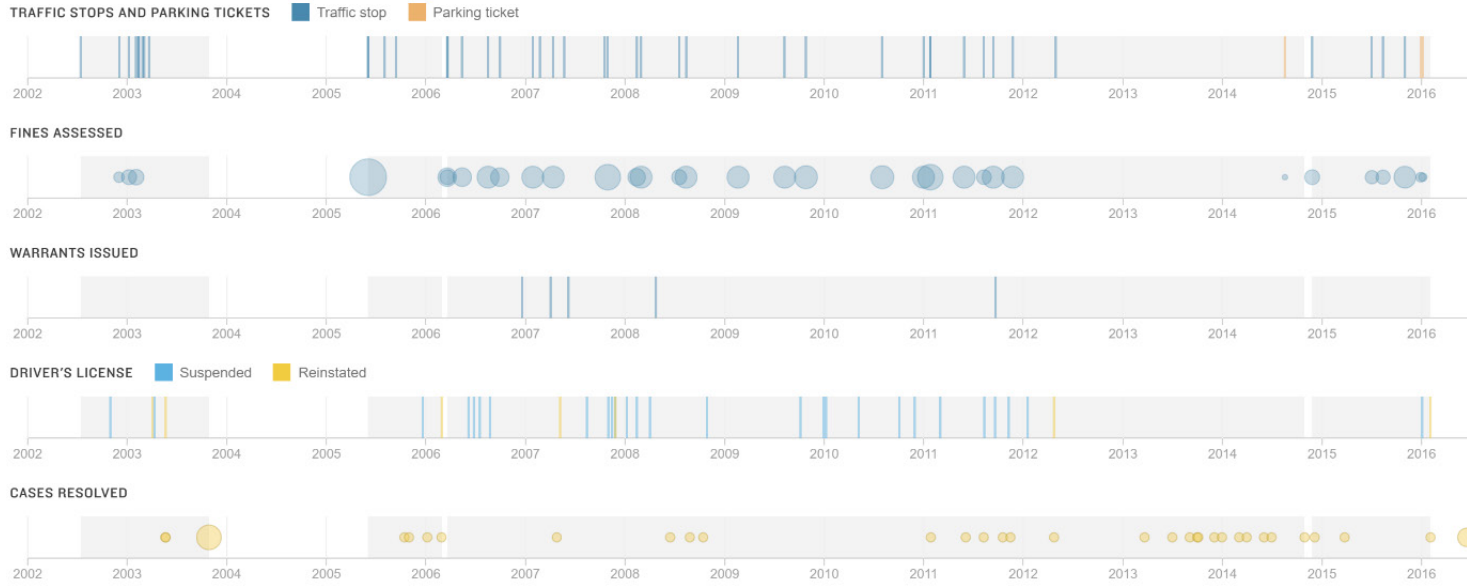


Figure 6: Philando Castile; Analysis of Court Documents (NPR, 2016)
 Credit: Alyson Hurt and Eyder Peralta/NPR

Table 5. Preliminary Report of Selected Fees by County

| | Hennepin | Beltrami | Steele | Ramsey* | Anoka | Dakota |
|---------------------------|----------------------------------|--|---------------------------|---|--------------------------------------|---|
| <i>Probation</i> | | | | | | |
| Adult Felony | \$350 (\$175 if public defender) | \$300 (state probation office) | \$300 (supervised by DOC) | \$300 per charge | \$335 per file | \$349 |
| Adult Gross Misd. | \$300 (\$150 for pd clients) | \$200 (state) | \$200/annual | \$300 per charge | \$230 per file | \$349 |
| Adult Misd. | \$250 (\$125 for pd clients) | \$100 (state) | \$150/annual | \$300 per charge | \$140 per file | \$266 |
| <i>Drug & Alcohol</i> | | | | | | |
| Drug Testing Fee | \$100 (\$50 for pd clients) | \$5/ subsequent test, \$25 for appeals | \$25/annual | Random Drug Testing Service | \$19 pre trial, \$65 post (per file) | |
| Alcohol Testing | unclear, but fee | \$10 Portable Breath Test(PBT) | \$10 or \$11/ day | SCRAM service | \$15/day | \$13.50 for alcohol monitor, up to \$19 for wireless/day |
| <i>Monitoring</i> | | | | | | |
| Electronic Monitoring | \$20/day | \$15-17/day | \$14-\$16/day | \$16/day (\$6 no job), out of county \$25/day | \$17/day | \$25/day, \$175 at program start, then weekly. More at jail entry |
| <i>Other</i> | | | | | | |
| Booking Fee | \$35 | \$25 | \$20 | \$20 | \$25 | \$25 |
| Work Release (aka Huber) | \$20/day | \$20 | \$14/\$16 day | \$16/day (\$6 no job), out of county \$25/day | \$55/day | \$25/day, out of county \$115/day |

*Ramsey County does not publish their fees online

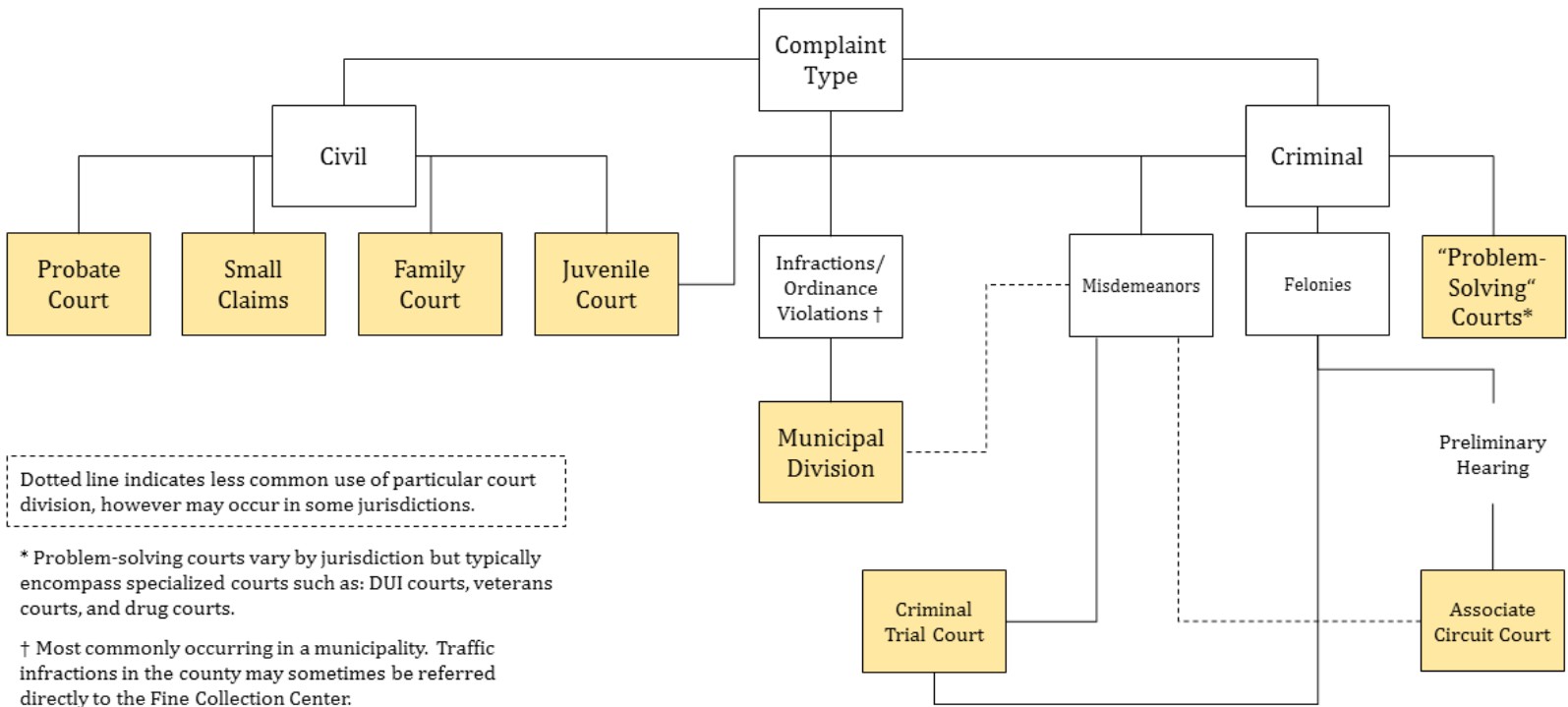
MONETARY SANCTIONS IN MISSOURI

Report prepared by Kristina Garrity and Beth Huebner

Missouri's use of monetary sanctions, when viewed through a historical, legal lens can appear almost paradoxical in nature. First, the state's legal statutes feature components that can be strikingly punitive. The Missouri Incarceration Reimbursement Act, for example, allows the state's Attorney General to pursue costs of incarceration from formerly incarcerated persons in amounts that can total up to sixteen thousand dollars per year of incarceration. Still, as will be documented more thoroughly in this report, Missouri statutes are inherently discretionary, and there appear to be a number of "safety valves" throughout the legal system to provide some financial relief to overwhelmed recipients. Adding another layer of complexity to Missouri's socio-legal landscape are recent discussions of the role collecting fines and fees for the purpose of funding municipalities. The Ferguson Report, which featured an extensive Department of Justice investigation of Ferguson, MO, highlighted the ways in which cities can fund their operations through the practice of excessive ticket-writing for minor violations. Still, the state has been aggressive in its attempts to ameliorate these problems, and recent legislation has dramatically limited the extent to which cities can maintain themselves through their municipal courts. Thus, Missouri's legal framework, at all points of the punishment process and at different jurisdictions, provides an interesting case study of the application of monetary sanction in the United States.

Missouri courts are arranged into three levels: 45 circuit courts, which are the primary trial courts in the state, 3 appeals courts, and the Missouri Supreme Court. Circuit courts predominantly operate from the county seat, and while some circuits consist of a single county courthouse (as is the case with the St. Louis City county court), others may include two or three county courts. All circuit county courts adjudicate misdemeanor and felony criminal cases as well as civil matters, and they can be further broken down into divisions (general, juvenile, drug court, traffic, etc.). Municipal courts, which often focus on traffic and city ordinance violations, can be considered special divisions of the circuit courts, and can be subject to special local rules. Figure 1 provides a general framework for the distribution of cases within a Missouri circuit court.

Figure 1: Common Divisions Within Missouri Circuit Courts



The structure of legal sanction statutes in Missouri is such that the defining guidelines for monetary sanctions operate primarily at the state level. Here, fines, costs, orders of restitution, and other financial obligations are defined in two places: The Revised Statutes of Missouri or the Court Operating Rules. While lawmakers determine the content of state statutes, the Missouri Supreme Court modifies and enacts the Court Operating Rules, which focus predominantly on court procedure in the state. In some cases, these two domains overlap, and it is common, but not required, for the Court Operating Rules to cite the originating legal statute. Few rules are written into circuit court codes (county-level), although municipal codes can outline additional ordinance violations, infractions, and misdemeanors that may be subject to legal financial obligations. Despite the state's role in providing much of the framework for LFOs, the language in the statutes provide room for expansive judicial discretion in the application of or exception to criminal financial obligations.

FINES

Fines may be assessed for a felony, misdemeanor, and/or infraction conviction. There are five classes of felonies in the state, although fines are only allowable for lower classes (C, D, or E), for which maximum penalties carry fines up to ten thousand dollars. Monetary penalties for misdemeanors vary by class, and maximums range from two thousand dollars for a class A misdemeanor (the most serious misdemeanor) to five hundred dollars for a class D misdemeanor. Infractions are capped at four hundred dollars. These penalty guidelines reflect a recent round of revisions in the Missouri criminal code, which go into effect January, 2017 (S. 491, Missouri Legis. 2014). The modifications, which affect over seventy components of Missouri criminal code, were the result of bipartisan efforts. Such revisions included a new felony classification (class E) and they also effectively doubled most maximum limits on fines for various crime classifications. For example, maximum fines available to judges for conviction of a Class C or D felony are set to increase from five thousand dollars to ten thousand dollars (RSMO 558.002). These alterations impact not only serious crimes such as felonies, but also infractions (an increase from \$200 to \$400). Infractions are defined as non-criminal violations in Missouri statutes. In other words, they do not count toward a criminal record, and a conviction of an infraction cannot result in jail or prison time. Such violations often include traffic or parking violations, as well as ordinance violations. It is critical to note that while they do not represent state-defined criminal behaviors, they are still processed through the court system, and thus, they often incur many of the same court fees and surcharges that are appropriated to criminal offenses.

Municipal courts can provide stricter guidelines for certain offense classes, although discretion can also be left up to municipal judges (wherein the maximums provided in the state statute offer the only limitation to their decision-making). In some locales, such as Cape Girardeau, ordinance violations are set at specific dollar amounts, and the court makes fines, along with any applicable fees and surcharges, explicit and available via their website (City of Cape Girardeau Violations Bureau Schedule, 2016).

COURT FEES

For any given conviction of a criminal offense or infraction, there are a number of associated surcharges and court fees. Court fees, as defined by this study, include any charges used to recover the costs of adjudication. Several of these costs are documented in the Court Costs chapter of the Revised Statutes of the State of Missouri (chapter 488), which broadly defines costs for different phases of the judicial process. Court fees begin at the indictment stage (\$30 for a felony indictment), and accumulate throughout the judicial process (\$15 for preliminary hearings, for example) (RSMO 488.012). Costs are also imposed on requests for new trials in misdemeanor cases (\$45). The Court Operating Rules document additional fees. For example, \$15 is charged for each case disposed as a misdemeanor and \$45 is assessed for cases disposed as felonies. It is important to note here that these costs, while officially named as "surcharges" in the statutes, should be defined as court fees and are distinct from this study's definition of surcharges.

SURCHARGES

A number of surcharges are imposed in the state of Missouri to supplement criminal justice system programming and services. For example, surcharges help to fund the sheriff's (RSMO 488.024) and attorney (RSMO 488.026) retirement funds. Judges traditionally adhere to the surcharge and fee schedule, but the

state statute provides judges full discretion to waive fines, fees, and surcharges. Criminal court costs and surcharges defined in statutes are described more fully in Table 1.

| Table 1: Court Fees & Surcharges Outlined in RSMO & OSCA Court Rules | | |
|---|--|------------------------|
| Surcharge or Court Fee | Amount/Application | Statute or Rule |
| Basic Civil Legal Services Fund surcharge | \$8.00 associate circuit court | RSMO 488.031 |
| | \$10.00 in circuit court | |
| | \$20.00 in Supreme or appeals court | |
| Clerk fees | (variable); Typically \$50.00 | COR 21.01 |
| Court Automation Fund fee | \$7.00 | COR 21.01 |
| DNA Profiling Analysis Fund Surcharge | \$15.00 misdemeanor and infraction violations (except for traffic violations defendants found guilty of a misdemeanor offense) | RSMO 488.5050 |
| | \$30.00 for Class C, D, or E felonies | |
| | \$60.00 for Class A or B felonies | |
| Crime Victims' Compensation Fund surcharge | \$7.50 for all criminal cases and infractions | RSMO 488.5339 |
| Independent Living Center Fund surcharge | \$1.00 for all criminal cases and infractions | RSMO 488.5332 |
| Prosecuting Attorneys & Circuit Attorney's Retirement Fund | \$4.00 for all criminal cases and infractions | RSMO 488.026 |
| Peace Officer Standards and Training Fund (POST) surcharge | \$2.00 for all criminal cases and infractions | RSMO 488.5336.1 |
| County fee | \$10.00 for infractions | RSMO 488.4014.1 |
| | \$25.00 for misdemeanors | |
| | \$75.00 for felonies | |
| Prosecuting Attorney Training Fund (PAT) surcharge | \$1.00 for all criminal cases and infractions | RSMO 488.5017.1 |
| Sheriff's fee | \$6.00 for infractions | RSMO 488.5320.1 |
| | \$10.00 for misdemeanors | |
| | \$75.00 for felonies | |
| Sheriff's Retirement Fund surcharge | \$3.00 for all criminal cases and infractions | RSMO 488.024 |
| Brain Injury Fund surcharge | \$2.00 for all criminal cases and infractions | RSMO 304.028 |
| Motorcycle Safety Trust Fund surcharge | \$1.00 for all criminal cases and infractions | RSMO 302.137 |
| Spinal Cord Injury Fund Surcharge | \$2.00 for all criminal cases and infractions | RSMO 304.017 |
| Crime Analysis Fee | \$150 for all criminal cases involving crime lab analysis of a controlled substance | RSMO 488.029 |
| Jury Compensation | \$18/per day per juror; \$.07 per mile for travel | RSMO 488.040 |
| Reasonable Costs of Arrest | Variable | RSMO 488.5334 |
| Electronic Device Seizure/ Examination | Variable | RSMO 488.5375 |
| RSMO Defined Municipal Court Costs | \$12.00 for municipal court filings | RSMO 488.012.3 |
| | \$15.00 for municipal ordinance violations filed before an associate circuit judge | |
| | \$30 for applications for a trial de novo of a municipal ordinance violation | |
| | | |

SUPERVISION PENALTIES AND THE MISSOURI INCARCERATION REIMBURSEMENT ACT

Those convicted of a crime may also incur costs for supervision. First, intervention fees are charged to all persons on probation or parole. Intervention fees are appropriated to the state's Inmate Fund in order to provide monetary support for treatment services provided to parolees, probationers, and individuals

on conditional release. Missouri statutes allow for the Department of Corrections to charge up to \$60.00 monthly in intervention fees (RSMO 217.690), however, the official Missouri of Department Corrections (2012) documentation indicates that the intervention fees currently stand at \$30.00 per month. In FY 2015, the Missouri DOC billed a total of nearly 19 million dollars in intervention fees to individuals on community supervision and was able to collect just over 10 million dollars from these persons (Department of Corrections, 2015). Individuals can pay fees in person, via mail, or online. If they utilize a debit or credit card, they incur additional processing fees (\$1.25 for payments under \$50.00, for example). Willful non-payment of intervention fees can result in a parole violation (RSMO 217.690).

Individuals on community supervision may be required to pay more than the monthly \$30.00 intervention fee, depending on the types of services needed. For example, some first-time offenders may be eligible for diversion programs, whereby they complete education, treatment, and rehabilitation in lieu of traditional sanctions. In such a scenario, individuals are required to pay for reasonable costs of the program, with few options for relief (RSMO 217.785). Additionally, those convicted of sex offenses are also responsible for a range of costs including registration (\$10) (RSMO 589.400), therapeutic assessments, and a required polygraph test (\$240-\$250) (RSMO 557.051; Department of Corrections, 2016; Missouri Office of Administration, 2016a). Relatedly, individuals sentenced to house arrest are charged for related sanction costs (RSMO 217.541). For example, based on current contracted rates, basic radio frequency monitoring can cost \$1.72 per day (Missouri Office of Administration, 2016b), and depending on the individual's ability to pay, he/she can be required to pay the full cost. Importantly, the RSMO allows for these services to be contracted out to public and private entities. Thus, depending on the number of contracts in the state for a given treatment or service, costs could vary substantially across jurisdiction (RSMO 217.430).

Restitution payments are also traditionally a condition of probation and parole. As such, failure to make payments can be deemed a violation. In Missouri, individuals can face evidentiary hearings to determine if they did not make bona fide efforts to secure resources to make payments. Only after such a determination can probation or parole be revoked (RSMO 558.019). Likewise, regular child support payments are often a parole condition for those convicted of criminal nonsupport (RSMO 568.04). Judges can revoke probation or parole for those who fail to make child support payments.

Time spent in jail may also result in criminal debt. If individuals are convicted, they become responsible for any costs incurred in their transportation to jail and their time served in jail (RSMO 220.070). If they fail to pay off such debt, and fail to enter into repayment plan agreements with the county sheriff, they may be reported to the court clerk as delinquent. In addition to general costs of supervision, RSMO 221.122 allows the county correctional facility to request repayment for any medical care (medicine, dental care, or medical attention) received while under county supervision.

Finally, imprisonment can carry a large financial burden for individuals in the state of Missouri. The Missouri Incarceration Reimbursement Act (MIRA), passed in 1988, allowed for the state's attorney general to pursue reimbursement for the costs of incarceration. Once sentenced to a term of imprisonment, individuals are required to list their assets. The attorney general uses this information, along with other information derived from an investigation, to determine whether a released individual has sufficient assets to recover not less than ten percent of his/her estimated cost of care (RSMO 271.831). If the attorney general has good cause to believe that the inmate has funds to recover some of the expenses, he may enter a petition through civil action. No more than 90% of the individual's assets may be used for the purpose of securing costs. Importantly, 20% of any reimbursement received is transferred to the "Incarceration Reimbursement Act Revolving Fund" which is utilized to pay the costs of the investigation by the Attorney General in securing reimbursement (RSMO 217.841). In 2014, the Attorney General collected \$620,552.60 in reimbursement dollars from 103 formerly incarcerated persons in the state of Missouri (Office of the Attorney General, 2015).

JUVENILE LAWS AND LFOS

Special provisions apply to juvenile populations in the state of Missouri, and they have important consequences for families of juvenile justice-involved youths. RSMO 211.083 provides that youths adjudicated in the juvenile system may be required to make restitution payments for any damages and losses to victims.

Payments can be diverted directly to victims or through the court system. The method through which youths are able to make payments is also outlined. Specifically, youths over fourteen years old may be required to work for an employer at a rate not greater than the minimum wage for as long as necessary to cover the restitution amounts stipulated by the court (RSMO 211.085/RSMO 211.088).

Parents can bear some of the financial responsibilities resulting from juvenile court rulings. For example, RSMO 211.281 notes that the court can require parents to pay for costs associated with juvenile justice proceedings. In addition, if the judge finds that parents failed to exercise parental authority which could have prevented damage or loss, the parent may be responsible for some portion of the restitution, not to exceed \$4,000 (RSMO 211.185). Once such a judgement has been made against a parent or guardian, it follows the procedures of any other monetary fine. In addition to restitution, families may also be liable for costs of any court-ordered treatment or institutionalization (RSMO 211.134), if the judge finds that the family is financially able to provide support. In sum, the juvenile justice statutes described above, while developed to help youth avoid the negative consequences of the traditional criminal justice system, provide mechanisms by which monetary sanctions can be levied on youths and their families.

STATE STATUTES AND MUNICIPAL GOVERNMENTS

Missouri statutes also dictate many of the rules concerning LFOs at the municipal level. Some of these rules are part of a rapidly evolving discussion of the role of violations in financially supporting municipalities. For example, the 2015 Missouri Legislature introduced a number of revisions to the statutes in order to limit the extent to which local governments fund themselves from traffic fines. Mack's Creek Law (RSMO 479.359) dropped the annual general operating revenue that could be collected from traffic fines from 30% to 20%, and limited these fines even more so in St. Louis County (12.5%). In addition to these restrictions, the legislature also included limits to the total fines for minor traffic violations (\$300) and they also prohibited confinement for such violations or for failure to pay fines (RSMO 479.353). These laws were again revised in May, 2016 (waiting for signature from the governor), where the maximum fee for minor traffic violation fines was reduced to \$225. Additionally, the legislature outlined limits on municipal ordinance violations and revised Mack's Creek Law to include ordinance violations in calculations limiting the general revenue funds that can come from fines and court costs (S. 572, Missouri Legis. 2016). These changes reflect recent discussions of abuse of citations in Missouri municipalities and are linked to findings from the Ferguson Report, which is documented more thoroughly in Chapter 3.

The role of state statutes in dictating what municipal courts can charge goes beyond the recent revisions. RSMO 488.012 specifies that any court costs authorized by state statute must be set by the Missouri Supreme Court. Many of these court costs are defined in Table 1, however, there are also optional surcharges that are levied in specific counties and cities. For example, RSMO 488.607 allows for counties and municipalities to charge an extra \$4 to help fund shelters for victims of domestic violence. Likewise, court fees can be levied to support courthouse renovations in some municipal courts (St. Louis city charges \$5 to help fund courtroom renovations and restorations). Optional surcharges, however, are exceedingly rare, thus, there appears to be very little variation in court costs across municipal jurisdictions due to the role of statutes in defining court costs.

COLLECTING IN THE STATE OF MISSOURI

Many county courts in the state of Missouri refer their non-contested traffic, conservation, and watercraft offenses to the "Fine Collection Center," a bureau established in 1996 (RSMO 476.385) to ease time burdens for local court clerks and help increase collection rates. The benefit of such a center may go beyond its reduction in administrative burdens. Specifically, the use of a single processing center allows for uniform court costs across locales, thus, creating more equitable treatment for residents across different counties. While counties are able to assess additional court costs, at most, these additional court costs total to \$6.00. Missourians wishing to pay traffic violations can do so in person, via mail, over the phone, or online. If an individual selects to pay with a debit or credit card (either via person or online), they become subject to certain processing fees.

Intervention fees can be paid directly via the Department of Corrections' website, in person, or via mail.

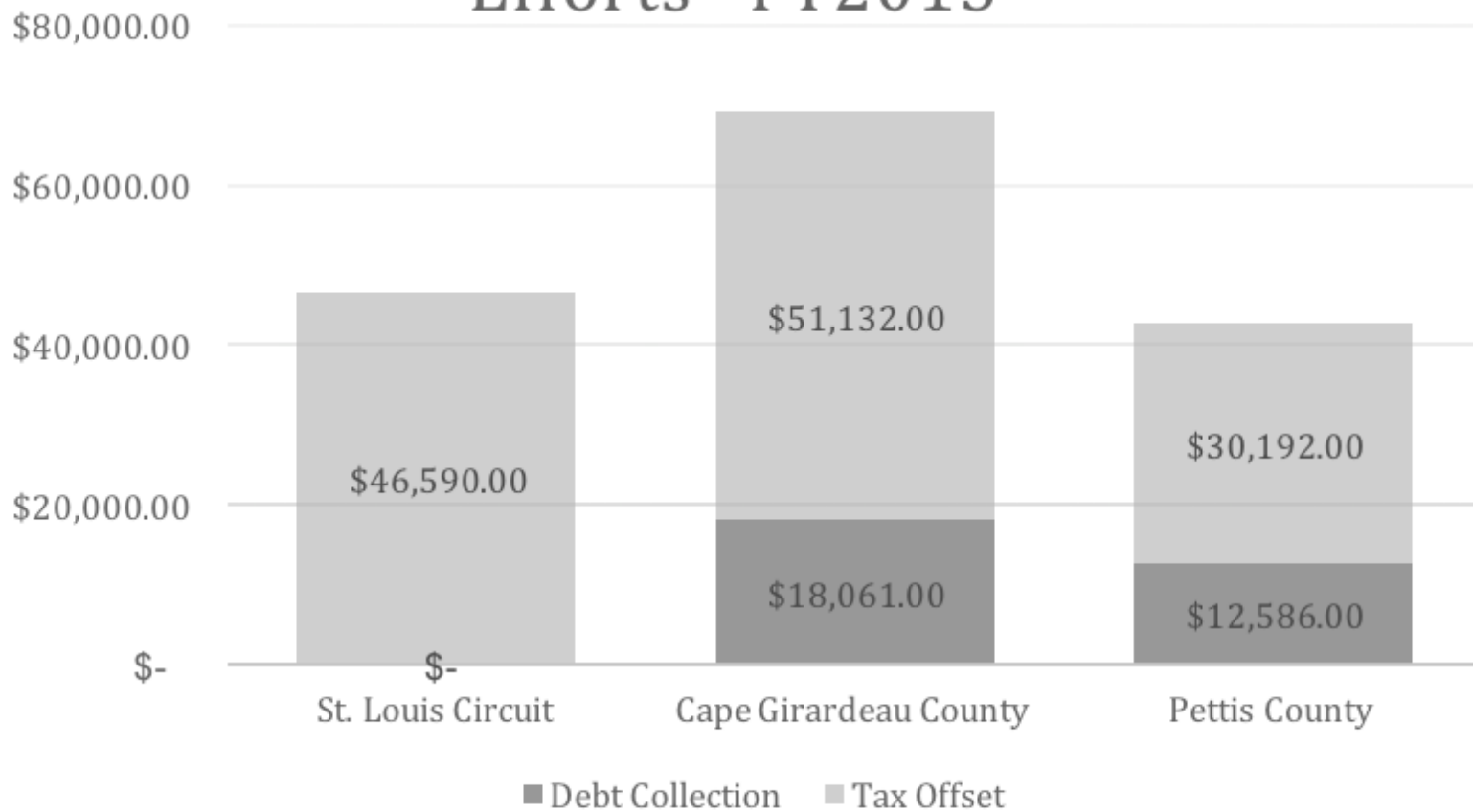
Payments are due on the first of the month and if an individual uses a credit or debit card, they are charged for particular convenience fees.

Table 2: Convenience Fees in Missouri for various LFOs

| | FCC Fine | Intervention Fees | Driver's License Reinstatement Fees |
|-----------------|----------|-------------------|-------------------------------------|
| \$0-50.00 | \$1.25 | \$1.25 | \$1.25 |
| \$50.01-\$75.00 | \$1.75 | \$1.75 | \$1.75 |
| 75.01-\$100.00 | \$2.35 | \$2.15 | \$2.15 |
| >\$100.01 | 2.35% | 2.15% | 2.15% |

When penalties, fines, restitution, sanctions, and court costs are past due (either to the FCC or the originating jurisdiction), the state authorizes jurisdictions to contract with private entities collect on past due amounts (RSMO 488.5030). This law allows for additional charges to accrue against debtors, as agencies add the costs of collection efforts to the outstanding bill. These charges are authorized to amount to up to 20% of the original debt owed. Circuit courts that utilize the Office of the State Courts' "Justice Information System" must participate in its Missouri courts debt collection program. According to the OSCA (2008), the state of Missouri contracts through ACS Government Services, who then sub-contracts with Alliance One Receivables Management, Inc. In conjunction with debt collection programs, RSMO 488.5028 allows circuit courts to request tax offsets from the Department of Revenue for those persons who have failed to make payments on circuit court monetary judgments. Figure 4 displays the dollars collected in 2015 from these efforts in the studied jurisdictions.

Figure 4: Circuit Court Collection Efforts - FY2015



Source: Missouri OSCA, 2015

ALLOCATING FUNDS FROM COURT DEBT

Perhaps as critical as understanding the extent of fines, fees, and costs in Missouri is the understanding of the beneficiaries of such dollars. Fines for circuit-court adjudications are collected and deposited in the county treasury. Similarly, fines for municipal rulings are deposited into the municipal treasury (RSMO 479.080). As mentioned in section 1.2, recent legislation has limited the extent to which court fines can make up a municipalities general fund. Basic fees, which emanate predominantly from 488.012 are deposited into a fund established by the state courts administrator. Within 30 days of receipt, amounts are distributed 80% to the state's general revenue fund. The remaining 20% is paid out to the respective county's treasury, or city treasury if the case was heard in St. Louis City's circuit court (COR 21.02). Any interest earned on collected funds pre-disbursement are deposited into a revolving fund, which is then appropriated as follows. First, 60% of the interest earned is divided among each court in the state, in the proportion of the court's deposits. The remaining 40% is allocated to the supreme court (RSMO 488.018).

Because surcharges are imposed to facilitate state, county, or local funds, they may be disbursed to a number of different accounts (at varying levels of government). When a surcharge is imposed for a statewide purpose, court clerks disburse amounts directly to fund accounts installed by state statute. For example, the court automation fee of \$7.00 is paid out to the state court automation fund, which was developed to automate record keeping in the state of Missouri and is headed by a consortium of judges, legislatures, and court employees. Likewise, the \$3 surcharge for the sheriff's retirement fund is collected by the court clerk to be deposited in the state sheriff's retirement fund. In any instances where surcharges or costs (such as the cost of public defense) are collect for statewide purposes, the funds are monitored by the state treasurer. When surcharges are imposed for county or municipal level purposes, court clerks make fees payable to the city. This is the case for surcharges dependent on city or county features, such as domestic shelters (RSMO 488.607). or courthouse restoration (RSMO 488.2215). Any funds received by the Fine Collection Center (typically traffic or ordinance related fines and associated court costs) are disbursed by the state treasurer according to the corresponding jurisdiction where the fine emanated (RSMO 476.385).

The \$25 late charge imposed on all court debt not paid within 30 days is also allocated to specific funds. Specifically, ten dollars are payable to the court and can be used in any manner to enhance case processing. Eight dollars of the late charge are directed to the court automation fund. Finally, the remaining eight dollars are deposited to the state's general revenue fund (RSMO 488.5025).

CRIMINAL DEBT, COLLATERAL CONSEQUENCES, AND POVERTY

Depending on their application, Missouri statutes can be accommodative to poor defendants or they can disproportionately penalize them. The vast discretion written into the revised statutes allow judges to wave certain court costs and penalties. For example, RSMO 558.004 instructs courts to consider the financial resources of a defendant when making judgments. The law notes that this is particularly true in cases where defendants must pay restitution, in order ensure that the weight of the sentence is not so great that it will cause the individual to fail to make restitution payments. Circuit and municipal court judges also have the ability to arrange for installment payments (RSMO 71.220.2; RSMO 479.240). In addition, at any time, defendants can petition the court for revocation of a fine or any unpaid portion thereof (RSMO 558.008).

Despite these apparent leniencies, there are a number of laws that make it increasingly difficult for poor debtors to successfully pay off monetary judgements. For example, Court Operating rule 21.13 allows for circuit courts to charge \$25 on all unpaid court bills. While installment payments may allow court debt to be more manageable, RSMO 488.5025 charges \$25 for any judgments paid on a time-payment basis. Likewise, imposition of interest is allowed on any unpaid balances (RSMO 488.020). For those with child support in arrears, they accrue simple interest on support balances at 1% per month (RSMO 454.520). Missouri has no laws in place to suspend monthly payments while serving a term of imprisonment.

For poor individuals, outstanding balances and/or fees associated with supervision are the first part of a process that may lead to other penalties and, in some cases, incarceration. When monetary judgments are delinquent, the court may summon the individual for appearance or issue a warrant of arrest (558.006). The state may also suspend driver's licenses for non-payment of traffic-related fines, failure to appear, and/

or failure to make child-support payments (RSMO 302.341; Missouri Department of Revenue, 2016). In order to have a driver's license reinstated, individuals must pay reinstatement fees that range from \$20 to \$150 dollars. The Office of State Courts Administrators can also work with the Missouri Department of Conservation to revoke hunting and fishing licenses if county court debts have not been paid (RSMO 488.5029).

Alternative sanctions may also be introduced if persons fail to make payments on court debt. Municipal courts are allowed to require community service (specifically, performing labor on public works projects) from individuals who have failed to make fine payments (RSMO 71.220). In addition, if circuit courts determine that individuals willfully do not make payments on court debt, they can incarcerate them for 180 days for felony convictions and 30 days for misdemeanors or infractions (RSMO 558.006). Prior to the court's determination of willful non-payment, defendants can request to sit out their court costs for misdemeanors and infractions at the rate of \$10 per day (RSMO 543.270). Similarly, non-payment can also result in probation or parole revocation (RSMO 217.690).

Sanctions for non-payment may exacerbate individual pre-existing economic challenges. Suspension of a driver's license may limit job opportunities. Likewise, incarceration may cause individuals to lose employment, even if the sentence time is relatively short. The state also allows for local contracts with private debt collection agencies, and authorizes additional surcharges (up to 20% of the original fine) for any unpaid debts (RSMO 488.5030). Because failure to pay can result in additional fines and fees, poor individuals can quickly become overwhelmed by court debt.

IMPORTANT LEGAL DEVELOPMENTS

Like many other states, Missouri courts have grappled with the role of non-payment of monetary sanctions in the determination of imprisonment/parole revocation. In 1985, Edith Schmeets' parole was revoked for her failure to make substantial progress on restitution payments, to which she owed \$5,000 but had only paid \$854 over the course of three years. Citing *Bearden v. Georgia*, Schmeets' petition with the Missouri Court of Appeals argued that the state of Missouri produced no evidence to show that she had not made good-faith efforts to pay restitution. In addition, no other alternative punishment was considered in her case. Despite the activation of *Bearden v. Georgia* as precedent, the appeals judge ruled that no standard of proof was outlined in the prior case. Thus, the court sufficiently adhered to *State v. Wilhite*, which indicates that parole violations require a lower burden of proof than required for securing a criminal conviction. This ruling, then, relaxed the quality of evidence of failure to make good-faith efforts in the state of Missouri.

Some court cases have challenged the use of nonpayment to extend probation periods indefinitely. In the *State v. Parrott* (2011), Linda Parrott, a disabled grandmother, was facing restitution, court costs, and jail costs which exceeded sixteen thousand dollars for the selling of a controlled substance and forgery. Although the probation officer testified that she regularly made restitution and court cost payments, a probation violation was drafted at the end of the four years, as Parrott still owed several thousand dollars. Parrott's probation was revoked in 2015, and she was sentenced to a new term of probation. In 2016, the Eastern District Appeals Court of Missouri heard Parrott's case, wherein she asked for relief from the court debt, as she was guardian to her granddaughters and had disability checks as her only source of income. The court ruled in her favor, given her inability to pay and her good faith efforts to pay over the course of her time on probation. The most significant aspect of this case concerns the circuit court judge's assertion (heard at the 2015 sentencing of probation) that individuals could not get compliance credits if there was remaining court debt. The appeals court rejected this notion, noting that such a philosophy would essentially bar indigent probationers from attaining compliance credits.

Argued in the Missouri Supreme Court, *State of Missouri v. Peterson*, focused on components of the Missouri Incarceration Reimbursement Act. The decision likely helped to impose some limits on the number of cases the attorney general might file in attempts to secure reimbursement for incarceration costs. Richard Peterson, who served twenty-five years for robbery, was ordered to pay \$130,600 by the courts. The defense argued that the attorney general failed to satisfy the "good cause" condition of the MIRA statutes, which holds that the state must investigate and offer proof that the inmate could pay some minimum amount once released

from prison. As a result of Peterson's lawsuit, hearings now must be held if debtors challenge the attorney general's investigation findings. Media reports have suggested that the potential for a hearing on evidence of the inmate's ability to pay has resulted in a recent decline in the yearly number of attorney general filings (Wiese, 2009).

Missouri has been featured prominently in recent discussions of the use of monetary sanctions, due, in large part, to the Department of Justice investigation of Ferguson, MO. Produced in the months following the shooting death of Michael Brown (a young Black male resident), the report found municipal court practices, in conjunction with city operations and police strategies, to promote racial bias. Beginning at the budgetary stages, city leadership encouraged yearly increases in municipal court collections. With a sales-tax revenue shortfall, the city relied heavily on municipal fines and fees as a primary source of revenue. The focus on ordinance and traffic ticket dollars was relayed, then, to the chief of police. The police department necessarily took on an aggressive law enforcement philosophy, which prioritized productivity over other performance metrics. The municipal court itself contributed to the problem by immediately resorting to arrest warrants for missed court appearances for non-serious violations (Department of Justice, 2015).

The behaviors of city management, the police department, and the municipal court system in Ferguson had striking consequences for poor, Black residents. According to the DOJ's report, after controlling for non-race factors, Black residents were still significantly more likely to be stopped and given citations for various traffic and ordinance offenses. These effects were especially pronounced in situations that relied exclusively on officer discretion. In addition, the courts were less likely to dismiss African American's cases, and, when ordinance offenses led to arrests, 95% of those arrested were African American.

In light of the Ferguson report, the state took action to limit the abilities of municipal courts in Missouri to fund general operations through minor traffic fines and fees. These limitations are described more thoroughly in section 1.2. In addition, the Supreme Court of Missouri developed a new court rule. Missouri court rule 37.65 emphasizes the use of installment payments in Missouri courts to reduce nonpayment of court debt. It highlights the existing discretion of judges as described in the Missouri statutes and it provides that incarceration can only be an option if the court has evidence of willful nonpayment.

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF SELECTED JURISDICTIONS

ST. LOUIS CITY – 22ND JUDICIAL CIRCUIT COURT

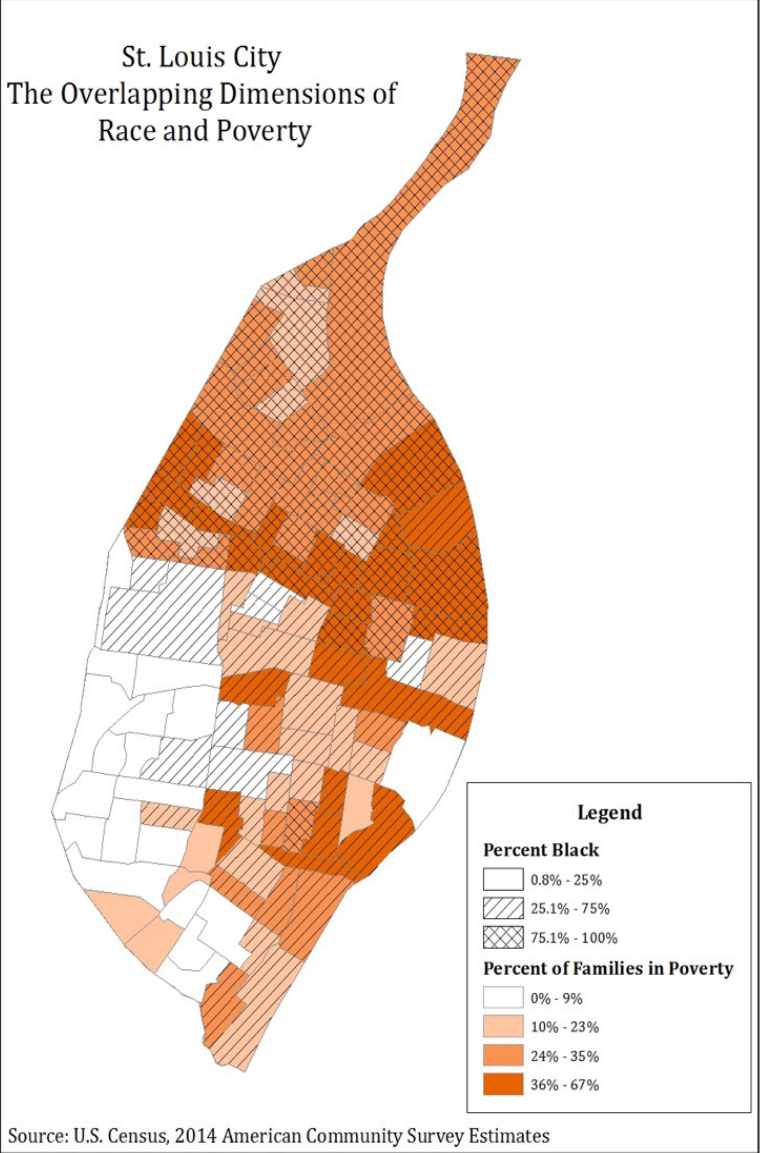
The city of St. Louis serves as a county unto itself (not to be confused with St. Louis County, which serves surrounding municipalities). The city (population 317,419) is part of the largest MSA in the state of Missouri. With 27.8% of the population living below poverty level (over 12% more than the state's poverty level), and a 9.2% unemployment rate, St. Louis city exemplifies relatively high economic disadvantage. The city is also racially diverse, with a Black population of 49.2%. Like many U.S. cities, dimensions of race and economic inequality are intertwined with spatial segregation. Figure 3 illustrates the extent to which race and poverty coincide within the city. The city votes predominantly Democratic, with Barack Obama overwhelmingly winning the presidential vote (82%), and Claire McCaskill (D) taking the U.S. Senate vote in 2012 (Secretary of State, 2012).

In 2015, the 22nd Judicial Circuit court filed 2,639 felony cases and 2,927 associate felony cases. It filed 1,386 misdemeanor cases (OSCA, 2016b).

St. Louis City (Municipal)

The municipal division of St. Louis city focuses predominantly on traffic cases, although it also hears cases on minor alcohol and drug cases, truancy court, and problem property. In 2015, the municipal court filed 233,259 traffic violations and 23,006 ordinance violations. The municipal courts do not deal with parking ticket issuances; rather, the city has a specialized violations bureau to handle parking ticket payments. In 2015, the bureau collected nearly 6 million dollars in parking fines and related costs, which generated over 4 million dollars in revenue (KPMG LLP, 2015).

Figure 3: Map of St. Louis Poverty by Census Tract



CAPE GIRARDEAU COUNTY – 32ND JUDICIAL CIRCUIT COURT

Located in the southeastern portion of the state, Cape Girardeau County has a population of 75,674 persons (U.S. Census, 2010). Over half of these persons reside in the City of Cape Girardeau, (38,665). The county is predominantly White (88.7%), has relatively high educational attainment (88% with a high school degree), and above Missouri-average income (\$45,849) (American Community Survey, 2014). The county leans heavily Republican, with over 70% voting for Mitt Romney (R) in 2012 (Missouri Secretary of State, 2012).

The Cape Girardeau County court, a branch of the 32nd Judicial Circuit Court, filed 1,101 felony cases, 1,297 misdemeanor cases, 623 traffic cases, and 344 ordinance cases in 2015.

City of Cape Girardeau

The municipal court of Cape Girardeau offers fairly extensive outlines of its ordinance code and procedures. It allows for fines to be paid online, and it provides the full fee schedules (court costs included) for various common offenses heard in the court. Two key features are important to note concerning the city of Cape Girardeau's municipal operations. First, the city operates a robust parks and recreation department, that, in recent years, has experienced double-digit growth in revenue due to improvement in offerings. Second, the city is in the midst of development and local economic growth, and it relies heavily on sales tax, which makes up over 50% of the city's revenues.

Municipal fines and court costs make up a small portion of Cape Girardeau's overall revenue. During the 2014-2015 fiscal year, revenues from municipal court fines, non-traffic fines, and parking tickets totaled \$704,967, around 3% of the city's total revenue for the year (Beussink et al., 2015). Court costs summed to \$56,127. Traffic violations are the most common cases filed in Cape Girardeau, with 3,610 being filed in 2015.

PETTIS COUNTY – 18TH JUDICIAL CIRCUIT COURT

Pettis County is located in the central western side of the state of Missouri. It is home to 42,213 residents, with its county seat, the city of Sedalia, home to nearly half of those residents (21,429). The county, when compared to the rest of the state, has a relatively high Latino population (7.8%). Additionally, it falls in the top third of counties in terms of proportion of non-white residents. Sixty-three percent of voters voted republican in the 2012 election, however, in the U.S. Senate race, Claire McCaskill (incumbent Democrat), won the county's vote.

The Pettis County Court filed 1,069 felony cases, 1,014 misdemeanor cases, and 865 traffic cases in the 2015 fiscal year. It received \$189,206 in fines, court costs, and bond forfeitures (Missouri OSCA, 2016)

City of Sedalia

The city of Sedalia is situated in the central part of the county. Founded as a railroad town in the late 1800s, the city's production, transportation, and material moving industry remains a chief source of income for Sedalia residents (American Community Survey, 2014). With regards to its municipal court operations, much information for residents is available via the city's website. Here, individuals can locate clear traffic and ordinance schedules and they may also link to the FCC's site to make payments on any open LFOs. In 2015, the court filed 854 non-traffic ordinance violations and 1,148 general traffic violations. During the 2015 fiscal year, fines and penalties totaled \$150,144, which was less than 1% of the city's general fund revenues (Gerding et al., 2015).

Table 3. Characteristics of select Missouri jurisdictions

| | Population | Poverty Rate (%) | Percent African American | Percent Latino | Fines and forfeitures per capita |
|----------------------------|------------|------------------|--------------------------|----------------|----------------------------------|
| State of Missouri | 6,028,076 | 15.6 | 12.6 | 3.8 | \$2.36 |
| St. Louis City (Circuit) | 318,727 | 25.1 | 49.5 | 3.7 | ----- |
| Cape Girardeau County | 77,031 | 17.3 | 8.3 | 2.1 | \$4.00 |
| Pettis County | 42,213 | 18.8 | 4.2 | 7.8 | \$26.04 |
| St. Louis City (Municipal) | 318,727 | 25.1 | 49.5 | 3.7 | † \$52.58 |
| City of Cape Girardeau | 38,665 | 24.7 | 14.4 | 2.4 | \$18.23 |
| City of Sedalia | 21,429 | 24.9 | 6.3 | 10.7 | \$7.01 |

Note: Population, poverty, and population composition data from 2014 American Community Survey 5 year averages, U.S. Census Bureau. City fines and forfeits information taken from respective city's annual financial reports. County and information taken from the 2012 Annual Survey of State and Local Governments, Finances, U.S. Census Bureau.

†St. Louis City's total fines and forfeitures includes Parking Violations Bureau figures. Municipal court violations were available for FY 2014, parking violations were available for FY 2015, thus, there may be a discrepancy in actual fines and forfeitures per capita.

UNIQUE MONETARY SANCTIONS IN CITY CODES

Court costs are fairly consistent across cities, and this is likely due to the nature of state statutes in providing clear court cost guidelines. Additionally, the Fine Collection Center, which processes most traffic violations for municipalities, maintains uniformity across jurisdictions. However, there are many points in the system in which discretion can be introduced. We surmise that the extent to which fines differ across cities is a function of the variation in local ordinances and the manner in which policies are policed and enforced by criminal justice actors.

Communities vary in the extent to which they outline and publicize ordinances and municipal codes. For example, Sedalia's code of ordinances details a range of potential offenses for which residents can be charged in addition to traditional traffic violations. For example, offenses such as "illegal posting of garage sale signs (\$64.00) and curfew violations (\$109.00) are highlighted in the public fee schedules. In short, the city outlines the landscape of fines for any given ordinance violation (City of Sedalia, 2016). In contrast, Cape Girardeau specifies the fines for traffic, parking, and animal violations. St. Louis City only provides parking fine schedules. However, the city of St. Louis separates its parking division from the rest of the municipal court, and includes schedules for additional fines that can be levied for non-payment. For example, failure to pay a parking violation within 22 days results in a doubling of the original fine. If not paid within 45 days, the fine is tripled. If fines are not paid in a reasonable time, vehicles may be towed or a boot may be installed. To have a boot removed, debtors are responsible for all outstanding fines as well as a \$50 boot fee. If vehicles are towed, owners become responsible for all fines and fees as well as tow and storage fees (specific amounts are not defined). In addition, unpaid parking fines may result in a suspension of the vehicle's registration, a \$20 fee is required for reinstatement (City of St. Louis, 2016).

Cities vary in their treatment of alternatives to fines and financial penalties. While state statutes specify that circuit court debtors can request to sit out prison at a rate of \$10 per day (RSMO 543.270), Cape Girardeau's municipal court lets debtors sit-out imprisonment at a rate of \$2 per day (City of Cape Girardeau Municipal Code, 16.30). St. Louis city and Sedalia do not describe "sitting out" prison time in their ordinances, but they do allow for judges to commute fines to imprisonment for non-payment. Sedalia requires debtors to show that they did not willfully fail to make payments on monetary judgments. If the judge is not satisfied with such evidence, the court can order imprisonment for no more than three months.

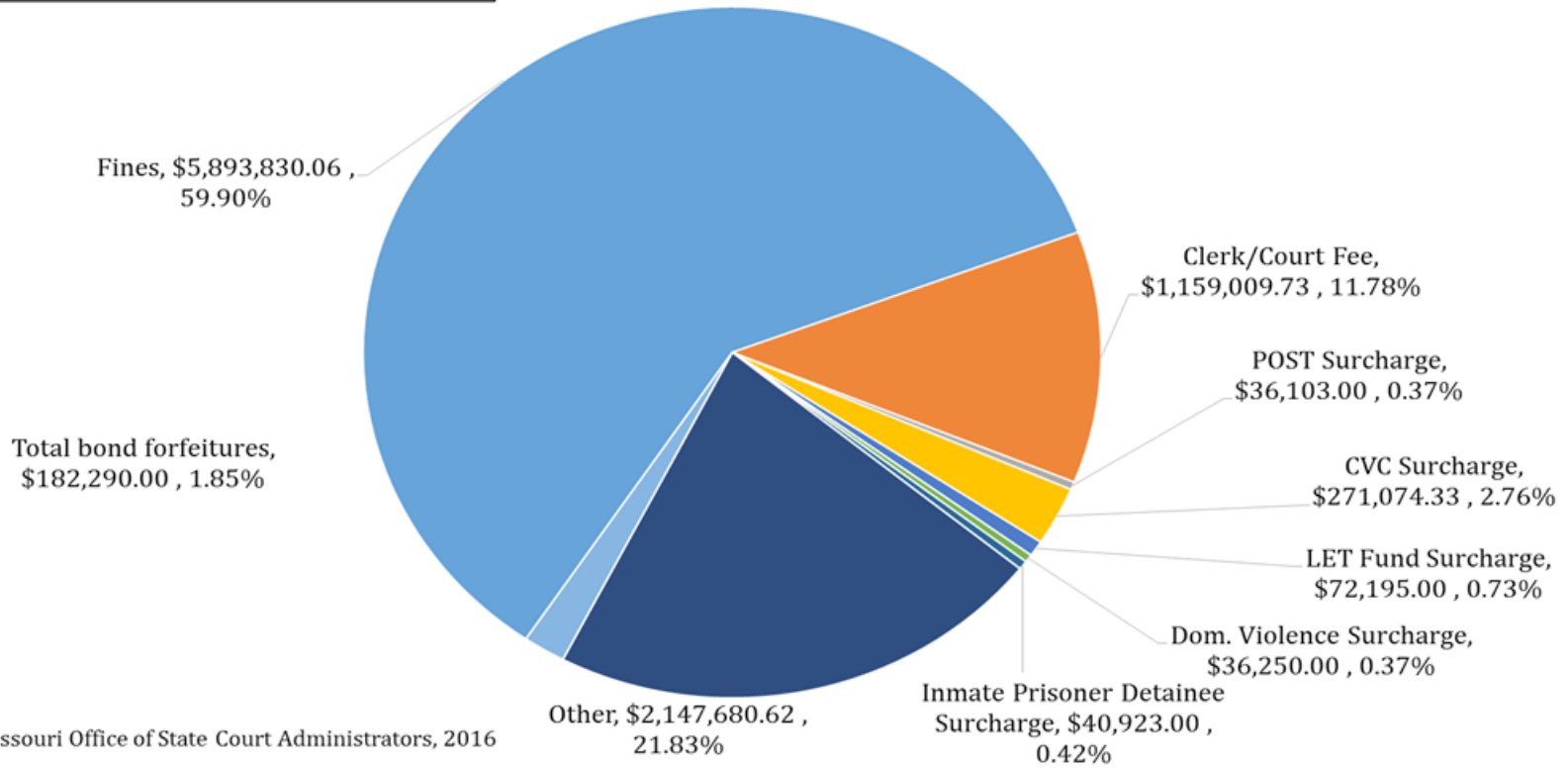
Finally, the city of St. Louis' municipal court recently reiterated much of the state statutes with Administrative Order 14-1. Within the document, the court explicitly provides for alternatives to fines and it suggests that judges consider alternative sanctions, the ability of a defendant to pay, and the use of installments when appropriate. Certainly, all of these items are found in Missouri statutes; however, the focus on such issues at the municipal court level suggests an increasing awareness of the way municipal courts operate with respect to indigent defendants.

The pie charts below depict information provided by the Office of State Court Administrators (2016c). They illustrate the differences in collected fines and surcharges across sites. Importantly, differences in percentages tell a story about how discretion may operate in different municipalities. In particular, we see that fines constitute a much smaller portion of collected monies from court cases in the city of St. Louis. Two possible reasons come to mind to explain these differences. First, it may be that judges impose smaller fines than the other selected sites. If we compare fines collected per capita, we find that the city of St. Louis collects at \$18.49 per capita compared to \$8.02 and \$6.13 per capita for Cape Girardeau city and Sedalia city respectively. This suggests that this explanation is not likely, and rather, St. Louis city collects more per capita than other places. A second explanation is that other courts may be more likely to waive court costs or surcharges. In this way, judges may weigh the fundamental importance of fines, court costs, and surcharges according to their philosophies of the function of municipal courts. Illuminating how discretion may operate in our sites will allow us to better understand the source of these differences.

Figure 4

St. Louis City Municipal Division Collections/Disbursements FY-2015

Total net collections: \$9,839,355.74



Source: Missouri Office of State Court Administrators, 2016

Figure 5.

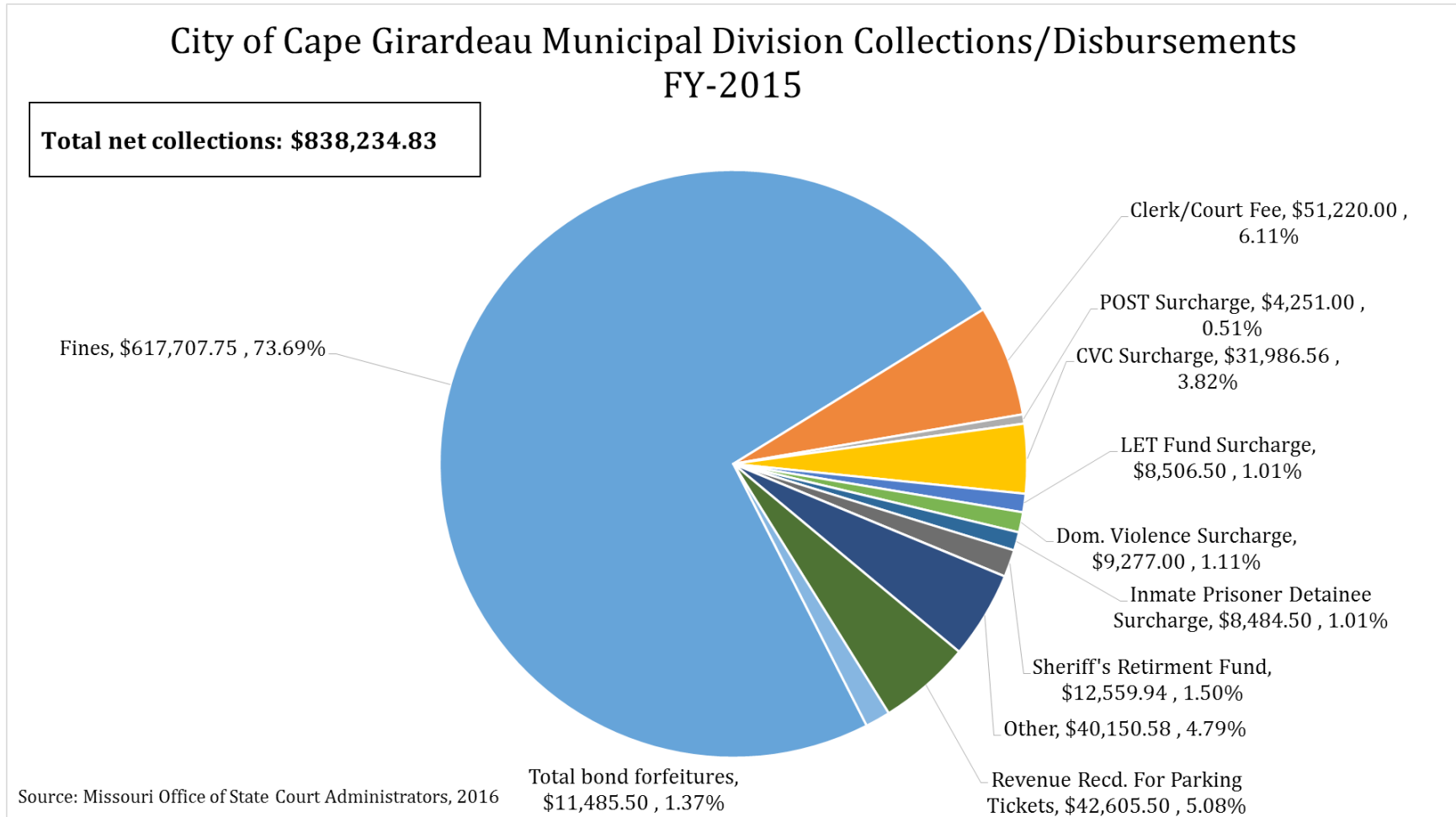
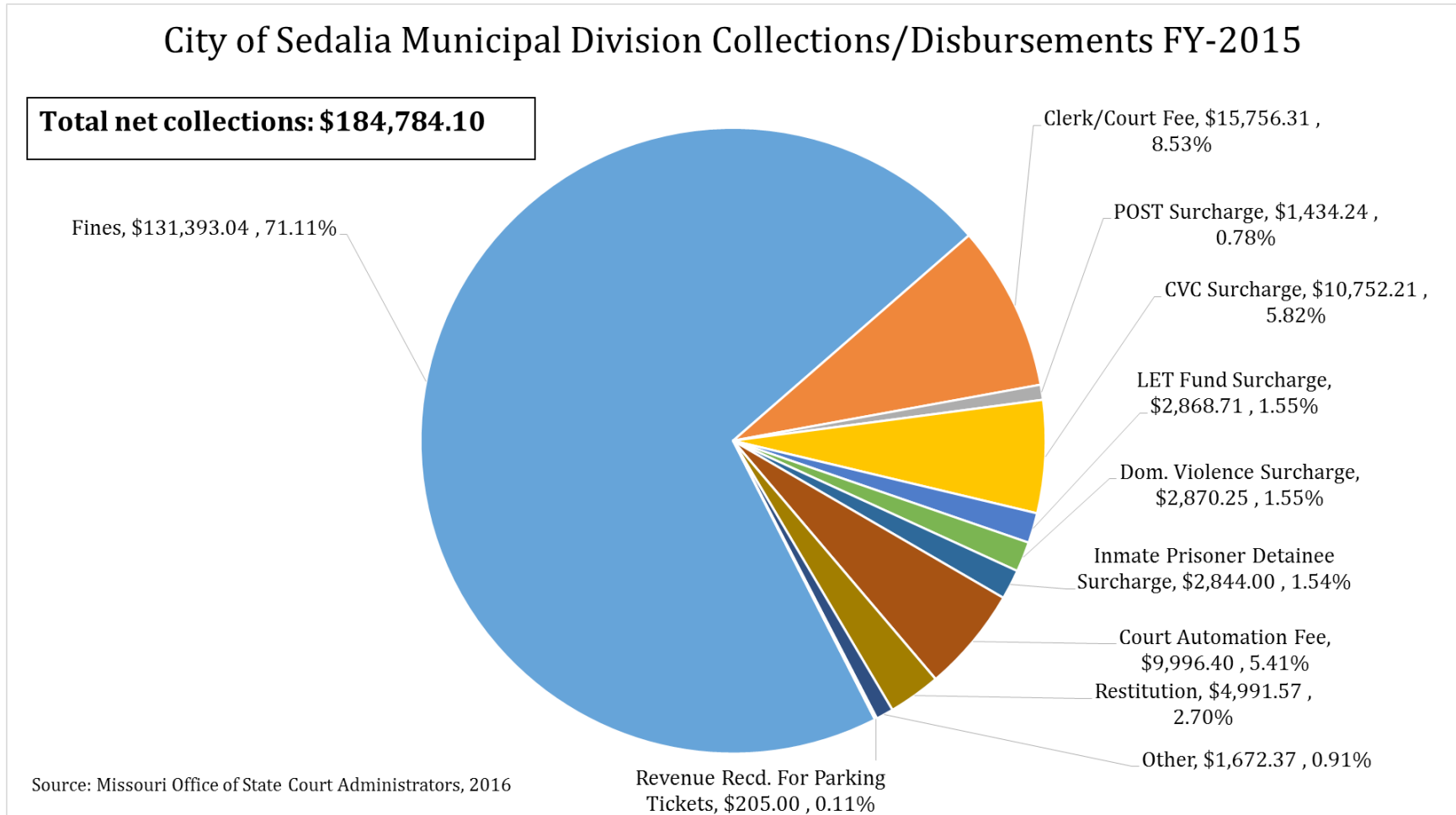


Figure 6



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MONETARY SANCTIONS IN NEW YORK

Prepared by Karin Martin & Kimberly Spencer-Suarez

Overview

New York State has more than 120 statutes pertaining to LFOs. The first relevant statute dates from 1909, the most recent is from 2013, and the state legislature is currently considering several more. In addition to being governed by Criminal Procedure Law and Penal Law, statutes related to LFOs can be found in a wide array of areas of law, including: Executive Law, Correction Law, Civil Rights Law, Vehicle and Traffic Law, and Alcoholic Beverage Control. The upshot of laws pertaining to monetary sanctions being scattered throughout so many sections of the law is that it is difficult for judges and legal counsel to keep track of all that apply to any given person. This in turn presents a significant challenge to providing effective counsel.

State, as opposed to municipal, statutes govern the bulk of LFOs in New York. Yet, as this review will make clear, New York City is an outlier in this and many other substantive ways. People who come into contact with the criminal or civil justice system in New York State are subject to: fines, surcharges, fees, restitution, civil penalties, restitution or any combination thereof. We discuss each type in greater detail below. Fines are the most prevalent type of LFO and surcharges are the most contested. However, the payment of restitution and surcharges takes precedence over the payment of fines (§ 420.10(b)). The revenue from the most common fees in New York—mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee, and supplemental sex offender victim fee—is deposited into the general fund. In contrast, local probation departments keep revenue from probation fees to fund probation services.

New York statutes governing LFOs have a few notable aspects. For one, New York has a special type of monetary sanction—a mandatory surcharge on restitution, payable to the agency collecting restitution. Secondly, no state law requires payment for a public attorney (actual practice may vary); however, one statute requires a \$70 fee to request a jury trial (NYCCCA 1911(h)). Finally, towns and villages can keep any interest accrued from the fines and cash bail moneys their courts deposit (Clerk Handbook, p. 86).

Fines

Most of New York's LFO statutes pertain to fines. More than 80 statutes specifically mention the word "fine" in their text and they apply to every level of offense in New York—felonies, misdemeanors, violations, three categories of traffic offenses, and proceedings in a town or village. Table 1 summarizes the range of fines by offense level.

Table 1. Offense Levels and Fines in New York Statutes

| | Maximum Fine | Minimum Fine | Notes |
|-------------------------|---|---|--|
| Felony | <p><i>Must not exceed the higher of:</i></p> <ul style="list-style-type: none"> - \$5000 - 2x amount of gain from the crime - if drug-related (class of felony): <ul style="list-style-type: none"> (A-I) \$100,000 (A-II) \$50,000 (B) \$30,000 (C) \$15,000 | <i>no minimum specified</i> | incarceration > 1 year |
| Misdemeanor & Violation | <p>(Class A) <\$1000 or 2x value of property</p> <p>(Class B) < \$500</p> <p>(unclassified) based on statute defining offense</p> <p>(Violation) <\$250</p> | <i>no minimum specified</i> | incarceration < 1 year; for an alternative sentence, the fine may not exceed 2x amount of defendant’s gain from commission of crime |
| Traffic Felony | <p>(Class D) <\$10,000</p> <p>(Class E) < \$5000</p> | <p>(Class D) >\$2000</p> <p>(Class E) >\$1000</p> | |
| Traffic Misdemeanor | < \$2500 | <i>no minimum specified</i> | incarceration up to 1 year; sanctions depend on number of prior convictions within fixed period of time, type of offense, type of vehicle, and judicial discretion |
| Traffic Infraction | < \$2000 | <i>no minimum specified</i> | incarceration up to 180 days; sanctions depend on number of prior convictions within fixed period of time, type of offense, type of vehicle, and judicial discretion |

The minimum fine mentioned explicitly in state statutes is \$25 (e.g. for dumping snow or not having license plates) and the maximum is \$10,000 for organizations convicted of a felony. One statute *caps* the fine for felonies at \$100,000 or “double the amount of the defendant’s gain from the commission of the crime” (Penal Law § 80.00).¹

¹ The statute also states that “if the defendant is convicted of a crime defined in article four hundred ninety-six of this chapter” then the maximum amount is “any higher amount not exceeding three times the amount of the defendant’s gain from the commission of such offense” (§ 80.00(1)(b))”

State statutes prescribe fines for offenses ranging from alcohol-related offenses involving minors (e.g. Vehicle and Traffic Law § 1194-a(2)) and possessing alcohol vaporizing devices (Alcoholic Beverage Control Law § 117-b) to violations of civil rights (Civil Rights Law § 44-a) or public health laws (Environmental Conservation Law § 71-1711).

Surcharges

Every conviction for any level of offense in New York State prompts a mandatory surcharge (Table 2). Notably significant surcharges include those for felony (\$300) and misdemeanor (\$175) DWI offenses, in addition to a mandatory surcharge on restitution (discussed below). Prison inmates are subject to a \$5 “mandatory disciplinary surcharge” and up to \$100 in restitution payments for property damage (New York Codes, Rules and Regulations § 253.7). State law also allows the state to collect unpaid mandatory surcharges from the commissary accounts of incarcerated individuals. PL §60.35 provides that all mandatory surcharges are payable to State, rather than local, accounts.

Table 2: New York State Surcharges

| STATUTE | PERTAINS TO | AMOUNT | MANDATORY |
|-----------------------------------|--|-----------------------------|-----------|
| PENAL LAW § 60.35(1)(a)(i) | Felony surcharge | \$300 | Yes* |
| PENAL LAW § 60.35(1)(a)(ii) | Misdemeanor surcharge | \$175 | Yes* |
| PENAL LAW § 60.35(1)(a)(i) | Violation surcharge | \$95 | Yes* |
| PENAL LAW § 60.35(10) | Proceeding in town or village court | \$5 | Yes |
| PENAL LAW § 60.27(8) | Designated surcharge to collecting agency for the collection and administration of restitution | 5-10% of restitution amount | Yes |
| EXECUTIVE LAW § 257-c | Fee for probation supervision in DWI cases | \$30/month | Yes** |
| CORRECTION LAW § 168-b | Fee for sex offender registry change of address or status of enrollment, attendance, employment or residence at any institution of higher learning | \$10 | Yes |
| VEH. & TRAF. LAW § 1809(1)(a) | VEH. & TRAF. LAW Article 9 infraction | \$25 | Yes |
| VEH. & TRAF. LAW § 1809(1)(b) | Crime victim assistance fee for felony or misdemeanor convictions under VEH. & TRAF. LAW § 1192 | \$25 | Yes |
| VEH. & TRAF. LAW § 1809(1)(b)(i) | VEH. & TRAF. LAW § 1192 DWI felony | \$300 | Yes |
| VEH. & TRAF. LAW § 1809(1)(b)(ii) | VEH. & TRAF. LAW § 1192 DWI misdemeanor | \$175 | Yes |
| VEH. & TRAF. LAW § 1809(1)(c) | Mandatory surcharge for selected VEH. & TRAF. LAW offenses | \$55 | Yes |
| VEH. & TRAF. LAW § 1809(9) | Proceeding in town or village court | \$5 | Yes |
| VEH. & TRAF. LAW § 1809-a | Surcharge required in certain cities for parking, stopping, and standing violations | \$15 | Yes |
| VEH. & TRAF. LAW § 1809-aa*** | Surcharge for certain parking violations | \$25 | Yes |
| VEH. & TRAF. LAW § 1809-b*** | Surcharge for certain violations related to handicapped parking spaces | \$30 | Yes |
| VEH. & TRAF. LAW § 1809-c*** | Surcharge for conviction under VEH. & TRAF. LAW § 1192 | \$25 | Yes |
| VEH. & TRAF. LAW § 1809-d*** | Surcharge for violation of maximum speed limits in highway construction or maintenance work areas | \$50 | Yes |
| VEH. & TRAF. LAW § 1809-e(1)(a) | Additional surcharge for certain VEH. & TRAF. LAW violations | \$28 | Yes |
| VEH. & TRAF. LAW § 1809-e(1)(b) | Additional surcharge for conviction under VEH. & TRAF. LAW § 1192 | \$175 | Yes |

* Pursuant to PENAL LAW § 60.35(6): Where an individual has paid restitution or reparation pursuant to PENAL LAW § 60.27, that individual shall not be required to additionally pay a mandatory surcharge or crime victim assistance fee

** Surcharge/fee may be waived due to indigence or other specified circumstances

*** Section or sub-section pertaining to surcharge/fee set to expire

Fees

New York State law mandates a variety of fees (Table 3). These include a sex offender registration fee (\$50), a DNA databank fee (\$50), and an incest supplemental sex offender victim fee (\$1,000). Other noteworthy fees include a \$1/week Incarceration Fee² and a \$1,000 Supplemental Sex Offender Victim Fee. State law allows for a \$30 monthly fee for adults on supervised presumptive release, parole, conditional release, or post-release supervision (Correction Law § 201), and probation (Executive Law § 257-c).

The opinion in *People v. Jones*, 2016 explains the clear revenue-focused rationale for fees and surcharges:

“...the fees imposed under Penal Law § 60.35 are related to the ‘State’s legitimate interest in raising revenues’ (*People v Barnes*, 62 NY2d 702, 703 [1984]), and the mandatory surcharge ‘is paid to the State to shift costs of providing services to victims of crime from “law abiding taxpayers and toward those who commit crimes”’ (*People v Quinones*, 95 NY2d 349, 352 [2000], quoting Mem of State Executive Dept, 1983 McKinney’s Session Laws of NY, at 2356, and citing Penal Law § 60.35 [3]; State Finance Law § 97-bb; Barnes, 62 NY2d 702).”

Given such clarity about their purpose, the proliferation of surcharges and fees in New York is unsurprising.

Table 3: New York State Fees

| STATUTE | PERTAINS TO | AMOUNT | MANDATORY |
|-----------------------------------|--|----------|-----------|
| PENAL LAW § 60.35(1)(a)(i) | Felony crime victim assistance fee | \$25 | Yes* |
| PENAL LAW § 60.35(1)(a)(ii) | Misdemeanor crime victim assistance fee | \$25 | Yes* |
| PENAL LAW § 60.35(1)(a)(iii) | Violation crime victim assistance fee | \$25 | Yes* |
| PENAL LAW § 60.35(1)(a)(iv) | Sex offender registration fee | \$50 | Yes |
| PENAL LAW § 60.35(1)(a)(v) | DNA databank fee | \$50 | Yes |
| PENAL LAW § 60.35(1)(b) | Supplemental sex offender victim fee (in cases of incest in the 3 rd , 2 nd , or 1 st degree) | \$1,000 | Yes |
| CORRECTION LAW § 189(2)** | Incarceration fee | \$1/week | No |
| VEH. & TRAF. LAW § 1809(1)(c) | Crime victim assistance fee for selected VEH. & TRAF. LAW offenses | \$5 | Yes |
| VEH. & TRAF. LAW § 503(2)(h) | Termination of license revocation fee; application for re-issuance | \$100 | Yes** |
| VEH. & TRAF. LAW § 503(2)(i) | Termination of driving privileges for non-resident; fee for reinstatement of privileges | \$25 | Yes** |
| VEH. & TRAF. LAW § 503(2)(j) | Termination of license suspension fee | \$50 | Yes** |
| VEH. & TRAF. LAW § 503(2)(j) | Termination of license suspension fee – alcohol-related offense | \$100 | Yes** |
| VEH. & TRAF. LAW § 503(2)(j-1)(i) | Termination of license suspension fee; suspension due to failure to appear or failure to pay | \$70 | Yes** |

* Pursuant to PENAL LAW § 60.35(6): Where an individual has paid restitution or reparation pursuant to PENAL LAW § 60.27, that individual shall not be required to additionally pay a mandatory surcharge or crime victim assistance fee

** Surcharge/fee may be waived due to indigence or other specified circumstances

Penalties & Assessments

New York Vehicle and Traffic Law has two additional separate types of LFOs that apply exclusively to traffic violations, “penalties” and “assessments.” These rank as some of the more punitive monetary sanctions in New York (Table 4). For example, the common offense of driving without a license warrants a \$750 penalty, in addition to any relevant fees or surcharges.

² Penal Law § 60.02 calls for this fee to be waived if a person has unpaid “restitution or reparation, fine, mandatory surcharge, sex offender registration fee, DNA databank fee, crime victim assistance fee or supplemental sex offender victim fee”

Table 4: New York State Penalties & Assessments

| STATUTE | PERTAINS TO | AMOUNT |
|--------------------------------|---|---|
| VEH. & TRAF. LAW § 318 | Failure to surrender registration, plates, license following revocation for termination of financial security | \$8/day (up to 30 days) |
| VEH. & TRAF. LAW § 319(5) | Operating vehicle without insurance or underinsured | \$750 |
| VEH. & TRAF. LAW § 402-a(3) | Manufacture, sale, or offer of unauthorized facsimile license plates | \$500 |
| VEH. & TRAF. LAW § 417-a(2)(b) | Violations related to mandatory disclosures by vehicle sellers prior to sale | \$1,000 |
| VEH. & TRAF. LAW § 503(4)(b) | Driver responsibility assessment | \$100/year (3 years) plus \$25/year for each point on DL beyond 6 |
| VEH. & TRAF. LAW § 1194(2) | Chemical test refusal | \$500 |
| VEH. & TRAF. LAW § 1194(2) | Second chemical test refusal within 5 year period | \$750 |
| VEH. & TRAF. LAW § | Chemical test refusal; commercial vehicle | \$550 |
| VEH. & TRAF. LAW § | Chemical test refusal with prior VEH. & TRAF LAW § 1192 conviction(s) within 5 period | \$750 |
| VEH. & TRAF. LAW § | Fraudulent attempt to obtain parking permit for handicapped persons | \$250-\$1,000 |

Restitution

Restitution takes two forms in New York State. Everyone is ordered to pay a Crime Victim’s Assistance (CVA) Fee, which goes to a state fund, and some people are also ordered to pay restitution directly to the victim to compensate for loss related to the crime. By state law, each county designates an agency (typically probation departments) to collect restitution, which then receives 5%-10% of the restitution amount as a mandatory surcharge³ (Penal Law § 60.27). This mandatory surcharge on restitution can be an important source of revenue for local jurisdictions or agencies (e.g. probation offices in areas with relatively small populations).

Restitution is capped at \$15,000 for felonies and \$10,000 for other offenses; however, a judge can exceed this limit for the purpose of returning of the victim’s property or reimbursing medical expenses. Importantly, a restitution or reparation order eliminates the requirement to pay mandatory surcharges and the CVA fee.

State law allows for some specially designated recipients of restitution. For instance, a law enforcement agency can receive restitution for the costs of purchasing illegal drugs as part of an undercover investigation, a municipality or volunteer fire department can be compensated for the costs of “restoration, rehabilitation or clean-up” of an arson site, and ambulance companies, fire departments, and schools (among others) can receive restitution for the costs of responding to a false bomb threat (New York Penal § 60.27).

Civil Penalties

Penal Law § 60.30 allows courts to impose civil penalties including: property forfeiture, suspension/cancellation of office or licensure, or “other civil penalty” as part of judgment of conviction.

Court Fees

In the state statutes, court fees are designated as “filing fees.”⁴ There are no filing fees in Family Court or in criminal cases. The largest fee is \$210 for obtaining an index number (CPLR §8018(a)(1)(3)), and the smallest fee is \$5 for filing a Notice of Appeal in a Town or Village Court. Noteworthy fees include a \$95 fee for a Request of Judicial Intervention in Supreme/County Court (CPLR §8020(a)) and a \$70 for a Demand for Jury Trial in NY City Civil Court, District Court or City Court (section 1911 of the New York City Civil Court Act, the Uniform District Court Act and the Uniform City Court Act).

Changes in New York Monetary Sanctions

Since the early 1990’s, New York has increased both the severity of mandatory sanctions and the number of people subject to them. For example, mandatory surcharges, first implemented in 1982, were originally

3 This is the case for most felonies; those involving a controlled substance are the exception.

4 A list of all filing fees can be found at the New York State Court System website: <http://www.nycourts.gov/forms/filingfees.shtml>

\$75 for a felony and \$25 for a misdemeanor (Rosenthal & Weissman, 2007). Now, the amounts are \$300 and \$175, respectively. In another increase, the fee for failing to appear or pay an LFO related to the termination of (driver’s license) suspension (VTL §503(2) (j-1)(i)), doubled from \$35 to \$70 in 2009 (Clerk Handbook, p. 61). The cap on the aggregate amount a court can impose in termination of suspension fees also doubled from \$200 to \$400 the same year (VTL §503[2][j-1][i]) (Clerk Handbook, p. 61).

As of 2004, the “Driver Responsibility Assessment,” has been distinct among New York monetary sanctions for requiring a payment of either \$250 or \$100 for each of three consecutive years (Vehicle and Traffic Law § 1199 and Vehicle and Traffic Law § 503(4)). This assessment is charged to people who, among other offenses, refuse a chemical test or gets six points on their driver’s licenses.

Probation fees also tell a story of expanded LFOs. Prior to 2006, the Attorney General interpreted state law to be that the state had preempted the “provision of probation services” and therefore, localities were prohibited from implementing and keeping the revenue from new probation fees⁵ (Scheingold & Brady, 2003). However, beginning in the early 1990’s, some jurisdictions already had probation fees and were considering expanding these. Then, in 2006, the legislature amended Executive Law § 257-c to allow local jurisdictions to collect and keep a \$30/month probation fee. Now, the revenue from this fee and the mandatory surcharge on restitution is an important source of income for some counties.

The treatment of juvenile offenders further reveals how New York State has expanded the reach of monetary sanctions. Historically, state law exempted juvenile offenders from LFOs (Rosenthal & Weissman, 2007). A 2005 statute, however, mandated that fees and surcharges apply “to sentences imposed upon a youthful offender finding” (P.L. §60.35(10)). A similar change was made to the Vehicle and Traffic Laws (§1809(10)). Despite the expansion of LFOs, recent legislative activity seeks to somewhat temper this momentum as outlined in the Legal Challenges section below.

Consequences for Non-Payment

Imprisonment

Imprisonment is one consequence of non-payment, and the level of offense determines the maximum term of imprisonment (Table 5). Specifically, nine statutes provide for incarceration due to non-payment of LFOs, either as directly ordered by the court (e.g. Criminal Procedure Law § 420.10) or as a consequence of non-payment being the basis for revocation of parole (e.g. Executive Law § 259-i(2), Executive Law § 259-i(3)). State law does not explicitly allow for private collection of LFOs, but it allows local jurisdictions to “enforce payment in any manner permitted by law for enforcement of a debt” (Executive Law § 257-c).

Table 5: Maximum imprisonment terms by offense level

| OFFENSE LEVEL | MAXIMUM TERM OF IMPRISONMENT FOR NON-PAYMENT OF FINE OR RESTITUTION |
|---------------|---|
| Felony | < 1year |
| Misdemeanor | < 1/3 maximum authorized term of imprisonment |
| Petty offense | < 15 days |

Several statutes allow for parole or conditional discharge to be extended for non-payment of LFOs (Penal Law § 65.05, Executive Law § 259-i(3), Executive Law § 259-j); yet, no state statute expressly curtails voting rights due to unpaid monetary sanctions.

1.1.1 Civil Judgments

Unpaid LFOs can result in a civil judgment for the balance due, for which State law sets the interest rate at 9%. Civil judgments are reported on credit reports. The consequences for not paying a civil judgment are any combination of the following:⁶

5 The payment of fines and restitution can be a condition of probation, while probation fees cannot.

6 According to the New York Courts website (<https://www.nycourts.gov/courts/nyc/civil/collectingjudg.shtml>).

- a) garnishment of wages and or bank accounts;
- b) lien, seizure, and/or sale of real property and/or personal property, including automobiles;
- c) suspension of motor vehicle registration, and/or driver’s license, if the underlying claim is based on the judgment debtor’s ownership or operation of a motor vehicle;
- d) revocation, suspension, or denial of renewal of any applicable business license or permit;
- e) investigation and prosecution by the State Attorney General for fraudulent or illegal business practices⁷

1.1.2 Loss of Driver’s License

Failure to answer an appearance ticket or summons, or to pay a fine/penalty/surcharge can result in the loss of driving privileges or a suspended license (New York Vehicle and Traffic Law § 510(4)(a)). After clearing the resulting debt, an individual must pay a \$70 termination of suspension fee (Vehicle and Traffic Law § 503(2)(j)). There is also a fee of \$100 for re-issuing a driver’s license following revocation (Vehicle and Traffic Law § 503(2)(h)). A non-resident whose driving privileges were revoked and who seeks reinstatement of privileges must pay an additional fee of \$25 (Vehicle and Traffic Law § 503(2)(i)).

1.1.3 Paying While Incarcerated

Failure (or inability) to pay at the time of sentencing means that when a person arrives at a New York State prison, his court-ordered debt arrives with him. In fact, state prisons play an important role in collecting LFOs. Between 1995 and 2003, the Department of Corrections and Community Supervision (DOCCS) collected more than \$22 million in court-ordered fees—the vast majority of which was mandatory surcharges (DOCS, 2004). Standard practice is to garnish LFO payments from a person’s commissary account while he is incarcerated. Importantly, commissary accounts are how incarcerated people can get better food and toiletries and family members are the main source of funds for these accounts. The amount garnished from people’s commissary accounts depends on the source of the money—from a prison job or from outside receipts (i.e. gifts from family)—in addition to the number of judgments against them. Note that the average prison wage is about \$1/day. Prison wages are garnished at the rate of 20% if there is one judgment and 40% if there are two or more judgments (New York State Bar Association, 2006). Yet 100% of outside receipts are garnished if there is more than one judgment, and 50% are garnished if there is just one (New York State Bar Association, 2006).

DOCCS also assessed nearly \$15 million in its own fees during the eight fiscal years of 1995-2003 (DOCS, 2004). The monies collected were for “disciplinary infractions, room and board costs at work release facilities, day reporter fees, arts and crafts fees and cash confiscated as contraband from inmates” and were primarily sent to the state general fund DOCS, 2004).

COURT STRUCTURE IN NEW YORK STATE

New York courts are organized on the basis of geography, case type (e.g. housing, families, etc.), and whether an offense is a felony or a misdemeanor. Felonies are offenses that are punishable for more than one year of imprisonment. Misdemeanors are defined as offenses punishable by a fine or a year or less of imprisonment.

There are both civil and criminal courts and each has three levels: Courts of Original Instance,⁸ Intermediate Appellate Courts, and Court of Appeals (and Appellate Division of the Supreme Court, in the criminal court system).⁹ Figure 1 and Figure 2 below clarify the structure for criminal and criminal courts in New York.

⁷ New York Civil Practice Law and Rules Section 5250 allows creditors to ask the court to put someone in jail for unpaid civil judgments.

⁸ In the civil system, these include Supreme Courts, County Courts, Surrogate’s Courts, Court of Claims, Family Courts, District Courts, NYC Civil Courts, and City, Town, and Village Courts. In the criminal court system, the courts of original instance include Supreme Courts, County Courts, District Courts, NYC Criminal Courts, and City, Town, and Village Courts.

⁹ While both the criminal and civil court structures have at their apex the Court of Appeals, they differ in the position of the Appellate Divisions of the Supreme Court. Both systems have the Appellate Terms of the Supreme Court 1st and 2nd Departments and County Courts as intermediate appellate courts. In the criminal system, the Appellate Divisions of the Supreme Court are also intermediate appellate courts; in the civil system, they are not.

Court Jurisdiction

The court system in New York has three levels and is divided geographically into four judicial “departments” and 13 judicial “districts” (see Figure 3 in the Appendix).¹⁰

The highest court, the Court of Appeals, hears civil and criminal appeals from the intermediate appellate courts (and sometimes from the trial courts). The intermediate level of appellate courts hears appeals from the lower level courts. Where the appeal goes depends on the district in which the case originated.

New York City is different from the rest of the state. There, the Civil Court of the City of New York handles cases involving claims for damages up to \$25,000 and small claims cases with amounts up to \$5000. These courts also have a division, called a “part,” that deals exclusively with housing (landlord-tenant issues). The Criminal Court of the City of New York handles misdemeanors and lesser offenses.

Outside of New York City, there are District Courts (six), City Courts, Town and Village Justice Courts, and County Courts (located in each county outside of New York City) that are the only courts where felony trials take place. Other courts may handle arraignment for felony matters, and Supreme Courts hear civil matters.

Family Courts handle issues involving children and families, Surrogate’s Court handles cases relating to deceased individuals, and the Court of Claims has exclusive authority to handle lawsuits seeking money damages from New York State.

Town and Village Justice Courts are important to the discussion of LFOs because there are almost 1300 of them with 2200 judges and they handle about 2 million cases a year. These courts hear both civil (small claims, landlord/tenant) and criminal matters (misdemeanors and violations). They exist everywhere in the state except for New York City and are often run by part-time judges and clerks. With small surrounding populations, there is preliminary evidence that the Town and Village Courts closest to highways bring in the most revenue from traffic violations.

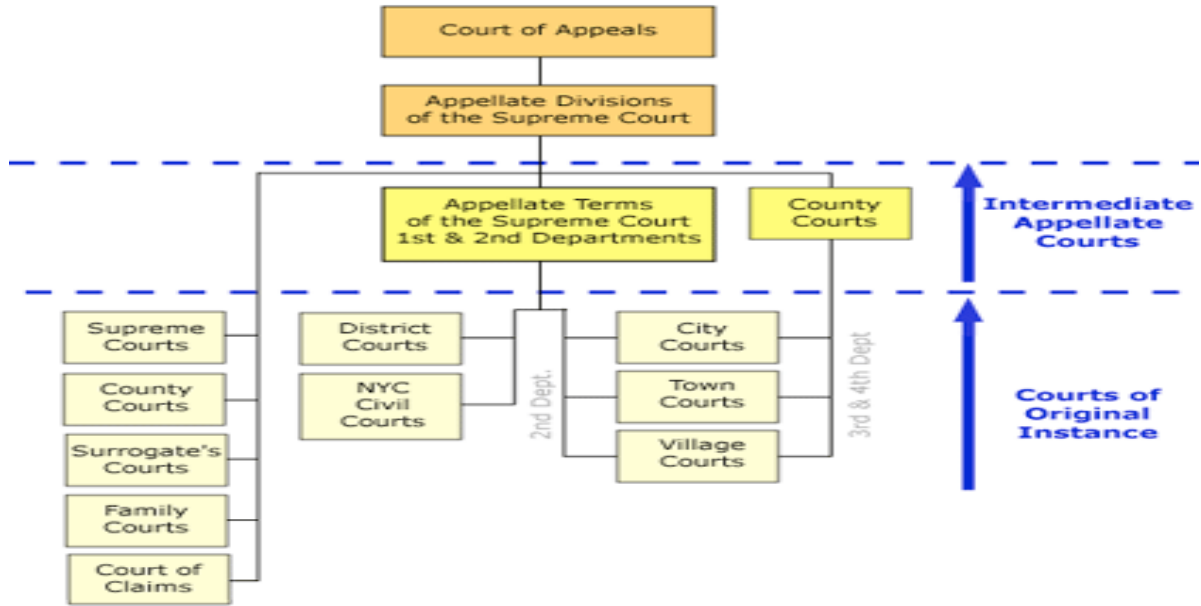
Other Court Information

- Altogether, New York Courts handle more than 4 million cases a year.
- Courts in New York have “parts” or specific courtrooms that handle a particular type of case.
- In all New York courts, the County Clerks collect court fees for filing documents.

¹⁰ The First Judicial Department includes districts 1 and 12; the Second Judicial Department, districts 2, 9, 10, 11 and 13; the Third Judicial Department, districts 3, 4 and 6; and the Fourth Judicial Department, districts 5, 7 and 8. The Appellate Terms of the Supreme Court in the First and Second Departments handle appeals of cases that originate in New York City Civil and Criminal Courts. The four Appellate Divisions (one in each department) of the Supreme Court hear civil and criminal appeals from the trial courts.

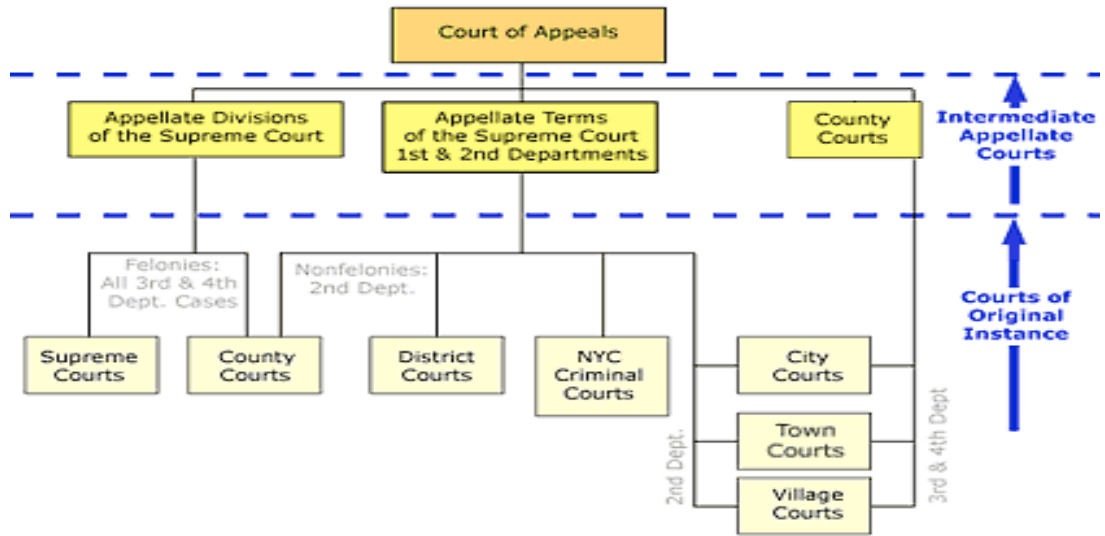
Figures 1 & 2: Diagrams of New York State Civil and Criminal Court Structures

CIVIL COURT STRUCTURE



Source: NYCourts.gov

CRIMINAL COURT STRUCTURE



Source: NYCourts.gov

LEGAL CHALLENGES

General Challenges

People can contest LFOs under New York State law in two ways. One is to request resentencing; however, the court may impose any sentence it could have originally imposed. As a result, the LFO cannot be increased, but the term of imprisonment can be. The other way people can contest LFOs is by requesting a deferral, which would allow for paying the LFO at a later date. However, deferrals are legally difficult to achieve as described below.

Mandatory Surcharges

The opinion in *People v. Jones*, 2016 provides a succinct legal history of mandatory surcharges in New York:

“Initially, courts had authority to waive the surcharges, but in 1992, in response to apparent judicial laxity in granting such waivers, and in order ‘to limit what ha[d] become perceived as the routine remission and waiver in some cases of surcharges . . . intended to be mandatory,’ (Approval Memorandum, Bill Jacket, L 1992, ch 794 at 14 [NY Senate Bill 9031]), the legislature amended CPL 420.35 and included language that courts be ‘mindful’ that the surcharge was mandatory, and of ‘the important criminal justice and victim services’ sustained by the surcharge and other fees (id. at 8 [Recommendation of Senate Committee on Rules]). Thereafter, with the enactment of the Sentencing Reform Act of 1995, the legislature greatly cabined judicial authority to waive and remit the mandatory surcharge (see L 1995, ch 3). As amended, CPL 420.35 (2) reads that ‘[u]nder no circumstances shall the mandatory surcharge . . . be waived,’ except in cases involving a statutorily defined, albeit discrete, category of defendants, not relevant here.[FN1] (see CPL 420.35 [2], as amended by L 1995, ch 3, eff. July 1, 1995). In the same vein, the relevant language in 420.30 (3) provides that ‘[i]n no event shall a mandatory surcharge, . . . be remitted.’ Thus, *the Legislature could not be clearer in communicating its intent to restrain the judiciary from discharging a person’s obligation to pay the statutorily imposed amount.*” [emphasis added]

Nevertheless, many of the legal challenges in the domain of LFOs relate to mandatory surcharges. In particular, many people have challenged the felony mandatory surcharge (\$300) and CVA fee (\$25) and have attempted to have them waived (e.g. *People v. Davis* 2016, *People v. Hernandez* 2016, *People v. Rosario* 2016, *People v. Singleton* 2016, *People v. Medina* 2012). However, *People v. Jones* (2016), in which the defendant argued that his due process rights were violated, found that the sentencing court does not have to consider requests to defer payment of a mandatory surcharge.

An earlier case, *People v. Morrison* (2012), found that the legislature established a structure for mandatory surcharges such that surcharges are automatically imposable and that the Courts do not have authority to waive or restrict a surcharge or defer a surcharge for someone sentenced to imprisonment for more than sixty days. Similarly, in *People v. Furet*, 12 NY3d 740 (2009) and in *People v. Harris* 12 NY3d 741 (2009), the Court of Appeals held that mandatory surcharges being mandatory, were automatic and were conditions resulting from a sentence. As a result, they do not have to be pronounced by a Court at the time of sentence and a Clerk of the Court can enter them. Moreover, *People v. Allen* (2006) established that the criterion for waiving a mandatory surcharge is establishing that it would be “an unreasonable hardship on [the] defendant over and above the ordinary hardship suffered by other indigent inmates.” If a person cannot pay the surcharge at the time of sentencing, then they can be collected at “the moment of confinement and throughout the period of incarceration” (*People v. Jones*, 2016).

The challenges to mandatory surcharges are well-founded, with judges in relevant cases making the point that “the statutes governing mandatory surcharges have been characterized as ‘poorly drafted and difficult to follow’” (Preiser, Practice Commentary, McKinney’s Cons Laws of NY, Book 11A, CPL 420.40, cited in *People v. Jones*, 2016). An example is *People v. Greenhalgh* (2015) in which the plaintiff sued to have the payment of a mandatory surcharge, crime victim assistance fee, and DNA databank fee imposed on him at sentence be “deferred” as opposed to being recorded as “not paid.” The plaintiff had been sentenced to two years in prison in addition to a \$300 mandatory surcharge, \$25 crime victim assistance fee, and \$50 DNA databank fee. The ruling also protected the inmate’s commissary funds, stipulating that “All fees and surcharges are

ordered by the court as a civil judgment and are not to be taken from inmate's funds". Given the Department of Correctional Services' policy of deducting 20% of an inmate's earnings and 50% of any funds gifted to the inmate, this was a significant protection. Instead, the state was directed to pursue collection via a civil judgment, which the plaintiff would pay upon leaving prison. The opinion chalks the case up to a clerk's error; however, it highlights the implications of New York's LFOs for indigent defendants.

People v. Quinones 95 N.Y.2d 349 (2000) resolved a set of conflicting judgments at lower level courts about whether courts can order mandatory surcharges in addition to restitution. The First and Third Departments had prohibited a sentencing court from imposing the mandatory surcharge/crime victim assistance fee when restitution was also ordered (*People v Espola*, 238 AD2d 281 [1st Dept]; *People v Meade*, 195 AD2d 756 [3d Dept]). However, the Second and Fourth Departments had held that both could be imposed simultaneously, and that once a defendant paid the restitution, he or she could obtain a refund of the mandatory surcharge/crime victim assistance fee (*People v Cabrera*, 243 AD2d 720 [2d Dept]; *People v De Berry*, 117 AD2d 1006 [4th Dept]). In *People v. Quinones* the court ruled that sentencing courts can indeed order both restitution and the mandatory surcharge/crime victim assistance fee when the defendant has not yet paid restitution.

Challenges to Incarceration for Failure to pay

People v Smith, 18 NY3d 588, 592 [2012] (citing *People v Medina*, 44 NY2d 199 [1978]) allows for incarceration for failure to pay LFOs. A person on probation can be incarcerated for non-payment of LFOs as a result of *People v. Amorosi*, 96 N.Y.2d 180 (N.Y. 2001). The ruling in this case asserted that when a monetary sanction is imposed as a condition of probation and a person fails to make payment without requesting resentencing or asserting an inability to pay, the court can sentence the debtor to a period of imprisonment for violation of probation,¹¹ but it is considered an alternative sentence after revocation of probation for violating a condition of the sentence. *People v Koch*, 299 NY 378, 381 [1949] permits incarceration for failure to pay mandatory surcharges.

Legislative Activity

The New York State legislature has been quite active in attempting to revise statutes relevant to LFOs. In contrast to treating LFOs as sources of revenue, an especially forward-thinking bill pending in the 2015-2016 legislative session, Assembly Bill A10042, takes into account the cost side of LFOs. The bill "requires the court to consider the cost to the state or locality of any imprisonment, post-release supervision or probation component of a defendant's sentence when imposing a fine under the penal law."

Other recent activity seeks to increase either the severity of LFOs or the severity of the consequences for non-payment. Senate Bill S1557 (2015-2016 Legislative Session) "Imposes additional fines when a person fails to appear before the court, pay fines or complete counseling and/or community service as mandated under a conviction of unlawful possession of an alcoholic beverage with intent to consume by persons under the age of twenty-one." It specifically creates an additional fine of \$500 for underage drinking. This bill has passed the Senate and is pending in the Assembly.

Assembly Bill A4766 (2015-2016 Legislative Session) would allow collection agencies (with court approval) to institute civil actions to enforce restitution orders. It would also allow income to be garnished directly from the employer and increases to 50% the amount that can be withheld from wages. Another bill, A00548, would require courts to impose a fine for all alcohol and drug related driving offenses regardless of whether a term of imprisonment is also imposed. In contrast, a bill (Senate Bill S6422A) that recently became law "[p]rohibits any municipality from collecting a fine, penalty or forfeiture when the charge of a violation of the vehicle and traffic law is dismissed."

11 This is not subject to N.Y. C.P.L. § 420.10(4), which sets up the limitations for a sentence of imprisonment for failure to pay your financial penalty.

PROFILES OF SELECTED JURISDICTIONS

Overview

The selected counties and cities represent the immense diversity to be found in the state of New York. As the descriptions in subsequent sections show, the sites offer diversity in terms of rural/urban, education levels, racial composition, proportion foreign-born, socio-economic indicators, population size, and political affiliation. Table 6 provides an overview of the basic differences.

Table 6: New York jurisdiction basic demographics

| JURISDICTION | POPULATION (2015) | POVERTY RATE (% 2015) | AFRICAN AMERICAN ALONE (% 2015) | LATINO (% 2015) | VOTE REPUBLICAN (% 2012) | MEDIAN HOUSEHOLD INCOME (2015) |
|-----------------|-------------------|-----------------------|---------------------------------|-----------------|--------------------------|--------------------------------|
| NEW YORK STATE | 19.79 million | 15.9 | 17.6 | 18.8 | 36.0 | \$58,687 |
| ERIE COUNTY | 922,578 | 15.2 | 14.0 | 5.2 | 41.3 | \$51,050 |
| CHEMUNG COUNTY | 87,071 | 18.2 | 6.8 | 3.0 | 50.7 | \$49,685 |
| MANHATTAN | 1.64 million | 17.7 | 18.2 | 26.0 | 14.6 | \$71,656 |
| BRONX | 1.46 million | 31.5 | 43.4 | 55.1 | 8.3 | \$34,284 |
| CITY OF BUFFALO | 258,071 | 30.9 | 38.6 (2010) | 10.5 (2010) | - | \$31,668 |
| CITY OF ELMIRA | 28,213 | 30.4 | 14.6 (2010) | 4.3 (2010) | - | \$29,865 |

Note: % Vote Republican based on 2012 NY Presidential Results; retrieved from: <http://www.politico.com/2012-election/results/president/new-york/>; data from Associated Press.

Chemung County & City of Elmira

The mix of economic, racial, and political conditions typify this region of the state and provide a good contrast to the metro NYC area. The county is predominantly White, Republican, and similar to national averages in amount of the population between 18-65 and median household income. Chemung County has a population of 88,000 and Elmira is one of 18 municipal governments in the county. Elmira differs from other municipalities for having a number of shared service agreements with the county. Elmira is home to a maximum-security state prison and there is a supermax state prison 2 miles outside of the city. Elmira is the county seat, has very high rates of high school completion, close to half the population have college degrees, and the median household income is \$30,000.

Elmira is struggling financially, as explained by the County Executive in the preface to a recent county budget:¹² "As you know, the City of Elmira is in severe fiscal distress. Moody's Investors, in June of this year, downgraded the City's General Obligation Rating five steps from A2 to Ba1, an unprecedented decline in New York State. This weakened financial position follows several years of reserve drawdowns resulting in a negative unassigned fund balance and a negative net cash position." The city's operating budget is approximately \$30 million and there is currently a \$3.2 million operating fund deficit. Even though court observations will clarify what the actual practice is, there is some evidence of the pressure to generate revenue via LFOs.

The jail received \$300,000 in revenue from "prisoner charges" in FY 2014. That same year, DWI fines generated \$187,846 for the County in FY2014, in addition to another \$50,356 in DWI fines collected by the county clerk. The County took in \$214,240 in "sheriff's fees," while the Probation Department took in

approximately \$400,000 from fees,¹³ the restitution collection surcharge, and DWI fines. This amount nearly matches the amount the department received in state aid and is about 50% of the agency's budget.

In addition, the County Charter does allow the local legislature to adopt ordinances that may include civil penalties or fines:

“Section 212. Ordinances. Ordinances may be adopted by the County Legislature and the procedure shall be the same as herein provided for the adoption of local laws, except that an ordinance shall not be subject to referendum, mandatory or permissive. An ordinance may provide for any subject matter of County concern not required to be provided by local law, legalizing act, or resolution of the County Legislature.

Such ordinance may provide for its enforcement by legal or equitable proceedings in a court or competent jurisdiction; may prescribe that violations thereof shall constitute offenses or misdemeanors; and may provide for punishment of violations by civil penalty or by fine or imprisonment or two or more such penalties or punishments. Ordinances and their application, including particular subjects and form, may be further provided in the Administrative Code.”

For traffic violations, the municipal code allows for a fine, jail, or both:

“Any person admitting or who has been found guilty of violation of any section of this chapter may for first offense be punished by a fine not exceeding \$50.00, or by imprisonment not exceeding 30 days, or both such fine and imprisonment, and for a second offense by a fine not exceeding \$100.00, or by imprisonment not exceeding 60 days, or both such fine and imprisonment, and for a third or subsequent offense within one year by a fine not exceeding \$150.00, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment.” ((Penal Ords. 1939, § 58.8) Code 1973, § 25-14.)

The municipal code requires fines for a variety of infractions. Violating housing ordinances is subject to fines up to \$500 (or up to 60 days in jail) (Code 1973, § 8-284), environmental offenses receive fines of \$100-\$300 (Code 1973, § 14-64), violating the “vegetation” code (e.g. planting the wrong kind of tree or planting them too close together) merits a fine up to \$500 (Code 1973, § 31-49), vandalism is punishable with a fine between \$100 and \$500 in addition to court costs, and skateboarding in prohibited areas gets a fine of \$25-\$100 ((Code 1973, §§ 15-29) § 18-58). People can also be fined \$25 for drinking in public or being in a public park after dark ((Code 1973; § 15-28) § 18-57).

Two other municipal codes stand out as noteworthy. One is that in order to contest a traffic ticket, a person must pay “bail” in an amount equal to double the prescribed fine (Penal Ords. 1939, § 58.4; Code 1973, § 25-10). The other is that Elmira makes the parents of unemancipated minors legally responsible for any “any fine or condition or restitution” that the court orders the minor to pay (Code 1973, § 18-8).

ERIE COUNTY & CITY OF BUFFALO

Erie County

Erie County has a high (80%) proportion of White residents, while the City of Buffalo has a much more racially diverse population (50% White residents, 38% Black, 10% Latino, 3% Asian). The county and city are also quite different economically: median household income for Buffalo is about \$33,000 and is \$50,000 for Erie county. There is a similar difference in terms of median value of owner occupied housing: \$124,000 for Erie county and \$66,000 for Buffalo. Erie also has a large population compared to other counties in the state, close to 1 million residents.

Erie County has 21 statutes relevant to LFOs. As an indication of the increasing prevalence of LFOs, sixteen of these statutes were put in place after 1991 and nine have been implemented since 2000. Examples of county offenses include: selling cigarettes for less than cost in public spaces, which is punishable with a fine up to

13 Budget line item: “41289 OTHER GEN. DEPT INCOME”

\$100 and/or 3 days imprisonment for the first violation, and a fine up to \$250 and/or 15 days imprisonment for subsequent violations (Local Law 3-1991); cyber-bullying is punishable with imprisonment or a fine up to \$1000 (Local Law 2-2012); and texting while driving is subject to a \$150 fine for the first violation (Local Law 4-2009). In addition, incarcerated individuals can be charged \$40/day (up to \$2500) for unreimbursed, pre-conviction and post-conviction incarceration costs. Prisoners must also pay a \$2/visit medical co-pay.

In 2005, the County added new fees for general probation supervision, DWI supervision, electronic monitoring, and drug testing with the express goal of “generat[ing] revenue for the County and enabl[ing] probation to retain existing staff and hire new staff as necessary and appropriate” (Erie Probation Audit, 2014, p. 8). County law provides the following fees for probation in Erie County: \$35/month (administrative fee for probation supervision); \$3/day (electronic monitoring fee); \$50 (drug testing fee) (Local Law 7-2005). People convicted of reckless driving or DWI are also required to pay a \$30/month probation administration fee. Additionally, the Probation Department can collect an investigation fee of \$50 to \$500 (Local Law 4-2004). Probation cannot end if a person owes any court-ordered restitution, without judicial consent. But probation also cannot be extended if a person does not pay court-ordered fees.

The Probation Department plays a significant role in administering and collecting LFOs in Erie County. The Probation Department is authorized to settle all court-ordered financial obligations. Altogether, the Erie County Probation Department collects more than \$330,000 in fines and about \$400,000 in restitution, which it disburses to the State. The department collects and keeps more than \$500,000 in supervision fees, from an adult probation caseload of approximately 6000 people. The department estimates that it spends about \$600 per adult offender each year. It also collects and keeps fees for the Restitution Surcharge (10%, the highest percentage allowed under state law), Drug Testing, and Electronic Monitoring (Erie County Probation Department Budget, 2015).

While no county statutes mention the use of private debt collection, a number state that “...any costs which have not been waived, the county of Erie may seek to enforce payment in any manner permitted by law for enforcement of a debt.” Non-payment of LFOs in Erie County can result in a probation violation, probation revocation, and incarceration. In addition, not paying probation fees may result in denial of travel permits, denial of early discharge of probation, and financial judgments (including liens on property, assets, and garnishment of wages). People can apply for a hardship waiver if they are unable to pay.

City of Buffalo

Fifty-nine municipal statutes in the City of Buffalo pertain to LFOs. All but five of the statutes were passed in 1974, and 31 have been amended since then. A schedule of fees for violations of city ordinances includes three levels of fines (Fine, Initial Penalty, Additional Penalty) and a maximum total for each class of violation, ranging from Fine Class A to Fine Class J and Fine Class AA to Fine Class EE. The base fines range from \$10.50 to \$500 with maximum total fines ranging from \$31.50 to \$1500. As an example, drinking in public is subject to a Class C fine of \$52.50 (max: \$157.50).

Table 7: Sample City of Buffalo LFO Statutes

| STATUTE | PERTAINS TO | AMOUNT |
|----------|--|--|
| § 69-1 | Drinking in public or in vehicles or selling alcohol in public without license | \$52.50 (Fine Class C, initial penalty); \$52.50 (additional penalty); \$157.50 (maximum total) |
| § 316-1 | Unlicensed peddling of goods | \$52.50 (Fine Class C, initial penalty); \$52.50 (additional penalty); \$157.50 (maximum total) |
| § 437-20 | Violation of any rules and regulations pertaining to taxis and liveries | <= \$1,500 and/or 15 days imprisonment |
| § 413-2 | No vehicles (including bicycles) to be ridden on sidewalks | \$75 (Fine Class D, initial penalty); \$75 (additional penalty); \$225 (maximum penalty) |
| § 293-7 | Noise violations | \$105 (Fine Class E, initial violation); \$150 (Fine Class F, second excessive noise violation); \$200 (Fine Class G, third and subsequent violations) |

New York City: The Bronx & Manhattan

The Bronx is a Borough of New York City and is one of the most diverse counties in the state in terms of race, foreign-born population, and politics. Racial minorities are the majority in the Bronx (45% White, 44% Black, 54% Latino, 4% Asian, with 34% foreign-born). As such, it is a good representative of the NYC metro area and provides significant contrast with the upstate region. The Bronx has low education attainment rates (70% complete high school and 18% hold college degrees), which is quite different from the other selections. However the median household income, \$34,000, is comparable to that of Buffalo and Elmira.

The New York City Charter gives the City Council the power to adopt local laws and to punish “misdemeanors, offense, and infractions” with a “civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments” (§28(b)). The New York City Administrative Code (NYCAC) punishes offenses with criminal fines, civil penalties, mandatory penalties, and sometimes a combination thereof (e.g. §15-223.1 punishes failure to comply with an order by the environmental control board commissioner subjects a person to a fine and a civil penalty – each up to \$5000). Table 8 and Table 9 in Appendix B provide examples of the hundreds of municipal codes relevant to LFOs in NYC. In the New York metropolitan area, fines generate 47% of criminal court revenue. New York City and New York State split this amount (each receives approximately \$14,000,000). Total revenue for New York (City) Criminal Courts was \$31,196,723 in 2013, of which revenue from fines comprised \$12,594,744.

A few features of the NYCAC stand out. One is that, unsurprisingly for a densely populated major city, many of the finable offenses are for quality-of-life issues such as noise, posting paper advertisements, and the use of public space (e.g. parks or sidewalks). Another is that most statutes that call for fines also allow for imprisonment or a combination thereof. Finally, it is interesting to note the vast disparities in the “exchange rate” between fines and imprisonment in the Code. For example, leaving a car running for more than three minutes on city streets can be punished with a minimal \$5 fine or up to a full two days imprisonment or both (§10-111), which essentially equates a day in jail with a \$2.50 fine. This equivalence is similar to that for selling a realistic toy gun, which is punishable with a fine of up to \$1000 or a year imprisonment or both (§10-131)—a \$2.74 rate. In contrast, drinking in public is punishable with a \$25 fine or up to 5 days imprisonment or both (§10-125)—a fine/jail equivalence of \$5 per day, while aiding or abetting in giving a false fire alarm can be punished with a maximum \$10,000 fine or up to a year in jail (§15-214)—a \$27.40 fine/jail equivalence. Such disparate correspondence between what an offense merits in fines versus what it merits in jail highlights the lack of coherence in rationale for fines at the city level.

Other municipal codes reflect an emphasis on regulating the use of public space. Failing to clear the sidewalk next to one’s residence can result in: “a civil penalty of not less than ten dollars nor more than one hundred fifty dollars for the first violation, except that for a second violation of subdivision (a) or (b) within any twelve-month period such person shall be liable for a civil penalty of not less than one hundred fifty dollars nor more than two hundred fifty dollars and for a third or subsequent violation of subdivision (a) or (b) within any twelve-month period such person shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than three hundred fifty dollars (§16-123).” Carrying a knife in public with a blade of four inches or more is punishable by a fine of up to \$300 or up to 15 days imprisonment or both (§10-133). A taxicab driver who asks where a passenger is going, without justifiable grounds, before the passenger is seated or who refuses to take someone to a destination within the city is subject to a fine of \$200 to \$350 for the first offense (§19-507). Improperly putting up or taking down handbills, posters, or notices is punishable with a fine of \$75-\$150. There is a \$100 fine or 30 days imprisonment for disturbing the peace with a loud radio (§15-214).

Such penalties highlight the variety of behaviors that are criminalized. However, New York is currently moving to decriminalize many infractions. In May 2016, the New York City Council passed a set of eight bills collectively known as the “Criminal Justice Reform Act,”¹⁴ which establishes a way to pursue many of the most common infractions (e.g. littering, excessive noise, being in a park after dark) civilly instead of criminally.

14 <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2553508&GUID=1C114CB9-C266-46AD-A67B-750568C524E5&Options=&Search=>

While the Act is laudable for downgrading many offenses from misdemeanors to violations, it also expands the reach of LFOs. For public urination, the fines increase on a sliding scale: \$75 for a first offense; \$250 to \$350 for a second offense within a year; and \$350 to \$450 for a third offense within that same year. The Act adds a new civil penalty of “up to \$25” for having an open container of alcohol in public (but it also reduces the jail penalty for this offense from five days to one). Instead of a criminal court warrant as is currently the case for LFOs, the Act allows for non-payment to result in civil judgment instead. A person who fails to answer a summons or appearance ticket will be subject to additional civil penalties that are capped at \$450 or 150% of the original ticket amount (whichever is less) for each violation. Indigent offenders have the option of community service instead of a fine. Initial observations indicate that community service is an area of significant judicial discretion.

Non-payment of LFOs in the city is subject to the following policy:

“If you do not pay or dispute your ticket within approximately 100 days, it will go into judgment. This means the City takes the legal step of entering a default judgment against you for the entire amount plus penalties and interest. The City can take steps to collect the debt, such as sending your debt to a collection agency or seizing assets.”¹⁵

New York City also has a unique feature in the Office of Administrative Trials and Hearings (OATH), which is an independent administrative law court. OATH conducts nearly 300,000 hearings about finable tickets each year. The ticket-issuing agencies for which OATH holds hearings are: Business Integrity Commission (BIC), Department of Buildings (DOB), Department of Environmental Protection (DEP), Fire Department (FDNY), Department of Health & Mental Hygiene (DOHMH), Department of Information Technology and Telecommunications, (DoITT), Landmarks Preservation Commission (LPC), Department of Parks, & Recreation (DPR), Police Department (NYPD), Department of Sanitation (DSNY), Department of Small Business Services (SBS), and Department of Transportation (DOT).

Federal – Southern District of New York (Manhattan)

In the Southern District of New York (Federal Court System, includes Manhattan), court-ordered LFOs include:

- Administrative fee of \$50.00 for all new Civil Actions filed in the Court
- New Action (Complaint, Notice of Removal & Petitions) Filing Fee, \$350.00 + \$50.00 Administrative fee
- Miscellaneous Filing Fees, \$46/case

In 2014, the Southern District of New York imposed \$844,570,479 in new criminal financial penalties (representing 1,165 new debts owed to the US government), with \$5,159,228 in new interest accrued (U.S. Department of Justice Executive Office for United States Attorneys, 2014). More than \$300,000,000 is owed for criminal debts for Federal offenses in the district (US Attorneys, 2012).

COMPARATIVE DISCUSSION OF LOCAL MONETARY SANCTIONS LAW

A few patterns emerge from a comparison of jurisdictions. One is that mandatory surcharges dominate the LFO landscape in New York. They not only exist for every level of offense (felony, misdemeanor, and violation), but they have proven quite resilient to legal challenge. Surcharges were implemented in New York for the express purpose of generating revenue: “Section 60.35 [the statute mandating surcharges] was originally enacted as part of a massive revenue-raising bill meant to ‘avert the loss of an estimated \$100 million in State tax revenues’” (*People v. Guerrero*, 12 NY3d 45, 49 (2009), citing Legislative Memo in Support, Bill Jacket, L 1982, ch 55, at 6). Based on rulings in such challenges, “pre-printed” motions to defer or waive surcharges are not popular with judges. These are pre-written motions for deferral that prisoners can readily obtain. Judges lament that it is easy for people to file such motions, even though they cost time and money for the system to

15 <https://www1.nyc.gov/site/finance/vehicles/services-tickets-in-judgment.page>

answer.¹⁶ Judges also show something of a cavalier attitude toward inability to pay. For example, in response to a person arguing that a mental or physical disability “precluded income-producing activity,” an opinion states, “he was certainly not precluded from winning the state lottery or inheriting funds, or collecting a possible future court judgment out of which a surcharge could be paid” (*People v Morrison 2012*).

Another conclusion to be drawn from a comparison of jurisdictions is that probation looms large in the world of New York LFOs. In Erie County, probation administers and collects most LFOs and in both Erie and Chemung Counties, probation fees account for a significant amount of revenue. Because they are the agency most often designated to collect restitution, probation departments are the primary beneficiary of the 5%-10% mandatory surcharge on restitution, which is meant to compensate the agency that collects restitution payments. Under state law, failure to pay LFOs can result in probation revocation, but in at least one county, (Erie) unpaid court-ordered fees cannot result in extended probation.

Finally, this review highlights the tremendous extent to which the New York City metropolitan area is an outlier. The size of the population and the amount of revenue at stake are orders of magnitude larger than some of the smaller jurisdictions in the state. Moreover, the nature of LFOs and the political state of affairs in the city create rather a different context compared to the rest of the state. This reality is key to keep in mind when seeking to characterize New York State as a whole.

16 “The Court is also not unaware of the asymmetric realities of prisoners motions, where there is no economic disincentive for an indigent inmate to churn out motions - either as a matter of time value of money (an inmate has plenty of time, and no better economic use then to try to hit the lottery of appeal) or of the cost of filing (free to an indigent) or the cost of representation. Yet, a Court must, in its performance of its duties, review every post judgment motion to sift the few kernels of grain from the large volume of chaff.” (*People v. Morrison, 2012*)

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COURT CASES

People v. Jones, (2016)

People v Morrison (2012)

People v. Furet, 12 NY3d 740 (2009)

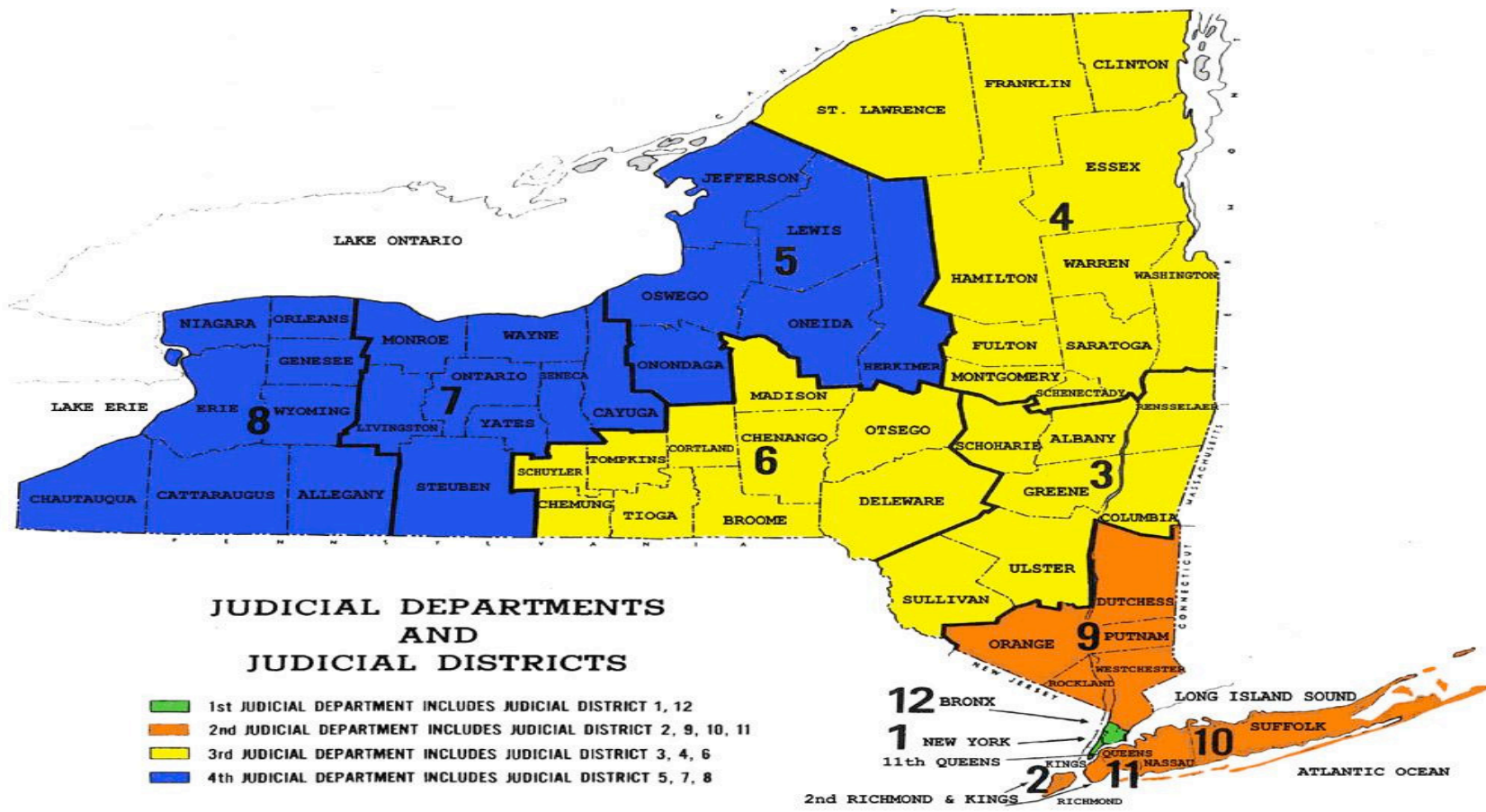
People v. Harris 12 NY3d 741 (2009)

People v. Quinones 95 N.Y.2d 349 (2000)

People v Smith, 18 NY3d 588, 592 (2012)

APPENDIX A

Figure 3. New York State Court Departments and Districts



APPENDIX B

NYC MUNICIPAL CODES

The Municipal codes relating to LFOs in New York City are organized by source.

1. Rules of the City of New York (RCNY): Contains rules and regulations of the NYC government agencies (e.g. Department of Correction, Department of Probation)
2. New York City Charter and Administrative Code: Contains codified local laws of NYC, consisting of 29 titles.

To find LFO-relevant NYC codes, we did the following:

- Searched for “fine” in NYC Charter and Administrative Code and in the RCNY, which yielded 191 results¹⁷
- Searched for “fee,” which yielded 368 results
- Searched for “surcharge,” which yielded 51 results (almost all results pertained to taxes, businesses, sewage, and buildings/rentals, so minimal note of surcharges in notes below)
- Searched for “restitution,” which yielded 14 results (all but RCNY Title 39 § 1-05 Penalties related to business, mainly taxicab services)

To construct the summary table below, we did the following:

- Limited table contents to codes pertaining to administration of fines, fees, and other monetary sanctions and a selection of municipal fines most relevant to the review. LFOs likely to affect individuals—particularly individuals of lower SES—were included and those aimed at businesses, corporations, local government entities, etc. were excluded from the table
- **Excluded** results related to the following: businesses (this includes LFOs directed at taxicab drivers, municipal government employees), taxes, buildings or sewage
- **Included:** codes setting forth LFOs or pertaining to the imposition or administration of LFOs likely to be levied on individual citizens (barring exceptions above)

Table 8 RULES OF THE CITY OF NEW YORK (RCNY)

| STATUTE | SUMMARY | AMOUNT | PERTAINS TO |
|---|--|------------------------------------|------------------------|
| RCNY Title 39 § 1-05 Penalties | Specifies penalties of violations of Dept. of Correction rules of conduct, including restitution for damaged property or medical services in cases of violent offenses; disciplinary surcharge may be imposed. | Case dependent | Restitution; surcharge |
| RCNY Title 19 § 9-02 Fee for credit card transactions | Specified municipal agencies (“covered agencies”) must charge fee of 2.49% of amount of fine, civil penalty, tax, fee etc. being paid for when payer uses credit card; “non-covered agencies” may choose whether to impose same fine. | 2.49% of amount of fine, fee, etc. | Fee |
| RCNY Title 39 § 39-01 Definitions | Administrative law judges to determine charges of parking violations, fix fines and assess penalties; multiple agencies empowered to issue “notice of violation”/summons. Other terms related to parking violations in NYC also defined. | Not specified | Fine; civil penalty |
| RCNY Title 39 § 39-02 Notice of violation (summons) | Pertains to issuance of violation notices/summons related to parking violations. Notice of violation (summons) copies may be requested at charge of \$1 per copy. | \$1/summons copy | Fee |

17 (available at: [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny))

| | | | |
|--|---|--|---------------------------------------|
| RCNY Title 39 § 39-05 Amount of fines | Specifies amounts of fines for parking violations, including citations of statutes to which each corresponds. Also specifies procedure for fines following a hearing. | \$20 (e.g. parking meter violations) to \$500 (e.g. unauthorized passenger pickup or discharge) | Fine (mandatory surcharge also noted) |
| RCNY Title 39 § 39-07 Penalties | Additional penalties beyond fines specified (see § 39-05 above), including penalties assessed for failure to plead or appear pursuant to notice of violation or failure to pay fines/penalties. | \$10-30 (depending on circumstances as specified in statute) | Civil penalty |
| RCNY Title 39 § 39-10 Decisions and judgments | Pertains to decisions and judgments for parking violations; administrative law judge responsible for final determination. In cases of fraudulent alteration of violation by person charged, judge may impose additional penalties. Default judgments for failure to appear specified. | Not specified | Fine, fee, penalty |
| RCNY Title 39 § 39-21 Photo speed violation monitoring system | Drivers found in violations of VEH. & TRAF. LAW § 1180-b as a result of photo speed violation monitoring system liable for penalty. If driver fails to contest liability or pay penalty within 30 days, additional penalty applies. | \$50 (per violation); \$25 (additional penalty for failure to contest/pay) | Civil penalty |
| RCNY Title 56 § 1-07 Penalties | A violation of codes pertaining to use of parks (e.g. destruction of plants or property/equipment) constitutes a misdemeanor and is punishable by fine and/or imprisonment. | Up to \$1,000 and/or 90 days (specified offenses); up to \$15,000 and/or 1 year (specified offenses); additional civil penalty up to \$10,000 (specified offenses) | Fine; civil penalty |

Table 9 NEW YORK CITY CHARTER AND ADMINISTRATIVE CODE

| STATUTE | SUMMARY | AMOUNT | PERTAINS TO |
|---|---|--|---------------------|
| NYC Charter § 394 Powers and duties | NYC law dept. - specifically the corporation counsel - empowered to collect debts, fines, penalties and to enforce laws. | Case dependent | All |
| NYC Charter § 11-105 Agreements with financing agencies or card issuers; payment of fines, civil penalties, taxes, fees, rates, rent, charges or other amounts by credit card | City may enter into agreements with private financing agencies or card issuers to provide for acceptance of credit cards for payment of municipal fines, fees, etc. Payment by city for services rendered by agencies may be deducted from amount returned from agencies to city. Agencies may charge fees to cardholders for services. | Not specified | Fee |
| NYC Charter § 156 Right of Entry | President or commissioner may enter real property at reasonable times; if refused by owner or agent, that person may be subject to fine or imprisonment. | Up to \$50 and/or 30 days imprisonment | Fine |
| NYC Charter § 460 Gun-free school safety zones | Guns prohibited in school zones except under specified conditions; guns prohibited on school grounds. | Up to \$10,000 (fine) and/or up to 1 year; up to \$10,000 (additional civil penalty) | Fine; civil penalty |
| NYC Charter § 466 Penalties | Sale, disposal, carrying, possession of firearms to/by anyone under 21 (without license) prohibited. | Up to \$10,000 (fine) and/or up to 1 year; up to \$10,000 (additional civil penalty) | Fine; civil penalty |
| NYC Charter § 492 Right of entry of officers of the department | Commissioner and deputies of fire department permitted entry in service of duties; refusal punishable by fine and/or imprisonment. | Up to \$50 and/or 30 days imprisonment | Fine |
| NYC Charter § 649 Inspection | Representatives of Dept. of Buildings authorized to gain access to buildings, streets, etc.; refusal is a misdemeanor and punishable by fine and/or imprisonment. | Up to \$100 and/or 30 days imprisonment | Fine |
| NYC Charter § 667 Inspections | Representatives of Board of Standards and Appeals authorized to gain access to buildings, streets, etc.; refusal is punishable by fine and/or imprisonment. | Up to \$50 and/or 30 days imprisonment | Fine |
| NYC Charter § 828 Right of entry | Representatives of Dept. of Citywide Administrative Services authorized to gain access to buildings, streets, etc.; refusal is a misdemeanor and punishable by fine and/or imprisonment. | Up to \$50 and/or 30 days imprisonment | Fine |
| NYC Charter § 1204 Right of entry | Representatives of Dept. of Design and Construction authorized to gain access to buildings, streets, etc.; refusal is a misdemeanor and punishable by fine and/or imprisonment. | Up to \$500 and/or 30 days imprisonment | Fine |
| NYC Charter § 1521 Right of entry | Representatives of Dept. of Finance authorized to gain access to buildings, streets, etc.; refusal is a misdemeanor and punishable by fine and/or imprisonment. | Up to \$50 and/or 30 days imprisonment | Fine |
| NYC Charter § 7-712 Temporary closing order; temporary restraining order; defendant's remedies | Intentional disobedience of temporary restraining/closing order subject to fine and/or imprisonment. | Up to \$500 and/or 6 months imprisonment | Fine |
| NYC Charter § 8-803 Prohibition of activities to prevent access to reproductive health care facilities | Preventing, obstructing persons from accessing reproductive health care facilities and otherwise damaging or interfering with reproductive health care facility punishable for fine and/or imprisonment. | Up to \$1,000 (first offense); \$5,000 (each subsequent offense) and/or imprisonment | Fine |

| | | | |
|--|--|--|---------------------|
| NYC Charter § 10-102 Permit for equipping automobiles with radio receiving sets capable of receiving signals on frequencies allocated for police use; fee | Permit required for use of radio devices capable of receiving police signals; violation punishable by fine and/or imprisonment. | Up to \$25 and/or 30 days | Fine |
| NYC Charter § 10-203 Unlawful manufacture, distribution or sale of a synthetic cannabinoid or synthetic phenethylamine | Manufacture, distribution, sale of synthetic cannabinoid or synthetic phenethylamine punishable by fine and/or imprisonment. | Up to \$5,000 and/or 1 year; additional civil penalties ranging from \$1,000 to \$50,000 may apply (see sub-part d.) | Fine; civil penalty |
| NYC Admin Code § 9-201 Probation administration fee | Individuals convicted of specified VEH. & TRAF. LAW offenses shall pay probation administrative fee. Fees are not a condition of probation. | \$30/month | Fee |
| NYC Admin Code § 9-202 Investigation fee | Parties involved in family court case may be made to pay investigation fee to probation dept. Fee determination must consider party's ability to pay. | No less than \$50, no more than \$500 | Fee |
| NYC Admin Code § 7-106 Collection of debts | The comptroller shall direct legal proceedings to be taken when necessary to enforce payment of debts due to the city. | Case dependent | All |
| NYC Admin Code § 7-105 Actions and proceedings for recovery of penalties | Corporation counsel may settle, compromise, adjust or discontinue any action brought to recover a penalty in the name of the city or any agency thereof so long as the amount sued for is less than \$250. | Case dependent | All |
| NYC Admin Code § 7-510 Inquiry for enforcement of judgments owed to the city | Sheriff empowered to conduct inquiries into whether judgment debtors of city have sufficient assets, property etc. to pay; sheriff may issue subpoenas. | Case dependent | All |
| NYC Admin Code § 10-608 Penalties | Violations of Gun Offender Registration Act subject to fine and/or imprisonment. | Up to \$1,000 and/or 1 year | Fine |
| NYC Admin Code § 10-703 Penalties | Unauthorized operation of a recording device in a performance prohibited and punishable by fine and/or imprisonment. | \$1,000 < \$5,000 and/or imprisonment plus <= \$5,000 (civil penalty) (1st offense); \$5,000 < \$10,000 and/or 1 year plus <= \$10,000 (civil penalty) (subsequent offenses) | Fine; civil penalty |
| NYC Admin Code § 11-1938 Criminal penalties | Violations pertaining to earnings tax on nonresidents, including attempts to evade tax. | Up to \$5,000 and/or 1 year (attempt to evade tax); up to \$5,000 and/or 1 year (willful failure to withhold) | |
| NYC Admin Code § 15-120 Uniforms and badges; unlawful use prohibited | Fraudulent use of fire dept. uniform, badge or emblem is punishable by fine and/or imprisonment. | No less than \$25, no more than \$250 and/or 10 days to 3 months | Fine |
| NYC Admin Code § 15-214 False alarms | False fire alarm or tampering with fire alarm punishable by fine and/or imprisonment. | Up to \$10,000 and/or 1 year imprisonment | Fine |

| | | | |
|--|---|--|---------------------|
| NYC Admin Code § 15-216 Fines and penalties | Violation of laws, rules, and regulations enforceable by fire department subject to fine and/or imprisonment. | Up to \$10,000 per fine plus civil penalty (if applicable) | Fine; civil penalty |
| NYC Admin Code § 16-464 Enforcement | Unlawful removal or sale of recyclable material is prohibited and punishable by fine and/or imprisonment. | \$500 to \$3,000 depending upon offense, fine and/or civil penalty and/or imprisonment | Fine; civil penalty |
| NYC Admin Code § 17-104 Measures to prevent the spread of disease | Failure to comply with measures by Dept. of Health and Mental Hygiene to prevent disease punishable by fine and/or imprisonment. | Up to \$250 and/or 6 months | Fine |
| NYC Admin Code § 17-1104 Civil and criminal penalties | Failure to notify neighbors of pesticide application punishable by fine, civil penalty and/or imprisonment. | Up to \$10,000 per violation | Fine; civil penalty |
| NYC Admin Code § 17-1607 Penalties | Failure to comply with Animal Abuse Registration Act punishable by fine and/or imprisonment. | Up to \$1,000 and/or 1 year imprisonment | Fine |
| NYC Admin Code § 14-107 Unlawful use of police uniform or emblem | Fraudulent use of police uniform or emblem is punishable by fine and/or imprisonment | Up to \$100 and/or 60 days | Fine |
| NYC Admin Code § 2-102 City seal | Unauthorized display of city seal punishable by fine and/or imprisonment. | \$25 and/or 10 days imprisonment | Fine |
| NYC Admin Code § 3-510 Violations | Making excavation, embankment, lay/take up pavement within 3 ft. of landmark without permit punishable by fine and/or imprisonment. | \$50 and/or 30 days imprisonment | Fine |
| NYC Admin Code § 6-204 Grade crossings; gates and attendants, (c) Disregard of closed gates | Disregarding closed gates and attempting to cross railroad tracks where prohibited is punishable by fine and/or imprisonment. | Up to \$10 (violations by persons not employed by railroad, etc.) | Fine |
| NYC Admin Code § 7-711 Temporary closing order; temporary restraining order | Mutilation/damage done to posting of temporary closing order or temporary restraining order or intentional disobedience of orders punishable by fine or imprisonment. | Up to \$500 (damage to posted order); ≤ \$1,000 (violation of order) | Fine |

MONETARY SANCTIONS IN NORTH CAROLINA

Prepared by April Fernandes

Throughout the last five years, the state of North Carolina has experienced a shifting landscape in terms of criminal justice practice and procedure. Due in part to critical reports from the Administrative Office of the Courts and its own internal investigations, the criminal justice system, from courts to community supervision to confinement, has seen substantial changes in its assessment and punishment of those convicted for infractions, misdemeanors and felonies. Most notably, the switch in 2012 to the Statewide Misdemeanant Program, which transferred those confined for misdemeanor offenses from prison to jail facilities, continues to have a substantial impact on the policies and practices of the system. Part of this impact centers around the issue of ordering, collecting and waiving monetary sanctions for court-related expenses as well as the distribution of the revenue from costs, fees, fines and surcharges. The criminal justice shifts of the last five years have been accompanied by a subsequent increase in the cost fee structure that funds the administration of the court as well as other state and local agencies and institutions. The implementation of the Statewide Misdemeanant Program ushered in a new set of fees to offset the cost to the state and counties. Additionally, the established fee structure for court-related costs was also increased in order to handle massive budget shortfalls, which placed North Carolina 45th among states in judicial funding.

Given this shifting landscape in criminal justice practices and an ever-evolving monetary sanctions system, the state of North Carolina, its counties and municipalities seem ripe for a thorough and empirical exploration of its system of assessing and collecting monetary sanctions and the impact on the citizens of the state. Despite these shifts, there has been little systematic and empirical work on how such changes affect the monetary sanctions system in the state and its counties and municipalities. This project offers an opportunity to examine and document the complexity of the system in place and how the state's outwardly transparent fee structure operates within individual superior and district courts in counties and municipalities. In addition, the project will allow for an understanding of the often far-reaching consequences of the elaborate system of costs, fines, fees and surcharges on those who have contact with the criminal justice system, their families and communities.

The state of North Carolina has a population of nearly 10 million residents, with a total poverty rate of 17.5%. The state is made up of 100 counties, ranging from urban to rural. The court structure in North Carolina consists of a Supreme Court, Court of Appeals, Superior Courts and District Courts. North Carolina has organized their court system through eight regional divisions across the state. Within these divisions, there are fifty Superior Courts located throughout the state. Superior Courts are responsible for all felony criminal cases, civil cases of more than \$25,000, as well as misdemeanor and infraction appeals. District courts are located within cities and counties, with the number of courts determined by the population of given city or county. District courts handle civil cases under \$25,000 as well as divorce and child custody, criminal cases (misdemeanors and infractions only) and juvenile adjudications. There are no jury trials within district courts. Magistrate courts are located on the district court level, but only certain cases, in particular guilty pleas for minor misdemeanors, traffic violations and waivers for worthless check convictions, can be heard by a magistrate.

MONETARY SANCTIONS

The organization of fines, fees, surcharges, restitution and other monetary penalties is arranged in the state's general statutes. Table 1 maps out the landscape of fines, fees and monetary penalties. The fine and penalty structure is decided at the annual conference of district judges (G.S. 7A-148). The judicial branch of North Carolina sets out a clear structure of basic court costs and fees, as well as additional penalties in the Court Costs and Fee Chart (see appendix). Table 1 details the breakdown of fines, fees and costs for both district and superior courts located in the North Carolina General Statutes. The statutes make distinctions between some waivable and non-waivable fines, fees, costs and penalties. However, the delineation is not always clear.

For instance, many of the court-related fees are not waivable, even for those who exhibit proof of indigence. Legal scholars at the University of North Carolina at Chapel Hill highlight the lack of clarity in the statutes for which costs and fees can be waived, and those that are mandatory (Markham, 2014). As compared to certain other states, North Carolina provides a clear structure for its base costs and fees. However, transparency seems to be obscured when it comes to the additional fees that are assessed based on the type of the offense as well as which of the base fees can be waived or reduced.

Table 1: North Carolina general statutes

| Title | Fee / Fine | General statute | Notes |
|--|--|---|---|
| Chapter 20 fee | \$10.00 | G.S. 7A-304(a)(4a) | Motor vehicle criminal offenses, excluding infractions. |
| Collection Assistance Fee | 10% of any cost or fee collected | G.S. 7A-321(b)(1) | The court shall remit the collection assistance fee to the State Treasurer for the support of the General Court of Justice. |
| Commercial driving penalty -- infractions & misdemeanors | Infraction: \$100-500 Misdemeanor: \$500-1000 | G.S. 20-37.21(b,c) | |
| Community Service Fee | \$250.00 | G.S. 143B-708 | Only one fee may be assessed for each sentencing transaction. |
| Confinement for non-payment | Varies | G.S. 15A-1352(a&b) | |
| Confinement for nonpayment – felony & misdemeanor | Confinement varies | G.S. 15A-1352(a, b); G.S. 15A-1362; G.S. 15A-1364(b) | A person sentenced to imprisonment for a felony under this Article or for nonpayment of a fine for conviction of a felony under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Division of Adult Correction of the Department of Public Safety. |
| Courtroom facilities fee | \$12.00 (district) \$30.00 (superior) | G.S. 7A-304(a)(2) , Article 28 | |
| Criminal Justice Education and Standards Commission / LEO Training & Certification Fee | \$2.00 | G.S. 7A-304(a)(3b) , Article 28 | |
| DNA Fee | \$2.00 | G.S. 7A-304(a)(9) | |
| Driver’s license restoration fee | \$65.00 | G.S. 20-7(6) (i1) | For non-impairment violations (G.S. 20-17); The \$65.00 fee shall be deposited in the Highway Fund. |
| Driver’s license restoration fee – impaired driving | \$130.00 | G.S. 20-7(6) (i1); G.S. 20-17 | The first \$105.00 of the \$130.00 fee, shall be deposited in the Highway Fund. \$25.00 used to fund a statewide chemical alcohol testing program. |

| | | | |
|---|---|----------------------------------|---|
| Driver's license revocation return | \$100.00 | G.S. 20-16.5(j) | 50% credited to the General Fund. 25% used to fund a statewide chemical alcohol testing program, 25% remitted to the county for the sole purpose of reimbursing the county for jail expenses incurred due to enforcement of the impaired driving laws. |
| Expunction fee | \$175.00 | G.S. 15A-145 | The clerk of superior court shall remit \$122.50 of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks. \$52.50 retained by the AOC for costs of processing petitions for expunctions |
| Failure to appear fee | \$200.00 | G.S. 7A-304(a)(6) | |
| Failure to pay / comply fee | \$50.00 | G.S. 7A-304(a)(6) | Failure to pay fine, fee or penalty within 40 days. Remitted to state treasurer |
| Fines | Varies | G.S. 15A-1361 | A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law. A person who has been found responsible for an infraction may be ordered to pay a penalty as provided by law. Unless the context clearly requires otherwise, references in this Article to fines also include penalties. |
| General Court of Justice Fee | \$147.50 (district); \$154.50 (superior) | G.S. 7A-394(a)(4) | \$145.05 / \$152.05 to General Fund. \$2.45 to State Bar Legal Aid Account (LAA) |
| House Arrest with Electronic Home Monitoring (EHA) Daily Fee | \$4.48 / day | G.S. 7A-313.1; G.S. 15A-1343(c2) | |
| House Arrest with Electronic Home Monitoring (EHA) Fee | \$90.00 | G.S. 7A-313.1; G.S. 15A-1343(c2) | One-time fee |
| Improper equipment fee (Chapter 20) | \$50.00 | G.S. 7A-304(a)(4b) | |
| Indigent Counsel Fee | \$60.00 | G.S. 7A-455.1 | |
| Infraction fee (non-criminal) | Up to \$100.00 | G.S. 14-3.1 | The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools |
| Installment Payment Fee | \$20.00 | G.S. 7A-304(f) | One-time fee |
| Interest | 4% | G.S. 7A-308.1(1) | Assessed yearly for outstanding court costs and fees. |
| Laura's Law DWI Fee | \$100 | G.S. 7A-304(a)(10) | |
| Law enforcement officer (LEO) retirement & insurance benefits | \$6.25 | G.S. 7A-304(a)(3) , Article 28 | |
| Limited Driving Privilege Fee | \$100.00 | G.S. 20-20.2 | |
| Local Government Crime Lab Fee | \$600.00 | G.S. 7A-304(a)(8) | |

| | | | |
|---|----------------------------|---------------------------------------|--|
| Local Lab Analyst Expert Witness Fee | \$600.00 | G.S. 7A-304(a)(12) | |
| Misdemeanor fines: Class 1 & A1 | Varies; Judge's discretion | G.S. 15A-1340-23(b) | |
| Misdemeanor fines: Class 2 | Up to \$1000 | G.S. 15A-1340.23(b) | |
| Misdemeanor fines: Class 3 | Up to \$200 | G.S. 15A-1340.23(b) | |
| Misdemeanor imprisonment grid | Varies | G.S. 15A-1340.23(c) | |
| Pre-trial release service fee | \$15.00 | G.S. 7A-304(a)(5) | Remitted to the county of arrest. |
| Private Hospital Analyst Expert Witness Fee | \$600.00 | G.S. 7A-304(a)(13) | |
| Private Hospital Lab Fee | \$600.00 | G.S. 7A-304(a)(9) | |
| Real estate liens for nonpayment or default on payment | Varies | G.S. 15A-1365 | |
| Reparation & community service | Varies | G.S. 13A-1343(d) | |
| Restitution | Varies | G.S. 15A-1340.34(b); G.S. 15A-1340.38 | |
| Service fee for arrest or service of criminal process (citations & subpoenas) | \$5.00 | G.S. 7A-304(a)(1), Article 28 | Remitted to arresting county, unless made by law enforcement employed by municipality. |
| Sheriff's supplemental pension benefits | \$1.25 | G.S. 7A-304(a)(3a), Article 28 | Remitted to the Department of Justice. |
| State Crime Lab Fee | \$600.00 | G.S. 7A-304(a)(7) | |
| State Lab Analyst Expert Witness Fee | \$600.00 | G.S. 7A-304(a)(11) | |
| Supervised probation fee | \$40.00 / month | G.S. 15A-1343(c1) | |
| Tax rebate collection | Varies | G.S. 7A-321(b)(3) | Chapter 105A of the General Statutes, the Setoff Debt Collection Act. |
| Telecommunications and Data Connectivity Fee | \$4.00 | G.S. 7A-304(a)(2a) , Article 28 | |
| Uniform jail fees (pre-conviction) | \$10 / day | G.S. 7A-313 | Not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill. |
| Use of collections agency | Varies | G.S. 7A-321(b)(2) | For late payment of monetary sanctions. |
| Violation of local ordinance | \$50-500 | G.S. 14-4 | |
| Worthless Check Program Fee | \$60.00 | G.S. 7A-308(c) | |

Monetary sanctions – cost breakdown

The courts separate infractions, misdemeanors and felonies based on whether or not the offense involves a motor vehicle, which is also known as a Chapter 20 offense. For a non-Chapter 20 infraction in district court, the defendant is required to pay a \$147.50 General Court of Justice Fee, \$12 facilities fee, \$4 telecommunication fee, \$7.50 for Law Enforcement Officer Retirement & Insurance Benefits, \$2 for a Law Enforcement Officer Training and Certification fee, and a \$5 service fee for each arrest or service of criminal process. An additional \$10 is charged for a Chapter 20 offense. For criminal offenses above an infraction, \$2 is added for a DNA fee. In superior court, the same fines and fees are assessed, with the General Court of Justice fee of \$154.50.

The fines, fees and courts costs have been steadily increasing. As a point of comparison, in 1999, the total amount of fines and fees in district court was \$81 and \$106 for superior court. The most substantial change

appears to be the growth of the General Court of Justice Fee, which was \$61 for district court and \$68 for superior court in 1999. In 2002, the court charts add more fines, fees and costs that are related to judicial processing and procedure. As of 2012, the breakdown remains similar to its current assessment of costs and fees. Table 2 provides a summary of the base court costs by court and the nature of the offense. For instance, for an infraction in district court, the mandatory court costs are currently \$178, but for a Chapter 20 misdemeanor offense, the costs are \$190. Fees, fines and penalties can be assessed in addition to the base costs based on the details and particulars of the case.

Table 2: Base court costs by court & offense type

| District Court | | Superior Court | |
|--|--------------|--|--------------|
| Offense type | Total Amount | Offense type | Total amount |
| Infraction | \$178.00 | No appearance within district court | \$205.00 |
| Infraction – motor vehicle (Chapter 20) | \$188.00 | No appearance within district court – motor vehicle (Chapter 20) offense | \$215.00 |
| Misdemeanor | \$180.00 | Appearance within district court | \$352.50 |
| Misdemeanor – motor vehicle (Chapter 20) | \$190.00 | Appearance within district court – motor vehicle (Chapter 20) offense | \$344.50 |

Source: Court Costs & Fees Chart, North Carolina Administrative Office of the Courts, 7/1/15

Disbursements

According to the Annual Report of the North Carolina Judicial Branch, the 2014-2015 budget for the judicial branch was \$463.8 million dollars, which constitutes 2.20% of the state’s General Fund of \$24 billion. Superior Courts are divided into eight divisions and fifty districts, and had 2014-2015 expenditures of \$33,460,082 (Statistical & Operational Report of Budget & Financial Management). The judges rotate every six months among the districts in order to minimize conflicts of interest (G.S. 7A-148). In 2014-2015, the superior courts disposed 146,290 criminal, non-traffic cases and 9,114 criminal traffic cases. The district courts, which often sit within the county seat, disposed of 590,078 criminal, non-traffic cases, 968,468 criminal traffic cases and 633,563 infraction cases. District court cases can also be adjudicated by magistrates for those cases involving minor misdemeanors and infractions, and waivers of trial for worthless check cases, as well as minor civil actions.

The total disbursements of fines and fees from the Superior Court to the State Treasurer were \$256,030,039, \$69,749,989 distributed to local governments, \$54,965,942 disbursed to other entities and \$289,792,161 distributed to citizens. Table 3 offers a breakdown of each category for monetary sanction-related fines and fees in 2014-2015.

Table 3: Disbursements of court-related fines & fees

| Remitted to State Treasurer | | Total |
|------------------------------------|--|---------------|
| | <i>Disbursement source</i> | |
| | General Court of Justice & other court fees | \$213,892,325 |
| | Probation & parole fees | \$14,227,905 |
| | Collection assistance fee (10% of cost or fee collected) | \$8,664,603 |
| | Laura’s Law DWI fee | \$2,400,592 |
| | Hospital Toxicology Test fee | \$4,278 |
| | Electronic monitoring | \$40,148 |
| Disbursed to other entities | | |
| | Law Enforcement Retirement System (State Treasurer) | \$5,345,997 |
| | Office of Indigent Defense (Appointment & Fee Recovery) | \$7,190,352 |
| | Legal Aid Assistance fee (North Carolina State Bar) | \$2,797,088 |
| | License revocation fee (Department of Health & Human Services) | \$792,684 |
| | Law Enforcement Officer Training & Certification (Department of Justice) | \$1,573,183 |

| | | |
|---|---|--------------|
| | State Lab fees (Department of Justice) | \$1,271,174 |
| | Expunction fee (Department of Justice) | \$305,117 |
| | Satellite-based Monitoring (Department of Correction) | \$55,218 |
| | Misdemeanant Confinement (Department of Correction) | \$25,720,842 |
| Special Operations | | |
| | Court information Technology fees | \$5,200,758 |
| | Worthless check fees | \$104,956 |
| | Fee/payment recovery | \$152,182 |
| Distributed to local governments | | |
| | Fines (county) | \$28,651,982 |
| | County facility fees | \$13,539,248 |
| | County jail fees | \$5,202,567 |
| | County officer fees | \$7,126,691 |
| | Municipal facility fees | \$259,832 |
| | Municipal jail fees | \$153 |
| | Municipal officer fees | \$1,651,490 |
| Distributed to citizens | | |
| | Restitution for victims | \$44,536,921 |
| | Restitution for worthless check victims | \$452,432 |
| | Refunds of fees | \$441,693 |

Source: Statistical & Operational Report of Budget & Financial Management, 2014-2015

A 2011 audit of the Judicial Department collection of court-ordered fines, fees and restitution found that the Judicial Department does not effectively manage these funds appropriately due to deficient computer systems and not using collection procedures. The computer system deficiencies inhibited department staff from providing auditors with a correct assessment of fines, fees and restitution assessed, collected and outstanding. The department used two computer systems to manage cases and receive payments (Automated Case Information System and the Financial Management System) but neither were designed to manage accounts owed to the courts. The two systems were found to operate independently from each other, and neither could provide an accounting of amounts assessed, paid and outstanding balances. The audit also derided the department for failing to use collection systems that were provided under General Statute provisions. In particular, the audit pointed to the department's inability to use the Collection Assistance Fee for past due accounts. The department stated that they did not think that the amounts would be paid in full, and that revenue from the Collection Assistance Fee would not be realized. In addition, the department has failed to partner with third-party collection agencies in order to collect outstanding balances. Due to the department's inability to sufficiently report the proper amounts assessed, paid and outstanding, they were unable to pursue contracts with third-party agencies. Through an independent analysis, the auditor found that for traffic cases in 2008, \$183.2 million was owed, \$156 million paid, and \$27.2 million outstanding in 2009. For cases sentenced to unsupervised probation, \$82.1 million was owed, \$69.2 million paid, and \$12.9 million outstanding from 2005 through 2008.

PENALTIES FOR NON-PAYMENT

North Carolina allows judges to transfer outstanding monetary sanctions debt to a civil judgment rather than a criminal judgment. The civil judgment designation allows for the court to collect the debt through liens on property and assets [G.S. 15A-1365] and garnishment of wages and incoming tax returns [G.S. 105A (1979)]. In addition, G.S. 71A-455(b) states that a judgment for attorney fees can be subject to a lien if payment is not made. The statute stipulates that the judgment is in effect either the date on which the conviction becomes final or the date on which probation is terminated, revoked or expires. Also, under G.S. 15A-1230.38(a), restitution in amounts exceeding \$250 may be enforced as a civil judgment. However, this only applies to restitution ordered under the Crime Victims' Right Act [G.S. 15A, article 46].

Confinement for non-payment is also a common practice, especially given the expansion of the Statewide Misdemeanant Confinement Program. The terms for confinement are not explicitly stated in the statutes, but jail for non-payment of court costs and fees for infractions, misdemeanors and felonies is implemented, in addition to any civil penalties [G.S. 15A-1352(a&b)].

VOTING RIGHTS / RESTORATION OF CITIZENSHIP

The state of North Carolina does restrict voting rights for those convicted of felonies and misdemeanors, which they term as the forfeit of citizenship [G.S. 13-1]. Citizenship rights for North Carolina include voting, running for public office and sitting on a jury. In order to have citizenship restored, the individual must complete all terms of their sentence (including probation and parole). The statute does not explicitly state whether or not the payment of fines, fees and court costs is related to the restoration of citizenship. However, probation is often the result of a failure to pay monetary sanctions, therefore, there does seem to be a direct link between the payment of fines, fees and court costs and citizenship rights such as voting.

DRIVER'S LICENSE REVOCATION

Driver's licenses must be revoked by the Licensing Division for defendants charged with a motor vehicle (Chapter 20) offense and who fail to appear when called for a trial or hearing or who fail to pay fines, penalties or court costs that are ordered by the court [G.S. 20-24.1]. The license remains revoked until the defendant pays the penalty, fine or costs ordered by the court or demonstrates to the court that the failure to pay is not willful and that a good faith effort will be made to pay or that the monetary sanctions should be remitted due to indigence or court error.

CRIMINAL COST WAIVERS

From a North Carolina Administrative Office of the Courts (NCAOC) 2016 Report on Criminal Cost Waivers, the state of North Carolina ordered monetary obligations in 794,989 cases. Enacted in 2011, the general statute G.S. 7A-350 allows for judicial discretion to dismiss – partially or completely – court costs for defendants who have been convicted or plead guilty to a criminal offense. Monetary obligations were waived (in whole or in part) in 90,502 cases (11%), 25,073 were stricken in error (3%), 21,506 were dismissed for improper assessment (2.7%) and 11,441 were ordered solely as civil judgments (1.4%).

There is variability on the reasons for waiving or reducing court fees, ranging from fees assessed in error or due to economic hardship. However, there are no standardized processes and procedures for waiving or reducing court costs and fees. In the NCAOC report, the variability is evident when looking at the breakdown of waivers and reductions based on district and judge. For instance, Wake County had the highest number of ordered cases (70,582) with a small percentage (7%) being waived. Robeson County, on the other hand, waived the most cases (4,284), even though the population sizes of the two counties differ markedly. Among judges, some waive, in part or in whole, most of the ordered costs and fees, while others do not reduce any of the ordered monetary sanctions. Future plans for interviews with court officials may uncover some of the rationale behind the decisions to waive or decrease monetary sanctions.

Historical narrative / legislation

Due to a shift from indeterminate to determinate sentencing practices in the late 1970s and the resulting massive prison over-crowding, North Carolina has enacted a variety of stop-gap solutions in order to avoid federal government take-over of corrections and to alleviate financial burdens from the cost of high incarceration rates. The first of these steps in recent memory was the Setoff Debt Collections Act [G.S. 105A (1979)]. The act intercepts individual's tax returns to satisfy debts owed to state agencies, including court-ordered fines, fees and restitution. In the 2011 audit of the Judicial Department's collection of fines, fees and restitution, the department stated that the statute did not allow for the collection of funds not meant for the department specifically. A 2007 amendment to the original act was enacted in 2007 [G.S. 7A-321(b)(3)] that expanded the ability of the Judicial Department to use tax return revenue to pay outstanding fines, fees and restitution amounts.

In order to improve on collections of monetary sanctions, Session Law 2007-323, section 30.9 [G.S. 7A-321(b)(1) (2007)] was enshrined to allow the Judicial Department to assess a collection assistance fee

for outstanding balances that were 30 days past due for offenders not sentenced to supervised probation. The fee is 10% of the outstanding balance of any fines and fees owed to the court. Also in 2007, there was a change to the statute [G.S. 7A-305(d)] in terms of the discretion of ordering certain costs for court-related processes and procedures. Prior to 2007, the statute's language gave judges' apparent discretion over whether or not to order a cost and also which costs to order. The amendment to the statute language curtails the discretion of the judges to decide only on the power to assess costs but not discretion over which costs were appropriate (Griffin, 2009).

In 2010, the state implemented payNcticket.org as an online collection site for infraction and fine and fee payments under the Omnibus Courts Act, House Bill 1848 [S.L. 2006-187, § 1]. The impetus behind the processing system was to increase revenue and decrease the administrative burden on court clerks. The payNcticket.org system boasts that it has increased efficiency, reduces the workload for clerks and court agents and provided an effective system for collecting payments from citizens. The site estimates that it has collected over \$140 million dollars since 2010 and saved 28,909 hours of clerk time (see Payments & Collections section for more information).

In 2011, the North Carolina legislature enacted the Justice Reinvestment Act, which expanded post-release supervision for felons, established advanced supervised release for select prisoners, limits judges' authority to revoke probation offenders, and transitions misdemeanor offenders from the prison to the jail system, also known as the Statewide Misdemeanant Confinement Program. The act also succeeded in giving probation officers more discretion in dealing with non-compliant individuals on community supervision. Under the act, they can order the non-compliant to short jail terms, but only if the offender waives his or her right to a hearing and counsel. Through the act, the probation officer has been delegated authority through legislation. However, compared with other delegated authority provisions, the offender in this case has no statutory right to have the confinement sentence for non-compliance reviewed by the court.

One of the main drivers of the rise in the state prison population, beyond the judicial and sentencing changes that were consistent across the country, was the practice of imprisoning misdemeanants in state prisons as opposed to local jails. In 2012, the state implemented the Statewide Misdemeanant Confinement Program, which transferred those with most misdemeanor convictions to county jails instead of state prisons. The program is discussed in length below, but it is notable because it ushered in new non-waivable court costs in order to fund the program due to its state-wide funding structure. The switch from prison to jail for misdemeanor offenders placed the fiscal onus on the state as opposed to those counties who were housing offenders in their local jails. This led to a strain on state corrections resources, and therefore, an impetus to pass the cost onto those who were convicted of infractions, misdemeanors and felonies.

The time period between 2010 and 2012 appears to have been a growth period in terms of criminal justice processes as well as subsequent fines, fees and related court costs. The costs have been increasing steadily in this period. According to the UNC School of Government, in 2007 the cost for a motor vehicle infraction was \$120. In 2008, there was a slight increase to \$121 but 2009 saw an increase to \$130, and 2010 to \$141. In 2011, the cost was up to \$170 due to an increasing landscape of fines and fees tacked onto the existing schedule of fees. Part of the increase seems to be predicated on the necessity of funding a portion of the changes mandated by the Justice Reinvestment Act.

Payments & Collections

The state of North Carolina uses online collections and payments (OCAP) for criminal probation cases that require a court appearance. For all other cases, including civil and infractions, the state uses payNcticket.org. For OCAP, there are administrative fees for each transaction of 2.25% of the court costs and fines due, plus \$1. Individuals can avoid these fees if they are paying by mail or in person. The payNcticket.org fee structure appears to be based on the amount of the total owed. The payments paid through payNcticket.org are processed by a private payment vendor, NIC. A table shows an example of a select few fines and service charges as procured from the payNcticket.org site.

Table 4: Service charges for paying ticket

| Fine owed | Service charges |
|------------------|------------------------|
| \$125 | \$5.57 |
| \$218 | \$5.91 |
| \$238 | \$6.36 |
| \$288 | \$7.48 |
| \$438 | \$10.86 |

According to the payNCticket.org site, the state collected \$140,087,304 from over 630,750 citation payments between 2010 and 2015. Almost 400 citation payments are made per day, totaling \$88,824 collected per day. The site estimates that nearly 30% of fees and costs linked to waived court appearances are paid using payNCticket, thereby saving in court administration and personnel costs. The counties which collected the five highest amounts are listed below with the amount recovered, the number of citations as well as the population of the county. The two below the bolded line round out the chosen jurisdictions for the state report.

Table 5: Payments & collections for paying ticket

| County | Population (2010) | Number of payments | Amount collected |
|--------------------|-------------------|--------------------|------------------------|
| Wake | 900,993 | 63,906 | \$13,688,388.50 |
| Mecklenburg | 919,628 | 45,401 | \$10,581,519.50 |
| Onslow | 177,772 | 33,945 | \$7,939,546.50 |
| Guilford | 488,406 | 30,001 | \$6,657,142.00 |
| Forsyth | 350,670 | 25,310 | \$5,416,159.00 |
| Robeson | 134,168 | 10,230 | \$2,371,458.00 |
| Tyrrell | 4,407 | 5,525 | \$1,146,626.50 |

Legal Challenges

Legal challenges centered on monetary sanctions in North Carolina have been limited. However, recently, the number of legal cases brought to the state Supreme Court and court of appeals have increased. Most of the challenges focus on the assessment of fines, fees, costs and surcharges. For example, in *State v. Patterson* (2012) the trial court sentenced Patterson to a minimum of 22 months in the North Carolina Department of Correction, and ordered him to pay \$1,954.50 in court costs. The court stated that “I have no discretion but to charge court costs and I’ll impose that as a civil judgment.” Patterson claimed that the court failed to exercise discretion when ordering him to pay court costs. The court agreed with Patterson on this point. In the original version of the statute [G.S. 7A-304(a)] – which was later amended – the trial court was responsible for assessing the imposition and amount of court costs. In the later revision, the trial court was stripped of its discretion in this matter, unless the action is to waive the costs. Patterson also argued against the amount of court costs ordered, suggesting that they were not authorized by the statute as written. The court agreed that the trial court costs ordered exceeded those permissible according to the statute. From the trial court records, it was not clear how the amount of \$1,954.50 was reached. The court vacated the portion of the judgment that related to court costs and remand to the trial court for resentencing.

In *State v. Rowe* (2013), jail fees were the subject of the legal challenge. Rowe was convicted of assault with intent to inflict serious injury and the trial court orally imposed an active sentence of 60 days, with credit for 1 day spent in pre-judgment custody and \$870.00 in court-appointed attorneys’ fees. The written judgment of cost included monetary obligations not stated in open court, including \$2,370.00 in jail fees. Rowe argued that the trial court lacked authority to order him to pay all but \$10 of those jail fees. The court agreed with Rowe, finding that G.S. 7A-313, which stipulates jail fines, only refers to those confined in jail and awaiting trial and those ordered to pay jail files pursuant to a probationary sentence. The court vacated the trial court’s judgment and remanded the case to the trial court to enter a new judgment consistent with the opinion of the court.

Laboratory fees for certain offenses are subject to a \$600 fee [G.S. 7A-304(a)(8)]. In *State v. Velazquez-Perez* (2014), the defendant challenged the lab fees that were assessed in his case. The case centered on an arrest

for cocaine trafficking. Perez contends that the trial court erred in ordered a fingerprint examination as part of his sentence. The court agreed with Perez, asserting that the statute contends that the cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratory has performed DNA analysis of the crime, test of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court contended that the trial court erred in assessing \$600.00 for fingerprint analysis done by the Charlotte–Mecklenburg Police Department.

In *Richmond County Board of Education v. Cowell* (2015), monetary sanction disbursements and allocation were the subject of legal challenge. The case revolved around G.S. 7A-304(a)(4b) which requires those convicted of an improper equipment offense to pay a \$50 surcharge in addition to all other mandatory penalties and costs. According to the statute, proceeds from the collection of the surcharge will be remitted to a fund administered by the State and used to pay counties for the State Misdemeanant Confinement Fund. The Richmond County Board of Education, however, argued that the collection of the \$50 surcharge should fall under G.S. 7(a), which states that the proceeds of all fines, penalties and forfeitures collected for the breach of the penal laws of the State shall belong to the counties and be used exclusively for maintaining public schools. The Court upheld the argument that the General Assembly of the State legislature exceeded its constitutional powers by enacting legislation that would divert the funds meant for public education to the State Confinement Fund. The determinations of this case concern the classification of the improper equipment penalty surcharge and whether or not it is captured under the G.S. 7(a) provisions for disbursement. The Court finds that while the improper equipment offenses are infractions, and are therefore not crimes, they do violate the penal laws of the State, and is therefore subject to a penalty not to exceed one hundred dollars. Also, the penalty imposed is viewed as punitive rather than remedial in nature, and therefore, falls within the confines of the original statute. The Court ultimately ordered that the money be remitted back to the Richmond County Board of Education.

Other challenges in the state have revolved around the ability to pay and determinations of indigence, especially in regards to indigent counsel. One of the first cases was *State v. Crews* (1974), which challenged fees assessed for a court-appointed attorney. In his appeal, Crews argued that the court erred in entering an order and judgment for the payment of counsel fees (\$1000) for the services of indigent counsel. Crews asserted that he did not have the opportunity to demonstrate his inability to pay for indigent counsel services. In addition, Crews objected to the judgment being entered as a civil judgment. The court vacated the judgment for counsel fees and remanded the case back to the trial court. More recently, *State v. Webb* (2004) challenged the \$50 appointment fee for indigent defense. Webb was arrested for a probation violation, and he requested and received appointed indigent counsel. Pursuant to G.S. 7A-455.1, Webb was ordered to pay a \$50 "appointment fee." Webb argued that the statute, and thereby the fee, are unconstitutional. The Supreme Court of North Carolina found that the statute and fee violated both the U.S. Constitution and the North Carolina state constitution. The court found that the appointment fee for indigent defense does constitute a fee of prosecution. The state argued that it is not a fee of prosecution, but rather an administrative fee. The court showed, however, that the other administrative fees that are ordered are only assessed if a person has been convicted. The appointment fee for indigent counsel is ordered if a person is convicted or acquitted. The court ordered that those who were charged such a fee between April 2, 2003 and the date of the opinion would be due a refund by the state.

The Statewide Misdemeanant Confinement Program

In 2012, the North Carolina legislature adopted the Statewide Misdemeanant Confinement Program (MCP), which transferred the responsibility for misdemeanor inmates with relatively long sentences from the statewide prison system to county jails. Previously, misdemeanants with sentences between 91 to 180 days were sent to state prisons. However, the costs of that practice were unsustainable. A report from the Council of State Governments found that North Carolina had an unusually high number of misdemeanants housed within the prison system. The program is administered by the North Carolina Sheriffs Association (NCSA), and is funded largely through additional fees to those sentenced to confinement for misdemeanor offenses. The shift to the Statewide Misdemeanant Program is significant for a number of reasons, but most notably,

it increases the monetary sanctions landscape for those convicted of misdemeanors. While the change is a positive transition in line with the confinement practices of other states and a more logical placement for misdemeanants, the funding structure on the state-level has not been properly implemented to fully fund the program. Therefore, the program is reliant on the added fee structure for those who are convicted of misdemeanors and sentenced to confinement. Add to this the changes in the fees for community supervision after confinement, and those convicted of misdemeanors in particular are subject to a host of fines, fees and court costs that add an extra layer of financial burden.

The switch to the MCP shifts the confinement location to counties but the cost is still covered by the State. Counties must volunteer to be a "receiving county" for misdemeanants, which include a \$40 per day reimbursement, including in-jail medical expenses. About 50 counties in the state have opted in as "receiving counties." If a misdemeanant is convicted in a non-receiving county, it will be expected to transport the inmate to a receiving county, therefore, all counties can be considered "sending counties." Transportation is reimbursed by the program for \$0.55 per mile and \$25 per hour, per officer.

The MCP is composed of those who have sentences more than 90 days, except for impaired driving offenses or the nonpayment of a fine. Those convicted of a DWI will still serve their sentences in a local jail. From [G.S. 15A-1352] "If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge may make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3." From the wording of the statute, it seems that those who are sentenced to confinement for nonpayment of either misdemeanor or felony convictions can be housed in either a state prison, county jail or work release program. In addition, those who are sentenced to jail and/or work release are required to give any earnings (less any standard payroll deduction and health insurance premiums) to the Sheriff. The county also charged a per day charge for those employed or otherwise thought able to pay from other available resources. According to G.S. 153A-230.3(b)(2), "The per day charge shall be calculated based on the following formula: The charge shall be either the amount that the Division of Adult Correction of the Department of Public Safety deducts from a prisoner's work-release earnings to pay for the cost of the prisoner's keep or fifty percent (50%) of the occupant's net weekly income, whichever is greater, but in no event may the per day charge exceed an amount that is twice the amount that the Division of Adult Correction of the Department of Public Safety pays each local confinement facility for the cost of providing food, clothing, personal items, supervision, and necessary ordinary medical expenses. The per day charge may be adjusted on an individual basis where restitution and/or child support has been ordered, or where the occupant's salary or resources are insufficient to pay the charge."

The discrepancy between the number of receiving and sending counties, however, results in misdemeanants being unsure of where the sentence will be served once it is rendered. The location of confinement, as laid out in the statute, is subject to judicial and/or sheriff's discretion. If there is not enough bed space in receiving county jails, the inmates will be transferred to the Division of Adult Correction (DAC). In addition, if misdemeanants pose a security risk or required specialized medical treatment, they will also be transferred to the DAC. The DAC is reimbursed for housing, transportation and supervision of the misdemeanant by the Statewide Misdemeanant Confinement Program.

The money comes from two courts costs that were implemented in August 2011: \$18 court cost for all district court convictions and a \$4.50 court cost specific to convictions for an improper equipment offense [G.S. 7A-304(a)(2b) & (4b)]. At the end of 2012, there was \$9 million in the MCP fund, with a projection of \$31 million annually. Ten percent of the amount collected goes to the North Carolina Sheriffs' Association and one percent goes to the General Fund to be allocated to DAC for administrative and operating expenses.

Counties & municipalities

Table 6: Demographics of North Carolina & selected counties & municipalities

| | North Carolina | Mecklenburg County | City of Charlotte | Robeson County | City of Lumberton | Tyrrell County | Town of Columbia |
|--|----------------|--------------------|-------------------|----------------|-------------------|----------------|------------------|
| Population (2013) | 9,848,917 | 992,514 | 731,424 | 134,956 | 27,716 | 4,105 | 891 |
| Poverty (2013) | 17.5% | 15.2% | 17.3% | 33.1% | 32% | 28.3% | 31% |
| Percent African American | 22% | 32.1% | 35.03% | 24.7% | 33.1% | 36.6% | 43.10% |
| Percent Native American | 1.6% | 0.8% | 0.48% | 39.5% | 12.2% | 0.7% | 0.34% |
| Percent Latino | 8.9% | 12.6% | 13.08% | 8% | 10.6% | 6.8% | 16.27% |
| Income (per capita; 2013) | \$25,284 | \$32,482 | \$31,844 | \$15,343 | \$18,198 | \$16,658 | \$16,079 |
| Unemployment rate (2013) | 6.3 | 5.9 | 5.4 | 9.5 | 8.1 | 7.5 | 7.2 |
| Violent crime rate (2014; per 100,000) | 333.0 | 534.0 | 589.79 | 859.0 | 1,659.28 | 217.2 | N/A |
| Presidential vote (2012) | 50.6% Rep | 60.8% Dem | 49.2% Dem | 57.9% Dem | 70.4% Dem | 64.7% Rep | 70.6% Dem |

The goal of selecting certain counties and municipalities as the focus of inquiry on monetary sanctions is to ensure a diverse and varied look at the state of North Carolina as a whole. Mecklenburg, Robeson and Tyrrell counties were chosen based on combined assessment of their respective poverty and unemployment rates as well as their size and racial breakdown. For instance, Mecklenburg County was chosen based on its population size, but also due to its centrality in the economic, political and social spheres of the state. It was essential to also provide a comparison with a more rural region of North Carolina such as Tyrell County, which reflects interesting and potentially informative patterns for monetary sanctions and their impact. Robeson County was selected based on its medium size, but also because of its status as a “majority-minority” county, with over 70% of the population identifying as Latino, African American or Native American. Robeson’s substantial Native American population is also of interest due to the high rates of poverty, unemployment and criminal justice contact within this particular population. The corresponding cities in these counties will aid in uncovering what is occurring at the district court level in relation to monetary sanctions. The assessment of costs, fines and fees at the district court level appears to be a significant and influential part of the story in regards to how monetary sanction function within the entire state of North Carolina.

MECKLENBURG COUNTY

Mecklenburg County is located on the border with South Carolina, in the southwestern portion of North Carolina. Mecklenburg is the most populated county in North Carolina, with a population of 992,514 (2013) with a projected 2016 population of over 1 million residents. The county’s poverty rate is 15.4% and per capita income of \$32,482, both below and above the state average, respectively. African American residents composed 32.1% of the population, with a sizeable Latino population (12.6%). The region votes predominately Democratic in local and presidential elections. Mecklenburg County voted 60.8% for Barack Obama in the 2012 election. The county houses the Center for Community Transitions, which is a privately-owned correctional institution.

Mecklenburg County is the 26th Judicial District, which handled 11,789 felony and 4,025 misdemeanor criminal cases in superior court in 2013-2014. From the annual statistical report on the 26th District, most superior court dispositions for both felonies and misdemeanors resulted in a guilty plea as charged or as a district attorney dismissal without leave. In district court, the majority of cases are for motor vehicle offenses (103,030), while non-motor vehicle and infraction offenses constitute 40,414 and 35,755 dispositions, respectively. When looking at data on the district court filings, between 2010 and 2011, there was a decrease

of 54.5% in filings (224,947 in 2010 & 102,462 in 2011) and a 73.7% increase in 2012 (178,024). Overall, between 2010 and 2014, there was a 25.7% decrease in filings and a 20.2% decrease in dispositions. The 2010-2012 period in the state seems to be characterized by considerable criminal justice reform, therefore, the fluctuations in the filings and dispositions could be part of the larger state pattern. Most notably, the change seems to be largely driven by an increase in motor vehicle (Chapter 20) offenses from 12,155 in 2011 to 100,630 in 2012, which suggests a potential change in law enforcement practices. However, in terms of motor vehicle offenses, 2011 seems to be an anomalous year, with a 90% decrease in the number of motor vehicle offense filings between 2010 and 2011. Since 2012, the number of Chapter 20 filings has remained consistent. More investigation into the reasons for the change between 2010 and 2011 will be needed.

According to the North Carolina Department of Public Safety, in 2014 Mecklenburg County released 1,570 from prison and had 6,862 individuals on community supervision. The racial breakdown for both those released and on community supervision skews towards a racially disproportionate portrait of the corrections system in the county (see table 7). In Mecklenburg, the majority of people were employed at the time of their arrest (38.09%) and the most common reported work skills of those released from custody were the construction trades (27.34%). The most common convictions were for drug offenses (12.8%) and robbery (11.78%).

As table 7 illustrates, there is clear racial disproportionality in terms of contact with the criminal justice system in Mecklenburg County. Such figures suggest that black residents of the county are more often subject to corrections and community supervision than their white counterparts. With this increase in contact comes a higher likelihood of being assessed monetary sanctions. More investigation needs to be done in order to make a more concrete connection between rates of incarceration and community supervision and the ordering of monetary sanctions. However, if this disproportionality is seen at the contact level, there are potential significant implications for seeing a similar pattern in regards to monetary sanctions.

Table 7: Confinement statistics for Mecklenburg County

| Confinement population | | Community supervision | |
|------------------------|--------------|-----------------------|--------------|
| Black | 74.6% | Black | 70.4% |
| White | 13.6% | White | 23.9% |
| Asian | 0.5% | Other | 5.6% |
| Native American | 0.6% | | |
| Other | 6.6% | | |
| Total number | 8,517 | Total number | 6,862 |

Source: Statistics Memo: Confinement population, Mecklenburg County, 2015, Dept. of Public Safety

From a NCAOC 2016 Report on Criminal Cost Waivers, Mecklenburg County judges ordered monetary obligations in 38,593 cases. The obligations were waived (in whole or in part) in 10,636 cases (27.5%), 513 were stricken in error (1.3%), 1,037 were dismissed for improper assessment (2.6%) and 109 were ordered solely as civil judgments (0.2%).

The disbursement figures in table 8 show how money is funneled to counties and municipalities. The fines section is of particular interest, showing the state's distribution of revenue from court-related fines. However, administrative court fees make up a substantial portion of the revenue to counties.

Table 8: Disbursements of court-related costs, fines and fees for Mecklenburg County

| Source | Total |
|---------------------|-------------|
| Facility fees | \$1,197,856 |
| Officer fees | \$1,574,884 |
| Jail fees | \$2,460 |
| Fines | \$1,298,425 |
| Forfeitures | \$370,382 |
| Other distributions | \$153,689 |

Source: Statistical & Operational Report of Budget & Financial Management, 2014-2015

CITY OF CHARLOTTE

Charlotte is the largest city in North Carolina, with 731,424 residents. The city has a substantial African

American population (35%) and a growing Latino population (13%, up from 9% in 2000). In local and national media, Charlotte is often discussed in terms of its high rate of poverty. In 2013, the poverty rate was 17.3%, slightly below the rate for North Carolina as a whole. However, according to local news, the poverty rate in certain areas of Charlotte remains higher than the city of a whole. The city leans Democratic in local and national politics. The city is home to a number of colleges and universities, the largest being University of North Carolina, Charlotte. In addition to housing the Superior Court of Mecklenburg County within the city limits, Charlotte is also home to a district court (District 26), which handles misdemeanor and traffic offenses.

City ordinances in Charlotte reflect certain similarities to the state statutes, but also a few notable divergences. As with most local municipalities, there are a number of ordinances pertaining to littering in public places [Section 15-16] or from a vehicle [Section 15-17] or loitering in a public park [Section 15-139] with civil penalties ranging from \$25 to \$50. In addition, there are prohibitions on public solicitation [Section 15-15(A)], which carries a \$500 maximum fine and imprisonment for a misdemeanor conviction. Motor vehicle and traffic violations [Section 15-68] carry civil penalties between \$100-1000. Juvenile curfew violations net a penalty for the juvenile of an adjudicated delinquent status and a misdemeanor charge and no more than \$100 fine for adults assisting the minor [Section 15-157]. An interesting addition to the city ordinances, however, are delinquent penalties for certain offenses that range from \$10 to \$50 if the payment of the civil penalty or criminal fine is 30 days late. For instance, littering, defacing property, spitting, panhandling or drinking on public transportation is subject to a class 3 misdemeanor charge, \$50 civil penalty and a late fee of \$50 [Section 15-275]. The sale of a drug stem is subject to a \$50 civil penalty with a delinquent charge of \$50 [Section 15-24]. This ordinance specifically states that the conviction on the sale of a drug stem is subject to civil action in form of liens on property and other assets.

ROBESON COUNTY

Robeson County is located in the southeastern part of the state, with a population of 134,956 in 2013. Lumberton is the largest city in Robeson County and is the county seat. Robeson County has the distinction of being a majority-minority county, with the population consisting of 24.7% African American residents, 39.5% Native Americans and 8% Latinos. The county is characterized by high poverty (31.7%), high unemployment (9.5) and a low per capita income (\$15,343). The county voted overwhelmingly for Democrats in the 2012 election (57.9%). Robeson County is home to one of the few historically Native American colleges in the United States, the University of North Carolina at Pembroke.

Robeson County is in Judicial District 16B, which handles superior and district court cases in the county.

Robeson County district court offers an extension for time to pay fines, fees and restitution, according to the local rules of procedure. These rules were initially put in place in 2013, and they allow for defendants to request a time extension. The motion to request an extension are filed with the Clerk of Court, and it is added to the supplemental court calendar for a regular criminal session of the district court. The local rules state, “A presiding judge has the inherent authority to determine the credibility of any written verification or other offered explanation tendered in support of the motion.”

The disbursement figures in table 9 show how money is funneled to counties and municipalities. The fines section is of particular interest, showing the state’s distribution of revenue from court-related fines for Robeson County. This appears to be the county’s most substantial form of revenue in regards to funding criminal justice related procedures. The switch to the Statewide Misdemeanant Program may be partially responsible for this amount, however, it could also be the volume of contacts that are prosecuted through the district court system in Robeson.

Table 9: Disbursements of court-related costs, fines and fees for Robeson County

| Source | Total |
|---------------------|-----------|
| Facility fees | \$157,074 |
| Officer fees | \$43,044 |
| Jail fees | \$6,805 |
| Fines | \$437,650 |
| Forfeitures | \$109,461 |
| Other distributions | \$95,568 |

From a NCAOC 2016 Report on Criminal Cost Waivers, Robeson County judges ordered monetary obligations in 12,653 cases. The obligations were waived (in whole or in part) in 2,582 cases (20%), 454 were stricken in error (3.6%), 436 were dismissed for improper assessment (3.4%) and 116 were ordered solely as civil judgments (0.9%).

Robeson County is often characterized in local and regional newspapers as plagued by high violent and property crime. According to the Annual Crime Survey from the North Carolina State Bureau of Investigation (2014), Robeson County had the highest violent (859 per 100,000) and property crime (5,985 per 100,000) rates in the state. The University of North Carolina at Chapel Hill’s Center for Excellence in Youth Violence Prevention has a \$6.5 million grant funded by the Centers for Disease Control and Prevention to study the factors that contribute to the high crime rate in Robeson County, especially youth violence.

According to the North Carolina Department of Public Safety, in 2014 Robeson County released 325 from prison and had 1,833 individuals on community supervision. The racial breakdown for both those released and on community supervision skews towards a racially disproportionate portrait of the corrections system in the county (see table 10). The large proportion of the “other” race category suggests that a substantial portion of the county’s Native American population is subject to confinement. In Robeson, the majority of people were employed at the time of their arrest (35.08%) and the most common reported work skills of those released from custody were the construction trades (44.74%). The most common convictions were for breaking and entering (20.31%) and larceny (13.23%).

As table 10 shows, the statistics for the confinement population and community supervision map onto the demographics of the county, and suggest racially disproportionality in criminal justice system contact in Robeson County. These numbers suggest that people of color make up over 75% of those being released from prison, with Native Americans constituting the largest group of those incarcerated. With this increase in contact comes a higher likelihood of being assessed monetary sanctions. More investigation needs to be done in order to make a more concrete connection between rates of incarceration and community supervision and the ordering of monetary sanctions. However, if this disproportionality is seen at the contact level, there are potential significant implications for seeing a similar pattern in regards to monetary sanctions. And if this disparity is apparent for sanctions as well, it suggests an undue burden and disproportionate impact on individuals and communities of color.

Table 10: Confinement statistics for Robeson County

| Confinement population | | Community supervision | |
|------------------------|--------------|-----------------------|--------------|
| Black | 36.8% | Black | 33.66% |
| White | 11.3% | White | 15.49% |
| Asian | 0% | Other | 50.85% |
| Native American | 47.5% | | |
| Other | 2.7% | | |
| Total number | 2,173 | Total number | 1,833 |

Source: Statistics Memo: Confinement population, Robeson County, 2015, Dept. of Public Safety

CITY OF LUMBERTON

The city of Lumberton has a population of 27,716 and is the largest city within Robeson County. Lumberton is located in the southern portion of Robeson County, in close proximity to the Inner Banks region. Lumberton has high poverty (33%) and unemployment rates (8%). Similar to the larger county, Lumberton is a majority-minority city, with 33.1% African American residents, 10.6% Latino residents and 12.2% Native American residents. Lumberton houses the Lumberton Correctional Facility, a medium security institution which contains under 800 male inmates and 250 employees.

The code of ordinances for Lumberton adhere closely to the state general statutes in terms of fines and fees. However, there are a few notable differences. For instance, there is a maximum \$200 fine for a misdemeanor conviction [Section 1-6]. The code specifically states that each day’s continuing violation shall be a separate

and distinct offense. There are also fines for operating under a suspended or revoked arcade and other businesses licenses [Section 12-172]. As with many small municipalities, there is a heavy emphasis on motor vehicle-related violations. Towing fees range from \$100 – 125 [Section 14-269], depending on the time of day, and residential parking violations net a fine of no more than \$200. If in default of payment, the individual can be jail for three days per violation [Section 14-275.13]. Individuals caught loitering with the purpose of engaging in drug-related activity will be charged with a misdemeanor and fined up to \$500 [Section 15-23(d)]. In addition, those who contribute to a minor breaking curfew will be subject to a misdemeanor conviction, a \$200 maximum fine and imprisonment [Section 15-24(h)(2)]. Sex offenders in a public park will be charged with a misdemeanor, fined up to \$500 and imprisoned for up to 30 days [Section 15-25]. The section on graffiti removal and abatement is the only one to mention restitution [Section 15-101(b)] which is payable to the property owner.

Despite its small population, Lumberton has a high crime rate. Lumberton ranks as one of the most violent small cities in the country, with a murder rate in 2013 of 50.28 and a violent crime rate of 1659.28 per 100,000 (FBI UCR 2013).

TYRRELL COUNTY

Tyrrell County is a rural county located in the eastern portion of North Carolina. The 2013 population numbered 4,105 residents, 36.6% identifying as African American and 6.8% as Latino. Tyrrell County is characterized by high poverty (20.8%) and high unemployment rate (7.5) and low per capita income (\$16,658). Residents of Tyrrell County vote overwhelmingly Republican (64.7%).

Tyrrell County is in the Second Judicial District along with Beaufort, Hyde, Martin and Washington counties. The Second Judicial District has a few distinct policies that differ from stated administrative practices in other counties. For example, for failure to appear cases in district courts in the Second District, the policies are designed expressly for transparency of process. When there is a twenty-one day failure to appear, any waiver of the failure to appear fee or a recall of a warrant for arrest has to be made in writing by the judge. The policy states, “It is not the responsibility of any court clerk to contract any judge or prosecutor on behalf of the defendant.” The only statutory relief from the failure to appear fee is a waiver when there is an error or omission by a court official or law enforcement officer. The fee can only be waived by a judge.

From a NCAOC 2016 Report on Criminal Cost Waivers, Tyrrell County judges ordered monetary obligations in 2,710 cases. The obligations were waived (in whole or in part) in 54 cases (2%), 31 were stricken in error (1.1%), 10 were dismissed for improper assessment (0.3%) and none were ordered solely as civil judgments.

According to the North Carolina Department of Public Safety, in 2014 Tyrrell County released 10 people from prison and had 50 individuals on community supervision. Given the small numbers, most of the demographics are split equally in terms of race, employment status and educational status. In Tyrrell, the most common reported work skills of those released from custody were the construction trades (75%). The most common convictions were for drug offenses (30%) and even 10% splits between assault, drug trafficking, murder, driving while impaired, robbery, burglary and habitual felon.

Table 11: Disbursements of court-related costs, fines and fees for Tyrrell County

| Source | Total |
|---------------------|------------|
| Facility fees | \$32,644 |
| Officer fees | \$15,043 |
| Jail fees | \$3,603.06 |
| Fines | \$92,996 |
| Forfeitures | \$4,151 |
| Other distributions | \$12,900 |

Source: Statistical & Operational Report of Budget & Financial Management, 2014-2015

TOWN OF COLUMBIA

Columbia is a rural town in the central-most section of Tyrrell County. It is located within the Outer Banks region of North Carolina, and therefore, sees a fair amount of tourist traffic especially in the summer months. It has a population of 891, with a substantial African American population (43%) and a sizable Latino

population (16%). The poverty rate is quite high (31%). The local industries are dominated by agri-business, aqua-business, tourism and forestry.

The town of Columbia is home to the Sheriff's office as well as the local jail and district and traffic courts. In minutes from the May 2, 2016 meeting of the town's Board of Aldermen, the Sheriff's office reported 477 law enforcement calls/complaints were responded to during April, including 391 business checks and 25 security checks. Ten citations resulting from traffic actions were issued, including four speeding violations.

Local rules for the district court include policies relating to bail and pre-trial release. The statement of general policy states, "Bail is not to be used to insure a defendant's presence in court. It is not to be used to punish a defendant either by making him wait in jail because he cannot make an excessive bail or by making him pay a professional bondsman a large fee to put up an excessive secured appearance bond. The purpose of N.C.G.S Chapter 15A, Article 26 on bail, is to impose the least restrictive nonmonetary form of pretrial release that will reasonably assure the defendant's appearance in court, to end or minimize the abuses of stereotyped ex parte bail fixing policies calling for secured bonds in predetermined amounts in all cases charging certain offenses and to vest the decision making process as to form of release and amount of bond in the judicial official who may know the most or can most readily learn the most about the defendant." The discretion for bail amounts seems to sit with either the magistrate or the court clerk.

Conclusion

North Carolina offers an interesting case study for monetary sanctions given recent changes that have occurred in both the legislative and judicial arenas. On the one hand, the state offers a transparent picture of the ways in which the legislative statutes organize the schedule of fines, fees and court costs. The detail seen in the court fees chart suggests a clear structure without surprises or hidden surcharges. However, this surface transparency belies a more complex reality. The court system is characterized by a fair amount of judicial discretion that makes a standardized assessment of fines, fees and court costs nearly impossible, even within the same judicial district. In addition, such transparency does not translate into a lack of punitiveness in terms of the assessment and collection of sanctions. This transparency instead seems to be indicative of the increased concentration in recent years on implementing new fees and costs as well as increasing those already established. With little scholarly work on the subject, North Carolina seems a rich landscape for investigating the complexity and reach of monetary sanctions.

Appendix

| CRIMINAL COURT COSTS G.S. 7A-304, unless otherwise specified | | AMOUNT |
|--|-----------------------------------|---------------------|
| An additional summary chart of criminal costs has been attached to this cost chart as "Appendix - Criminal Costs Summary." The appendix summarizes the basic costs common to all dispositions in a particular trial division. It does not include additional cost items that must be assessed depending on individual factors for each case (e.g., FTA fees, supervision fees, jail fees, etc.) or for specific offenses of conviction (e.g. improper equipment or impaired driving); those costs are assessed separately. Neither does it apply to offenses for which the relevant statute assesses specific costs or prohibits the imposition of costs. | | |
| DISTRICT COURT (including criminal cases before magistrates) | | |
| General Court of Justice Fee. G.S. 7A-304(a)(4). | General Fund | 145.05 |
| | State Bar Legal Aid Account (LAA) | 2.45 |
| Facilities Fee. G.S. 7A-304(a)(2). | | 12.00 |
| Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a). ² | | 4.00 |
| LEO Retirement/Insurance. G.S. 7A-304(a)(3) & (3a). | | 7.50 |
| LEO Training and Certification Fee. G.S. 7A-304(a)(3b). | | 2.00 |
| TOTAL | | 173.00 |
| Chapter 20 Fee. G.S. 7A-304(a)(4a) (for conviction of any Chapter 20 offense). | | +10.00 ³ |
| DNA Fee. G.S. 7A-304(a)(9) (criminal offenses, only; does not apply to infractions). | | +2.00 |
| Plus \$5.00 service fee for each arrest or service of criminal process, including citations and subpoenas. G.S. 7A-304(a)(1). | | +5.00 |
| SUPERIOR COURT | | |
| General Court of Justice Fee. G.S. 7A-304(a)(4). | General Fund | 152.05 |
| | State Bar Legal Aid Account (LAA) | 2.45 |
| Facilities Fee. G.S. 7A-304(a)(2). | | 30.00 |
| Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a).. G.S. 7A-304(a)(2a). | | 4.00 |
| LEO Retirement/Insurance. G.S. 7A-304(a)(3) & (3a). | | 7.50 |
| LEO Training and Certification Fee. G.S. 7A-304(a)(3b). | | 2.00 |
| TOTAL | | 198.00 ⁴ |
| Chapter 20 Fee. G.S. 7A-304(a)(4a) (for conviction of any Chapter 20 offense). | | +10.00 |
| DNA Fee. G.S. 7A-304(a)(9) (criminal offenses, only; does not apply to infractions). | | +2.00 |
| Plus \$5.00 service fee for each arrest or service of criminal process, including citations and subpoenas. | | +5.00 |
| OTHER CRIMINAL FEES | | AMOUNT |
| Appointment of Counsel Fee for Indigent Defendants. G.S. 7A-455.1. | | 60.00 |
| Civil Revocation Fee (impaired driving CVRs, only). G.S. 20-16.5(j). | | 100.00 |
| Community Service Fee. G.S. 143B-708. | | 250.00 |
| Continuous Alcohol Monitoring (CAM) Fee (offenses prior to Dec. 1, 2012). G.S. 20-179. ⁵ | | Varies ⁶ |
| Continuous Alcohol Monitoring (CAM) Fee (parolees, only). G.S. 15A-1374. ⁷ | | Varies |
| Criminal Record Check Fee. G.S. 7A-308(a)(17). | | 25.00 |
| Dispute Resolution Fee. G.S. 7A-38.3D and G.S. 7A-38.7. | | 60.00 per mediation |
| Expunction Fee, petitions under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, and 15A-145.4. | | 175.00 |
| Expunction Fee, petitions under G.S. 15A-145.5. | | 175.00 |

| | |
|---|---|
| Expunction Fee, petitions under G.S. 15A-146. ⁸ | 175.00 |
| Failure to Appear Fee. G.S. 7A-304(a)(6). | 200.00 |
| Failure to Comply Fee. G.S. 7A-304(a)(6). | 50.00 |
| House Arrest with Electronic Monitoring (EHA) One-Time Fee. G.S. 15A-1343(c2). | 90.00 |
| House Arrest with Electronic Monitoring (EHA) Daily Fee. G.S. 15A-1343(c2). | 4.48/day |
| Impaired Driving Fee. G.S. 7A-304(a)(10). Note: Applies only to offenses committed on or after December 1, 2011. | 100.00 |
| Improper Equipment Fee. G.S. 7A-304(a)(4b). ⁹ | 50.00 |
| Installment Payments Fee. G.S. 7A-304(f). | 20.00 |
| Jail Fees (pre-conviction). G.S. 7A-313. | 10.00 per 24 hours or fraction thereof |
| Jail Fees (split sentence served in local facility). G.S. 7A-313 and G.S. 148-29. | 40.00 per day |
| Limited Driving Privilege Fee – Petitions under G.S. 20-20.1. | At petition/Application: If Issued: (G.S. 20-20.2) |
| Limited Driving Privilege Fee – Other than under G.S. 20-20.1. Note: If there is no underlying conviction in the county, charge civil filing fees as explained on form AOC-CV-350. | If Issued: (G.S. 20-20.2) |
| Pretrial Release Service Fee (county). G.S. 7A-304(a)(5). ¹⁰ | +100.00 |
| Satellite-Based Monitoring Fee for Sex Offenders. G.S. 14-208.45. | 15.00 |
| State Crime Lab Fee. G.S. 7A-304(a)(7). | 90.00 |
| Local Government Lab Fee. G.S. 7A-304(a)(8). | 600.00 |
| Private Hospital Lab Fee. (G.S. 7A-304(a)(8a)) ¹¹ | 600.00 |
| State Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(11). ¹² | 600.00 |
| Local Lab Analyst Expert Witness Fee. G.S. 7A-304(a)(12). ¹³ | 600.00 |
| Private Hospital Analyst Expert Witness Fee. G.S. 7A-304(a)(13). ¹⁴ | 600.00 |
| Seat Belt Violations (adult, front seat) and Motorcycle/Moped Helmet Violations. ^{15,16} G.S. 20-135.2A and G.S. 20-140.4. | 25.50 fine +costs below: |
| General Court of Justice Fee, G.S. 7A-304(a)(4) | 147.50 (Dist.) 154.50 (Sup.) |
| Telecommunications and Data Connectivity Fee. G.S. 7A-304(a)(2a) | 4.00 |
| LEO Training and Certification Fee, G.S. 7A-304(a)(3b) | 2.00 |
| TOTAL | 179.00 (Dist.) 186.00 (Sup.) |
| Seat Belt Violations (adult, rear seat). G.S. 20-135.2A(e). | No Costs 10.00 fine only |
| Supervision Fee. G.S. 15A-1343, G.S. 15A-1368.4, and G.S. 15A-1374. | 40.00 per month |
| Worthless Check Program Fee. G.S. 7A-308(c). ¹⁷ | 60.00 |

MONETARY SANCTIONS IN TEXAS

Prepared by Becky Pettit, Nathan Fennell, Katherine Hill, and Ilya Slavinski¹

INTRODUCTION

The system of legal financial obligations in Texas has long historical roots but over the past four decades it has developed into a distinctly modern form of punishment and public finance. In 1965, the Texas state legislature passed a number of bills amending the criminal code to stipulate the conditions under which fines could be charged, that property could be forfeited or seized to satisfy unpaid fines, and allowing and monetizing the use of jail time as both a sanction for, and a mechanism to satisfy, unpaid legal debt. In 1965, the legislature also authorized jurisdictions to charge a warrant fee (CCP Art. 45.203) which now allows jurisdictions to charge \$25 for the issuance of a warrant for failure to appear to a court date for a criminal offense. Over the ensuing decades state law has expanded and at times contracted to now allow judges and the courts to assess fines, restitution, and 143 distinct court costs and fees to people with criminal convictions.² Additional legal financial obligations can result from delays in payment, supervisory fees, and other charges associated with criminal justice contact.

Texas has the largest prison and jail system of any state in the United States. At the end of 2014, 219,100 people resided in Texas' prisons and jails and close to 500,000 more were under some form of community-based supervision.³ The incarceration rate in Texas is 1,090 per 100,000, or just over 1%, of the adult population. Texas' incarceration rate places it 6th highest among U.S. states, below rates in Louisiana, Oklahoma, Alabama, Georgia, and Mississippi, and above the nationwide rate of 890 per 100,000. An additional 496,900 people were under the supervision of probation or parole agencies in Texas at the end of 2014. This represents 2,480 per 100,000, or nearly 2.5% of the adult population. Texas' rate of community supervision places it 9th highest in the U.S., behind Georgia, Idaho, Ohio, Rhode Island, Pennsylvania, Michigan, Indiana, Minnesota, and above the nationwide rate of 1,910 per 100,000. In total, 699,300 people were under some form of correctional supervision in Texas through incarceration, probation, or parole in 2014. 3,490 persons per 100,000, or over 3% of the adult population is in prison, jail, or under some form of community supervision in Texas. Although the number of people under criminal justice supervision in Texas is vastly more than the number under supervision in any other state, it has the 5th highest correctional supervision rate because it is so populous. Georgia, Idaho, Ohio, and Pennsylvania have higher correctional supervision rates. Nationwide, the supervision rate is 2,760 per 100,000.

Legal financial obligations are a significant source of revenue in Texas. Although total receipts from legal financial obligations are difficult to assess because of the complexity of the collections system, evidence suggests that legal financial obligations generate billions of dollars annually in Texas. Local court costs and fees alone generated one billion dollars in 2014. According to the Texas Office of Court Administration, Justice courts collected \$318 million (p. 117) and Municipal courts collected \$713 million (p. 124) in 2014.⁴

1 Please direct all comments and correspondence to Becky Pettit, Professor of Sociology and Faculty Affiliate, Population Research Center, University of Texas-Austin (bpettit@utexas.edu). Please do not cite or distribute without written permission.

2 For a complete list of fees and costs stipulated by the state legislature, see: Slayton, David. 2014. "Study of the Necessity of Certain court Costs and Fees in Texas." Austin, TX: Office of Court Administration. Available on-line at: <http://www.txcourts.gov/media/495634/SB1908-Report-FINAL.pdf>.

3 Kaeble, Danielle, Lauren Glaze, Anastasios Tsoutis, and Todd Minton. 2015. Correctional Populations in the United States, 2014. Washington, D.C.: Bureau of Justice Statistics. NJC 249513. Available on-line at: <http://www.bjs.gov/content/pub/pdf/cpus14.pdf>.

4 Slayton, David. 2014. "Annual Statistical Report for the Texas Judiciary Fiscal Year 2014." Austin, TX: Office of Court Administration. Available on-line at: <http://www.txcourts.gov/media/885306/Annual-Statistical-Report-FY-2014.pdf>.

Local supervisory fees for probation and related services added another \$158 million.⁵ Exactly how much has been collected by higher level County and District courts or through supervisory agencies, including the parole division of the Texas Department of Criminal Justice, is unclear. However, it is clear that legal financial obligations are an important funding source for courts, community supervision, and other justice and non-justice related activities in Texas.

COURT ORGANIZATION

Texas state law allows judges and courts to assess fines, restitution, court costs, fees, and surcharges at every level of the judiciary. Additional fees and costs can result from delays in payment, for conditions of supervision, and for other reasons including resolving issues arising from collateral consequences of legal financial obligations. The court system plays a particularly important role in the imposition and enforcement of legal financial obligations. Figure 1 is an illustration of the court structure of Texas. As Figure 1 indicates, the Texas court system includes Justice, Municipal, County, District, and Appellate courts.

Justice and Municipal courts are local trial courts of limited jurisdiction. Justice and Municipal courts handle the vast majority of relatively low-level, Class C, misdemeanor cases. Class C misdemeanors include traffic tickets as well as disorderly conduct, petty theft, and a range of other offenses. Class C misdemeanors are considered fine only offenses and fines are typically not to exceed \$500.⁶ Many Class C misdemeanors can be resolved without an appearance in court by making in person, on-line, or mail payments toward “window fines”, standard fines set by the court. Local jurisdictions throughout Texas have materials and websites articulating “window fines” for a range of offenses. “Window fines” technically include fines as well as mandated court costs and fees.⁷

County courts are trial courts of limited jurisdiction. County courts handle Class A/B misdemeanor cases. Examples of Class B misdemeanors include driving while intoxicated (1st offense), minor drug possession, and criminal trespass. A conviction for a Class B misdemeanor is eligible for a sentence of confinement of up to 180 days in jail and/or a fine of up to \$2,000. Examples of Class A misdemeanors include driving while intoxicated (2nd offense), assault, and cruelty to animals. A conviction for a Class A misdemeanor is eligible for a sentence of confinement of up to a year in jail and/or a fine of up to \$4,000. In addition to any fines imposed by the court, a conviction for a Class A/B misdemeanor mandates legal financial obligations in the form of fees and costs that vary depending on the specific offense and characteristics of the case.

District courts are state trial courts of general and special jurisdiction. District courts have jurisdiction in felony criminal cases and misdemeanors that involve official misconduct.⁸ Examples of felonies include aggravated assault, burglary, and grand theft. A felony conviction carries a mandatory minimum prison term of 180 days and a fine up to \$10,000. Texas law allows for the imposition of the death penalty in capital felony convictions. In addition to the punishments outlined in the Penal Code, the Health and Safety Code provides guidelines for mandatory minimum prison sentences and additional fines for the possession, manufacture, or delivery of controlled substances.⁹ For first degree felonies involving such offense types, the minimum prison sentence is raised and the maximum fine is not to exceed \$250,000 (Tex. Health & Safety Code Ann. § 481.112). In addition to any fines imposed, state law mandates the imposition of court fees and costs for a felony conviction.

5 Welebob, Carey. 2016. Testimony provided to the House Corrections and Criminal Jurisprudence Committees, May 17. Available on-line at: http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=11963

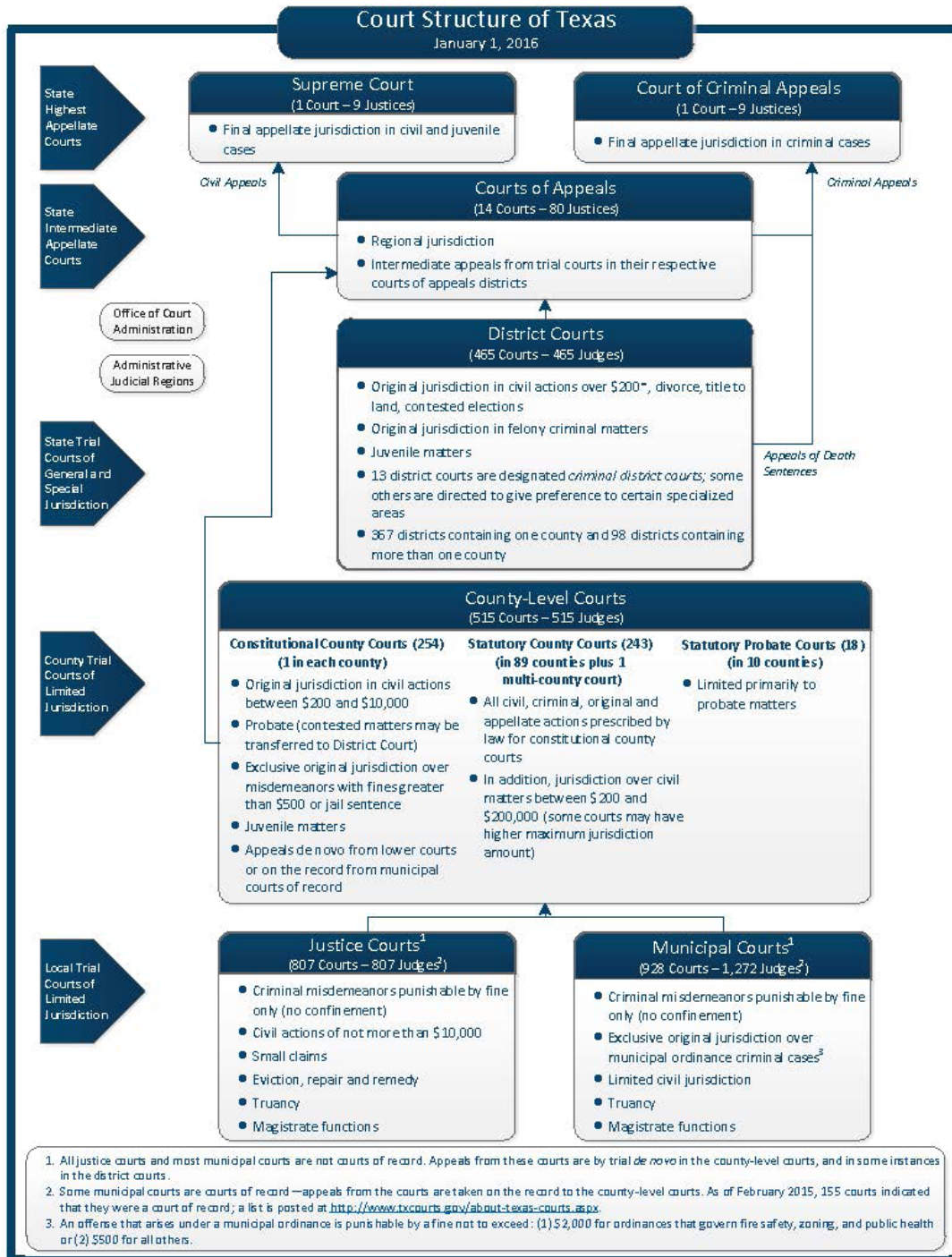
6 Municipal courts may levy fines up to \$2,000 for violations of that involve fire safety, zoning, and public health.

7 Materials from Midland, Texas offer a particularly clear example of how fines and costs contribute to total “window fines”. Available on-line at: <http://www.midlandtexas.gov/187/Standard-Fines>

8 <http://www.txcourts.gov/about-texas-courts.aspx>

9 Pp.64-78 in Office of Attorney General. 2015. Penal Code Offenses by Punishment Range. Including Updates from the 84th Legislative Session. Available on-line at: <https://www.texasattorneygeneral.gov/files/cj/penalcode.pdf>

Figure 1. Court Structure of Texas



Source: <http://www.txcourts.gov/media/1244897/Court-Structure-Chart-Jan-2016.pdf>.

Table 1 shows the number of criminal convictions in Texas, by offense class level, in fiscal year 2012. According to the most recent available data, there were 4,516,748 Class C misdemeanor convictions in 2012, representing 86% of criminal convictions in Texas. As Table 1 shows, there were a total of 329,512 Class A/B misdemeanors in fiscal year 2012, representing just over 6% of all criminal convictions. 157,446 felony cases represented less than 3% of criminal convictions in Texas in fiscal year 2012.

Table 1. Number of Criminal Convictions by Offense Class Level, Fiscal Year 2012

| Offense Class | Convictions |
|-------------------|-------------|
| Ordinance/Parking | 245,099 |
| Class C | 4,516,748 |
| Class A/B | 329,512 |
| Felony | 157,446 |
| Total | 5,248,805 |

Source: Legislative Budget Board (2013).¹⁰

TYPES OF LEGAL FINANCIAL OBLIGATIONS

Texas law allows for the imposition of several different types of legal financial obligations. The state penal code stipulates maximum fines for different offense classes whereas information on other legal financial obligations such as fees, costs, or surcharges are found in a variety of state codes.

Within Texas law and practice, fines are considered part of the sentence for an offense and are commonly viewed as penalties, akin to sentences for community supervision or confinement in prison or jail. The amount of a fine is subject to a range in which the judge has discretion to set. Table 2 shows punishment ranges by offense type including fines and custodial supervision.

Restitution is allowable in Texas. Judges can order people convicted of certain types of offenses to pay restitution to victims. Restitution orders indicate how much restitution must be paid and stipulate beneficiaries. In 1979, the state legislature passed the Crime Victims' Compensation Act which established the Crime Victims' Compensation Fund. The fund is administered by the Office of the Attorney General and enables victims of crimes to apply for financial help with specific expenses incurred by their victimization. It is funded by a portion of consolidated court costs assessed to people convicted of misdemeanor and felony offenses, a portion of probation fees, and a number of other sources. Restitution payments can be ordered to be made to the fund if the victim has already been compensated by the fund.¹¹

A range of other fees, costs, and surcharges are levied at the time of sentencing. Costs, fees, and surcharges are articulated for a variety of reasons that include the use of services of the police and the courts, the compensation of victims, involvement of programs associated with conditions of supervision, and to support the operation and maintenance of the criminal justice system. In the case of Class C misdemeanors, fees, costs, and surcharges are commonly bundled with fines in standardized "window fines" payable in person, on-line, by phone, or by mail and do not require a court appearance. In cases that involve a court appearance, a person is typically issued a bill of costs at the time of sentencing that includes a detailed assessment of legal financial obligations.

10 P. 295 in Legislative Budget Board. 2013. Texas State Government Effectiveness and Efficiency Report. Selected Issues and Recommendations. Available on-line at: <http://www.lbb.state.tx.us/Documents/Publications/GEER/Government%20Effectiveness%20and%20Efficiency%20Report%202012.pdf>.

11 <https://texasattorneygeneral.gov/cvs/crime-victims-compensation>.

Table 2. Punishment by Offense Classification, Texas Penal Code

| <u>Offense</u> | <u>Punishment</u> | <u>Penal Code</u> |
|---------------------|--|--|
| Class C Misdemeanor | <input type="checkbox"/> Fine not to exceed \$500 | Tex. Penal Code §12.23 |
| Class B Misdemeanor | <input type="checkbox"/> Confinement in jail not to exceed 180 days | Tex. Penal Code §12.22 |
| | <input type="checkbox"/> Fine not to exceed \$2,000 | |
| | <input type="checkbox"/> Both fine and confinement | |
| Class A Misdemeanor | <input type="checkbox"/> Confinement in jail not to exceed one year | Tex. Penal Code §12.21 |
| | <input type="checkbox"/> Fine not to exceed \$4,000 | |
| | <input type="checkbox"/> Both fine and confinement | |
| Felony | <input type="checkbox"/> Imprisonment for a term of 180 days-life | Tex. Penal Code §12.32, 12.33, 12.34, and 12.34 (a), and (b) |
| | <input type="checkbox"/> In addition to imprisonment, a fine not to exceed \$10,000 | |
| Capital Felony | <input type="checkbox"/> Imprisonment for life without the possibility of parole, or Death | Tex. Penal Code Ann. §12.31 |

Source: Office of Attorney General (2015).¹²

A wide range of specific fees and costs have been added over the past few decades while the legislature has twice moved to consolidate court costs. In 1997, and again in 2003, the legislature consolidated some itemized court costs into a Consolidated Court Cost (LGC § 133.102 & 133.102(a)) which is assessed to all convictions. The consolidated court cost is now \$40 for a Class C conviction under the jurisdiction of a Municipal or Justice court, \$83 for a Class A/B conviction in a County court, and \$133 for a felony conviction in a District court.

Additional mandatory fees and costs stipulated in state law vary in relation to the offense type and the court of jurisdiction. The legislature has authorized fees and costs for Municipal court convictions that include a judicial support fee of \$6 (LGC § 133.105(a)), an indigent defense fee of \$2 (LGC § 133.107), and a truancy prevention cost of \$2 (CCP Art. 102.015). Justice courts are authorized to assess those costs as well as a court technology fee of \$4 (CCP Art. 102.0173) and a court security fee of \$4 (CCP Art. 102.017(b)). County and District courts are mandated to assess many of those fees along with a clerk's fee of \$40 (CCP Art. 102.005(a)), a records management fee of \$25 (CCP Art. 102.005(f)), and a judicial fund court cost of \$15 (GC §§ 51.702, 51.703). Table 3 shows minimum costs that must always be assessed upon conviction in different courts.

Texas state law mandates court costs and fees ranging from \$50 for a conviction in Municipal court for a Class C fine-only misdemeanor that is not a moving violation to \$215 for a range of unspecified felony convictions. As outlined in Table 3, the \$50 for a fine only misdemeanor that is not a moving violation includes: \$40 Consolidated Court Cost, \$6 Judicial Support Fee, \$2 Indigent Defense Fee, and \$2 Truancy Prevention Cost. The \$215 minimum assessment for an unspecified felony includes: \$133 Consolidated Court Cost, \$40 Clerk's Fee, \$25 Records Management Fee, \$6 Judicial Support Fee, \$5 Court Security Fee, \$4 County and District Court Technology Fund Fee, and \$2 Indigent Defense Fee.

12 Office of Attorney General. 2015. Penal Code Offenses by Punishment Range. Including Updates from the 84th Legislative Session. Available on-line at: <https://www.texasattorneygeneral.gov/files/cj/penalcode.pdf>.

Table 3. Mandatory Minimum Court Costs and Fees in Texas, January 1, 2016

| | District Court <u>Felony</u> ¹ | County Court Class A/B <u>Misdemeanor</u> ² | Justice Court Class C <u>Misdemeanor</u> ³ | Municipal Court Class C <u>Misdemeanor</u> ⁴ |
|---|--|--|---|---|
| Consolidated Court Cost | | | | |
| LGC § 133.102 Judicial Support Fee | \$133 | \$83 | \$40 | \$40 |
| LGC § 133.105 Indigent Defense Fee LGC § | \$6 | \$6 | \$6 | \$6 |
| 133.107 | \$2 | \$2 | \$2 | \$2 |
| Truancy Prevention Cost | | | | |
| CCP Art. 102.015 | \$0 | \$0 | \$2 | \$2 |
| Technology Fee | | | | |
| CCP Art. 102.0169 & 102.0173 | \$4 | \$4 | \$4 | \$0 |
| Court Security Fee | | | | |
| CCP Art. 102.017(a & b) Clerk's Fee | \$5 | \$3 | \$4 | \$0 |
| CCP Art. 102.005(a) | \$40 | \$40 | \$0 | \$0 |
| Judicial Fund Court Cost GC §§ | | | | |
| 51.702, 51.703 | \$0 | \$15 | \$0 | \$0 |
| Records Management Fee CCP Art. | | | | |
| 102.005(f) | \$25 | \$25 | \$0 | \$0 |
| Minimum Total Costs Always Assessed | \$215 | \$178 | \$58 | \$50 |

Source: Respective Court Cost Charts (see FN 12, 13, 14, and 15).

Court costs outlined in Table 3 represent minimum costs and fees mandated upon conviction for each class of offenses in a given court. Mandated costs and fees can be much higher for these and other offenses. For example, a misdemeanor conviction for passing a school bus mandates \$108.10 in court costs and fees. A felony conviction for driving while intoxicated (DWI) or a felony intoxication offense carries a minimum \$375 cost and fee assessment. Mandatory cost and fee ranges for different offense classifications are shown in Table 4.

Table 4. Mandatory Fees and Costs in Texas, January 2016

| <u>Offense Class</u> | <u>Assessment (for selected offenses)</u> |
|----------------------|---|
| Class C | \$50-\$108.10 |
| Class A/B | \$178-\$338.10 |
| Felony | \$215-\$375 |

Source: Respective Court Cost Charts (see FN 12, 13, 14, and 15).

In addition to the mandatory minimum costs and fees outlined in Tables 3 and 4, Texas also stipulates a number of fees and costs to be assessed in different circumstances at the time of sentencing. Justice and Municipal courts must assess additional costs and fees if services have been performed by a peace officer,

for example to execute a warrant (CCP Art. 102.011(a)(2)). County and District courts must assess a jury conviction fee if the conviction was by a jury (CCP Art. 102.004).

Costs and fees associated with supervision, program participation, or other aspects of justice programming or debt servicing can be levied during sentencing or at a later time.¹³ People on community based supervision can be charged between \$25 and \$60 per month by local probation departments for their supervision. A recent survey done by the Texas Department of Criminal Justice Community Justice Assistance Division finds that that 67% of community supervisory agencies report charging \$60 per month for supervision, 15% charge \$50 per month, 7% charge \$40 per month, and the remaining charge less than \$40 per month. Statewide, collections of supervisory fees totaled \$136 million dollars in the most recent fiscal year and collections of program participation fees including fees associated with drug treatment and other types of program participation, totaled \$22 million. The collection of supervisory and program participation fees amounts to 33% of local probation office budgets statewide, although in some places collections cover up to 60% of local office operating costs.¹⁴

Unpaid legal financial obligations can trigger additional penalties in Texas, including financial obligations, other forms of criminal justice involvement, and non-justice related consequences such as the inability to renew a driver's license. There is a \$25 fee, called the deferred payment fee, that is levied for paying any part of legal financial obligations on or after the 31st day on which a judgement is entered (LGC § 133.103). In addition, a person can be charged up to \$5, or not more than 5% of the cost being paid, to use a credit card or electronic means to make a payment (LGC § 132.002). If a person fails to appear in court for a judgement or fails to satisfy her/his legal financial obligations as stipulated, \$30 can be added to the original judgement (Transp. Code Sec. 706.006a). State law allows local jurisdictions to enlist private collection agencies for outstanding debts 60 days past due. Private collection agencies can levy a 30% surcharge on outstanding debt.

State law allows for a variety of additional justice sanctions for unpaid legal financial obligations. Periods of supervision can be extended, additional court appearances can be mandated, and people can be held in jail if a judge has determined them to be willful in their noncompliance of court-ordered sanctions.¹⁵ A *capias pro fine* (warrant) can be issued when a person with legal financial obligations defaults on payment, including when a person has made arrangements to pay and does not pay, when a person fails to perform community service, or when a person pays a judgment with a check that does not have sufficient funds. There is a \$50 fee for executing and processing a *capias pro fine* (CCP Art. 102.011a2).

Judges are required to consider ability to pay, or establish willful noncompliance, before imposing alternative sanctions although the law allows them to mandate community service or institute jail as a sanction for willful failure to comply with court-mandated sanctions. People may be ordered to perform community service in lieu of financial payments for legal financial obligations. People may be confined in jail until a judgment is

13 The system of costs and fees is sufficiently complex in Texas that formalized programs exist to educate and assist courts and clerks in the imposition and collection of fines, fees, and costs. The state's Collection Improvement Program (CIP) has regional educators who provide assistance to courts mandatorily (or voluntarily) complying with the state's CIP. Texas Municipal Courts Education Center (TMCEC), located in Austin, regularly offers classes, training, and on-line tutorials that guide practices regarding the imposition and collection of fines, fees, and costs (<http://www.tmcec.com/fines/>). The state judicial branch also regularly updates a catalogue of costs on its website (<http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs.aspx>).

14 Welebob, Carey. 2016. Testimony provided to the House Corrections and Criminal Jurisprudence Committees, May 17. Available on-line at: http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=11963.

15 Recent news articles have covered practice of jailing for nonpayment in Texas. See, for example, Taggart, Kendall and Alex Campbell. 2015. Their Crime: Being Poor. Their Sentence: Jail. Buzzfeed. Available on-line at: https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor?utm_term=.xhRDzDRKg#.la0WGMxL.

One judge in Texas has written publicly about his unwillingness to use jail as a sanction for nonpayment. Spillane, Ed. 2016. "Why I refuse to send people to jail for failure to pay fines." Washington, D.C.: Washington Post. Available on-line at: https://www.washingtonpost.com/posteverything/wp/2016/04/08/why-i-refuse-to-send-people-to-jail-for-failure-to-pay-fines/?utm_term=.99accec3e804.

discharged if the person has been determined to have failed to make an effort to discharge the judgment, and if the person is not indigent (CCP Art. 45.046).

State law allows municipalities to establish contracts with the Texas Department of Public Safety to impose additional sanctions for specified offenses. Judges can impose sanctions that prohibit the renewal of a driver's license if a person fails to appear or fails to satisfy a judgment ordering the payment of legal financial obligations. In these cases, a judge refers a case to the Department of Public Safety which can assess additional sanctions. At a minimum, if a case is referred to the Department of Public Safety, a \$30 administrative fee is imposed (Trans. Code § 706.002). The Department of Public Safety also manages the Driver Responsibility Program (Trans. Code § 708.101-708.159) which allows for the assessment of a surcharge associated with driving-related offenses. The surcharge program is outsourced to a private collections agency which has the authority to also levy: a service fee of 4% of the original surcharge amount; an installment plan fee of \$2.50 for each partial payment; a credit or debit card fee of 2.25% of the payment plus \$0.25 (except where prohibited); and an electronic check fee of \$2 for each payment. Select cities may deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense.

There are special policies governing the imposition and collection of legal financial obligations assessed to juveniles, which in Texas courts are defined as youth between the age of 10 and 17 (CCP Art. 45.058(h)). A municipal court or justice court may waive the payment of fines and costs imposed on a defendant who defaults if the defendant is a child (CCP Art. 45.0491). For people younger than 17 years of age convicted of Class C misdemeanors, the defendant may be required to discharge all or part of a fine or cost by performing community service or attending a tutoring program (CCP Art. 45.0492). A child cannot be jailed for contempt of court for misdemeanor offenses in justice or municipal court (CCP Art. 45.050). In these situations, the court may refer the child to juvenile court, order the child to pay a fine not to exceed \$500, or order the Department of Public Safety to suspend the child's driver's license or permit or deny issuance of a license or permit (CCP Art. 45.050).

COLLECTIONS AND RELIEF FROM LEGAL FINANCIAL OBLIGATIONS

There is some ambiguity in the legal statutes and rules about when and how legal financial obligations can be waived. After 30 days, or if a defendant defaults on payment, a judge can exercise discretion to modify terms of payment. Although the law stipulates that certain legal financial obligations are mandatory, judges have the discretion to determine that a person is not able to pay and thus may not be subject to additional sanctions. There is, however, debate about when and how a determination of inability to pay can be made. Indigency is defined in state statute under CCP Art. 133.002(2), which states that "'indigent' means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines." In practice, indigency, or ability to pay, in relation to legal financial obligations is typically determined in a hearing with a judge 31 days or more after sentencing or after a person has defaulted on debt obligations.¹⁶ After a judge has determined someone is unable to pay court-ordered fines and costs, the judge may order a payment plan, order some alternative punishment such as community service, or consider a waiver.

Collections in Texas are managed by a variety of entities. Within local jurisdictions, collections are handled by court clerks who offer people a variety of ways to pay judgements. Municipal and Justice courts commonly offer opportunities to pay by mail, pay on-line, pay by phone, or pay in person. One jurisdiction in Texas has even placed automated machines to pay legal financial obligations in a local grocery store chain located near the court. Legal financial obligations assessed by County and District courts may be paid directly to the court but they may also be transferred to supervisory personnel who can accept payments during or after a period of correctional supervision. Legal financial obligations assessed by the Department of Public Safety are managed through a contracted agency. State law allows legal financial obligations to be drawn

¹⁶ This is an active area of consideration for the next legislative session. The Indigent Defense Commission and Judicial Council have discussed the issues at length in recent committee meetings. It has also been the source of some recent litigation, including *Gonzales et al v. City of Austin*.

from commissary accounts of people incarcerated in correctional facilities. State law also allows government entities to enforce collections by placing a lien against the property of a person with outstanding legal financial obligations (CCP Art. 45.203).

Receipts from the collection of legal financial obligations are shared between local and state entities in Texas. Although the exact sharing arrangement depends on the assessments made, fines are generally kept locally, restitution is paid to victims, and other collections are shared in varying proportions with the state. It is not clear whether or how different types of legal financial obligations, such as restitution, are prioritized and thus allocated to respective beneficiaries. Collections made by supervisory agencies are kept within the collecting agency. Funds assessed and collection for the Department of Public Safety are shared between the Department of Public Safety and its collection agency.¹⁷

Texas has instituted a number of policies and practices to enhance collections. Most notably, in 1998, the Office of Court Administration began what is now known as the Collection Improvement Program (CIP).¹⁸ The CIP outlines processes to facilitate and enhance the collection of legal financial obligations including, but not limited to, contacting people with outstanding debt by phone and by mail to inform them of accounts past due. In 2005, the legislature mandated participation in the Collection Improvement Program for large cities (>100,000) and counties (>50,000) under Texas Code of Criminal Procedure Article 103.0033. The CIP mandates participating jurisdictions and courts therein to report detailed invoices of number of cases, amounts assessed, amounts collected, amounts outstanding, amounts waived, and number of cases satisfied through jail time or community service. It also requires participating jurisdictions to have “a minimum of one staff person whose priority job function is collection activities.”¹⁹ The CIP offers education and training programs, including regional directorates, to encourage collections. Jurisdictions that comply with the CIP keep proportionately larger shares of revenue collected from fees and costs than those that do not comply with the CIP.²⁰ The Office of Court Administration estimates that the CIP was responsible for an additional collection of \$886,399,032 in court costs and fees from 2006-2015.²¹

Specific jurisdictions in Texas have additional collection enhancement programs. Austin, for example, initiated what is now called the “Great Texas Roundup” which enhances resources and services to clear court orders. According to available documents, over 300 jurisdictions in Texas now participate in the annual event that lasts approximately two weeks. During the period, people who voluntarily visit the court to resolve outstanding legal financial obligations are not arrested.

POLICY DIRECTIONS

Legal financial obligations in Texas have encountered a great deal of scrutiny over the past few years. Inquiry into the policies and practices that govern the imposition, enforcement, and implications of legal financial obligations has helped to identify opportunities and challenges for new policy initiatives. Acknowledging the complexity of the criminal justice-related cost and fee structure, the legislature has invited the Office of Court Administration to examine the possibility of further consolidating or simplifying costs and fees as well as the

17 Cost sharing between jurisdictions for specific fees and costs is outlined in the respective court cost charts (see FN 12, 13, 14, and 15). It is not clear whether or to what extent any agency prioritizes the collection of restitution. See, for example, Reynolds, Carl, Mary Cowherd, Andy Barbee, Tony Fabelo, Ted Wood, Jamie Yoon. 2009. A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes. New York and Texas: Council of State Governments Justice Center and Texas Office of Court Administration. Available on-line at: <https://csgjusticecenter.org/wp-content/uploads/2013/07/2009-CSG-TXOCA-report.pdf>.

18 P. 6 in Matthias, John and Laura Klaversma. 2009. Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions. National Center for State Courts. Available on-line at: <https://csgjusticecenter.org/wp-content/uploads/2013/07/2009-NCSC-Current-Practices-in-Collecting-Fines-and-Fees.pdf>.

19 Components of the Collection Improvement Program. Available on-line at: <http://www.txcourts.gov/media/63722/CIP-Components.pdf>.

20 CCP Art. 133.058

21 <http://www.txcourts.gov/cip/about-the-cip/>

necessity and statutory justification of fees and costs.²² Preparations for the 2017 legislative session have identified several potentially unnecessary costs and fees and judicial committee hearings have emphasized limiting the financial incentives associated with enhancing collections through the CIP. Several policy proposals and recommendations are being circulated and reviewed by committee members and the Office of Court Administration (OCA).²³

However, it is important to note that legal financial obligations in Texas are widespread and represent a significant source of funding for the nation's largest criminal justice system. Texas has the largest number of people under criminal justice surveillance. There are nearly 700,000 people in prison, jail, or under community-based supervision. In FY 2012, there were over five million convictions in Texas that mandated the assessment of court fees and costs. Class C misdemeanor convictions alone represent a significant potential revenue stream. If each conviction were assessed just a mandatory minimum \$50 cost and fee, Class C misdemeanors would generate close to one quarter of a billion dollars annually. Actual collections far exceed those amounts and available evidence suggests that legal financial obligations generate billions of dollars to fund a wide range of justice and non-justice related activities in Texas.

LEGAL CHALLENGES

In addition to active discussions about legal financial obligations within the legislature, several challenges have been made to various dimensions of legal financial obligations in the courts. The following provides a brief summary of recent cases, several of which have been dismissed, to illustrate the issues and lines of argument being pursued.

Gonzales et al v. City of Austin was a federal class action suit filed in 2015 which claimed that Austin's municipal court puts people in jail for unpaid fines without assessing whether defendants can afford to pay. Texas Fair Defense Project, the Civil Rights Clinic at the University of Texas' School of Law, and a private firm filed the suit. Additionally, the lawsuit claimed that judges make unreasonable community service demands, citing a case where a woman who was five months pregnant was ordered to do 30 hours every month over the course of a year. The lawsuit stated that the court imposes jail sentences to poor defendants without first appointing a lawyer to represent them. This case was dismissed in federal court in November of 2015 due to technical issues regarding the named defendants. Following the lawsuit, Austin city officials have taken another look at municipal court practices related to jailing people for failure to pay fines, fees and court costs, and requested a report from the city auditor's office on the subject, which largely exonerated itself of wrongdoing.²⁴

Carina Canaan and Levi Lane v. City of El Paso was filed against the City of El Paso in 2016 by the Texas Civil Rights Project to challenge the city's 25% Upfront Policy of debt collection. On April 2006, the city of El Paso instituted its 25% Upfront Policy. This policy requires individuals to pay 25% of all fines owed for Class C misdemeanors, the lowest level of wrongdoing, before they may qualify for payment plans. 50% of the payment is required on the 30th day of the payment plan; 75% is required on the 60th day of the payment plan; and 100% is required on the 90th day of the payment plan (Canaan et al. v. City of El Paso). The original complaint of the lawsuit claimed that the 25% Upfront Policy sends people who are too poor to pay their fines to jail. Additionally, the complaint claims that the 25% Upfront Policy creates a disincentive for poor

22 Slayton, David. 2014. "Study of the Necessity of Certain court Costs and Fees in Texas." Austin, TX: Office of Court Administration. Available on-line at: <http://www.txcourts.gov/media/495634/SB1908-Report-FINAL.pdf>.

23 One policy change involves rule changes to CIP: <http://www.txcourts.gov/media/1351974/Collections-Change-Guidance-Final-1.pdf>. Others include the elimination of payment penalties including the Deferred Payment Fee (\$25) and Credit Card Fee (\$5, or no more than 5% of payment). There is also active consideration of eliminating the Driver Responsibility Program which involves surcharges levied by the Department of Public Safety.

24 For more discussion of these issues see, Ulloa, Jazmine. 2016. "The Price They Pay: Austin Rethinks Whether to Send Poor People to Jail for Unpaid Traffic Fines they Can't Afford." Austin, TX: Austin American Statesman. Available on-line at: <http://specials.mystatesman.com/traffic-fines/>. See also, Office of the City Auditor. 2016. Special Request Report on Alternatives to Incarceration at Municipal Court. Austin, TX. Available on-line at: <http://www.austintexas.gov/sites/default/files/files/Auditor/as16103.pdf>.

debtors to assert their constitutional rights (*Canaan et al. v. City of El Paso*). The city of El Paso filed a motion to dismiss the case on June 6, 2016, which has yet to be heard.

McKee et al v. City of Amarillo, Texas was brought by two local Amarillo attorneys, Jeff Blackburn and Chris Hoffman, who filed a class-action lawsuit in federal court challenging the City of Amarillo's practice of jailing defendants who are unable to pay their court fines on January 14, 2016. Specifically, they cite a municipal ordinance which requires that defendants remain in jail "until the fine, State-imposed fees and other penalties are paid" (City of Amarillo Municipal Code Title II, Ch. 2-8, Art. I, Sec. 2-8-111). The plaintiffs claim that municipal courts in the City of Amarillo fail to consider whether defendants are able to pay fines and do not offer defendants any alternatives to paying a fine (*McKee et al v. City of Amarillo, Texas*). These are locally referred to as "pay or lay" cases. The City of Amarillo has hired a private firm to defend the city which has filed a motion to dismiss the case, which has yet to be heard.

Peraza v. State of Texas was brought by Jani Maselli Wood, a Harris County public defender, who appealed the collection of a specific fee levied on her client. She argued that the \$250 "DNA record fee" was illegal because the majority of the revenue generated from the fee goes into the state's highway fund, and that the courts were effectively collecting tax revenue under the guise of court costs – a violation of the separation of powers clause of the Texas Constitution. The court costs were briefly declared unlawful by the 1st Court of Appeals, whose ruling was then overturned in July of 2015 by the Court of Criminal Appeals, the highest court in criminal matters in Texas. This ruling yielded a sharply-worded rebuttal from a judge on the 1st Court of Appeals, in a rare instance of a judge in a lower court publicly challenging a decision made by the higher court.

Johnson v. State of Texas 423 S.W.3d 385, *14 (Tex. Crim. App. 2014), also brought by Wood, led to a 2012 ruling by the 14th Court of Appeals that defendants could not be charged court costs without being provided an invoice or bill of costs. The Court of Criminal Appeals (CCA) overturned the ruling and declared that costs could be assessed without a bill of sale but could not be required to be paid without one. This ruling functionally required all courts to provide a bill of court costs because without doing so they would not be permitted to collect any of that money from the defendant. A number of cases that had been decided by appeals courts based on the original ruling in *Johnson* by the 14th Court of Appeals were vacated and remanded once the CCA reached its decision overturning the 14th Court of Appeals' ruling in *Johnson*. See *Shaw v. State*, 438 S.W.3d 582; *Rogers v. State*, 426 S.W.3d 105; *Flores v. State*, 427 S.W.3d 399; and *Cardenas v. State*, 423 S.W.3d 396.

Salinas v. State, 485 S.W.3d 222 challenged the constitutionality of consolidated court costs assessed upon conviction, claiming that the costs were facially unconstitutional because the funds were directed towards categories such as abused children's counseling and comprehensive rehabilitation. The case was first remanded by the Court of Criminal Appeals and consolidated court costs were then found to be constitutional by the lower court.

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF ILLUSTRATIVE JURISDICTIONS

Legal financial obligations in Texas are structured by the state legislature, imposed by judges and courts, and collected through a variety of different mechanisms. The general architecture of legal financial obligations is statewide, yet local jurisdictions retain some autonomy in determining fine amounts, within allowable ranges, and have a relatively small set of locally-determined policies. Local jurisdictions can, for example, establish policies and guidelines for the determination of inability to pay and alternative sanctions, set transaction fees up to allowable maxima, and determine whether or not to participate in programs through the Department of Public Safety. Local jurisdictions can also determine whether to enlist the assistance of private collection firms to enhance collections of outstanding debt.

There are over 1000 incorporated cities in Texas and 254 counties. The court system only partially accords with the geographic and political boundaries that define Texas' cities and counties. There are 807 Justice

courts, 928 Municipal courts, 515 County-level courts, and 465 District courts.²⁵ The remainder of this report summarizes key demographic and legal characteristics of just three large cities and three large counties to help illustrate some of the local variability in demographic and economic factors as well as local variability in the imposition and enforcement of legal financial obligations. The cities of Austin, El Paso, and Houston located in Travis, Harris, and El Paso counties are not representative of Texas as a whole but attention to them may help illustrate some key opportunities and challenges facing the imposition, enforcement, and implications of legal financial obligations in Texas.

Travis County²⁶

Travis County is located in Central Texas and houses the city of Austin, the capital of Texas. Travis County is the 5th most populous county in Texas with a population of 1,176,558. Within Travis County, 8.9% of county residents are Black and 33.8% are Latino. The poverty rate in Travis County is 16.7%. Basic demographic information for Travis County and other jurisdictions discussed below are listed in Table 5.

Travis County houses District, County, Municipal, and Justice courts. Although data are not available for the assessment of legal financial obligations in District and County courts, the total fees, fines, and costs collected from justice courts (\$18,827,221) and municipal courts (\$33,610,586) in Travis County totaled \$52,437,807 in 2014. Collections for Justice and Municipal courts by jurisdictions are listed in Table 6.

Harris County²⁷

Harris County is located in Southeast Texas. It is the most populous county in Texas with a population of 4,538,028. Harris County also hold Texas's most populous city, Houston. Harris County is a relatively diverse county: 19.5% of its residents are Black, 41.6% are Latino, and 31.9% are white. The poverty rate in Harris County is 17.3%. Fines, fees, and costs collected in justice courts (\$77,292,861) and municipal courts (\$93,866,294) in Harris County totaled \$171,159,155 in 2014.

El Paso County²⁸

El Paso County is the western-most county in Texas located on the border of Mexico. El Paso, the county seat of El Paso County, is just across the border from Ciudad Juarez, Mexico and has a large federal and military presence. The population of El Paso County is 835,593. El Paso County is 81.1% Latino. The poverty rate in El Paso County is 23.3%.²⁹ In FY 2014, fines, fees, and costs collected from justice courts (\$9,505,869) and municipal courts (\$20,265,948) in El Paso County totaled \$29,771,817.

25 Annual Statistical Report for the Texas Judiciary: FY 2015. Available on-line at: <http://www.txcourts.gov/media/1332585/Judicial-System-Overview-2015.pdf>.

26 Information about court dockets and court-related information associated with Travis District and County courts is available on-line at: <https://www.traviscountytexas.gov/courts/criminal>.

27 Payment information for legal financial obligations associated with Houston District and County courts is available on-line at: <http://www.hcdistrictclerk.com/Common/Criminal/collections.aspx>.

28 Information about criminal fees can be found on the El Paso District Clerk website under Fees: Criminal Filing. Available on-line at: <http://www.epcounty.com/clerk/default.htm>.

29 Annual Statistical Report for the Texas Judiciary: FY 2015. Available on-line at: <http://www.txcourts.gov/media/1332585/Judicial-System-Overview-2015.pdf>.

Figure 2. Counties in Texas.



Source: Interactive Map of Texas Courts. Available on-line at: <http://maps.txcourts.gov/>.

Austin³⁰

Austin is the capital of the state of Texas and the county seat of Travis County. Located in central Texas, Austin is the 11th most populous city in the United States and the fourth most populous city in Texas. It is one of the fastest growing cities in the United States. Austin is a hub for technology related companies. In 2014, fines, fees, and costs collected from municipal courts in Austin totaled \$28,829,139. Average collections per criminal case in municipal courts was \$147.03.

Austin allows some additional municipal fines in addition to those specified in state laws. Austin is also known for initiating the “Great Texas Roundup” to enhance collections of legal financial obligations. Available materials suggest that Austin allows a wide range of punitive sanctions for the nonpayment of legal financial obligations, but it does not engage a collections agency to enhance debt collection. There are active discussions in the local city council about recommending revisions to local policies and practices governing the imposition and enforcement of legal financial obligations.³¹

Table 5. Characteristics of Select Texas Jurisdictions³²

| | <u>Population</u> | <u>Poverty Rate</u> | Percent African American | Percent <u>Latino</u> | <u>Municipal and Justice Collections per capita</u> |
|----------------|-------------------|---------------------|--------------------------------|--------------------------|---|
| State of Texas | 26,956,958 | 16.2% | 12.0% | 50.2% | \$51.14 |
| Travis County | 1,176,558 | 16.7% | 8.9% | 33.8% | \$45.57 |
| Harris County | 4,538,028 | 17.3% | 19.5% | 41.8% | \$37.72 |
| El Paso County | 835,593 | 23.4% | 4.0% | 81.2% | \$35.63 |
| Austin | 931,830 | 19.0% | 8.1% | 35.1% | \$30.94 |
| Houston | 2,296,224 | 22.9% | 23.7% | 43.8% | \$27.49 |
| El Paso | 681,124 | 21.5% | 3.4% | 80.7% | \$27.62 |

Houston³³

Houston, Texas is the most populous city in Texas and the fourth most populous city in the United States. Houston is the county seat of Harris County. Houston is a multicultural city with a large influx of immigrants. There are an estimated 400,000 undocumented immigrants that reside in the Houston area. Blacks account for 25% of Houston’s population and 37.4% of Houston’s population is Latino. In FY 2014, fines, fees, and costs collected from municipal courts in Houston totaled \$63,119,070. The average collections per criminal case in municipal courts was \$73.63.

In Houston, individuals committed to correctional facilities for nonpayment of a fine arising from conviction of misdemeanor in the municipal courts receive a credit of \$15.00 for each day or fraction of each day served (Houston Municipal Code of Ordinances Sec 35-6). In addition to court costs for misdemeanors convicted in municipal courts, Houston courts impose additional discretionary costs including a \$4 technology fee and \$3 security fee (Houston Municipal Code of Ordinances Sec. 16-13, Sec. 16-10; Government Code 102.120, 102.121). For fine-only misdemeanor convictions, Houston charges a \$5 juvenile case manager fee (Houston Municipal Code of Ordinances Sec 16-9; Texas CCP 102.0174). Houston also imposes a \$234 fee for failure to appear for court. Houston allows outstanding legal financial obligations to be transferred to a collections

30 Information about Austin’s municipal courts, including options for payment, alternatives to financial sanctions, and daily court dockets are available on-line at: <https://austintexas.gov/department/municipal-court>.

31 See, for example, Ulloa, Jazmine. 2016. “The Price They Pay: Austin Rethinks Whether to Send Poor People to Jail for Unpaid Traffic Fines they Can’t Afford.” Austin, TX: Austin American Statesman. Available on-line at: <http://specials.mystatesman.com/traffic-fines/>. See also, Office of the City Auditor. 2016. Special Request Report on Alternatives to Incarceration at Municipal Court. Austin, TX. Available on-line at: <http://www.austintexas.gov/sites/default/files/files/Auditor/as16103.pdf>.

32 Demographic data come from estimates of the U.S. Census Bureau. Collections per capita refer to justice and municipal courts combined for the county level and municipal courts only for the city level based on data provided by the Office of Court Administration.

33 Houston has information about Municipal court Fines and Fees Information available on-line at: https://www.houstontx.gov/courts/fine_and_fees.html.

agency which has the authority to assess a 30% surcharge on outstanding balances.

El Paso

El Paso is the county seat of El Paso County. The westernmost city in Texas, El Paso sits across the border from Ciudad Juarez, Mexico. El Paso has a strong federal and military presence with the Beaumont Army Medical Center, Biggs Army Airfield, Fort Bliss Army base, and other agencies. The population of El Paso is 681,124 and it is 80.7% Latino and 3.4% Black. In FY 2014, fines, fees, and costs collected from municipal courts in El Paso totaled \$18,810,676. The average collections per criminal case in municipal courts was \$84.48.

In addition to the \$50 cost for execution and processing of an arrest warrant, El Paso charges \$25 for extending a warrant as a special expense fee (El Paso Municipal Code 2.44.080). El Paso adds a \$3 security fee and a \$4 technology fee to all convictions (El Paso Municipal Code 2.44.090). Any person or agency in El Paso collecting on unpaid accounts may add a one-time collection fee of 21%, which occurs for accounts which have been owed to the city for more than 60 days (El Paso Municipal Code 3.44.010, 3.44.020).

Table 6. Justice and Municipal Collections in Texas and select Counties and Cities, FY2014

| | <u>Total Collections</u> | <u>Cases</u> | <u>Collections Per Case</u> |
|-------------------|--------------------------|--------------|---------------------------------|
| Harris Justice | \$77,292,861 | 450,101 | \$171.72 |
| Harris Municipal | 93,866,294 | 1,051,598 | 89.26 |
| Harris Total | 171,159,155 | 1,501,699 | 113.98 |
| Travis Justice | 18,827,221 | 63,462 | 296.67 |
| Travis Municipal | 33,610,586 | 266,563 | 126.09 |
| Travis Total | 52,437,807 | 330,025 | 158.89 |
| El Paso Justice | 9,505,869 | 71,735 | 132.51 |
| El Paso Municipal | 20,265,948 | 229,766 | 88.20 |
| El Paso Total | 29,771,817 | 301,501 | 98.75 |
| Austin Municipal | 28,829,139 | 196,076 | 147.03 |
| Houston Municipal | 63,119,070 | 857,226 | 73.63 |
| El Paso Municipal | 18,810,676 | 222,653 | 84.48 |
| State Justice | 559,032,003 | 2,376,489 | 235.23 |
| State Municipal | 726,865,296 | 5,569,008 | 130.52 |
| State Total | 1,285,897,299 | 7,945,497 | 161.84 |

Source: Authors calculations from data provided by the Office of Court Administration.

(Table Endnotes)

- 1 District Clerk’s Felony Conviction Court Cost Chart. 2016. Available on-line at: <http://www.txcourts.gov/media/1223917/dc-fel-ct-cst-010116-.pdf>.
- 2 County Clerk’s Misdemeanor Conviction Court Cost Chart. 2016. Available on-line at: <http://www.txcourts.gov/media/1223914/cc-misd-ct-cst-orig-010116-.pdf>.
- 3 Justice Court Convictions Court Cost Chart. 2016. Available on-line at: <http://www.txcourts.gov/media/1223920/j-ct-ct-cst-010116-.pdf>.
- 4 Municipal Court Convictions Court Cost Chart. 2016. Available on-line at: <http://www.txcourts.gov/media/1223923/m-ct-ct-cst-01-01-16-.pdf>.

MONETARY SANCTIONS IN WASHINGTON

Prepared by Alexes Harris, Frank Edwards, April Fernandes, Michelle Majors, and Emmi Obara

Washington has five types of court, with three that handle the daily business of imposing and managing monetary sanctions. Each county in the state has a District Court, which hears cases involving traffic violations, misdemeanors and some civil cases. Many cities and town have established Municipal Courts to handle traffic and misdemeanor cases originating within city limits. Each county in the state also houses a Superior Court, which are the trial courts of general jurisdiction in the state and hear all felony and juvenile cases. Superior, District, and Municipal court judges are elected and serve four-year terms.

Washington allows judges to assess people convicted of felonies a wide range of monetary sanctions. The Washington State legislature has outlined a number of fines that can be sentenced to law breakers (see Table 1). For example, first time drug offenders can be sentenced to up to \$1,000 upon conviction and each subsequent violation they can be sentenced to \$2,000¹.

A number of fees and surcharges associated with felony convictions are mandated by the state's criminal code. Judges are required to impose a victim penalty assessment of \$500, regardless of the type of offense committed, and a \$100 DNA collection fee. Fees may be ordered and sometimes must be paid even in the absence of a conviction². Some optional costs include fees for a public defender ranging from \$450 to actual costs; a fee for requesting a jury of \$125 to \$250; warrant costs of \$100; court costs of \$200; and an annual \$100 collection surcharge. In Washington, monetary sanctions accrue 12 percent annual interest from the time of sentencing until paid in full, with interest accrual paused while a debtor is incarcerated³. If a judge determines that a defendant is able to pay, he or she can be sentenced to pay \$50 per day for incarceration in prison or the actual cost of incarceration for the county jail, up to \$100 a day. A judge may waive the non-mandatory fines, fees, and interest during a sentencing hearing or in a hearing to modify the initial judgment and sentence. Courts have the authority to convert some categories of monetary sanctions into community service, generally at the rate of the state minimum wage. Courts also have the authority to jail debtors if they fail to make payments toward their monetary sanctions⁴.

The types of monetary sanctions that can be levied in Washington State have expanded dramatically in recent years. Inmate surveys reveal a swift rise in the number of people who have been sentenced to monetary sanctions. Twenty-five percent of inmates reported receiving LFOs in 1991, but that number rose to 66 percent in 2004. The increase was the greatest for court fees compared to other types of LFOs⁵.

The expansion of monetary sanctions was made possible because of relatively recent changes to state penal codes, which have added new types of sanctions and modified existing statutes to increase the amounts that can be assessed. In 1977 the legislature stipulated a mandatory victim penalty assessment (VPA) for criminal defendants of \$25 per felony conviction, and over the next twenty years the fee grew from \$25 to \$500 per felony conviction.

1 RCW 69.50.430

2 RCW 10.01.160(1)

3 RCW 19.52.020

4 RCW 9.94B.040(3); RCW 10.01.180 (3)

5 Harris, Evans and Beckett 2010

Table 1. Example Monetary Sanctions in the Revised Code of Washington

| Title | Sanction | RCW | Notes |
|--|--|--------------------|--|
| Penalty for misdemeanor, gross misdemeanor & felony convictions | \$50 fine | RCW 46.64.055 | Cannot be waived, reduced or suspended except under findings of indigence |
| Alcohol & drug violations – mandatory minimums | no less than \$350, no more than \$5000 fine | RCW 46.61.5055 | |
| Alcohol & drug violations, ignition interlock device -- Department of Licensing fee | \$100 fee | RCW 46.20.380 | Division of \$175: 50% to toxicology laboratory & 50% to WA state patrol for enforcement. The remaining \$25 to the highway safety fund, DUI courts, and victim impact panel registries. |
| Alcohol / drug violation + passenger under 16 (first offense) | no less than \$1000 / no more than \$5000 fine | RCW 46.61.5055(6) | |
| Alcohol violations – additional penalty, (RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522) | \$200 fee | RCW 46.61.5054 | |
| Assessment & intake fees for misdemeanor convictions | \$100 / month fee | RCW 9.95.214 | |
| Criminal filing fee | \$200 fee | RCW 36.18.020 | 50% of assessment to prosecutor's victim's fund, remainder to county treasurers. |
| Court-appointed attorney | \$350 fee | RCW 10.101 | |
| Crime lab | \$125 fee | RCW 43.43.690 | |
| Crime victim assessment (adult) | \$250 (misdemeanor); \$500 (felony) surcharge | RCW 7.68.035 | |
| Crime victim assessment (juvenile) | \$75 (misdemeanor); \$100 (felony) surcharge | RCW 7.68.035(1)(b) | |
| Criminal conviction | \$43 fee | RCW 3.62.085 | |
| Deferred prosecution cost | up to \$250 fee | RCW 10.01.160(2) | |
| Mental health treatment | Variable fee | RCW 10.01.160(5) | |
| DNA collection | \$100 fee | RCW 43.43.754 | |
| Domestic violence assessment | \$100 surcharge | RCW 43.43.754 | |
| Ignition interlock device (reckless/negligent driving) | \$20 / month fee | RCW 46.20.720 | In addition to the cost of installing, removing and leasing the interlock device. |
| Incarceration | \$50 / day (prison) \$100 / day (jail) fee | RCW 9.94A.760(2) | |

| | | | |
|---|---|---|---|
| Jury trial | \$125 (6 jurors); \$250 (12 jurors) fee | RCW 10.46.190; RCW 36.18.016(3) | |
| Legal financial obligation collection fee LFO interest | \$100 payment penalty 12% annual payment penalty | RCW 9.94A.780 RCW 10.82.090; RCW 4.56.110(2) | 25% state general fund, 25% to the state treasurer for judicial information system account 25% to the county current expense fund, 25% to the county current expense fund to fund local courts. No interest while incarcerated. Revenue placed into Cost of Supervision fund RCW 72.11.040 |
| Offender supervision intake | \$400 – 600 fee | RCW 9.94A.780(2,3) | |
| Preparation & service of failure to appear warrant cost | up to \$100 fee | RCW 10.01.160(2) | |
| Pretrial supervision cost | up to \$150 fee | RCW 10.01.160(2) | |
| Probation | Maximum \$100 monthly fee | RCW 10.64.120 | Revenues directed to probation services |
| Public safety & education assessment | 70% of base sanction | RCW 3.62.090 | |
| Restitution | Varies surcharge | RCW 9.94A.750(6) / RCW 9.94A.753(6) | |
| Sheriff's services | Variable fees, see Table 3 | RCW 36.18.040 | |

The cost of choosing to have one's case adjudicated by a jury has also increased, in similar fashion. In Washington, defendants are assessed a fee for the use of a jury. Since the inception of the criminal code in 1869, there has been a provision for a jury fee, but no fee was stipulated until 1961, when the criminal code was amended to allow for the assessment of a \$12 jury fee. In 2005 Senate Bill 5454 raised jury fees to the current levels of \$150 and \$250 for a six- or twelve-person jury, respectively⁶.

The expansion of monetary sanctions is also evident in the number of open accounts held by state superior courts. These accounts represent each conviction with sentenced monetary sanctions. An individual can have multiple open accounts if he or she has received multiple convictions. In 2012 Washington had just under half a million court-ordered LFO accounts (483,725), an increase of 33 percent over the number of accounts in 2006 (363,875). In King County, one of the largest counties in Washington, just under 19,000 new LFO accounts are opened annually between 2007 and 2012. In 2012 a total of \$740,716,759 in outstanding legal financial obligations was owed to King County. The average amount owed per account was \$4,713. In the same year, 123,198 people—8 percent of the adult population—owed LFO debt to King County.⁷

Individuals may lose their driving privileges if they do not pay their monetary sanctions for traffic infractions. If an individual does not respond to a traffic infraction within 15 days⁸, the department of licensing will

6 RCW 7.68.035 and 36.18.016

7 Washington Association of County Officials 2012

8 RCW 46.63.060

suspend driving privileges until all penalties and restitution have been paid⁹. If the court determines that a person is unable to fully pay the monetary sanction before one year has passed since the date the penalty became payable, the court will enter into a payment plan with the individual. If a payment under this plan is late, unless the court determines good cause, the court may notify the department of licensing to have the person's driver's license or driving privileges suspended¹⁰.

The right to vote is provisionally restored to individuals with a felony conviction in a Washington state court when he or she is no longer under the authority of the department of corrections. However, there are two ways in which nonpayment of monetary sanctions can result in a loss of voting rights. First, if the court determines that a person has willfully failed to pay, these provisional rights may be revoked. Second, if a person has failed to make three payments in a twelve-month period, the county clerk or restitution recipient may request the prosecutor to seek the revocation of voting rights¹¹. Once revoked, voting rights are not restored until the individual has made a "good faith effort" to pay, meaning the individual has paid the full principal (non-interest) amount, or made at least 15 monthly payments in an 18-month period¹².

LEGAL CHALLENGES

Determinations of good faith and willfulness are tightly linked to conceptualizations of worthiness and accountability. *Washington v. Bower* (1992) attempted to challenge the practice of penalizing people who said that they are unable to pay monetary sanctions. Bower contended that the state could not incarcerate him for his inability to make regular payments toward his LFOs. The Washington Court of Appeals, Division I, determined that, while the state needed to establish noncompliance with the sentencing conditions of the court, it was the defendant's burden to present evidence of his inability to pay and reasons why he should not be sanctioned. Thus, while prosecutors had to prove to courts that debtors missed payments, discretion was left to judges to assess whether or not defendants presented enough evidence that they are too impoverished to make minimum monthly payments.

Washington v. Nason (2010) questioned the constitutionality of incarcerating nonpaying defendants. Nason contended that his county's "auto-jail" policy, which mandated that he report for jail on a specific day and time without a hearing once he failed to make a monthly payment, violated his due process rights. Relying on *Bearden v. Georgia* (1983), the court partly struck down the auto-jail policy, finding that the court did not hold hearings to allow defendants to present their reasons for nonpayment. The court also found, however, that jailing for nonpayment was permissible when the court determined that a defendant had willfully refused to pay.

Washington v. Stone (2012) addressed due process rights in Washington State. The defendant, Mr. James Michael Stone, had been denied a defense attorney in a show cause hearing to determine how willful he was in not paying his LFOs. The Washington Court of Appeals found that the court violated Stone's fundamental due process rights by failing to inquire about his ability to pay and denying him the right to an attorney prior to incarcerating him for willful nonpayment. As it stands, the vast majority of states allow the incarceration of nonpaying defendants. The U.S. Supreme Court and state courts have established the constitutionality of imprisoning debtors if sentencing judges hold hearings to determine the reason for their nonpayment and find that their nonpayment is willful. A recent case, *Washington v. Blazina* (2015), requires judges to explicitly consider defendants' current and future ability to pay non-mandatory monetary sanctions at the time of sentencing, having a potentially large impact on the imposition of monetary sanctions for low-income defendants.

In *Washington v. Diaz-Farias* (2015), the court upheld an earlier decision (*Washington v. Marintorres* (1999)) that non-English speaking defendants should not be responsible for costs associated with a language interpreter, and that such costs violate the equal protection statute. In addition, the State ordered the court

9 RCW 46.20.289
10 RCW 46.63.110
11 RCW 29A.08.520
12 RCW 10.82.090

to evaluate Diaz-Farias' ability to pay the fines and fees in remand.

DEMOGRAPHIC AND LEGAL CHARACTERISTICS OF SELECTED JURISDICTIONS

King County

King County is home to Seattle and many of its suburbs in Western Washington and has the largest population in the state, at nearly 2 million. It has a relatively low poverty rate, with 11.3 percent of the population below the federal poverty line. Its voters lean heavily Democratic, with Republicans capturing less than 30 percent of the presidential vote in 2012. It has a larger African American population than most of the state (though smaller than the national average), a large Asian American population, and a relatively small Latino population¹³. King County is home to a Superior Court and a Juvenile Court in Seattle, a District Court with 8 branches, and 17 Municipal Courts.

King County reported about \$4 million dollars collected of outstanding monetary sanctions in 2012 by the county clerk, or about 2 dollars per county resident¹⁴. King County reported about \$12 million dollars in total revenue collected from legal fines and forfeits in 2012, or about \$6 per resident. These revenues constituted about 0.4 percent of the County's total revenues for 2012.

City of Kent

Kent is a city in South King County, with a population of about 126,000. Relative to the rest of Washington State, Kent has larger than average African American (11.3 percent), Asian American (15.2 percent), and Latino (16.6 percent) populations. Its poverty rate (17.4 percent) is higher than the state average.

Kent is home to a branch of the King County District Court and a Municipal Court. The city reported about \$1.5 million in revenue from criminal justice fines and forfeits in 2012, about 0.9 percent of total city revenues.

City of Des Moines

Des Moines, a city in Southern King County, has a population of about 31,000. It has a relatively large African American population (9.1 percent) compared to the Washington State average (3.6 percent), as well as relatively large Latino (15.2 percent) and Asian American (10.7 percent) populations when compared with the state average. It has a poverty rate (14.4 percent) that is near the state average.

Des Moines is home to a Municipal Court, and within the jurisdiction of the King County Superior and District Court. In 2012, Des Moines reported \$209,000 in revenues from fines and forfeits; about \$7 per resident or 0.9 percent of total City revenues.

Table 2. Characteristics of select Washington jurisdictions

| | Population | Poverty Rate | Percent African American | Percent Latino | Fines and forfeits revenue per capita |
|---------------------|------------|--------------|--------------------------|----------------|---------------------------------------|
| State of Washington | 7170351 | 13.2 | 4.1 | 12.2 | \$20.82 |
| Adams County | 19254 | 19.0 | 0.6 | 62.0 | \$43.30 |
| Benton County | 190309 | 14.6 | 1.3 | 20.4 | \$11.69 |
| Franklin County | 88807 | 17.3 | 2.8 | 51.9 | \$8.93 |
| King County | 2117125 | 11.3 | 6.7 | 9.4 | \$6.15 |
| Snohomish County | 772501 | 9.9 | 3.1 | 9.7 | \$8.93 |
| City of Des Moines | 31011 | 14.4 | 9.1 | 15.2 | \$7.04 |
| City of Everett | 106736 | 18.0 | 4.1 | 14.2 | \$19.81 |
| City of Kent | 125560 | 17.4 | 11.3 | 16.6 | \$15.78 |

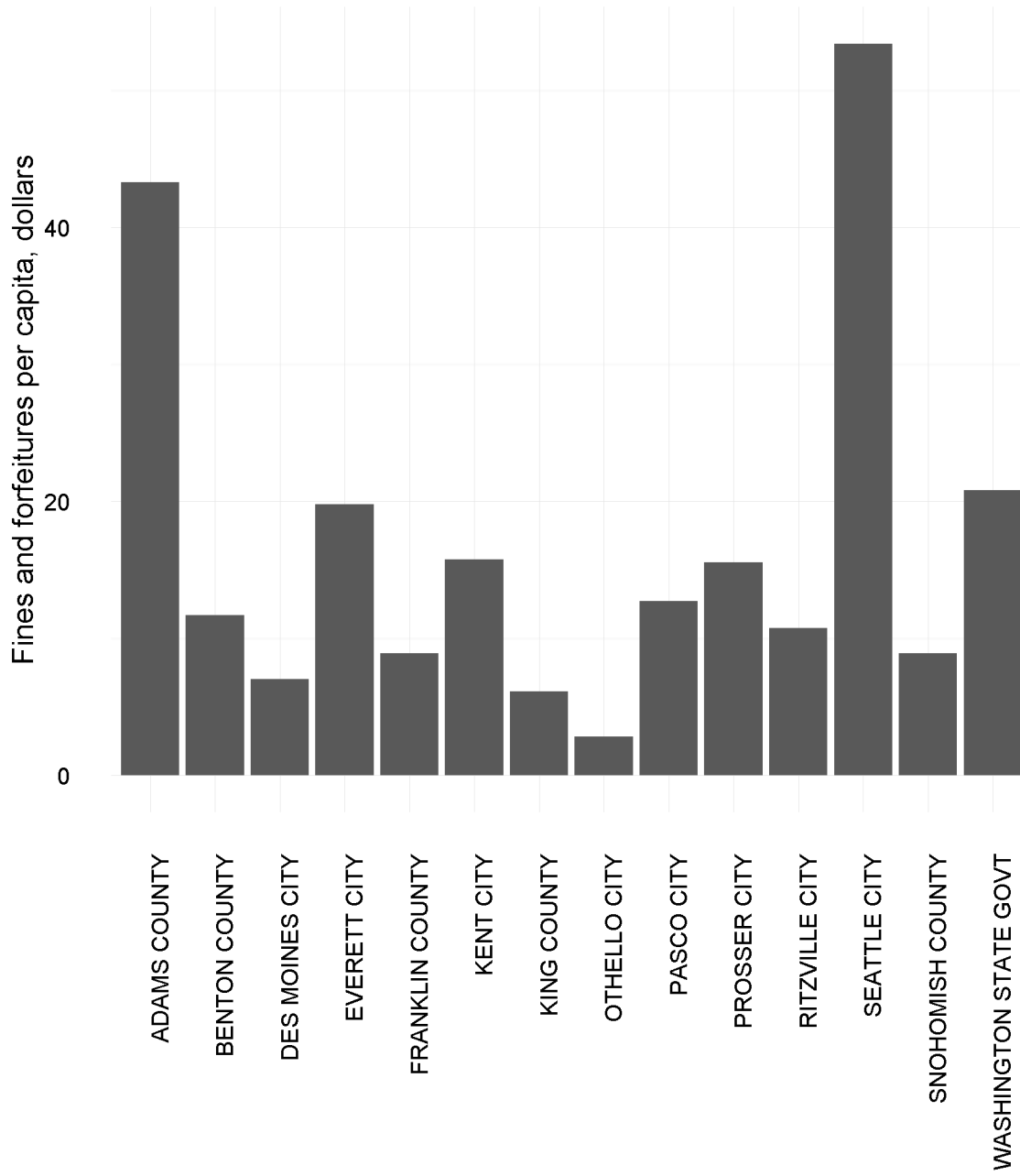
13 U.S. Census Bureau 2014

14 Washington Association of County Officials 2013

| | | | | | |
|-------------------|-------|------|-----|------|---------|
| City of Othello | 7703 | 29.1 | 0.5 | 74.7 | \$2.85 |
| City of Pasco | 68648 | 20.5 | 1.9 | 55.7 | \$12.75 |
| City of Prosser | 5802 | 12.1 | 0.5 | 37.2 | \$15.58 |
| City of Ritzville | 1673 | 16.5 | 0.1 | 5.7 | \$10.76 |

Note: Population, poverty, and population composition data from 2014 American Community Survey 5 year averages, U.S. Census Bureau. Revenue data from 2012 Census of Government Finance, U.S. Census Bureau.

Figure 1. Fines and forfeits revenue per capita in select Washington State jurisdictions, 2012



Note: Data from 2012 Census of Government Finance, United States Census Bureau

Benton County

Benton County in Eastern Washington has a population that is near the state average (178,000) with a conservative electorate, a poverty rate near the state average, and an economy that is heavily reliant on agriculture. Benton's population is approximately 20 percent Latino, and less than 2 percent African American. Benton County has become the subject of a recent ACLU lawsuit for its extraordinary use of LFOs. Benton County increased its rate of collections from LFOs over three fold between 2003 and 2012, and has among the highest rate of collections per LFO in the state¹⁵. In 2012, the Benton County Clerk reported \$3.1 million collected from outstanding monetary sanctions, about \$18 per county resident¹⁶. The County reported about \$2 million in revenues from fines and forfeits for 2012, or about 2 percent of Benton County's total revenue. Unlike other jurisdictions we consider in Washington State, Benton and Franklin share significant infrastructure across counties, including a single superior court for both counties, a single juvenile detention center, and a single public defenders' office. Benton is home to the Benton and Franklin Counties Superior Court located in Kennewick, the Benton Franklin Counties Juvenile Court, also in Kennewick, and the Benton County District Court, with offices in Prosser and Kennewick. The Benton County District Court holds municipal court hearings for all municipalities in Benton County, in addition to the ordinary obligations of Washington District courts.

City of Prosser

Prosser is the county seat of Benton, has a population of around 6,000, with a large Latino population (about 37 percent of city population) and non-Latino White population (about 60 percent of city population). Prosser has a relatively low poverty rate (12.1 percent of city population). Prosser relies primarily on agriculture, and has a large fruit and wine industry.

Municipal violations are handled through the Benton County District and Superior Courts, with specific times set aside for municipal violations on the court schedule. Prosser reported \$89,000 in revenue from fines and forfeits in 2012, about 0.8 percent of total City revenues.

Franklin County

Franklin County in Eastern Washington neighbors Benton County to the north, and contains the county seat of Pasco. Franklin is a small county (population of approximately 82,000) with a large Latino population (51 percent), a small African American population (about 2 percent) and relatively high poverty (17 percent below federal poverty line).

Benton and Franklin counties share a Superior Court, though the Benton Franklin superior court does have a branch at the Franklin County Courthouse in Pasco. This courthouse also houses the Franklin County District Court, and all Municipal Courts in Franklin County.

In 2012, the Franklin County Clerk reported just over \$1 million in collections from debtors with outstanding monetary sanctions (about \$13 per capita), and about \$700,000 in revenue from fines and forfeits. Revenue from fines and forfeits constituted about 1.7 percent of Franklin County's total revenues in 2012.

City of Pasco

Pasco is the county seat of Franklin, and has a population of about 70,000. Latinos make up a majority of Pasco's population (56 percent), with non-Latino Whites making up about 39 percent of the population. About 21 percent of city residents fall below the federal poverty line. Pasco's economy is heavily dependent on agriculture.

Pasco houses a branch of the Benton Franklin Superior and District courts, as well as a Municipal Court within the same Franklin County Courthouse. In 2012, Pasco reported \$762,000 in revenues from fines and forfeits, about 1.2 percent of the City's total revenues, or about \$13 per resident.

Adams County

Adams County is a rural county in southeastern Washington State, with a population of 19,410 residents.

15 ACLU of Washington and Columbia Legal Services 2014

16 Washington Association of County Officials 2012

It contains a superior court, juvenile court and two district courts, one located in Othello and the other in Ritzville. Adams County borders Franklin County to the North. Adams has high poverty (19 percent), high political conservatism (66% Republican presidential vote in 2012), and a large Latino population (60 percent). Othello, its largest city, is 75 percent Latino.

Adams County revenue from small fines and forfeitures (2013) was \$132,415, out of a total county revenue of \$642,664. Revenue from DUI fines and forfeitures was \$111,620. In 2013, the Public Defender's Office handled 838 new criminal cases, 587 revocation cases, 68 new juvenile cases, numerous juvenile review/ placement hearings as well as numerous miscellaneous criminal matters. In 2015, the superior court received a budget of \$218,625 for 2015, \$128,175 for personnel and \$90,450 for operation.

According to a 2015 State Auditor's report, Adams County had \$717,664 in revenue from fines and penalties. The Adams County Clerk reported about \$134,869 in collected monetary sanctions from debtors with outstanding legal financial obligations in 2012.

There is an interlocal agreement (effective 1/1/2004) between the city of Othello and Adams County regarding RCW 39.34.180, which states that the County shall be responsible for the provision of prosecution, adjudication, indigent defense, sentencing and incarceration services for misdemeanor and gross misdemeanor offense. The agreement requires that the city of Othello provide funds for services set forth in the agreement language, including remanding all relevant fines and fees collected by the courts for adults arrested and referred for prosecution for misdemeanants. The city of Othello is also required to provide Adams County with \$50,000 for prosecution services per year. The city also pays \$50 per day for the costs associated with incarceration of Othello misdemeanants.

City of Othello

The city of Othello has a population of 7,631 residents. The total 2015 expenditures for the city are \$19,536,062, with \$5,795,767 in revenues. Law enforcement represents the greatest share of expenditures (49 percent) for the city.

An Adams County State Auditor's report in 2015 showed the Othello District Court received a budget of \$247,662. The number of citations in Othello is low, with 176 criminal, non-traffic violations, 180 criminal traffic violations and 301 traffic infractions in 2014. Othello reported only \$21,000 in revenue from fines and forfeits during 2012, or 0.2 percent of the City's total revenue.

City of Ritzville

Ritzville is the county seat of Adams County, with a population of 1,673 residents. The city of Ritzville contains Adams County Superior Court and the Ritzville District Court.

The total budget for the city of Ritzville (2013) was \$2,431,400.30 with revenue of \$3,108,055.79. According to a State Auditor's report in 2013, the city of Ritzville had \$32,047.26 in revenue from court fines and penalties. An Adams County State Auditor's report in 2015 showed the Ritzville District Court received a budget of \$273,877. Ritzville collected only \$18,000 in revenues from fines and forfeits during 2012, a rate of about \$11 per capita.

ADDED MONETARY SANCTIONS IN COUNTY AND MUNICIPAL CODES

Counties and municipalities have the flexibility to impose additional monetary sanctions in cases that originate in their jurisdictions. Day-to-day practices in courts likely differ substantially from the laws on the books and stated policies. However, state and local laws on-the-books do reveal the boundaries within which local court actors impose monetary sanctions.

Fines and Restitution

Fines for offenses not described in the Revised Code of Washington, or additional fines for offenses included in the RCW are assessed throughout the counties and municipalities in Washington State. These fines ranged from \$100 up to \$5000, based on the nature of the crime and the location of the court. Restitution is also allowed for offenses defined in county and municipal codes in all of the counties and municipalities reviewed in Washington State. Restitution amounts are discretionary based on a judge's assessment. For example, in

Adams County, restitution can range from \$100 to \$2000 depending on the nature and type of conviction.

Fees

In all of the counties and municipalities, user fees are assessed based on the judicial, state and local resources that are accessed in the process of criminal prosecution. For all counties, sheriff’s fees are levied for a variety of services such as the serving of an arrest warrant or a writ of possession. Most services also include mileage charges. The RCW specifies specific charges, however, many of the jurisdictions in Washington State deviate from these specifications. For instance, in Benton County, Sheriff’s fees range from 45 to 100 percent higher than the amounts specified in the RCW. While the RCW specifies a \$30 plus mileage fee for serving an arrest warrant, Benton sets a fee of \$50 plus mileage. For mileage, while the state suggests a rate of \$0.35 per mile, Benton sets a rate of \$0.51 per mile with a \$10 minimum assessment. For serving a writ of possession or restitution with the aid of the county, the RCW specifies \$40, with an additional \$30 per hour plus mileage. However, in Snohomish County, the charge is \$87, with an additional \$67 per hour plus mileage, and in King County, it is a flat \$110 charge, plus roundtrip mileage at \$0.54 per mile. A full comparison of sheriff’s fees relevant to criminal cases is provided in Table 3.

There is a set of fees assessed that cannot be waived or decreased. For instance, all Washington courts charge a criminal filing fee of \$200. For certain offenses, defendants are charged a crime victim assessment fee of \$250 for misdemeanors or \$500 for a gross misdemeanor or felony. If the conviction required the services of a state or local crime lab, the defendant may be assessed a fee between \$100 (Benton and Franklin County) and \$125 (Adams County). If the conviction involves a domestic violence charge, Benton, Franklin and Adams counties assess a \$100 fee. Charges requiring a criminal lab fee range from possession of a controlled substance to burglary and assault. In addition, Franklin and Benton Counties also charge \$125 for a toxicology lab fee. Similarly, defendants are charged a \$100 DNA database fee in order to add their sample to a state database in Benton, Franklin, Adams and Snohomish Counties. In Adams County, all drug-related offenses from possession to sale and distribution are assessed a \$250 fee that provides revenue for the Adams County Drug Fund to drug-related enforcement through the Sheriff’s office. There are also a variety of court fees that are assessed across District, Municipal, and Superior Courts. For instance, in the City of Des Moines (King County) and Benton County, fees are levied for expert witnesses. In Benton and Franklin Counties, \$100 fee is levied for processing bench warrants.

Table 3. Sherriff’s Fees in the RCW and sampled Washington Counties

| Service | RCW | King County | Benton County | Snohomish County | Adams County |
|---|--|---|--|--|--|
| Service of summons, notice, or petition | \$10 for one defendant, \$12 for two or more at same residence, plus mileage | \$53, plus mileage | \$20 for one defendant, \$25 for two or more at same residence, plus mileage | \$30 for one defendant, \$40 for two or more at same residence, plus mileage | \$20 for one defendant, \$25 for two or more at same residence, plus mileage |
| Making a return | \$7, plus mileage | N/A | \$10, plus mileage | \$23, plus mileage | \$10, plus mileage |
| Levying writ of attachment or execution upon property | \$30 per hour, plus mileage | Personal property: \$413, plus mileage. Real property: \$428, plus mileage. | \$50 per hour, plus mileage | \$67 per hour, plus mileage | \$50 per hour, plus mileage |
| Filing a writ of attachment or execution with auditor | \$10, plus auditor’s filing fee | N/A | \$20, plus auditor’s filing fee | \$20, plus auditor’s filing fee | \$20, plus auditor’s filing fee |

| | | | | | |
|---|--|--------------------------------------|---|--|---|
| Serving a writ of possession or restitution without aid of county | \$25, plus mileage | \$110, plus mileage x 2 (round trip) | \$40, plus mileage | \$46, plus mileage | \$40, plus mileage |
| Serving a writ of possession or restitution with aid of county | \$40 plus \$30 per hour after one hour, plus mileage | \$110, plus mileage x 2 (round trip) | \$60 plus \$50 for each hour after one hour, plus mileage | \$87 plus \$67 per hour after one hour, plus mileage | \$60, plus \$50 per hour after one hour, plus mileage |
| Serving arrest warrant | \$30, plus mileage | \$90. | \$50, plus mileage | \$67, plus mileage | \$50, plus mileage |
| Executing any other writ | \$30 per hour, plus mileage | \$130, plus mileage. | \$50 per hour, plus mileage | \$67 per hour, plus mileage | \$50 per hour, plus mileage |
| Mileage | \$0.35 per mile | \$0.54 per mile | \$10 minimum, or \$0.51 per mile | \$10 minimum, or \$0.50 per mile | \$10 minimum, or \$0.50 per mile |

Payment penalties

District, Municipal, and Superior courts assess a range of surcharges, interest charges, collections fees and other sanctions that only impact those unable or unwilling to pay sanctions immediately and in full.

Court process surcharges and fees

All jurisdictions reviewed offer indigent counsel for those who cannot afford to retain the services of an attorney. However, jurisdictions such as Snohomish and Benton Counties assess a screening fee for indigent defense. Adams County charges \$350 for a court-appointed attorney. In all jurisdictions reviewed, an annual clerk’s collection fee of \$100 was assessed for adult and juvenile cases adjudicated by the court. In the cities of Prosser (Benton County) and Pasco (Franklin County), penalties are charged failure to appear in court, with a maximum penalty of \$5,000 and/or 364 days incarceration. The city of Pasco also charges a \$52 penalty for non-payment of traffic violations, and may suspend the defendant’s driver’s license if the debtor fails to make payments.

Deferments

The cities of Ritzville (Adams) and Everett (Snohomish) and Snohomish County detail deferment programs that allow for prosecution to be waived when fees are paid. Snohomish runs a “therapeutic alternatives to prosecution” program that charges a set of user fees in exchange for deferred prosecution. The program requires a \$300 evaluation fee, a \$150 signing fee, and a \$50 per month user fee. The payments may be waived or deferred after consideration by a fee advisory committee. In the city of Ritzville (Adams County), defendants cited with a traffic violation can pay \$150, for the first offense, to defer a traffic violation. A fee of \$50 is assessed for each additional violation. If defendant does not comply with terms of deferral, their case will be remanded to the Department of Licensing for possible license suspension. The municipal court also offers deferred prosecution for drug and alcohol addiction and/or mental health concerns. Deferred prosecution requires defendant’s payment for treatment.

Incarceration

Many of the jurisdictions in Washington State assess a detention cost based on specifications in the RCW. However, these costs vary depending on location. In Benton and Franklin Counties, the charge is \$100 per day, while in Adams, it is a fee of \$150 per day. The city of Kent charges \$92 per day. Snohomish County, however, operates on a sliding scale (\$0 - \$50 per day) for those convicted of a DUI. Snohomish County charges room and board fees for work release programs, with a minimum charge of \$10 and a maximum charge of \$50.

Alternatives to incarceration are also subject to surcharges. The counties of Adams and Snohomish and the city of Kent allow for electronic home monitoring (EHM) to serve in place of detention. However, the charges

for electronic home monitoring are often prohibitive for indigent defendants. For instance, Snohomish County charges daily fees for EHM in addition to a deposit. Community service provisions are also available in the city of Prosser (Benton County) and Pasco (Franklin County), Franklin County and Snohomish County. Franklin County allows courts to order community service for defendants unable to pay, and assesses the rate at the state minimum wage for each hour of community service. Snohomish County charges \$10 per month for community service participation.

Payments & Collections

All jurisdictions listed used a private payment service to collect revenue from fines, fees and surcharges. Benton County and Snohomish County and the city of Pasco (Franklin County) use nCourt, which charges a 4-7% service and processing fee, while Franklin County, Adams County, Everett, Ritzville, and Othello use Official Payments Corporation, which charges a 4% convenience fee for each payment. The city of Des Moines uses the services of Paymentus.

The RCW allows for the use of private collections agencies when debt is owed. These private collections agencies often levy interest and collections fees in addition to those assessed by the court. For instance, in the city of Ritzville (Adams County), Local Government Rule (LGR) 12 states that failure to pay will result in the debt being turned over to a private collection agency. It allows for the addition of the collection agency's charges and surcharges to be added to the outstanding balance. In addition, LGR 12 states that the District Court has the right to notify the Department of Licensing for failure to pay fines, fees, restitution and forfeiture balances.

Adams County, the cities of Des Moines (King County), Kent (King County), Ritzville and Othello (Adams County) use AllianceOne, while the city of Everett (Snohomish County) employs Signal Management Services to handle the collections of fines and fees. Signal Management Services charges a one-time setup fee of \$15, \$4.75 per month for one case, and \$8.25 per month for more than one case. If the account is past due, the monthly fee increases to \$7.75 for one case and \$11.25 for multiple cases, including an unspecified interest amount.

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