

# DOJ's "Dear Colleague" Letter on Fines & Fees

---

Guidance for Courts and a Roadmap for Litigation

Presented by: Joanna Weiss and Lisa Foster, Co-Executive Directors, Fines and Fees  
Justice Center



# Fines and Fees Justice Center

## Our Mission

The Fines and Fees Justice Center is catalyzing a movement to eliminate the fines and fees that distort justice. Our goal is to create a justice system that treats individuals fairly, ensures public safety and community prosperity, and is funded equitably. We work together with affected communities and justice system stakeholders to eliminate fees in the justice system, ensure that fines are equitably imposed and enforced, and end abusive collection practices.

Has anyone here ever  
received a traffic  
ticket?

# California Traffic

## Ticket

Base Fine	\$100
Penalty Assessment & Surcharge	\$310*
Court Operations Assessment	\$40
Criminal Conviction Assessment	\$35
Emergency Medical Air Transp. Penalty	\$4
Night Court Fee	\$1

**Total: \$490**

(NAME OF AGENCY AND JURISDICTION)		<input type="checkbox"/> MISDEMEANOR		(Citation No.)
<b>NOTICE TO APPEAR</b>		<input type="checkbox"/> Traffic <input type="checkbox"/> Nontraffic		
Date of Violation	Time	<input type="checkbox"/> AM <input type="checkbox"/> PM	Day of Week	Case No.
		<b>SMTWFS</b>		
Name (First, Middle, Last)		<input type="checkbox"/> Owner's Responsibility (Veh. Code, § 40001)		
Address				
City	State/Country	ZIP Code	E-mail Address	
Driver Lic. No.	State	Class	Commercial <input type="checkbox"/> Yes <input type="checkbox"/> No	Apt. Birth Date
Sex	Hair	Eyes	Height	Weight
				Race
Veh. Lic. No. or VIN		State	Reg. MO/YR	<input type="checkbox"/> JUVENILE (Phone No.)
Yr. of Veh.	Make	Model	Body Style	Color
Evidence of Financial Responsibility		CHP/IDOT/PUD/IGCC		
Registered Owner or Lessee		<input type="checkbox"/> Same as Driver		
Address		<input type="checkbox"/> Same as Driver		
City	State	ZIP Code		
Correctable Violation (Veh. Code, § 40810)	<input type="checkbox"/> Booking Required (see reverse)	Misdemeanor or Infraction (Circle)		
Yes No Code and Section	Description			
<input type="checkbox"/> <input type="checkbox"/>		M I		
<input type="checkbox"/> <input type="checkbox"/>		M I		
<input type="checkbox"/> <input type="checkbox"/>		M I		
<input type="checkbox"/> <input type="checkbox"/>		M I		
Speed Approx.	P.P./Max Spd.	Veh. Lmt.	Safe	Radar
				<input type="checkbox"/> Continuation Form Issued
Location of Violation(s)		City/County of Occurrence		
Comments (Weather, Road & Traffic Conditions)		<input type="checkbox"/> Accident		
<input type="checkbox"/> Violations not committed in my presence, declared on information and belief.				
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.				
Executed at (place)		Violation Location		
Dec. Date	Arresting or Citing Officer	Serial No.	Dates Off	
Dec. Date	Name of Arresting Officer, if different from Citing Officer	Serial No.	Dates Off	
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW.				
X Signature				
WHEN:	ON OR BEFORE THIS DATE:	Time:	<input type="checkbox"/> AM <input type="checkbox"/> PM	
			<input type="checkbox"/> AM <input type="checkbox"/> PM	
WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE.				
WHERE: (Name of court(s))				
(Section(s) or division(s), room no(s))				
(Street address(es))				
(Phone No.)				
<input type="checkbox"/> To be notified <input type="checkbox"/> You may arrange with the clerk to appear at a night session of the court.				
FPO Barcode (USS Code 39)				DEFENDANT COPY
Judicial Council of California Form				SEE REVERSE
Rev. 06-26-15 (Veh. Code, §§ 40500(b), 40513(b), 40522, 40600; Pen. Code, § 853.9)				TR-130

# What's the difference between a fine and a fee?

## FINES

Monetary sanctions imposed as punishment for violating the law – either criminal or civil.

### Examples:

*Fines exist for parking violations, littering, traffic offenses, truancy, sleeping on a park bench, walking dog without a license, cracked windshield etc.,*

## FEES

Costs, assessments, and/or surcharge imposed to access services or fund the justice system or other government services.

### Examples:

*Probation Fees, Programming Fees, Counsel Fees, Drug Testing Fees, Civil Assessment Fees, Electronic Monitoring Fees, Warrant Fees, Phone Call Fees etc.,*

# Ferguson, MO

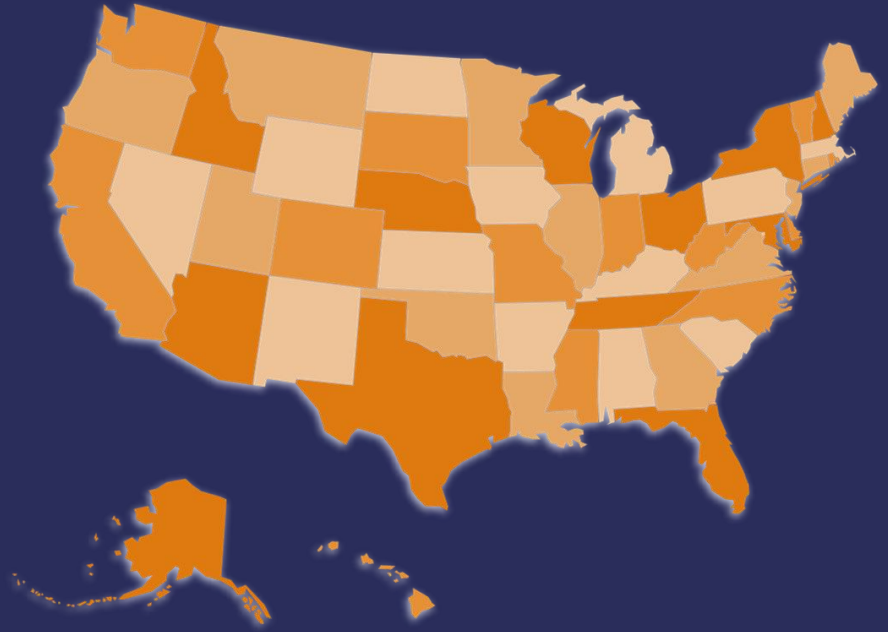
- City planned to collect over 23% of revenue through fines and fees in 2015.
- Issued 23,000 warrants in a city of 21,000 residents.
- Police engaged in racially discriminatory policing to increase revenue through fines and fees.



# Sample of Fine Costs in Ferguson

Offense	Cost of Fine
Allowing high weeds or grass to grow on your lawn	\$531
Jaywalking	\$302
Disturbing the peace	\$427

States, cities,  
small towns  
—  
everywhere.



# Jurisdictions with high reliance on fines and fees

In FY 2017-2018:  
**600**

**JURISDICTIONS**  
In 600 jurisdictions, fines account for **over 10% of general revenues**

**284**

**JURISDICTIONS**  
In 284 of those 600 jurisdictions, fines account for **over 20% of revenue.**



Source: *Addicted to Fines, Governing, 2017-2018 data*

# Where are fees imposed?

## **MULTIPLE TOUCH POINTS →**

**Added at every stage of the justice system**

## **WITH OR WITHOUT CONVICTION →**

**Imposed regardless of guilt or innocence**

## **STATE AND LOCAL →**

**Types and amounts vary by state and locality**



# Juvenile Fees

- Fall disproportionately on youth of color & their families
- Associated with higher recidivism
- Debt may follow children into adulthood

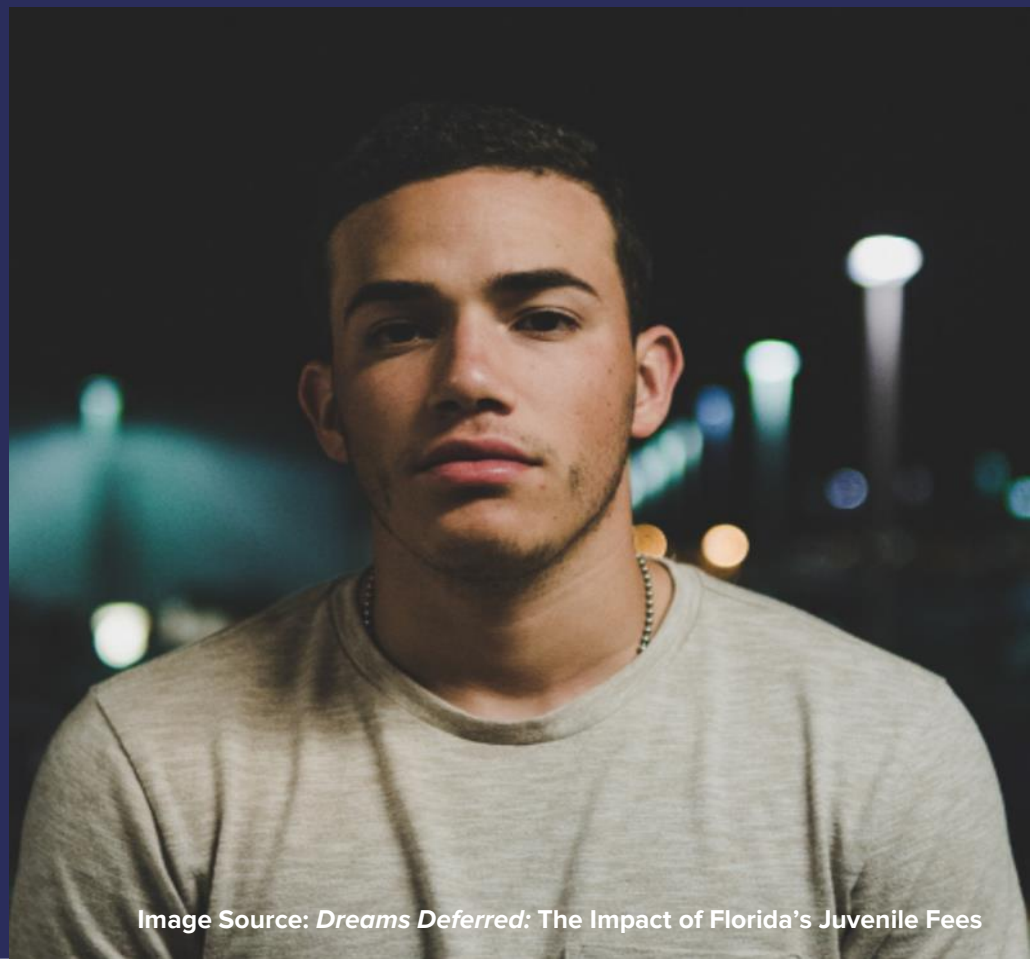
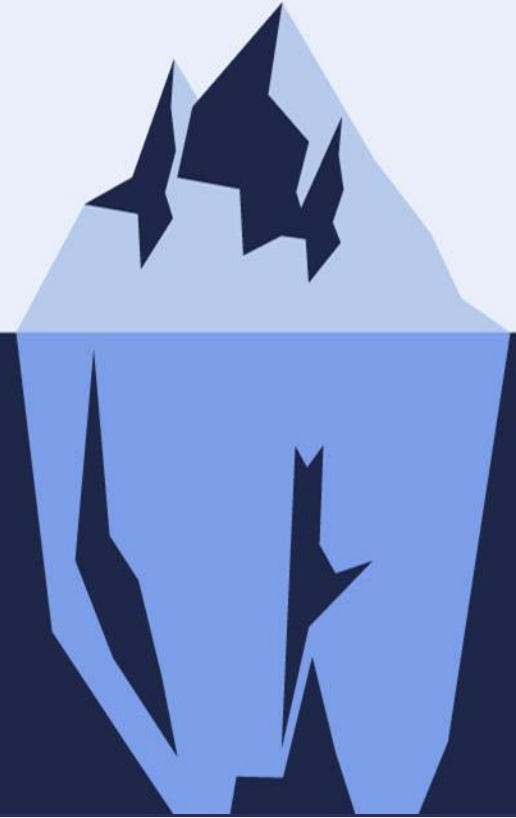


Image Source: *Dreams Deferred: The Impact of Florida's Juvenile Fees*

We can document that at least  
**\$27.6 billion**  
of fines and fees is owed  
across the nation.

**The rest is unknown.**



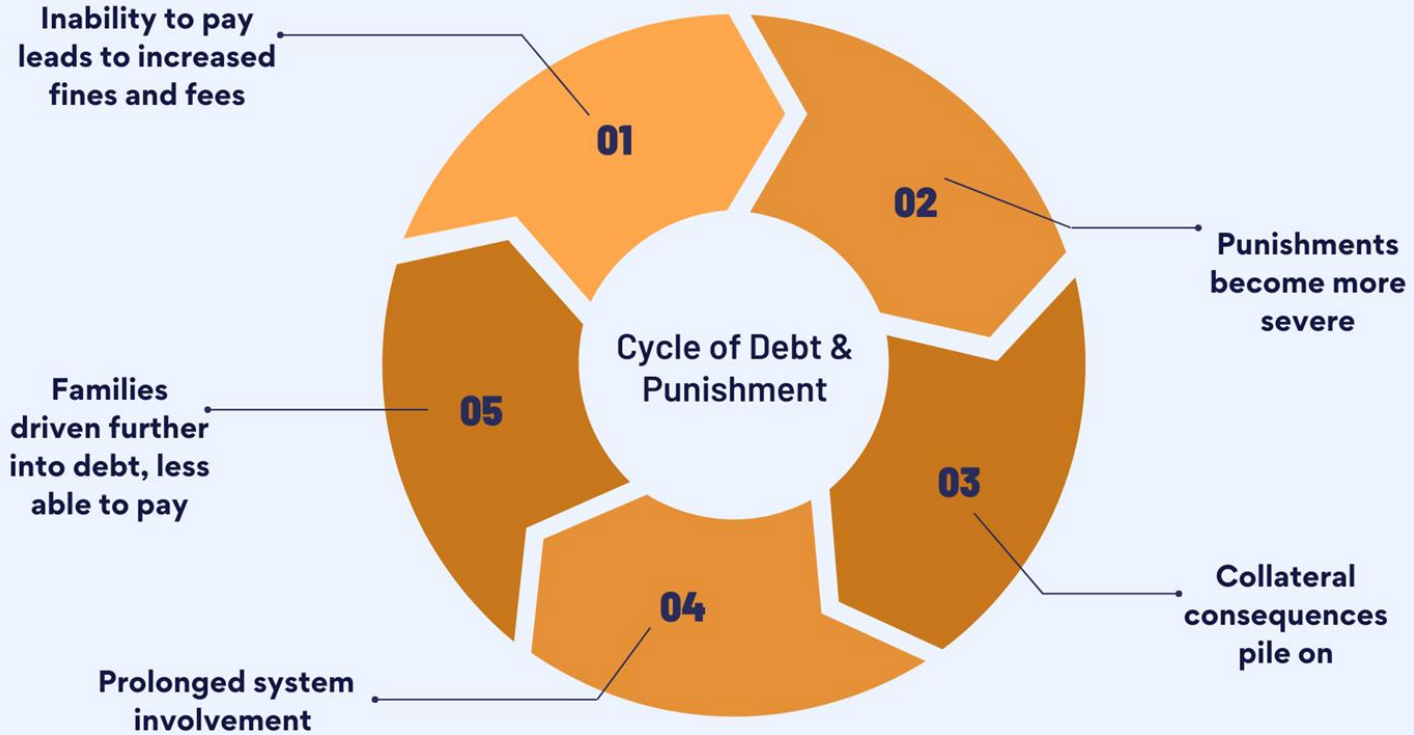
# Fines and fees revenue makes budgets dependent on crime

*“The policy subconsciously hopes for more crime. A good year in raising administrative assessment fees is a year when the crime rate goes up; a bad year is when the crime rate goes down.*

*Success in raising administrative assessment fees depends in large part on our failure to prevent crime.”*

- Nevada Judges Association President, Stephen Dahl

What happens when you  
can't afford to pay a fine  
or fee?



## The impacts of fines and fees are felt nationwide:

1 in 3 Americans have been directly impacted by fines or fees related to traffic, criminal, juvenile, or municipal court in the past ten years.



## People ordered to pay fines and fees experience severe, destabilizing impacts:



reported that court debt affected their daily lives



parents had to cut back on at least one essential daily need



of impacted people had to cut back on two or more essentials



of impacted people had challenges simply obtaining food



reported housing hardship

*Source: Debt Sentence: How Fines and Fees Hurt Working Families, 2023*



Estimated  
**17M**

Number of households with children that likely experienced shortfalls in food, housing, healthcare, or other essentials because a parent was saddled with court debt.

*Source: Debt Sentence: How Fines and Fees Hurt Working Families, 2023*

# More key findings

There is a shocking lack of access to payment plans, bill notices, and counsel:



Only one third reported having an attorney representing them at any point in the court or administrative process in which fines and fees were imposed.



Only a quarter of people receiving fines and fees reported being offered a payment plan as a way of paying in more affordable installments.



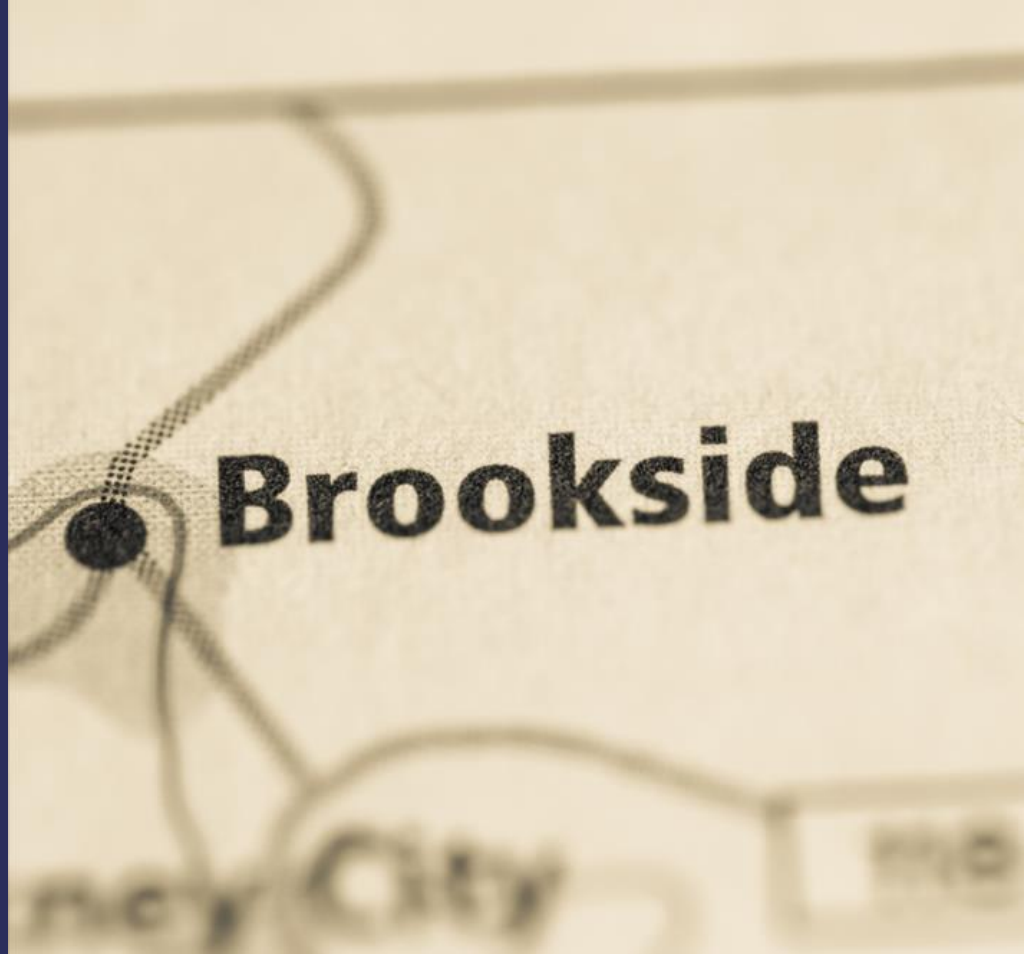
Nearly 1 out of every 5 people reported they never received clear notice explaining why they owed fines and fees, and 22% did not know how to pay.

*Source: Debt Sentence: How Fines and Fees Hurt Working Families, 2023*

# Brookside, AL

- **Increased fines and fees revenue by 640% from 2018-2020**
- **By 2020, over 49% of the town's revenue came from fines, fees and forfeitures**
- **Made more misdemeanor arrests than it has residents**

*Source: "Police in this tiny Alabama town suck drivers into legal 'black hole'", John Archibald, AL.com*



## Fines and fees disproportionately impact communities of color

- People living in poor areas are also those most impacted by fines and fees
- Major racial disparities exist in traffic stops, citations, and arrests
- Wealth is extracted from entire families, especially women

*Source: Driving While Black and Latinx: Stops, Fines, Fees, and Unjust Debts, 2020; Who Pays? Trust Cost of Incarceration of Families, 2015*

# The Department of Justice “Dear Colleague” Letter

# The History of DOJ's Engagement with Fines and Fees

- **Ferguson Civil Rights Investigation and Report**
- **Convenings**
- **First Dear Colleague Letter - March 2016**
- **Juvenile Advisory - January 2017**
  - Attorney General Sessions Revoked both in Dec. 2017, together with 23 other advisories and guidance.
- **April 2023 - Revised Dear Colleague Letter**

# What Does the Dear Colleague Letter Cover?

- General Observations About Fines and Fees
- Fine and Fee Practices that Implicate the US (and potentially a State) Constitution
- Fine and Fee Practices that May Violate Federal Law
- Fine and Fee Policies the Department Recommends

# General Observations

- Imposing and enforcing fines and fees on individuals who cannot afford to pay them has been shown to **cause profound harm.**
- The detrimental effects of unjust fines and fees **fall disproportionately on low-income communities and people of color.**
- To the extent that fine and fee practices are geared toward raising revenue and not toward addressing public safety, **they can erode trust in the justice system.**
- The assessment of unaffordable fines and fees **often does not achieve its stated purposes:**
  - Specifically in that regard, the **DOJ advises courts to be looking for alternative funding sources** rather than relying on fines and fees.

# Excessive Fine Clause - 8th Amendment

*Timbs v. Indiana*, 139 S.Ct. 682 (2019): Is the Excessive Fines Clause incorporated by the 14th Amendment and applies to the states?

- **Unanimously - Yes.** Fundamental to our scheme of ordered liberty and deeply rooted in our history and tradition.
- **Important dicta:** Magna Carta required that economic sanctions “be proportioned to the wrong” and no larger than “his circumstances or personal estate will bear . . . .”). Quoting Blackstone

# Excessive Fine Clause - 8th Amendment

***Timbs v. Indiana*, 139 S.Ct. 682 (2019): Is the Excessive Fines Clause incorporated by the 14th Amendment and applies to the states.**

- **Even more important dicta:** Even absent a political motive, fines may be employed “in a measure out of accord with the penal goals of retribution and deterrence,” for “fines are a source of revenue,” while other forms of punishment “cost a State money.” *Harmelin v. Michigan*, 501 U. S. 957, 979, n. 9 (1991) (opinion of Scalia, J.) (“it makes sense to scrutinize governmental action more closely when the State stands to benefit”). This concern is scarcely hypothetical. See Brief for American Civil Liberties Union et al. as Amici Curiae 7 (“Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue.”).

# Excessive Fine Clause - 8th Amendment

- **Remand to Indiana Supreme Court:**
  - 2-part test - Fines must be proportionate to the offense **and** to an individual's economic circumstances.
    - Ditto Washington State, Colorado and Philadelphia Supreme Courts
    - “[T]he history of the clause and the reasoning of the Supreme Court strongly suggest that considering ability to pay is constitutionally required.” *Seattle v. Long*, 493 P.3d 94, 112 (Wash. 2021)
- **Applies to Monetary Sanctions that are at least in part punitive**

## Excessive Fines Clause: What's Ripe for Challenge?

- Mandatory minimum fines
- Mandatory fees
- Fines and fees assessed against very low income people

*Defense lawyers need to make the argument and take up the case if they lose.*

# The Fourteenth Amendment

The Fourteenth Amendment prohibits incarceration for nonpayment of fines and fees without first conducting an ability-to-pay determination and establishing that the failure to pay is willful.

- **The due process and equal protection principles of the Fourteenth Amendment prohibit “punishing a person for his poverty.”** *Bearden v. Georgia*, 461 U.S. 660, 671 (1983).
  - The prohibition applies to contempt. *Beck v. Elmore Cnty Magistrate Ct.*, 489 P.3d 820,836 (Idaho 2021)
- **The prohibition applies beyond incarceration to other collateral consequences that implicate liberty or property interests.**
  - Non-carceral penalties “may bear as heavily on an indigent accused as forced confinement. *Mayer v. Chicago*, 404 U.S. 189, 197 (1971) (stressing that “[t]he collateral consequences of conviction may be even more serious”).
    - Extended terms of probation
    - Diversion
    - Driver’s License Suspensions

# DOJ's Guidance for Ability-to-Pay

## Determinations

- **“State and local courts have an affirmative duty to determine an individual’s ability to pay...”**
  - Given the command of the excessive fines clause — that needs to be done at sentencing.
- **Youth should be presumed indigent**
- **Ability-to-pay determinations should be made “even if a defendant does not specifically raise the issue.”** In other words, shouldn't make a defendant bring a motion or have to ask the judge to decide their ability to pay.

# DOJ's Guidance for Ability-to-Pay Determinations

- **The focus of an ability-to-pay determination should be on an individual's income, not how they spend their money.**
- **Jurisdictions will benefit from using presumptions of indigency for certain classes of defendants** – those eligible for public benefits, unhoused people, people are serving a term of incarceration, people below a certain income level.

# What can courts do with ATP determinations?

- Reduce and waive fines and fees
- Payment plans
- Alternative sanctions

## What's Ripe for Challenge?

- Judges making determinations without standards
- Determination not made at sentencing

## The Fourteenth Amendment Requires Consideration of Alternatives Before Incarcerating People Unable to Pay Fines and Fees.

**“It is the position of the United States that imposing certain adverse consequences for failure to pay an unaffordable fine or fee, where alternative approaches could serve the government’s interests, violate the Fourteenth Amendment.”**

- Waive or Reduce Court Debt,
- Non-monetary sanctions like traffic school
- Community Service, Broadly Defined.
- Payment Plans

# 14th Amendment prohibition on automatic incarceration

**What can courts do? What's ripe for challenge?**

- Probation violation for non-payment
- Automatic warrants for non-payment

# Conflicts of Interest — “The Right to an Impartial and Disinterested Tribunal”

**The Due Process Clause of the Fourteenth Amendment prohibits the imposition of fines and fees that create conflicts of interest.**

- 1927: *Tumey v. Ohio*, 273 U.S. 510, the U.S. Supreme Court held that a defendant is denied due process if the judge deciding the case has a “direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.” *Id.* at 523. Based on that standard, the Court in *Tumey* held that a mayor who also served as a judge was not a neutral decision maker because fines that he imposed supplemented his salary and generated revenue for his town.
- 1972: *Ward v. Village of Monroeville*, 409 U.S. 57, the Court held that a mayor who also served as judge was not a neutral decision maker because fines and fees provided a substantial portion of the municipality’s funds.

## Cain and Caliste - 2 Fifth Circuit Opinions - Different Panels, Same Holding

- ***Cain v. White*, 937 F.3d 446, 451 (5th Cir. 2019)**, the court held that parish judges were not neutral decision makers because they oversaw collection of fines and fees that funded a substantial portion of a judicial expense fund they administered and that supported the salaries of judicial staff and other court expenses.
- ***Caliste v. Cantrell*, 937 F.3d 525, 531-32 (5th Cir. 2019)**, the court held that a judge violated the defendant's due process right to a neutral decision maker by both setting bail and administering a similar judicial expense fund financed in substantial part by fees assessed on commercial security bonds typically used by the defendants to make bail.

# Cain and Caliste

**“The Department has taken the position that due process protections also apply when the disposition of fines creates a personal interest in the outcome of an enforcement proceeding for other officials who enforce the law, including police, prosecutors and probation officers. “**

# Conflicts of Interest: Ripe for challenge

***“[c]ourts, prosecutors, and police should be driven by justice—not revenue.”***— U.S. Statement of Interest, *Coleman v. Town of Brookside*

- **Private Probation**

- Harper v. Pro. Prob. Servs. Inc., 11th Cir.
- McNeil v. Cmty. Prob. Servs., LLC, TN

- **Policing practices**

- Automatic License Plate Readers, Freeport LI

## The 14th Amendment prohibits conditioning access to the judicial process to the payment of fees by people who can't afford to pay

- M.L.B. v. S.L.J., 519 U.S. 102, 119-24 (1996). Mississippi statutes that conditioned an indigent mother's right to appeal a judgment terminating her parental rights on prepayment of costs violated equal protection and due process.
- Boddie v. Connecticut, 401 U.S. 371, 374 (1971) Due process bars states from conditioning access to compulsory judicial process on the payment of court fees by those unable to pay.
- Griffin v. Illinois, 351 U.S. 12, 18 (1956) "There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance."
- Tucker v. City of Montgomery Bd. of Comm'rs, 410 F. Supp. 494, 502 (M.D. Ala. 1976) Conditioning of an appeal on payment of a bond violates indigent prisoners' equal protection rights and "has no place in our heritage of Equal Justice Under Law" (quoting Burns v. Ohio, 360 U.S. 252, 258 (1959))

# Conditioning Access to the Judicial Process

## What's ripe for challenge?

- **Nevada Bond**
- **Diversion Fees**
  - Briggs v. Montgomery, AZ
  - Buffalo DWI Diversion

# Right to counsel and notice

- The 6th Amendment requires counsel in a criminal proceeding that MAY result in incarceration.
- The 14th Amendment requires counsel for youth.

## **Notice:**

- DOJ recommends jurisdictions ensure that citations and summonses are actually received, AND
- Adequately inform people of the precise charges against them, the amount they owe other possible penalties, date of their court hearing, availability of payment plans, community service, court rules and procedures, and their rights as litigants.

# Counsel

## What's Ripe for Challenge?

- **Defender Fees**
  - Charged in 39 states
  - Fees can add up to hundreds, even thousands of dollars
- **Defendants may waive their constitutional right to an attorney**
- **NJDC - kids waiving counsel because parents can't pay**



## The 14th Amendment prohibits on intentional discrimination, but federal law prohibits DOJ grantees from practices that have a discriminatory impact

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq. prohibit race, color, and national origin discrimination in the delivery of services or benefits by recipients of federal financial assistance.
- Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 34 U.S.C. § 10228(c)(1) prohibits discrimination based on race, color, national origin, religion, or sex.
- Both “bar recipients of federal financial assistance, including court systems, from implementing otherwise neutral policies and practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against individuals on the basis of race, color, or national origin.”

# Office of Justice Programs, Office of Civil Rights

- **Mandate to Investigate Discriminatory Impacts of Recipients of OJP Funds**
- **Complaint Procedure**
- **Sacramento County Juvenile Fees**

## Discriminatory Impact — What can courts do?

### **Courts and Justice system actors:**

- Assess data on impact of cases with fines and fees

### **Ripe for challenge: Follow the Money**

- New York Urban League v. State of New York, Transportation Funding

# Successful Fines and Fees

## Litigation

- **Webb v. City of Maplewood**
  - Debtors Prison - \$3.25 million settlement
- **Nelson v. Colorado, 581 U.S. \_\_\_\_ (2017)**
  - State must refund conviction fees after successful appeal.
- **Georgia State Conference of the NAACP v. LaGrange, GA**
  - Municipal utility and court debt
- **People v. Cunningham, 852 N.W. 2d 118 (2014)**
  - Court fees must be authorized by statute
  - But see *Blackjack Bail Bonds v. City of Las Vegas Muni. Ct.*, 116 Nev. 1213 (2000)
    - Courts have inherent authority to impose costs

# Unsuccessful fines and fees litigation

- **Brucker v. City of Doraville**
  - Conflict of Interest, GA
- **Robinson v. Purkey**
  - Drivers License Suspensions and Revocations, TN
- **Jones v. DiSantis,**
  - Voting rights, FL

Where can you learn  
more?

Learn more:

## FFJC's Clearinghouse

**Digital library with 400+ article summaries of research, litigation, policy guidance, media and more related to fines and fees reform.**

**Get started: [ffjc.us/clearinghouse](https://ffjc.us/clearinghouse)**



## RESOURCE

# HIGHLIGHTS: Research & Policy Guides

- **Fee Elimination Guidance**
- **Ability-to-Pay Guidance**
- **50-State Fee Surveys**

## Campaign

## Websites

- [ffjc.us](http://ffjc.us)
- [endjusticefees.org](http://endjusticefees.org)
- [freetodrive.org](http://freetodrive.org)



Get in touch

Lisa Foster: [lfoster@ffjc.us](mailto:lfoster@ffjc.us)

Joanna Weiss:

[jweiss@ffjc.us](mailto:jweiss@ffjc.us)