

# Adding It Up



## The Financial Realities of Ohio's Pay-to-Stay Jail Policies

# Introduction

The United States is the largest incarcerator in the world, and Ohio ranks eighth in terms of prison population size.<sup>1</sup>

Many of the individuals incarcerated are low-level, nonviolent offenders whose crimes may not have led to incarceration 20, 30 or 40 years ago.<sup>2</sup> However, mandatory minimum sentencing, the misguided War on Drugs, and other tough on crime campaigns have left many courts with little choice but to incarcerate a person who may be better served in rehabilitation or under community control.<sup>3</sup> The addiction to incarceration has had very real consequences — creating a growing class of individuals with criminal convictions unable to obtain employment or housing, and trapped in perpetual poverty. As these individuals struggle under the weight of reentering society, many see no hope and instead return to crime. In turn, taxpayers pay increasingly more money to fund prisons and jails, which has led to Ohio spending over \$1.32 billion in 2010 alone.<sup>4</sup>

In recent years, state legislators have begun to recognize this problem and have enacted common-sense legislation that moderately reformed Ohio's criminal sentencing laws and alleviated some of the barriers formerly incarcerated people experienced when seeking employment.

Unfortunately, these modest reforms have not been adequate to turn the tide of over-incarceration in Ohio, and many local officials have worried that they may negatively impact county jails.<sup>5</sup> Coupled with substantial cuts in state funding to local governments, many counties are considering implementing or increasing "pay-to-stay" fees levied against those incarcerated in county jails.

Pay-to-stay policies can take a number of different forms, from booking charges and fees for medical treatment, to per diem charges for each day of incarceration. At first glance, these charges may seem like an innocuous way to supplement the budgets of struggling jails, but charging inmates for their incarceration is not the simple solution it may appear to be.

**Criminal justice experts estimate that at least 80% of individuals in jail are indigent.**<sup>6,7</sup> Many of those who do not enter into jail with low income almost assuredly will leave in financial distress, as they will likely no longer have employment, their families will have spent any savings on basic necessities while the person was in jail, and they may also face steep criminal fines imposed by the court. If local officials hope to reap a financial windfall off the backs of those housed in



their jails, they will be confronted quickly with the reality that the vast majority of these individuals simply cannot pay these fees.

**In 2007, the Buckeye State Sheriffs' Association estimated that 60 counties had implemented pay-to-stay programs.<sup>9</sup>**

While that number may have increased since then, other counties have turned away from pay-to-stay programs because they have recognized these programs expend far more resources than they could ever hope to collect.

*Adding it Up: The Financial Realities of Ohio's Pay-to-Stay Policies* examines the programs at three jails with long-running fee programs. The ACLU of Ohio's research uncovered several important findings:

- **Larger fees that build up over time do not lead to more revenues.** The vast majority of individuals in jail are low income, and cannot afford high pay-to-stay fees. Exorbitant charges simply means that people will have larger outstanding bills, but does not translate into higher collection rates.
- **Aggressive programs to collect fees after incarceration are likely to fail.** Collection agencies often promise that they will bring in large revenues for local officials, but data suggests that low-income people are no more likely to pay their fees when collection agencies are used. Additionally, collection agencies impose a new cost on jails that are not offset by the meager revenues accrued through pay-to-stay programs.

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**“Pay-for-Stay is like spitting in the wind. It doesn't even make a dent.”<sup>8</sup>**

*- Phil Johnson, Fairfield County Jail Administrator*

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- **Local officials cannot hope to balance their budgets by assessing fees on low-income people.** The vast majority of people who enter prison are already indigent, and even more leave prison with large financial obstacles. The burden of pay-to-stay fees is often shared by entire families, as commissary funds deposited by loved ones are seized to satisfy the fees.
- **Officials should seek to depopulate their jails rather than rely on ineffective pay-to-stay fees.** The only long-term remedy for over-incarceration is to invest in programs that will keep people out of jail, and change rules and practices that give preference to incarceration over rehabilitative services. As state officials have begun to make strides to reduce the prison population, local officials must also partner with elected officials and law enforcement to depopulate jails.

As Fairfield County Jail Administrator Phil Johnson expressed, collecting pay-to-stay fees is often an uphill battle. **In August 2012, the Fairfield County Jail suspended its program altogether.**

# Fairfield County

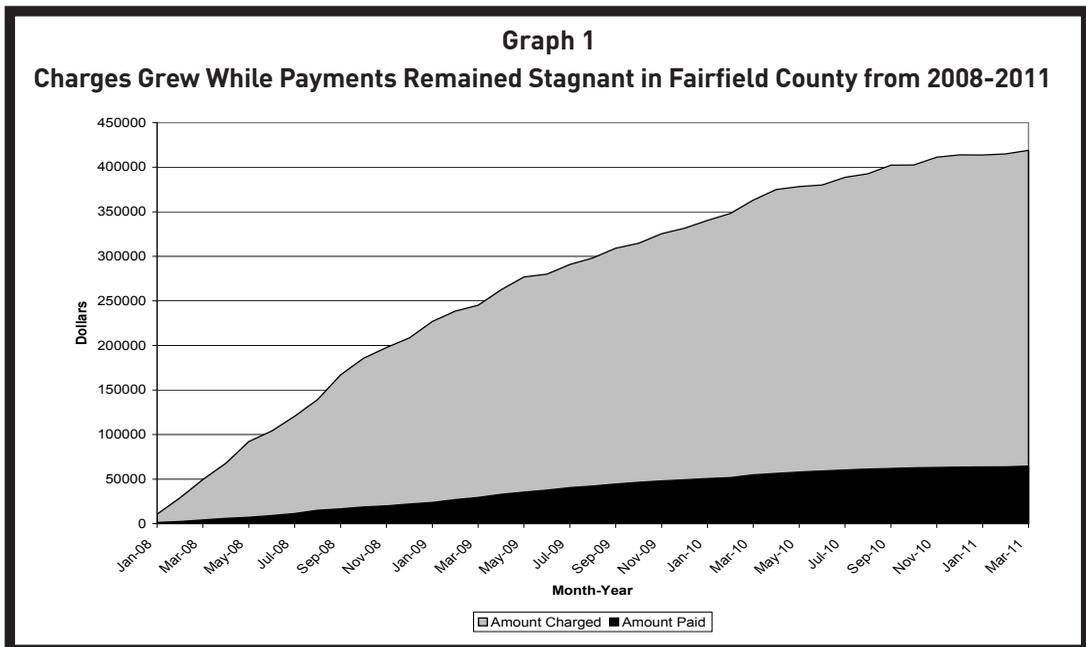
Fairfield County Jail first implemented its pay-to-stay system in 2003. Inmates entering and exiting the jail were assessed booking fees as well as fees for medical care and other expenses. These inmates were also charged a daily fee based on income and number of children. Each day in jail could cost anywhere from \$5 for a person making \$5 per hour with two or more children, up to \$60 per day for a person making \$30 an hour with no children. These fees could be collected from an inmate's commissary account anytime while in jail. If the pay-to-stay fees remained unpaid for 90 days after release, they were turned over to a collection agency.

On paper, the program seemed like it would generate revenue through large fees and robust enforcement. However,

these aggressive attempts to recoup money, from the moment inmates were committed until every last cent of their reimbursement was paid, failed to deliver the results local officials had hoped.

Overall, the Fairfield County program proved extremely ineffective at bringing in revenue for the jail. **Only about 15% of pay-to-stay fees charged from 2008-2011 were collected (graph 1).** In fact, booking fees and per diem fees combined made up less than half of total jail revenues.

Fairfield County's pay-to-stay system was fundamentally flawed because their source of funding was unreliable. While there were peaks and valleys in terms of revenue, the trend over time was unquestionably negative, with revenue falling approximately \$39 per month.





# Hamilton County

Pay-to-stay fees are not a new idea in Hamilton County. In 2000, a lawsuit put an end to the county's practice of charging fees to people who had yet to be convicted and were in jail pending trial. A federal judge ruled that this violated basic due process protections and **ordered the county to pay \$1 million in refunds and \$150,000 for an inmate education program.**

However, the Hamilton County Jail soon reintroduced their pay-to-stay program in 2008.<sup>10</sup> This new incarnation of its program charges a relatively high, flat \$40 booking fee to individuals who have either pled guilty to or are convicted of an offense.

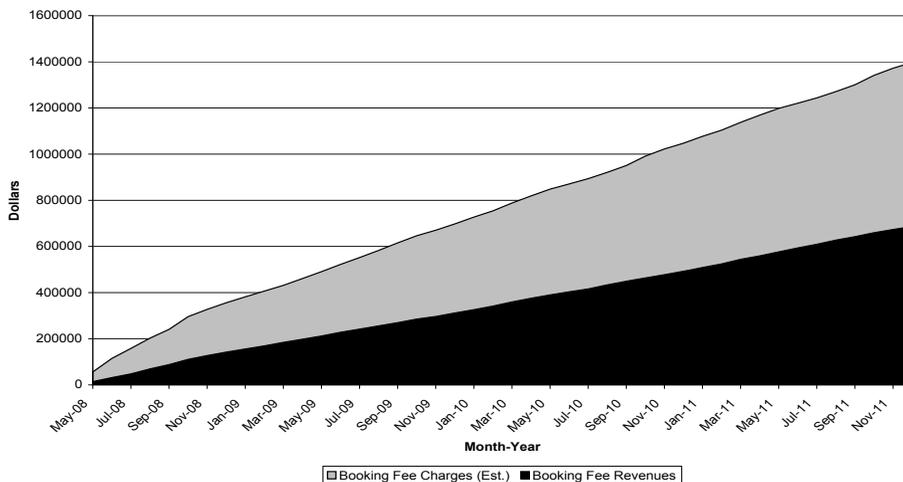
Once a person is incarcerated, the jail

sets up an account. Any money in this account can be confiscated by the jail to pay off the booking fee as long as there is a minimum of \$5 left in the account. Given the often inflated prices of commissary items, this pittance is unlikely to allow the incarcerated person to purchase many items at the commissary. Any money still owed to the jail at the end of incarceration is invoiced to the inmate.

This aggressive strategy has led to mediocre results for Hamilton County. The county may boast new revenue, bringing in anywhere from \$142,000 to \$192,000 per year between 2008-2011. However, these are relatively small revenues given that the jail's large population has steadily increased since 2009. The

Graph 4

Hamilton County Received Approximately Half What It Charged from 2008-2011



number of inmates receiving charges has increased as well, but the jail is only collecting roughly half of what they are charging inmates **(graph 4)**.

It is important to consider how far this money will go in terms of covering the jail's overall expenses. In 2010, the Hamilton

County Jail spent nearly \$31 million. Even the most basic operating expenses are vastly more expensive than booking revenues. For

example, in 2010 the jail spent nearly three times more on food alone than they brought in from booking fees from 2008-2011.<sup>12</sup>

While these revenues are miniscule when compared to expenses, **they potentially cost communities even more revenue in lost tax dollars and support of local businesses.** Studies on the economic impact of incarceration have found that as many as 60% of previously incarcerated individuals remain unemployed one year after release. Many formerly incarcerated individuals face employers unwilling to hire people with criminal records, lack marketable job skills, are unable to network in the working population, and lack employment history or references.<sup>13</sup> These individuals are likely to need government assistance, and are also unable to pay taxes and stimulate

the economy by renting an apartment, purchasing local goods, and supporting their families. Inability to find employment is also a factor that leads to a higher probability they will be arrested again. As a result, taxpayers lose by paying for incarceration, failed fee collection programs, public assistance, and possible future incarceration.

Demanding payment from these already struggling individuals is both counterintuitive and unproductive. This can be seen clearly in Hamilton County, where the amount of unpaid debt continues to grow each year **(graph 5)**.

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**“When it came time to collect the pay-to-stay, it ended up costing almost as much if not more to run the program.”<sup>11</sup>**

*- A.J. Rodenberg, Clermont County Sheriff*

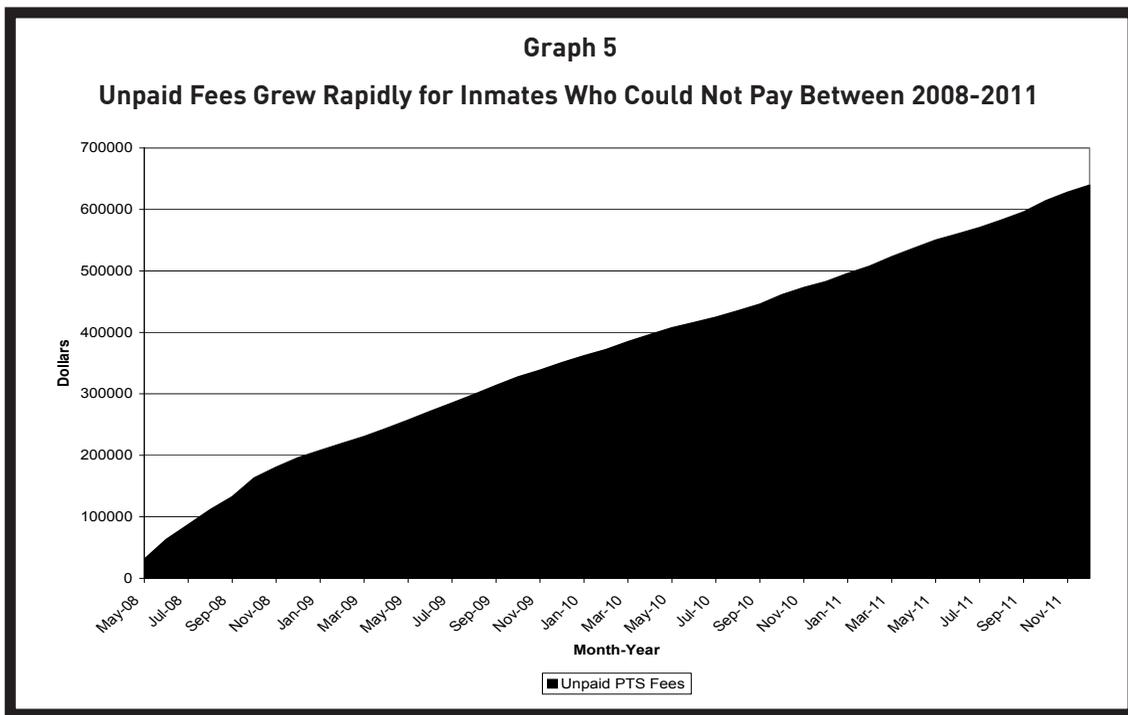
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To its credit, Hamilton County Jail does inquire whether an inmate is indigent and avoids charging them fees. However, people who are low income or face financial hardship may still not meet the jail's definition of indigent. For instance, in 2011, only 52% of inmates were declared indigent. This number does not align with national figures, which estimate at least 80% of the jail population is low income.

Additionally, the county does not take into account whether inmates will be indigent when they leave jail, nor the effect the fees may have on their families.

Many inmates cycle in and out of jail, unable to pay their new booking fee as well as their past fees. Unsatisfied pay-to-stay fees can remain active permanently, so each subsequent incarceration increases their fees and decreases the likelihood of successful payment. In fact, estimates suggest the average debt per released inmate increased by as much as 51.4% from 2008-2011, rising from \$37.26 to \$56.42. These rising fees bury inmates who are unable to pay their fees in a mountain of debt that few have any hope to pay.



# Southeastern Ohio Regional Jail (SEORJ)

SEORJ has had a pay-to-stay policy since it opened in 1998.<sup>14</sup> Like Fairfield County Jail, this facility bills individuals both a booking fee and a daily fee. However, its more lenient policies make SEORJ distinctly different from other examples.

Inmates at this facility are charged a flat \$15 booking fee and a flat \$1 per day fee for each day in jail. To recover these fees, the jail can take money out of a

commissary account that is established for the person while incarcerated. Once the person is released, the jail does not invoice or seek payment. If an inmate is re-

arrested within three years, the charges remain active and can be collected once they are in jail again. Again, the jail makes no active effort to recoup additional money owed after the person is released.

While it seems counterintuitive to some that a more lenient system would be more effective, this system has achieved the highest level of success in the sample (**graph 6-7**). From 2008-2011, SEORJ collected nearly all of the fees they charged. This is likely due to the low daily fee at \$1 and the average stay in jail about 14 days, making the average inmate's

total bill \$29.

This high collection rate more than makes up for the lower fee amounts and allows the jail to cover anywhere from 9.5% to 13.5% of non-medical inmate supplies. Since individuals are not invoiced nor subject to a collection agency upon release, they face less of a burden than people housed in other county jails. However, the financial burden of these

pay-to-stay fees often shifts to their families since many programs subsidize off funds deposited into inmates' commissary accounts. These funds are provided

by family members, who often have less income because their family member is unable to work while incarcerated.

Among the items people may purchase in commissaries include toiletries, reading materials, stamps, phone calls, and snacks. Some jails require inmates to purchase required clothing, non-prescription medical supplies, and other important items from the commissary. Not only is this taking money from families of incarcerated individuals, it also directly impacts the individual's success when they leave jail. Multiple studies have shown

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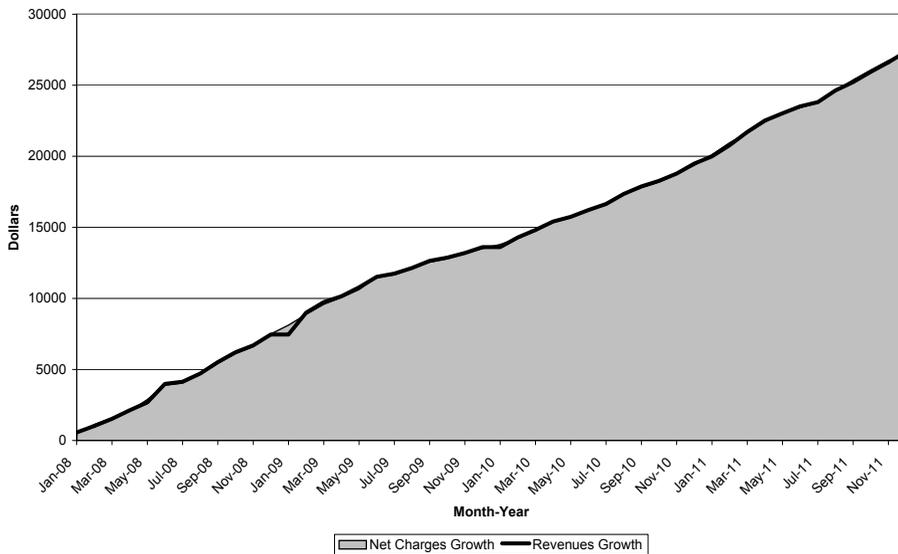
**"If I thought I could raise revenue, I'd go through [pay-to-stay] in a heartbeat, but it just did not work the way it was drummed up to be."<sup>15</sup>**

*- Neil Hassinger, Medina County Sheriff*

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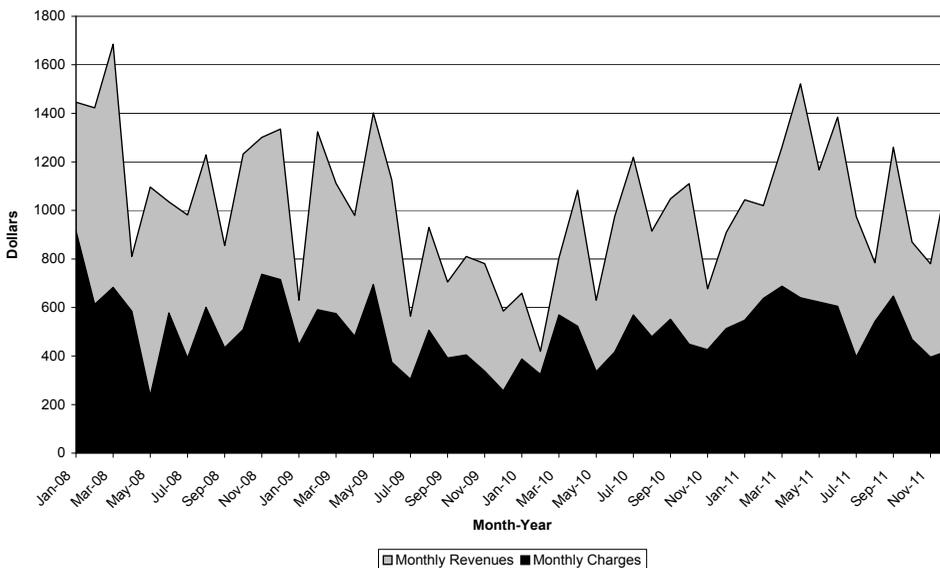
**Graph 6**

**SEORJ Collected Nearly All its Modest Daily Fee Charges from 2008-2011**



**Graph 7**

**SEORJ's Collection of Booking Fees Fluctuated from 2008-2011**



that maintaining a strong family bond is incredibly important to make it less likely a person commits crime in the future.<sup>16</sup> Reentry is often a difficult process, and family is needed to help ease the process of integrating back into society. These policies take funds from inmates who may wish to purchase phone calls home, which may be expensive. **For a 15 minute call to Columbus from the Fairfield County Jail or SEORJ, individuals must pay \$8.15 to a private phone company.**<sup>17</sup> To maintain any meaningful contact with family over a two week or month long jail stay, individuals will need every penny in their commissary to pay these excessive rates.

Available data is insufficient to quantify the number of families affected by these pay-to-stay practices and the magnitude of these effects. However, research suggests that for many families, the impact may be significant, due to the likelihood of children being involved and the strain of the incarcerated person's lost income on family finances.<sup>18,19</sup>

As these policies wreak havoc on low-income families, local governments should instead seek to invest in reentry and educational programs that will reduce the overall jail populations rather than continue to pursue revenues through ineffective pay-to-stay programs.

### **Federal Communications Commission Considers End to Phone Price Gouging**

One of the key items incarcerated individuals must purchase at the jail commissary are phone calls. Family members often must foot the bill for these calls. The FCC recently conducted a public comment period around rampant price gouging orchestrated by private phone companies. According to leaders in the federal Legislative Black Caucus, on average a phone call from jail will cost \$4 plus an additional \$.55 per minute for long distance calls.<sup>20</sup> Some estimates indicate many prisoners pay in excess of \$17 for a 15 minute phone call.<sup>21</sup>

This is far and above the basic rate people outside of prison are expected to pay, and negatively affects the poorest Americans who are incarcerated. It also leaves many low-income families with a terrible choice: lose contact with a beloved family member for weeks or months, or purchase expensive phone cards with money that would be used to support their struggling family. When pay-to-stay fees are taken from the commissary, the problem becomes even greater for financially disadvantaged families.

Over 60 civil rights organizations and tens of thousands of individuals submitted public comments urging the FCC to place a cap on how much private companies may charge these individuals.<sup>22</sup> The FCC is expected to make a decision soon. Officials in Cuyahoga County have considered refusing their share of profits in order to help inmates while the FCC decides.<sup>23</sup>

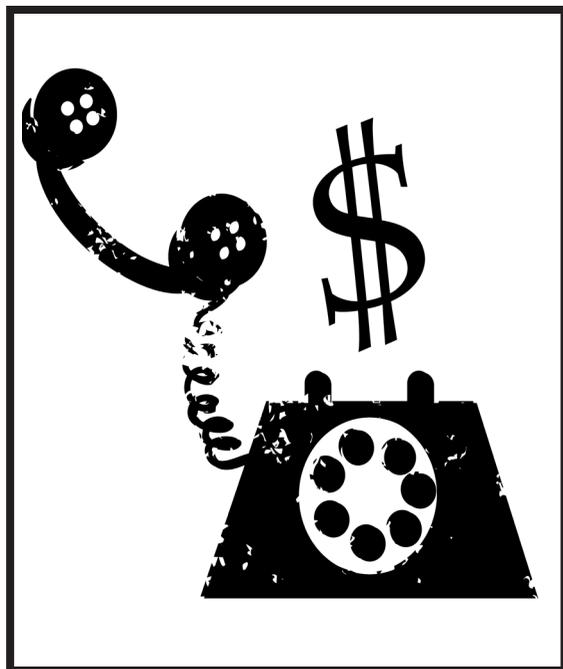
# Recommendations

Of all the lessons these jails can teach about pay-to-stay policies, easily one of the most important is this: **harsher policies do not lead to higher revenues.** The ACLU of Ohio makes the following recommendations to officials who seek to implement pay-to-stay jail policies, or have them in their community already:

- **Do not drown individuals in exorbitant fees.** In each case outlined, the higher the fees, the less likely inmates were to pay them, regardless of the tactics used to pursue payment. Many people in jail simply do not have the funds to pay these fees, and charging them more will not cause them to be any more likely to pay.
- **Collection agencies do not work and may pose an additional cost.** Data suggests that the use of a collection agency was actually linked to fewer people paying off their debts. Contracts with collection agencies, in turn, cost taxpayers additional money, making this tactic fiscally questionable. Finally, collections may have a negative impact on inmates' credit scores, making it more difficult for them to obtain employment and housing, leading to higher rates of recidivism.
- **Do not allow jail charges to accrue over a long period.** Imposing aggressive financial burdens that grow with each period of incarceration helps neither the jail nor the inmate.
- **Assess whether an inmate is indigent, and do not charge low-income individuals pay-to-stay fees.** If a person is indigent, even a \$50 or \$100 fee will be nearly impossible to pay. The negative impact of using collection agencies and other post-release collection mechanisms could negatively affect these individuals' reentry and cause them to fall further into poverty. Jails will rarely be able to collect this money, and will end up spending even more to collect it.
- **Consider other facts, such as impact on families, when assessing pay-to-stay fees.** The impact of pay-to-stay fees is not confined to the jail, no matter how those fees are structured. Whether the fees are invoiced directly or are unwittingly being satisfied by families supporting their incarcerated loved one, pay-to-stay charges still affect people who are not part of the criminal justice system. Families suffer twofold under pay-to-stay: they have lost the financial contributions of their loved one while he or she is incarcerated, and they often must bear the financial burden of these fees at the same time. Even families who are not technically indigent may suffer greatly under these policies, and be forced into poverty because of aggressive fees.

As budgets remain tight across Ohio, it is difficult to find ways to finance even the most basic services. However, pay-to-stay fees are not the silver bullet that they may initially seem. **Simply put, inmates are not a good source of revenue, and local governments are beginning to realize this fact.** The potentially negative effects of these fees suggest it is time to abandon this practice altogether and focus all efforts on ensuring successful inmate reentry into society.

In August 2012, Fairfield County Jail ended its pay-to-stay policy altogether. It is our hope this report will help more communities reexamine and ultimately eliminate the use of these counterproductive practices.



## Methodology

This report analyzes records from three Ohio jails that employed pay-to-stay policies from 2008-2011: Fairfield County Jail, Hamilton County Jail, and Southeastern Ohio Regional Jail. These jails were chosen due to their representation of different Ohio regions and population size, and the length of their use of pay-to-stay policies.

Each county was sent a records request pertaining to operation of the pay-to-stay program, revenues and costs associated with the program, and inmate population. Details specific to particular jails, such as documents relating to fee increases, were also requested. Further details were also gathered in subsequent phone calls to the jails.

Unfortunately, most of the counties did not keep accurate records for the cost of these programs. As a result, the ACLU was unable to determine how much counties spend to enforce these programs — which is just as problematic as finding steep costs.

The available data was analyzed using a variety of techniques, such as means, medians, and linear trends. Graphs were created using appropriate data from the documents provided. The level of detail provided by the jails varied, so analyses between jails have differing levels of precision, though all use the same techniques.

# Acknowledgments

**The ACLU of Ohio would like to acknowledge the following staff members for their contributions to this report:**

**Mike Brickner**, Director of Communications and Public Policy

Mike has been with the ACLU of Ohio for nine years. During this time, he has worked on a variety of civil liberties campaigns, including the Cincinnati-based Police Reform Project and state criminal sentencing reform. Mike frequently provides commentary to members of the media on core ACLU issues ranging from ending capital punishment to strengthening state privacy laws. Additionally, Mike previously coauthored *The Outskirts of Hope: How Ohio's Debtors' Prisons Are Ruining Lives and Costing Communities*, as well as *Prisons For Profit: A Look At Private Prisons*. Mike received his master's degree in psychology from Cleveland State University's Diversity Management Program and his bachelor's degree from Hiram College.

**Marcus Gaddy**, Legislative Associate

Marcus joined the ACLU of Ohio in October 2010. He has served in multiple capacities focusing on education and outreach on a range of civil liberties issues. While primarily responsible for monitoring current legislation and preparing updates on legislation for the public, Marcus also does extensive research on topics related to Ohio's criminal justice system. Marcus is an Ohio State University graduate, with a bachelor's degree in economics.

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