

Fees, Fines, and the Funding of Public Services

A Curriculum for Reform

Arthur Liman Center for Public Interest Law Yale Law School

Criminal Justice Policy Program Harvard Law School

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Policy Advocacy Clinic UC Berkeley School of Law

AUGUST 2020

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Focusing on Economic Sanctions

Since 2018, the Liman Center at Yale Law School and Harvard Law School's Criminal Justice Policy Program (CJPP), in partnership with the Fines & Fees Justice Center and the Berkeley Law Policy Advocacy Clinic, have collaborated to mitigate the problems faced by people of limited means and resources who interact with criminal punishment systems around the United States. Through a series of workshops and materials, we have examined how law has enabled and, on occasion, limited these harms, experienced disproportionately by communities of color.

Budget pressures are part of what drives state and local governments to rely on monetary sanctions. Reform efforts have, at times, been stymied by arguments that governments "need" the money generated by regressive fines and fees. In 2008, during and after the Great Recession, state and local governments responded to sudden budget pressures by searching for new streams of revenues—including from a host of legal assessments. Given that experience, we know that the economic disruptions created by the current COVID-19 crisis will likely result in governments' considering additional use of monetary sanctions and "user" fee financing to generate revenue. The current economic constraints place strains on subnational budgets even more acute than those experienced a dozen years ago. Thus, we fear that governments may scale up the imposition and the enforcement of monetary sanctions. More tools are needed to resist these efforts, as the economic effects of the pandemic will frame the years to come.

Knowledge of subnational systems of taxing and budgeting and of fiscal policymaking processes can be put to use to reduce and to end governments' reliance on user fees for courts and for other aspects of criminal systems. This reader aims to help experts in public finance to understand the misuse of court-based assessments which are regressive revenue streams. Subsequent volumes will provide a primer on public finance for people knowledgeable about the law and practices of unfair monetary sanctions through an overview of how money is collected and allocated at the state and local level. These materials interact with ongoing seminars, sometimes virtual, to link people expert in public finance with their counterparts seeking to reform unfair monetary sanctions.

Through monographs such as this, we hope to support work underway to shape just and equitable revenue-generation mechanisms that avoid imposing harmful costs on vulnerable individuals, families, and communities. This is the third volume in this series. See ARTHUR LIMAN CENTER FOR PUBLIC INTEREST LAW, WHO PAYS? FINES, FEES, BAIL, AND THE COST OF COURTS (2018) ([link](#)), ARTHUR LIMAN CENTER FOR PUBLIC INTEREST LAW, ABILITY TO PAY ([link](#)). See also *Inability to Pay: Court Debt Circa 2020*, N.C. L. REV. ([link](#)).

We should note that, to be concise, we have provided just a snapshot of a rich literature. In the few essays excerpted here, we have cut sections and references, and we provide the original publication information to enable easy access to the originals. This project is made possible by support from Yale Law School, the Liman Center, and Arnold Ventures. Our hope is that through these many efforts, fairer and more just practices will result.

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All contributions were reprinted with permission.

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- 11 Mike Maciag, *Addicted to Fines*, GOVERNING (Sept. 2019)**
This report focuses on revenues generated by fines and on the reliance by local governments on these revenue streams to fund their budgets. Focusing on traffic citations, Maciag explains that fines represent a disproportionate share of revenues for small cities and towns, particularly in rural parts of the South. He makes connections between these trends and the deterioration of local tax bases—through property tax limitations, homestead exemptions, lack of taxable commerce in rural communities, and a decline in state funding. Maciag also addresses the ways in which cities can respond to evade legislative reforms through budgetary workarounds.
- 19 Karin D. Martin, *Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors*, 29 CRIM. JUST. POL’Y REV. 630 (May 2018)**
This study assesses the use of fines and fees for misdemeanor crimes in Nevada and Iowa; the sections included highlight the perverse incentives embedded in the practice of relying on courts as revenue centers. Martin proposes the concept of “monetary myopia”—a short-sighted focus on revenue at the expense of other concerns—as one explanation of states’ choices.
- 25 Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFF. REV. 5 (2020)**
This study considers whether law enforcement participation in revenue collection affects the ability of police departments to solve violent crime. The authors identify a statistically significant correlation between revenue collection by police departments and a failure to find the people who commit violent crimes. This excerpt also provides a summary of the social science literature on how revenue pressures affect various aspects of local government policy.
- 29 Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POL. 1090 (2017)**
Race is of course central to the discussion of fiscal policy. This study examines use of fines and court fees for local revenue by exploring the relationship to political representation. The authors use Census data drawn from more than 9,000 cities to show that the use of fines as revenue is robustly related to the share of city residents who are Black, and that this relationship is mediated by political representation on city councils.

33 U.S. Department of Justice, Civil Rights Division, Investigation of the Ferguson Police Department (Mar. 2015)

We included this excerpt from the well-known Ferguson Report for two reasons. First, this investigation—referenced in each of the other readings—is widely credited with catalyzing public attention on the issue of fines and fees in the criminal punishment system. Second, this report provides a “behind the curtains” glimpse into how monetary pressures motivated city budget officials in one jurisdiction. The city budgeted 23 percent of its revenue from fines and fees and evaluated the performance of criminal justice actors based on the amount of revenue they produced.

41 Tracy Gordon & Sarah Gault, *Ferguson City Finances: Not the New Normal*, URB. WIRE (Apr. 7, 2015)

This blog post, written shortly after the publication of the U.S. Department of Justice’s Ferguson report, provides data about whether Ferguson’s reliance on revenues from fines and fees was out of step with budgets in comparably sized U.S. jurisdictions. These data are key to discussions of local fiscal pressures.

43 The White House, Council of Economic Advisers Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor* (Dec. 2015)

We include this excerpt for its helpful overview of some of the social science literature that was available by 2015. At this point, the relationship between budget shortfalls and ticket citations had been documented. This briefing both tracks the spread of monetary sanctions in response to budget pressures and also discusses the question of whether fines and fees are an “efficient” method of raising revenue.

49 Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen & Noah Atchison, *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties*, BRENNAN CTR. JUST. (Nov. 21, 2019)

We conclude this packet with a 2019 study that examines the fiscal policies of 10 counties across Texas, Florida, and New Mexico, as well as statewide data for those states. The study documents the high costs of collection and enforcement. The excerpted sections provide a deeper look into the revenue and budget practices in these jurisdictions. For those who enjoy budget spreadsheets, a number are presented here. The authors conclude that criminal-court fees and fines fail at efficiently raising revenue.

63 Information about authors of excerpted articles, editor, and contributors

A Proposal to End Regressive Taxation through Law Enforcement (March 2019)

**Michael Makowsky
HAMILTON PROJECT**

Following the 2014 shooting death of Michael Brown, the U.S. Department of Justice conducted an investigation of the Ferguson (Missouri) Police Department. The resulting report details how local government directed law enforcement to support its budget, explicitly shifting police objectives away from public safety or criminal deterrence and toward revenue generation. “City officials routinely urge Chief Jackson to generate more revenue through enforcement. . . . The importance of focusing on revenue generation is communicated to FPD [Ferguson Police Department] officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership.” The report also summarizes how these fiscal motivations led to very different racial impacts: “[The Ferguson Police Department] appears to bring certain offenses almost exclusively against African Americans. For example, from 2011 to 2013, African Americans accounted for 95 percent of Manner of Walking in Roadway charges, and 94 percent of all Failure to Comply charges. . . . Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law.”

The tragedy of a young man’s death brought attention to the specific targeting of African Americans for financial expropriation by the Ferguson police, but the fiscal landscape over which it occurred is common across many U.S. towns and counties. Local governments have had to cope with the fiscal strains of weakened property tax bases, uncertain state transfers, and growing legacy costs of pensions and other obligations, often while operating under state-level constitutional tax limits. It should come as little surprise that governments in distress found some fiscal relief in the revenue generated by traffic tickets, fines, adjudication fees, and in the property seized on the front lines of the drug war. This has all occurred within a criminal justice system that has evolved to minimize resistance to imposed penalties. What has emerged from the confluence of political, legal, and economic forces within local government are police officers directed to execute their duties in a manner that maximizes the revenue generated.

Research has demonstrated that the political economy of law enforcement—the need to raise revenue through the criminal justice system—exacerbates racial bias and the expropriation of wealth from politically vulnerable subpopulations through the criminal justice system. These findings have a silver lining, however: The observed distortions in law enforcement are caused by narrowly identifiable incentives for revenue-motivated police discretion that can be undone and, furthermore, can be reconstructed to the benefit of both communities and the officers who serve them.

Local government budgets consistently face fiscal vulnerability and uncertainty far greater than their federal and state counterparts. Tax bases are more mobile and credit markets tighter, and there is no emergency fiscal escape via inflation. If the prospect of constituents voting with their feet was not threat enough to prevent regular raises in taxes, states have far more frequently tied themselves and their constituent local governments to the fiscal mast, constitutionally committing to tax and expenditure limits that leave local bureaucrats with little in the way of budgetary slack when planning for and accommodating the vicissitudes of the business cycle. It should come as little surprise that when taxes cannot be raised and reduction of expenditures is both politically costly and institutionally

difficult, elected officials and agents of the bureaucracy will seek out new and unconstrained sources of revenue to bolster budgets and insulate them against the next rainy day.

The composition of local revenues has transformed since the Tax Revolt of the early 1980s. While the federal government has responded to anti-tax pressures with increases in deficit spending, local and state governments do not enjoy the same access to inexpensive and plentiful credit. Instead, state and municipal governments have found themselves managing portfolios of nontax revenue sources within which fines, fees, and the proceeds of forfeited property make up ever-increasing portions. While these alternative revenue sources may offer local officials the welcome relief of a balanced budget, they also squarely place the men and women of law enforcement in a new role: that of revenue collector.

DATA ON FINES AND FORFEITURES

In 1977 the U.S. Census Bureau's Census of Governments began asking local governments to separately report revenues from fines and forfeited property. The average fine and forfeiture revenues per capita for local governments steadily increased between 1977 and 2005 (see figure 1 for revenue trends of the upper half of the distribution of governments). In 2005 the Census of Governments noticed that local officials were often including fine and forfeiture revenue as "miscellaneous revenue" and asked that officials identify it separately under its own header. This reclassification effort corresponded with extending record collection to counties with smaller populations, resulting in a precipitous increase in reported fine and forfeiture revenues for the highest percentiles (i.e., the jurisdictions collecting the most fine and forfeiture revenues).

In 2012 county fine and forfeiture revenues were equivalent to 15 percent of all law enforcement operating expenses (as opposed to total revenues, the denominator in figure 1b). In one out of every ten police departments these revenues accounted for nearly one-third (32 percent) of operating expenses. In roughly 1 percent of counties fines and forfeitures nearly covered the entire budget, accounting for 90 percent or more of all law enforcement operating expenditures. These numbers include all fines and penalties, as well as conviction-contingent fees. They do not, as prescribed (see endnote 3), include the yield from confiscated property sales, processing fees, and supervision or incarceration fees, which are often far greater than the principal fines. [A 2007 study by Katherine] Baicker and [Mireille] Jacobson estimate[d] that U.S. Department of Justice and state seizures amount to roughly \$3 per capita on average (with a standard deviation of \$5). Including such revenues, it is likely that significant number of local governments employ a police department that generates revenues in excess of costs. For this minority of local governments, law enforcement has become a source of revenue that local governments depend on for fiscal solvency.

FIGURE 1A.
Per Capita Fine and Forfeiture Revenues,
1977–2012

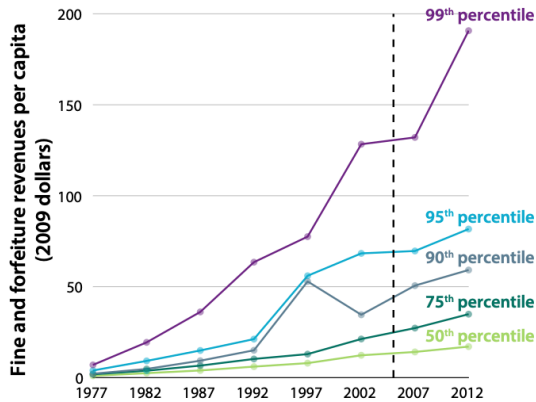
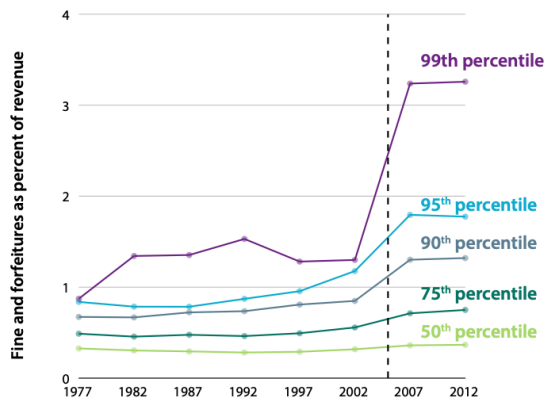


FIGURE 1B.
Fine and Forfeiture Share of Total Revenues,
1977–2012



Source: Census of Governments, U.S. Census Bureau (Census) 1977–2012; author’s calculations.
 Note: In 2005 the Census of Governments revised the classification manual, which for some local districts moved fine and forfeiture revenues from residual categories (e.g., from miscellaneous revenues). This did not have a significant impact on the median county but appears to have motivated many local governments above the 90th percentile to recategorize revenues as fines and forfeitures. This revision coincided with the expansion of the Census of Governments to smaller counties, generally those with populations less than 250,000. The dotted black line indicates when these changes took place. Percentile bins are recalculated in each year.



HOW LAW ENFORCEMENT GENERATES REVENUE: FINES, FEES, AND SEIZURES

Municipalities can use the criminal justice system in a variety of ways to raise revenue. In Chicago, traffic tickets make up more than 7 percent of the city’s total revenues. Municipal courts in Arizona generated \$167 million in 2016, roughly half of all criminal justice revenues, despite accounting for only 13 percent of the cost of running the state’s court. In the state of Washington, the median conviction in 2004 resulted in \$1,110 of assessed fines and fees.

Similar to the fine and forfeiture revenues presented in figure 1, the broader revenues from the criminal justice system are not uniform across jurisdictions. The financial burden of conviction in Washington State varies tremendously across counties, with local medians ranging from \$600 to \$7,049. Examining this variation, [Katherine] Beckett, [Alexes M.] Harris, and [Heather] Evans found that comparable individuals, committing identical infractions, could incur ten-fold differences in fines and fees incurred across counties.

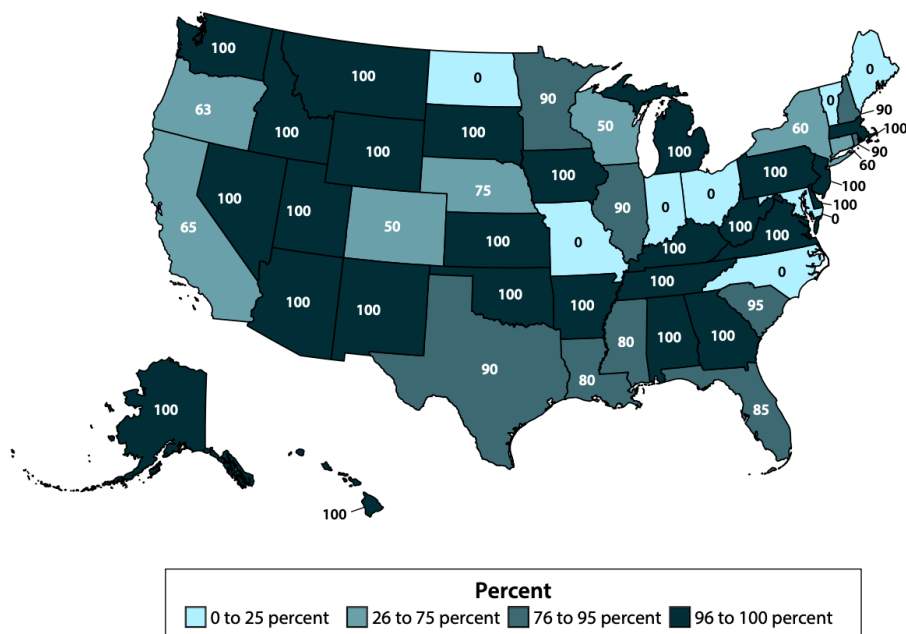
Today there is scarcely an arrest made that does not directly generate some amount of revenue, be it through fines, fees, or the seizing of property. Traffic citations, perhaps the most frequently discussed example in modern revenue-generating law enforcement, are the predominant source of fines, but felony and misdemeanor crimes generate fines as well. In 2009 36 percent of all non-incarcerated drug offenders and 19 percent of property crime offenders were fined, typically with community service or treatment conditions attached.

Like most revenue-generating offenses, however, traffic citations are more an exercise in the collection of fees than the imposing of fines. While fines are monetary punishments intended to deter crime and punish offenders, fees serve, in theory, to defray the costs of the criminal justice system. Fees, however, have outpaced fines in their growth, particularly following the 2008–9 recession.

When coupled with increasing rates of guilty pleas and out-of-court settlements, court and processing fees offer an opportunity for revenues that exceed costs. A random sample of felony defendants in Washington State in 2004 found that 66 percent of prisoners and 84 percent of felony defendants had been assessed criminal justice fees, amounting to an average of \$2,540 per offense. Arrestees typically find themselves facing a bundle of fees, such as DNA database, clerk’s, crime lab, and supervision fees. In addition, there are court costs in the event of a guilty verdict. Defendants may also have to pay a fee for public counsel. The Supreme Court case *Gideon v. Wainwright*, 372 U.S. 335 (1963) acknowledged a constitutional right to counsel—“If you cannot afford an attorney, one will be appointed to you”—but not a right to *free* counsel. Every state and the federal government have recoupment statutes that impose fees or post-trial liens on those defendants who use their constitutional right to an attorney. Courts may assess fees for time spent and services received in jail.

While all arrests stand to generate revenue for the local governing body, some arrests are potentially more lucrative than others. Civil asset forfeiture is a significant and growing source of revenue from law enforcement. Under current civil asset forfeiture doctrine, police can seize property on the suspicion that it is connected to a crime. Once property has been seized, prosecutors can bring a civil case against the property rather than against the owner. Police can keep 100 percent of the value of any seized cash or property in 26 states, and at least 50 percent in an additional 16 states (see figure 2). Police departments particularly value funds from seizures because there is little oversight of their allocation. In eight states, including Maryland and Ohio, seized cash and the receipts from the sale of seized property are allocated to the state’s general fund rather than to law enforcement agencies.

FIGURE 2.
Percentage of Forfeited Property Proceeds Retained by Local Arresting Agency



Source: Holcomb, Kovandzic, and Williams 2011.
 Note: Includes any percentage of funds required to be allocated to prosecutors and district attorneys. Excludes funds allocated to programs such as drug treatment programs, court expenses, and drug education programs. See Holcomb, Kovandzic, and Williams (2011) for more details.



THE CHALLENGE

Consider, for a moment, the incentives facing elected local government leaders and the law enforcement administrators they appoint. Traditional taxes are often constitutionally constrained, usually politically costly, and always subject to the vicissitudes of the business cycle. Revenues from law enforcement, on the other hand, are unconstrained by tax limits, are paid by individuals who may or may not be voting constituents, and are roughly constant throughout the business cycle, if not countercyclical. Police chiefs and commissioners appointed to oversee law enforcement have every reason to be keenly aware of the revenues they are collecting. Every dollar generated via law enforcement is both an implicit subsidy of the police budget and a shift toward dependence on law enforcement for fiscal solvency.

This alignment of incentives toward revenue-motivated law enforcement, of course, requires the opportunity for increasing arrests and citations. Arrests in response to crimes such as homicide, armed robbery, or burglary can only be made when victims, or those related to victims, report an incident; in other words, these arrests are constrained by the number of reported incidents. Police can increase their attentiveness to reported incidents but would be hard-pressed to produce more reported crimes. There is a ceiling to how many revenue-yielding arrests even the most aggressive department can generate from policing such crimes.

So-called victimless crimes and infractions, such as drug possession, prostitution, jaywalking, or everyday traffic violations, are much more amenable to officer choices and discretion; they require little or no cooperation on the part of the community. Furthermore, the laws prohibiting many activities are often out of alignment with social norms that are far more permissive. Driving above the speed limit, possessing recreational marijuana, jaywalking, and engaging in prostitution are examples of offenses whose rates of transgression in the population are far higher than victim-reported crimes. The pool of potential violators is likely greater than the arrest and citation capacity of police (i.e., there is no binding ceiling on police action). The arrest totals for victimless crimes are to a large extent under the control of law enforcement, subject to the deployment of personnel and the personal strictness of individual officers. It is in this choice of how to pursue perpetrators of victimless crimes that we see the direct distortionary effects of revenue incentives.

The distortion in how officers apply their discretion in the day-to-day execution of their duties is demonstrable. Budgetary shortfalls have been connected to larger numbers of speeding tickets; stricter officers and larger fines; increased arrests for drug crimes, DUI, and prostitution; and higher rates of property seizure. This distortion of law enforcement is self-reinforcing because local governments and their police departments become dependent on these revenues. Law enforcement is no longer just providing a public good, but is now also a tax collection mechanism. . . .

A REGRESSIVE TAX

Most tax institutions in the United States are progressive (e.g., income, estate) or flat (e.g., sales, property). Some taxes, while flat in application, are effectively regressive due to their disproportionate impact on low-income individuals, such as tobacco taxes or tariffs on lower-priced goods. There is likely no tax institution in the United States, however, that is as steeply regressive as revenue extracted via law enforcement. This is due in part to the fact that low-income adults and youths from low-income households are more likely to be arrested and incarcerated. In their [2018] study of bail assignment for 420,000 arrestees in Miami and Philadelphia, [Will] Dobbie, [Jacob] Goldin, and

[Crystal S.] Yang observed that the average felony defendant had earned less than \$7,000 in the year prior to their arrest.

The criminal justice tax becomes more regressive when one considers the financial barriers to paying up front, mounting an effective legal challenge, or negotiating a reduced sentence. Californians who cannot afford to mail in immediate payment for a traffic citation face far harsher consequences including license suspension, arrest, jail, wage garnishment, and vehicle seizure, all for the same minor underlying offenses. Arrestees lacking the resources to hire private legal representation are convicted at higher rates and incur harsher penalties, including larger financial penalties. For both guilty and nonguilty decisions, defendants who rely on assigned counsel face penalties double the size of those with private representation. Even without adjusting for defendant differences (aside from types of convictions), [Amanda] Agan, [Matthew] Freedman, and [Emily] Owens, [in a 2018 study,] find that defendants without privately hired representation pay 26 percent larger fines. Arrests in which property is seized are especially attractive as sources of revenue, in part because they are costly for an arrestee to defend against and the burden of proof is often on the defendant in order to retrieve their property. The cost of challenging a forfeiture case is sufficiently high that most go unchallenged. Awaiting trial in jail is costly, bail can be prohibitive, and the price of hiring effective legal representation is beyond the reach of many. For many low-income arrestees, the optimal response is a foregone conclusion: enter a guilty plea. This pathway from arrest to guilt, from a fiscal perspective, is a picture of grim efficiency.

Punitive law enforcement is an institution particularly suited to use as a system of regressive taxation. The targets of law enforcement are often from subsets of the population that are unable to offer electoral retribution. Revenue burdens can also be exported through arrests and citations of nonvoters, such as speeding tickets issued to out-of-town and out-of-state drivers. When local municipalities experience budgetary shortfalls and are constitutionally constrained from raising property taxes, they increase the rate at which officers ticket non-constituent drivers. A wider concern, however, is not the out-of-town traveler who lacks a political stake in local elections, but rather the broader subpopulations characterized by felony disenfranchisement or other, softer, exclusions from democratic processes. As such, revenue-generating law enforcement may disproportionately target minority citizens – who are more likely to be disenfranchised – in addition to low-income individuals.

RACIAL BIAS

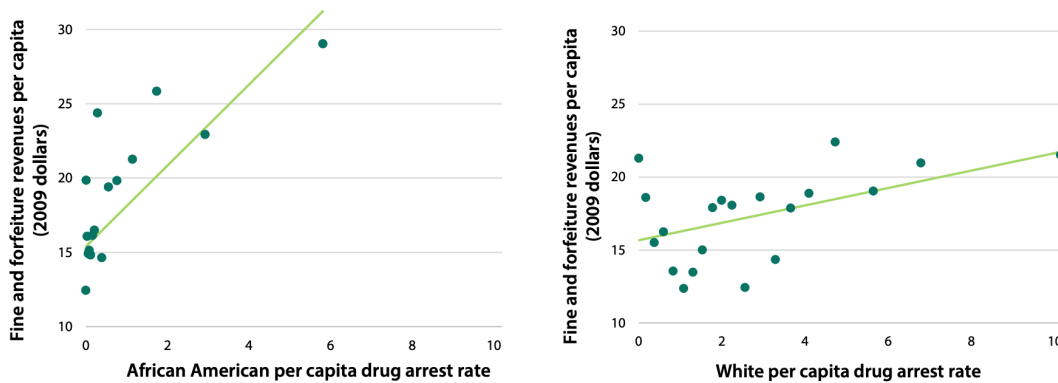
Evidence of racial bias continues to be found across multiple dimensions and stages of the criminal justice system, including traffic stops, searches, jury trial outcomes, sentencing, and bail decisions. Implementing what amounts to a regressive tax via a demonstrably racially biased institution would be a problem by itself, but the reality may actually be worse. [A forthcoming study by Michael] Makowsky, [Thomas] Stratmann, and [Alexander] Tabarrok . . . present[s] evidence that revenue-motivated law enforcement can lead to racially biased arrest rates even if officers are themselves unbiased. Otherwise racially neutral institutions can, when combined with revenue-driven policing, generate racially non-neutral outcomes. When combined with institutions that are, in fact, racially biased, revenue-driven policing will exacerbate racial bias and, perhaps more disconcertingly, calcify biased institutions by increasing the fiscal and political costs of change.

African Americans constitute nearly half of all drug arrests despite representing only 13.4 percent of the population and consuming illegal drugs at roughly the same rate as other racial groups.

Given the emphasis on property seizures in drug arrests, this leads to a disproportionate impact of revenue-maximizing law enforcement on African Americans. Furthermore, if minority groups perceive that the criminal justice system is biased against them at the adjudication, bail, and sentencing levels, they will rationally choose to enter guilty pleas at higher rates and at earlier stages of due process. From the standpoint of fiscal profitability, it is in the interest of local governments to maximize the revenue-yielding arrests of individuals who are the most likely to plead guilty. In figures 3 and 4 we see that the per capita fine and forfeiture revenues for local governments within counties are increasing at a faster rate with the arrest rate of African Americans for drugs and DUI than the comparable white arrest rates. The contrast is sharpest for DUI arrests, where per capita revenues are actually declining with white DUI arrests.

When each arrest is implicitly an act of taxation, the political costs and benefits of individual acts of enforcement will differ according to the levels of political representation and influence. In their analysis of local government budgets in 2012, [(excerpted in this volume at page 33)] [Michael] Sances and [Hye Young] You find that while fine and forfeiture revenues increase with the size of a county’s African American population, this effect is significantly mitigated by the presence of African American representatives on elected city councils. Given that local political economy affects law enforcement, political representation has become an important source of relief from targeted fiscal expropriation via law enforcement.

FIGURE 3.
Fine and Forfeiture Revenues over Drug Arrest Rates

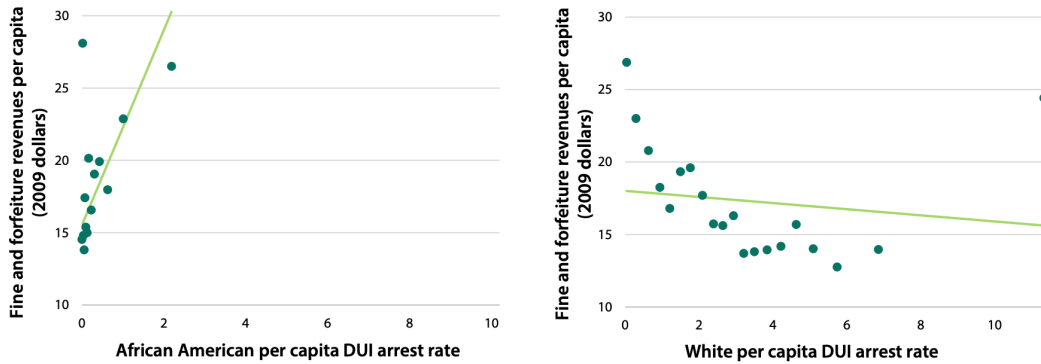


Source: National Archive of Criminal Justice Data 2007–12; Census of Governments, Census 1977–2012; author’s calculations.
Note: The figure is a binned scatterplot (Stepner 2014), where the x-axis variable (arrests per capita) is split into equal-sized bins, and the points represent the mean of the x-axis and y-axis variables (fine and forfeiture revenues per capita) within each bin. The line is a regression line using the full population of observations. The full population is county-year pairs for 2007 and 2012.



FIGURE 4.

Fine and Forfeiture Revenues over DUI Arrest Rates



Source: National Archive of Criminal Justice Data 2007–12; Census of Governments, Census 1977–2012; author’s calculations.
 Note: The figure is a binned scatterplot (Stepner 2014), where the x-axis variable (arrests per capita) is split into equal-sized bins, and the points represent the mean of the x-axis and y-axis variables (fine and forfeiture revenues per capita) within each bin. The line is a regression line using the full population of observations. The full population is county-year pairs for 2007 and 2012.



REVENUE MOTIVATIONS UNDERMINE THE CORE MISSION OF LAW ENFORCEMENT

“Communities like Ferguson begin to see police not as trusted partners but as an occupying army constantly harassing them to raise money to pay their salaries and buy new weapons” ([Harvard Law Review] Editorial Board 2015).

When law enforcement is optimizing revenue rather than safety, officers cease to be partners in the communities they ostensibly serve. This generates immediate costs through reductions in law enforcement actions that promote public safety, but the total cost is likely far higher. If members of a community believe the criminal justice system views them as revenue sources to exploit, they are likely to expect less fair treatment at each stage of due process. Public and officer safety are both reduced when the public views the police as unfair and their authority as less legitimate.

[In a 2008 study, Kristina] Murphy, [Lyn] Hinds, and [Jenny] Fleming find that lower public views of police legitimacy correspond with reduced public cooperation with the police. Respondents who believe police are engaged in procedural justice in their dealings with the public (i.e., that they operate more in accordance with rules and less by their own personal discretion) are more likely to perceive law enforcement as legitimate. Similar effects have been observed with regard to rates of trust in police and reporting of crimes by victims or witnesses. To the extent that revenue-motivated policing undermines the relationship between police departments and the communities they serve, it is fundamentally incompatible with the optimal provision of law enforcement.

Revenue-motivated policing can impact the decisions individuals make when they are being processed in the criminal justice system as well. As defendants lose faith in the possibility of exoneration, they are more likely to enter a guilty plea in hopes of minimizing costs incurred and eliciting lenience in the court’s sentencing. Guilty pleas reduce the procedural costs of due process, increasing the efficiency (from a fiscal perspective) of the criminal justice system and, in turn, increasing the net of revenue over expenditures generated per arrest. As the profitability of arrests increases, so do the intensity of incentives motivating revenue-maximizing law enforcement,

contributing to a self-reinforcing cycle that serves to isolate officers from their communities and inculcate an adversarial relationship. This cycle erodes trust and communication, undermining police in their efforts to respond to the most pressing threats to public safety. As the capacity for law enforcement to provide public safety declines, so too does the opportunity cost of further emphasizing revenue generation in law enforcement activities. . . .

Once internalized within the political economy of a state or local government, law enforcement is no longer charged with the production of a public good, but instead with the subsidizing and sustaining of other government expenditures. Similar to any other productive activity requiring multiple complementary inputs, strong, narrowly focused incentives for police to supply one input (i.e., revenue) are likely to reduce total output. In this case, that output is public safety, which is the product of several factors that are not being incentivized (e.g., the policing of crimes that are not associated with seizable assets or uncontested fines).

Any shifting of law enforcement activities toward revenue generation comes at the expense of public safety. [In a study excerpted in this volume at page 28, Rebecca] Goldstein, [Michael] Sances, and [Hye Young] You find that clearance rates of criminal incidents reported to police, particularly for violent crime, decrease when the proportion of local government revenue from fines and fees increases. The observed effect is largely driven by small cities where officers must engage in a variety of duties. Emphasis on revenue generation dilutes their attention to responding to reported crimes. In the smaller cities, officers move to collecting more fines and fees and decrease the amount of arrests they make for violent or property crime.

COLLATERAL DAMAGE

When economists discuss the costs and benefits of a tax and its structure, they will typically focus on the deadweight loss and any potential distortionary effects. Taxation through law enforcement brings with it an entire additional cost category: the destruction of human capital. Criminal records have permanent effects on lifetime earning that individuals likely never recover from, restricting access to employment, credit, and housing. The negative personal financial shock from a criminal conviction can result in debt that the individual may pay in increments for the rest of their life. Even noncriminal citations can generate fines and fees that, if the individual is unable to pay, can result in the issuance of a bench warrant and subsequent incarceration for failure to remit payment. The emphasis on revenue generation, coupled with the growth in criminal justice fees, has contributed to the disturbing return of incarceration that is effectively due to inability to repay debts. The punishments associated with failure to pay criminal justice debt obligations only serve to further financially cripple arrestees who are struggling with interrupted work histories and the stigma of criminal records.

This can, quite perversely, drive individuals toward committing crimes. In a [2018] survey of individuals involved with the justice system conducted by [Alabama Appleseed Center for Law and Justice] and the University of Alabama-Birmingham, 38.3 percent of respondents indicated they had committed at least one crime to pay their court debt. It is not an exaggeration to suggest that revenue generation via law enforcement may impose greater collateral damage than any other tax structure currently implemented in the United States.

Addicted to Fines (September 2019)

Mike Maciag
GOVERNING

Flashing police lights are a common sight all along Interstate 75 in rural south Georgia. On one recent afternoon in Turner County, sheriff's deputies pulled over a vehicle heading northbound and another just a few miles up on the opposite side of the interstate. In the small community of Norman Park, an officer was clocking cars near the edge of town. In Warwick to the north, a police cruiser waited in the middle of a five-lane throughway.

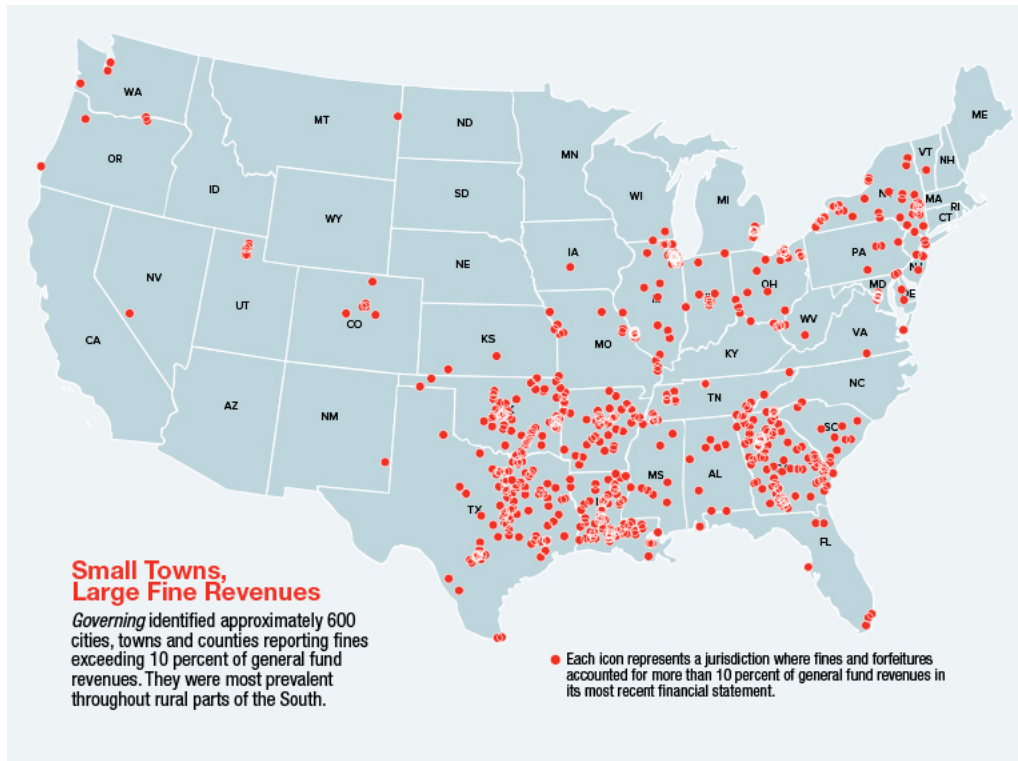
These places have one thing in common: They issue a lot of tickets, and they finance their governments by doing it. Like many other rural jurisdictions, towns in south Georgia have suffered decades of a slow economic decline that's left them without much of a tax base. But they see a large amount of through-traffic from semi-trucks and Florida-bound tourists. And they've grown reliant on ticketing them to meet their expenses.

"Georgia is a classic example of a place where you have these inextricable ties between the police, the town and the court," says Lisa Foster, co-director of the Fines & Fees Justice Center. "Any city that's short on revenue is going to be tempted to use the judicial system."

This is by no means just a Georgia phenomenon. Throughout the country, smaller cities and towns generate major dollars from different types of fines, sometimes accounting for more than half of their revenues. Some places are known for being speed traps. Others prop up their budgets using traffic cameras, parking citations or code enforcement violations.

To get a picture of just how much cities, towns and counties rely on fines and fees, Governing conducted the largest national analysis to date of fine revenues and the extent to which they fund budgets, compiling data from thousands of annual financial audits and reports filed to state agencies.

What we found is that in hundreds of jurisdictions throughout the country, fines are used to fund a significant portion of the budget. They account for more than 10 percent of general fund revenues in nearly 600 U.S. jurisdictions. In at least 284 of those governments, it's more than 20 percent. Some other governments allocate the revenues outside the general fund. When fine and forfeiture revenues in all funds are considered, more than 720 localities reported annual revenues exceeding \$100 for every adult resident. And those numbers would be even higher if they included communities reporting less than \$100,000 in fines; those jurisdictions were excluded from our analysis. In some places, traffic fine revenue actually exceeds limits outlined in state laws.



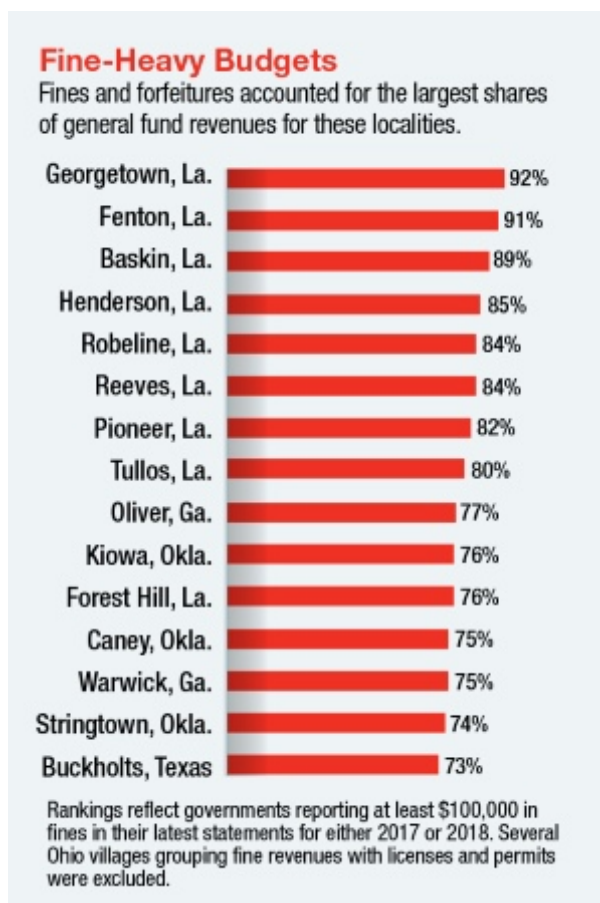
High fine communities can be found in just about every state, but they tend to be concentrated in certain parts of the country. Rural areas with high poverty have especially high rates. So do places with very limited tax bases or those with independent local municipal courts. And these jurisdictions are far more common in the South than elsewhere. The states that stood out in our analysis were Arkansas, Georgia, Louisiana, Oklahoma and Texas, plus New York. Fines and forfeitures accounted for more than one-fifth of general revenues in the most recent financial audits for 52 localities in Georgia, and 49 in Louisiana. By contrast, several Northeastern states with high property taxes had no localities exceeding the 10 percent threshold.

Five years ago, the issue of excessive fines gained national notoriety following the revelation that Ferguson, Mo., and other St. Louis-area municipalities generated outsized revenues from fines and court fees. Since then, advocacy groups and state lawmakers have stepped up political pressure to address what they say are excessive fees. Multiple lawsuits in several states are challenging municipal court practices and fines, and some cities are beginning to revisit their fines with an eye toward social justice and equity for low-income residents and communities of color. On top of those legal and political pressures are other looming changes, including new advancements in driving technology that could one day drastically limit the money that cities can take in through speeding tickets and other violations. The fact is that fines and fees are a volatile revenue source, and the towns that rely the most on them face an increasingly uncertain fiscal future.

Fines – and the revenues they yield – have mounted in recent decades as the prospect of raising taxes has proved politically difficult in many places. “There’s a culture that’s built up over time of tolerance and normalization of this idea that courts are there for revenue generation,” Foster says. There are no hard numbers on how much fine revenues have climbed nationally, although Census Bureau survey data suggests a significant national increase.

Fines and fees are not the same thing. Fines serve as punishment for committing offenses; fees are levied to support operational expenses. Different states charge fees for mandatory services such as drug tests, monthly parole meetings or even for a jury trial. Failure to pay those fees can result in interest charges and other surcharges. While both fines and fees have been on the rise in recent years, it's the fees that have swelled the most, and these days they're often used to fund parts of government that have little to do with the justice system itself. Georgia, for example, levies about a dozen fees, and they're used to pay for a state police motorcycle unit, a brain and spinal injury trust fund, and a police supplemental retirement fund.

For the vast majority of local governments, fines aren't a significant funding source, amounting to less than 5 percent of general revenues. Some states don't allow their cities and counties to retain much money from traffic tickets. The North Carolina Constitution, for instance, requires that fine revenues be appropriated for public schools.



But in other places, a dependence on fine and fee money is simply built into the budget. Louisiana is one of those. In many of its small towns, state highways cut right through central business districts. “It would be malfeasance if they didn’t aggressively patrol some of these stretches of highways through towns,” says John Gallagher, head of the Louisiana Municipal Association. He points out that local governments don’t collect nearly as much in property taxes as similar communities in other states, and many homesteads are fully exempt. Local governments collect sales taxes, but not much commerce exists in rural parts of the state, and the legislature has enacted numerous exemptions for those as well.

Robert Scott, president of the Public Affairs Research Council of Louisiana, agrees that weakened tax bases are contributing to the problem, but says it ultimately stems from localities’ ingrained habits. “If I had to point to one reason why this happens, it’s because culturally you have [local] agencies who’ve grown dependent on these types of revenue sources,” he says. “They don’t want to let it go.”

In some extreme cases, local budgets are funded almost exclusively by fines. Georgetown, La., a village of fewer than 500 residents, was the most reliant on fines of all reviewed nationally. Its 2018 financial statement reported nearly \$500,000 in fines, accounting for 92 percent of general revenues. Not far behind is Fenton, La., which reported more than \$1.2 million in fines, or 91 percent of 2017 general fund revenues. Such situations can be ripe for scandal: A Louisiana state audit last year found that some cash payments for citations in Fenton were never deposited in the village’s bank account and alleged improper compensation to city officials.

Actions taken by the legislature in Louisiana and in other states have likely compounded the issue. According to Census survey data, in states with the most fine-reliant jurisdictions, localities incurred notably steeper state funding cuts than elsewhere nationally over the decade. Many of those same states have also enacted numerous revenue restrictions for cities over the years. In fact, according to research from the Center on Budget and Policy Priorities, in states that implemented caps or limits on local property taxes starting in the late 1970s, fees and charges substantially increased as a share of all revenues that local governments raised.

The mostly rural towns that collect high fine revenues have typically weathered decades of economic decline. Jurisdictions that *Governing* reviewed where fines and forfeitures accounted for more than 20 percent of general revenues recorded a median household income of just \$39,594.

In Warwick, the median income is only \$22,000, and an estimated 37 percent of residents live in poverty. Its town center lacks any significant commercial activity. Over the years, Warwick has earned a reputation as a speed trap. Its latest financial audit shows fines and forfeitures accounted for three-quarters of general revenues. Mayor Juanita Kinchen says the city recently reduced speeding fines and would adapt to any future declines in citation revenues. “The city has experienced economic growth, recession and even depression,” she emailed in response to questions from *Governing*. “We are working to not rely on fines and we will continue to work on this.”

Tourist destinations, too, register substantial fine revenues. Only a few hundred people reside in Morrison, Colo., but tens of thousands visit a speedway and the nearby Red Rocks Amphitheatre on busy days. Fines and forfeitures for fiscal 2017 totaled nearly \$1.2 million, while the town spent roughly the same amount on public safety. Town Manager Kara Winters says the town board has emphasized traffic enforcement as some concertgoers speed or drive drunk. *Governing* identified at least 123 other jurisdictions across the country that collect more than \$500 a year for every adult resident, suggesting it’s mostly out-of-towners who bear the brunt of the fines.

In some communities, traffic cameras further generate substantial revenues. Suburban Maryland has a significantly high number of such places. In Seat Pleasant, Md., a Washington, D.C., suburb of 4,800 residents, fines account for about 48 percent of city revenues—and much of that comes from speed and red-light cameras. Police Chief Devan Martin says the cameras were installed in response to traffic deaths, and they’ve helped reduce accidents along two congested state highways running through the community. “The purpose of the program is not for the potential financial revenue that’s generated from it,” he insists. “Our only purpose is to curb behavior to improve traffic safety and public safety.” Part of Seat Pleasant’s \$3.7 million in total fine collections was paid to the camera vendor, as is the case in other cities. Still, the city’s latest budget proposal states the deployment of an additional mobile photo radar camera “will increase photo enforcement revenue.” The revenues help fund public safety resources that other similarly sized towns don’t enjoy: 24 full-time sworn officers, including a three-person dedicated automated speed enforcement unit and a drone aviation unit.

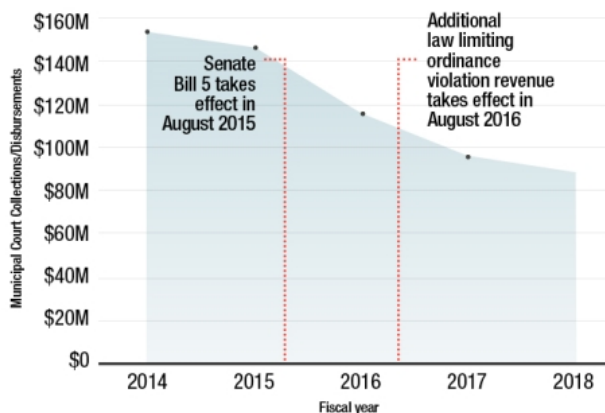
While the issue of excessive court fines and fees isn’t new, it was only in 2014, with the civil unrest in Ferguson, Mo., following the police shooting of Michael Brown, that the practice started drawing considerable interest around the country. A Department of Justice investigation found that Ferguson police prioritized generating revenue from writing tickets.

Missouri lawmakers responded by lowering, to 20 percent, a cap on the proportion of general operating revenues that could come from minor traffic violations. Missouri Attorney General Eric Schmitt, who sponsored the bill as a state senator, views it as a national model. “There is an important oversight role in making sure that you don’t have practices that are abusive, discriminatory, treat people as ATMs, or have a practice of taxation by citation,” he says. Any cities exceeding the cap must either turn their excess revenue over to the state or else face what Schmitt calls a “death penalty,” in that citizens may vote to dissolve their governments. The new lower cap has contributed to drastic reductions in money localities are taking in through fines and fees. Municipal court disbursements fell 39 percent statewide between fiscal 2015 and last year, according to data from the Missouri Office of State Courts Administrator. In Ferguson, fine and forfeiture revenues plummeted from more than \$2 million to about \$300,000.

A few other states, including Georgia, Maryland and Texas, also maintain revenue caps. But some cities still exceed them. In their most recent financial addendums, at least five jurisdictions in Missouri reported fines and court revenue surpassing the 20 percent threshold, remitting the excess to the state. Policy advocates express concerns that jurisdictions may respond to caps with budgetary workarounds. One Missouri community, Pagedale, drastically increased citations for code enforcement and other municipal ordinances after the state imposed the new lower cap on traffic fines, so lawmakers approved another bill limiting revenue from non-moving violations.

Moving the Needle

Following the public outcry over high fines in Ferguson and other localities, Missouri lawmakers passed measures to limit such revenues. The state’s total court disbursements, consisting primarily of fines and fees, have sharply declined as a result.



Some municipal courts began transferring cases to state circuit courts when minimum operating standards went into effect in September 2016. In FY 2018, 384 municipal courts reported disbursements of more than \$0, while 432 did in FY 2014.

SOURCE: MISSOURI OFFICE OF STATE COURTS ADMINISTRATOR STATISTICS

At the heart of the debate over fines and fees is the concern that law enforcement officers may feel pressured to write more tickets just to raise revenues. A special prosecutor investigating Ridgetop, Tenn., earlier this year found an “improper and illegal ticket quota.” In April, a municipal clerk in the small town of Mount Enterprise, Texas, was similarly convicted of pushing a ticket quota. Revenue-generating efforts may hinder policing in other ways. A 2018 study published in *Urban Affairs Review* found police in cities relying more on fines and forfeitures solved violent crimes at significantly lower rates than others. “The police end up losing the connectivity to get information to solve problems in the community,” says Ronal Serpas, a criminology professor at Loyola University in New Orleans and a former police chief in that city.

One rural town in Georgia may even have established a new police department last year largely to raise revenue. According to documents obtained by *Governing* via a public records request, the state Department of Public Safety received a letter from a local probate judge alleging the small city of Cecil had created a police department and a local court in part to help pay off a debt owed for sewer services. “Since the inception of their police department and municipal court, my office has been flooded with calls and visits by individuals who, in my opinion, have legitimate complaints,” the

judge wrote. Georgia law limits speeding tickets to 35 percent of a local law enforcement agency's budget (excluding school zone violations and citations exceeding 20 mph over the posted limit). A subsequent investigation by the state found such speeding citations issued over just four months amounted to 150 percent of the total police budget, so Georgia temporarily suspended Cecil's permit to operate speed radar guns. Officials in Cecil and most other localities did not respond to requests for comment.

Fines and fees are a significant issue in some big cities as well, although for different reasons. With much larger budgets, fines generally aren't a major source of revenues for larger cities. Among the 50 biggest cities in the U.S., fines and forfeitures account for a median of just 2 percent of general revenues.

Instead, the main concern in larger cities is that the people facing fines – and the resulting hefty court costs – are often those who can least afford it. Research consistently shows that poorer households and residents of color are disproportionately impacted by fines and fees. That's led to a small but growing number of cities that are reevaluating the way they structure and impose fines. One such city is Chicago, under an initiative led by City Clerk Anna Valencia that includes officials representing city departments and community groups. Mayor Lori Lightfoot has backed a few of the group's initial recommendations, such as no longer doubling vehicle sticker tickets for failing to pay promptly. "We need to find other revenue sources that aren't burdening our most vulnerable population," Valencia says.

As they have elsewhere, fines and fees in Chicago have gradually ticked up over the years. "There was an unintended consequence of raising a fine or fee a little here or there," Valencia says. In 2018, fines and forfeitures accounted for nearly 11 percent of the city's general fund – the highest of any of the nation's 50 biggest cities – and about 5 percent of total governmental revenues.

San Francisco enacted major changes last year, abolishing fees for jail booking, monitoring and probation. In Kitsap County, Wash., just outside Seattle, hundreds lined up at a courthouse earlier this year for "reconsideration day," when individuals were allowed to request that court debts be forgiven or reduced.

Traffic violations are civil infractions in most places, but not everywhere. In Georgia, they are criminal misdemeanors, carrying fines of up to \$1,000. This comes as a shock to many tourists passing through. Motorists who can't pay often end up on probation, incurring monthly supervision fees in addition to their fine.

Some of the most problematic practices are found in small municipal courts with little state oversight. New York is home to approximately 1,300 town and village courts that, unlike the larger state-run city courts, keep most of their revenues from fines and fees. That means those judges have an incentive to show that their courts earn back the money spent on them, given that they're funded almost entirely by the locality, says Amelia Starr, chair of the Fund for Modern Courts, which promotes access to justice in New York state courts. "Almost any state that has courts that generate money for their locality in small towns is vulnerable to exactly these kinds of pressures," Starr says.

This arrangement carries serious ramifications for those facing charges. A Fund for Modern Courts survey of defense attorneys and public defenders reported that courts in 43 New York counties,

or most of the state, “rarely” or “never” took a defendant’s ability to pay into account before issuing a bench warrant.

Similarly, the legal advocacy group ArchCity Defenders has called for the consolidation of nearly 80 municipal courts operating throughout St. Louis County, Mo. Blake Strode, the group’s executive director, says that consolidating them under the purview of the state court would yield more consistency and professionalization. “People are in court time and time again for what are really crimes of poverty,” Strode says. “We have to rethink whether the court is the right institution to serve those people.”

In the small towns that are most dependent on fine revenue, though, the real question isn’t about social equity or the burden borne by low-income residents. It’s about the risky fiscal future of relying on fines.

The U.S. Supreme Court ruled in February that the Constitution’s ban on excessive fines applies to states and localities. It didn’t attempt to define “excessive,” but provided clues, citing the Magna Carta’s requirement that sanctions “be proportioned to the wrong” and “not so large as to deprive [an offender] of his livelihood.” While the decision itself doesn’t mandate any changes, it’s expected to provoke future legal challenges and provide ammunition for defense attorneys. Another case in Doraville, Ga., makes a constitutional challenge to what it claims is the city’s practice of using police and the courts to generate revenue. A judge has denied the city’s motion to dismiss the case.

Several states considered outlawing traffic enforcement cameras this year. Texas banned red-light cameras, while Ohio lawmakers cut state funding for localities based on the amount of camera fines they collect. After years of steady expansion, the number of communities with speed cameras plateaued about four years ago, while the number of red-light cameras is sharply declining, according to statistics from the Insurance Institute for Highway Safety.

Rethinking fines and fees could further emerge as the next broad step in the criminal justice reform movement, with supporters ranging from the libertarian Koch brothers to the ACLU. “There’s absolutely a political risk for long-term reliance on these sorts of revenues,” says David Eichenenthal, who works with cities on the issue for the consulting firm PFM. “There’s a movement both in terms of advocacy going on at the local level, litigation in the federal courts, and a series of post-Ferguson statewide task forces that started to look at these issues.”

New technologies also are threatening the fiscal future of jurisdictions that rely on fines. Speed-trap alerts that warn drivers about possible enforcement ahead have long been a feature on the Waze navigation app, and they were added to the popular Google Maps app earlier this year. One proposed bill in the U.S. Senate would limit maximum tractor-trailer speeds to 65 mph using software that most trucks are already equipped with. Further into the future, traffic fines could take a major hit with the proliferation of autonomous vehicles that don’t park illegally and never exceed the speed limit. Indeed, starting in 2022, vehicles sold in the European Union will be required to use technology that automatically restricts speed using GPS or cameras that recognize posted limits.

Is there a “right” way for cities to budget for fines? There’s no national standard for how much local governments should be collecting, and no consistent way those revenues are reported. Audited financials may or may not include related fees, and some may include revenues remitted to states. Rules for reporting these revenues aren’t always enforced. West Virginia, for instance, directs localities to

conduct annual audits, but several we reviewed hadn't actually completed one in the past five years. For those reasons, our findings undoubtedly represent low estimates, as we excluded many governments without available audits and those that don't report separate line items for fines.

The way governments allocate fine revenue also matters. The majority deposit it into their general fund, but many in Oklahoma, for example, route the money to separate police or public safety funds. That's a mistake, says Michael Makowsky, an economics professor at Clemson University in South Carolina. "You want to separate officer incentives from the revenues they generate," he says. One solution he proposes is to route fines and fees to state governments. States would then redistribute all the funds back as block grants based on population or other metrics, effectively removing incentives to issue tickets.

Many of the small rural and suburban towns facing financial woes find themselves in a much different situation than when they originally incorporated. In Warwick and similar cities, fines now account for more revenue than taxes. Some small towns may decide they need to disband their police departments, as Oak Park, Ga., did earlier this year. Others may have to consider unincorporating or merging with neighboring municipalities, says Jay Shambaugh, director of The Hamilton Project, a Brookings Institution policy initiative. Unlike larger cities, they have few services left to cut. "They either need to find a way to avoid the other revenue constraints," Shambaugh says, "or they eventually are faced with the decision whether it makes sense to fund themselves at all."

Terrell Hudson has served on the county commission in rural Dooly County, Ga., for more than three decades. The county, he says, has never had a budget that wasn't tight. Only around 14,000 people reside there, and the millage rate already ranks among the highest in the state. Dooly County reported \$4 million in fines and forfeitures in fiscal 2018, accounting for just over a quarter of its general fund revenues. County law enforcement officers patrol Interstate 75, and when there's a backup, generally on weekends or in bad weather, police direct traffic along the state road that runs parallel. The fines and fees also help fund two full-time ambulance crews, another costly line-item for a limited budget. "The system will never pay its own weight," Hudson says. "That is part of what our government is supposed to provide to keep people safe."

Hudson views the revenue cap on fines and property tax exemptions enacted by the legislature as "handcuffing" Georgia's rural localities. "With the requirements that state has put on cities and counties," he says, "at some point in time, we're not going to be able to afford these smaller cities or towns."

Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors (2018)

Karin D. Martin

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Introduction

Every state in the country has legislation concerning monetary sanctions. Dozens of state statutes, myriad municipal codes, and federal law guide all monetary sanction use. As these sanctions grow, evidence of their fraught nature is emerging from throughout the criminal justice system. Fines and the resulting debt can precipitate police contact and further involvement in the criminal justice system, including incarceration. In addition to the fines or restitution that judges order, courts can both set and collect their own fees. Meanwhile, state supervisory agencies (prison, jail, probation, parole) regularly charge a weekly or monthly fee to the indigent, unemployed, and those who work for extremely low-wages (e.g., US\$1/hr. in prison).

Through all of these situations, a potentially problematic thread runs. Rather than the primary function of monetary sanctions being to achieve *bona fide* punishment goals (i.e., deterrence, retribution, restitution, or rehabilitation), they are instead used to generate money for the state. Given the difficulty, if not impossibility, of pursuing revenue and justice at the same time, this shift heralds an acute dilemma in criminal justice. At stake is the potential for money to undermine equity, efficiency, and even the fundamental aims of the criminal justice system.

Scholars have long argued for the efficiency of monetary penalties. The core assumption of this argument is that monetary sanctions are socially costless. In [Gary S.] Becker's 1968 . . . exposition of Optimal Penalty theory, [he] states, "the social cost of fines is about zero[.]" Indeed, this logic likely helped spur the 1980s impetus to expand monetary sanction use. During that time, the first incidents of prison over-crowding, reports that probation was failing in many urban areas, and the publication of [Joan Petersilia's] influential book arguing for options besides prison and probation provoked significant interest in non-prison punishments. Chief among these were monetary sanctions, which are considered "intermediate," "alternative," or "less restrictive" punishments.

In the early 1980s, the Vera Institute reviewed all extant research on fines[,] and soon thereafter, the Bureau of Justice Assistance (BJA) sponsored a series of demonstration projects on day fines. These projects were modeled on the European approach to fines, in which income factors into setting monetary penalties Indeed, fines are in widespread use internationally. Despite practitioners' long-standing interest in the topic, the empirical literature on monetary sanctions remains limited and almost exclusively focused on or after the sentencing stage.

The literature nevertheless reveals a few key findings. First, the adverse repercussions for failing to pay monetary sanctions are myriad. In their pioneering [2008] study of "legal debt" in Washington state, [Katherine] Beckett, [Alexes] Harris, and [Heather] Evans found that monetary sanctions have numerous negative consequences such as reducing family income and wealth; creating difficulties in securing housing, employment, and credit; and prolonged or additional involvement with the criminal justice system. These pivotal findings demonstrate that monetary sanctions have negative consequences that may exceed the intended level of punitiveness, with far-reaching consequences such as creating a "disincentive to work."

[In a 2010 Brennan Center report,] [Alicia] Bannon et al. conducted an extensive review of debt on criminal justice “user fees” – or financial obligations that are explicitly *not* imposed for any of the traditional purposes of punishment. In an examination of these practices in 15 states with the highest prison populations, the authors find that unpaid monetary sanctions often prompt liens, wage garnishment, and tax rebate interception. Because debt is often reported to credit agencies (either directly or through civil judgments), a person’s credit score can also suffer with consequences for the ability to secure loans, mortgages, leases, and employment. Furthermore, evidence also shows that debtors are often confused about who they owe and why.

Other consequences for unpaid court-ordered debt range from driver’s license suspension to warrants. In 30 states, a person’s right to vote can be affected by unpaid court-ordered debt, including for misdemeanors. Unpaid debt can also lead to incarceration, despite a Supreme Court ruling, *Bearden v. Georgia* (1983), mandating that a court must find that a person has “willfully” failed to pay. For these reasons, [in her 2016 book, *Alexes*] Harris argued that monetary sanctions “serve as a punishment tool that permanently penalizes and marginalizes the vast majority of criminal defendants.”

The second key finding in the literature on monetary sanctions is that a variety of legal and extra-legal factors influence their use. For instance, analyses of sentencing data in Pennsylvania reveal that offender and offense characteristics affect the likelihood of monetary penalties, that there is a trade-off between types of sanctions (e.g., fines vs. restitution), and that there are significant differences across jurisdictions. [A 2004 study by R. Barry] Ruback specifically finds that race, age, and type of offense affect fines and restitution. Harris, Evans, and Beckett similarly find that Latinos receive higher monetary sanctions than non-Latinos in Washington state.

Other research on monetary sanctions finds that jurisdictions have significant variation in their monetary sanction policies and practices. Indeed, “no nationally consistent set of laws, policies, or principles . . . govern monetary sanctions[.]” These types of studies are essential for establishing a baseline understanding of how monetary penalties function in criminal sentencing, but they leave unanswered the question at hand about the revenue-generating aspect of monetary sanctions.

The final main finding in the literature is that the type of monetary sanctions—fine, fee, restitution, or surcharge—matters enormously to both theory and practice. For example, Beckett and Harris argue for excluding direct restitution from the discussion of monetary sanction abolition because it is assessed when there is an identifiable victim who has suffered financial losses. As such, direct restitution does not produce the conflicts of interest inherent in courts charging fees to generate revenue. However, restitution does contribute to a debtor’s overall debt burden. Fines stand out for being the one type of monetary sanction that a judge imposes expressly to punish. [Pat] O’Malley calls for expanding the use of fines in the United States, precisely because they are rarely used as an alternative (as opposed to a supplement) to incarceration. In contrast, scholars, practitioners, and advocates often specifically criticize surcharges and fees because of the questionable profit motive they introduce into criminal justice. Along these lines, one study finds a connection between the use of fines and court fees for local revenue and the size of a city’s African American population. Although previous work raises the question of how government responds to the revenue incentive, the literature has yet to engage the topic in depth.

Outside of the academic literature, events such as those in Ferguson, Missouri, in addition to reports and lawsuits brought by legal advocates on behalf of people harmed by criminal justice debt are bringing the issues of monetary sanctions and criminal justice debt to national attention. The U.S. Department of Justice, Civil Rights Division found that Ferguson’s leadership routinely exhorted police and court staff to generate revenue via traffic tickets. Other examples of the negative consequences of ticket-writing can be found across the country. Attention to criminal justice debt has led to practitioner-oriented policy reports and limited policy changes such as bench cards for judges, amnesty programs, or repeals of some types of monetary sanctions.

Taken together, the literature on monetary sanctions shows that they are ubiquitous and growing, that they produce significant social costs, and that it is important to distinguish between the types of monetary sanctions. Drawing on these insights, this article expands the scope to examine legislative response to the revenue incentive inherent in monetary sanctions for misdemeanor convictions. The central question is whether and how legislatures create problems as they seek revenue from monetary sanctions. Through an analysis of the present analysis examines relevant policies and practices in Nevada and Iowa, this analysis explores the idea of “monetary myopia” – or a short-sighted focus on revenue at the expense of considering other important, competing concerns. The article proceeds by reviewing modern monetary sanction policy and problems. It then provides baseline comparisons of the two states, followed by sections on each state’s status quo. These segments review the history of relevant statutes to highlight the incentives monetary sanctions produce and institutional responses to those incentives. By exploring the consequences of treating monetary sanctions as a source of state revenue – rather than as a punishment – the article exposes a particular aspect of the penal apparatus in two comparable states, highlighting an emerging and critically important aspect of misdemeanor justice.

The Origins of Monetary Myopia

A focus on revenue potential in the short-term at the expense of other considerations (e.g., costs, efficiency, or fairness) in the criminal justice system has various origins. Monetary penalties were originally designed as an alternative to prison that was both punitive and less costly to the state. As [Sally T.] Hillsman noted, a fine “is unmistakably punitive and deterrent in its aim” and “it can be coupled with other noncustodial sanctions when multiple sentencing goals are sought[.]” She also notes that fines can be less expensive to administer, can produce revenue (such as for victim compensation) and can reflect the severity of the crime and a person’s ability to pay. This rationale helps explain why policy-makers came to see fines as an attractive option to prison: they were less expensive than incarceration, but still effective.

The most proximal source of monetary myopia is that public institutions such as courts, probation departments, Sheriff’s departments, and jails can be both the originator and the beneficiary of monetary sanctions. The power to do so is, in part, because legislators have been reluctant to pass the costs of a massive system of incarceration on to taxpayers; instead, the tendency is to shift more costs to justice-involved people. In short, “the structures in place foster a myopic focus on revenue, while largely shielding decision-makers from the short and long-term costs entailed in actually collecting this revenue[.]” In the two jurisdictions in question, Nevada and Iowa, policy-makers did ultimately come to see monetary sanctions as a way to shore up the general fund or court budgets. The following analysis will show how they each engaged in monetary myopia, although they did so in different ways. . . .

Discussion . . .

Toward a Theory of Monetary Myopia

. . . [O]bservations of practice and policy in Nevada and Iowa . . . contribute to formulating the concept of monetary myopia. Each state exhibits a focus on revenue at the expense of other important, competing concerns. In Nevada, the origin of monetary myopia is a simple shift in budgeting. Revenue from the state's administrative assessments went from exceeding what was budgeted to falling far short of budget expectations. In the process, the legislature increased the courts' self-funding responsibility and emphasized funding from the unreliable source of administrative assessments. In Iowa, monetary myopia inhered in a lack of effective responses to early signs of substantial and growing court-ordered debt. There, the focus on attempting to collect what it is legally owed eclipses other approaches to reducing the debt, such as reducing surcharges or court costs, expanding ability to pay considerations, or writing off debt sooner.

In both cases, budgetary reliance on citizens' involvement with the criminal justice system leads to practical and ethical problems, one aspect of which is prolonged involvement with the criminal justice system due to unpaid court-ordered debt. It follows that monetary myopia's persistent pursuit of revenue helps fuel a cycle of perpetual criminal justice contact, while fostering inequality in punishment. As Harris notes, poverty—instead of public safety—is often the dominant factor in determining who remains subject to scrutiny and punishment. On one hand, people who can afford to pay typically do so and move on with their lives. On the other hand, people who cannot afford to pay are subject to escalating enforcement mechanisms that tend to ensnare them in the criminal justice system far beyond what the precipitating offense warrants. A case in Benton County, Washington, exemplifies the issue (*Fuentes v. Benton County*, 2015). The county routinely assessed monetary sanctions upward of US\$1000, without considering ability to pay, and then jailed or forced manual labor on people who failed to pay. Cases like this demonstrate how, rather than holding people accountable for their offenses in a just and efficient manner, the pursuit of revenue distorts the integrity of the criminal justice system. Specifically, the pursuit of revenue via tax-like monetary sanctions compromises punishment as a policy goal.

The incentive to try to increase revenue is, nonetheless, perennial. States can respond to that incentive in any number of ways. Nevada and Iowa are two cases where misdemeanors play a central role in that response. In the conceptual framework laid out above, the central idea is that the needs of the criminal justice system prompt a connection between the enforcement of misdemeanors and revenue that the enforcement produces. Because the need and the potential for revenue are unending, they are also mutually reinforcing. Together, they tend to produce monetary myopia where revenue occupies the central focus. Such focus contributes to a few significant pitfalls.

The first potential peril relates to the addition of revenue to the goals of punishment. Jurisdictions that concentrate on generating revenue instead of generating justice risk undermining a core government function, the result of which is weakened government legitimacy with the attendant threats to an effective criminal justice system.

Another potentiality of monetary myopia is the lack of earnest consideration of other ways to achieve the goals of punishment. If a jurisdiction focuses on collections as a principal problem, then there is an incentive to devalue nonrevenue producing alternative sanctions. For example, community

service can certainly help hold people accountable for their offenses, but it entails costs. [In 2013 rulemaking, t]he Supreme Court of Iowa expressed concern about the court resources necessary to administer community service and ultimately settled on prohibiting community service for court-ordered debt less than US\$300 and for all delinquent debt. The example of Florida shows the validity of such concerns. That state estimates that if court collections decreased 15% due to more people choosing community service, then the clerks of the court would lose an estimated US\$24.7 million in revenues. Confronting the cost of community service versus the potential for revenue from fees highlights the impetus to focus on the latter.

The ultimate danger of monetary myopia is fostering bureaucratic inertia for maintaining the size and scope of the current penal apparatus. The alternative to seeking revenue to fund or expand functions is to reduce the need for revenue itself. A prime example of doing so can be found in New York's closing 13 prisons since 2011, saving an estimated US\$162 million in the process. An analogous shrinkage in the domain of misdemeanors would, however, necessitate more creativity than simple decriminalization, which can precipitate even more financial penalties for typically disadvantaged defendants.

Conclusion

This article shows that legislative action could remedy some of the more problematic aspects of the status quo. In Iowa, for instance, currently uncollectible court debt cannot be written off until 65 years have passed (Chapter 602.8107(6)), even though debt remains more easily collectible closer to the date of assessment. Shortening this timeframe would free up resources to focus on more recent and tractable debt. State budgeting that fostered more assiduous removal of uncollectible debt would help slow the relentless growth in unpaid court-ordered debt. The Legislative Services Agency also recently recognized an incentive inherent in the County Attorney Program: people delaying payment until they can set up an installment plan with the County Attorney. In Nevada, the courts receive less than half the amount of the general fund appropriation as the courts in Iowa (1% vs. 2.5%). Statutorily protecting and guaranteeing judiciary funding would bolster its standing as an independent and coequal branch of government.

In both states, statutes that offer improved strategies for taking into account ability to pay would go a long way toward reducing debt and expenditures on collections. Day fines, which tailor a fine amount based on both ability to pay and offense severity and have been used for decades in Europe, are a promising option. These proportional fines had limited success in the United States in the 1980s and 1990s during a set of experiments and demonstration projects. [Beth] Colgan's recent assessment of day fines in the American context found that the earlier experiments reveal the pitfalls to avoid, offering useful lessons for a renewed effort. Specifically, day fine systems in the United States would need to be properly designed and implemented by avoiding alterations such as minimum fines, which inflate the ultimate graduated sanction beyond a person's ability to pay. They would also need to be explicit about how to account for family resources or unreported income. With so much at stake in terms of fairness and efficiency in our current system of monetary sanctions, reconsidering a proportional approach may well be advantageous.

Given the dearth of research on monetary sanctions – particularly on the governmental context that gives rise to the system – there are a variety of directions for future research. The first is to expand this type of analysis to other states. Doing so would elucidate how the allure of potential for revenue

has myriad implications for criminal justice policy. Another critically important issue to address is the cost side of the system. That is, the system of assessing, administering, collecting, and enforcing monetary sanctions entails quantifiable costs such as infrastructure, personnel, and materials. It also exacts significant social costs on people who do not have the means to readily pay what they owe: damaged credit (which can affect the ability to obtain housing, transportation, and employment), extended or revoked probation or parole, and incarceration, each with its own deleterious consequences. Despite abundant indications that these economic and social costs are significant, the actual sum remains unknown. As much as monetary sanctions seem like a way to generate revenue, it is unknown how much it is costing to acquire said revenue. Beckett and Harris summarized the concern by arguing that this dependence may not represent a net financial gain and create a series of conflict for government actors. This analysis provides additional impetus to assess net gain and it offers insight into the conflict of interest at the legislative level. Both concerns merit sustained inquiry in the future.

Monetary sanctions can take as many forms as there are states. This article has . . . has illuminated a largely unexplored aspect of monetary sanctions. Instead of focusing on individual sentencing, it emphasized institutional responses to the powerful incentive to treat monetary sanctions as a source of revenue rather than as a punishment. In [Nevada and Iowa], the collection apparatus reflects the destination of funds from misdemeanor convictions. It also found that misdemeanors can be a domain of conflicting interests in terms of the goals of punishment and fostering tension between public safety and revenue. Moreover, this analysis has described how these conflicting goals in misdemeanor sanctions violate tenets of proportionality and parsimony in punishment. The concept of monetary myopia was put forth as a way to understand the tendency to focus on the potential for revenue at the expense of other approaches or an earnest consideration of short- and long-term costs. The key conclusion to be drawn is that jurisdictions need to directly address the mounting pressures to produce revenue and for courts (or any other criminal justice concern) to be self-funding. Only in this way can justice truly be served.

Exploitative Revenues, Law Enforcement, and the Quality of Government Service (2020)

Rebecca Goldstein, Michael W. Sances & Hye Young You
56 URB. AFF. REV. 5

Recent high-profile tensions between Black citizens and police officers in the United States have led to protests and calls for reforms. The ensuing popular and scholarly discussion of inequality in police practices has been focused, for the most part, on individual police officers' implicit bias or lack of appropriate training. Comparatively less attention has been paid to police departments' institutional structures and incentives, even though these characteristics have been shown to significantly influence police behavior.

One aspect of recent criticism of police departments has been centered on the aggressive imposition and collection of fees, fines, and civilly forfeited assets. The Department of Justice's (DOJ) investigation of the Ferguson, Missouri, police department revealed that a key driver of the behavior of the Ferguson police was the desire to generate municipal revenue by issuing traffic tickets and imposing fees. Scholarly evidence indicates the practices unearthed in Ferguson are by no means unique. Census of Governments data from 2012 show that about 80% of American cities with law enforcement institutions derive at least some revenue from fees, fines, and asset forfeitures, with about 6% of cities collecting more than 10% of their revenues this way in 2012. Implementing this practice requires close coordination between governing bodies, such as mayors and city councils, and local police forces, as the DOJ's Ferguson report vividly describes.

If police agencies keep a substantial fraction of revenues from fines and fees, they could be augmenting their own budgets through fee and fine enforcement. In practice, revenue from fines and fees is typically contributed directly to the municipal budget, not the police budget, meaning that direct financial incentives for police departments to collect revenue may be weak. But police forces are also the agents of local governments: Local police chiefs are appointed by the city executive (mayor or city manager), and must respond to city politicians. This means that the police in some cities are under significant pressure from city authorities to raise city funds. Given that local police offices have limited resources, and that police officers have broad discretion to focus on any of a wide variety of activities, a focus on revenue-generating activities may distract police departments from their primary duty of providing public safety. Although political scientists know little about how police departments respond to institutional incentives, a recent study [by Jonathan Mummolo] shows that police officers are highly responsive to managerial directives, which suggests that at least in some cases, political pressure on police leadership can translate into officer behavior.

In this article, we examine whether revenue-collection activities compromise the criminal investigation functions of local police departments. We do so by studying the relationship between police-generated local revenue and crime clearance rates (that is, the rate at which a person or persons are charged or otherwise identified by law enforcement as perpetrators of particular crimes). In cities where the proportion of local revenue coming from fines and fees is higher, there is presumably more pressure on the local police to raise revenue, and they might engage in revenue-generating activities instead of investigating crimes when such resource allocation decisions must be made on the margin. In addition, aggressive collection of fines and fees by police officers could affect local residents' trust in law enforcement officers. In turn, this may lead to less cooperation from citizens to solve crimes at the local level, which also could contribute to less effective police investigations.

Establishing a causal link between reliance on revenues from fees and fines and crime clearance is challenging because the allocation of police resources to revenue collection is not random. Municipalities may face different types of crime—such as prevalent gang activity—which could systematically affect the crime clearance rate. In addition, while we argue that reliance on fines is associated with lower clearance rates, we cannot rule out reverse causality or omitted variable bias using observational data. To address these concerns, we use two strategies.

First, we use county fixed effects to account for heterogeneity across municipalities that is constant within counties. This strategy leverages within-county, across-city variation in the use of fines to estimate the impact of fine revenue on clearance rates. By making the comparison within counties, we are able to rule out any omitted variables that vary at the county level such as county-level criminal justice policies.

Second, we also employ an instrumental-variables strategy to rule out municipal-level confounders and reverse causality. Specifically, we use the average commuting time as an instrument for fines and fees revenue. More than 86% of workers in the United States drive to work, and traffic-related violations and charges account for a significant share of fines and fees revenue. In 2011, among 62.9 million U.S. residents age 16 or older who had one or more contacts with police during the prior 12 months, 49% of contacts were involuntary or police-initiated. Among these involuntary contacts, in 2011, 86% involved traffic stops. Therefore, we argue, longer commuting times are related to fee and fine imposition, and are unrelated to crime clearance rates. Using American Community Survey (ACS) data on the average commuting time to work at the municipal level, we show that longer commuting times are strongly associated with increased local government reliance on fines and fees as revenue sources.

We find that, in cities where a relatively higher share of revenue is collected through fines, fees, and asset forfeitures, violent and property crimes are cleared at a relatively lower rate, conditional on the background crime rate, the overall police budget, and a host of relevant sociodemographic variables. In particular, we find in our instrumental variables specifications that a 1% increase in the share of own-source revenues from fees, fines, and forfeitures is associated with a statistically and substantively significant 6.1 percentage point decrease in the violent crime clearance rate and 8.3 percentage point decrease in the property crime clearance rate.

Importantly, the effect on violent crime clearance is driven entirely by cities with populations less than 28,010 (the bottom 80% of the U.S. city population distribution). This is a crucial component of our results because large police departments tend to have many specialized divisions charged with performing specific functions. Therefore, in a large police department, it is unlikely that revenue pressure would affect a department's decisions to choose between different types of activities, because most officers are confined to specific functions. However, in small-town police departments, officers “function as generalists, performing a wide variety of problem-solving, administrative, public service and law enforcement tasks, as opposed to the big-city departments where specialization is highly valued[.]” Thus, our results are consistent with the hypothesis that officers devote time to revenue collection rather than investigation in departments where officers perform a wide variety of functions.

Research suggests that low clearance rates for violent crimes in disadvantaged neighborhoods both reflect and generate low levels of trust in the local police force. Studies also document that

exposure to violent crimes is associated with many negative social outcomes, including lack of local employment opportunities and economic mobility. This article suggests that aggressive fee and fine enforcement can compound this vicious cycle by further diverting resources from investigations that might identify perpetrators. Both the institutional and the individual harms of aggressive fee and fine collection fall heavily on a city's most disadvantaged residents: Fees and fines are most frequently imposed on them, and they are most likely to become victims of crimes.

Our work contributes to political scientists' growing focus on the causes and consequences of local law enforcement practices. Recent research points to the unequal impacts of involuntary contacts with law enforcement officials on residents' political participation. Our results complement the existing research by documenting one of the institutional causes of unequal policing—the use of police officers as revenue generators—and one of its institutional consequences—compromising police departments' roles as public safety providers. The analysis we present here also has important implications for proposed criminal justice reforms, which mostly focus on officer-level changes such as body camera use or implicit bias reduction. Our results suggest that institutional reforms, such as decreasing municipal government reliance on fines and fees for revenue, may also be an important step for reforming criminal justice systems and providing higher levels of public safety.

Policing for Profit and Police as Bureaucrats

Whereas it is well known that cities have limited discretion in many policy areas, municipal governments have ample discretion over the collection of fines and fees because local police forces and municipal courts that oversee their collection are mainly controlled by city councils. In addition, policing and public safety are two policy areas over which local governments have strong influence compared with other policies.

Previous research has shown that when municipal governments experience financial stress, their reliance on fees and fines increases. Although property taxes are the main component of own-source revenue for local governments, real estate prices rarely change significantly or quickly enough for property tax revenue levels to change quickly. Therefore, local governments tend to rely on traffic tickets and other fines when other revenue sources are limited.

There is extensive academic study of the negative consequences of police- and court-imposed fees and fines on affected individuals. Scholars tend to focus on the function of these fees and fines as, effectively, forms of regressive taxation. Another stream of research focuses on the democratic consequences of involuntary contact with law enforcement. The issuance of fines and fees often occurs at traffic stops, which are the most common type of involuntary contact with law enforcement personnel. Studies document that individuals who have repeated unwanted interactions with the law enforcement system are likely to withdraw from civic and political life, further impeding their ability to influence police policy through their local elected officials.

When police forces play a role in generating revenue for their municipality, it is easy to imagine the police shifting some resources from patrol and criminal investigation functions to revenue generation in a resource-scarce environment. Such a shift in resources has been documented in the case of the collection of court and correctional fees. A New York University (NYU) Brennan Center study of legal debts in the 15 states with the largest prison populations concluded that “Overdependence on fee revenue compromises the traditional functions of courts and correctional agencies . . . When

probation and parole officers must devote time to fee collection instead of public safety and rehabilitation, they too compromise their roles[.]”

All this suggests that institutional context matters in understanding the behavior of law enforcement agencies. Police officers are classic examples of street-level bureaucrats because of their discretion and autonomy in deciding whom to arrest and whom to overlook. Police departments, like schools and welfare agencies, have the special property that within the organization, discretion increases as one moves *down* the hierarchy. Existing research on police officer discretion mainly focuses on personal characteristics of police officers and environmental or circumstantial factors affecting decision-making. While institutional conditions have been considered one of the most important factors influencing incentives of federal bureaucrats, questions of how institutions shape incentives for local bureaucrats, such as police officers, are relatively understudied.

Police agencies could face both financial and political incentives for revenue generation from fines and fees. There are a handful of existing studies that address the issue of how police activities might be redirected as a result of financial incentives. Studies find that when local governments allow police agencies to keep a substantial fraction of the assets that they seize in drug arrests, police respond to the real net incentives for seizures by increasing the drug offense arrest rate. If agencies can keep a substantial fraction of revenues from fines and fees, they could help increase their budgets or the municipal budget.

But, unlike asset forfeitures from arrests for drug offenses, revenues from fines and fees generally accrue to the city’s general fund rather than to the police department’s own budget. If this is the case, a direct monetary incentive to increase police departments’ own revenue from issuing more tickets and citations would be weak. However, there is another mechanism – political incentives – that can explain the coordination of law enforcement for policing for city revenues. A chief of police is appointed by either the city council or the chief executive – the mayor or city manager. Given that city officials have some control over police budgets and the choice of a police chief, some scholars argue that municipal police departments have always been political institutions in the United States and that political control of police departments can, at times, explain police behavior.

Law enforcement agencies also often have a reputational incentive to participate in policing for profit, if their reputation in the eyes of city officials depends on their success in generating revenue. If pressure to generate revenue from fines and fees comes without additional resources (such as hiring more police officers or allocating more public funds for overtime pay), local police officers may need to divert resources from traditional activities, such as criminal investigation, in favor of revenue-generation activities. This effect would be more salient in police departments where police officers’ work assignments are flexible rather than specialized.

Police officials are sometimes frank about the pressures they face. James Tignanelli, president of the Police Officers Association of Michigan union, told *Car and Driver* magazine in 2009 that, “When elected officials say, ‘We need more money,’ they can’t look to the department of public works to raise revenues, so where do they find it? The police department”

Who Pays for Government?

Descriptive Representation and Exploitative Revenue Sources (2017)

Michael W. Sances & Hye Young You
79 J. POL. 1090

Much recent public discussion focuses on racial discrimination by local officials and not only in terms of police violence. According to a U.S. Justice Department report in the wake of the Michael Brown shooting in Ferguson, Missouri – a city with a majority black population but a majority white government – city officials urged the police chief to generate more revenue from traffic tickets and court fines to address a substantial sales tax shortfall. Indeed, about 20% of Ferguson’s revenues come from fines and related sources. Other observers note that the dependence on fines is not unique to Ferguson but also occurs in other Missouri communities.

Scholars have extensively documented racial bias in pedestrian stops by law enforcement, elected officials’ response to constituent requests, and public service delivery by bureaucrats. In contrast, bias in the form of local revenue generation is rarely discussed in this literature, perhaps because city officials are assumed to be limited in their policy discretion. Police spending, on the other hand, is one of the few areas where past work does find evidence of local discretion. We should therefore expect local governments to exercise discretion over law enforcement revenue as well.

In this paper, we examine city governments’ use of fines and court fees, a policy that disproportionately harms black voters. Using data on over 9,000 cities, we show that the use of fines as revenue is both commonplace and robustly connected to the proportion of residents who are black: 86% of the cities in our sample obtain at least some revenue through fines and fees, with an average of about \$8.00 per capita, and this is higher in cities with larger black populations – up to about \$20.00 higher per capita – when we compare cities with the lowest black populations to the highest.

We then show that the relationship between black population and fines is conditioned by black representation on the city council. Previous studies show that politicians are more likely to address issues relevant to constituents sharing similar descriptive traits and that constituents disproportionately communicate more to same-race representatives. If the presence of black representatives on city councils gives black citizens a channel to deliver complaints and concerns regarding un- equal treatment, descriptive representation may reduce a city’s use of fines. Alternatively, a black councilor could monitor the degree to which the budget depends on exploitative sources. Consistent with past findings that descriptive representation matters for city policy, we find that the presence of black council members significantly reduces the relationship between race and fines.

DATA

To measure cities’ use of fines, we use the Census of Governments (COG), a project of the U.S. Census Bureau that collects revenue and expenditure data for all local governments every five years. The COG asks cities how much revenue they collect from “penalties imposed for violation of law; civil penalties (e.g., for violating court orders); court fees if levied upon conviction of a crime or violation . . . and forfeits of deposits held for performance guarantees or against loss or damage (such as forfeited bail and collateral).” This variable only includes penalties related to matters of law, and it does not include “penalties relating to tax delinquency; library fines; and sale of confiscated property[.]” We use the COG data from 2012. Of the 35,000 city, town, and township governments in the COG, we

focus on those with police and/or court systems only, as only these governments have the capacity to issue fines, and we also restrict the sample to cities with populations of at least 2,500. The resulting sample consists of 9,143 observations.

Because the raw amount of fine revenues is skewed, we divide by city population, and we then take the logarithm plus one. We present the distribution of this variable in figure 1A, which shows that the majority of cities collect at least some revenue from fines and fees. Although 1,252 of the cities in our sample report collecting zero revenue from fines, 7,891, or 86%, collect greater than zero revenues.

Among the full sample, the average collection is about \$8.00 per person (among cities with greater than zero fines revenue, the average is \$11.00). There is also substantial variation in the collection of fines: it varies from a few cents to a few hundred dollars.

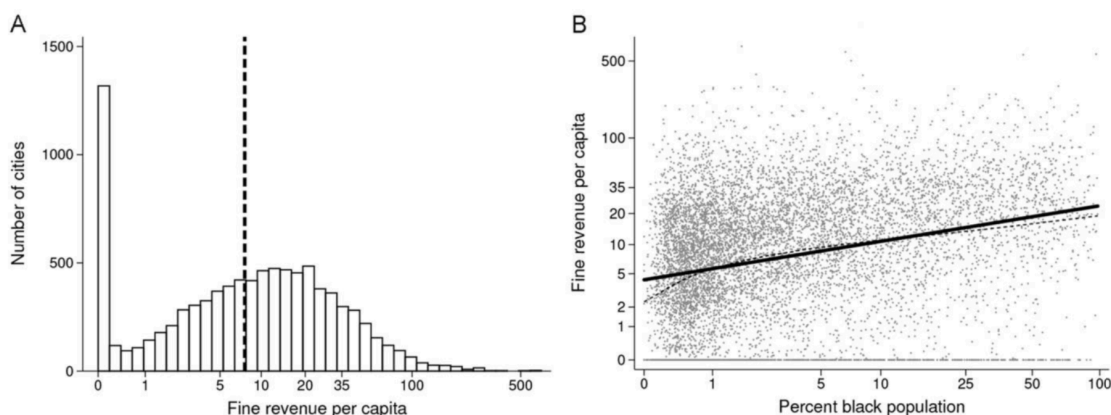


Figure 1. Distribution of fines per capita and relationship with black population. Sample is all US cities that spend more than zero on law enforcement. The dashed vertical line in panel A denotes the sample average, the solid line in panel B represents the regression line, and the dashed line in panel B is a lower bound. Both fines and black population are logged, with the scales exponentiated for readability. The number of observations in each figure is 9,143.

FINES, RACE, AND REPRESENTATION

We combine our fines data with population information from the 2010 U.S. Census. Figure 1B displays the relationship between fine revenue and the proportion of a city’s population that is black (we log this variable as well, as it is similarly skewed). This figure shows a clear positive relationship between the two variables.

To account for potential confounding—cities with high black populations may also differ in other ways that impact fines use—we next conduct a series of linear regressions of (log) fines per capita on (log) percent black population; we scale black population such that zero is the sample minimum and one is the sample maximum. We include a set of municipal- and county-level variables meant to capture other determinants of fines that may also be related to percent black population: local finances (total local revenue, share of revenue from taxes, share of revenue from state and federal), demographics (log population, log population density, income per capita, share with a college degree, share over age 65), and county-level characteristics (crime per capita, police officers per capita, share Democratic vote in 2012, number of governments per capita, net migration). Notably, our set of demographic controls includes other measures of ethnic and racial diversity, including a Herfindahl index, Theil’s measure of segregation, and the proportions Hispanic and foreign-born.

We summarize the results in table 1 In all specifications, the point estimates on percent black population are statistically significant: the estimates range from 1.0 to 1.5, and the smallest t-statistic is 9. Because log-log coefficients are difficult to interpret (and more so when one of the untransformed variables is a proportion), we translate the coefficients to dollar amounts in the footer (we describe the procedure for transforming the coefficients in the appendix). Substantively, the estimates imply that cities with the largest share of black residents collect between \$12.00 and \$19.00 more, per person, than cities with the smallest black share of residents.

Table 1. Revenue from Fines and Black Population in US Cities

	(1)	(2)	(3)	(4)
Percent black population	1.47*** (.06)	1.35*** (.06)	1.16*** (.12)	1.02*** (.12)
Effect size (\$)	18.91 (1.08)	16.79 (1.04)	13.65 (1.98)	11.59 (1.78)
Controls:				
Local finances		Yes	Yes	Yes
Demographics			Yes	Yes
Crime, fragmentation, mobility, Democratic vote				Yes

Note. The sample size is 8,665 for all specifications. Robust standard errors are in parentheses.

* $p < .05$.

** $p < .01$.

*** $p < .001$.

estimates are robust to clustering errors at the county level, that the impact of race is seen in both large (above 10,000 persons) and small (less than 10,000 persons) cities, and that the results are unchanged when using a two-stage selection model to account for cities reporting zero fines revenue.

To explore the moderating effect of descriptive representation, we use data on city councilor races from the 2006 and 2011 International City/County Management Association (ICMA). Unlike the COG, not all cities respond to the ICMA surveys; those that do so tend to be larger, and our sample reduces to about 3,700 cities after merging with the ICMA. However, we are able to replicate the results from table 1 on this smaller subsample, which suggests that any patterns evident using this subset of cities would likely hold in the full sample. We estimate the impact of descriptive representation by interacting the share of the population that is black with the presence of at least one black city councilor, using the same set of control variables as before. The interaction represents how the relationship between fines and black population changes when moving from no black councilor to having at least one black councilor. If this interaction is negative, the presence of minority city council members reduces the relationship between fines and race.

While data limitations prevent us from ruling out unobservable city-level confounders—we lack enough panel variation to implement a difference-in-differences design and the city council election data for a discontinuity design are unavailable—in the appendix we re-estimate the regression in table 1 while including state-level and county-level fixed effects. This specification controls for all possible unobserved confounding variables, provided that they vary at the state level or the county level. The relationship between race and fines is robust to these strategies. Thus, while strong conclusions regarding causality would be unwise here, we do demonstrate a strong, robust relationship that is consistent with a causal effect. Also in the appendix, we show that our

In the first two columns of table 2, we report specifications where we exclude the interaction terms. The relationship between fines and black population holds in the relatively smaller subsample of cities for which we can obtain data on city council race. The lack of an unconditional effect for black

Table 2. Revenue from Fines and Black Representation on City Councils

	(1)	(2)	(3)	(4)
Percent black population	1.26*** (.12)	1.00*** (.19)	1.50*** (.14)	1.00*** (.19)
Any black council	-.13 (.07)	-.09 (.07)	.39** (.14)	.23 (.15)
Black population × any black council			-.94*** (.25)	-.61* (.28)
Controls		Yes		Yes

Note. The sample size is 3,764 in all specifications. Robust standard errors are in parentheses.

* $p < .05$.

** $p < .01$.

*** $p < .001$.

is achieved. Although local government officials may decide the overall portfolio of revenue sources, street-level bureaucrats also wield significant discretion, and their own biases could affect who receive traffic tickets and other penalties, as previous research suggests.

DISCUSSION

Assembling a new data set on fines use and using variation in descriptive representation, we find municipal governments with higher black populations rely more heavily on fines and fees for revenue. Further, we find that the presence of black city council members significantly reduces—though does not eliminate—this pattern. While data limitations prevent us from implementing more credible designs, the robust relationships we observe are consistent with race playing a crucial causal role in the degree to which cities rely on regressive revenue sources.

Aside from regressivity, policing for revenue may disenfranchise. Contact with law enforcement decreases democratic participation, and that fines and fees are often implemented in a racially biased fashion may help explain why turnout is lower among poor minority voters. While descriptive representation at the city council level decreases fine use, fines may make descriptive representation less likely by depressing minority turnout.

Future work should explore the mechanisms that produce these patterns. One interpretation of our results is that cash-strapped cities target poor and minority voters simply because they are less likely to complain and not due to any inherent bias. An alternative interpretation, however, is that fines and other law enforcement policies are intended as methods of social control. We encourage future studies that explicitly attempt to untangle these two explanations.

councilor suggests that black representatives' own preferences play only a limited role in revenue collection. In contrast, the third and fourth columns include the interaction between black population and an indicator for the presence of at least one black councilor. As predicted, the interactions are negative. Comparing the magnitudes of the coefficients, the relationship between race and fines is 50% less in cities with at least one black representative.

It is important to note that our results do not indicate that the presence of a black council member completely eliminates the relationship between race and fines. The baseline relationship between black population and reliance on fines holds, albeit at a substantially reduced magnitude, even when descriptive representation

Investigation of the Ferguson Police Department (March 2015)

U.S. Dep't of Justice, Civil Rights Division

I. REPORT SUMMARY

The Civil Rights Division of the United States Department of Justice opened its investigation of the Ferguson Police Department (“FPD”) on September 4, 2014. This investigation was initiated under the pattern-or-practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title VI”). This investigation has revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.

Over the course of the investigation, we interviewed City officials, including City Manager John Shaw, Mayor James Knowles, Chief of Police Thomas Jackson, Municipal Judge Ronald Brockmeyer, the Municipal Court Clerk, Ferguson’s Finance Director, half of FPD’s sworn officers, and others. We spent, collectively, approximately 100 person-days onsite in Ferguson. We participated in ride-alongs with on-duty officers, reviewed over 35,000 pages of police records as well as thousands of emails and other electronic materials provided by the police department. Enlisting the assistance of statistical experts, we analyzed FPD’s data on stops, searches, citations, and arrests, as well as data collected by the municipal court. We observed four separate sessions of Ferguson Municipal Court, interviewing dozens of people charged with local offenses, and we reviewed third-party studies regarding municipal court practices in Ferguson and St. Louis County more broadly. As in all of our investigations, we sought to engage the local community, conducting hundreds of in-person and telephone interviews of individuals who reside in Ferguson or who have had interactions with the police department. We contacted ten neighborhood associations and met with each group that responded to us, as well as several other community groups and advocacy organizations. Throughout the investigation, we relied on two police chiefs who accompanied us to Ferguson and who themselves interviewed City and police officials, spoke with community members, and reviewed FPD policies and incident reports.

We thank the City officials and the rank-and-file officers who have cooperated with this investigation and provided us with insights into the operation of the police department, including the municipal court. Notwithstanding our findings about Ferguson’s approach to law enforcement and the policing culture it creates, we found many Ferguson police officers and other City employees to be dedicated public servants striving each day to perform their duties lawfully and with respect for all members of the Ferguson community. The importance of their often-selfless work cannot be overstated.

We are also grateful to the many members of the Ferguson community who have met with us to share their experiences. It became clear during our many conversations with Ferguson residents from throughout the City that many residents, black and white, genuinely embrace Ferguson’s diversity and want to reemerge from the events of recent months a truly inclusive, united community. This Report is intended to strengthen those efforts by recognizing the harms caused by Ferguson’s law enforcement practices so that those harms can be better understood and overcome. . . .

Community Distrust

Since the August 2014 shooting death of Michael Brown, the lack of trust between the Ferguson Police Department and a significant portion of Ferguson’s residents, especially African Americans, has become undeniable. The causes of this distrust and division, however, have been the subject of debate. Police and other City officials, as well as some Ferguson residents, have insisted to us that the public outcry is attributable to “outside agitators” who do not reflect the opinions of “real Ferguson residents.” That view is at odds with the facts we have gathered during our investigation. Our investigation has shown that distrust of the Ferguson Police Department is longstanding and largely attributable to Ferguson’s approach to law enforcement. This approach results in patterns of unnecessarily aggressive and at times unlawful policing; reinforces the harm of discriminatory stereotypes; discourages a culture of accountability; and neglects community engagement. In recent years, FPD has moved away from the modest community policing efforts it previously had implemented, reducing opportunities for positive police-community interactions, and losing the little familiarity it had with some African-American neighborhoods. The confluence of policing to raise revenue and racial bias thus has resulted in practices that not only violate the Constitution and cause direct harm to the individuals whose rights are violated, but also undermine community trust, especially among many African Americans. As a consequence of these practices, law enforcement is seen as illegitimate, and the partnerships necessary for public safety are, in some areas, entirely absent.

Restoring trust in law enforcement will require recognition of the harms caused by Ferguson’s law enforcement practices, and diligent, committed collaboration with the entire Ferguson community. At the conclusion of this report, we have broadly identified the changes that are necessary for meaningful and sustainable reform. These measures build upon a number of other recommended changes we communicated verbally to the Mayor, Police Chief, and City Manager in September so that Ferguson could begin immediately to address problems as we identified them. As a result of those recommendations, the City and police department have already begun to make some changes to municipal court and police practices. We commend City officials for beginning to take steps to address some of the concerns we have already raised. Nonetheless, these changes are only a small part of the reform necessary. Addressing the deeply embedded constitutional deficiencies we found demands an entire reorientation of law enforcement in Ferguson. The City must replace revenue-driven policing with a system grounded in the principles of community policing and police legitimacy, in which people are equally protected and treated with compassion, regardless of race. . . .

III. FERGUSON LAW ENFORCEMENT EFFORTS ARE FOCUSED ON GENERATING REVENUE

City officials have consistently set maximizing revenue as the priority for Ferguson’s law enforcement activity. Ferguson generates a significant and increasing amount of revenue from the enforcement of code provisions. The City has budgeted for, and achieved, significant increases in revenue from municipal code enforcement over the last several years, and these increases are projected to continue. Of the \$11.07 million in general fund revenue the City collected in fiscal year 2010, \$1.38 million came from fines and fees collected by the court; similarly, in fiscal year 2011, the City’s general fund revenue of \$11.44 million included \$1.41 million from fines and fees. In its budget for fiscal year 2012, however, the City predicted that revenue from municipal fines and fees would increase over 30% from the previous year’s amount to \$1.92 million; the court exceeded that target, collecting \$2.11 million. In its budget for fiscal year 2013, the City budgeted for fines and fees to yield \$2.11

million; the court exceeded that target as well, collecting \$2.46 million. For 2014, the City budgeted for the municipal court to generate \$2.63 million in revenue. The City has not yet made public the actual revenue collected that year, although budget documents forecasted lower revenue than was budgeted. Nonetheless, for fiscal year 2015, the City's budget anticipates fine and fee revenues to account for \$3.09 million of a projected \$13.26 million in general fund revenues.

City, police, and court officials for years have worked in concert to maximize revenue at every stage of the enforcement process, beginning with how fines and fine enforcement processes are established. In a February 2011 report requested by the City Council at a Financial Planning Session and drafted by Ferguson's Finance Director with contributions from Chief Jackson, the Finance Director reported on "efforts to increase efficiencies and maximize collection" by the municipal court. The report included an extensive comparison of Ferguson's fines to those of surrounding municipalities and noted with approval that Ferguson's fines are "at or near the top of the list." The chart noted, for example, that while other municipalities' parking fines generally range from \$5 to \$100, Ferguson's is \$102. The chart noted also that the charge for "Weeds/Tall Grass" was as little as \$5 in one city but, in Ferguson, it ranged from \$77 to \$102. The report stated that the acting prosecutor had reviewed the City's "high volume offenses" and "started recommending higher fines on these cases, and recommending probation only infrequently." While the report stated that this recommendation was because of a "large volume of non-compliance," the recommendation was in fact emphasized as one of several ways that the code enforcement system had been honed to produce more revenue.

In combination with a high fine schedule, the City directs FPD to aggressively enforce the municipal code. City and police leadership pressure officers to write citations, independent of any public safety need, and rely on citation productivity to fund the City budget. In an email from March 2010, the Finance Director wrote to Chief Jackson that "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. What are your thoughts? Given that we are looking at a substantial sales tax shortfall, it's not an insignificant issue." Chief Jackson responded that the City would see an increase in fines once more officers were hired and that he could target the \$1.5 million forecast. Significantly, Chief Jackson stated that he was also "looking at different shift schedules which will place more officers on the street, which in turn will increase traffic enforcement per shift." Shortly thereafter, FPD switched to the 12-hour shift schedule for its patrol officers, which FPD continues to use. Law enforcement experience has shown that this schedule makes community policing more difficult—a concern that we have also heard directly from FPD officers. Nonetheless, while FPD heavily considered the revenue implications of the 12-hour shift and certain other factors such as its impact on overtime and sick time usage, we have found no evidence that FPD considered the consequences for positive community engagement. The City's 2014 budget itself stated that since December 2010, "the percent of [FPD] resources allocated to traffic enforcement has increased," and "[a]s a result, traffic enforcement related collections increased" in the following two years. The 2015 budget added that even after those initial increases, in fiscal year 2012-2013, FPD was once again "successful in increasing their proportion of resources dedicated to traffic enforcement" and increasing collections.

As directed, FPD supervisors and line officers have undertaken the aggressive code enforcement required to meet the City's revenue generation expectations. . . . FPD officers routinely conduct stops that have little relation to public safety and a questionable basis in law. FPD officers routinely issue multiple citations during a single stop, often for the same violation. Issuing three or four charges in

one stop is not uncommon in Ferguson. Officers sometimes write six, eight, or, in at least one instance, fourteen citations for a single encounter. Indeed, officers told us that some compete to see who can issue the largest number of citations during a single stop.

The February 2011 report to the City Council notes that the acting prosecutor—with the apparent approval of the Police Chief—“talked with police officers about ensuring all necessary summonses are written for each incident, i.e. when DWI charges are issued, are the correct companion charges being issued, such as speeding, failure to maintain a single lane, no insurance, and no seat belt, etc.” The prosecutor noted that “[t]his is done to ensure that a proper resolution to all cases is being achieved and that the court is maintaining the correct volume for offenses occurring within the city.” Notably, the “correct volume” of law enforcement is uniformly presented in City documents as related to revenue generation, rather than in terms of what is necessary to promote public safety. Each month, the municipal court provides FPD supervisors with a list of the number of tickets issued by each officer and each squad. Supervisors have posted the list inside the police station, a tactic officers say is meant to push them to write more citations.

The Captain of FPD’s Patrol Division regularly communicates with his Division commanders regarding the need to increase traffic “productivity,” and productivity is a common topic at squad meetings. Patrol Division supervisors monitor productivity through monthly “self-initiated activity reports” and instruct officers to increase production when those reports show they have not issued enough citations. In April 2010, for example, a patrol supervisor criticized a sergeant for his squad only issuing 25 tickets in a month, including one officer who issued “a grand total” of 11 tickets to six people on three days “devoted to traffic stops.” In November 2011, the same patrol supervisor wrote to his patrol lieutenants and sergeants that “[t]he monthly self-initiated activity totals just came out,” and they “may want to advise [their] officers who may be interested in the open detective position that one of the categories to be considered when deciding on the eligibility list will be self-initiated activity.” The supervisor continued: “Have any of you heard comments such as, why should I produce when I know I’m not getting a raise? Well, some people are about to find out why.” The email concludes with the instruction to “[k]eep in mind, productivity (self-initiated activity) cannot decline for next year.”

FPD has communicated to officers not only that they must focus on bringing in revenue, but that the department has little concern with how officers do this. FPD’s weak systems of supervision, review, and accountability . . . have sent a potent message to officers that their violations of law and policy will be tolerated, provided that officers continue to be “productive” in making arrests and writing citations. Where officers fail to meet productivity goals, supervisors have been instructed to alter officer assignments or impose discipline. In August 2012, the Captain of the Patrol Division instructed other patrol supervisors that, “[f]or those officers who are not keeping up an acceptable level of productivity and they have already been addressed at least once if not multiple times, take it to the next level.” He continued: “As we have discussed already, regardless of the seniority and experience take the officer out of the cover car position and assign them to prisoner pick up and bank runs. . . . Failure to perform *can* result in disciplinary action not just a bad evaluation.” Performance evaluations also heavily emphasize productivity. A June 2013 evaluation indicates one of the “Performance-Related Areas of Improvements” as “Increase/consistent in productivity, the ability to maintain an average ticket [sic] of 28 per month.”

Not all officers within FPD agree with this approach. Several officers commented on the futility of imposing mounting penalties on people who will never be able to afford them. One member of

FPD's command staff quoted an old adage, asking: "How can you get blood from a turnip?" Another questioned why FPD did not allow residents to use their limited resources to fix equipment violations, such as broken headlights, rather than paying that money to the City, as fixing the equipment violation would more directly benefit public safety.

However, enough officers—at all ranks—have internalized this message that a culture of reflexive enforcement action, unconcerned with whether the police action actually promotes public safety, and unconcerned with the impact the decision has on individual lives or community trust as a whole, has taken hold within FPD. One commander told us, for example, that when he admonished an officer for writing too many tickets, the officer challenged the commander, asking if the commander was telling him not to do his job. When another commander tried to discipline an officer for over-ticketing, he got the same response from the Chief of Police: "No discipline for doing your job."

The City closely monitors whether FPD's enforcement efforts are bringing in revenue at the desired rate. Consistently over the last several years, the Police Chief has directly reported to City officials FPD's successful efforts at raising revenue through policing, and City officials have continued to encourage those efforts and request regular updates. For example, in June 2010, at the request of the City, the Chief prepared a report comparing court revenues in Ferguson to court revenues for cities of similar sizes. The Chief's email sending the report to the City Manager notes that, "of the 80 St. Louis County Municipal Courts reporting revenue, only 8, including Ferguson, have collections greater than one million dollars." In the February 2011 report referenced above, Chief Jackson discussed various obstacles to officers writing tickets in previous months, such as training, injury leave, and officer deployment to Iraq, but noted that those factors had subsided and that, as a result, revenues were increasing. The acting prosecutor echoed these statements, stating "we now have several new officers writing tickets, and as a result our overall ticket volume is increasing by 400-700 tickets per month. This increased volume will lead to larger dockets this year and should have a direct effect in increasing overall revenue to the municipal court."

Similarly, in March 2011, the Chief reported to the City Manager that court revenue in February was \$179,862.50, and that the total "beat our next biggest month in the last four years by over \$17,000," to which the City Manager responded: "Wonderful!" In a June 2011 email from Chief Jackson to the Finance Director and City Manager, the Chief reported that "May is the 6th straight month in which court revenue (gross) has exceeded the previous year." The City Manager again applauded the Chief's efforts, and the Finance Director added praise, noting that the Chief is "substantially in control of the outcome." The Finance Director further recommended in this email greater police and judicial enforcement to "have a profound effect on collections." Similarly, in a January 2013 email from Chief Jackson to the City Manager, the Chief reported: "Municipal Court gross revenue for calendar year 2012 passed the \$2,000,000 mark for the first time in history, reaching \$2,066,050 (not including red light photo enforcement)." The City Manager responded: "Awesome! Thanks!" In one March 2012 email, the Captain of the Patrol Division reported directly to the City Manager that court collections in February 2012 reached \$235,000, and that this was the first month collections ever exceeded \$200,000. The Captain noted that "[t]he [court clerk] girls have been swamped all day with a line of people paying off fines today. Since 9:30 this morning there hasn't been less than 5 people waiting in line and for the last three hours 10 to 15 people at all times." The City Manager enthusiastically reported the Captain's email to the City Council and congratulated both police department and court staff on their "great work."

Even as officers have answered the call for greater revenue through code enforcement, the City continues to urge the police department to bring in more money. In a March 2013 email, the Finance Director wrote: “Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try.” Even more recently, the City’s Finance Director stated publicly that Ferguson intends to make up a 2014 revenue shortfall in 2015 through municipal code enforcement, stating to Bloomberg News that “[t]here’s about a million-dollar increase in public-safety fines to make up the difference.” The City issued a statement to “refute[]” the Bloomberg article in part because it “insinuates” an “over reliance on municipal court fines as a primary source of revenues when in fact they represented less than 12% of city revenues for the last fiscal year.” But there is no dispute that the City budget does, in fact, forecast an increase of nearly a million dollars in municipal code enforcement fines and fees in 2015 as reported in the Bloomberg News report.

The City goes so far as to direct FPD to develop enforcement strategies and initiatives, not to better protect the public, but to raise more revenue. In an April 2014 communication from the Finance Director to Chief Jackson and the City Manager, the Finance Director recommended immediate implementation of an “I-270 traffic enforcement initiative” in order to “begin to fill the revenue pipeline.” The Finance Director’s email attached a computation of the net revenues that would be generated by the initiative, which required paying five officers overtime for highway traffic enforcement for a four-hour shift. The Finance Director stated that “there is nothing to keep us from running this initiative 1, 2, 3, 4, 5, 6, or even 7 days a week. Admittedly at 7 days per week[] we would see diminishing returns.” Indeed, in a separate email to FPD supervisors, the Patrol Captain explained that “[t]he plan behind this [initiative] is to PRODUCE traffic tickets, not provide easy OT.” There is no indication that anyone considered whether community policing and public safety would be better served by devoting five overtime officers to neighborhood policing instead of a “revenue pipeline” of highway traffic enforcement. Rather, the only downsides to the program that City officials appear to have considered are that “this initiative requires 60 to 90 [days] of lead time to turn citations into cash,” and that Missouri law caps the proportion of revenue that can come from municipal fines at 30%, which limits the extent to which the program can be used. *See* Mo. Rev. Stat. § 302.341.2. With regard to the statewide-cap issue, the Finance Director advised: “As the RLCs [Red Light Cameras] net revenues ramp up to whatever we believe its annualized rate will be, then we can figure out how to balance the two programs to get their total revenues as close as possible to the statutory limit of 30%.”

The City has made clear to the Police Chief and the Municipal Judge that revenue generation must also be a priority in court operations. The Finance Director’s February 2011 report to the City Council notes that “Judge Brockmeyer was first appointed in 2003, and during this time has been successful in significantly increasing court collections over the years.” The report includes a list of “what he has done to help in the areas of court efficiency and revenue.” The list, drafted by Judge Brockmeyer, approvingly highlights the creation of additional fees, many of which are widely considered abusive and may be unlawful, including several that the City has repealed during the pendency of our investigation. These include a \$50 fee charged each time a person has a pending municipal arrest warrant cleared, and a “failure to appear fine,” which the Judge noted is “increased each time the Defendant fails to appear in court or pay a fine.” The Judge also noted increasing fines for repeat offenders, “especially in regard to housing violations, [which] have increased substantially and will continue to be increased upon subsequent violations.” The February 2011 report notes Judge Brockmeyer’s statement that “none of these changes could have taken place without the cooperation of the Court Clerk, the Chief of Police, and the Prosecutor’s Office.” Indeed, the acting prosecutor noted

in the report that “I have denied defendants’ needless requests for continuance from the payment docket in an effort to aid in the court’s efficient collection of its fines.”

Court staff are keenly aware that the City considers revenue generation to be the municipal court’s primary purpose. Revenue targets for court fines and fees are created in consultation not only with Chief Jackson, but also the Court Clerk. In one April 2010 exchange with Chief Jackson entitled “2011 Budget,” for example, the Finance Director sought and received confirmation that the Police Chief and the Court Clerk would prepare targets for the court’s fine and fee collections for subsequent years. Court staff take steps to ensure those targets are met in operating court. For example, in April 2011, the Court Clerk wrote to Judge Brockmeyer (copying Chief Jackson) that the fines the new Prosecuting Attorney was recommending were not high enough. The Clerk highlighted one case involving three Derelict Vehicle charges and a Failure to Comply charge that resulted in \$76 in fines, and noted this “normally would have brought a fine of all three charges around \$400.” After describing another case that she believed warranted higher fines, the Clerk concluded: “We need to keep up our revenue.” There is no indication that ability to pay or public safety goals were considered.

The City has been aware for years of concerns about the impact its focus on revenue has had on lawful police action and the fair administration of justice in Ferguson. It has disregarded those concerns—even concerns raised from within the City government—to avoid disturbing the court’s ability to optimize revenue generation. In 2012, a Ferguson City Councilmember wrote to other City officials in opposition to Judge Brockmeyer’s reappointment, stating that “[the Judge] does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn’t let all the pertinent witnesses testify before rendering a verdict.” The Councilmember then addressed the concern that “switching judges would/could lead to loss of revenue,” arguing that even if such a switch did “lead to a slight loss, I think it’s more important that cases are being handled properly and fairly.” The City Manager acknowledged mixed reviews of the Judge’s work but urged that the Judge be reappointed, noting that “[i]t goes without saying the City cannot afford to lose any efficiency in our Courts, nor experience any decrease in our Fines and Forfeitures.” . . .

Ferguson City Finances: Not the New Normal (April 7, 2015)

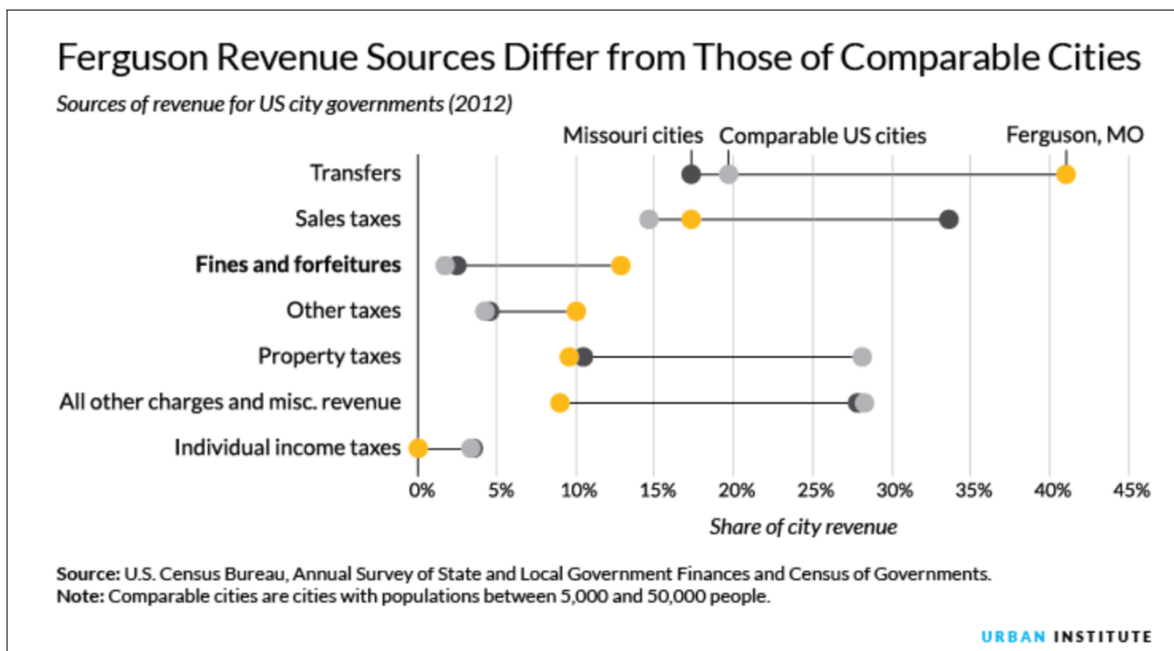
Tracy Gordon & Sarah Gault

URB. WIRE

The recently completed US Department of Justice (DOJ) investigation into Ferguson's police department highlighted "the City's focus on revenue rather than . . . public safety needs" when setting law enforcement priorities. It noted that fines and forfeitures nearly doubled as a share of the city's general fund revenues from fiscal years 2010 to 2015 (from 12 to 23 percent), while fines for everyday offenses like "weeds/tall grass" often exceeded \$100 (versus \$5 in some neighboring communities).

The DOJ did not show how Ferguson stacks up against other US cities, or how its finances have changed over time. Thanks to recently released Census data, we can see how it compares.

And the data show that Ferguson is an outlier.



In fiscal 2012, the city derived 12.9 percent of its general revenues from fines and forfeitures, compared with 2.5 percent in all other Missouri cities. The comparable share for all mid-sized U.S. cities (with 5,000 to 50,000 people) was 1.8 percent.⁰

Ferguson lost more than a quarter of its population between 1972 and 2012, shrinking from about 29,000 to 21,000 residents. For other cities that shrunk by more than a quarter over the past 40 years, fines and forfeitures provided 1.6 percent of general revenues.

Ferguson shifted from predominantly white (74 percent) in 1990 to predominantly black (67 percent) in 2010. Other U.S. cities that have gone through a similar minority-to-majority transition derived 1.7 percent of fiscal 2012 general revenues from fines and forfeitures.

The comparisons don't look any different if we consider other places like Ferguson with household incomes in the \$40,000 to \$50,000 per year range. They are the same for other majority (greater than 55 percent) black U.S. cities.

Where does the money go? Ferguson spent 40 percent of its general expenditures on public safety in 2012. This was higher than other Missouri cities (28 percent) or comparably sized U.S. municipalities (29 percent). However, public safety is often the largest spending category for U.S. cities, and Ferguson's allocations across budget categories have remained fairly constant since 1972.

Some hypotheses: Tax limitations, intergovernmental aid, and political fragmentation

So what's going on? Like a lot of states, Missouri got swept up in the tax revolt movement of the late 1970s. Voters passed several initiatives to limit taxes, most prominently the so-called Hancock Amendment limiting taxes to a fixed percentage of personal income and requiring voter approval for any tax increases beyond a minimal threshold. In Ferguson, as in a lot of U.S. cities, property tax collections fell immediately afterwards, and user fees and charges grew to take their place.

But, as *Governing* and *Better Together* have shown, while Ferguson is an outlier, it is by no means the most extreme Missouri city in its reliance on fines and forfeitures. It is not even in the top 20; that distinction goes to several smaller jurisdictions, most with populations of fewer than 5,000 people.

Another outgrowth of the tax limitation movement was that cities became more dependent on higher levels of government. In Ferguson, intergovernmental transfers rose by 50 percent from 1977 to 1982 (though this total includes the city's share of St. Louis County sales tax revenue sharing pool). Intergovernmental aid spiked again in the 1990s, and then in 2009 with passage of the [American] Recovery and Reinvestment Act. Although Census only provides detail on fines and forfeitures after 2007, it's interesting to note that the latest uptick coincides with the withdrawal of federal stimulus payments.

Other commentators have offered explanations for Ferguson's troubles ranging from government bloat to off cycle elections to political fragmentation. Ferguson's small size may make it especially prone to relying on higher levels of government or excessive penalties as opposed to taxes or user fees. Small cities have also been at the center of corruption scandals in California.

The Great Recession was tough on city budgets, leaving many places struggling to make ends meet and pushing a few over the edge into municipal bankruptcy. Now revenues are coming back, but some observers worry about a "new normal" of sluggish growth due to wage stagnation, anti-tax sentiment, and ongoing federal policy uncertainty.

One thing is clear: there is a model of cities in which voters get valued services from government and in return are willing to pay higher property taxes and user fees. Excessive penalties are more like the concept of "tax exporting," or getting tourists and other non-residents to pay a bigger tax share. Penalties for violations of the law should be used to deter criminal behavior, not to export taxes to your own citizens. This is not the new normal.

Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor (December 2015)

COUNCIL OF ECONOMIC ADVISERS ISSUE BRIEF

Introduction

Much of public discussion about the need for criminal justice system reform has focused on the dramatic growth in the size of the incarcerated population, as the number of Americans behind bars is now approximately 2.2 million. At the same time, concerns are growing about the expanding use of monetary penalties, which disproportionately impact poor defendants and offenders. Crime imposes real costs on society in terms of both the harm done to victims and in resources that must be allocated to policing, prosecution, and incarceration. Increases in criminal justice spending have put a strain on local criminal justice budgets and led to the broader use of fine penalties and itemized criminal justice fees in an effort to support budgets. However, this practice places large burdens on poor offenders who are unable to pay criminal justice debts and, because many offenders assigned monetary penalties fall into this category, has largely been ineffective in raising revenues. Similarly, the growing use of fixed bail bonds as a condition for pretrial release has contributed to growth in jail populations, and often results in localities detaining the poorest rather than the most dangerous defendants.

In this brief, we examine three common types of monetary payments in the criminal justice system:

- **Fines** are monetary punishments for infractions, misdemeanors, or felonies. Fines are intended to deter crime, punish offenders, and compensate victims for losses.
- **Fees** are itemized payments for court activities, supervision, or incarceration charged to defendants determined guilty of infractions, misdemeanors, or felonies. Fee collections are intended to support operational costs in the criminal justice system and may also be used to compensate victims for losses. Fees may also have a punitive and deterrent purpose, but are not designed to cater to specific offense categories.
- **Bail** is a bond payment for a defendant's release from jail prior to court proceedings, and the majority of a bail payment is returned to a defendant after case disposition. Bail payments are intended to incentivize defendants to appear at court and, in some cases, to reduce the criminal risk of returning a defendant to the community.

In jurisdictions throughout the United States, monetary payments for infractions, misdemeanors, or felonies typically do not consider a defendant's ability to pay, and instead are determined based on offense type, either statutorily or through judicial discretion. Fixed payments for a given offense create regressive penalties, or penalties more punitive for poorer individuals than for wealthier individuals. The disproportionate impact of these fixed payments on the poor raises concerns not only about fairness, but also because high monetary sanctions can lead to high levels of debt and even incarceration for failure to fulfil a payment. In some jurisdictions, approximately 20 percent of all jail inmates were incarcerated for failure to pay criminal justice debts. Estimates indicate that a third of felony defendants are detained before trial for failure to make bail; and in one city, approximately 20 percent of defendants made bail at amounts less than \$500. High debt burdens for poor offenders in turn increase barriers to successful re-entry after an offense.

As the use of fixed monetary penalties has increased, many observers have raised concerns about the equity, legality, and efficiency of these regressive payments. At the same time, meaningful reforms could increase equity without sacrificing deterrent impacts of these payments or the goal of supporting criminal justice operations. Below, we discuss the use and impact of fines, fees, and bail, and highlight potential options for reform.

Fines and Fees

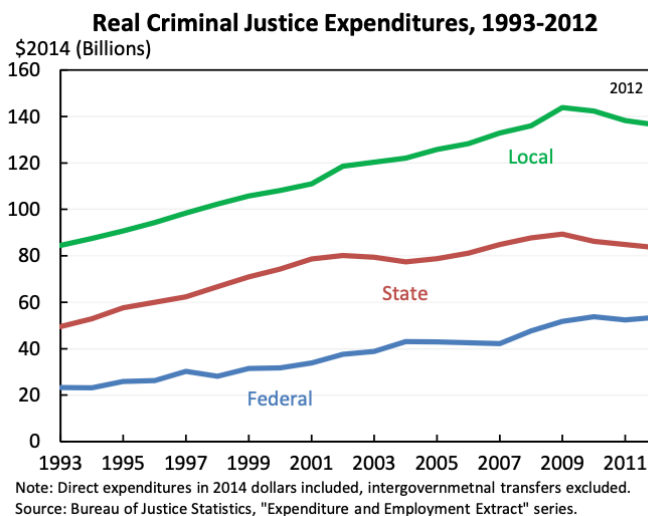
Rising Criminal Justice Budgets have Motivated Growth in Fines and Fee

In the past two and a half decades, the U.S. criminal justice system has expanded dramatically. Between 1990 and 2014, incarceration rates increased by 61 percent, and in 2014, over 2.2 million people were incarcerated in local jails or in State and Federal prisons.

As part of the growth in the criminal justice system expenditures have risen substantially. Between 1993 and 2012, total real annual criminal justice expenditures grew by 74 percent from \$157 to \$273 billion, and local spending comprised approximately half of total expenditures. State corrections expenditures represent 7 percent of the total State general funds on average, and 11 States spent more on corrections than higher expenditures education in 2013.

As enforcement has increased, budget pressure has mounted. State and local court systems, which process the majority of low-level offenses, have also faced increasing budget pressure, reflected in criminal justice expenditure growth of 69 percent at the State level and 61 percent at the local level over the same period.

In the 1990s, policy makers began arguing that taxpayers should not bear responsibility for these increasing costs, but rather the individuals convicted of crimes. State and local governments, who pay many of the operational costs of the criminal justice system, have increasingly turned to monetary sanctions as a source of additional revenue. One study using data from North Carolina found that counties use traffic tickets and fines not only to ensure safety but also as a tool to raise revenue, responding to a 10 percent budget shortfall by issuing 6 percent more tickets. In a high-profile example of this practice, a Department of Justice investigation of the Ferguson Police Department in Missouri showed that the town of Ferguson set revenue targets for criminal justice fines and fees of over \$3 million in 2015, covering over 20 percent of the town's operating budget.



The Use and Size of Fines and Fees Have Increased over Time

A recent study estimates that tens of millions of individuals in the United States have been assessed fines or fees as part of the punishment for a criminal offense. The use of these practices has increased substantially over time; in 1986, 12 percent of those incarcerated were also fined, while in 2004 this number had increased to 37 percent. When including fees as well, the total rises to 66 percent of all prison inmates. In 2014, 44 States charged offenders for probation and parole supervision, up from 26 in 1990.

While the use of fines and fees has grown for all sentencing groups, they remain more common in cases of misdemeanors, infractions, and other relatively less serious crimes than in cases of felonies. Even among felony defendants, fines and fees are more common for individuals convicted to probation or jail than prison, because fines may be used as an alternative to incarceration. At all levels, fines and fees are more associated with less serious crimes.

Within particular States, the number and type of fees has also risen substantially; for example, Florida has added 20 new categories of financial obligations since 1996. Examples of financial obligations include charges for representation by a public defender, court appearances, room and board for jail or prison stays, parole or probation services, court-required drug testing, counseling or community service, and electronic monitoring. Fees can also be directly linked to fines when additional fees are triggered by failure to pay a fine for the original offense. In many States, the range of fees can impact and burden poor defendants at each step of the justice process.

In addition to monetary penalties for specific offenses or criminal justice operations, surcharges for collecting criminal justice debt have an extra impact on offenders unable to pay their initial charges, a group that likely includes a large proportion of poor defendants. For example, in the State of Washington, individuals with criminal justice debt are subject to an initial flat charge of \$500 and an interest rate of 12 percent. Other States assess fees ranging from \$25 to \$300 for late payments, failure to pay fines, or to set up a debt payment plan. In Florida, private collection agencies may add processing fees of up to a 40 percent.

Though each individual fee may appear a manageable sum, a charge of several hundred dollars can present a significant obstacle to poor offenders and the number of charges, processing fees, and high rates of interest can quickly compound debt into much larger sums. In 2011, the city of Philadelphia sent bills on unpaid criminal justice debts to more than 20 percent of residents, with a median debt of \$4,500. A 2008 study in the State of Washington found an average of \$1,406 in fines and fees owed. The same study found that non-violent drug offenders owed debts over 1.5 times greater than other offender groups, in part because drug offenders may be more likely to receive fines instead of incarceration sentences. Given an interest rate of 12 percent in Washington, an offender paying \$10 a month on the average debt would owe more than \$15,000 in 30 years.

Fines and Fees Are Regressive Payments that Disproportionately Impact the Poor

While fines and fees serve different purposes in the criminal justice system, with the former intended as a direct form of punishment and the latter intended as a form of cost-sharing for operation of the system, they have a key similarity in the fact that both are typically assessed without consideration of the offender's ability to pay. These monetary penalties often place a disproportionate

burden on poor individuals who have fewer resources available to manage debt. They also serve as a regressive form of punishment as the same level of debt presents an increasingly larger burden as one moves lower on the income scale.

Statutory caps on fines and fees may attempt to ensure that payments are affordable for all, but payment ceilings often remain too high for impoverished offenders to afford. Caps on fines and fees can also perpetuate the regressive nature of the fine and fee system by reducing the relative punishment for wealthy defendants. For example, experiments varying the size of fines for running a red light find that larger fines reduce traffic violations, but that wealthier individuals are less responsive to changes in fine levels because fines are relatively less costly as income increases.

Though fines and fees represent fixed payments with respect to an individual's ability to pay, these payments show large variance across local jurisdictions, offense categories and offender characteristics due to judicial discretion. Regression analysis of criminal justice debt in the State of Washington found higher fines and fees for drug offenses, cases that went to trial, and for Hispanic and male offenders. Differences in criminal justice debt according to characteristics of the case may disproportionately impact certain groups or change the incentives that defendants face when choosing how to proceed with a case. Criminal justice debt also varied according to county characteristics; with higher fines and fees charged in counties with lower populations, counties with higher arrest rates for violent and drug offenses, and counties that spent a lower percentage of their budgets on criminal justice.

Fines and Fees Impose Large Financial and Human Costs on Poor Offenders

Fines and fees create large financial and human costs, all of which are disproportionately borne by the poor. High fines and fee payments may force the indigent formerly incarcerated to make difficult trade-offs between paying court debt and other necessary purchases. Unsustainable debt coupled with the threat of incarceration may even encourage some formerly incarcerated individuals to return to criminal activity to pay off their debts, perversely increasing recidivism. Time spent in pre-trial detention as a punishment for failure to pay debts entails large costs in the form of personal freedom and sacrificed income, as well as increasing the likelihood of job loss.

Further, an arrest for inability to pay a fine is itself a criminal record offense and can exacerbate the consequences of the original criminal charge. A large body of research shows that there is a substantial labor market penalty for having a criminal record or history of arrests or incarceration, in terms of both decreased employment and wage loss. Individuals unable to pay criminal justice debt may be further punished by having their drivers' licenses suspended, even for offenses unrelated to driving. In a recent study, eight of 15 States surveyed suspend licenses for nonpayment of criminal justice debt. Loss of a driver's license can make it difficult to maintain employment, increasing the obstacles to paying off debt.

In some cases, judges issue warrants to arrest and jail indigent individuals for failure to pay debts, a practice that may violate constitutional rights. In many States, payment of fines and fees is a condition of parole or probation, and failure to pay criminal justice debt can result in a violation of parole or probation that can lead to additional incarceration. In Pennsylvania, individuals unable to pay a \$60 fee for parole supervision are ineligible for parole release, leading to longer sentences for the

poorest offenders. Because many States provide credits toward debt for time spent in jail, convicted persons in some States may “choose” to serve time in jail to reduce their debts.

Though national data on incarceration for failure to pay criminal justice debt is not available, investigations of smaller jurisdictions are illustrative. In Rhode Island in 2008, 18 percent of all incarceration commitments were for criminal justice debt and over 2/3 of individuals jailed for debt were first time offenders. In Huron County, Ohio in 2012, failure to pay fines and fees accounted for 20 percent of all jail bookings.

Collection of Fines and Fees Is Often Inefficient

Though some jurisdictions may be successful in raising revenue through fines and fees, growing evaluation evidence suggests that a policy that funds government through criminal justice fees and fines is often ineffective. State and local governments are likely to collect fines and fees at low rates, in large part because of low incomes among many offenders, making them unable to pay court debts assigned without consideration for ability to pay. Available data shows that approximately 65 percent of prisoners did not complete high school and 14 percent have less than an 8th grade education, indicating that they may have limited labor market prospects or incomes. Similarly, evidence suggests that approximately 80 percent of felony defendants are designated as indigent and rely on court-appointed counsel.

As States have increasingly relied on fees and fines that do not take into account ability to pay, they have faced very low rates of collection on debt. For example, Florida and Maryland collected 14 percent and 17 percent of certain types of fees assessed, respectively. Additionally, the collection rate was zero in half of sentenced felonies in Washington over three years, and a large majority of sentenced cases had only collected 20 percent of funds charged. State and local governments appear to be responding to low collection rates by contracting with private collection agencies and increasing the fines and fees charged, a response that often exacerbates existing challenges with the system and raises serious due process concerns.

Despite their goal of increasing revenue to fund local criminal justice expenditures, in many cases, the costs of collection may exceed revenues from fines and fees due to the high direct costs of collecting debt and the low rate of collection. Direct costs of administering the program can be substantial, including staffing collectors, locating offenders, and administering collections. For example, the State of Washington collected over \$21 million in fee revenue in 2006, but saw a net gain of less than \$6 million.

The inefficiency of court debt collection is exacerbated by the high cost of imprisoning people who cannot pay these debts. When jurisdictions jail offenders for failure to pay, the cost of fee collection increases more; in Rhode Island in 2008, 2,446 individuals were incarcerated for unpaid debts at an average cost of \$505 per commitment, and in 13 percent of cases the cost of incarceration alone exceeded the debt assessed. These direct incarceration costs do not include other direct costs of collecting fees or the humanitarian and equity concerns of imprisoning those unable to pay criminal justice debts.

Inefficient debt collection practices persist because many States do not appropriately track the costs or net gains from collection of criminal justice debt. In a study of debt collection practices, none of the 15 States surveyed had any formal processes of tracking the costs associated with fee collection.

When Massachusetts conducted an impact analysis of introducing a fee for room and board in prisons and jails in 2010, the State found that the proposed fee would not feasibly increase revenue and would create additional obstacles to successful reentry.

Reforming Fines and Fees Could Potentially Increase Both Equity and Efficiency

Though State and local governments face important budgetary challenges, equitable and commonsense reforms to monetary criminal justice punishments have the potential to improve fairness and efficiency without compromising public safety.

Over 25 countries in Europe and Latin America utilize progressive “day” fines instead of fixed fines of a certain dollar amount for a given offense. In a “day” fine system, judges use sentencing guidelines for offense types measured in a number of “days.” Then, the court determines the total fine by multiplying the number of “days” by an individualized income measure for the defendant. Often, the “day” value for a defendant equals the dollar amount he or she earns in day, allowing fine punishments to be equally punitive in terms of days of work across defendants of different means.

Evaluation research has shown that “day” fine systems without statutory maximums have the additional potential to increase collection rates, as all defendants should be capable of paying proportional fines, to increase total fine revenue collected, and to reduce arrest warrants for outstanding debt. In the early 1990s, enthusiasm for the wide array of benefits of “day” fines led to a number of pilot programs in jurisdictions in the United States, though these pilots had mixed results due to implementation challenges. These challenges included high start-up costs, personnel training, and complications with easily accessing income data in the courts. Recognizing these challenges and capitalizing on modern technology, new forms of progressive fine systems may be more successful in today’s digital era.

Programs that increase the availability of exemption waivers for criminal justice fees for impoverished defendants have also shown promise. To qualify for an exemption, courts assess an individual’s poverty level based on an income threshold and provide an alternative to a fine, such as community service, for individuals below the threshold. In 2011, the State of Washington passed legislation to permit waivers for interest accrued while a person is incarcerated and Maryland passed a law that required the probation and parole officers to notify those on supervised release of available exemptions. Several other reform ideas have been suggested by academics and practitioners, including amnesty days, community service alternatives, and requiring court hearings to determine whether defendants are able to pay sanctions.

Given the high administrative costs and low or negative rates of return for fee collection programs, some localities have opted to abolish fee payments altogether. After extensive review of the net gains of fee collections, Leon County, Florida closed its Collections Court and terminated eight thousand outstanding arrest warrants. Following a similar review, Orange County, Florida cancelled outstanding nonpayment warrants for transient residents. . . .

The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties (November 21, 2019)

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Executive Summary

The past decade has seen a troubling and well-documented increase in fees and fines imposed on defendants by criminal courts. Today, many states and localities rely on these fees and fines to fund their court systems or even basic government operations.

A wealth of evidence has already shown that this system works against the goal of rehabilitation and creates a major barrier to people reentering society after a conviction. They are often unable to pay hundreds or thousands of dollars in accumulated court debt. When debt leads to incarceration or license suspension, it becomes even harder to find a job or housing or to pay child support. There's also little evidence that imposing onerous fees and fines improves public safety.

Now, this first-of-its-kind analysis shows that in addition to thwarting rehabilitation and failing to improve public safety, criminal-court fees and fines also fail at efficiently raising revenue. The high costs of collection and enforcement are excluded from most assessments, meaning that actual revenues from fees and fines are far lower than what legislators expect. And because fees and fines are typically imposed without regard to a defendant's ability to pay, jurisdictions have billions of dollars in unpaid court debt on the books that they are unlikely to ever collect. This debt hangs over the heads of defendants and grows every year.

This study examines 10 counties across Texas, Florida, and New Mexico, as well as statewide data for those three states. The counties vary in their geographic, economic, political, and ethnic profiles, as well as in their practices for collecting and enforcing fees and fines.

Key Findings

- Fees and fines are an inefficient source of government revenue. The Texas and New Mexico counties studied here effectively spend more than 41 cents of every dollar of revenue they raise from fees and fines on in-court hearings and jail costs alone. That's 121 times what the Internal Revenue Service spends to collect taxes and many times what the states themselves spend to collect taxes. One New Mexico county spends at least \$1.17 to collect every dollar of revenue it raises through fees and fines, meaning that it loses money through this system.
- Resources devoted to collecting and enforcing fees and fines could be better spent on efforts that actually improve public safety. Collection and enforcement efforts divert police, sheriff's deputies, and courts from their core responsibilities.
- Judges rarely hold hearings to establish defendants' ability to pay. As a result, the burden of fees and fines falls largely on the poor, much like a regressive tax, and billions of dollars go unpaid each year. These mounting balances underscore our finding that fees and fines are an unreliable source of government revenue.

- Jailing those unable to pay fees and fines is especially costly—sometimes as much as 115 percent of the amount collected—and generates no revenue. The practice is not just unconstitutional but also irrational.
- The true costs are likely even higher than the estimates presented here, because many of the costs of imposing, collecting, and enforcing criminal fees and fines could not be ascertained. No one fully tracks these costs, a task complicated by the fact that they are spread across agencies and levels of government. Among the costs that often go unmeasured are those of jailing, time spent by police and sheriffs on warrant enforcement or driver’s license suspensions, and probation and parole resources devoted to fee and fine enforcement. This makes it all but impossible for policymakers and the public to evaluate these systems as sources of revenue.

Recommendations

- States and localities should pass legislation to eliminate court-imposed fees. Courts should be funded primarily by taxpayers, all of whom are served by the justice system.
- States should institute a sliding scale for assessing fines based on individuals’ ability to pay. The purpose of fines is to punish those who violate the law and deter those who might otherwise do so. A \$200 fine that is a minor inconvenience to one person may be an insurmountable debt to another.
- Courts should stop the practice of jailing for failure to pay, which harms rehabilitation efforts and makes little fiscal sense.
- States should eliminate driver’s license suspension for nonpayment of criminal fees and fines. The practice makes it harder for poor people to pay their debts and harms individuals and their families. Lawmakers should follow the approach taken by Texas, where recent legislation will reinstate hundreds of thousands of licenses.
- Courts and agencies should improve data automation practices so that affected individuals understand their outstanding court debts and policymakers can more thoroughly evaluate the efficacy of fees and fines as a source of revenue.
- States should pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions, as some jurisdictions, including San Francisco, have done. This would also ensure that individuals who have been free and clear of the criminal justice system for many years are not pulled back in simply on the basis of inability to pay.

What’s the Difference Between Fees and Fines?

Fines, imposed upon conviction, are intended as both deterrence and punishment. In Texas, for example, a fine of up to \$500 may be imposed for a low-level offense, such as a traffic violation; a fine of up to \$2,000 may be imposed for more serious misdemeanors, such as harassment or minor drug possession; and a fine of up to \$4,000 may be imposed for the most serious misdemeanors, such as unlawful carrying of a weapon and assault with injury.

Fees, by contrast, are intended to raise revenue. Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the “users” of the courts. They cover almost every part of the criminal justice process and can include court-appointed attorney fees, court clerk fees, filing clerk fees, DNA database fees, jury fees, crime lab analysis fees, late fees, installment fees, and various other surcharges.

The Growing Use of Fees and Fines – and the Damage They’ve Done

Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded. Our justice system increasingly relies on fees and fines charged to defendants in criminal cases to fund basic operations.

For example, North Carolina collects 52 separate fees, disbursing them to four state agencies and 611 counties and municipalities. It uses fees to fund half of the state’s judicial budget as well as jails, law enforcement, counties, and schools. Using fee and fine revenues to fund the judiciary can create perverse incentives with the potential to distort the fair administration of justice. When criminal courts become responsible for their own financing, they may prioritize the imposition of significant fee and fine amounts and dedicate substantial staff to collecting these sums.

In Florida, a significant portion of the funds raised through fees and fines is allocated to the state’s general coffers. Colorado has used increased court fees to replace and update public buildings, including a judicial complex and a museum. Florida and Kentucky increased court fees as a way to address state fiscal crises. In Oklahoma, where a 1992 referendum made it nearly impossible for legislators to raise taxes, lawmakers have increasingly come to rely on fees and fines to fund the state budget. Some fee and fine revenue has even been used for personal perks: fees and surcharges allocated to a judicial expense fund in Louisiana were found to have been spent on luxury goods, including supplemental health insurance for judges, two Ford Expeditions, a leather upholstery upgrade for a take-home vehicle, and a full-time private chef.

This increase in fees and fines has exacted a steep human cost. Individual amounts may be small, but they can quickly add up, meaning indigent people may face hundreds or thousands of dollars in accumulated debt that they’re unable to pay. While “debtors’ prisons” have been declared unconstitutional, many states still incarcerate people for failure to pay criminal justice debt. And even when failure to pay is not an explicit charge, jail sentences are handed down for failure to appear or failure to comply – infractions that often stem from failure to pay. In Socorro County, New Mexico, for example, one magistrate judge has adopted a “three strikes” policy. For each missed payment of outstanding court costs, the court’s enforcement response progresses from a bench warrant, to a bench warrant with a bond, to a charge of failure to comply that carries a three-day jail sentence. Each day spent in jail may then be credited against the defendant’s outstanding debts. Under the guise of different charges, such a policy perpetuates the function of a debtors’ prison.

In this way, criminal justice debt represents a significant barrier to a person’s chances of successfully reentering society following a conviction. It also hurts the families of those who are incarcerated, depriving them of a wage earner while adding new court costs to the defendant’s criminal debts. One study found that about half of families with convicted members cannot afford to pay fees and fines. Moreover, nearly two in three families who had a family member incarcerated were unable

to meet their households' basic needs, such as food and housing. States such as Florida that suspend driver's licenses for unpaid fees and fines only exacerbate this economic distress, as those who lose their license may then lose their job as well as their ability to take family members to school or medical appointments and to drive themselves to court.

There is also evidence that fees and fines are assessed in a racially discriminatory way. A 2017 report by the U.S. Commission on Civil Rights found that municipalities that rely heavily on revenue from fees and fines have a higher than average share of African American and Latino residents.

By now, these harms have been well documented. But there has been much less research conducted on the fiscal costs of fees and fines. This report aims to start filling that gap. Without an understanding of how much governments are spending to administer fees and fines, and how much in fees and fines is never collected, decision-makers can't accurately gauge the efficacy of these programs.

Report Terms

Assessment. As used in this report, assessment refers to the amount of the fee or fine imposed by a judge on a criminal defendant at sentencing. For many minor offenses, assessments are made at the conclusion of a simple hearing before a judge or magistrate in which the defendant makes a plea, the evidence is reviewed, and a decision is made by the judge or magistrate. More complex and serious criminal cases may involve separate appearances in court, including an arraignment in which the charges are read and a defendant's plea is accepted by the judge, a trial before the judge (and possibly a jury), and a sentencing hearing, at which point fees and fines may be imposed by the judge.

Criminal justice debt. Criminal justice debt is composed of legally binding financial obligations imposed on those convicted by criminal courts. While such debt may comprise fees, fines, and victim restitution – payments ordered to victims as compensation – this report deals only with fees and fines (see below), which are recognized as revenue on the balance sheets of courts and other public agencies. In contrast to private and many civil debts, criminal justice debt is enforced by the criminal justice system and can result in the issuance of arrest warrants for nonpayment, criminal court hearings, additional fines and court surcharges, detention in jail, inclusion on criminal records, and – in some states – loss of voting privileges.

Fines. Criminal fines are penalties imposed on defendants after conviction, intended as both deterrence and punishment. The amount of a fine is set by statute and based on the severity of the crime. For misdemeanors, fines may be relatively small. For felonies, fines are typically larger. Fines vary by jurisdiction and may be enhanced for repeat offenses. For example, each of the three states included in this study imposes fines as a penalty for drunk driving. For a first offense, New Mexico assesses a \$300 fine, Florida assesses a \$500 fine, and Texas may assess up to \$2,000. In all three states, drunk driving is an enhanceable offense, meaning that the penalties, including fines, escalate depending on the number of prior offenses.

Fees. Criminal fees, unlike fines, are intended to raise revenue. Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the “users” of the courts. Cash-strapped state and local governments rely on criminal fees to raise revenue for other purposes as well, thereby avoiding the politically unpopular step of raising taxes. Most jurisdictions impose certain fees on every defendant convicted, regardless of the nature of the offense. For example,

one convicted of a misdemeanor in Florida is charged a \$20 court cost fee, a \$3 Court Cost Clearing Trust Fund fee, a \$60 Fine and Forfeiture Fund fee, a \$20 Crime Stoppers Program fee, a \$50 prosecution fee, a \$50 crime compensation fee, and a \$20 Crime Prevention Fund fee, and potentially others. Other fees are offense-specific and imposed only on defendants convicted of certain offenses. For example, in New Mexico there are fees for defendants convicted of driving under the influence (DUI) or drug offenses. While fees may be imposed by courts, parole and probation departments, and jails and prisons, this report focuses on fees imposed by criminal courts following conviction. In some jurisdictions, fees may be referred to by another name. For example, some of the fees imposed by courts in Texas are called “court costs.”

Revenue. Fees and fines both serve as sources of revenue for state and local governments. The permissible uses for this revenue are typically set by statute. Many fees are earmarked for specific purposes, such as programs that divert defendants from prison, courthouse maintenance, or traffic safety education. Much of the revenue from criminal justice fees and fines is used to fund the judiciary or routed to law enforcement. In some cases it goes to a state or locality’s general fund, where it may be used for purposes wholly unrelated to law enforcement or the courts. Fine revenue is disbursed according to statute in each of the three states studied. In each state, most fine revenue goes into a general fund at the state or municipal level, though some is directed toward particular programs, such as road maintenance or schools.

While state statutes prescribe the distribution of funds collected through the criminal justice system, the allocation of revenue varies. For example, in New Orleans, the \$11.5 million in criminal justice fees and fines collected in 2015 was distributed among eight agencies, providing funding for the municipal court, district court, public defenders, and traffic court. In Allegan County, Michigan, half of court-imposed fees went toward running the county courthouse, paying employee salaries, heating the court building, purchasing copy machines, and underwriting the cost of the county employee gym.

Waivers. In some courts, judges have authority to reduce the amount of certain fees and fines imposed at conviction. Amounts reduced without a quid pro quo (such as the performance of community service in lieu of payment or time spent in jail) often are referred to as waivers. This is the meaning of the term as employed in this report. The issuance of waivers varies considerably among jurisdictions and states.

Jail credits. Some states waive fees and fines in exchange for jail time, which are referred to as jail credits and are distinct from the kinds of credits through which people earn reductions to sentences. Though this alternative might be pitched as a benefit to those who want to discharge their debt in this manner, no one who has a choice and can make other payment arrangements would choose jail. Further, many defendants have no say in the matter. For example, one magistrate judge in Socorro County, New Mexico, jails individuals for missing three payments without making a court appearance, regardless of ability to pay. Perversely, people can accumulate additional fees during their stay in jail, leaving them with more debt than when they entered.

In some states, including Alabama, Michigan, and Texas, when people are picked up on a warrant for a failure to pay traffic tickets or fines, they may be jailed involuntarily to pay off delinquent criminal justice debt through credits issued for each day spent in jail.

These credits do not generate actual revenue but simply exchange jail time for debt reduction at a great cost to the government. Jailing also comes at great cost to the people affected and their families. The U.S. Supreme Court has held that imprisonment for unpaid fines or fees without a hearing to determine ability to pay is unconstitutional. If courts find that a defendant is unable to pay, they are required to consider alternatives, such as deferrals, payment plans, community service, and waivers. Unfortunately, in practice, many courts fail to make these financial determinations.

Community service credits. Most states offer some type of community service option as an alternative to payment, though these practices vary significantly within and across states. Some states offer programs assigning people to pick up trash or maintain parks in lieu of a jail sentence or fine, while other states allow people to meet educational requirements to pay off their debt. Some types of community service require classes for certification (e.g., controlling traffic for the Department of Transportation), which can lead to employment opportunities after the debt is paid.

In some states, community service is seldom available to defendants because judges feel pressure to raise revenue for their city or county. For those who get the opportunity, community service hours are often paid at the federal minimum wage, only \$7.25 an hour, making it unrealistic for people to devote the time necessary to work down their debt. This is even harder if they have jobs or are caring for family members.

I. Key Findings

A. Fees and Fines Are Inefficient for Raising Revenue

The costs of fee and fine enforcement are huge. For example, in 2017 misdemeanor and traffic courts in Travis County, Texas, spent nearly \$4.8 million on in-court proceedings and staff costs related to fee and fine compliance. In addition, the county spent more than \$4.6 million on jailing those who failed to pay fees and fines and those allowed to earn jail credit against amounts owed.

On average, the jurisdictions in this report spent more than \$0.41 for every dollar they collected over the period studied. Because of a lack of available data, this figure counts only in-court and jail costs. If all costs were measured—including the sizable cost to law enforcement for warrant enforcement and arrests, the cost to Department of Motor Vehicles (DMV) offices for processing suspended licenses, and the cost to parole and probation officers for fee and fine compliance—it would be even higher.

Compare these collection costs to the cost of raising revenue through taxation. The Internal Revenue Service spends just \$0.34 for every *hundred dollars* in taxes collected. In other words, it costs jurisdictions, on average, *121 times more* to collect criminal fees and fines—even without including some of those costs—than it costs the IRS to gather taxes. Meanwhile, Texas spends around \$0.31 for every *hundred dollars* in taxes collected. New Mexico spends roughly \$0.95. It's clear that general taxation is significantly more cost effective than criminal fees and fines at raising revenue.

B. Collecting Fees and Fines Detracts from Public Safety Efforts

Fees and fines are most often evaluated by courts and criminal justice agencies, legislators, and policymakers on the basis of the revenue they generate, but they come at a great cost to the criminal

justice system. When criminal courts impose fees and fines and then spend much of their resources collecting them, this leaves less to spend on true public safety needs. For example:

- When police and sheriff's deputies are serving warrants for failure to pay fees and fines, they are less readily available to respond to 911 calls.
- When courts schedule appearances for failure to pay, proceedings for more serious crimes can be delayed or rushed.
- When community corrections officers spend much of their time reminding their clients to pay unaffordable fees and fines, they have less time to work with people to help them break the cycle of repeated contact with the criminal justice system.
- When people who can't afford to pay fees and fines are jailed, they are exposed to the many harms of incarceration, while correctional authorities are burdened with providing jail space and services to people who pose no risk to public safety.
- These are just a few examples; there are many more ways in which criminal justice agency efforts to coerce payment translates into less time spent on more valuable criminal justice work.
- Put concretely and in dollar terms, almost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue. This is a fundamentally inefficient way to collect revenue to support courts and other criminal justice agencies, and it does not make fiscal or economic sense.

C. Almost No Time Is Spent in Court Determining Whether People Can Afford to Pay Fees and Fines

One reason that fees and fines are so inefficient as a revenue raiser is that each year millions of people are given sentences that include fines and fees they are simply unable to pay. From watching more than 1,000 court proceedings in seven jurisdictions, the authors found that judges rarely hold ability-to-pay hearings. While there are plainly up-front costs associated with such hearings, in the long run, jurisdictions would spend less money by holding them rather than trying to chase down debts that cannot be paid.

D. Jailing for Nonpayment Is Costly and Irrational

The Supreme Court has held that “punishing a person for his poverty” is unconstitutional. Still, states and localities continue to jail large numbers of indigent defendants as a sanction for unpaid criminal justice debt. Jailing people for nonpayment is by far the most expensive method of enforcing collections and generates little to no revenue – making it highly uneconomical. In counties where courts incarcerate for failure to pay, the authors found that the cost of incarceration dwarfs other collections costs. For example, in Bernalillo County, New Mexico, jail costs represent as much as 98 percent of the collection costs documented by the authors.

Further, while the full costs are unknown, they are considerable – with many jails in Texas and New Mexico reporting costs per inmate per day clustering around \$55 to \$65 or higher – and the costs

negate or reduce much of the revenue that city, county, and state officials believe that criminal fees and fines produce.

Often when someone is unable or unwilling to pay a fee or fine, the court issues a warrant. Frequently, indigent people do not appear on their court date, due to a transportation issue (they may have had their license suspended), or because they have to work, or because they fear arrest for nonpayment. In these instances, courts often issue a warrant for failure to appear, resulting in additional debt for the defendant and, in some jurisdictions, jail time. Some defendants receive credit toward their debt at a state-determined per diem rate for the time they spend in custody; others incur additional debt in the form of jail fees; and some are released still owing the amount they owed before the warrant was issued. Jailing is particularly counterproductive not only because incarceration is extremely costly to jurisdictions but also because it diminishes a person's ability to pay outstanding fees.

E. The Amount of Uncollected Debt Continues to Grow

A substantial portion of fees and fines is never collected and is likely uncollectable, meaning that these assessments are an unreliable source of government revenue that will always come up short.

No one knows how much is owed in total because few states and courts track this information – which is itself a problem requiring attention. But from 2012 to 2018, the states of Florida, New Mexico, and Texas amassed a total of almost \$1.9 billion in uncollected debt. And in each of the jurisdictions studied here, the amount of unpaid debt grew significantly over the period examined. Much of this debt is unlikely to ever be collected, as those with low incomes lack resources to draw on for payment.

This high level of uncollected debt demonstrates why fees and fines are such an unreliable way to raise revenue. It also hurts those who can't pay, putting them at risk of incarceration, loss of their ability to legally drive, voter disenfranchisement, and increased difficulty in getting a job. And courts keep track of debts in perpetuity, making it all but impossible for defendants to get out from under them.

F. *Jurisdictions Do Not Track Costs Related to Collecting Fees and Fines*

For the most part, jurisdictions do not know how much it costs them to collect fees and fines. Of the three states studied, only Texas systematically tracks some of the costs for court collection units. But even there, the picture is incomplete. No jurisdiction tracks any of the following: the court costs for fee and fine administration, the cost to public defender systems for dealing with their clients' fees and fines, the cost to parole and probation systems for fee and fine enforcement (whether they engage in collections or simply remind their charges constantly to pay their court debts), the cost to DMV offices processing license suspensions or state tax agencies processing offsets, and the cost to law enforcement for warrant enforcement or arrests for failure to pay or suspended driver's licenses.

Though Texas collects some data on the costs of jailing people who fail to pay fees and fines or are allowed to earn jail credit against amounts owed, most courts and other criminal justice agencies do not track and report such costs.

G. Fees and Fines Are a Regressive Tax on the Poor

Revelations that cities like Ferguson, Missouri, collect millions in fees from poor citizens sparked a national debate in 2014 about predatory and regressive policies targeting vulnerable communities. The city relied on rising municipal court fines to make up 20 percent of its \$12 million operating budget in fiscal year 2013. But Ferguson is not alone. As detailed below, fee and fine assessments in each of the states studied amount to significant costs for the people who pass through the criminal justice system, many of whom are poor. Across the three states, billions of dollars are charged without regard to ability to pay. According to the Federal Reserve, many Americans are unable to pay an unexpected bill of \$400. The fees and fines charged in these three states may well be more than what the average defendant can afford (and the noticeable growth of unpaid fee and fine debt bears this out). This is particularly so where evidence exists that policing frequently has a disproportionate impact on marginalized communities. . . .

III. County Fiscal Impacts

This basic fiscal analysis identifies the cost to courts and criminal justice agencies in target counties of assessing and collecting criminal fees and fines, then subtracts those costs from the revenues collected for each jurisdiction. The remainder is the net gain in revenue.

Until now, the costs of assessing and collecting criminal justice fees and fines have gone largely unmeasured. To provide a clearer understanding of whether fees and fines are an efficient means of raising government revenue, both within each jurisdiction studied and on average, the authors gathered data from various stakeholders in the criminal justice system engaged in the collection of fees and fines in 10 counties. These included courts, prosecutors, public defenders, probation/parole officers, and local jails. The authors had the most success obtaining data for courts, with jailing costs also available for some jurisdictions. With this data, the authors were able to quantify the costs associated with in-court proceedings dealing with fees and fines, court collection costs for some jurisdictions, and jailing costs for nonpayment in certain jurisdictions. For a variety of reasons, including local policies, the authors were unable to collect any information from law enforcement agencies.

FIGURE 1

Fiscal Analysis of Target Counties in Texas (2017), New Mexico (2016), and Florida (2017)

Thousands of dollars

Total Fees and Fines Assessed	TEXAS				NEW MEXICO			FLORIDA			RANGE	
	Travis	El Paso	Jim Hogg	Marion	Bernalillo	Santa Fe	Socorro	Leon	Miami-Dade	Madison	Low	High
Total Assessments	\$38,006	\$14,109	N/A	N/A	\$4,170	\$1,138	\$207	\$1,148	\$10,143	\$257	\$207	\$38,006
Waivers/Adjustments	\$1,176	\$308	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$308	\$1,176
Community Service Credits	\$561	\$83	N/A	N/A	\$84	\$55	\$2	\$44	\$12	\$1	\$1	\$561
Jail Credits	\$6,958	\$3,140	N/A	N/A	\$1,448	\$214	\$76	\$0	\$0	\$0	\$0	\$6,958
Conversions to Liens	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0	\$0	\$54	\$0	\$54
Other Credits	\$0	\$0	N/A	N/A	\$661	\$83	\$10	\$20	\$0	\$6	\$0	\$661
Total Adjustments	\$8,694	\$3,532	N/A	N/A	\$2,193	\$352	\$88	\$64	\$12	\$61	\$12	\$8,694
Net Amounts Owed	\$29,312	\$10,577	N/A	N/A	\$1,977	\$787	\$120	\$1,084	\$10,131	\$196	\$120	\$29,312
Revenue Collected												
Collections	\$26,929	\$8,132	\$237	\$366	\$1,862	\$724	\$119	\$858	\$7,978	\$174	\$119	\$26,929
Collections as a Percentage of Assessments	71%	58%	N/A	N/A	45%	64%	58%	75%	79%	68%	45%	79%
Cost to Levy and Collect												
In-Court Costs	\$3,186	\$68	\$10	\$29	\$40	\$54	\$14	\$31	\$267	N/A	\$10	\$3,186
Collections Unit Costs	\$1,610	\$733	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$733	\$1,610
Jail Costs	\$4,627	\$2,917	N/A	N/A	\$2,138	\$239	\$81	N/A	N/A	N/A	\$81	\$4,627
Other Costs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$0	\$0
Total Costs	\$9,423	\$3,718	\$10	\$29	\$2,178	\$294	\$96	N/A	N/A	N/A	\$10	\$9,423
Costs as a Percentage of Collections	35%	46%	4%	8%	117%	41%	80%	N/A	N/A	N/A	4%	117%
Net Gain (Revenue Minus Cost)	\$17,506	\$4,414	\$227	\$336	-\$316	\$430	\$24	N/A	N/A	N/A	-\$316	\$17,506

Sources: New Mexico Judicial Information Division; Texas Collection Improvement Program; Florida Court Clerks & Comptrollers; Brennan Center calculations.

Our fiscal analysis revealed that, across the counties studied, 66 percent of criminal justice debts assessed were eventually collected. In the most recent year examined, revenues ranged up to \$27 million raised in these jurisdictions, with more populous and urban counties at the higher end. Costs associated with assessments and collections that could be documented were as much as \$9.4 million, depending on the county. As expected, costs were higher in counties where courts jailed for nonpayment. Costs associated with time spent on fees and fines in court proceedings were estimated to be relatively low, as little time was observed in courtrooms considering the amounts owed or the ability to pay.

The authors' estimates of collection and enforcement costs underestimate the full set of direct costs due to limited data availability in the jurisdictions studied; if data had been fully available, this study's cost estimates would have been higher.

- The authors observed court proceedings to estimate personnel costs for the judges, prosecutors, public defenders, and other staff involved in court proceedings in all but three

jurisdictions, smaller counties in which court proceedings do not occur weekly. Personnel costs are therefore not included in estimates for those counties.

- Jail costs could be calculated for New Mexico and larger Texas counties. Florida jail data was not available. Florida does not jail for failure to pay but does incur costs for incarceration for driving with a license that has been suspended due to inability to pay fees and fines.
- The authors were not able to obtain the cost of court collections for a large portion of Texas counties.
- The authors were unable to obtain adequate survey responses from judges, court clerks and their staff, prosecutors, public defenders, and probation and parole staff to document time spent outside courtrooms on fee/fine enforcement and collection; and no cooperation was received from law enforcement agencies.

In addition to the basic fiscal analysis, the authors tallied uncollected court debts in most of the 10 jurisdictions to calculate the extent of accumulating unpaid fees and fines. Courts are rarely able to provide estimates of outstanding balances. The authors therefore examined how these debts accumulated by using several years of fee and fine assessments, credits, waivers, and collections data for each jurisdiction; calculating unpaid balances for each year; and totaling these amounts for the years examined.

Figure 2 illustrates how revenues compare across each county studied over a five-year period. While the trends vary among jurisdictions (see section IV), one major finding of this report is that across states, the amount of uncollected debt increases year over year. . . .

FIGURE 2

Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
Florida						5-Year Total
Leon County						
Assessed	\$3,661	\$3,240	\$2,673	\$2,431	\$1,148	\$13,153
Collected	\$2,065	\$1,825	\$1,953	\$1,888	\$858	\$8,589
Credits/Waivers/Liens	\$379	\$217	\$83	\$259	\$64	\$1,002
Remaining Outstanding	\$1,217	\$1,198	\$637	\$283	\$226	\$3,562
Cumulative Unpaid Balance	\$1,217	\$2,415	\$3,053	\$3,336	\$3,562	\$3,562
Collection Rate	56%	56%	73%	78%	75%	65%
Miami-Dade County						
Assessed	\$20,872	\$14,384	\$15,772	\$12,178	\$10,143	\$73,348
Collected	\$12,245	\$9,353	\$9,453	\$8,297	\$7,978	\$47,326
Credits/Waivers/Liens	\$28	\$33	\$43	\$23	\$12	\$140
Remaining Outstanding	\$8,598	\$4,998	\$6,276	\$3,858	\$2,153	\$25,883
Cumulative Unpaid Balance	\$8,598	\$13,596	\$19,872	\$23,730	\$25,883	\$25,883
Collection Rate	59%	65%	60%	68%	79%	65%
Madison County						
Assessed	\$288	\$291	\$224	\$243	\$257	\$1,303
Collected	\$124	\$190	\$187	\$175	\$174	\$850
Credits/Waivers/Liens	\$60	\$38	\$36	\$74	\$61	\$268
Remaining Outstanding	\$104	\$63	\$2	-\$6	\$22	\$185
Cumulative Unpaid Balance	\$104	\$167	\$169	\$163	\$185	\$185
Collection Rate	43%	65%	83%	72%	68%	65%
New Mexico						4-Year Total
Bernalillo County						
Assessed	\$5,371	\$5,294	\$4,558	\$4,170	N/A	\$19,393
Collected	\$3,062	\$2,704	\$2,267	\$1,862	N/A	\$9,895
Credits/Waivers/Liens	\$1,703	\$2,077	\$2,089	\$2,193	N/A	\$8,062
Remaining Outstanding	\$606	\$513	\$203	\$115	N/A	\$1,437
Cumulative Unpaid Balance	\$606	\$1,119	\$1,322	\$1,437	N/A	\$1,437
Collection Rate	57%	51%	50%	45%	N/A	51%
Santa Fe County						
Assessed	\$987	\$1,243	\$1,370	\$1,138	N/A	\$4,738
Collected	\$675	\$843	\$952	\$724	N/A	\$3,193
Credits/Waivers/Liens	\$172	\$143	\$350	\$352	N/A	\$1,016
Remaining Outstanding	\$141	\$256	\$69	\$63	N/A	\$528
Cumulative Unpaid Balance	\$141	\$397	\$465	\$528	N/A	\$528
Collection Rate	68%	68%	69%	64%	N/A	67%

Continues>

FIGURE 2-CONTINUES

Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
New Mexico						4-Year Total
Socorro County						
Assessed	\$289	\$281	\$231	\$207	N/A	\$1,008
Collected	\$156	\$155	\$140	\$119	N/A	\$569
Credits/Waivers/Liens	\$105	\$112	\$102	\$88	N/A	\$406
Remaining Outstanding	\$29	\$14	-\$10	\$0	N/A	\$33
Cumulative Unpaid Balance	\$29	\$43	\$33	\$33	N/A	\$33
Collection Rate	54%	55%	60%	58%	N/A	56%
Texas						5-Year Total
El Paso County						
Assessed	\$34,690	\$34,568	\$34,364	\$31,272	\$14,109	\$149,003
Collected	\$22,497	\$19,075	\$19,844	\$19,083	\$8,132	\$88,631
Credits/Waivers/Liens	\$11,267	\$12,602	\$10,587	\$7,970	\$3,532	\$45,958
Remaining Outstanding	\$926	\$2,890	\$3,933	\$4,220	\$2,445	\$14,414
Cumulative Unpaid Balance	\$926	\$3,816	\$7,749	\$11,969	\$14,414	\$14,414
Collection Rate	65%	55%	58%	61%	58%	59%
Jim Hogg County						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	\$206	\$215	\$196	\$292	\$237	\$1,147
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
Marion County						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	\$352	\$287	\$324	\$394	\$366	\$1,722
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
Travis County						
Assessed	\$48,412	\$51,563	\$49,307	\$41,497	\$38,006	\$228,784
Collected	\$34,090	\$36,619	\$35,703	\$29,164	\$26,929	\$162,505
Credits/Waivers/Liens	\$11,882	\$10,112	\$9,827	\$8,026	\$8,694	\$48,541
Remaining Outstanding	\$2,440	\$4,833	\$3,777	\$4,307	\$2,382	\$17,738
Cumulative Unpaid Balance	\$2,440	\$7,272	\$11,049	\$15,356	\$17,738	\$17,738
Collection Rate	70%	71%	72%	70%	71%	71%

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