REDUCING FINES AND FEES IN COUNTY JUSTICE SYSTEMS

In counties nationwide, financial obligations are placed on individuals as part of their involvement in the local justice system, from a citation issued in lieu of arrest to costs associated with court-mandated treatment after release. While these financial penalties often appear to be minor, in reality, they can place a major—sometimes insurmountable—burden on the people on whom they are assessed. This brief will detail how fines and fees are typically used in county justice systems, identify reasons for which these financial penalties may be more harmful than helpful and highlight successful alternative strategies being implemented in communities across the country.

What are Fines and Fees?

The term "fines and fees" generally includes financial obligations placed on an individual during the course of his or her involvement with the criminal justice system. These can include:

- Offense-related fines, such as a ticket for a parking violation or minor traffic offense
- Fees related to criminal justice costs, such as payment for a day in jail or for the use of a public defender
- Fines imposed as a penalty for conviction
- Collection costs, interest or other penalties that accrue on late or missed payments of a fine or fee

Why Are Fines and Fees an Issue for Counties?

Criminal justice fines and fees were developed to help cover growing costs to local criminal justice systems for court services and supervision. Counties spent almost $93 billion on justice and public safety services in 2016, creating a heavy burden on county budgets. While intended as a revenue maker, in practice, very little revenue is actually raised from such debts. The Brookings Institute reported in 2019 that the average county only raises enough revenue through collection of fines and fees to cover 7 percent of its police and judicial expenditures.[1]

One of the reasons why this revenue source hasn't worked as intended is low collection rates. For example, the collection rates

Low collection rates combined with high costs of collections mean that the cost to taxpayers is often far greater than the money that could be collected from criminal justice fines and fees.

for legal financial obligations in Alabama's largest counties are only around 25 percent.[2] In Florida, performance standards for court clerks assume that only 9 percent of fees imposed in felony cases will be collected.[3] And in California, research found that counties can often spend more to collect fees than they bring in.[4]

People who come into contact with the justice system are disproportionately low-income and all too often accumulate debt from fines and fees that they are unable to pay. One study found that the median income for individuals who are incarcerated is less than $2,000 per month.[5] As unpaid criminal justice debt starts to accumulate and additional amounts such as late fees or collections fees get added in, criminal justice debt can quickly reach levels that an individual is unlikely to ever be able to pay, and many times courts issue warrants for unpaid fines and fees. These warrants, in turn, can lead to jail time, which is both expensive to the county and harmful to the individual. In North Carolina, for example, one study found that counties spent an average of $1,159 to jail someone for average outstanding court debts of $525.[6] Another study reported that Los Angeles County spent $3.9 million to collect $3.4 million in probation fees—resulting in a loss of $500,000.[7] In some counties, upwards of 20 percent (and sometimes as many as 50 percent) of people in jail are there related to failures to pay fines.[8, 9]

In addition to the direct consequences of imposing high fines and fees, collateral consequences can also have harmful impacts on individuals and the community. These collateral consequences can include drivers' license suspensions, which make it difficult for individuals to find or continue employment or to comply with court-ordered treatment or other appointments. If a missed or late payment results in a probation or parole violation, an individual can be disqualified under federal law from receiving Temporary Assistance to Needy Families (TANF), housing assistance and Supplemental Security Income (SSI) for people who are elderly or disabled.[10] These consequences can be particularly harmful for low-income individuals, keeping them in a revolving cycle of debt and incarceration that is difficult to ever overcome.

Jailing individuals for failure to pay fines and fees may also be in conflict with Supreme Court holdings. In the 1971 case of Tate v. Short, the Supreme Court ruled that it is unconstitutional to convert an individual's fine to a jail term if that person is unable to afford payment, and that courts cannot revoke probation for failure to pay a fine without first making an inquiry into facts that demonstrate the defendant had the ability to pay, willfully refused to pay and had access to adequate alternatives to jail for non-payment.[11] As such, courts criminalizing non-payment of fees may be in violation of the constitution, as these fees were not intended to be punitive, but administrative to cover criminal justice costs accrued by the jurisdiction.

What Can Counties Do to Effectively Address Fines and Fees?

Counties can implement a number of policies and programs that hold people accountable for minor infractions while also protecting public safety and improving outcomes.

- ***Institute Ability-to-Pay Determinations.*** Inquiring about a person's capacity to pay a financial obligation can prevent many of the issues detailed in this brief and ensure that some level of payment is received. Courts can develop quick, standardized questions to ask individuals to determine their ability to pay, or can adopt a "presumption of indigence" for individuals whose income is at or below a certain threshold.

- ***Create Caps on Payment.*** Once an individual's ability to pay has been established, leaders can reduce penalties by a flat amount or by using a sliding or graduated scale. In Maricopa County, Ariz., individuals who received graduated sanctions paid more than those with ungraduated sanctions and paid their debts more quickly.[12]

- ***Allow Flexible Payment Plans or Create Other Mechanisms to Pay Off Debts.*** Many jurisdictions charge an additional fee for a person's use of a payment plan to pay off their debts; these extra fees only compound the likelihood that a person will not be able to afford his or her obligations and that debt will accrue rather than be paid to the county. Reasonable and affordable payment plans can be set up at sentencing or if/when an individual encounters difficulty paying and monetary alternatives such as community service can be made available for those with limited income.

- ***Eliminate Fees Related to Criminal Justice System Involvement.*** The American Bar Association recommends that individuals should not be ordered to pay public defender fees they cannot afford, but 43 states and the District of Columbia allow courts to charge for the use of a public defender.[13] These fees can prevent a person from utilizing a public defender, which has been shown to result in higher rates of conviction and longer sentences—both of which come at a higher cost to counties and worse outcomes for individuals and communities.[14] In recognition of the burden criminal justice fees pose to individuals and the low recovery rate of these fees for the county, San Francisco City and County became the first in the country to eliminate all of its locally authorized and controlled fees and as well as all the outstanding debt from these fees ($32 million owed by 21,000 people). Following its neighbors, Alameda County leaders from the public defender's office, probation department and sheriff's office worked with the county auditor-treasurer's office, county administrative office and county board of supervisors to find alternative sources of funding to replace the county's financial reliance on public defender and probation fees. In January 2019, this collaborative effort resulted in the county eliminating all adult fees, including wiping out all outstanding fee balances of current and former county criminal justice clients.[15]

- ***Prohibit Warrants and Jail Time for Unpaid Fees.*** As discussed previously, issuing warrants and sentencing people to jail time for unpaid fees creates a burden on counties in terms of jail costs, does not result in the person paying the fees and negatively impacts individuals. Leon County, Fla., closed its collections court in 2010 and terminated approximately 8,000 outstanding arrest warrants, leading jailing an estimated 800 fewer people per year for criminal justice debt. This saved the county, and individuals, 20,000 hours of jail time.[16]

- ***Adopt Practices that Can Help Minimize Failures to Pay or Appear in Court.*** Some of the most common reasons why people charged with low-level offenses end up in jail are failure to pay a fine or failure to appear in court. Reminders such as a postcard, phone call or text message about a court obligation are low-cost and effective ways to increase appearances and payments. When Jefferson County, Colo., realized that 33 percent of people in its jail were there for failing to comply with court orders such as court appearance, paying fines and fees or violating conditions of release, the Criminal Justice Coordinating Committee implemented a pilot project to call individuals seven days before a scheduled court appearance. The court appearance rate for defendants who were successfully contacted was 92 percent, compared to an appearance rate of 73 percent for those who were not.[17] Pima County, Ariz., offers night court hours regularly to accommate different schedules and improve appearance rates. At these courts, individuals can quash warrants, reinstate driver's licenses, schedule new court dates, make payments and create payment plans.[18]

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