

BRENNAN
CENTER
FOR JUSTICE

CRIMINAL JUSTICE DEBT:
A BARRIER TO REENTRY

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	4
I. CRIMINAL JUSTICE DEBT IS GROWING AT AN ALARMING RATE ACROSS THE COUNTRY	7
A. Debt Adds Up Quickly	7
B. States Fail to Track the Real Costs	10
II. CRIMINAL JUSTICE FEES FREQUENTLY LEAD TO AN INSURMOUNTABLE CYCLE OF DEBT	13
A. Lack of Fee Waivers	13
B. Unworkable Payment Plans	14
C. No Meaningful Community Service Alternatives	15
D. Poverty Penalties Compound Debt and Enrich Private Companies	17
III. HARSH COLLECTION PRACTICES FORGE FOUR PATHS TO DEBTORS' PRISON	19
A. History and Constitutional Limitations	19
B. Four Paths to Debtors' Prison	20
1. Probation or Parole Revoked or Not Granted	21
2. Incarceration Through Civil or Criminal Enforcement Proceedings	22
3. "Choosing" Jail	22
4. Arrest and Pre-Hearing Incarceration	23
C. Aggressive Collection Tactics Also Push Debtors Toward New Offenses	24
1. Suspension of Driver's Licenses	24
2. Extending Probation Terms	25
D. Debtors' Prison Wastes Public Funds	25
IV. CRIMINAL JUSTICE DEBT IMPEDES REENTRY AND REHABILITATION	27
A. Hurdles to Finding Housing and Employment	27
B. Public Benefits at Risk	28
C. Barriers to Paying Child Support	28
D. Debt Functions as a Poll Tax	29
V. OVERRELIANCE ON CRIMINAL JUSTICE FEES UNDERMINES THE PROPER ROLES OF COURTS AND CORRECTIONAL AGENCIES	30
A. Courts Face Conflicts of Interest and Financial Uncertainty	30
B. Probation and Parole Officers are Diverted from Their Public Safety and Rehabilitation Functions	31
VI. RECOMMENDATIONS	32
ENDNOTES	34

EXECUTIVE SUMMARY

Many states are imposing new and often onerous “user fees” on individuals with criminal convictions. Yet far from being easy money, these fees impose severe – and often hidden – costs on communities, taxpayers, and indigent people convicted of crimes. They create new paths to prison for those unable to pay their debts and make it harder to find employment and housing as well to meet child support obligations.

This report examines practices in the fifteen states with the highest prison populations, which together account for more than 60 percent of all state criminal filings. We focused primarily on the proliferation of “user fees,” financial obligations imposed not for any traditional criminal justice purpose such as punishment, deterrence, or rehabilitation but rather to fund tight state budgets.

Across the board, we found that states are introducing new user fees, raising the dollar amounts of existing fees, and intensifying the collection of fees and other forms of criminal justice debt such as fines and restitution. But in the rush to collect, made all the more intense by the fiscal crises in many states, no one is considering the ways in which the resulting debt can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public.

Key Findings

- **Fees, while often small in isolation, regularly total hundreds and even thousands of dollars of debt.** All fifteen of the examined states charge a broad array of fees, which are often imposed without taking into account ability to pay. One person in Pennsylvania faced \$2,464 in fees alone, approximately three times the amount imposed for fines and restitution. In some states, local government fees, on top of state-wide fees, add to fee burdens. Thirteen of the fifteen states also charge poor people public defender fees simply for exercising their constitutional right to counsel. This practice can push defendants to waive counsel, raising constitutional questions and leading to wrongful convictions, over-incarceration, and significant burdens on the operation of the courts.
- **Inability to pay leads to more fees and an endless cycle of debt.** Fourteen of the fifteen states also utilize “poverty penalties” – piling on additional late fees, payment plan fees, and interest when individuals are unable to pay their debts all at once, often enriching private debt collectors in the process. Some of the collection fees are exorbitant and exceed ordinary standards of fairness. For example, Alabama charges a 30 percent collection fee, while Florida permits private debt collectors to tack on a 40 percent surcharge to underlying debt.

States Covered
(in order of number of persons in prison)

- California
- Texas
- Florida
- New York
- Georgia
- Ohio
- Pennsylvania
- Michigan
- Illinois
- Arizona
- North Carolina
- Louisiana
- Virginia
- Alabama
- Missouri

*Source: National Prisoner Statistics,
Bureau of Justice Statistics*

- **Although “debtors’ prison” is illegal in all states, reincarcerating individuals for failure to pay debt is, in fact, common in some – and in all states new paths back to prison are emerging for those who owe criminal justice debt.** All fifteen of the states examined in this report have jurisdictions that arrest people for failing to pay debt or appear at debt-related hearings. Many states also use the threat of probation or parole revocation or incarceration for contempt as a debt-collection tool, and in some jurisdictions, individuals may also “choose” to go to jail as a way to reduce their debt burdens. Some of these practices violate the Constitution or state law. All of them undercut former offenders’ efforts to reintegrate into their communities. Yet even though over-incarceration harms individuals and communities and pushes state budgets to the brink, states continue to send people back to prison or jail for debt-related reasons.
- **As states increasingly structure their budgets around fee revenue, they only look at one side of the ledger.** Strikingly, there is scant information about what aggressive collection efforts cost the state. Debt collection involves myriad untabulated expenses, including salaried time from court staff, correctional authorities, and state and local government employees. Arresting and incarcerating people for debt-related reasons are particularly costly, especially for sheriffs’ offices, local jails, and for the courts themselves. For example, Brennan Center analysis of one North Carolina county’s collection efforts found that in 2009 the government arrested 564 individuals and jailed 246 of them for failing to pay debt and update address information, but that the amount it ultimately collected from this group was less than what it spent on their incarceration.
- **Criminal justice debt significantly hobbles a person’s chances to reenter society successfully after a conviction.** In all fifteen of the examined states, criminal justice debt and related collection practices create a significant barrier for individuals seeking to rebuild their lives after a criminal conviction. For example, eight of the fifteen states suspend driving privileges for missed debt payments, a practice that can make it impossible for people to work and that can lead to new convictions for driving with a suspended license. Seven states require individuals to pay off criminal justice debt before they can regain their eligibility to vote. And in all fifteen states, criminal justice debt and associated collection practices can damage credit and interfere with other commitments, such as child support obligations.
- **Overdependence on fee revenue compromises the traditional functions of courts and correctional agencies.** When courts are pressured to act, in essence, as collection arms of the state, their traditional independence suffers. When probation and parole officers must devote time to fee collection instead of public safety and rehabilitation, they too compromise their roles.

Top Penny-Wise, Pound-Foolish Practices

- Incarcerating those who have failed to pay
- Extending probation and other supervision in order to collect fees
- Suspending driver’s licenses for failure to pay

All of these policies are at odds with America’s growing commitment to reduce recidivism and over-incarceration, and to promote reentry for those who have been convicted of crimes. As states look to ways to shave their prison and jail budgets without compromising public safety, eliminating the debt-based routes back to jail – both direct and indirect – is an obvious choice for reform.

Core Recommendations

In light of these findings, this report makes the following recommendations for reforming the use of user fees and the collection of criminal justice debt in state and local policy environments:

- Lawmakers should evaluate the total debt burden of existing fees before adding new fees or increasing fee amounts.
- Indigent defendants should be exempt from user fees, and payment plans and other debt collection efforts should be tailored to an individual's ability to pay.
- States should immediately cease arresting and incarcerating individuals for failure to pay criminal justice debt, particularly before a court has made an ability-to-pay determination.
- Public defender fees should be eliminated, to reduce pressures that can lead to conviction of the innocent, over-incarceration, and violations of the Constitution.
- States should eliminate "poverty penalties" that impose additional costs on individuals who are unable to pay criminal justice debt all at once, such as payment plan fees, late fees, collection fees, and interest.
- Policymakers should evaluate the costs of popular debt collection methods such as arrests, incarceration, and driver's license suspensions – including the salary and time spent by employees involved in collection and the effect of these methods on reentry and recidivism.
- Agencies involved in debt collection should extend probation terms or suspend driver's licenses only in those cases where an individual can afford to repay criminal justice debt but refuses to do so.
- Legislatures should eliminate poll taxes that deny individuals the right to vote when they are unable to pay criminal justice debt.
- Courts should offer community service programs that build job skills for individuals unable to afford criminal justice debt.

INTRODUCTION

Cash-strapped states have increasingly turned to user fees to fund their criminal justice systems, as well as to provide general budgetary support. States now charge defendants for everything from probation supervision, to jail stays, to the use of a constitutionally-required public defender. Every stage of the criminal justice process, it seems, has become ripe for a surcharge.

These “user fees” differ from other kinds of court-imposed financial obligations. Unlike fines, whose purpose is to punish, and restitution, whose purpose is to compensate victims, user fees are explicitly intended to raise revenue. Sometimes deployed as an eleventh hour maneuver to close a state budget gap, the decision to raise or create new user fees is rarely made with much deliberation or thought about the consequences.

As this report documents, however, the consequences of imposing and collecting user fees, and other forms of criminal justice debt such as fines and restitution, are significant.

This report discusses the national landscape of criminal justice debt and collection practices by surveying the fifteen states with the largest prison populations. Individuals incarcerated in these fifteen states represent 69 percent of all state prisoners nationally, and these states together have more than 60 percent of all state criminal filings.¹ Over the course of a year, we researched relevant laws and court rules and spoke with more than 100 court officials, public defenders, and others involved in the criminal justice system, to understand how these laws and rules operate in practice. We focused on how and when criminal justice debt is imposed on individuals, and which collection mechanisms are used in each of the states studied.

What emerges is a disturbing uptick in both the dollar amount and the number of criminal justice fees imposed on offenders, as well as increased pressure on officials to collect fees, fines, and other forms of criminal justice debt. The result is a broad array of collateral consequences that policy makers have seldom considered in the rush to raise revenue.

Fees and other criminal justice debt are typically levied on a population uniquely unable to make payments. Criminal defendants are overwhelmingly poor. It is estimated that 80-90 percent of those charged with criminal offenses qualify for indigent defense.² Nearly 65 percent of those incarcerated in the U.S. did not receive a high school diploma;³ 70 percent of prisoners function at the lowest literacy levels.⁴ African-Americans face a particularly severe burden: Nationally, African-Americans comprise 13 percent of the population but 28 percent of those arrested and 40 percent of those incarcerated,⁵ and African-Americans are almost five times more likely than white defendants to rely on indigent defense counsel.⁶

Individuals emerging from prison often face significant challenges meeting basic needs. Many are unable to find stable housing – it is estimated that 15 to 27 percent of prisoners expect to go to homeless shelters upon their release.⁷ Many used drugs or alcohol regularly before going to prison and may need treatment upon release.⁸

Employment rates for those coming out of prison are also notoriously low – up to 60 percent of former inmates are unemployed one year after release.⁹ Obstacles to finding a job are even greater now, as the unemployment rate in the general population hovers at just under 10 percent, and is as high as 16 percent for industries such as construction that have traditionally been sources of jobs for persons with criminal convictions.¹⁰

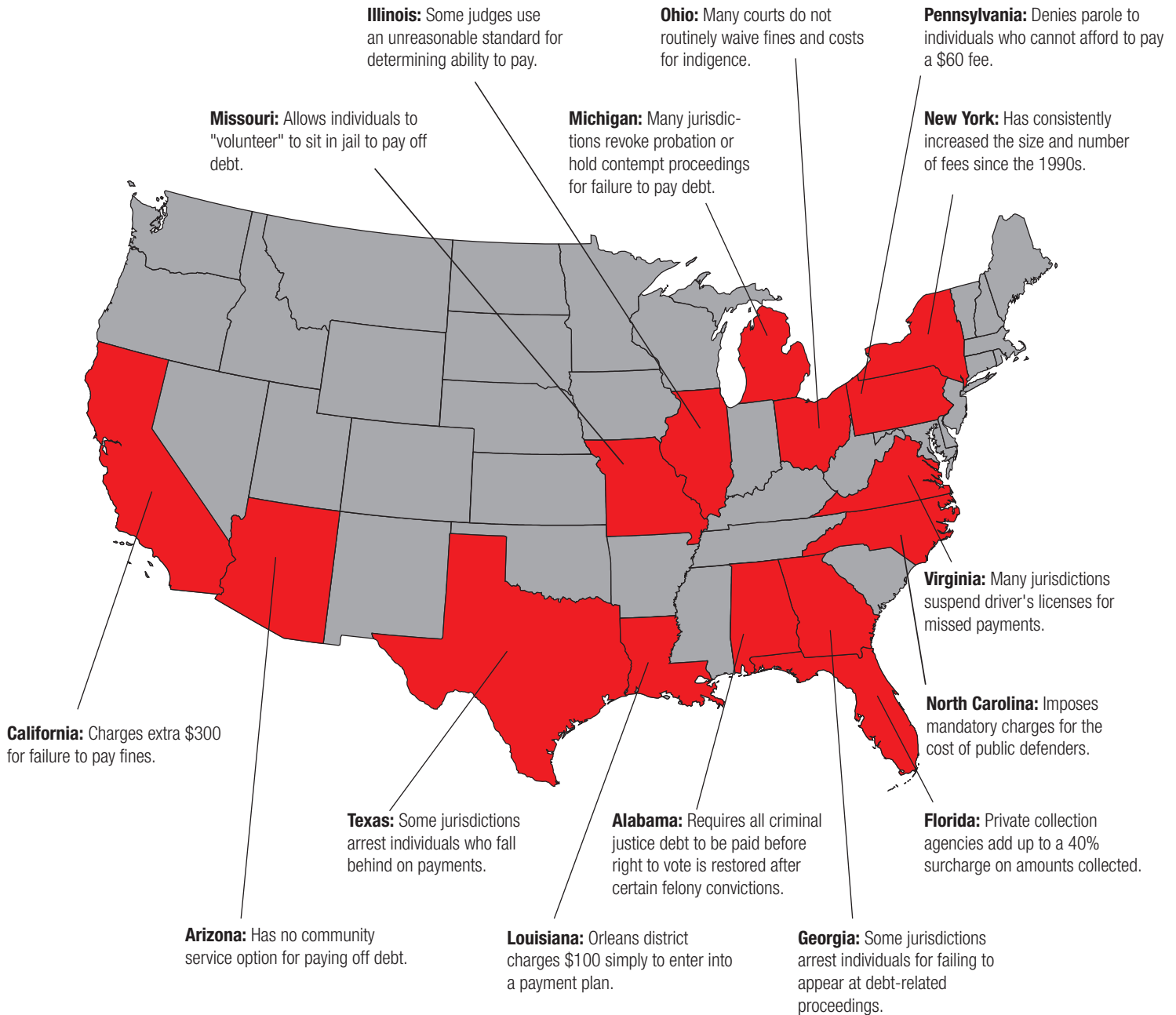
Against this backdrop, criminal justice debt adds yet one more barrier to getting on one's feet. What at first glance appears to be easy money for the state can carry significant hidden costs – both human and financial – for individuals, for the government, and for the community at large. When persons with convictions are unable to pay their debts, they face a cascade of consequences. Late fees, interest, and other “poverty penalties” accrue. In many states, driver's licenses are suspended for missed payments, thereby stripping individuals of a legal means of traveling to work. Damaged credit can make it difficult to find employment or housing.

Worse yet, in many ways, when states impose debt that cannot be paid they are charting a path back to prison. Debt-related mandatory court appearances and probation and parole conditions leave debtors vulnerable for violations that result in a new form of debtors' prison. Suspended driver's licenses lead to criminal sanctions if debtors continue to drive. Aggressive collection tactics can disrupt employment, make it difficult to meet other obligations such as child support, and lead to financial insecurity – all of which can lead to recidivism.

In recent years, there has been a growing consensus that we need to be smarter, not necessarily tougher, in fighting crime. It is in everyone's interest to ensure that formerly incarcerated persons successfully reenter society – and scholars, advocates, religious leaders, and those who have spent time in prison have forcefully argued for more sensible policies that foster reintegration, rather than recidivism. More than two-thirds of nonviolent offenders released from state prison are rearrested within three years.¹¹ Bipartisan federal legislation enacted in 2008, the Second Chance Act, seeks to better meet the needs of the formerly incarcerated and thereby break this vicious cycle.¹² And the same budgetary forces that have prompted new user fees have also prompted a reexamination of expensive mass incarceration as a crime-fighting technique.

It is time to reconsider the wisdom of turning persons with criminal convictions into debtors. As this report demonstrates, the hidden costs of imposing and collecting user fees and other forms of criminal justice debt are profound.

Criminal Justice Debt Across the Country



I. CRIMINAL JUSTICE DEBT IS GROWING AT AN ALARMING RATE ACROSS THE COUNTRY

Across the country, individuals face an increasing number of “user fees” as part of their criminal cases. These fees are often imposed on top of other forms of criminal justice debt, such as fines and restitution, and can add up to staggering totals.

In only the past few years, most of the fifteen states studied by the Brennan Center have increased both the number and dollar value of criminal justice fees, sometimes significantly. For example:

- **Florida** has added more than 20 new categories of financial obligations to the criminal justice process since 1996 and has increased existing fees in both of the last two years. It recently increased court costs for felonies by \$25, required costs of prosecution to be imposed on convicted persons regardless of their ability to pay (minimum \$50 for misdemeanors and \$100 for felonies), and set minimum mandatory recoupment fees for persons who use public defenders at \$50 for misdemeanors and \$100 for felonies.¹³
- **New York** has been increasing the size and number of fees since the 1990s.¹⁴ In 2008, the legislature introduced new surcharges for various driving offenses, ranging from \$20 to \$170 dollars.¹⁵ It also increased existing surcharges, some by as much as \$50.¹⁶
- **North Carolina** in 2009 instituted a \$25 late fee for failure to pay a fine or other court cost on time and a \$20 surcharge to set up an installment payment plan. It also doubled the fee for a failure to appear in court (to \$200), and the fee imposing lab costs on defendants (to \$600).¹⁷

While fees grow year after year, policymakers seemingly have failed to evaluate, or even consider, what these new assessments mean for individuals’ total debt burdens.

A. Debt Adds Up Quickly

In the fifteen states examined in this report, fees span the criminal process and often begin to accrue before a defendant even reaches the courthouse. For instance, many states charge indigent defendants a fee simply to apply for a public defender. Once a person secures a defender, he or she may be charged a reimbursement fee for the costs of defense services.

A conviction can also bring financial penalties. Many crimes carry a fine, and most states impose fine “surcharges” that go either to state coffers or to criminal justice or crime victim funds. A person may also be forced to pay a range of court administrative fees just for being convicted or pleading guilty.

If a person is then placed in prison or jail, he or she often faces fees to defray costs associated with incarceration. If placed on probation, or released from incarceration on parole, in most cases individuals are charged monthly supervision fees as well.

In the fifteen surveyed states, individual fees, small and large, add up quickly, leaving many poor individuals with heavy debt burdens that they often cannot hope to pay.

By the Numbers

15 of 15 states impose fees that attach upon conviction¹⁸

15 of 15 states impose parole, probation or other supervision fees¹⁹

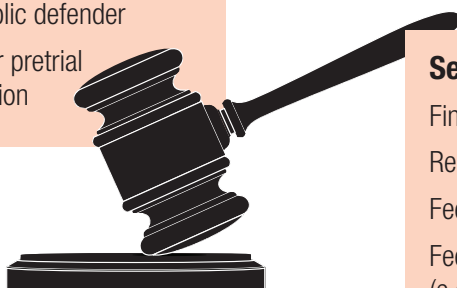
15 of 15 states have laws authorizing the imposition of jail or prison fees²⁰

Criminal Justice Debt Accrues at Every Stage of a Criminal Proceeding²¹

Pre-conviction

Application fee to obtain public defender

Jail fee for pretrial incarceration



Sentencing

Fines, with accompanying surcharges

Restitution

Fees for court administrative costs

Fees for designated funds (e.g. libraries, prison construction, etc.)

Public defender reimbursement fees

Prosecution reimbursement fees

Incarceration

Prison fees

Jail fees

Probation, Parole, or Other Supervision

Probation and parole supervision fees

Drug testing fees

Vehicle interlock device fees (DUIs)

Mandatory treatment, therapy, and class fees

Poverty Penalties

Interest

Late fees


Payment plan fees

Collection fees



According to one recent docket sheet shown below, for example, a Pennsylvania woman convicted of a drug crime incurred 26 different fees, ranging from \$2 to \$345. When her financial obligations are added together, she faces \$2,464 in fees alone, an amount that is approximately three times larger than both her fine (\$500) and restitution (\$325) combined.

Docket Sheet Snapshot, Pennsylvania

COURT OF COMMON PLEAS OF CAMBRIA COUNTY					
DOCKET					
			Docket Number:		
			CRIMINAL DOCKET		
			Court Case		
Commonwealth of Pennsylvania v.			Page 7 of 8		
CASE FINANCIAL INFORMATION					
Last Payment Date:		Total of Last Payment: \$0.00			
Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
Costs/Fees					
Automation Fee (Cambria)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Sheriff Costs (Cambria)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Postage Fee (Cambria)	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
Police Transport (Cambria)	\$100.00	\$0.00	\$0.00	\$0.00	\$100.00
CO/Drug Fee (Cambria)	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00
Plea (Cambria)	\$94.71	\$0.00	\$0.00	\$0.00	\$94.71
CO/Drug Fee (Cambria)	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00
Special Adm. (Cambria)	\$200.00	\$0.00	\$0.00	\$0.00	\$200.00
OSP (Cambria/State) (Act 35 of 1991)	\$345.00	\$0.00	\$0.00	\$0.00	\$345.00
OSP (Cambria/State) (Act 35 of 1991)	\$345.00	\$0.00	\$0.00	\$0.00	\$345.00
Service Charge (Cambria)	\$230.00	\$0.00	\$0.00	\$0.00	\$230.00
Judgment Fee (Cambria)	\$24.50	\$0.00	\$0.00	\$0.00	\$24.50
State Court Costs (Act 204 of 1976)	\$12.30	\$0.00	\$0.00	\$0.00	\$12.30
Commonwealth Cost - HB627 (Act 167 of 1992)	\$18.40	\$0.00	\$0.00	\$0.00	\$18.40
County Court Cost (Act 204 of 1976)	\$26.80	\$0.00	\$0.00	\$0.00	\$26.80
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$0.00	\$35.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
Firearm Education and Training Fund (158 of 1994)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Substance Abuse Education (Cam) (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Substance Abuse Education (Cam) (Act 198 of 2002)	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
Judicial Computer Project	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
ATJ	\$2.00	\$0.00	\$0.00	\$0.00	\$2.00
Police Drug Fee (Cambria)	\$150.00	\$0.00	\$0.00	\$0.00	\$150.00
DNA Detection Fund (Act 185-2004)	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00
Certification (Cambria)	\$20.20	\$0.00	\$0.00	\$0.00	\$20.20

AOPC 2220 - Rev 11/28/2009

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This is an excerpt of a docket sheet from the Court of Common Pleas of Cambria County. This defendant was convicted under 35 PA. CONS. STAT. ANN. § 780-113(30) (the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance). She was sentenced to a minimum of three months and a maximum of 23 months imprisonment, a fine of \$500, and restitution totaling \$325. Her total fees are \$2,464.91.

This is not an unusual case. In Texas, a preliminary study by the Texas Office of Court Administration showed that people released to parole owe anywhere from \$500 to \$2,000 in offense-related debt (not including restitution).²¹ A chart used by court clerks in Texas inventories at least 39 different categories of court costs in misdemeanor cases and 35 types of costs in felony cases.²² In Arizona, individuals face a series of surcharges that add 84 percent to their underlying fines and penalties.²³ Individuals are also liable for additional “set amount” surcharges, including a \$20 probation surcharge²⁴ and a \$20 surcharge for using a payment plan to pay off debts.²⁵

Adding to the burden are fees that apply only in certain local jurisdictions, authorized either by state statute or imposed directly by local governments.²⁶ In Louisiana, for example, defendants in Jefferson Parish face an additional “special court cost” of \$75 for a felony conviction and \$25 for a misdemeanor conviction.²⁷ And in New York, some counties have reportedly collected additional probation-related fees even though such fees are not permitted under state law.²⁸

In addition to user fees that apply to all offenses, individuals convicted of certain types of crimes frequently face substantial additional debt. For instance, in many states, individuals convicted of drug crimes, driving under the influence (“DUI”), or sex offenses face mandatory fees that dramatically increase their overall debt. In Arizona, for example, a person convicted of DUI must pay special fees totaling \$1,000, on top of all other fees and a fine of \$250.²⁹

Individuals can also face high fees for the cost of monitoring systems. In North Carolina, a person convicted of a DUI can be assessed up to \$1,000 for the use of a continuous alcohol monitoring system as a condition of probation,³⁰ and many states also require individuals convicted of DUIs to pay for a vehicle interlock device.³¹ Texas and Illinois also impose fees for sex offender monitoring, with Illinois law instructing courts to charge offenders for “all costs.”³²

Together, these fees can add up to a debt burden that is impossibly high for many poor people convicted of crimes.

B. States Fail to Track the Real Costs

Despite the dramatic increase in the number of criminal justice fees, **none of the fifteen** states studied had any kind of process for measuring the impact of criminal justice debt and related collection practices on former offenders, their families, or their communities. And even though fees are imposed as a revenue-generating measure, **none of the fifteen** had a statewide process for tracking the costs of collection.

In many states, it is difficult to even calculate how much debt individuals with different criminal convictions typically face. Fees are often not located in a single place in the statutory code and are not collected at a single point in an individual’s criminal proceeding, making it difficult to calculate exactly how much debt a criminal conviction might engender. Louisiana, for example, has dozens, if not hundreds, of assessments sprawled throughout its code.³³

The amounts imposed in different jurisdictions within a state also often vary dramatically. In Michigan, Detroit felony courts regularly provide indigence waivers for non-mandatory fees such as court costs and defender costs,³⁴ while in Kent County, judges typically impose \$700 in court debt (which helps cover the cost of a court-appointed attorney) and will rarely waive this debt for indigence unless the individual is sentenced to prison.³⁵

Without clear information about the debt burdens that result from different kinds of criminal convictions, it is impossible for states to make informed judgments about what fee amounts are appropriate and how a new or increased fee will impact total debt burdens. Improved tracking and record-keeping is urgently required.

States are similarly derelict in evaluating the impact of collection practices. To the extent that states evaluate fee collection processes at all, they seem to look only at one side of the ledger – the money brought in – without taking into account the costs of collection incurred by various governmental entities, much less the longer term impacts on recidivism and reentry.

Unlogged direct costs of collection include salary and time for the clerks, probation officers, attorneys, and judges who often participate in collection, as well as the costs associated with penalties for non-payment, which can include sheriff time to execute arrest warrants and nights in local jails.

In this respect, Massachusetts provides a useful example of a thoughtful approach to fees. After facing opposition from criminal justice advocates to a proposed local jail fee, in 2010 the legislature instead established a commission to investigate the revenue that could be generated from jail fees, the cost of administering collection, the impact on the affected population, and other factors.³⁶ Similar studies of the real costs and benefits of debt collection in other states could lead to a more considered criminal justice debt policy.

Common Collection Practices . . .	And Some Hidden Costs . . .
Probation or parole officers monitor payments.	Salary and overtime. Officers distracted from role in supporting reentry and rehabilitation.
Debtor must attend regular meetings before a judge, clerk, or other collection official.	Salary and overtime. Burdened court dockets.
Incarceration for failure to pay.	Salary and overtime for judges, prosecutors, and public defenders. Cost of incarceration. Jail overcrowding. Lost jobs and housing. Difficulty paying child support.
Refer debt to private collection agencies.	Onerous collection fees, leading to spiraling debt. Damaged credit, which hurts housing and employment prospects.
Probation terms extended for failure to pay.	Probation officer salary and overtime. Increased risk of reincarceration for violating probation requirements.
Driver's license suspended for failure to pay.	Challenges in finding and maintaining employment. Increased risk of reincarceration for driving with a suspended license.
Debt converted to a civil judgment.	Damaged credit, which hurts housing and employment prospects.
Wage garnishment and tax rebate interception.	Individuals discouraged from seeking legitimate employment. Financial hardship and inability to meet child support commitments.

Fees in Focus: You Have the Right to an Attorney, If You Can Afford It

Broad reliance on defender fees in the examined states

One common – and particularly troubling – fee category involves fees tied to the use of a public defender. Thirteen of the fifteen states studied in this report either authorize or mandate charging indigent individuals “defender fees” – sometimes in the thousands of dollars – for exercising their right to counsel.³⁷

Defender fees can include charges to “apply” for representation before an attorney is appointed, charges during the course of a criminal proceeding to offset the costs of representation, and charges at the termination of a criminal proceeding to reimburse the state for all or a portion of the costs of representation. In Florida and Ohio, individuals are required to pay defender fees even if they are acquitted or have charges dropped.³⁸ Of the fifteen states, only Pennsylvania and New York do not utilize some form of defender fee.

Mandatory fees

Strikingly, Florida, North Carolina, and Virginia all utilize *mandatory* defender fees, providing no opportunity for the court to waive the fee if the defendant lacks the financial resources to afford payment.³⁹ In North Carolina, the court must order convicted defendants to pay a \$50 fee and must direct a judgment to be entered for the full value of the defense services provided,⁴⁰ currently valued at \$75/hour for non-capital cases, plus additional fees and expenses.⁴¹ In Virginia, poor defendants may be charged as much as \$1,235 per count for certain felonies.⁴²

Even when defender fee statutes include hardship waivers, some states fail to offer waivers in practice. In Arizona, where state law mandates that courts take into account and make factual findings regarding a defendant’s financial resources,⁴³ interviews indicate that courts order defendants to reimburse public defense costs in the vast majority of cases,⁴⁴ and that many courts have uniform fee schedules that fail to take into account ability to pay.⁴⁵

Discouraging the right to counsel

In practice, defender fees often discourage individuals from exercising their constitutional right to an attorney – leading to wrongful convictions, over-incarceration, and significant burdens on the operation of courts. In Michigan, for example, the National Legal Aid and Defender Association found that the threat of paying the full cost of assigned counsel resulted in misdemeanor defendants systematically waiving their right to counsel – at a rate of 95 percent in one county, according to a judge’s estimate.⁴⁶

The result is that in many states, defender fees effectively circumvent states’ obligation to provide counsel to those who cannot afford it, raising serious constitutional questions. The Supreme Court has indicated that defender fees should have safeguards to ensure that they do not create a “manifest hardship” for poor defendants,⁴⁷ and numerous state and federal courts have concluded that to be constitutional, defender fees must take into account defendants’ ability to pay and provide for a waiver if payment would impose a hardship.⁴⁸ Similarly, the ABA recommends that “[a]n accused person should not be ordered to pay a contribution fee that the person is financially unable to afford,” and that states abolish reimbursement fees (imposed at the termination of a proceeding) altogether.⁴⁹

In increasingly relying on public defender fees, states ignore their costs – including the harm to individuals and to public safety from the conviction of the innocent, the financial burden on taxpayers from over-incarceration, and the harm to the integrity of the justice system as a whole when individuals are denied their right to counsel.

II. CRIMINAL JUSTICE FEES FREQUENTLY LEAD TO AN INSURMOUNTABLE CYCLE OF DEBT

Despite the fact that most criminal defendants are indigent, **none of the fifteen** examined states pay adequate attention to whether individuals have the resources to pay criminal justice debt, either when courts determine how much debt to impose or during the debt collection process.

In many states, courts are either unwilling or unable to waive fees based on indigence, to tailor payment obligations to a person's ability to pay, or to offer meaningful alternatives to payment such as community service. And fourteen of the fifteen examined states utilize at least one form of "poverty penalty," where individuals face additional debt because they are unable to pay off criminal justice debt immediately. The result is a system effectively designed to turn individuals with criminal convictions into permanent debtors.

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The impact of this debt is significant. As discussed in the next two sections, unpaid criminal justice debt puts individuals at risk of imprisonment and can impact everything from their employment and housing opportunities, to their financial stability, to their right to vote.

Imposing impossibly high debt burdens on low-income people is financially self-defeating for states as well. When debts are imposed without taking into account ability to pay, states end up chasing debt that is simply uncollectable. According to statewide performance standards for court clerks in Florida, for example, only *9 percent* of fees assessed in felony cases are expected to be collected.⁵⁰ Expending personnel and resources to collect debt from people who lack the ability to pay is a waste of scarce criminal justice funds. And as experts on child support compliance have argued, low-income debtors are far more likely to make payments when the payment amount is manageable.⁵¹

A. Lack of Fee Waivers

Even though imposing criminal justice debt on the indigent is costly for states and individuals alike, **none** of the states studied by the Brennan Center have adequate mechanisms to reduce criminal justice debt based on a defendant's ability to pay.

At least fourteen of the fifteen states – every state but Ohio⁵² – has at least one mandatory fee that courts are required to impose upon certain convicted defendants, regardless of their financial resources.⁵³ Moreover, even when sentencing courts have the discretion to waive or modify debt levels, in practice, many courts routinely fail to consider a defendant's ability to pay. In Ohio, for example, despite courts' broad authority to waive debt, interviews with clerks and public defenders suggest that courts do not routinely waive debts for indigence in practice.⁵⁴

It is more common for courts to have the authority to waive or modify criminal justice debt post-sentencing – **at least twelve states** allow for post-sentencing waivers or modification of criminal justice debt in at least some circumstances.⁵⁵ But while these post-sentencing options are vital to address changed circumstances such as job loss, disability, or changing family commitments, they cannot substitute for ability to pay determinations at sentencing. Such determinations are necessary because once individuals are sentenced to pay criminal justice debt, they are immediately at risk of sanctions for non-payment such as probation revocation and the loss of driving privileges, as well as other harms such as damaged credit and a loss of public benefits.

Post-sentencing evaluations can also pose logistical challenges. For example, in North Carolina, one public defender observed that while individuals have the right to seek a post-sentencing reduction in their payment obligations by petitioning the court, they rarely do so because they do not have a right to counsel to aid with the petition. Instead, individuals often fall behind on payments and face probation revocation before a court has the opportunity to consider whether their fees should be reduced or waived.⁵⁶ This wastes resources and can potentially lead to unwarranted arrests and jail stays as part of the probation revocation process.

Finally, in many states, courts do not take advantage of their authority to waive or modify debt post-sentencing. For example, in Virginia, a court may reduce a defendant's financial obligations (including fines, costs, and restitution) if a defendant establishes, at a show cause proceeding for failure to pay, that the failure to pay was not the defendant's fault.⁵⁷ However, according to court clerks interviewed for this report, courts very rarely reduce the amount of a fee or fine and almost never reduce the amount of restitution owed.⁵⁸

B. Unworkable Payment Plans

Most states also fail to provide adequate payment plan options. While payment plans cannot undo the harm from unreasonably high debt burdens, a well-designed plan can make it easier for low-income people to pay down medium-size debts that might otherwise push them toward default. Yet despite their obvious utility, payment plan options in most states are burdensome and inflexible.

All fifteen of the states studied in this report permit payment plans in at least some contexts.⁶⁰ But in many states, payment plan systems need to be made more effective and fair.

In many states, payment plans are not geared to individuals' actual ability to pay. For example, the Michigan State Court Administrative Office has a collection policy that requires individuals to make an initial payment of \$45 if they are approved for a payment plan, regardless of their income.⁶¹ Similarly, in Louisa Circuit Court in Virginia, individuals must pay a minimum of \$50 per month and an initial payment of \$100. Another Virginia jurisdiction, Roanoke Circuit Court, usually requires payments to be large enough to pay off the entire debt within one year, regardless of its size.⁶²

Rather than setting a fixed plan, a better practice would be for courts to impose payment plans based on the individual needs of defendants. For example, Florida law presumes that an individual is able to pay a monthly payment equaling one-twelfth of two percent of his or her annual net income, and provides that the court may review the reasonableness of a payment plan employing this presumption.⁶³ Yet even in Florida, this presumption is often ignored and payment levels are set at fixed amounts.⁶⁴

The Need for Clear Standards

Most states do not have clearly defined standards for determining how much criminal justice debt an individual has the ability to pay. As result, even when states provide for hardship waivers, they are often ignored or inconsistently applied. Best practices developed by the Brennan Center for indigent defense appointments provide guidance for establishing criminal justice debt standards:⁵⁹

- State should have uniform, written requirements for what debt levels are appropriate given individuals' resources.
- Screening should evaluate genuine financial ability, taking into account other obligations should as child support commitments. In determining ability to pay, screeners should not include income needed for living expenses, non-liquid assets, and family and friends' assets.
- Individuals who receive public benefits, reside in correctional or mental health facilities, or have incomes below a fixed multiple of the federal poverty guidelines should be presumed ineligible to pay and should receive automatic waivers.

In another disturbing practice, jurisdictions in **at least nine** states charge individuals *extra* fees for entering into a payment plan.⁶⁵ This can discourage people from entering payment plans in the first place, and turn payment plans into a vehicle for increasing, rather than diminishing, debt burdens. For instance, Orleans district in Louisiana imposes a \$100 payment plan fee, and Franklin County in Ohio imposes a \$25 fee.⁶⁶ These fees target individuals with the least capacity to take on additional financial obligations, and contribute to and perpetuate cycles of debt.

C. No Meaningful Community Service Alternatives

Another potential path out of criminal justice debt is meaningful community service options for the indigent. Well-designed community service programs can help individuals with criminal convictions develop job skills and avoid long-term debts that keep them entangled with the justice system.

In **twelve of the fifteen** states the Brennan Center studied, interviewees reported that their state offered at least limited community service options in lieu of criminal justice debt. But practices varied significantly, both within individual states and across the country, such that many individuals lack meaningful community service options in practice.

In some states, community service options are rarely applied at all. For example, in Florida, judges are permitted to convert statutory financial obligations into court-imposed community service for those who cannot pay, but it appears that courts seldom take advantage of this option. According to court clerks, only 16 of 67 Florida counties converted any mandatory criminal debt imposed in felony cases to community service. Of those 16 that did report using community service, ten converted less than \$3,000 of debt to community service in one year.⁶⁷

In other states, community service is only offered for certain categories of financial obligations, which can leave individuals still liable for significant dollar amounts. For example, in Georgia, community service is generally only an option to offset certain financial obligations, such as fines.⁶⁸ And some states offer no community service options at all. For instance, North Carolina law does not offer individuals the option of performing community service in lieu of paying criminal justice debt.⁶⁹ In fact, when individuals are ordered to undertake community service as a term of their sentence, they must pay a \$200 *fee* to offset the cost of the program.⁷⁰

The design of community service programs also matters. For example, defenders in Illinois observed that when community service is imposed on individuals who are otherwise employed, it can be difficult for them to complete the necessary hours.⁷¹ For this reason, community service should only be imposed at the defendant's request, or when an unemployed defendant has been unable to make payments. Similarly, judges should have discretion as to how many hours of community service should be required to pay off criminal justice debt, rather than mandating by statute a fixed dollar value per hour. If a person faces thousands of dollars of debt, a fixed dollar equivalent of service hours may not be realistic.

California Woman Faces Spiraling Debt⁷²

In the middle of 2006, Michelle was sentenced, on fraud and drug charges, to six months in jail and three years on probation. She was also required to pay approximately \$40,000 in restitution, an obligation she embraces as necessary to compensate her victims for her wrongdoing. But while Michelle works to pay off her obligations, her debt grows by the month.

After serving her six months in jail Michelle began a three-year probation term. Back in her community, Michelle was fortunate to get a steady job, and she started making payments on the restitution she owed. The court put her on a payment plan under which she owed \$230 per month. But, as she paid off her restitution, she also accrued probation fees of \$136.78 per month, which continued to add to her total debt. Michelle was later downgraded to “administrative” probation, but continued to be charged a (lower) monthly fee.

Michelle worked hard to pay each month, at times paying down more than required. Even when she got laid off and was unemployed for over a year, Michelle paid what she could while supporting a daughter, but she feared punishment for her accumulating debt. “When I got laid off, there was one month – it was Christmas and my daughter’s sixteenth birthday – when I couldn’t make any payment,” says Michelle. “But the financial officer told me that if I didn’t make next month’s payment they’d give me a probation violation and send me back to jail. That’s the part that scared me most – I’d get my electric turned off before I missed a payment and had to maybe go back to jail.”

She worries, “for the unpaid probation fees, they can put me in jail if I don’t make payments Anytime that you owe probation and you don’t pay, they give you thirty days and then they issue a bench warrant for your arrest.”

When her three years of sentenced probation time came to an end, Michelle learned that because she had not yet repaid her restitution in full, she would remain on administrative probation until April of 2011, the maximum time allowed under the law. As a result, she continues to be charged \$33 per month in *new* fees.

As of June 2010, Michelle had paid \$6,212 toward her total debt, but she still has a long way to go. With her current job, Michelle earns about \$1,400 a month, with no government benefits. Her debt from monthly fees alone now totals over \$2,000, with months still to go on her probation term.

Of these other fees that have accumulated while she pays off her restitution, she says, “I’ve only ever been arrested that one time. I made a mistake. I messed up. And now all of this is still happening. I can’t imagine what it would be like for people who can’t get a job or don’t have the support I have.”

States With At Least Limited Community Service Options Available		
	Yes	No
Alabama ⁷³	✓	
Arizona ⁷⁴		✓
California ⁷⁵	✓	
Florida ⁷⁶	✓	
Georgia ⁷⁷	✓	
Illinois ⁷⁸	✓	
Louisiana ⁷⁹	✓	
Michigan ⁸⁰	✓	
Missouri ⁸¹	✓	
New York ⁸²		✓
North Carolina ⁸³		✓
Ohio ⁸⁴	✓	
Pennsylvania ⁸⁵	✓	
Texas ⁸⁶	✓	
Virginia ⁸⁷	✓	

NB: This list includes those states for which the Brennan Center identified an authorizing statute and/or practice of providing community service as an option to pay off at least some forms of criminal justice debt.

In contrast, when community service programs are well-designed, the benefits can be significant. Cambria County, Pennsylvania, for example, offers individuals who owe fines and court costs the opportunity to participate in a work detail if they are unable to make their monthly payments. A person may work at a preauthorized site such as the Salvation Army or YMCA, or may seek approval from the work crew supervisor to volunteer at another site, such as a local church or daycare center. A similar program is available for individuals incarcerated in the County Prison, where selected inmates are typically given the opportunity to work on county property, such as at the courthouse. By participating in this program until they are released from prison or gainfully employed, participants can avoid financial hardship arising from debt. According to one public defender, “the work program offers the person a chance to prove to themselves, family and the court that they are serious about reintegrating themselves as a productive, responsible member of the community, building self-esteem and dignity along the way . . . and of course the ultimate goal, reducing recidivism.”⁸⁸

D. Poverty Penalties Compound Debt and Enrich Private Companies

In addition to failing to offer adequate waivers for the indigent and meaningful payment plan and community service options, the Brennan Center found that many states also charge *additional* fees when individuals fail to pay off their debts immediately – without looking at whether the

debtor has the resources to pay. These charges effectively penalize people solely for being poor.

Fourteen of the fifteen states studied have statutes authorizing some form of poverty penalty or have at least one jurisdiction that utilizes such a penalty – including late fees, interest charges, payment plan fees, and collection fees.

- In **thirteen states**, individuals can be charged interest or late fees if they fall behind on payments⁸⁹ – even if they lack any resources to make the payments or have conflicting obligations such as child support. The added debt can be significant – such as a flat charge of \$300 in California,⁹⁰ late charges of \$10⁹¹ or \$20⁹² every time a defendant makes a late payment in some Florida counties, and a 20 percent late fee after 56 days in Michigan.⁹³
- **Nine of the states studied** authorize exorbitant “collection fees,” frequently payable to private debt collection firms.⁹⁴ For example, in Alabama, individuals must pay a collection fee of 30 percent of the amount due if their payments are 90 days overdue.⁹⁵ Similarly, Florida law authorizes private collection agencies to charge individuals up to a 40 percent surcharge on amounts collected,⁹⁶ and Illinois law authorizes charging individuals who fall behind on payments with a fee of 30 percent of the delinquent amount.⁹⁷ Only one of the states studied, Texas, exempts defendants who are unable to pay their underlying debt from an added collection fee.⁹⁸

- **Nine states** charge defendants a fee for entering into a payment plan – also without any exemption for poverty.⁹⁹ Fee amounts vary, from \$10 in Virginia,¹⁰⁰ to \$100 in New Orleans.¹⁰¹ Florida debtors can be charged \$25 to enroll in a payment plan, or an additional \$5 charge per month.¹⁰²

By pushing poor people further into debt, poverty penalties make it harder for them to meet their daily needs and to fulfill important commitments such as child support. For example, California’s \$300 civil assessment for defendants who fall behind in paying a fine or related surcharge¹⁰³ is close to the average monthly food budget for a household making less than \$70,000 per year.¹⁰⁴ Collection fees in Florida – which can reach 40 percent of the amount collected – likewise regularly add hundreds of dollars to individuals’ debt burdens and can bring their total debt into four figures.¹⁰⁵ Often these charges far exceed ordinary standards of fairness. For example, Alabama’s 30 percent “collection fee”¹⁰⁶ is in striking contrast to its general usury law, which limits interest rates on private loans to a maximum of 8 percent.¹⁰⁷

Certainly, states have a legitimate interest in creating incentives so that defendants that *can* pay their debts *do* pay them. But states need to ensure that they do not end up penalizing the truly poor and enriching private debt collectors at their expense.

III. HARSH COLLECTION PRACTICES FORGE FOUR PATHS TO DEBTORS' PRISON

Criminal justice debt puts many individuals on the fast track to re-arrest and re-incarceration. At their worst, criminal justice debt collection efforts result in a new form of debtors' prison for the poor.

In a startling number of jurisdictions, we found that individuals can face arrest and incarceration not for any criminal activity, but rather for simply falling behind on debt payments. Our research also uncovered a variety of ways in which criminal justice debt can be the first step toward new offenses and more jail time – all originating from the failure to pay off debt.

The Supreme Court Rejects Debtors' Prison

"[I]f the probationer has made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available."

*Bearden v. Georgia*¹⁰⁸

Some of these practices violate the Constitution or state law. All of them undercut former offenders' efforts to reintegrate into their communities. Even a short stint in jail can lead to harmful consequences such as job loss, family disruptions, and interruptions in treatment for addiction, all of which create a situation ripe for new and more serious offenses. And the costs of arrest and incarceration – passed on to the taxpayer – are often more than the state can ever hope to collect from debtors.

Yet despite these legal objections and hidden costs, versions of debtors' prison persist in all of the states examined by the Brennan Center.

A. History and Constitutional Limitations

Historically, being in debt was often tantamount to hopelessness. In ancient Rome, a debtor who could not repay an outstanding loan was bound in chains in a public plaza for three days, after which he was sold as a slave or executed.¹⁰⁹ In England, debtors' prisons were widely used into the nineteenth and early twentieth centuries.¹¹⁰

Early America also relied on debtors' prisons. In the 1830s, some U.S. states imprisoned three to five times as many individuals for debt as for actual crimes.¹¹¹ By this time popular opposition to debtors' prison had begun to grow, however, and in 1833, the United States eliminated the imprisonment of debtors under federal law, with many states following suit as well.¹¹²

But these provisions did not stop the use of debtors' prison to collect criminal justice debt imposed by courts. In fact, beginning soon after the Civil War and continuing through the 1930s, many Southern states used criminal justice debt collection as a means of effectively re-enslaving African-Americans, allowing landowners and companies to "lease" black convicts by paying off criminal justice debt that they were too poor to pay on their own.¹¹³

More recently, the Supreme Court has made clear that debtors' prison can be used to collect criminal justice debt only when a person has the *ability* to make payments but refuses to do so. In 1970, the Court ruled in *Williams v. Illinois* that extending a maximum prison term because a person is too poor to pay fines or court costs violates the right to equal protection under the Fourteenth Amendment.¹¹⁴ And in 1983, it ruled in *Bearden v. Georgia* that the Fourteenth Amendment bars courts from revoking probation for a failure to pay a fine without first inquiring into a person's ability to pay and considering whether there are adequate alternatives to imprisonment.¹¹⁵

Yet despite these constitutional protections, Brennan Center interviews with defenders and court personnel revealed that some jurisdictions ignore the requirement that courts inquire into ability to pay before utilizing debtors' prison, while many others skirt the edges of the law by failing to evaluate a defendant's ability to pay until after he or she has been arrested, or even jailed, for criminal justice debt, or by allowing defendants to "volunteer" to be incarcerated. Only recently, an appellate court in Louisiana found that a trial court in Monroe Parish violated the Constitution in sentencing an indigent person to an automatic jail term that was triggered if he failed to pay fines and costs.¹¹⁶

Even more jurisdictions arrest and incarcerate individuals who miss court dates or other appointments related to criminal justice debt – even when they lack the resources to make payments – making criminal justice debt a path to new offenses. And other common collection practices, such as extending probation or suspending driver's licenses, also lead to new offenses rooted in debt.

B. Four Paths to Debtors' Prison

Individuals with heavy debt burdens risk incarceration in all **fifteen** of the states examined in this report – in many cases without regard for their ability to pay. The Brennan Center identified four main paths to this disturbing new form of debtors' prison.

- **Path 1: Probation or parole revoked or not granted**
All fifteen states make criminal justice debt a condition of probation, parole, or other correctional supervision. In some states, when individuals fail to pay, they may face re-arrest and may ultimately be sent to prison. In Pennsylvania, persons in prison are ineligible for parole unless they pay a \$60 fee that makes no exception for the indigent.
- **Path 2: Incarceration through civil or criminal enforcement proceedings**
At least eleven states have statutes or practices that authorize incarceration as a penalty for a willful failure to pay criminal justice debt, often under the guise of civil contempt.
- **Path 3: "Choosing" jail**
Interviewees in **two states** reported programs where defendants can request to spend time in jail as a way of paying down court-imposed debt. These programs are often voluntary in name only and reflect the untenable choices that poor defendants must make.
- **Path 4: Arrest and pre-hearing incarceration**
All fifteen states have jurisdictions that arrest people for failing to pay criminal justice debt or appear at debt-related hearings, leading in many cases to multi-day jail terms pending an ability to pay hearing.

Key Terms¹¹⁷

- **Probation** typically refers to a court-imposed sentence that releases a person into the community, usually subject to the person meeting stated conditions, rather than sending the person to jail or prison.
- **Parole** typically refers to the release of a person from prison before he or she has completed a full sentence, and is usually granted for good behavior and subject to the parolee meeting certain conditions during the parole period. This report refers to probation and parole together as **supervision**.
- **Conditions** of supervision are requirements that a probationer or parolee must abide by under order of the court or parole board. Examples of conditions of supervision include attending drug treatment programs, abiding by curfews, meeting with probation or parole officers, and paying criminal justice debt.
- If a person under supervision fails to meet required conditions, they have **violated** that condition. Allegations of violations are typically brought before a judge or the parole board. If the judge or parole board finds that a condition has been violated, they have the option to **revoke** probation or parole, sending the person back to prison.

1. Probation or Parole Revoked or Not Granted

All fifteen states studied in this report make at least some forms of criminal justice debt a condition of probation or parole, including for the indigent, putting individuals at risk of incarceration if a court finds that missed payments were willful.¹¹⁸

In several states, supervision authorities regularly seek revocation based on missed payments, requiring individuals to appear at hearings to explain failures to pay.¹¹⁹ While in many states these hearings do not lead to a decision to send the person back to prison, incarceration is a common result in jurisdictions in at least two states, Alabama and Missouri.¹²⁰ Many other states have jurisdictions that sometimes revoke probation or parole for failures to pay.¹²¹ Failure to pay can also lead to revocation if an individual cannot pay for mandatory treatments, classes, or polygraph tests that are often conditions of supervision.¹²²

Under the Constitution, while a court can make debt payment a *condition* of probation or parole regardless of ability to pay, probation and parole can only be *revoked* after a court makes an ability to pay inquiry. Troublingly, defenders in at least **five** of the surveyed states reported instances where they believed courts had either failed to consider ability to pay altogether or used an unreasonable standard for determining ability to pay in the process of revoking probation or parole.¹²³

For example, a public defender in Illinois observed that rather than evaluating a person's assets and obligations, one judge simply asked everyone if they smoked. If they smoked and had paid nothing since the last court date, he found willful nonpayment and put them in jail without doing any further inquiry.¹²⁴ Similarly, in Michigan, a public defender said that while incarceration for failure to pay is not

common, she has observed judges make only cursory ability to pay inquiries, such as finding a person's failure to pay willful because he had cable television.¹²⁵ In some jurisdictions missed payments are also regularly listed in supervision reports as one of many reasons for revocation,¹²⁶ placing the defendant in a negative light even if the court formally revokes supervision on another ground.

"I do, generally, believe that very few of our judges have ever experienced the kind of poverty a majority of my clients live with, so they are often unrealistic about what is possible."

**— Public defender in
Jackson County, Illinois¹²⁸**

A similar path to debtors' prison occurs when states condition *eligibility* for probation and parole on the payment of criminal justice debt, denying probation or parole and holding individuals in prison until they pay their debts. Pennsylvania utilizes such a practice, making eligibility for probation, parole, and accelerated rehabilitative disposition contingent on paying a \$60 court costs fee. Strikingly, this law has no waiver for indigence, in blatant violation of the Fourteenth Amendment.¹²⁷

According to the Pennsylvania Institutional Law Project, many inmates who were otherwise eligible for release on parole have been kept in prison – sometimes for a period of months – because they lacked the resources to pay \$60.¹²⁹ Ironically, it costs almost \$100 to hold a person in prison for a *single day* in Pennsylvania.¹³⁰

2. Incarceration Through Civil or Criminal Enforcement Proceedings

Another common path to debtors' prison takes place when civil or criminal enforcement proceedings are used to incarcerate individuals who fail to make debt payments. **At least eleven of the fifteen states** examined in this report have statutes or practices that authorize incarceration for willful failures to pay criminal justice debt, often under the guise of civil contempt.¹³¹

These proceedings raise particular concern in states where individuals have no right to counsel in civil proceedings even when they face incarceration. For example, many Florida counties use "collections courts," where individuals are at risk of being jailed for civil contempt but have no right to a public defender.¹³² This lack of counsel is particularly disturbing when, as in Florida, defendants are hauled into court for debt that no judge has ever determined they have the ability to pay. While most states recognize a right to counsel in civil proceedings that could result in incarceration, high courts in Florida,¹³³ Georgia,¹³⁴ and Ohio,¹³⁵ have rejected this notion (although lower courts in Ohio are divided as to whether the high court's ruling continues to be good law).¹³⁶

Denying individuals counsel at proceedings where their liberty is at stake raises serious constitutional questions¹³⁷ – and creates a significant risk that individuals will end up incarcerated simply for being poor. Attorneys play a crucial role in ability to pay proceedings: they can collect and present evidence regarding ability to pay criminal justice debt, navigate often-confusing rules for altering payment commitments or debt loads, and ensure that individuals' rights are protected and that they understand the implications of any payment commitments that they make. Putting individuals' liberty at risk without access to an attorney draws the fairness and accuracy of civil contempt proceedings into serious question.

3. “Choosing” Jail

Some states also create a third path to debtors’ prison by offering individuals the “choice” of spending time in jail as a way of paying off criminal justice debt, highlighting just how severe a burden criminal debt imposes on the poor.

In California¹³⁸ and Missouri,¹³⁹ for example, some jurisdictions allow people to “volunteer” to sit in jail as a way of fulfilling debt obligations. In many cases, volunteering for jail is a choice in name only.

According to a public defender in Missouri, for example, one judge treats nonpayment as an implicit request to commute fines to jail time, eliminating any pretext that jail time was the defendant’s voluntary choice. The defender successfully fought this policy, but the judge reportedly still applies it to individuals not represented by a public defender.¹⁴⁰ The Supreme Court rejected exactly this kind of practice in *Tate v. Short*, holding that courts could not automatically convert an indigent defendant’s unpaid fines into a jail sentence.¹⁴¹ In Marin County, California, one public defender observed that judges only very rarely waive criminal justice debt for indigence, and that clients who are poor and unable to work are more likely to convert debt to jail terms, to avoid facing future probation violations for failures to pay.¹⁴²

Individuals who “choose” jail terms to pay down debts may also accumulate new debts in the process. For example, in at least one Missouri jurisdiction, debtors who choose to sit in jail to pay down one set of fines and costs reportedly accrue new jail board bills for their stay in jail.¹⁴³

In other states, although there is no explicit statutory provision for choosing to “sit out” fees and fines, defendants can still effectively choose incarceration by accepting plea agreements that provide for jail time in lieu of certain forms of debt. For example, in one North Carolina county, individuals who are unable to immediately pay criminal justice debt are placed on supervised probation and are typically sentenced to the full length of their suspended sentence if they are found to have willfully violated probation. With such high-stake debt burdens at issue, one public defender said that if she expects a client will have trouble making payments she will often encourage the client to accept a plea agreement that provides for jail time in lieu of certain financial obligations.¹⁴⁴ Ironically, states not only forego debt revenue in these cases but also typically face additional costs from unnecessary incarceration.

4. Arrest and Pre-Hearing Incarceration

Finally, in **all fifteen states**, at least one jurisdiction has a practice of arresting individuals if they miss debt payments or fail to appear at a debt-related proceeding, typically as the first step in a probation or parole revocation hearing or a civil contempt proceeding.¹⁴⁵ In some jurisdictions, a missed payment automatically triggers an arrest warrant,¹⁴⁶ while in others, clerks or probations officers regularly seek arrest warrants when individuals fall behind on payments.¹⁴⁷ And in still others, arrests occur for “failure to appear” at a debt-related hearing, meeting, or court date.¹⁴⁸ Arrests lead not only to an initial loss of freedom but in many cases to days in jail prior to a court appearance and an ability to pay determination.

The use of arrests as a collection mechanism raises serious concerns because in many jurisdictions, arrests and pre-hearing incarceration take place before a court has *ever* assessed whether the individual has the resources to make payments. In Florida, for example, some counties use “pay or appear” hearings, where an individual is required to either make a payment by a fixed deadline or appear in court for

a hearing. If a person fails to pay and does not appear in court, the person is arrested and held in jail pending a court hearing unless he or she can pay a “purge.” In most cases, no court has ever determined that person had the ability to make payments in the first place.¹⁴⁹

And as in Florida, even when jurisdictions do provide options for individuals to make a payment in order to be released from jail prior to an ability-to-pay hearing, the amounts themselves are not typically tied to ability to pay.¹⁵⁰ As a result, poor people must frequently stay in jail pending an ability-to-pay hearing, sometimes for several days.

Troublingly, even when an arrest is based on a failure to appear, rather than a failure to pay, in many instances indigence is the underlying *cause* of the failure to appear. In Texas and Michigan, for example, defenders complain that in some jurisdictions, aggressive collection tactics by probation officers deter poor people from showing up to probation meetings if they lack the resources to make a required payment – leading these same probation officers to issue a probation violation for the failure to appear.¹⁵¹

The result – sending debtors to overcrowded prisons and jails for failing to follow a court order – is costly to states, harmful to public safety, and unfairly burdensome to debtors whose failure to appear is often rooted in poverty. In New Orleans, for example, a review of a week of felony docket sheets revealed that a full 6.15 percent of cases before the court related to debt collection issues, a questionable allocation of resources in a crime-plagued city. Of these, approximately 21.6 percent were cases where an arrest warrant had issued because of a missed payment or failure to appear.¹⁵²

While the Supreme Court has never specifically addressed the constitutionality of using arrests for failures to pay debt or appear at debt-related hearings, at core these practices punish debtors without first determining whether they have the ability to pay. This is inconsistent with basic fairness and runs directly against the equal protection and due process principles reflected in the cases prohibiting debtors’ prison.

States That Suspend Driver’s Licenses To Punish Missed Payments

California¹⁵³
Florida¹⁵⁴
Louisiana¹⁵⁵
Michigan¹⁵⁶
North Carolina¹⁵⁷
Pennsylvania¹⁵⁸
Texas¹⁵⁹
Virginia¹⁶⁰

NB: This list includes those states for which the Brennan Center identified an authorizing statute and/or practice of altering driving privileges for a failure to pay at least some forms of criminal debt.

C. Aggressive Collection Tactics Push Debtors Toward New Offenses

In addition to creating new paths to debtors’ prison, many states’ collection practices push debtors toward the old path to prison: reoffending. Harsh collection practices can lead to probation and parole violations and new offenses that are rooted in debt, often leading to new prison terms and undermining efforts at reentry.

1. Suspension of Driver’s Licenses

One common collection practice that leads to a cycle of reincarceration is the suspension of driver’s licenses. **At least eight states** suspend driver’s licenses based on missed payments, in many cases without considering whether a person had the resources to

make payments in the first place. In still other states, individuals can have their licenses revoked for a failure to appear at a hearing or for an arrest warrant, the underlying cause of which is often criminal justice debt.¹⁶¹ If these individuals continue driving – as they often must to work – they face new and often severe criminal penalties for driving with a suspended license.

In California, for example, driving with a suspended or revoked license carries a penalty of up to six months imprisonment and/or a fine of between \$300 and \$1000 for a first offense.¹⁶² If a person is convicted more than once in a twelve month period, he or she is considered a habitual traffic offender and faces mandatory incarceration.¹⁶³ As a result, even if the debtor's original crime was quite minor, driver's license suspension can push debtors toward more serious offenses and future incarceration.

2. Extending Probation Terms

In addition to ordering criminal justice debt as a condition of probation, **at least thirteen** states also have a statute or practice allowing courts to *extend* probation terms for failure to pay debt in at least some cases. In many of these states, jurisdictions extend probation even if the person has satisfied all other probation conditions, and even if it is undisputed that the person lacks the resources to pay.

As a result, individuals stay enmeshed in the criminal justice system for longer and face a risk of incarceration for longer – not for new crimes, but for technical violations of probation conditions, including payment conditions.

In San Francisco, for example, individuals with extended probation terms must continue reporting regularly to probation officers, attend counseling sessions, and fulfill other probation conditions. These requirements are often time-consuming and can interfere, among other things, with efforts to find and maintain steady employment. Missing a meeting or other condition of probation can lead to a probation violation charge – and possibly arrest, a jail stay pending a judicial hearing, and ultimately the revocation of probation and a new prison term.¹⁶⁴

In this way, extending probation for a failure to pay off criminal justice debt makes future interaction with the criminal justice system more likely, and creates a host of burdens unrelated to the debt payments themselves.

D. Debtors' Prison Wastes Public Funds

The underlying motivation for using debtors' prison and other aggressive collection practices is generally fiscal: states look to criminal justice debt as a way to boost revenue. But strikingly, debtors' prison and other collection practices that lead individuals on a path to reincarceration simply do not add up – they are expensive and place additional pressure on already-overcrowded prisons and jails. As policies for increasing revenue, they are penny-wise and pound-foolish.

Any time an individual is arrested or imprisoned, taxpayers face a hefty bill. California, for example, spends more than \$130 per day to incarcerate a single prisoner.¹⁷⁸ And over-incarceration requires states to divert resources from other critical areas, including everything from education to law enforcement. Indeed, with the recent economic crisis putting unprecedented strain on state budgets, many states have been rethinking their high rates of incarceration. Most notably, California recently announced a plan to reduce the number of inmates in the state's 33 prisons next year by 6,500.¹⁷⁹

States That Extend Probation For Debt

Alabama¹⁶⁵
Arizona¹⁶⁶
California¹⁶⁷
Florida¹⁶⁸
Georgia¹⁶⁹
Louisiana¹⁷⁰
Michigan¹⁷¹
Missouri¹⁷²
North Carolina¹⁷³
Ohio¹⁷⁴
Pennsylvania¹⁷⁵
Texas¹⁷⁶
Virginia¹⁷⁷

NB: This list includes those states for which the Brennan Center identified an authorizing statute and/or practice of extending probation for failure to pay criminal debt in at least some circumstances.

Yet in the quest for criminal justice fee revenue, states are sending *more* people into prisons and jails. While states focus on the income such collection practices bring in, they generally fail to look at the other side of the balance sheet, including costs imposed on sheriffs' offices, local jails and prisons, prosecutors and defense attorneys, and the courts themselves.

North Carolina County's Collection Practices Do Not Add Up

Mecklenburg County, North Carolina faced an \$85 million budget gap this year, with austerity measures including everything from closing 12 library branches to a potential \$9 million dollar cut to the Sheriff's Office.¹⁸⁰ Yet records from the Mecklenburg County Fine Collection Department indicate that some of the county's debt collection efforts cost more money than they bring in.

According to an official in the Fine Collection Department, when individuals on a payment plan fail to make scheduled payments, they receive a series of postcards and calls and ultimately a probation violation report, requiring them to appear in court. If these postcards and reports go unserved because a person's address has changed, a warrant is then issued for the person's arrest.¹⁸¹

Department records indicate that in 2009, 564 individuals were arrested because they fell behind on debt and failed to provide the Fine Collection Department with updated address information.¹⁸² In order to be eligible for release from jail prior to a hearing before the court, they were required to pay the full amount of their debt. Of the 564 individuals arrested, 246 people did not pay and were held in jail for an average of about 4 days pending a compliance hearing – at which point their debts were often cancelled.¹⁸³ This jail term alone cost more than \$40,000¹⁸⁴ – while the county collected only \$33,476 from the individuals who had been arrested.¹⁸⁵ Additional arrests also took place when individuals did not appear at debt-related hearings, costing the county even more money.¹⁸⁶

IV. CRIMINAL JUSTICE DEBT IMPEDES REENTRY AND REHABILITATION

The harm from criminal justice debt does not stop at debtors' prison and new debt-related offenses. In all of the fifteen states studied, criminal justice debt and related collection tactics pose severe hurdles in virtually every area of life.

From seeking and maintaining employment and housing, to obtaining public benefits, to meeting financial obligations such as child support, to exercising the right to vote, criminal justice debt is a barrier to individuals seeking to rebuild their lives after a criminal conviction. In the rush to raise revenue, states have not considered whether turning defendants into debtors is consistent with the need to reduce recidivism, reduce over-incarceration, and promote reentry.

A. Hurdles to Finding Housing and Employment

One significant result of the heavy debt burdens and aggressive collection tactics documented in the fifteen states is that debtors face major hurdles to finding and maintaining housing and employment, both key steps in promoting former offenders' reentry into their communities.

For instance, in many states, criminal justice debt wreaks havoc on individuals' credit scores, and with it, their housing and employment prospects. **At least eleven states** allow at least some forms of criminal justice debt to be converted into civil judgments or collected in the same manner as civil judgments,¹⁸⁷ meaning that the debt is filed with the county clerk just like any other judgment and becomes public information available for credit reporting agencies.¹⁸⁸ And at least **four** states affirmatively report delinquent defendants to credit agencies in some contexts, typically via private vendors contracted to help collect delinquent debt.¹⁸⁹

The resulting damaged credit scores hurt individuals applying for a loan or mortgage,¹⁹⁰ as well as those seeking public or rental housing where credit scores are often a screening mechanism. For example, in New Haven, Connecticut, the city's Housing Authority recently approved a program that would allow preferential placement for up to 12 ex-offenders on lists for public housing. However, the new program does not make exceptions for individuals with a poor credit history.¹⁹¹

Reporting criminal justice debt to credit agencies also impacts employment prospects. Background checks by employers increasingly include credit reports,¹⁹² which can be used as a form of "character screening" for job applicants.¹⁹³ By damaging credit, criminal justice debt functions as yet another application hurdle for jobseekers.

Even more troubling, credit reports can also serve as a back-door way for employers to identify individuals with criminal records. In order to promote reentry, some states limit how and when employers can use a defendant's criminal history in hiring decisions.¹⁹⁴ Criminal justice debt appearing on a credit report can potentially inform employers that an individual has a criminal history even when the legislature has decided that this information should not be made available to employers.

In addition to damaging credit, criminal justice debt and related collection practices harm employment and housing prospects in other ways as well. Wage and tax garnishment, for example, discourages individuals from participating in legitimate employment and pushes them toward the underground economy.¹⁹⁵ **All fifteen states** studied permit the use of at least certain civil collection methods for criminal justice debt collection, such as liens or the garnishment of bank accounts or wages,¹⁹⁶ and **nine of the fifteen** states utilize tax rebate interceptions for at least limited purposes.¹⁹⁷

Likewise, states' use of arrests and incarceration as collection tactics can disrupt work schedules and create an erroneous impression that the person has committed a new crime, making it harder to hold down housing or a job. Longer-term periods of incarceration for failing to pay criminal justice debt cause even greater disruptions. Similarly, suspending driver's licenses for a failure to pay criminal justice debt can make it difficult for many people to search for and hold down jobs.¹⁹⁸ Strikingly, both Florida and Virginia routinely revoke driver's licenses for missed debt payments without first considering a person's ability to pay.¹⁹⁹ This practice is in marked contrast to the child support context, where driving penalties for non-payment are typically viewed as a last resort, leaving officials with substantial discretion.²⁰⁰

By aggressively using the probation and parole supervision process for debt collection, states increase economic insecurity for a population that is already overwhelmingly poor . . .

B. Public Benefits at Risk

In a harsh irony, aggressive collection practices can also render individuals with criminal justice debt ineligible for public benefits, simply for being too poor to make debt payments.

As discussed in the context of debtors' prison, **all fifteen** of the examined states make criminal justice debt a condition or probation or parole.²⁰¹ But treating a failure to pay criminal justice debt as a violation of a probation or parole term can impact debtors in other ways as well – under federal law, individuals who violate a term of their probation or parole are ineligible for federal Temporary Assistance to Needy Families (TANF) funds,²⁰² as well as Food Stamps,²⁰³ low-income housing and housing assistance,²⁰⁴ and Supplemental Security Income for the elderly and disabled.²⁰⁵ By aggressively using the probation and parole supervision process for debt collection, states increase economic insecurity for a population that is already overwhelmingly poor – a practice directly at odds with the goal of promoting reentry.

The risk of losing public benefits is particularly serious because in practice, agencies sometimes terminate benefits solely on the basis of a warrant *alleging* that a person has violated probation or parole by failing to make payments – even when a court has not made a finding that the person had the ability to pay, and even when there may have been a mistake about the person's parole or probation status.

A recent Second Circuit Court of Appeals case, *Clark v. Astrue*,²⁰⁶ addressed this issue in the context of Supplemental Security Income (SSI) and Old-Age, Survivor and Disability Insurance (OASDI). As documented in an amicus brief by the Empire Justice Center and other non-profits, individuals around the country have lost SSI and OASDI benefits based on warrants arising from criminal justice debt that they cannot afford to pay.²⁰⁷ The Second Circuit agreed with the plaintiffs that the government had no right to terminate these benefits unless it was “more likely than not” that the person actually violated a condition of probation or parole.²⁰⁸ However, because the Social Security Administration has not yet acquiesced to this decision, it is likely that criminal justice debt warrants will still be used to terminate benefits, even when a court has never determined whether the person has the ability to make payments.²⁰⁹

C. Barriers to Paying Child Support

The heavy debt burdens documented in the fifteen states also harm family relationships. In Texas, for example, 10 to 20 percent of felony probationers and 15 to 25 percent of parolees owe child support.²¹⁰ Rather than encouraging former offenders to meet these obligations, however, many states impose criminal justice debt obligations directly in tension with child support commitments.

Although federal law prioritizes child support obligations over all other debts owed to the state, including criminal justice debt,²¹¹ obligations to make monthly criminal justice debt payment can often be in direct conflict with child support commitments – particularly when judges lack discretion to take into account ability to pay in setting debt levels or creating payment plans. Moreover, when aggressive collection tactics result in the loss of jobs, housing, or public benefits, it is often impossible for individuals to meet their child care and child support obligations.

In Texas, one fee statute explicitly takes into account child support commitments, requiring the court to consider “the defendant’s employment status, earning ability, and financial resources” and “any other special circumstances that may affect the defendant’s ability to pay, *including child support obligations* and including any financial responsibilities owed by the defendant to dependents or restitution payments owed by the defendant to a victim.”²¹² This provision should be a model for other Texas fee statutes – and other states should follow its lead

D. Debt Functions as a Poll Tax

In addition to impacting financial security, criminal justice debt also harms individuals’ most fundamental rights. All fifteen of the states examined in this report disenfranchise people with criminal convictions for some period of time.²¹³ In **at least seven of these fifteen states**, individuals must pay off criminal justice debt before they can regain their eligibility to vote after a conviction. This modern-day poll tax is particularly harmful to the African-American community – nationwide, 13 percent of African American men have lost the right to vote, seven times the national average.²¹⁴

Among the fifteen states examined in this report, Alabama, Arizona, Florida, and Virginia all explicitly condition the restoration of voting rights on the repayment of at least some forms of criminal justice debt.²¹⁵ In fact, Alabama and Virginia require individuals to pay *all* fines, restitution, and court costs before they can be considered for reinstatement – a dollar amount that can easily reach thousands of dollars.

Other states, including Georgia and Texas, have ambiguous provisions that require individuals to complete their “sentences,” which may potentially include the payment of fines, restitution, or other forms of criminal justice debt.²¹⁶

Finally, some states – including Louisiana, North Carolina, and Texas – disenfranchise people on probation, while also allowing the court to extend probation if a defendant has not paid off his or her debt by the expiration of the probation term.²¹⁷ By extending individuals’ probation terms due to unpaid debt, courts also effectively continue to deny the right to vote.

These requirements raise serious constitutional concerns and contravene a core principle of our democracy – that rich and poor alike have a right to participate in our political system. And by denying access to political rights based solely on poverty, states counter efforts to encourage former offenders to accept the rights and responsibilities of citizenship.

It is in everyone’s interest for people coming out of prison to reintegrate into their communities – to hold down stable jobs and housing, to meet obligations to their children and families, to enjoy financial security, and to take on the obligations of citizenship. Unfortunately, while states have increasingly recognized that fostering successful reentry is a necessary part of criminal justice policy, every state that we examined imposes and collects criminal justice debt in a manner that runs directly counter to these goals.

V. OVERRELIANCE ON CRIMINAL JUSTICE FEES UNDERMINES THE PROPER ROLES OF COURTS AND CORRECTIONAL AGENCIES

An overreliance on criminal justice debt coupled with aggressive collection practices also undermines the traditional functions of the courts and criminal justice agencies enlisted to collect debt.

All fifteen of the examined states require courts and probation and parole officers to be involved in debt collection in some capacity.²¹⁸ This practice blurs traditional roles, requiring judges and supervision officers to act as collection agents, rather than impartial adjudicators or supervision officers concerned with public safety and rehabilitation. In fact, **at least eleven states** use some criminal fees, fines, or penalties to support general revenue funds, treasuries, or funds unrelated to the administration of criminal law – effectively turning courts, clerks, and probation officers into general tax collectors.²¹⁹

A. Courts Face Conflicts of Interest and Financial Uncertainty

States' increasing reliance on fees to fund court operations raises significant concerns, particularly for the judiciary, and goes against the best practices recommended by the American Bar Association and other justice experts.²²⁰ **All of the states** studied in this report use criminal justice debt to provide budgetary support to courts.

Chief among these concerns is that when courts are over-dependent on fees, such reliance can interfere with the judiciary's independent constitutional role, divert courts' attention away from their essential functions, and, in its most extreme form, threaten the impartiality of judges and other court personnel with institutional, pecuniary incentives.²²¹

Concerns arise, too, when courts are used to collect fees that go to other state functions or general revenue. This concern has prompted the Louisiana Supreme Court to strike down fees that are not directly connected to the administration of justice on separation of powers grounds, stating that “our clerks of court should not be made tax collectors . . . nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature.”²²² More recently, the court has adhered to this precedent, and focused on the issue of whether a fee relates to “administration of justice” in deciding whether it violates separation of powers.²²³

Fee revenue can also be unstable. When the operation of the criminal justice process depends too heavily on fee revenue, courts risk major disruption when fee revenue goes down.

New Orleans, for example, faced an extreme version of this phenomenon in the wake of Hurricane Katrina when the traffic court fines that it had relied upon to fund the public defender system dried up.²²⁴ Already underfunded before Katrina, the city's public defender office faced devastating cuts after the depopulation of New Orleans depleted traffic fine revenue. By October of 2005, the office's staff shrunk to 10 attorneys from 35.²²⁵

News reports documented accounts of defendants being kept in jail even after charges against them were dropped, or just as troubling, waiting months before their cases were presented.²²⁶ In a highly publicized decision, one judge, Judge Arthur Hunter, decided to suspend prosecutions and release defendants because they were not being provided counsel in a timely fashion.²²⁷

Far from being easy money, then, criminal justice debt puts court officials in the awkward role of becoming debt collectors, while creating the potential for financial instability when fee revenue goes down.

B. Probation and Parole Officers are Diverted from Their Public Safety and Rehabilitation Purposes

The concern about compromising roles is also salient for probation and parole officers. Because some form of criminal justice debt is a condition of supervision in **all fifteen** states, supervision officers are involved in collections in each state to varying degrees. Collection-related tasks include monitoring payments, setting up payment plans, dunning persons under supervision, and taking punitive actions such as reporting failures to pay.²²⁸ Even when jurisdictions do not typically seek probation revocation solely on the basis of nonpayment, many interviewees reported that supervision officers will threaten revocation in an effort to encourage payments.²²⁹

These enforcement responsibilities can be a distraction from the more important duties that probation and parole officers have. In particular, given their often crushing caseloads, their highest priority is to promote public safety and monitor individuals at risk of re-offending. Supervision officers are aware of these consequences and some find debt collection to be at odds with their main purpose: to serve society by ensuring that individuals do not commit new offenses.

These concerns led Virginia to abolish one of its supervision fees in 1994 (though other supervision fees remain). Virginia abolished its parole supervision fee, which had been \$30 per month, in part because it had been “a huge hassle to collect,” according to a Virginia corrections official.²³⁰ In addition to the problems inherent in requiring parole officers to be fee collectors, the associated administrative and accounting tasks made collection by the Department of Corrections too burdensome relative to the small amount of revenue generated by the fee.²³¹ Some within the Department, including parole officers, objected to the fee and to the parole officers’ role in the collections process, not only because of the administrative challenges, but also because collection undermined their other duties. As one official stated, “parole officers are not loan sharks.”²³²

VI. RECOMMENDATIONS

Criminal justice debt and collection practices are different in each state, but in our analysis of fifteen states' practices, several themes emerged. Many of the problems described in this report arise from states' failure to provide indigence waivers for criminal justice debt. States also consistently failed to consider the costs – both human and financial – of aggressive collection practices, including arrests, incarceration, the extension of probation terms, and the suspension of driver's licenses. Several collections practices also raised serious constitutional concerns. We outline below a number of recommendations to address these hidden costs.

1. **Lawmakers should evaluate the total debt burden of existing fees before adding new fees or increasing fee amounts.** Massachusetts provides a good model: on the verge of instituting a local jail fee in 2010, the legislature instead established a commission to perform an initial investigation of the revenue that could be generated from the fee, the cost of administering and collecting the fee, and the impact of the fee on affected populations.
2. **Indigent defendants should be exempt from user fees, and payment plans and other debt collection efforts should be tailored to an individual's ability to pay.** States should have clear written standards for determining a person's ability to pay, and screening should evaluate genuine financial ability, taking into account other obligations such as child support commitments. Individuals who receive public benefits, reside in correctional or mental health facilities, or have incomes below a fixed multiple of the federal poverty guidelines should be presumed eligible for criminal justice debt waivers.
3. **States should immediately cease incarcerating and jailing individuals for failure to pay criminal justice debt, particularly before a court has made an ability-to-pay determination.** Many people land in jail for debt-related reasons pending a court hearing, even though no one has ever determined that they have the ability to pay in the first place. This blatantly unfair practice punishes people for being poor and raises significant constitutional questions.
4. **Public defender fees should be eliminated, to reduce pressures that can lead to conviction of the innocent, over-incarceration, and violations of the Constitution.** At the very least, states should follow the ABA recommendation that individuals should not be ordered to pay defender fees they are unable to afford and that states should abolish reimbursement fees that require defendants to reimburse the state for all or part of the defender's services at the end of a proceeding.
5. **States should eliminate "poverty penalties" that impose additional costs on individuals who are unable to pay criminal justice debt all at once, such as payment plan fees, late fees, collection fees, and interest.** These fees unfairly burden the poor and contribute to spiraling debt for many individuals. Collection fees that benefit private collection agencies are particularly troubling, because these agencies generally lack oversight and charge high fees.

6. **Policymakers should evaluate the costs of popular debt collection methods such as arrests, incarceration, and driver's license suspensions – including the salary and time spent by employees involved in collection and the effect of the methods on reentry and recidivism.** States are in the best position to evaluate the costs of collection, because they have better access to information about the salaries of court officials, supervision officers, and other collection officials and data on the operating costs of courts, jails, and prisons.
7. **Agencies involved in debt collection should extend probation terms or suspend driver's licenses only in those cases where an individual can afford to repay criminal justice debt but refuses to do so.** These practices undermine individuals' reentry into their communities by increasing the likelihood of new offenses and undermining employment and housing opportunities.
8. **Legislatures should eliminate poll taxes that deny individuals the right to vote when they are unable to pay criminal justice debt.** Denying individuals the right to vote based on a failure to pay criminal justice debt raises serious constitutional concerns and counters efforts to encourage former offenders to accept the rights and responsibilities of citizenship. It also contravenes a core principle of our democracy – that rich and poor alike have a right to participate in our political system.
9. **Courts should offer community service programs that build job skills for individuals unable to afford criminal justice debt.** Well-designed community service programs promote reentry and help individuals avoid long-term debts that keep them entangled with the justice system. Community service options for debt should be widely available, but should only be imposed at the defendant's request, or when an unemployed defendant has been unable to make payments.

ENDNOTES

- 1 For data on the number of state prisoners, see Bureau of Justice Statistics, National Prisoner Statistics, Prisoners at Yearend 2009 - Advance Counts, *available at* <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2272>. For data on state criminal filings, see National Center for State Courts, Court Statistics Project, Interactive Statistics Query, http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html.
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- 3 CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/ecp.pdf>.
- 4 42 U.S.C. § 17501(b)(14) (Congressional Findings supporting the Second Chance Act, the most comprehensive federal legislative response to date to the needs of those re-entering society after incarceration).
- 5 CHRISTOPHER HARTNEY & LINH VUONG, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM 2 (2009), *available at* <http://www.nccd-crc.org/nccd/pdf/CreatedEqualReport2009.pdf>.
- 6 *Id.* at 14.
- 7 42 U.S.C. § 17501(b)(9) (Second Chance Act findings).
- 8 42 U.S.C. § 17501(b)(10) (Second Chance Act findings).
- 9 42 U.S.C. § 17501(b)(18) (Second Chance Act findings).
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- 13 REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 5-6 (2010).
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- 15 CTR. FOR CMTY. ALTERNATIVES, INCREASED MANDATORY SURCHARGES AND CRIME VICTIMS ASSISTANCE FEES (2008), *available at* <http://www.communityalternatives.org/pdf/fees%20chart.pdf>; *see also* N.Y. VEH. & TRAF. LAW § 1809-e.
- 16 CTR. FOR CMTY. ALTERNATIVES, INCREASED MANDATORY SURCHARGES AND CRIME VICTIMS ASSISTANCE FEES (2008), *available at* <http://www.communityalternatives.org/pdf/fees%20chart.pdf>; *see also* N.Y. VEH. & TRAF. LAW § 1809(1)(b)(i) (surcharge for felony conviction increased from \$250 to \$300); § 1809(1)(b)(ii) (surcharge for misdemeanor conviction increased from \$140 to \$175); N.Y. PENAL LAW § 60.35(1)(a)(iii) (surcharge for conviction of a violation increased from \$75 to \$95).
- 17 *See* N.C. Admin. Office of the Courts, Court Costs and Fees Chart (2009), *available at* http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-2009-criminal.pdf.

- 18 *See, e.g.*, ALA. CODE § 36-21-67 (imposing \$1 costs for a traffic infraction, \$5 for a misdemeanor or violation of a municipal ordinance, and \$10 for a felony to be allocated to the Peace Officers' Annuity and Benefit Fund), § 12-19-181 (assessing additional fees for drug-related convictions); ARIZ. REV. STAT. §§ 12-116.01(A) – (C) (imposing additional surcharges on every fine penalty and forfeiture imposed); § 16-954(C) (assessing an additional 10 percent surcharge on criminal fines to be deposited into a clean elections fund); CAL. PENAL CODE § 1202.4(b) (imposing restitution fine upon conviction); FLA. STAT. § 938.03(1), (4) (\$50 fee for all criminal convictions, \$49 of which is deposited in the Crimes Compensation Trust Fund); § 142.01(1); GA. CODE ANN. § 15-21-73(a)-(b) (imposing additional surcharges on top of original fines to be paid into the Peace Officers' Annuity and Benefit Fund); § 17-11-1 (the costs of a prosecution may be entered against a defendant after conviction); 625 ILL. COMP. STAT. 5/16-104d (imposing an additional \$20 fee for those convicted of serious traffic violations, to be dispersed into various funds); 725 ILL. COMP. STAT. 5/124A-5 (convicted defendants must pay for costs of prosecution and other reasonable costs, such as those incurred by the Sheriff for serving arrest warrants); LA. CODE CRIM. PROC. ANN. art. 887(A) (cost of prosecution); MICH. COMP. LAWS § 780.905 (outlining mandatory surcharges); § 769.1f(1) (authorizing courts to order convicted defendants to reimburse the costs of prosecution); MO. REV. STAT. § 595.045(8) (assessing fees, the amount of which determined by the severity of the crime, to be paid to the crime victims' compensation fund); N.Y. PENAL LAW § 60.35(1)(a) (imposing mandatory surcharges ranging from \$95 to \$300, depending on severity of offense); N.C. GEN. STAT. § 7A-304 (listing costs upon conviction); OHIO REV. CODE ANN. § 2949.091(A) (imposing fees of up to \$30 for felonies to go toward the indigent defense support fund); § 2947.23(A)(1)-(2) (imposing costs of prosecution and juror fees in criminal cases); 18 PA. CONS. STAT. ANN. § 11.1101(b)(1)-(2) (imposing costs of at least \$60 upon conviction); 16 PA. CONS. STAT. ANN. § 1403 ("In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant."); TEX. CODE CRIM. PROC. ANN. art. 102.004(a) (requiring defendants convicted by a jury to pay a jury fee of up to \$20); 102.005(a) (\$ 40 court clerk fee at conviction."); VA. CODE ANN. § 17.1-275.1 to -275.4 (depositing portions of various conviction fees into funds such as the Criminal Injuries Compensation Fund and the Virginia Crime Victim-Witness Fund); § 17.1-275.5(A)(2), (7), (13) (authorizing the court clerk to assess fees for trial transcripts, jury costs, and courthouse security to convicted defendants).
- 19 *See, e.g.*, ALA. CODE § 15-22-2(a) (\$30 fee for probation or parole); ARIZ. REV. STAT. ANN. § 31-466(A) (assessing supervision fees \$65 - \$75); CAL. PENAL CODE §§ 1203.1b(a), 1203.1e(a)-(b) (defendant must pay all or a portion of probation costs or parole supervision costs, based on ability to pay); FLA. STAT. § 948.09(requiring persons on probation, parole and other supervision to pay costs of supervision); GA. CODE ANN. § 42-8-34(d)(1) (\$23 a month probation fee); 730 ILL. COMP. STAT. 5/5-6-3(i) (\$50 monthly probation fee); LA. CODE CRIM. PROC. ANN. art. 895(A) (imposing probation supervision fee); MICH. COMP. LAWS § 771.3c(1) (probation supervision fee based on projected monthly income, up to \$135 per month); MO. REV. STAT. § 217.690(3) (authorizing fee of up to \$60 per month for supervision); N.Y. EXEC. LAW § 259-a(9)(a) (monthly \$30 supervision fee for those on presumptive release, parole, conditional release or post-release supervision); N.C. GEN. STAT. § 15A-1343(c1)\$30 monthly fee for supervised probation); § 15A-1374(c) (\$30 monthly supervision fee for persons on parole); OHIO REV. CODE ANN. § 2951.021(A)(1) (\$50 monthly probation fee can be required); 18 PA. CONS. STAT. ANN. § 11.1102(c) (minimum \$25 monthly supervision fee for parole and probation); TEX. GOV'T CODE ANN. § 508.182(a)(1)-(2), 508.182(f) (imposing a monthly parole supervision fee of \$10 and administrative fee of \$8); VA. CODE ANN. § 19.2-303.3(D) (imposing costs of supervision for community-based probation).
- 20 *See, e.g.*, ALA. CODE § 14-6-22(a)(1)-(3) (imposing jail fee of up to \$20 per day in misdemeanor cases, which may be remitted upon a showing of hardship); ARIZ. REV. STAT. ANN. § 13-804.01 (imposing a fee, based on the costs of incarceration and the person's ability to pay, for those convicted of a misdemeanor); § 31-239(A) (assessing a monthly utility fee of up to \$2 for a prisoner's consumption of electricity); CAL. PENAL CODE § 1203.1c(a) (authorizing courts to assess a fee local jail stays as a condition of probation or conditional sentence after determining defendant's ability to pay); § 1203.1m(a) (authorizing courts to impose a fee on those in state prison after making a determination of ability to pay); FLA. STAT. § 951.033(2)-(3) (authorizing detention facilities to determine the financial status of prisoners and require prisoners to pay all or a portion of daily subsistence costs); GA. CODE ANN. § 42-1-4(d) (deducting "an amount determined to be the cost of the inmate's keep and confinement" from the earnings of inmates participating in a work-release program); 730 ILL. COMP. STAT. 125/20(a) (allowing county boards to require prisoners in their jails to reimburse the county for incarceration costs based on ability to pay); 5/3-7-6(a) ("Committed persons shall be responsible to reimburse the Department [of Corrections] for the expenses incurred by their incarceration at a rate to be determined by the Department . . ."); LA. CODE CRIM. PROC. ANN.

- art 890.2(A)-(B) (the court may impose on persons convicted of a felony the expected costs of imprisonment after a determination of ability to pay); MICH. COMP. LAWS § 801.83(1)(a), (3) (authorizing counties to seek reimbursement of up to \$60 per day of imprisonment after determining individual's financial status); MO. REV. STAT. § 221.070 (persons committed to county jails shall bear the expense of being carried to the jail and being supported while in jail); N.Y. CORRECT. LAW § 189(2) (authorizing incarceration fee of up to \$1 per week to be collected from compensation paid to a prisoner for work performed; expires Sept. 1, 2011); N.C. GEN. STAT. § 7A-313 (imposing a fee of \$5 for every twenty-four hours of confinement in jail while awaiting trial; the fee is not collected if the defendant is not convicted); OHIO REV. CODE ANN. §§ 2929.18(A)(5)(a)(ii), 2929.28(A)(3)(a)(ii) (imposing the costs of confinement on prisoners staying in both local jails and state prisons); 61 PA. CONS. STAT. ANN. § 3303(a) (requiring inmates to pay a fee to cover a portion of costs of medical services provided while imprisoned); TEX. CODE CRIM. PROC. ANN. art 42.038(a), (c) (authorizing courts that sentence a defendant convicted of a misdemeanor to serve time in a county jail to assess a fee of \$25 per day, which can be waived if the defendant is found to be indigent); art 104.002(d) (requiring prisoners to pay for medical, dental, or health-related services received while in a county jail); VA. CODE ANN. § 53.1-131.3 (authorizing inmate fee, not to exceed \$3 per day, to defray the costs associated with confinement).
- 21 CARL REYNOLDS ET AL., TEX. OFFICE OF COURT ADMIN., A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES, INTERIM REPORT 8 (2009), *available at* <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf>.
- 22 County Clerk's Misdemeanor Court Cost Chart – 1/01/2010, *available at* <http://www.courts.state.tx.us/oca/pdf/CC-CRfeeChartOriginalJurisdiction2010.pdf>; District Clerk's Felony Court Cost Chart – 1/01/2010, *available at* <http://www.courts.state.tx.us/oca/pdf/DC-CRfeeChart2010.pdf>.
- 23 Arizona state law specifies three surcharges to be imposed on all fines, penalties, and forfeitures imposed for criminal offenses. These surcharges are 47 percent, 7 percent, and 7 percent. ARIZ. REV. STAT. ANN. § 12-116.01(A)-(C). The surcharges may be waived by the court to avoid working a hardship on the defendant or the defendant's family and they must be waived to the extent that underlying fine or penalty is waived. § 12-116.01(F). However, surcharges imposed on fines and certain assessments for driving under the influence may not be waived. § 28-1389. Also, section 12-116.02(A) imposes an additional 13 percent surcharge under the same conditions and pursuant to the same waiver rules as section 12-116.01. An additional surcharge of 10 percent is imposed on all civil and criminal fines and penalties collected under section 12-116.01 and deposited into the clean elections fund. § 16-954(C).
- 24 ARIZ. REV. STAT. ANN. § 12-114.01(A).
- 25 ARIZ. REV. STAT. ANN. § 12-116(A).
- 26 At least 7 states have fees that vary by locality. Alabama: While Alabama law provides that court fees for criminal cases in the circuit and district courts should generally be uniform, ALA. CODE § 12-19-20, courts do charge additional local costs. For example, Macon County has a \$30 jail fee and a \$2 juvenile fee. Telephone Interview with Veronica Harris, Macon County Circuit Court (Nov. 2, 2009). Pike County has a \$21 district attorney fee, a \$1 law library fee, a \$2 fee for the juvenile fund. Telephone Interview with Peggy McVay, Court Clerk, Pike County Dist. Court (Nov. 5, 2009). Also, municipal governing bodies may assess additional costs and fees in municipal court, up to the amount assessed in the district court of the county. ALA. CODE § 11-47-7.1(a). California: Some state statutes permit counties to authorize additional charges. *See, e.g.*, CAL. PENAL CODE § 1465.5 (authorizing counties to adopt a resolution imposing an additional 20 percent assessment on fines levied against certain vehicular violations). Georgia: Some state laws allow counties to impose additional fees if they meet the statute's criteria. *See, e.g.*, GA. CODE ANN. §§ 15-21-92 to -93 (authorizing counties to charge an additional fee constituting 10 percent of the fine imposed as long as the county meets certain criteria); GA. CODE ANN. § 36-15-9(a) (authorizing a local fee of not more than \$5 for establishing and maintaining a county law library if a need for one exists). Illinois: Under state law, many court costs differ based upon county population size. *See* 705 ILL. COMP. STAT. 105/27.1a(w)(1), 105/27.2(w)(1), 105/27.2a(w)(1). When state law provides for a fee range, counties can choose the amount to impose. *See* 705 ILL. COMP. STAT. 105/27.1a, 105/27.2, 105/27.2a. In Louisiana: State law provides for many fees that vary by district. *See, e.g.*, LA. REV. STAT. ANN. § 13:965 (authorizing a fee of up to \$10 towards an indigent transcript fund in the Nineteenth Judicial District). Ohio: Court costs are generally uniform, but some statutes allow counties to impose additional costs for specific purposes. *See, e.g.*, OHIO REV. CODE ANN. § 2949.093(C).

- (allowing counties that elect to participate in a “criminal justice regional information system” to collect additional court costs of up to \$5); *see also* Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009) (noting that most court costs are standard across counties). Texas: Fees are generally uniform and must be authorized by state statute, but some statutes provide that counties may collect additional local fees under certain circumstances. *See, e.g.*, TEX. CODE CRIM. PROC. ANN. art. 102.009 (authorizing counties with a population of 3.3 million or more to collect court costs of up to \$7 for each conviction of a Class C misdemeanor).
- 27 LA. CODE CRIM. PROC. ANN. art. 887(F)(2).
- 28 ALAN ROSENTHAL & MARSHA WEISSMAN, CENTER FOR COMMUNITY ALTERNATIVES, SENTENCING FOR DOLLARS: THE FINANCIAL CONSEQUENCES OF A CRIMINAL CONVICTION 16 (Feb. 2007), *available at* http://www.brennancenter.org/content/resource/sentencing_for_dollars_the_financial_consequences_of_a_criminal_conviction/.
- 29 ARIZ. REV. STAT. ANN. § 28-1381(I)(4)-(5) (requiring defendants to pay \$500 to a prison construction and operation fund and \$500 to a public safety equipment fund, in addition to all other fees).
- 30 N.C. GEN. STAT. § 20-179(h1).
- 31 California: those that are convicted under or violate California’s driving under the influence statute may apply for a restricted driver’s license after a certain period of time. One condition of a restricted driver’s license is the maintenance of an ignition interlock device. CAL. VEH. CODE § 13352(3)-(9). Illinois: those convicted of driving under the influence of alcohol or other drugs may be granted a monitoring device driving permit, or MDDP. Anyone with an MDDP must, at his or her own expense, drive only vehicles equipped with an ignition interlock device. 625 ILL. COMP. STAT. 5/6-206.1(a)-(a-1). New York: Persons convicted under New York’s driving under the influence statutes must, as a condition of probation or a conditional license, install and maintain an ignition interlock device. Those subject to this condition must bear the costs, but as of August 2010, the cost may be waived or imposed pursuant to a payment plan if the person is unable to afford the device. N.Y. VEH. & TRAF. LAW §§ 1198(2)(a), (3)(a), (4)(a). Virginia: as a condition of a restricted license or license restoration, a court may order for the first offense and must order for the second or any subsequent offense or when the offender’s blood alcohol level is above 0.15 percent, a functioning, certified ignition interlock system to be installed for at least six months. VA. CODE ANN. § 18.2-270.1(B). In addition, the court clerk shall assess any court costs related to an ignition interlock device. § 17.1-275.5(A)(10).
- 32 TEX. CODE CRIM. PROC. ANN. art. 42.12 § 19(i); 730 ILL. COMP. STAT. 5/5-6-3(19)(i-5).
- 33 Memorandum from Rebecca Bers, Orleans Pub. Defender, Chart of Fines and Fees Authorized (on file with the Brennan Center).
- 34 Telephone Interview with Donald Johnson, Chief State Defender, Legal Aid and Defender Ass’n, Inc., Detroit, Michigan (Dec. 10, 2009).
- 35 Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court, Michigan (Dec. 10, 2009).
- 36 *See* Massachusetts FY 2011 Budget Summary, Outside Section 177, Inmate Fee Schedule, http://www.mass.gov/bb/gaa/fy2011/os_11/h177.htm.
- 37 Of the surveyed states, every state but Pennsylvania and New York utilizes defender fees. Alabama: *See* ALA. CODE § 15-12-25(a) (“A court may require a convicted defendant to pay the fees of court appointed counsel.”). Arizona: *See* ARIZ. REV. STAT. § 11-584(C)-(E) (court may order a \$25 administrative assessment or require the defendant to pay a reasonable amount to reimburse the county for the cost of the person’s legal services). California: *See* CAL. PENAL CODE § 987.5 (\$50 registration fee); CAL. GOV’T CODE § 27712 (court may require defendant to pay all or part of the costs of legal assistance). Florida: FLA. STAT. § 938.29(1)(a) (attorney’s fees and costs shall be set in all cases at no less than \$50 per case for misdemeanors or criminal traffic offenses and no less than \$100 per case for felonies); FLA. STAT. § 27.52(1)(b)-(c) (\$50 application fee). Georgia: GA. CODE ANN. § 15-21A-6(c) (\$50 application fee), GA. CODE ANN. § 17-12-51 (court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other defense expenses). Illinois : 725 ILL. COMP. STAT. § 5/113-3.1 (may order

- defendant to pay a reasonable sum to reimburse state or county, not to exceed \$500 for misdemeanors and \$5,000 for felonies). Louisiana: LA. REV. STAT. ANN. § 15:175(A)(1)(f) (\$40 application fee); LA. REV. STAT. ANN. § 15:176 (“To the extent that a person is financially able to provide for an attorney, other necessary services, and facilities of representation and court costs, the court shall order him to pay for these items.”). Michigan: MICH. COMP. LAWS § 769.1k (the court may impose the expenses of providing legal assistance to the defendant). Missouri: MO. REV. STAT. § 600.090(1) (if defendant is able to provide a limited cash contribution toward the cost of his representation, or if later he or she becomes able, that contribution shall be required). North Carolina: N.C. GEN. STAT. ANN. § 7A-455 (if financially able, required to pay portion of legal services); N.C. GEN. STAT. ANN. § 7A-455.1 (\$60 appointment fee). Ohio: OHIO REV. CODE ANN. § 2941.51(D) (defendant shall pay the county an amount that the person reasonably can be expected to pay); OHIO REV. CODE ANN. § 120.36(A)(1) (\$25 application fee). Texas: TEX. CODE CRIM. PROC. art. 26.05 (if financially able, required to pay all or part of legal services). Virginia: VA. CODE ANN. § 19.2-163.4:1 (defendant charged the sum that would have been allowed a court-appointed attorney as compensation and as reasonable expenses). Another recent survey indicates that nationally, twenty five states and two counties charge defendants an application fee for exercising the right to counsel. Ronald F. Wright & Wayne A. Logan, *The Political Economy of Application Fees for Indigent Criminal Defense*, 47 WM. & MARY L. REV. 2045, 2052 (2006).
- 38 See FLA. STAT. ANN § 27.52(1)(b); OHIO REV. CODE ANN. § 120.36(A)(1).
- 39 See Fla. Stat. §§ 938.29(1)(a), 27.52(1)(b)-(c); N.C. Gen. Stat. Ann. §§ 7A-455, -455.1; Va. Code Ann. § 19.2-163.4:1.
- 40 See N.C. GEN. STAT. ANN. §§ 7A-455, -455.1. Moreover, if the court determines that an indigent defendant is currently capable of paying a portion of the value of the legal services provided, the court must order that payment. N.C. GEN. STAT. ANN. § 7A-455(a). These fees are mandatory. See N.C. GEN. STAT. ANN. §§ 7A-455, -455.1. Despite the mandatory provisions, however, some judges nonetheless waive or remit the reimbursement provision, citing constitutional concerns. Telephone Interview with Danielle Carman, Assistant Dir., N.C. Office of Indigent Def. Servs. (Nov. 20, 2009). Repayment may also be made a condition of probation. See N.C. GEN. STAT. ANN. § 15A-1343(10).
- 41 Telephone Interview with Margaret Gressens, Dir. of Research, N.C. Office of Indigent Def. Servs. (Nov. 10, 2009).
- 42 See Telephone Interview with Terry Rohr, Clerk, Bristol Circuit Court (Dec. 28, 2009) (defendants are charged \$1,235 per count for Class 1 and 2 felonies, and \$445 per count for Class 3-6 felonies). Other Virginia jurisdictions have different collection regimes. For example, in Norfolk Circuit Court, appointed counsel are contracted for felony defense at a variable rate per hour, while defendants are charged \$112 per count for misdemeanor defense. Telephone Interview with Tara Relendia, Deputy Pub. Defender, Norfolk Circuit Court (Jan. 5, 2010).
- 43 ARIZ. REV. STAT. § 11-584(D); *State v. Taylor*, 166 P.3d 118, 125 (Ariz. Ct. App. 2007).
- 44 See, e.g., Telephone Interview with Tim Armbruster, Chief Deputy Legal Defender, Pima County (Nov. 16, 2009); Telephone Interview with Dolores Corral, Fin. Specialist, Clerk of the Superior Court, Yuma County (Nov. 17, 2009).
- 45 For example, Yuma and Coconino counties have set rates that judges use when requiring reimbursement. Telephone Interview with Dolores Corral, Fin. Specialist, Clerk of the Superior Court, Yuma County (Nov. 17, 2009); Telephone Interview with Sue McLean, Office Manager, Coconino County Public Defender (Nov. 16, 2009). Not all jurisdictions use set rates, however. Navajo, Pima, and Mohave counties appear to modify and adjust the amount of reimbursement for the services of a public defender on a case-by-case basis. Telephone Interview with Juanita Mann, Clerk of the Superior Court, Navajo County (Nov. 19, 2009); Telephone Interview with Tim Armbruster, Chief Deputy Legal Defender, Pima County (Nov. 16, 2009); Telephone Interview with Virlynn Tinnel, Clerk of the Superior Court, Mohave County (Nov. 17, 2009) (according to Ms. Tinnel, there has been discussion of moving towards a more uniform fee structure for reimbursement).
- 46 NATIONAL LEGAL AID & DEFENDER ASSOCIATION, A RACE TO THE BOTTOM 32-33 (2009), available at http://www.mynlada.org/michigan/michigan_report.pdf.

- 47 *Fuller v. Oregon*, 417 U.S. 40, 45-46 (1974).
- 48 See *State v. Dudley*, 766 N.W.2d 606, 614-15 (Iowa 2009) (finding Iowa's mandatory reimbursement statute violated the right to counsel under the U.S. and Iowa constitutions because it lacked the safeguards in *Fuller*); *State v. Tennin*, 674 N.W.2d 403, 410-11 (Minn. 2004) (same conclusion with respect to Minnesota's mandatory contribution statute); *State v. Morgan*, 789 A.2d 928, 931 (Vt. 2001) (holding "that, under the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount..."); *Hanson v. Passer*, 13 F.3d 275, 279 (8th Cir. 1994) (finding that "it is constitutionally permissible to require the defendant to repay the expense incurred by the state in providing the representation ...so long as "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay.") (quoting *Fuller*, 417 U.S. at 53); *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) ("[T]he entity deciding whether to require repayment must take cognizance of the individual's resources...and the hardships he or his family will endure if repayment is required" in order to ensure that indigent defendants are not required to pay); *Olson v. James*, 603 F.2d 150, 155 (10th Cir. 1979) (finding a mandatory reimbursement statute unconstitutional because it did not distinguish between indigent and non-indigent defendants). But see *State v. Blank*, 930 P.2d 1213, 1219-20 (Wash. 1997) (en banc) (holding that the Constitution does not require a prior determination of defendant's ability to pay, but that before enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay); *State v. Albert*, 899 P.2d 103, 111 (Alaska 1995) (same); *State v. Kottenbroch*, 319 N.W.2d 465, 473 (N.D.1982) (same).
- 49 ABA, Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 2, 2 (Aug. 2004), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/rec110.pdf>.
- 50 REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 9 (Mar. 2010), available at <http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1>.
- 51 See CYNTHIA MILLER & VIRGINIA KNOX, MANPOWER DEMONSTRATION RESEARCH CORPORATION, THE CHALLENGE OF HELPING LOW-INCOME FATHERS SUPPORT THEIR CHILDREN 23-24 (2001).
- 52 Although it is possible that mandatory fees exist in Ohio, Brennan Center research did not uncover any mandatory fees.
- 53 See Alabama: ALA. CODE § 32-6-18(a) (\$50 penalty assessment for unlicensed driving, used to support the Traffic Safety Trust Fund and the Peace Officers Standards and Training Commission Fund); Arizona: ARIZ. REV. STAT. ANN. § 13-3821(Q) (\$250 sex offender registration fee); California: CAL. PEN CODE § 1464 (\$10 penalty assessment per every \$10, or part of \$10, of fines, penalties, and forfeitures imposed for criminal offenses); Florida: FLA. STAT. § 938.03(1) (\$50 fee for all criminal offenses); Georgia: GA. CODE ANN. § 15-21-73(a)(1) (additional penalty assessment in every case where the court imposes a fine, including costs, summing to 10 percent of the original fine plus the lesser of \$50 or 10 percent of the original fine); Illinois: 705 ILL. COMP. STAT. 105/27-6(b) (\$100 fee for cases involving driving under the influence); Louisiana: LA. REV. STAT. ANN. § 16.16 (\$10 fee imposed in all criminal cases over which the district attorney's office has jurisdiction, except in parish of Orleans); Michigan: MICH. COMP. LAWS § 780.905(1)(a)-(b) (\$60 fee for felonies; \$50 fee for certain misdemeanors); Missouri: MO. REV. STAT. § 595.045(8) (\$68 fee for class A or B felonies; \$46 fee for class C or D felonies; \$10 fee for certain misdemeanors); New York: N.Y. PEN LAW § 60.35(a)(i)-(ii) (\$300 felony fee; \$175 misdemeanor fee, subject to exemption where offenders make restitution or reparation); North Carolina: N.C. GEN. STAT. § 7A-455.1(a)-(b) (\$50 appointed counsel fee in criminal cases resulting in conviction); Pennsylvania: 18 PA. CONS. STAT. ANN. § 11.1101(a)(1) (\$60 minimum court costs fee in criminal cases resulting in plea or conviction); Texas: TEX. LOCAL GOV'T CODE ANN. § 133.102(a) (court cost fee of \$133 for felonies, \$83 for misdemeanors; \$40 for nonjailable misdemeanors); Virginia: VA. CODE ANN. § 17.1-275.1 (\$350 fixed felony fee).
- 54 See, e.g., E-mail from Miguel Santiago, Defender, Office of the Ohio Public Defender (Oct. 16, 2009, 10:10:00 EST); Telephone Interview with Dan Horrigan, Summit County Clerk of Courts, Ohio (Nov. 3, 2009).

- 55 Alabama: If the defendant fails to pay a fine and/or restitution, the court may reduce or waive the fees after they are imposed. Specifically the court may “[r]educe the fine to an amount the defendant is able to pay,” “[c]ontinue or modify the schedule of payments of the fine and/or restitution,” or “[r]elease the defendant from obligation to pay the fine.” ALA. R. CRIM. P. 26.11(h)(1), (2), (5). However, the same statute authorizes courts to incarcerate defendants until unpaid penalties are paid (after examining the reasons for nonpayment) and order employers to withhold amounts from wages. 26.11(h)(3), (4). Arizona: Courts have the power to modify the way in which restitution, fines, fees or incarceration costs are to be paid, but rarely do so in practice. ARIZ. REV. STAT. ANN. § 13-810(E)(1); Telephone Interview with Gordon Mulleneaux, Assoc. Clerk of Cash & Fins., Maricopa County Superior Court (Nov. 18, 2009). California: See CAL. PENAL CODE § 1464(d) (“In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.”). Georgia: Interviews indicate that some judges will change the terms of probation for defendants that become unable to pay off debt. See Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Public Defender’s Office (Nov. 6, 2009); Telephone Interview with Claudia Saari, Interim Circuit Public Defender, DeKalb County (Oct. 23, 2009). Illinois: Courts have the statutory authority, upon showing of good cause, to revoke unpaid fines or modify the method of payment. 730 ILL. COMP. STAT. 5/5-9-2. Louisiana: Judges have the authority to suspend court costs. LA. CODE CRIM. PROC. ANN. art. 887(A) (“[A]ny judge of a district court, parish court, city court, traffic court, juvenile court, family court, or magistrate of a mayor’s court within the state shall be authorized to suspend court costs.”). Michigan: A probationer who is required to pay certain costs can petition the sentencing judge for remission of such costs. MICH. COMP. LAWS § 771.3(6)(b). Similarly, defendants who owe restitution can petition the sentencing judge to modify the method of payment. § 769.1a(12). Missouri: A defendant can petition the sentencing court to revoke a fine or modify a payment method if “it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine no longer exist or that it would otherwise be unjust to require payment of the fine.” MO. REV. STAT. § 560.036. If a defendant defaults on the payment of a fine and the default is “excusable,” the court can offer the defendant additional time to pay, reduce the amount of the fine, or revoke the fine. § 560.031(3). New York: Sentencing courts have the authority to remit certain fines, restitution or reparation. N.Y. CRIM. PROC. LAW § 420.30. North Carolina: Statutes authorize the sentencing court to remit or revoke debt after sentencing, either based on a petition by the defendant or prosecutor or default on the part of the defendant. See N.C. GEN. STAT. §§ 15A-1363, -1364(c). Pennsylvania: Judges in some counties will reduce or waive criminal debt for good behavior or if defendant is making a good-faith effort to repay the debt. Telephone Interview with Art Ettinger, Assistant Public Defender, Office of the Public Defender, Allegheny County (Oct. 29, 2009). Texas: Courts may waive fines imposed on a defendant who defaults if the defendant is indigent. TEX. CODE CRIM. PROC. ANN. art. 43.091(1). However, fines can only be waived if alternative methods, such as confinement or working “in the county jail industries program, in the workhouse, or on the county farm,” would impose an undue hardship on the defendant. TEX. CODE CRIM. PROC. ANN. art. 43.09(a), 43.091(2).
- 56 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).
- 57 VA. CODE ANN. § 19.2-358(C).
- 58 See, e.g., Telephone Interview with Gary Williams, Clerk, Sussex Circuit Court, Virginia (Jan. 5, 2010); Telephone interview, Diane Blackburn, Deputy Clerk, Buckingham Circuit Court, Virginia (Dec. 28, 2009).
- 59 ACCESS TO JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, ELIGIBLE FOR JUSTICE: GUIDELINES FOR APPOINTING DEFENSE COUNSEL 5 (2008), *available at* <http://www.brennancenter.org/page/-/publications/Eligibility.Report.es.pdf>.
- 60 Alabama: ALA. R. CRIM. P. 26.11(d); Telephone Interview with Cindy, Clerk, Circuit Criminal Court of Jefferson County (Nov. 2, 2009); Telephone Interview with Veronica Harris, Clerk, Circuit Court of Macon County (Nov. 2, 2009). Arizona: ARIZ. REV. STAT. § 12-116. California: CAL. PENAL CODE § 1205(a) (allowing a court to impose a payment plan for misdemeanor convictions). Florida: FLA. STAT. ANN. § 28.246(4). Georgia: GA. CODE ANN. § 42-8-34.1(f). Illinois: Judges set payment plans for restitution payments to victims. 730 ILL. COMP. STAT. 5/5-5-6(f). Judges can also extend payment schedules at compliance review hearings. Otherwise, clerks or probation and parole officers work out a payment plan with defendants. Telephone Interview with Lester Finkle, Assistant Pub. Defender, Cook County Public Defender (Oct. 29, 2009). Louisiana: In Orleans district, defendants are set

- up on a monthly payment plan for the fees and fines assessed at sentencing. Telephone Interview with Rebecca Bers, Defender, Orleans Pub. Defender (Aug. 5, 2009); Telephone Interview with Collections Dep't, New Orleans Criminal Court (Aug. 11, 2009). Michigan: MICH. CT. R. 1.110; MICH. COMP. LAWS ANN. § 769.1a(10); 769.1f(4); 771.3(7). Missouri: MO. REV. STAT. § 543.270(2). New York: N.Y. CRIM. PROC. § 420.10 (governing collection of fines, restitution, or reparation). North Carolina: The court may order a payment plan or delegate a probation officer with the responsibility to set up a payment plan. *See* N.C. GEN. STAT. §§ 7A-304(f); 15A-1340.36(b); 15A-1343(c1)-(c2); 15A-1362(b). Ohio: Payment plans are set up for both misdemeanors and felonies. *See, e.g.*, Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009). Dayton Municipal Court permits defendants to pay half the balance and get a 30-day extension for the second half. Telephone Interview with Rita Orlowski, Central Payments Office Supervisor, Dayton Municipal Clerk of Court (Oct. 30, 2009). Franklin County Municipal Court allows defendants to break up the balance owed into 12 monthly payments. Telephone Interview with Matt Davenport, Accounting/Fin. Supervisor, Franklin Municipal Clerk of Court (Nov. 25, 2009). Pennsylvania: Pennsylvania law provides for installment plans to be imposed at sentencing, as well as following default. *See* 42 PA. CONS. STAT. ANN. § 9758(b); § 9730(b)(3); 18 PA. CONS. STAT. ANN. § 1106(c)(2) (ii); PA. R. CRIM. P. 414(C)(5); 706. Texas: There are payment plans in many jurisdictions under Texas's Collection Improvement Program. TEX. CODE CRIM. PROC. ANN. art. 103.0033; 1 TEX. ADMIN. CODE § 175.1 (establishing collection mechanisms in counties and municipalities meeting certain population thresholds). Judges also have authority under TEX. CODE CRIM. PROC. ANN. art. 42.15 to require the defendant to pay when the fees and fines are imposed, to pay at a later date, or can require payment in installments. Virginia: VA. CODE ANN. § 19.2-354(A).
- 61 Memorandum from the Mich. State Court Admin. Office on Collection Policy for Fines, Costs, and Other Assessments Due to the Court, *available at* <http://courts.michigan.gov/scao/services/collections/Policies/SampleCourtPolicies/DistrictCourtCollectionPolicy.pdf>.
- 62 Telephone Interview with Susan Hopkins, Clerk, Louisa Circuit Court (Jan. 4, 2010); Telephone Interview with Brandy Duncan, Supervisor, Clerk's Office, Roanoke Circuit Court (Dec. 21, 2009).
- 63 FLA. STAT. ANN. § 28.246(4).
- 64 REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 14 (Mar. 2010), *available at* <http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1>.
- 65 Nine states have either a practice of charging for payment plans or a statute authorizing charges. Arizona: \$20 fee for each payment plan imposed. ARIZ. REV. STAT. ANN. § 12-116(a). California: Counties can charge for setting up a payment plan. For example, in San Francisco the charge is \$35 to set up a payment plan. Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, S.F. Pub. Defender's Office (Dec. 17, 2009). Florida: Clerks can charge debtors \$25 to enroll in a payment plan, or an additional \$5 charge per month. FLA. STAT. §§ 28.24(26)(b)-26(c). At least one county exceeds this amount, charging \$135 to apply for the payment program. Telephone Interview with Bob Young, Gen. Counsel, 10th Judicial Circuit Office of the Pub. Defender (July 23, 2007). Louisiana: There is a \$100 payment plan fee in New Orleans. Telephone Interview with Rebecca Bers, Orleans Pub. Defender (Dec. 2, 2009). North Carolina: \$20 fee to set up a payment plan setup. N.C. GEN. STAT. § 7A-304(F). Ohio: Practices vary. The county courts in Franklin, Summit, and Green do not charge for payment plans. *See* Telephone Interview with Sherry Bova, Budget Office Manager, Franklin County Clerk of Courts (Nov. 2, 2009); Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (November 2, 2009). In Franklin County Municipal Court, a defendant utilizing a payment plan must pay \$50 up front – a \$25 fee for establishing a payment plan, and \$25 toward the balance. Telephone Interview with Matt Davenport, Supervisor, Accounting/Fin. Div., Franklin Municipal Clerk of Court (Nov. 25, 2009). Pennsylvania: Practices vary. At least one jurisdiction (Centre County) charges \$32 for installment plans. Telephone Interview with David Crowley, Defender, Centre County, Penn. (Oct. 23, 2009). In Philadelphia, there is no charge. Telephone Interview with Daniel Bartoli, Defender, Defender Ass'n of Phila. County (Oct. 27, 2009). Texas: Defendants may be required to pay a one-time \$12 fee if restitution is collected in installments. TEX. CODE CRIM. PROC. ANN. art. 42.037(g)(1). Defendants also can be required to pay a \$2 transaction fee for each payment transaction. TEX. CODE CRIM. PROC. ANN. art. 102.072. Virginia: Defendants may be assessed a fee of up to \$10 if they are placed in a payment plan. VA. CODE ANN. § 19.2-354(A).

- 66 Telephone Interview with Rebecca Bers, Defender, Orleans Pub. Defender (Dec. 2, 2009); Phone Interview, Matt Davenport, Accounting/Fin. Supervisor, Franklin Municipal Clerk of Court (Nov. 25, 2009).
- 67 REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, *THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES* 23 (Mar. 2010), *available at* <http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1>.
- 68 *See* GA. CODE ANN., § 17-10-1(d). Interviewees in Georgia indicated that community service did not apply to all financial obligations in their jurisdictions. For example, the Ogeechee Public Defender has never seen community service imposed in lieu of a court fee. Telephone Interview with Robert Persse, Pub. Defender, Ogeechee Circuit Pub. Defender's Office (Oct. 29, 2009). A Gwinnett County probation officer stated that he had seen community service ordered in lieu of a fine, and in lieu of an overdue probation supervision fee, but in no other context. Telephone Interview with Henry Goodman, Probation Officer (Oct. 29, 2009).
- 69 Brennan Center research did not identify any statute authorizing a community service option in North Carolina, and interviewees indicated that no option is available in practice. *See, e.g.*, Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Emily Harrell, Assistant Pub. Defender, Buncombe County (Nov. 20, 2009).
- 70 N.C. GEN. STAT. § 15A-1371(i); § 143B-262.4(b). *See also* Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009).
- 71 Telephone Interview with Margaret Degen, Assistant Pub. Defender, Jackson County (Oct. 28, 2009).
- 72 Telephone Interview with Michelle (last name withheld on request), Los Alamitos, California (June 16, 2010).
- 73 Practices vary. For example, in Macon County, the judge can allow the defendant to perform community services in lieu of fees or fines, but only does so in traffic cases. Telephone Interview with Veronica Harris, Macon County Circuit Clerk (Nov. 2, 2009). In Pike County, community service is not utilized in practice. Telephone Interview with Peggy McVay, Pike County Dist. Court Clerk (Nov. 5, 2009). In Tuscaloosa, judges will sometimes allow defendants to do community service in lieu of fines. Telephone Interview with Gerry Hudson, Pub. Defenders of Tuscaloosa (Oct. 29, 2009). Some statutes explicitly give judges the discretion to order community service in lieu of fees. *See, e.g.* ALA. CODE § 12-23-18.
- 74 There is no statutory mechanism for the performance of community service in lieu of fees and fines. Moreover, all interviewees who were asked agreed that there is no option for performing community service in lieu of fees or fines. *See, e.g.*, Telephone Interview with Virlynn Tinnel, Clerk of the Mohave County Superior Court (Nov. 17, 2009); Telephone interview with Tricia Caincimino, Fin. Manager, Clerk of Graham County Superior Court (Nov. 13, 2009).
- 75 *See* MARCUS NIETO, CAL. RESEARCH BUREAU, CAL. STATE LIBRARY, *WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA?* 19-26 (Feb. 2006), *available at* <http://www.library.ca.gov/crb/06/03/06-003.pdf> (stating that judges can impose community service in place of fines and fees). Practices in California vary. In Los Angeles Criminal Court, clerk and public defender said community service is available as an alternative at sentencing and upon failure to pay *fines*, but not fees. Telephone Interview with Jessica, Court Manager; Los Angeles Criminal Court (Oct. 29, 2009) (last name withheld on request); Telephone Interview with Phil Dube, Assistant Pub. Defender; Los Angeles County Pub. Defender (November 17, 2009). In Marin County, community service is a commonly used alternative used by judges in place of fees and fines. Defendants can work off debt at \$10/hour. Telephone Interview with Jose Varela, Assistant Pub. Defender; Law Offices of the Pub. Defender Marin County (Nov. 12, 2009). San Francisco offers community service only under limited circumstances. Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, San Francisco Pub. Defender's Office (Dec. 17, 2009).
- 76 FLA. STAT. ANN. § 938.30(2) (stating that a “judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay”).

- 77 *See* GA. CODE ANN., § 17-10-1(d) (stating that “in any case involving a misdemeanor or a felony in which the defendant has been punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the defendant to satisfy such fine through community service” and proving that one hour of community service shall offset debt at the minimum wage rate unless otherwise specified by the sentencing judge). The text of this statute applies only to fines, and interviewees in Georgia indicated that community service did not apply to all financial obligations in their jurisdictions. *See, e.g.*, Telephone Interview with Robert Persse, Pub. Defender, Ogeechee Circuit Pub. Defender’s Office (Oct. 29, 2009) (stating he had never seen community service imposed in lieu of fees); Telephone Interview with Henry Goodman, Probation Officer (Oct. 29, 2009) (stating he had only seen community service imposed in lieu of fines and overdue probation supervision fees).
- 78 Generally Illinois law does not provide for community service in lieu of fees and fines, but community service is sometimes part of the sentence or is offered in lieu of non-mandatory drug assessment fines. Telephone Interview with Margaret Degen, Assistant Pub. Defender, Jackson County (Oct. 28, 2009).
- 79 Louisiana’s probation supervision fee statute provides that the court may require “the defendant to perform a specified amount of community service work each month if the court finds the defendant is unable to pay the supervision fee.” LA. CODE CRIM. PROC. art. 895(D); *see also* art. 895.1(D). Although Louisiana law does not have a general provision explicitly providing for a community service alternative, judges do sometimes impose community service in practice. According to the Orleans Criminal Court Collections Department, judges may authorize community service in lieu of collecting fees and fines from indigent defendant, but do not do so regularly. Telephone Interview with Collections Dep’t, Orleans Criminal Court. (Aug. 11, 2009); Email from Rebecca Bers, Defender, Orleans Public Defender (Aug. 30, 2009, 19:59 EST) (on file with the Brennan Center). In Monroe County, defendants are assigned community service if they are unable to pay fees and fines. Telephone Interview with Bob Noel, Defender, Monroe County (Dec. 11, 2009).
- 80 Community service was used in the jurisdictions reviewed, although practices varied. For example, in Kent County, community service can be imposed for any financial obligation except mandatory fees and restitution. Community service is valued at \$8/hour. Telephone Interview with Paula Taylor, Fin. Director, 17th Circuit Court (Kent County, Mich.) (Dec. 21, 2009). For felonies in Washtenaw county, a defendant can work off attorneys fees with community service, but not regular fines and costs. Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Public Defender’s Office (Dec. 15, 2009).
- 81 Several of the interviewees said that community service was not commonly used. *See, e.g.*, Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Clerk’s Office, in Benton, Mo. (Nov. 23, 2009). In one jurisdiction, judges will ordinarily waive fees and fines rather than impose community service. Telephone Interview with Dewayne Perry, Dist. Defender, Dist. 30 (Nov. 23, 2009). Some jurisdictions use community service for limited purposes, however. *See, e.g.*, Email from Cathy Kelly, Deputy Dir., Director’s Office, Mo. Public Defender (Jan. 8, 2010, 13:46 CST) (on file with the Brennan Center) (stating that she has seen judges impose community service in lieu of fines when the defendant claims he or she does not have the money to pay a fine); Email from Donna Holden, Dist. Defender, Mo. Dist. 25 (Jan. 15, 2010, 08:30 CST) (on file with the Brennan Center) (stating that some Crawford County judges allow defendants to do community service toward jail board bills at a rate of \$7-10/hr).
- 82 None of our interviewees indicated that community service was an available option in New York.
- 83 There is no provision for performing community service in lieu of paying fees or fines, and it does not appear that it occurs in practice. *See, e.g.*, Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Cynthia Buchanan, Head Cashier, Durham Clerk of Court (Nov. 19, 2009).
- 84 *See* OHIO REV. CODE ANN. § 2951.02 (providing for payment of misdemeanor and felony fines through community service “if the offender requests an opportunity to satisfy the payment by this means and if the court determines that the offender is financially unable to pay the fine”); § 2929.28(B) (discussing community service to offset “financial sanction[s] and court costs”); § 2947.23(B) (discussing community services in cases where the defendant has failed to pay a judgment or to make timely payments under a payment plan). Community service is more common for misdemeanors than for felonies, and courts are generally more likely to give community service if the defendant has a reason for being unable to work, such as health problems. Telephone Interview with Miguel Santiago, Assistant State Pub. Defender (Nov. 23, 2009). Practices also vary across the state. For example, Greene County allows the

- majority of people who ask to perform community service to do so, and is trying to expand the program. Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009). The community service option is less common in Summit County. Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009).
- 85 In most jurisdictions, community service is uncommon as an alternative to fees/fines. *See, e.g.*, Telephone Interview with Flo Messier, Pub. Defender of Phila. (Oct. 19, 2009); Telephone Interview, David Crowley, Chief Pub. Defender, Centre County (Oct. 23, 2009). However, Lycoming County allows community service to pay off fees (excluding restitution), if there is a court order to that effect. Defendants are paid at minimum wage. Telephone Interview with Nicole Spring, First Assistant Pub. Defendant, Lycoming County. (Oct. 26, 2009); Telephone Interview with Holly Raymin, Clerk, Lycoming County (Nov. 4, 2009). Similarly, Cambria county allows community service to pay off fees. It has created a “work force” for Cambria at 3-4 work locations run by a county supervisor. They work 5 days a week, from 8am-3pm, for minimum wage. Telephone Interview with Lisa Lazzari, Pub. Defender, Cambria County. (Oct. 29, 2009).
- 86 *See* TEX. CODE CRIM. PROC. ANN. art. 43.09(f)-(g) (stating that “[a] court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service,” and must provide the number of hours the defendant must work and who will oversee related administrative tasks). In some jurisdictions, this option is offered at the time of sentencing, while in others, community service is offered only when the defendant falls behind in payment. *See* Telephone Interview with Amanda Marzulo and Andrea Marsh, Tex. Fair Defense Project (Oct. 14, 2009); Telephone Interview with Ted Wood, Assistant Gen. Counsel, Office of Court Admin.(Oct. 15, 2009).
- 87 *See* VA. CODE ANN. § 19.2-354(C) (providing that courts may allow a defendant on whom “a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment”). The community service alternative is not used very regularly. When used, defendants’ obligations are credited at the minimum wage rate. *See, e.g.*, Telephone Interview with Gary Williams, Clerk, Sussex Circuit Court (Jan. 5, 2010); Telephone Interview with Diane Blackburn, Deputy Clerk, Buckingham Circuit Court (Dec. 28, 2009).
- 88 Email from Lisa Lazzari, Adm’r, Office of the Pub. Defender, Cambria County (Feb. 23, 2010, 12:41 EST) (on file with the Brennan Center).
- 89 Arizona: Criminal restitution orders accrue 10 percent interest per year. ARIZ. REV. STAT. ANN. §§ 13-805(C), 44-1201(A). Delinquencies collected through Arizona’s Fines, Fees and Restitution Enforcement (FARE) Program are subject to a flat fee of \$35 and 19 percent surcharge. Telephone Interview with Tricia Ciancimono, Fin. Manager, Graham County Clerk of the Superior Court’s Office (Nov. 13, 2009). California: Civil assessment of up to \$300 for late payment of fine or related assessments. CAL. PENAL CODE § 1214.1(a); *see also* Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request). The Brennan Center confirmed that at least Los Angeles, Santa Clara, and San Francisco counties use this mechanism. *See* <http://www.lasuperiorcourt.org/criminal/>; <http://www.scselselfservice.org/crim/payment.htm#fine>; Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, S.F. Pub. Defender’s Office (Dec. 17, 2009). Florida: Highlands County charges a \$20 late fee for every delinquent payment. Order Establishing a Collections Court Program in Highlands County (2003), <http://www.jud10.org/AdministrativeOrders/orders/Section7/7-13.0.htm>. Leon and Orange Counties charge a \$10 surcharge for every delinquent payment. Leon County Court of Clerks Frequently Asked Questions, http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=collections (last visited Dec. 15, 2009) [hereinafter PAYMENT FAQ]; Amended Administrative Order Governing a Collections Court Program in Orange County (2007), <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf>. Georgia: The court can, in its discretion, require defendants to pay interest on restitution. GA. CODE ANN. § 17-14-14(d). However, it appears that in practice defendants are not charged late fees or interest for an outstanding balance. Telephone Interview with Claudia Saari, Defender, DeKalb County, Ga. (Oct. 23, 2009); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Pub. Defender’s Office (Oct.29, 2009); Telephone Interview with Peter Wilson, Fiscal Technician, Cobb County Clerk of Superior Court Office (Oct. 28, 2009); Telephone Interview with Henry Goodman, Prob. Officer, Gwinnett County (October 29, 2009). Illinois: A default in payment of a fine, fee, cost, restitution, or judgment of bond forfeiture draws interest at the rate of 9 percent per annum. 730 ILL. COMP. STAT. 5/5-9-3(e). Unless defendant is on a payment plan, the clerk may add to any judgment a “delinquency amount”

of 5 percent of the amount unpaid after thirty days, 10 percent of the amount unpaid after sixty days, and 15 percent of the amount unpaid after ninety days. 725 ILL. COMP. STAT. 5/124A-10. Louisiana: Interest is charged on unpaid fines, costs, and restitution beginning sixty days after the sentence is imposed. LA. CODE CRIM. PROC. ANN. art. 886(A). Michigan: There is a 20 percent late fee after fifty-six days of delinquency. MICH. COMP. LAWS § 600.4803(1). Some jurisdictions charge this fee, while others do not. For example, the 17th Circuit Court in Kent County does not charge a late fee. Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court (Dec. 21, 2009). Oakland and Washtenaw counties both charge the fee. Telephone Interview with Judy Lockhart, Chief of Fiscal Servs., Oakland County Executive Office (Dec. 21, 2009); Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Office of Pub. Defender (Dec. 15, 2009). Missouri: There is a \$25 one-time late fee. Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Court Clerk's Office (Nov. 23, 2009). Restitution can accrue 9 percent interest if entered as judgment on behalf of victims. MO. REV. STAT. § 408.040(1); Telephone Interview with Paul Fox, Dir. of Judicial Admin., St. Louis County Circuit Clerk's Office (Nov. 30, 2009). North Carolina: \$25 fee if fail to pay a fine, penalty, or costs within 20 days of date specified in judgment. N.C. GEN. STAT. § 7A-304(a)(6). Interest is generally not charged on outstanding balances, but if a civil judgment is entered against the defendant, a statutory interest rate of 8 percent applies. Telephone Interview with Angie Colvard, Assistant Clerk, Ashe County Clerk's Office (Nov. 19, 2009); N.C. GEN. STAT. § 24-1. If arrested as part of failure to pay, an additional \$5 fee is imposed, plus a \$5/day fee for every day defendant is held in jail. N.C. GEN. STAT. § 7A-304(a)(1); N.C. GEN. STAT. § 7A-313; Telephone Interview with Cynthia Buchanan, Head Cashier, Office of the Durham Clerk of Court (Nov. 19, 2009). Ohio: Some jurisdictions charge defendants a \$25 late fee. Telephone Interview with Matt Davenport, Accounting/Finance Supervisor, Franklin County Municipal Clerk of Court (Nov. 25, 2009). Court clerks can collect "any interest due on the judgment for costs." OHIO REV. CODE ANN. 2335.19(B). Pennsylvania: Interest and late fees do not appear to be utilized in practice, but statute permits charging interest. 42 PA. CONS. STAT. ANN. § 9728(a)(1); Telephone Interview with Nicole Spring, Defender, Lycoming County, Penn. (Oct. 26, 2009). Texas: \$25 fee if a defendant pays any part of the fine, court costs, or restitution on or after the thirty-first day after the date on which judgment was entered, even if the defendant is on a payment plan. TEX. LOC. GOV'T CODE ANN. § 133.103(a); Telephone Interview with Ted Wood, Assistant Gen. Counsel, Tex. Office of Court Admin. (Oct. 15, 2009). Virginia: 6 percent interest may be ordered on fines, costs, and restitution, but interest on unpaid fines and costs does not accrue if the defendant is incarcerated or on a deferred or installment payment plan and makes timely payments. VA. CODE ANN. §§ 19.2-305.4, -353.5.

- 90 CAL. PENAL CODE § 1214.1(A). The Brennan Center confirmed that at least Los Angeles, Santa Clara, and San Francisco counties use this mechanism. *See* <http://www.lasuperiorcourt.org/criminal/>; <http://www.scservice.org/crim/payment.htm#fine>; Telephone Interview with Sangeeta Sinha, Deputy Public Defender, S.F. Pub. Defender's Office (Dec. 17, 2009); Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request)
- 91 Leon and Orange Counties charge a \$10 surcharge. Leon County Court of Clerks Frequently Asked Questions, http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=collections (last visited Dec. 15, 2009) [hereinafter PAYMENT FAQ]; Amended Administrative Order Governing a Collections Court Program in Orange County (2007), <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf>.
- 92 Highlands County charges a \$20 late fee. Order Establishing a Collections Court Program in Highlands County (2003), <http://www.jud10.org/AdministrativeOrders/orders/Section7/7-13.0.htm>.
- 93 MICH. COMP. LAWS ANN. § 600.4803(1).
- 94 Alabama: 30 percent fee if ninety days past due and transferred to district attorney for collection. ALA. CODE § 12-17-225.4; *see also* Telephone Interview with Veronica Harris, Macon County Circuit Court (Nov. 2, 2009). Arizona: Courts may charge defendants for collection costs. ARIZ. REV. STAT. ANN. § 12-116.03. Maricopa County, which contains Phoenix, allows private collection agencies to collect an 18 percent surcharge on defendants. Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep't of Finance Collections Unit (Nov. 19, 2009). Florida: A private attorney or collections agent hired by the court clerk can add up to a 40 percent surcharge to the amounts it collects from delinquent payments. FLA. STAT. § 28.246(6). Illinois: For delinquent payments, an additional collection fee of 30 percent goes to the State's Attorney in the relevant county to compensate for the costs of collection. 730 ILL. COMP. STAT. 5/5-9-3(e). Missouri: If debts are sent to private debt collectors,

- an additional 20 percent fee is collected. Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Court Clerk's Office (Nov. 23, 2009). North Carolina: Defendants not sentenced to supervised probation can be charged a "collection assistance fee" if an amount due is not paid for 30 days, which cannot exceed the average cost of collecting the debt or 20 percent, whichever is lower. N.C. GEN. STAT. § 7A-321(b)(1). Ohio: Court clerk can charge defendants for collection fees charged by private debt collectors or public agencies involved in collection. OHIO REV. CODE ANN. § 2335.19(b). Practices vary. For example, Dayton Municipal Court passes along the 30 percent fee charged by private debt collectors. Telephone Interview with Rita Orlowski, Central Payments Office Supervisor, Dayton Municipal Clerk of Court (Oct. 30, 2009). Summit County does not charge defendants collection fees. Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009). Pennsylvania: Practices vary. Public defenders in several counties noted that private collection agencies are not utilized. *See, e.g.*, Telephone Interview with Nicole Spring, Defender, Lycoming County (Oct. 26, 2009); Telephone Interview with Lisa Lazzari, Defender, Cambria County (Oct. 29, 2009); Telephone Interview with Art Ettinger, Defender, Alleghany County (Oct. 29-30, 2009). A Philadelphia public defender stated that private collection agencies sometimes impose an extra fee on defendants. *See* Telephone Interview with Daniel Bartoli, Defender, Defender Ass'n of Phila. County (Oct. 27, 2009). If such agencies are used, defendants can be charged a fee up to 25 percent of amount collected. 42 PA. CONS. STAT. ANN. § 9730.1(b)(2). Texas: 30 percent collection fee is authorized for debts more than sixty days past due and referred to a private attorney or vendor, but not if the defendant has been found unable to pay the underlying debt TEX. CODE CRIM. PROC. ANN. art. 103.0031(b), (d).
- 95 ALA. CODE § 12-17-225.4.
- 96 FLA. STAT. ANN. § 28.246(6).
- 97 730 ILL. COMP. STAT. 5/5-9-3(e).
- 98 TEX. CODE CRIM. PROC. ANN. art. 103.0031(d).
- 99 *See supra* note 65.
- 100 VA. CODE ANN. § 19.2-354(A).
- 101 Telephone Interview with Rebecca Bers, Orleans Pub. Defender (Dec. 2, 2009).
- 102 FLA. STAT. § 28.24(26)(b)-(c).
- 103 CAL. PENAL CODE § 1214.1(a) (court may impose up to \$300); *see also* Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request) (\$300 charge issues if defendant fails to make payments).
- 104 *See* U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2010 tbl. 672 (2010), <http://www.census.gov/compendia/statab/2010/tables/10s0672.pdf> (stating that the average annual expenditures on food for consumer units with income less than \$70,000 was \$4,625 in 2007). According to this data, one month's expenditures would be \$385.42.
- 105 An informal Brennan Center survey found that Florida defendants faced an average debt of \$772.23, such that a 40 percent collection fee would be \$308.89, bringing the defendant's the total debt to \$1,081.12. REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 8 (2010).
- 106 ALA. CODE § 12-17-225.4.
- 107 ALA. CODE § 8-8-1.
- 108 *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983).
- 109 Jayne S. Ressler, *Civil Contempt Confinement and the Bankruptcy Abuse and Consumer Protection Act of 2005*, 37 RUTGERS L. J. 355, 359 (2006).

- 110 In 1869, England enacted the “1869 Act for the Abolition of Imprisonment for Debt.” Certain forms of debtors’ prison continued even past that point. Under the Act, courts retained the power to imprison people for willful failures to pay and between 1869 and 1914, courts imprisoned over 300,000 people for debt. *See* Sandor E. Schick, *Globalization, Bankruptcy, and the Myth of the Broken Bench*, 80 AM. BANKR. L.J. 219, 258 & n.202 (2006).
- 111 Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit*, 55 FLA. L. REV. 807, 846 (2003) (describing Massachusetts, Maryland, New York, and Pennsylvania).
- 112 Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 16 (1995).
- 113 DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 63-69 (2008).
- 114 *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970).
- 115 *Bearden v. Georgia*, 461 U.S. 660 (1983). Another Supreme Court case discussing the rights of the indigent is *Tate v. Short*, 401 U.S. 395, 398 (1971) (finding it unconstitutional to “impos[e] a fine as a sentence and then automatically [convert] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full”).
- 116 *See State v. Hotard*, 17 So. 3d 64 (La. Ct. App. 2009).
- 117 Some of these terms are adopted from BLACK’S LAW DICTIONARY (8th ed. 2004).
- 118 Alabama: *See* ALA. CODE § 15-22-52 (courts may make fines or costs, or portions thereof, a condition of probation); ALA. CODE § 15-18-70 (courts may make restitution a condition of probation). Arizona: *See* ARIZ. REV. STAT. ANN. § 13-808(B) (courts are required to impose the payment of fines, fees, and restitution as a condition of probation). California: *See* CAL. PENAL CODE § 1202.4(m) (court must make the payment of restitution fines a condition of probation); CAL. PENAL CODE § 1203.1(j) (court may make fines a condition of probation, as well as “other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done”). Florida: *See* FLA. STAT. ANN. § 27.52(1)(b)(1) (if a defendant does not pay the public defender application fee prior to the disposition of the case, the fee must be made part of the sentence or a condition of probation); FLA. STAT. ANN. § 948.09(6) (offenders under any type of supervision must submit to and pay for urinalysis as a condition of supervision); *see also* REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, *THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES* 4 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/ (many individuals convicted of misdemeanors and criminal traffic violations are sentenced to county or court probation on the condition that they pay legal financial obligations). Georgia: *See* Telephone Interview with Claudia Saari, Defender, DeKalb County, Ga. (Oct. 23, 2009) (criminal justice debt imposed as a condition of probation); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Pub. Defender’s Office (Nov. 6, 2009) (probation always imposed if there is a fine or other financial obligation imposed on defendant); *see also* GA. CODE ANN. § 17-14-3 (restitution shall be a condition of probation or a suspended, deferred, or withheld sentence); GA. CODE ANN. § 15-21A-6(c) (public defender application fee shall be imposed as a condition of probation if it has not been paid prior to sentencing). Illinois: *See* 730 ILL. COMP. STAT. 5/5-6-3(b) (court may require a person to pay a fine, costs, and restitution as a condition of probation). Louisiana: *See* LA. CODE CRIM. PROC. ANN. art. 895 (supervision fee must be a condition of probation); LA. CODE CRIM. PROC. ANN. art. 895.1 (restitution must be a condition of probation, court may impose court costs and other user fees as a condition of probation). Michigan: *See* MICH. COMP. LAWS ANN. § 769.1a(11) (restitution must be condition of probation, parole, or conditional sentence if ordered); MICH. COMP. LAWS ANN. § 769.1f(5) (prosecution costs must be condition of probation or parole if ordered); MICH. COMP. LAWS ANN. § 769.1j(3) (payment of the “minimum state cost” is a condition of probation); MICH. COMP. LAWS ANN. § 771.3(1)(f) (mandatory assessment under MICH. COMP. LAWS ANN. § 780.905 must be a condition of probation); MICH. COMP. LAWS ANN. § 771.3(2)(b)-(d) (allowing courts to condition probation on payment of fines, legal expenses, and other assessments). In practice many jurisdictions make fees and fines a condition of probation. Missouri: *See* MO. REV. STAT. § 600.093 (allowing courts to make repayment of all or part of the value of public defender services a condition of probation); MO. REV. STAT. § 559.021(2) (“In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim,

- any statutorily created fund for costs incurred as a result of the offender's actions, or society."'). New York: *See* N.Y. CRIM. PROC. LAW § 420.10(1)(c) ("Where the defendant is sentenced to a period of probation as well as a fine, restitution or reparation and such designated surcharge, the court may direct the payment of the fine, restitution or reparation and such designated surcharge be a condition of the sentence.'). North Carolina: *See* N.C. GEN. STAT. § 15A-1343(b) (as a regular condition of probation, defendant must pay a supervision fee, court costs, defender costs, any fine imposed, and restitution); N.C. GEN. STAT. 15A-1374(b)(c) (parole commission may require parolee to make restitution, pay a supervision fee, and comply with court orders regarding payment obligations). Ohio: *See* Telephone Interview with Glen Dewar, Defender, Montgomery County (Nov. 25, 2009) (criminal justice debt is normally made a condition of probation); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009) (same). Pennsylvania: *See* Telephone Interview with Flo Messier, Pub. Defender of Phila. (Oct. 19, 2009) (criminal justice debt is normally made a condition of probation); Telephone Interview with Lisa Lazzari, Pub. Defender, Cambria County. (Oct. 29, 2009) (same); *see also* 18 PA. CONS. STAT. ANN. § 1106(b) ("Whenever restitution has been ordered . . . and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.'). Texas: *See* TEX. CODE CRIM. PROC. art. 42.12 (payment of fines, court costs and other user fees, and restitution to the victim may be made a condition of community supervision, but must consider ability to pay); TEX. CODE CRIM. PROC. art. 42.037(h) (restitution must be a condition of community supervision, parole, or mandatory supervision). Virginia: VA. CODE ANN. § 19.2-356 (court may make payment of fine and costs a condition of probation or suspension of sentence).
- 119 *See, e.g.*, Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (discussing frequent use of revocation hearings in jurisdictions in Georgia, New York, North Carolina, Michigan, and Ohio).
 - 120 *See* Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials); *see also* EQUAL JUSTICE INITIATIVE, CRIMINAL JUSTICE REFORM IN ALABAMA: SENTENCING, PROBATION, PRISON CONDITIONS, AND PAROLE 69 (2005) ("[J]udges and inmates indicate that probation is often revoked for failure to pay fines, court fees and/or restitution, and sentences sometimes may exceed statutory limits.).
 - 121 *See, e.g.*, Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (saying revocation sometimes happens for failure to pay in jurisdictions in Michigan, Missouri, New York, North Carolina, and Pennsylvania).
 - 122 *See* REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 13 (Mar. 2010) (when an offender in Florida is unable to pay a treatment provider, "the treatment provider may eventually terminate the treatment as unsuccessful or the offender may cease showing up because he is unable to pay for sessions. Termination of treatment then can be a basis for a violation of probation or community release") *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/.
 - 123 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (discussing instances where courts did not consider ability to pay in Georgia, Illinois, Louisiana, Michigan, and Missouri).
 - 124 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).
 - 125 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).
 - 126 Telephone Interview with Sangeeta Sinha, Deputy Public Defender, S.F. Pub. Defender's Office (Dec. 17, 2009); Telephone Interview with Gary Gibson, Defender, San Diego Pub. Defender (Dec. 2, 2009).
 - 127 18 PA. STAT. ANN. § 11.1101(e).
 - 128 E-mail from Margaret Degen, Defender, Jackson County, to Brennan Center for Justice (Dec. 1, 2009, 17:35 EST) (on file with the Brennan Center).

- 129 Telephone Interview with Angus Love, Pennsylvania Institutional Law Project (Mar. 17, 2010).
- 130 See PEW CTR. ON THE STATES, *1 IN 3 1: THE LONG REACH OF AMERICAN CORRECTIONS*, FACT SHEET ON PENNSYLVANIA (2009) (finding that Pennsylvania spends \$97.72 per inmate per day), *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=49382.
- 131 Alabama: See ALA. CODE. § 15-18-62 (“In cases of willful nonpayment of the fines and costs, the defendant shall either be imprisoned in the county jail or, at the discretion of the court, sentenced to hard labor for the county”); Telephone Interview with Veronica Harris, Macon County Circuit Court (Dec. 8, 2009) (incarceration for failure to pay criminal justice debt is very common in Macon County). Arizona: See ARIZ. REV. STAT. ANN. § 13-810 (if a person sentenced to pay a fine, fee, costs, or restitution defaults, the clerk shall notify the prosecutor and sentencing court and the court shall require the defendant to show cause why the defendant’s default should not be treated as contempt); Telephone Interview with Tom O’Connell, Division Director, Probation Department, Maricopa County (Nov. 19, 2009) (Maricopa County uses contempt proceedings to enforce debt payments). California: See CAL. PENAL CODE § 1205(b) (“If time has been given for payment or it has been made payable in installments, the court shall, upon any default in payment, immediately order the arrest of the defendant and order him or her to show cause why he or she should not be imprisoned. If the fine, restitution order, or installment, is payable forthwith and it is not so paid, the court shall without further proceedings, immediately commit the defendant to the custody of the proper office to be held in custody until the fine or the installment thereof, as the case may be, is satisfied in full”). Florida: See *e.g.* FLA. STAT. § 938.30(9) (“Any person failing to appear or willfully failing to comply with an order under this section, including an order to comply with a payment schedule established by the clerk of court, may be held in civil contempt.”) (emphasis added). Defendants are not provided counsel. See REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, *THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES* 17 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/. Illinois: 730 ILL. COMP. STAT. § 5/5-9-3(a) (“An offender who defaults in the payment of a fine or any installment of that fine may be held in contempt and imprisoned for nonpayment.”); Telephone Interview with Margaret Degen, Defender, Jackson County (Oct. 28, 2009) (individuals are regularly held in contempt for failure to pay for 30 days); Telephone Interview with Lester Finkle, Defender, Cook County (Oct. 29, 2009) (same). *But see* MARIE CLAIRE TRAN-LEUNG, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *DEBT ARISING FROM ILLINOIS’ CRIMINAL JUSTICE SYSTEM* 39 (Nov. 2009) (finding that “imprisonment is not a typical enforcement tool”), *available at* <http://www.theshriverbrief.org/2009/12/articles/criminal-reentry/debt-arising-from-illinois-criminal-justice-system-making-sense-of-the-ad-hoc-accumulation-of-financial-obligations/>. Louisiana: LA. REV. STAT. § 13:1381.2(A) (“When any defendant, other than an indigent, fails to pay [certain criminal justice debt], he shall be sentenced to a term of thirty days in the parish prison in default of the payment of same.”); LA. CODE CRIM. PROC. arts. 884-85 (a sentence that includes fines or costs shall provide that if individuals default they will be incarcerated for a specified term, but can be released if they pay their debt). *See also* Telephone Interview with Rebecca Bers, Orleans Public Defender (Aug. 5, 2009) (individuals face potential incarceration for failures to pay). Michigan: *See, e.g.*, Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court, Kent County (Dec. 21, 2009) (contempt proceedings used to collect debt; individuals can be incarcerated up to 45 days unless they pay off their debts, but in practice the sentence is usually 3-4 days); Phone Interview, Sheila Blakney, Senior Assistant Public Defender, Washtenaw County Public Defender’s Office (December 15, 2009) (contempt proceedings used in Washtenaw County). New York: See N.Y. CRIM. PROC. LAW. § 420.10(3) (sentence may provide that if a defendant fails to pay a fine, restitution, or reparation, he or she must be imprisoned until the debt is satisfied). North Carolina: See N.C. GEN. STAT. § 15A-1364(b) (following a show-cause proceeding for non-payment, the court may activate a defendant’s suspended sentence or if no suspended sentence was imposed, order imprisonment for not more than 30 days, and may provide that payment will result in release or a reduction in the jail term); Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009) (defendants can be subject to incarceration for willful nonpayment through contempt proceedings); Telephone Interview with Emily Harrell, Defender, Buncombe County (Nov. 20, 2009) (contempt not common in her county, but in other counties contempt proceedings are used as an additional “stick” as part of the probation supervision process, imposing periods of incarceration on top of what a defendant is subject to through probation). Ohio: See OHIO REV. CODE § 2947.14(A) (“If a fine is imposed as a sentence or a part of a sentence, the court or magistrate that imposed the fine may order that the offender be committed to the jail or workhouse until the fine is paid or secured to be paid, or the offender is otherwise legally discharged, if the court or magistrate determines at a hearing that the offender is able, at that time, to pay the fine but refuses to do so.”); E-mail from Miguel Santiago, Defender (Oct. 16, 2009) (courts frequently incarcerate defendants not only for failures to pay fines but for failure to pay costs, even though there is no statutory authorization to do so). Texas: See TEX. CODE. CRIM. PROC. art. 43.03(a) (if a defendant defaults on paying fines or costs, the court may order the defendant confined in jail until discharged as provided by law).

- 132 See REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 15
17 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/.
- 133 *Andrews v. Walton*, 428 So.2d 663 (Fla. 1983).
- 134 *Adkins v. Adkins*, 248 S.E.2d 646 (Ga. 1978).
- 135 *In re Calhoun*, 350 N.E.2d 665 (Ohio 1976). Some appellate courts in Ohio have treated *Calhoun* as overruled by *Lassiter*, while others have continued to follow the case's holding. See *Garfield Hts. v. Stefaniuk*, 712 N.E.2d 808, 809 (Ohio Ct. App. 1998) ("There is a conflict in the appellate decisions concerning whether a contemnor in a civil contempt proceeding is entitled to appointed counsel.").
- 136 Lower courts in Pennsylvania and Virginia have likewise rejected the right to counsel in civil proceedings involving incarceration, while courts in Alabama, Arizona, and Louisiana appear to have never considered the question. See *Wade v. Daniels*, No. 008610210, 1997 WL 1433799 (Ct. Com. Pl. Phila. County, Nov. 21, 1997), *appeal dismissed* 718 A.2d 869 (Pa. Super. Ct. 1998) (mem.); *Krieger v. Commonwealth*, 567 S.E.2d 557 (Va. Ct. App. 2002). *But see* Another court of common pleas disagreed; however, the decision was quashed. See *Carnes v. Carnes*, No. NS 81 9044, 1990 WL 302942 (Ct. Com. Pl. Erie County, Oct. 23, 1990) (indigent defendant is entitled to court-appointed counsel for civil support contempt proceedings), *quashed* 598 A.2d 1325 (Pa. Super. Ct. 1991) (mem.).
- 137 See, e.g., *United States v. Anderson*, 553 F.2d 1154, 1155-56 (8th Cir. 1977) (concluding that a person charged with civil or criminal contempt is entitled to appointed counsel and noting that three Circuit Courts of Appeals had previously come to the same conclusion); *McBride v. McBride*, 431 S.E.2d 14, 18 (N.C. 1993) (indigent civil contemnors may not be incarcerated for failure to pay child support arrearages); *Mead v. Batchlor*, 460 N.W.2d 493, 504-05 (Mich. 1990) (holding that a defendant may not be imprisoned for civil contempt if denied counsel during the contempt proceeding).
- 138 In California, defendants can choose to sit out fines at a daily rate set by the county, pursuant to CAL. PENAL CODE § 1205(a). See also Telephone Interview with Gary Gibson, Defender, San Diego Pub. Defender (Dec. 2, 2009) (jail option used in San Diego County); Telephone Interview with Jose Valera, Defender, Marin County (Nov. 11, 2009) (jail option used in Marin County); Telephone Interview with Phil Dube, Assistant Pub. Defender, L.A. County Pub. Defender (Nov. 17, 2009) (jail option used in Los Angeles County, which has set the rate at the statutory minimum of \$30/day). *But see* Telephone Interview with Sangeeta Sinha, Defender, San Francisco Pub. Defender (Dec. 17, 2009) (not used in San Francisco).
- 139 See MO. REV. STAT. § 543.270(1) (circuit judge has the power, at the request of a defendant, to commute fine and costs to imprisonment in the county jail, which is credited at \$10 per day); see also Email from Kari Cornstock, District Defender, District 26 (forwarded by Cathy Kelly on Jan. 14, 2010) (jail option used in Morgan County); Email from Justin Carver, District Defender, District 12 (forwarded by Cathy Kelly on Jan. 14, 2010) (jail option used in Callaway County).
- 140 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).
- 141 *Tate v. Short*, 401 U.S. 395, 398 (1971).
- 142 Telephone Interview with Jose Valera, Defender, Marin County (Nov. 11, 2009).
- 143 See E-mail from Richard Scheibe, Defender, Dist. 11 (Jan. 14, 2010) (forwarded by Cathy Kelly on Jan. 14, 2010).
- 144 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

- 145 Alabama: *See* Telephone Interview with Veronica Harris, Macon County Circuit Court (Dec. 8, 2009) (arrest warrants issue both for the failure to appear at debt-related show cause hearings for the failure to pay when individuals are on probation). *But see* Telephone Interview with Robert Oakes, Assistant Exec. Dir., Ala. Bd. of Pardons and Parole (Nov. 2, 2009) (arrests for non-payment do not happen often in practice). Arizona: *See* Telephone Interview with Jessica Alonso, Collections Officer, Prob. Dep't, Greenlee County (Nov. 11, 2009) (if a person is 60-90 days behind on payments, the probation officer will usually have the person arrested and brought before the court on the threat of probation revocation, although actual revocation is very rare); Telephone Interview with Dusty Alder, Senior Deputy Probation Officer, Mojave County (Nov. 18, 2009) (individuals who miss payments are required to fulfill alternative requirements, such as attending a budget training, and failure to fulfill these requirements can lead to arrest for probation violation). California: *See* Telephone Interview with Phil Dube, Assistant Pub. Defender, L.A. County Pub. Defender (Nov. 17, 2009). (individuals face arrest for failing to appear at a scheduled check-in meeting regarding their criminal justice debt); Superior Court of California, General Information, <http://www.lasuperiorcourt.org/criminal/> (noting that, in Los Angeles County, "[i]f you fail to pay a fine as promised/ordered, the Court may order and issue a warrant for your arrest."); Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request) (confirming that arrest warrants are used for failures to pay fines but noting that warrants are rarely used in the case of fees); Payment of Fines, Santa Clara County Superior Court, <http://www.scservice.org/crim/payment.htm> ("If you don't pay your fine on time, the Court can put out a warrant for your arrest or proceed by Civil Assessment. If you need more time to pay, contact the Department of Revenue."); Florida: *See* REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 15, 20 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/ (finding that in counties with collections courts, a failure to appear for a payment hearing will typically result in an arrest warrant being issued, and that in Alachua County, in some circumstances arrest warrants issue automatically for failures to pay). Georgia: *See* Telephone Interview with Nick White, Defender, Houston County Pub. Defender Office (Nov. 6, 2009) (individuals who cannot pay criminal justice debt are often arrested for failing to report to probation officers, who are involved in collection). Illinois: *See* Telephone Interview with Margaret Degen, Assistant Pub. Defender, Jackson County (Oct. 29, 2009) (failure to appear at a payment hearing can result in an arrest warrant being issued). Louisiana: *See infra* notes 158-159 and accompanying text (discussing data on arrest warrants in New Orleans). Michigan: *See* Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court, Kent County, Mich. (Dec. 21, 2009) (if a defendant fails to comply with the payment plan set up at a show cause hearing (which was the result of previous failure to pay), a bench warrant issues); Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Pub. Defender's Office (Dec. 15, 2009) (individuals are arrested if they fall behind on payments and fail to appear at a show-cause hearing). Missouri: Email, Cathy Kelly, Deputy Director, Director's Office, Missouri Public Defender, St. Louis (Jan. 14, 2010) (individuals can be arrested and held in jail for a night for a failure to pay costs). New York: *See* Telephone Interview with Jay L. Wilber, Defender, Broome County (Dec. 1, 2009) (arrest warrants are issued for failure to pay and failure to pay can sometimes result in jail time). North Carolina: *See* Telephone Interview with Jennifer Harjo, Defender, New Hanover County (Nov. 24, 2009) (warrants are issued for failures to appear at a show cause hearing). Ohio: *See* Telephone Interview with Miguel Santiago, Defender (Nov. 23, 2009) (practices vary across counties, but in general, it is common for people to be arrested for failing to pay fines and costs); Telephone Interview with Glen Dewar, Defender, Montgomery County (Nov. 25, 2009) (arrest warrants issue for failures to appear at payment hearings). Pennsylvania: *See* E-mail from David Crowley, Defender, Centre County, Pa. (Nov. 30, 2009) (Magisterial District Courts automatically issue arrest warrants for missed payments if a person is 31 days delinquent); E-mail from Nicole Spring, Defender, Lycoming County, Pa. (Dec. 1, 2009) (bench warrants are issued for failure to appear at a payment hearing). Texas: *See* CARL REYNOLDS ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR., A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTION FROM PEOPLE CONVICTED OF CRIMES 82 (2009), *available at* <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf> (a "capias pro fine" may be issued for a person's arrest if he or she fails to pay criminal justice debt, and in Collection Improvement Program districts, arrests are sometimes used in misdemeanor cases but seldom used in cases where an individual is on parole). Virginia: *See* Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court, Virginia (Jan. 5 2010) (A defendant is sent a notice to appear at a show cause hearing for failure to pay, and a capias arrest warrant issues if the defendant fails to appear).
- 146 *See, e.g.,* E-mail from David Crowley, Defender, Centre County, Pa. (Nov. 30, 2009) (Magisterial District Courts automatically issue arrest warrants for missed payments if a person is 31 days delinquent).

- 147 *See, e.g.*, Telephone Interview with Jessica Alonso, Collections Officer, Prob. Dep't, Greenlee County, Ariz. (Nov. 11, 2009) (if a person is 60-90 days behind on payments, the probation officer will usually have the person arrested and brought before the court on the threat of probation revocation, although actual revocation is very rare).
- 148 *See, e.g.*, Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Pub. Defender's Office, Mich. (Dec. 15, 2009) (individuals are arrested if they fall behind on payments and fail to appear at a show-cause hearing).
- 149 *See* REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 15-17 (2010).
- 150 *See, e.g.*, Telephone Interview with Jennifer Harjo, Defender, New Hanover County, North Carolina (Nov. 24, 2009) (in her county, bond amounts are frequently *higher* than what the defendant owes); REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 16 (2010) ("purge" amounts are not linked to ability to pay, requiring family, friends, or employers to often put up the required money).
- 151 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).
- 152 These statistics reflects a review of eight days of dockets (December 1-4 and December 7-10, 2009) for the twelve sections that make up New Orleans' felony courtrooms. The Brennan Center calculated the percentage of cases that involved payment issues, as well as the percentage of payment issue cases that involved arrest warrants. Payment issues included appearances categorized as "Filed Arrest on Cap[ias] Notification" (where the docket reflected the capias warrant was issued for a failure to pay fees and fines or appear at a status on payment hearing), "Status on Payment," "Restitution Hearings," and "Payment of Restitution Hearings." The Brennan Center did not count cases listed as "contempt of court hrg", "probation status" and "hrq and resentencing," even though these may be about fees as well. For further details on methodology, *see* Memorandum, New Orleans Data Methodology (on file with the Brennan Center).
- 153 In response to a willful failure to pay a fine, the magistrate or clerk of the court may give notice of the fact to the [Department of Motor Vehicles] for a violation." CAL. VEH. CODE 40509.5(b). In response, the DMV will sometimes suspend licenses. *See, e.g.*, Telephone Interview with Sally Pina, Clerk, San Francisco Collections Unit (Dec. 20, 2009) (DMV sometimes suspends licenses upon notification); Telephone Interview with Randy Dickow, KCBA Indigent Defense Program, Bakersfield, California (Nov. 12, 2009) (DMV suspends licenses in driving-related cases).
- 154 This is a very common enforcement mechanism in Florida. OFFICE OF PROGRAM POLICY ANALYSIS AND GOV'T ACCOUNTABILITY, FLORIDA LEGISLATURE,,CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM'S COLLECTION PERFORMANCE STANDARDS 4 (2007), *available at* <http://www.opaga.state.fl.us/reports/pdf/0721rpt.pdf> (85 percent of county clerks use "Driver's License Sanctions" as a collection tool). *See also* FLA. STAT. ANN. § 322.245(3-5) (authorizing the clerk of courts to notify the Florida Department of Motor Vehicles if "a person licensed to operate a motor vehicle in [Florida] . . . has failed to pay financial obligations for any criminal offense other than [certain traffic misdemeanors and traffic felonies]" and requiring the DMV to suspend the person's driver's license upon receipt of such notification).
- 155 *See* LA. CODE CRIM. PROC. ANN. art. 885.1 (courts may order defendants with outstanding fines to surrender their driver's licenses, ultimately leading to a suspended license).
- 156 If the Secretary of State finds that a defendant is in default or has a warrant issued for certain motor vehicle code violations, it can trigger a suspension of the defendant's license. This is not ordered by the court, but is rather through the Secretary of State. The suspension is lifted if the defendant pays plus an additional clearance fee and a reinstatement fee. MICH. COMP. LAWS 257.321c.
- 157 Generally not, but for motor vehicle offenses, after a period of default the court will report a failure to pay to the DMV, which will suspend a defendant's license until he or she pays. Telephone Interview with Matt Osborne, Associate Counsel, North Carolina Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Cynthia Buchanan, Head Cashier, Durham Clerk of Court (Nov. 19, 2009).

- 158 For individuals convicted of driving under the influence of alcohol or drugs, full fees and fines must be paid before a suspended license can be reinstated. PA. CONS. STAT. ANN. § 1541(d). At least one jurisdiction suspends driver's licenses. Telephone Interview with Holly Raymin, Clerk, Lycoming County, Pennsylvania (Nov. 4, 2009) (collections division has used authority to suspend driver's licenses).
- 159 Individuals may be denied their driver's license renewals for a failure to pay or satisfy court judgments in any court with criminal jurisdiction. TEX. TRANSP. CODE ANN. § 706.002; TEX. TRANSP. CODE ANN. § 706.004(a); Tex. Op. Att'y Gen. GA-0479 (2006). Generally, courts will only exercise this power in the case of defendants convicted of Class C misdemeanors, rather than more serious crimes. JUSTICE CENTER, COUNCIL OF STATE GOVERNMENTS, A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES at 81. License suspension is one of a number of powers utilized as part of the state's Comprehensive Collections Program. See OFFICE OF COURT ADMINISTRATION, COLLECTION IMPROVEMENT PROGRAM 1 (2010), available at <http://www.courts.state.tx.us/oca/collections/collections.asp>.
- 160 Under VA. STAT. ANN. § 46.2-395(B), if a defendant fails to make payments on any fine, costs, forfeiture, restitution, or penalty, the court must suspend the defendant's driver's license until the amounts due are paid in full or the defendant enters into a new payment plan. A number of Virginia jurisdictions participate in this program. See, e.g., Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court, Virginia (January 5, 2010); Telephone Interview with Diane Blackburn, Deputy Clerk.
- 161 See, e.g. Alabama: Telephone Interview with Veronica Harris, Clerk of Court, Macon County Circuit Court (Nov. 2, 2009) (Macon County suspends driver's licenses for a failure to appear.); California: A comprehensive collection program for recovering delinquent fees and fines payments may include a driver's license revocation element where appropriate. CAL. PENAL CODE § 1463.007(m); Missouri: MO. REV. STAT. § 302.341(1); Ohio: OHIO REV. CODE ANN. § 4507.091 describes the use of warrant blocks. A court, at its discretion, "may order the clerk of the court to send to the registrar of motor vehicles a report containing the name, address, and such other information as the registrar may require by rule, of any person for whom an arrest warrant has been issued by that court and is outstanding." OHIO REV. CODE ANN. § 4507.091(A). The information is entered into the BMV's records. *Id.* The warrant block prevents the person from obtaining a certificate of registration for a vehicle or obtaining or renewing a driver's license. *Id.* When all outstanding arrest warrants have been satisfied, the defendant must pay the BMV \$15 to lift the warrant block. OHIO REV. CODE ANN. § 4507.091(B).
- 162 CAL. VEH. CODE § 14601(b)(1).
- 163 CAL. VEH. CODE § 14601.3(d)(1).
- 164 Telephone Interview with Sangeeta Sinha, Defender, San Francisco Public Defender's Office (Dec. 17, 2009).
- 165 Probation can be extended for up to five years for nonpayment. At the end of the five years the defendant is rolled off probation even if he has not paid. In split sentence cases there is no automatic roll-off after five years. Telephone Interview with Robert Oakes, Assistant Executive Director, Alabama Board of Pardons and Paroles (Nov. 2, 2009). The practice here is particularly bad because the DA can still bring contempt proceedings after probation or parole has ended. *Id.*
- 166 Probation can be extended beyond the expiration or termination of probation if the defendant still owes restitution. ARIZ. REV. STAT. ANN. § 13-902(c). This is standard practice. See, e.g., Telephone Interview with Tom O'Connell, Division Director, Probation Department, Maricopa County, Arizona (Nov. 19, 2009); Telephone Interview with Jessica Alonso, Collections Officer, Probation Department, Greenlee County, Arizona (Nov. 13, 2009) (probation is generally extended when restitution is owed; if the probationary period has already ended, financial obligations are more likely to be converted into a civil judgment).. Probation can be extended up to five years for a felony and two years for a misdemeanor. ARIZ. REV. STAT. ANN. § 13-902(c).
- 167 *People v. Medeiros*, 25 Cal. App. 4th 1260, 1267 (Cal. Ct. App. 1994) (if a defendant cannot pay fees and fines, the court can extend probation to the maximum time permitted by law but not beyond that and must discharge probation); *People v. Sisco*, No. E037254, 2005 WL 3473325, at *9 (Cal. App. 4th Dec. 20, 2005) (a defendant can also consent to extend probation). In Marin County, defendants agree to extensions because otherwise their

- record would reflect that probation was unsuccessfully terminated. *See, e.g.*, Telephone Interview with Jose Varela, Defender, Marin County, California (Nov. 12, 2009). This is problematic for defendants because the other terms of probation are extended as well and the extension is usually for five years. Further when a defendant is on probation and has an infraction the punishment is harsher. Telephone Interview with Sangeeta Sinha, Defender, San Francisco Public Defender's Office (Dec. 17, 2009). *But see, e.g.*, Telephone Interview with Randy Dickow, Administrator, KCBA Indigent Defense Program, Bakersfield, California (Nov. 13, 2009) (California mandates a hearing prior to probation term extension; in light of the hearing requirement, which may dissuade the state from pursuing this course of action, defendants often do not give their consent for extensions); Telephone Interview with Sally Pina, Clerk, Superior Court of California, San Francisco County (Dec. 20, 2009) (probation is usually extended only for restitution but the Collections Unit continues to pursue fees and fines from the defendant after the termination of probation).
- 168 *See* REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, *THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES* 24 (2010) (when monthly payment plan is set by Florida Department of Corrections, a probation violation for failure to pay can only occur at the end of the probation term, at which point the judge can extend the supervision period for a willful failure to pay).
- 169 GA. CODE ANN. § 17-10-1(a)(2) ("Probation supervision shall terminate in all cases no later than two years from the commencement of probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, in those cases involving the collection of fines, restitution, or other funds, the period of supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs"). The court generally cannot extend a defendant's total sentence, however. Telephone Interview with Claudia Saari, Interim Circuit Public Defender, DeKalb County, Georgia (Oct. 23, 2009); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Public Defender's Office (Oct. 29, 2009).
- 170 LA. CODE CRIM. PROC. ANN. art. 894.4 ("When a defendant has been sentenced to probation or is on parole and has a monetary obligation, including but not limited to court costs, fines, costs of prosecution, and any other monetary costs associated with probation or parole, the judge may extend the period of probation or parole until the monetary obligation is extinguished").
- 171 Telephone Interview with Sheila Blakney, Defender, Washtenaw County Public Defender's Office (Dec. 15, 2009) (when probation is coming to an end and the defendant still owes money the judge will often extend probation to the maximum period allowed by law to give the defendant more time to pay); Telephone Interview with Donald Johnson, Chief Defender, State Defender Office (Dec. 10, 2009) (sometimes a defendant will have probation extended if the defendant can't pay by the end of the term, thus has never seen an extension for more than a year).
- 172 Telephone Interview with Dewayne Perry, Defender, State Public Defender (Nov. 23, 2009) (probation can be extended up to a year beyond the statutory maximum as a result of failure to pay costs but this happens only if the defender has the capacity to pay); Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Clerk's Office (Nov. 23, 2009); *see also* MO. REV. STAT. § 559.105(2) ("No person ordered by the court to pay restitution pursuant to this section shall be released from probation until such restitution is complete. If full restitution is not made within the original term of probation, the court shall order the maximum term of probation allowed for such offense."); MO. REV. STAT. § 599.105(3) (applying similar provisions to parole).
- 173 Telephone Interview with Emily Harrell, Defender, Buncombe County, North Carolina (Nov. 20, 2009) (judges typically extend a defendant's probation term at hearings on probation violations for failure to pay).
- 174 Under OHIO REV. CODE ANN. § 2929.15(B) and OHIO REV. CODE ANN. § 2929.25(C)(2), if a person violates the conditions of community control, the court can extend the period of community control, impose a more restrictive community control sanction, or impose a prison or jail term, provided, the total duration of community control does not exceed five years. Payment of fees and fines is considered a condition of community control. *See State v. Carpenter*, No. 2008 CA 00238, 2009 WL 2894603 (Ohio Ct. App. Aug. 31, 2009). Therefore, a person's term of community control can be extended if he or she fails to pay. Before the term can be extended, however, the defendant is entitled to notice and a hearing. *State v. Fairbank*, No. WD-06-015, No. WD-06-016, 2006 WL 3378338 at *3 (Ohio Ct. App. Nov. 22, 2006); *State v. Flekel*, No. 80337, No. 80338, 2002 WL 1307430 at *3 (Ohio Ct. App. June 13, 2002).

- 175 In practice some counties do extend probation, often to correspond with an extended payment plan set based on defendant's ability to pay. Telephone Interview with David Crowley, Defender, Centre County, Pennsylvania (Oct. 23, 2009); Telephone Interview with Nicole Spring, Defender, Lycoming County, Pennsylvania (Oct. 26, 2009). In Allegheny County, courts may extend probation terms for failure to pay restitution. Telephone Interview with Art Ettinger, Defender, Allegheny County, Philadelphia (Oct. 29, 2009). Courts often limit the length of probation terms. For a first misdemeanor, for example, courts impose a maximum of 5 years. Telephone Interview with Daniel Bartoli, Defender, Defender Association of Philadelphia County (Oct. 27, 2009).
- 176 TEX. CODE CRIM. PROC. ANN. art. 42.12(22)(c) ("The judge may extend a period of community supervision on a showing of *good cause* under this section as often as the judge determines is necessary, but the period of community supervision in a first, second, or third degree felony case may not exceed 10 years and, except as otherwise provided by this subsection, the period of community supervision in a misdemeanor case may not exceed three years. *The judge may extend the period of community supervision in a misdemeanor case for any period the judge determines is necessary, not to exceed an additional two years beyond the three-year limit, if the defendant fails to pay a previously assessed fine, costs, or restitution and the judge determines that extending the period of supervision increases the likelihood that the defendant will fully pay the fine, costs, or restitution.* A court may extend a period of community supervision under this section at any time during the period of supervision or, if a motion for revocation of community supervision is filed before the period of supervision ends, before the first anniversary of the date on which the period of supervision expires") (emphasis added); JUSTICE CTR., COUNCIL OF STATE GOV'TS, A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES⁷⁰ n. 50 (2009), *available at* <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf> (Good cause is generally interpreted to include failure to pay fees and fines in felony cases).
- 177 Pursuant to VA. CODE ANN. § 19.2-305(C), "No defendant shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, or costs, provided that, following notice by the probation and parole officer to each court and attorney for the Commonwealth in whose jurisdiction any fines, fees, or costs are owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from supervised probation." However, this statute does not apply to restitution. *Id.* Some clerks interviewed for this report stated that they believed probation is extended even when restitution is not involved. *See* Telephone Interview with Kerry Rohr, Clerk, Bristol Circuit Court, (Dec. 28, 2009); Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court (Jan. 5, 2010).
- 178 *See* PEW CTR. ON THE STATES, I IN 3 I: THE LONG REACH OF AMERICAN CORRECTIONS, FACT SHEET ON CALIFORNIA (2009) (finding that California spends \$134.83 per inmate per day), *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=49382.
- 179 Randal C. Archibold, *California, in Financial Crisis, Opens Prison Doors*, N.Y. TIMES, Mar. 23, 2010, at A14..
- 180 Tony Burbeck, *12 Mecklenburg Libraries to Close in Two Weeks*, WCNC.com, Mar. 18, 2010, <http://www.wcnc.com/news/local/County-debates-which-libraries-to-close-88418652.html>.
- 181 Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).
- 182 *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010). This figure does not include individuals who failed to appear at payment hearings. An additional 63 individuals failed to appear at payment hearings and had warrants automatically issued for their arrest.
- 183 *See* Telephone Interview with Tony Purcell, Assistant Public Defender, Mecklenburg County (Jan. 19, 2010) (stating that judges often remit the debts of individuals who were held in jail pending a hearing).

- 184 This calculation is based on a daily jail cost of \$40, the current reimbursement rate paid by the North Carolina Department of Corrections to county jails. *See* North Carolina Administrative Office of the Courts, Court Costs and Fee Chart (Sept. 2009), http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-2009-criminal.pdf. According to Mecklenburg County Fine Collection Department data, arrested individuals were collectively held for a total of 1022 days pending a court appearance.
- 185 *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).
- 186 An additional 63 individuals failed to appear at payment hearings and had warrants automatically issued for their arrest. *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).
- 187 Arizona: If probation is not ordered, or if probation is ordered but has expired and fees, fines, or restitution remain to be paid, the court may issue a criminal restitution order. ARIZ. REV. STAT. §13-805(A). The criminal restitution order functions as and may be enforced just like any civil judgment, except that it does not expire and it imposes 10 percent interest per year. ARIZ. REV. STAT. §§ 13-805(C) and 44-1201; *see also* Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep’t of Fin. Collections Unit (Nov. 19, 2009). California: Many fees and fines can be enforced “in the same manner as on a judgment in a civil action.” *See* CAL. GOV’T CODE § 27712 (cost of legal assistance); CAL. PENAL CODE § 1202.4(a)(3)(B) (restitution). Practices vary. In San Diego, fees and fines are converted to civil judgment if at the end of a probation term, there is a balance due. Telephone Interview with Gary Gibson, Defender, San Diego County Pub. Defender (Dec. 2, 2009). In Los Angeles, some debts are also enforced through civil judgments. Telephone Interview with Phil Dube, Defender, L.A. County Pub. Defender (Nov. 17, 2009). Florida: FLA. STAT. § 938.30(6) (“If judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment thereon and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.”); § 960.294(2) (“A civil restitution lien order may be enforced . . . in the same manner as a judgment in a civil action . . .”). Georgia: GA. CODE ANN. § 17-10-20(a) (“In any case in which a fine or restitution is imposed as part of the sentence, such fine and restitution shall constitute a judgment against the defendant.”). Illinois: 725 ILL. COMP. STAT. 5/124A-10 (“The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution.”). Louisiana: The court can convert legal fees, fines, and restitution (and interest) into a judgment, which can be enforced in the same manner as a money judgment in a civil case. *See* LA. CODE CRIM. PROC. ANN. art. 886(A), 895.1. Michigan: Penalties, fees, or costs not incurred as a result of a misdemeanor “may be recovered in the same manner as civil judgments . . .” MICH. COMP. LAWS § 600.4805; *see also* § 769.1f(6) (“An order for reimbursement [for prosecution costs] under this section may be enforced . . . in the same manner as a judgment in a civil action.”). New York: N.Y. CRIM. PROC. LAW § 420.10(6)(a) (“A fine, restitution or reparation imposed or directed by the court . . . shall be entered by the county clerk in the same manner as a judgment in a civil action . . .”); § 420.35(1) (stating that the provisions of § 420.10 are applicable to specified fees, including certain mandatory surcharges, the sex offender registration fee, the DNA databank fee and the crime victim assistance fee); § 420.40(5) (“The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee or DNA databank fee may be collected in the same manner as a civil judgment.”). North Carolina: Restitution in excess of \$250 is docketed in the same manner as a civil judgment and may be collected in the same manner, with certain exceptions for restitution as a condition of probation. N.C. Gen. Stat. §§ 15A-1340.38(a)-(b). Public defender costs are also entered as judgments and constitute a lien. § 7A-455(b). Upon a defendant’s default in paying fines or costs, the court may order the judgment be docketed, becoming a lien on real estate in the same manner as do judgments in civil actions. § 15A-1365. Texas: Restitution may be collected as a civil judgment. *See* TEX. CODE CRIM. PROC. ANN. art. 42.037(m) (“An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”). Virginia: Fines imposed and costs taxed in a criminal prosecution are recorded as a judgment against the defendant in favor of the Commonwealth and execution may issue on that judgment in the same manner as on any other monetary judgment, subject to a 20 year statute of limitations. VA. CODE ANN. §§ 19.2-340, -341.

- 188 See, e.g., Telephone Interview with Lynn Baas, Senior Court Clerk Dep't Head, N.Y. County Clerk's Office (June 7, 2010) (in New York, debt judgment filed in clerk's office and becomes public information that credit agencies have access to); Telephone Interview with Judy Lockhart, Chief of Fiscal Servs., Oakland County Executive Office, Michigan (June 7, 2010) (same in Michigan).
- 189 Arizona: See Telephone Interview with Kristie Weegan, Dir., Admin. Office of the Courts, Ariz. Supreme Court (Nov. 23, 2009) (under Arizona's Fines Fees and Restitution Enforcement Program (FARE), private contractors report individuals with unpaid debt to credit bureaus); Telephone Interview with Kim Knox, Supervisor, Maricopa County Department of Finance, Collections Unit (Nov. 19, 2009) (if a person fails to pay for 120 days, the county clerk directs a private collection agency to begin collection efforts, which includes credit reporting). California: See Telephone Interview with Phil Dube, Los Angeles County Defender (Nov. 18, 2009) (Los Angeles County uses private company for collecting debt from traffic-related offenses, and this company can report information to credit reporting agencies). Illinois: See Telephone Interview with Suzy Choi, Deputy Gen. Counsel, Clerk of the Circuit Court of Cook County (July 6, 2010) (court clerks refer unpaid criminal justice debt to a private collection company, which reports the debt to credit bureaus after 30 days). Virginia: See Telephone Interview with Susan Hopkins, Clerk, Louisa Circuit Court (Jan. 4, 2010) (individuals who fail to pay criminal justice debt may be subject to the efforts of private collection agencies, including credit reporting).
- 190 See *What Is A Credit Bureau Score And How Do lenders Use Them?*, 100 QUESTIONS & ANSWERS ABOUT BUYING A NEW HOME, (last visited June 20, 2010), <http://www.hud.gov/offices/hsg/sfh/buying/buyhm.cfm..>
- 191 Allan Appel, *12 Ex-Offenders Will Get Public Apartments*, NEW HAVEN INDEP., Mar. 17, 2010, http://newhavenindependent.org/index.php/archives/entry/ex-offenders_gain_access_to_public_housing/.
- 192 Special Comm. on Collateral Consequences of Criminal Proceedings, N.Y. State Bar Ass'n, *Re-Entry and Reintegration: The Road to Public Safety* 177 (2006) (noting that 35 percent of employers ran credit checks of applicants in 2003, up from 19 percent in 1996) (citing Susan R. Hobbs, *Employee Background Checking Seen as Staple in Today's Job Environment*, Daily Lab. Rep. (BNA, Arlington, Va.), May 3, 2004, No. 84, at S-7).
- 193 Privacy Rights Clearinghouse, FACT SHEET 16: EMPLOYMENT BACKGROUND CHECKS: A JOBSEEKER'S GUIDE (April 2010), <http://www.privacyrights.org/fs/fs16-bck.htm>; see also Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 6, 2009, at A1, available at <http://www.nytimes.com/2009/08/07/business/07credit.html?hp=&adxnnl=1&adxnnlx=1249624822-AdNTN6kxyhaWwYGWQhdODQ> ("Employers, often winnowing a big pool of job applicants in days of nearly 10 percent unemployment, view the credit check as a valuable tool for assessing someone's judgment."). Some states have passed statutes prohibiting credit checks as part of employment background checks. For example, Oregon has banned the use of credit histories in evaluating an applicant or discriminating against an applicant or employee in any way, with specific exceptions for employers such as banks or credit unions 2010 Or. Laws 102 (to be codified at OR. REV. STAT. § 659A.885).
- 194 See e.g. N.Y. Correct. Law §§ 752 to 753 (limiting the use of prior convictions in employment decisions and requiring employers to consider "the state's public policy of encouraging employment of previously convicted persons").
- 195 RACHEL L. MCLEAN & MICHAEL D. THOMPSON, COUNCIL OF STATE GOV'TS JUSTICE CTR., REPAYING DEBTS 8 (2007), available at: http://www.reentrypolicy.org/jc_publications/repaying_debts_full_report/RepayingDebts_Guide_v13.pdf.
- 196 Alabama: See ALA. R. CRIM. P. 26.11(h)(4) (court may "[o]rder an employer to withhold amounts from wages to pay fines and/or restitution"); see also Telephone Interview with Brian Barnett, Restitution Recovery Unit of Tuscaloosa County Dist. Attorney's Office (Nov. 5, 2009) (wage garnishment commonly used in Tuscaloosa County). But see Telephone Interview with Brandy (last name withheld upon request), Morgan County Restitution Recovery Officer, Morgan County Dist. Attorney's Office (Nov. 5, 2009) (wage garnishment not used in Morgan County). Arizona: See ARIZ. REV. STAT. §13-804(J) ("A restitution lien shall be created in favor of the state for the total amount of the restitution, fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any."); ARIZ. REV. STAT. § 13-806 (if filed with the appropriate agency, a restitution lien creates an interest in favor of the state or victim in the defendant's real and personal property); Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep't of Fin. Collections Unit (Nov. 19, 2009) (Maricopa County refers unpaid

debts to collection agencies, which engage in collection efforts that can include wage garnishment). California: *See* State of California Franchise Tax Board, Court-Ordered Debt – Frequently Asked Questions (Debtor), http://www.ftb.ca.gov/online/Court_Ordered_Debt/faq_debtor.shtml (last visited Sept. 20, 2010) (describing use of wage and account garnishment to collect criminal justice debt); *see also* CAL. PENAL CODE § 1202.42 (permitting income deductions for collection of restitution); CAL. PENAL CODE § 987.8(a) (to reimburse costs of providing legal assistance, court may impose a lien on defendant's real property that can be enforced by way of attachment, except that it cannot be enforced through a writ of execution on a defendant's principal place of residence). Florida: *See* FLA. OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM'S COLLECTION PERFORMANCE STANDARDS 4 (2007) (most clerks use liens as a collection method and some also garnish wages or bank accounts), *available at* www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf; *see also* FLA. STAT. § 938.30(6) (court may enter a judgment on court-imposed financial obligations, which constitutes a civil lien against the debtor's presently owned or after-acquired property). Georgia: *See* GA. CODE ANN. § 17-10-20(c) (fines and restitution can be collected through levy, foreclosure, garnishment, and all other actions provided for the enforcement of judgments in Georgia) GA. CODE ANN. § 42-8-34.2(a) (authorizing the collection of "arrearage . . . through issuance of a writ of fieri facias" from defendants for whom payment of fines, costs, and restitution is a condition of probation). However, no one the Brennan Center interviewed knew of wage garnishment or liens being used in practice. Illinois: *See* 725 ILL. COMP. STAT. 5/124A-10 ("The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property . . . of every offender, not exempt from the enforcement of a judgment or attachment, . . . to pay the fine and costs of prosecution."); 730 ILL. COMP. STAT. 5/5-9-4; 5/5-5-6(h) (judge may enter an order of withholding to collect fines and restitution). Louisiana: The court can convert fees, fines, and restitution (and interest) into a judgment, which can be enforced in the same manner as a money judgment in a civil case, LA. CODE CRIM. PROC. ANN. arts. 886(A), 895.1(A)(2)(a), including through garnishment, LA. CODE CIV. PROC. ANN. art. 2411, and the seizure and sale of property, LA. CODE CIV. PROC. ANN. art. 2291. Michigan: *See* MICH. COMP. LAWS § 769.1k(4) ("The court may require the defendant to pay any fine, cost, or assessment ordered to be paid under this section by wage assignment."); MICH. COMP. LAWS § 769.1a(13) ("An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution."); *see also* Telephone Interview with Judy Lockhart, Chief of Fiscal Services, Oakland County Executive (Dec. 21, 2009) (Oakland County utilizes wage and bank account garnishment). Missouri: *See* Telephone Interview with Defender (name withheld upon request), Missouri (Nov. 24, 2009) (wage garnishment used for collection in her district). *But see* Telephone Interview with Paul Fox, Director of Judicial Administration, St. Louis County Circuit Clerk's Office (Nov. 30, 2009) (wage garnishment not used in St. Louis). New York: *See* N.Y. CRIM. PROC. LAW § 420.10(6) (fines and restitution can be entered as a civil judgment); Collecting the Judgment, <http://www.nycourts.gov/courts/nyc/civil/collectingjudg.shtml> (describing garnishment and liens as civil collection options). North Carolina: *See* N.C. GEN. STAT. § 7A-455(b) (the court must enter a judgment for the value of legal services provided to the defendant, which shall constitute a lien); N.C. GEN. STAT. § 15A-1340.38(a) (restitution orders in excess of \$250 can be enforced in the same manner as a civil judgment); N.C. GEN. STAT. § 15A-1365 (unpaid fines and court costs may be docketed upon default, constituting a lien on the defendant's real estate). North Carolina law generally does not provide for wage garnishment for criminal justice debt. *See* Telephone Interview with Matt Osborne, Associate Counsel, North Carolina Administrative Office of the Courts (Nov. 20, 2009). Ohio: *See* OHIO REV. CODE ANN. § 2929.18(D) (fines, costs, and restitution can be collected through attachment of property and wage or account garnishment); *see also* Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009) (after a year of non-payment, use garnishment, judgment liens, and attachment of property); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009) (office occasionally garnishes wages). Pennsylvania: *See* 42 PA. CONS. STAT. ANN. § 9728(b)(4) (criminal justice debt can be entered as a judgment upon the person or the person's property); *see also* Telephone Interview with David Crowley, Chief Public Defender, Centre County (Oct. 23, 2009) (jurisdiction uses liens). Texas: *See* TEX. CODE CRIM. PROC. ANN. art. 43.07 (providing for execution against a person's property to collect fines and costs); TEX. CODE CRIM. PROC. ANN. art. 42.22(8) (providing for "restitution liens" to collect restitution and certain fines and costs, which can be perfected against real property, personal property, and motor vehicles). Virginia: *See* VA. CODE ANN. §§ 19.2-340, 341 (fines and costs constitute a judgment and may be executed in the same manner as any other monetary judgment); *see also* Telephone Interview with Diane Blackburn, Deputy Clerk, Buckingham Circuit Court (Dec. 28, 2009) (utilizes services of the Department of Taxation to garnish wages); Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court (Jan. 5, 2010) (contract with private collector to garnish wages).

- 197 Alabama: Alabama intercepts tax rebates in order to collect payments. Intercepted returns go to local clerks to pay towards debt. Telephone Interview with Brian Barnett, Restitution Recovery Unit, Dist. Attorney's Office of Tuscaloosa County. (Nov. 5, 2009). Arizona: Arizona utilizes the TIP program, established by state statute, to recover funds that Arizona State taxpayers owe to the state or court by intercepting tax refunds and lottery winnings. ARIZ. REV. STAT. ANN. §§ 42-1122(A) and 5-525(A). California: Counties can participate in the Franchise Tax Board's optional Court-Ordered Debt Collections Program under California Revenue and Taxation Code §§ 19280 and 18670. This collection program has the ability to intercept state tax returns and lottery winnings. See MARCUS NIETO, CAL. RESEARCH BUREAU, CAL. STATE LIBRARY, WHO PAYS FOR PENALTY ASSESSMENT PROGRAMS IN CALIFORNIA? 26 (Feb. 2006), available at <http://www.library.ca.gov/crb/06/03/06-003.pdf>. Illinois: Circuit clerks can intercept state income tax returns in order to recover court costs and fees. 705 ILL. COMP. STAT. 105/27.2b. Louisiana: See LA. CODE CRIM. PROC. ANN. art. 886(A). Michigan: The treasury has a "debt referral program" through which it can offset tax refunds or other payments due from the state in circumstances where an individual owes fees or fines. See MICH. COMP. LAWS ANN. §§ 12.133, 12.136. Missouri: Tax intercepts are a common form of collection in Missouri. Telephone Interview with Dewayne Perry, Dist. Defender, Dist. 30 (Nov. 23, 2009). See also Telephone Interview with Defender (name withheld upon request), Missouri (Nov. 24, 2009) (adding that wage garnishment is used, as well). North Carolina: The state intercepts tax refund checks for attorneys' fees and restitution. See N.C. GEN. STAT. ANN. § 7A-321(b); Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009). Virginia: Under VA. CODE ANN. § 19.2-349(B), the Commonwealth's attorney for a given jurisdiction is responsible for collection, and may use the services of the Department of Taxation to expedite collection. Among other things, the Department runs a tax refund setoff program. See VA. CODE ANN. § 58.1-523. Virtually all jurisdictions participate in the state income tax refund setoff program. See, e.g., Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court. (Jan. 5, 2010); Telephone Interview with Kerry Rohr, Clerk, Bristol Circuit Court (Dec. 28, 2009).
- 198 See Margy Waller, *High Cost or High Opportunity Cost? Transportation and Family Economic Success*, THE BROOKINGS INSTITUTION POLICY BRIEF, CENTER ON CHILDREN AND FAMILIES, no. 35, Dec. 2005, available at http://www.brookings.edu/-/media/Files/rc/papers/2005/12poverty_waller/pb35.pdf; Sandra Gustitus et al., THE MOBILITY AGENDA, ACCESS TO DRIVING AND LICENSE SUSPENSION POLICIES FOR THE TWENTY-FIRST CENTURY ECONOMY (2008).
- 199 Florida: See REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA'S CRIMINAL JUSTICE FEES 6 (2010) (suspension of an individual's driver's license for failure to pay criminal justice debt is very common, and county clerks routinely request driver's license suspensions without any prior determination of ability to pay). Virginia: See VA. CODE ANN. § 46.2-395(B) ("[W]hen any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth."). In Lee County, Virginia, a defendant's driver's license can be suspended at show cause hearing after 30 days of delinquency. Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court, Virginia (Jan. 5, 2010). In Halifax County, a defendant will not face show cause hearings if he makes any payment towards debt, but paying less than amount due will result in driver's license suspension. Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court, Virginia (Jan. 5, 2010).
- 200 U.S. GOV'T ACCOUNTABILITY OFFICE, LICENSE SUSPENSIONS FOR NONDRIVING OFFENSES 34 (2010), available at <http://www.gao.gov/new.items/d10217.pdf>.
- 201 See *supra* note 118 and accompanying text.
- 202 42 U.S.C. § 608(a)(9)(A).
- 203 7 U.S.C. § 2015(k)(1).
- 204 42 U.S.C. § 1437d(l)(9) (it shall be cause for immediate termination of the tenancy of a public housing tenant if the tenant is violating a condition of his or her probation or parole); 42 U.S.C. § 1437f(d)(1)(B)(v) (contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide that violating a condition of probation or parole is cause for termination of tenancy).

- 205 42 U.S.C. § 1382(e)(4)(A)(ii).
- 206 602 F.3d 140 (2d Cir. 2010).
- 207 Brief for Empire Justice et al. as Amici Curiae Supporting Plaintiff-Appellant at 17-19, *Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010) (No. 08-5801-cv) (describing how individuals in California and Florida lost benefits due to criminal justice debt warrants).
- 208 *Clark*, 602 F.3d at 149.
- 209 Telephone Interview with Jennifer Parish, Dir. Of Crim. Justice Advocacy, Urban Justice Center (June 28, 2010).
- 210 CARL REYNOLDS ET AL., TEX. OFFICE OF COURT ADMIN., A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES, INTERIM REPORT 8 (2009), *available at* <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf>.
- 211 42 U.S.C. § 666(b)(7).
- 212 TEX. CODE CRIM. PROC. ANN. art. 42.038(d).
- 213 *See* Brennan Center for Justice, *Felony Disenfranchisement Laws Across the United States* (2006), *available at* www.brennancenter.org/dynamic/subpages/download_file_47267.pdf.
- 214 Erika L. Wood & Neema Trivedi, *Modern-Day Poll Tax: How Economic Sanctions Block Access to the Polls*, CLEARINGHOUSE REV. J. OF POVERTY L. & POL'Y, May-June 2007, at 32.
- 215 Alabama: ALA. CODE § 15-22-36.1(a)(3) (must fully pay all fines, court costs, fees, and victim restitution). Arizona: ARIZ. REV. STAT. ANN. § 13-912(A)(2) (must pay “any fine or restitution imposed”). Florida: FLA. R. EXEC. CLEM. 5.E, 9.A.3 (must pay “all restitution”), *available at* <https://fpc.state.fl.us/Policies/ExecClemency/ROEC04052007.pdf>. Virginia: Virginia Secretary of the Commonwealth, Restoration of Rights, <http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/RORLongApp.pdf> (last visited Sept. 23, 2010) (must pay “costs, fines, and/or restitution”).
- 216 Georgia: GA. CONST. art. II, § 1, ¶ III (“No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.”). Texas: TEX. ELEC. CODE ANN. § 11.002(4)(A) (individuals convicted of a felony are qualified to vote after having “fully discharged the person’s sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court”).
- 217 *See supra* notes 170, 173, 176 (probation can be extended for failing to pay criminal justice debt in Louisiana, North Carolina, and Texas); Brennan Center for Justice, *Felony Disenfranchisement Laws Across the United States* (2006) (voting rights restored in Louisiana, North Carolina, and Texas after completion of sentence, including prison, parole and probation), *available at* www.brennancenter.org/dynamic/subpages/download_file_47267.pdf.
- 218 *See supra* note 118.
- 219 *See, e.g.*, ALA. CODE § 12-19-152 (except as provided elsewhere, fines collected in felony and misdemeanor cases are remitted to the State General Fund); § 12-19-154 (90 percent of docket fees collected in district and circuit courts for violation of municipal ordinances go to the State General Fund); ARIZ. REV. STAT § 41-1723 (all money received each year by the public safety equipment fund after the first \$1.2 million goes to the state general fund); § 36-2219.01(B)(5) (5.5 percent of money sent to the medical services enhancement fund is deposited in the state general fund); CAL. PENAL CODE § 1465.7(a)-(c) (a state surcharge of 20 percent levied on a defendant’s base fine is transmitted to the General Fund); REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV. SCH. OF LAW, THE HIDDEN COSTS OF FLORIDA’S CRIMINAL JUSTICE FEES 6 (2010) (“Some fees [in Florida] go directly to the state’s general revenue fund to subsidize the state’s overall budget.”); GA. CODE ANN. § 42-8-34(d)(1)-(2) (imposing various fees to be deposited into the general fund of the state treasury, such as a monthly probation fee of \$23); 705

- ILL. COMP. STAT. 105/27.5 (41 percent of all fees, fines, costs and other penalties collected by a circuit court shall be disbursed into that county's general corporate fund); CHAMPAIGN COUNTY ADMIN. SERVS., CHAMPAIGN COUNTY FY2010 BUDGET 35 (2009), *available at* <http://www.co.champaign.il.us/COUNTYBD/2010budget/fullbudget.pdf> (13 percent of Champaign County's [Illinois] revenue comes from fees and fines); MICH. COMP. LAWS § 780.905 (assessing fees of \$60 and \$50 for those convicted of felonies or certain misdemeanors, respectively, 90 percent of which is transmitted to the department of treasury); N.C. CONST. art. IX, § 7(a) ("... the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools."); About Court Costs, <http://www.nccourts.org/County/Moore/Costs/Default.asp> (last visited July 21, 2010) ("Except for certain fees that are devoted to specific uses, all superior and district court costs collected by the Judicial Department are paid into the State's General Fund, as are appellate court fees."); 42 PA. CONS. STAT. § 3571(a) ("Except as otherwise provided by statute, the Commonwealth shall be entitled to receive all fines, forfeited recognizances and other forfeitures imposed, lost or forfeited, fees and costs which by law have heretofore been paid or credited to, or which by statute are payable or creditable to, the Commonwealth."); TEX. CODE CRIM. PROC. ANN. art. 102.020(h) (35 percent of funds received as costs for DNA testing go to the state highway fund); VA. CODE ANN. § 19.2-353 (proceeds from fines collected for offenses against the Commonwealth are to be deposited into the State Literary Fund.)
- 220 See ABA COMMISSION ON STATE COURT FUNDING, BLACK LETTER RECOMMENDATIONS OF THE ABA COMMISSION ON STATE COURT FUNDING: REPORT 7 (Aug. 2004) (stating that courts should have "a predictable general funding stream that is not tied to fee generation"); *see also* CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON STATE JUDICIAL BRANCH BUDGETS IN TIMES OF FISCAL CRISIS 14 (2003), *available at* <http://cosca.ncsc.dni.us/WhitePapers/BudgetWhitePaper.pdf> (courts must guard against the perception that they are responsible for funding themselves) [hereinafter COSCA Position Paper].
- 221 See Conference of State Court Administrators, Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges, and a National Survey of Practice 6 (1986), *available at* <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/financial&CISOPTR=81> (noting that the complexity of fees and surcharges imposed in confusing to court personnel and requires the maintenance of complex accounting systems); Robert Tobin, National Center for State Courts, *Funding the State Courts: Issues and Approaches* 50 (1996), *available at* <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/financial&CISOPTR=5> (stating that "[i]t is beyond dispute that [the concept of self-supporting courts] is not consistent with judicial ethics or the demands of due process")
- 222 *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038, 1042 (La. 1997) (striking down three dollar filing fee imposed in criminal and civil cases to fund domestic violence programs).
- 223 See *State v. Lanclos*, 980 So.2d 643 (La. 2008) (striking down five dollar traffic-violation fee that went to police as "a tax to be levied improperly through the judicial system" because connection between law enforcement and court system was too attenuated).
- 224 See Leslie Eaton, *Judge Steps in for Poor Inmates Without Justice Since Hurricane*, N.Y.TIMES (May 23, 2006), *available at* <http://www.nytimes.com/2006/05/23/us/23court.html?scp=1&sq=poor%20inmates%20without%20justice%20since&st=cse..>
- 225 Paul Purpura, *Cupboard Bare for Poor's Legal Aid*, TIMES PICAYUNE, Nov. 2, 2005, at B-3, *available at* <http://www.nola.com/katrina/pages/110205/1102B03.pdf>.
- 226 See, e.g., Eaton, *supra* note 224; Peter Whoriskey, *In New Orleans, Justice on Trial: Katrina Strains Public Defender's Office*, WASH. POST (Apr. 15, 2006).
- 227 See Eaton, *supra* note 224.

- 228 Alabama: Probation officers are involved in setting up payment plans Telephone Interview with Robert Oakes, Assistant Executive Director, Alabama Board of Pardons and Parole (November 2, 2009). Arizona: Ariz. Rev. Stat. § 31-466(A) (parole or probation officer is required to monitor the collection of supervision fees). California: Telephone Interview with Phil Dube, Assistant Public Defender, Los Angeles County Public Defender (Nov. 18, 2009) (probation department is involved in dunning defendants into paying costs). Telephone Interview with Gary Gibson, Deputy Public Defender, San Diego Public Defender (Dec. 2, 2009) (Probation officers are the main interface in collections and judges are not involved in the process). Florida: If the sentencing court or Parole Commission has ordered a specific monthly payment amount, and the probationer fails to make that monthly payment, the probation officer must report the failure to pay to the court or commission. E-mail from Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. to Rebekah Diller, Brennan Center (Jan. 14, 2008). Georgia: Depending on what the judge orders, defendants make payments either to the clerk of the court or to the probation office. *See* Ga. Code Ann., § 42-8-34.1(f) (stating that the sentencing judge has discretion to order payments made either to the clerk of the court or the probation office). In either case, the probation officer oversees collection enforcement, because payment is a condition of probation. Telephone interview with Claudia Saari, Interim Circuit Public Defender, DeKalb County, Georgia (Oct. 23, 2009); Telephone interview with Peter Wilson, Fiscal Technician in the Cobb County Clerk of Superior Court Office (Oct. 9, 2009). Illinois: Probation officers work out payment plans. Telephone Interview with Lester Finkle, Assistant Public Defender, Cook County (Oct. 30, 2009). Louisiana: Probation officers and parole agencies are involved in collecting probation/parole related fees and fines. Telephone Interview with Collections Department, New Orleans Criminal Court (Aug. 11, 2009). Missouri: Mo. Code Regs. Ann. tit. 14, § 80-5.010(1)(I) (process for sanctions for nonpayment includes reminder from supervising officer, submission of violation report). Michigan: Phone Interview with Paula Taylor, Finance Director, 17th Circuit Court (Kent County, Michigan) (Dec. 21, 2009) (financial obligations are normally a condition of probation and probation officers monitor payments and report failures to pay.); Phone Interview with Judy Lockhart, Chief of Fiscal Services, Oakland County Executive (Dec. 21, 2009) (For those with probation, payment is a condition of probation, and the probation office monitors failure to pay and reports violations). New York: Probation agencies can be chosen by the courts to be the collection agency for the various financial obligations of defendants who are given sentences of probation. Telephone Interview with Jay L. Wilber, Public Defender, Broome County (Dec. 1, 2009). North Carolina: Telephone Interview with Matt Osborne, Associate Counsel, North Carolina Administrative Office of the Courts (Nov. 20, 2009) (Payment schedules are usually set up by the probation officer). Ohio: Probation officers warn persons under supervision who have not paid that arrest warrant will be issued if payment is not made within a certain number of days. Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009). Pennsylvania: 42 Pa. Cons. Stat. § 9728(a)(1) (“Except as provided in subsection (b)(5), all restitution, reparation, fees, costs, fines and penalties shall be collected by the county probation department or other agent designated by the county commissioners of the county with the approval of the president judge of the county for that purpose in any manner provided by law.”). Texas: Carl Reynolds et al., Council of State Governments Justice Center, Texas Office of Court Administration, *A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collection from People Convicted of Crimes: Interim Report* (2009), available at <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf>. (Probation officers are involved in collecting financial information from defendants, setting up payment plans, collecting payments, and administering progressive sanctions.) Virginia: Although probation officers do not have a formal role in the actual collection of fees, fines and restitution, they often assist in collection by threatening revocation, and much more rarely, actually initiating revocation proceedings for a failure to pay. Telephone interview with Kerry Rohr, Clerk, Bristol Circuit Court, Virginia (Dec. 28, 2009); Telephone interview with Diane Blackburn, Deputy Clerk, Buckingham Circuit Court, Virginia (Dec. 28, 2009); Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court, Virginia (Jan. 5, 2010).
- 229 *See, e.g.* Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts, Ohio (Nov. 2, 2009) (Probation officers warn persons under supervision who have not paid that arrest warrant will be issued if payment is not made within a certain number of days); S. CTR. FOR HUMAN RIGHTS, PROFITING FROM THE POOR: A REPORT ON PREDATORY PROBATION COMPANIES IN GEORGIA 2 (2008) (discussing how private probation companies assigned to supervise misdemeanors threaten imprisonment and use other bullying tactics in order to collect fees), available at http://www.schr.org/files/profit_from_poor.pdf.
- 230 Telephone interview with Walter Pulliam, Chief of Operations, Virginia Department of Corrections, Division of Community Corrections (Jan. 8, 2009).

- 231 *Id.*; Telephone interview with Richard Crossen, Virginia Department of Corrections, Community Corrections Manager (Jan. 12, 2009).
- 232 Telephone interview with Walter Pulliam, Chief of Operations, Virginia Department of Corrections, Division of Community Corrections (Jan. 8, 2009).

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