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at New York University School of Law



CRIMINAL JUSTICE DEBT

A TOOLKIT FOR ACTION

By Roopal Patel and Meghna Philip

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ABOUT THE AUTHORS

Roopal Patel joined the Brennan Center as the Katz Fellow/Counsel in the Justice Program in September 2011. She attended NYU Law School where she was an Arthur Garfield Hays Fellow. She gained litigation experience in the Immigrant Rights Clinic while in law school. She has also interned at the American Civil Liberties Union, the Center for Constitutional Rights, the Brooklyn Family Defense Project, and the Department of Justice Civil Rights Division. She has done legal support work for a water rights movement in South Africa and a displaced people's movement in India. Prior to law school she worked as a community organizer in the South Bronx and has experience teaching students in prisons. She attended Harvard as an undergraduate.

Meghna Philip joined the Brennan Center in October 2011 as a Research Associate in the Justice Program. Prior to joining the Brennan Center, Meghna worked at the Vera Institute of Justice, analyzing national trends in prison and community corrections, and planning program alternatives for poor individuals saddled with criminal justice debt. She also worked on advocacy and research efforts to expand post-secondary educational opportunities for incarcerated people, at the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. Meghna graduated from Brown University in May 2011, where she coordinated student efforts to expand access to housing for low-income and homeless communities in Rhode Island.

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PROPOSED REFORMS

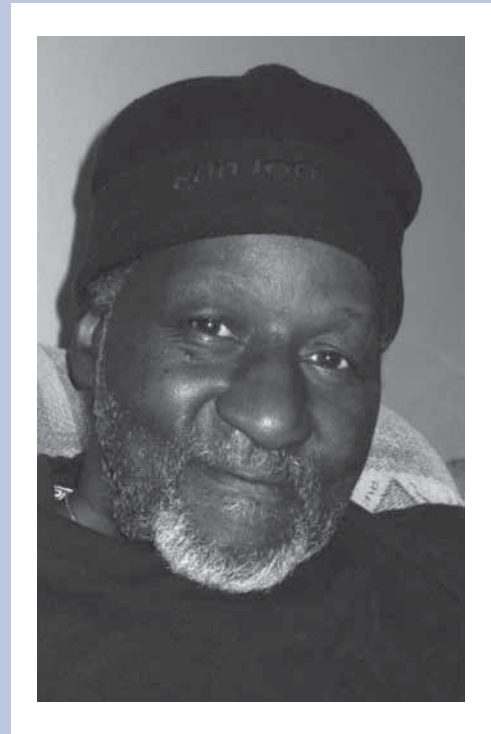


INTRODUCTION

In 2008, the Rhode Island Family Life Center conducted interviews of people managing court debt and facing debt-based incarceration. Harold Brooks, a 58-year-old veteran, was arrested and jailed for 10 days after falling behind on payments of court fines.¹ At the time, Mr. Brooks was receiving Supplemental Security Income disability payments because of cancer and heart problems. He had faced a long series of incarcerations over the course of more than three decades, due solely to his inability to keep up with criminal justice debt payments.

“My court fees started in the ‘70s, and to get rid of them took over 30 years,” Mr. Brooks said in an interview. “In my life, I’d say I was in prison for court fines more than five times... enough that when I get a court date for a court fine and I know that I haven’t got the funds to pay it, I get really shaky when it comes to that time.”²

Mr. Brooks’ problem is becoming disturbingly common. As states have become increasingly strapped for funds, some have looked to a most unlikely revenue source: the disproportionately poor people involved in the criminal justice system. Despite decades-old Supreme Court cases ruling that incarceration solely for debt is unconstitutional,³ a 2010 Brennan Center report, *Criminal Justice Debt: A Barrier to Reentry*, uncovered existing modern-day debtor’s prisons. Now, although some states are creating more fiscally-sound and fair policies, increasing numbers of states are creating new pathways to imprisonment based solely on criminal justice debt.⁴



Criminal justice fees, applied without consideration of a person’s ability to pay, create enormous costs for states, communities, and the individuals ensnared in the criminal justice system. In an increasing number of jurisdictions, people are faced with a complex and extensive array of fees at every stage of criminal processing: fees for public defenders, jail fees, prison fees, court administrative fees, prosecution fees, probation fees, and parole fees. Estimates are that at least 80 percent of people going through the criminal justice system are eligible for appointed counsel,⁵ indicating that the majority of the people in the criminal justice system have had a judicial determination of indigency. Poor to begin with, and often lacking even a high school diploma,⁶ it is difficult for people going through the criminal justice system to find the sort of employment that would enable them to re-pay their financial debt. Sociological studies have indicated that criminal justice fees and fines incentivize criminal behaviors as people try to meet payments amounts, and discourage people from contact with authorities, including obtaining necessary medical assistance and reporting to the police when they themselves are victimized.⁷

Criminal justice debt policies vary from state to state, but our research reveals common themes and trends. Many states are failing to consider financial, structural, and social costs as they create fees and enforce their collection. This limited perspective results in senseless policies that punish people for being poor, rather than generate revenue. Also, several practices may violate fundamental constitutional protections.

Regardless of jurisdictional variations, advocates face many similar challenges and would benefit from having tools to assist their work. Intelligent reform efforts, whether broad or incremental, should call for proof that creating more criminal justice debt will actually provide revenue and square with fundamental principles of fairness and justice.

The Brennan Center has identified five core recommendations for successful advocacy against the rise of modern day debtors' prisons:

1. Conduct Impact Analysis of Proposed and Existing Fees

Such studies can show lawmakers that the imposition and enforcement of fees and fines has both financial and social costs, and that these laws fail to generate revenue.

2. Create and Enforce Exemptions for Indigence

The most effective way to break the cycle of debt and poverty that criminal justice debt perpetuates is to create exemptions for indigent people and effectively enforce them.

3. Eliminate Unnecessary Interest, Late Fees, and Collateral Consequences

Where exemptions are not possible, other policies can reduce the onerous burden of debt. Eliminating interest and late fees makes debt more manageable. Collateral punishments, such as suspending driver's licenses, only make it more difficult for people to obtain the employment necessary to make payments.

4. End Incarceration and Supervision for Non-Willful Failure to Pay

Criminal justice debt ensures that people who are no threat to public safety remain enmeshed in the system. Often people facing the possibility of re-incarceration or further supervision have no right to counsel. Such practices raise constitutional questions, are costly to states, and decrease public safety as court and criminal justice resources are diverted.

5. Focus on Rehabilitation through Meaningful Workforce Development

Offering optional community service as a means for paying criminal justice debt has the potential to improve the long-term job prospects for those who enroll, improving reentry prospects and providing states with an alternative means to collect debt.

Criminal Justice Debt: A Barrier to Reentry proposed a number of reforms to criminal justice debt policies. Several of the Brennan Center's recommendations have been successfully implemented. Further, advocacy organizations around the country have successfully challenged shortsighted and unjust criminal justice debt practices.

This Toolkit examines the issues created by criminal justice debt collection policies and also profiles positive examples of reform efforts from around the country. These success stories will assist advocates as they decide upon their advocacy efforts. The Toolkit also provides statutory language, sample campaign pieces, and a step-by-step guide for a successful campaign. Since the intricacies of criminal justice debt differ from state to state, advocates should adapt models and initiatives to best fit their jurisdictions.



OVERVIEW: CRIMINAL JUSTICE DEBT

THE TRUE COSTS

More jurisdictions are adding user fees at every stage of a criminal proceeding. While the fees can be an easy way to score political points or to theoretically fill budget gaps, without proper oversight, criminal justice debt policies often do more harm than good.

In many states today, offenders now serve multiple sentences. People serve the criminal sentence handed down by a court. Afterwards, a person is confronted with a bewildering array of fees and fines they must pay to the state. People who fail to pay the state may be faced with another physical sentence. Or, as people struggle to make payments, they may suffer a host of collateral consequences that create barriers to reentry and raise the specter of reimprisonment.

Some jurisdictions have haphazardly created an interlocking system of fees that can combine to create insurmountable debt burdens. Florida has added more than 20 new fees since 1996.⁸ In 2009, the Council of State Governments Justice Center, a national nonprofit organization, partnered with the Texas Office of Court Administration to report on criminal justice debt collection practices.⁹ The report found that a “sprawling number of state and local fees and court costs that state law prescribes as a result of a criminal conviction amounts to a nearly incomprehensible package.”¹⁰ In 2009, North Carolina instituted late fees for failure to pay a fine, and added a surcharge for being placed on a payment plan.¹¹ Jurisdictions in at least nine states charge people *extra* fees for entering into payment plans, which are purportedly designed to make payments easier.¹²

Furthermore, policymakers often fail to acknowledge aspects of the criminal justice system that will make collection of criminal justice debt difficult, if not impossible. People going through the criminal justice system are often poor. After conviction, punitive laws regarding the collateral consequences of criminal convictions make it exceedingly difficult for people to find the means to satisfy their debts.

Large numbers of the people going through the criminal justice system are indigent. Estimates indicate that at least 80 percent of people charged with criminal offenses qualify for indigent defense.¹³ Every state has policies and laws that create collateral consequences of conviction, such as the loss of driver’s licenses or a professional license. These policies greatly restrict the ability of those convicted of crimes to find future employment. Many employers will not hire people with criminal records. Up to 60 percent of former inmates are unemployed one year after release.¹⁴ Criminal debt collection schemes do not take these realities into account, and therefore become counter-productive. Charging those who are unable to pay serves no purpose; persons unable to pay will not be any more able to pay simply because their debt has increased. Instead of raising revenues, these fees and fines may actually increase the costs for local governments, and increase the likelihood of recidivism.

A 2009 Council of State Governments Justice Center and Texas Office of Court Administration report on criminal justice debt collection found that a “sprawling number of state and local fees and court costs that state law prescribes as a result of a criminal conviction amounts to a nearly incomprehensible package.”

Fiscal Costs to the State

The assumption that court user fees provide a valuable revenue source ignores the vast expenditures incurred in attempts to collect fees, mostly from people unable to pay. Policymakers must also consider direct costs of collection, such as the salary and time for the clerks, probation officers, attorneys, and judges who will be involved in fee collection processes.¹⁵

For example, a state that revokes or fails to grant supervised release to someone who has not paid their criminal justice-related debt will often spend more money incarcerating that person than it could expect to collect if a criminal justice debt were paid in full. There are inmates in Pennsylvania who are eligible for release but are kept in prison based on their inability to pay a \$60 fee.¹⁶ The daily cost of confinement is nearly \$100 per day.¹⁷ In 2009, Mecklenburg County, North Carolina arrested 564 people because they fell behind on debt; the County jailed 246 debtors who did not pay for an average of 4 days.¹⁸ The county collected \$33,476 while the jail term itself cost \$40,000 — a loss for the county of \$6,524.¹⁹

The Burden on the Criminal Justice System

Turning court and correctional officials into collection agents also interferes with the proper administration of justice. Judges are no longer able to act as impartial adjudicators if they are forced to act as collections agents

Pennsylvania inmates who are eligible for release but remain in prison because of justice debt are charged \$60 a day. The daily cost of their confinement is nearly \$100 per day.

in the hopes of obtaining revenue for their own courts. Furthermore, even if courts are able to collect, such dependence is an unstable and a short-sighted means to fund an important public service. As crime rates fluctuate, perverse policy incentives could develop when there are fewer people going through criminal proceedings.

In some cases, criminal fees are used to support general revenue funds or treasuries unrelated to the administration of criminal law.²⁰ This undermines separation of powers, by forcing courts to act as fundraisers for other programs or agencies created by the legislature or executives.

Some states task probation and parole officers with acting as collections agents. They are responsible for monitoring payments, setting up payment plans, dunning persons under supervision, and taking punitive

actions such as reporting failures to pay. These are distractions from other far more important duties. Officers should be monitoring persons at risk of re-offending, and promoting public safety.

Social Costs

People jailed for failure to pay debt are torn away from their communities and families, making reintegration harder upon release. Jail time undermines other important obligations such as maintaining employment and making child support payments. Incarceration can also result in disruptions in medical treatments such as treatments for drug addictions. Loss of employment means a further loss of state tax revenue. Failure to meet such obligations can result in further criminal penalties.²¹

People who have probation extended for failure to pay face increased risk of incarceration for technical violations of probation. Such violations can result in a loss of public benefits, along with expensive and pointless re-incarceration. Under federal law, people who violate parole or probation are ineligible for Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program benefits (food stamps), low-income housing assistance, and Supplemental Security Income.²²

Criminal justice debt policies may also infringe on a person's right to vote. This prevents a person from taking on rights and duties of citizenship. Several states disenfranchise people with criminal convictions and will not restore voting rights until after criminal justice debt is satisfied.²³ But this policy fails to recognize that voting helps transform a former prisoner from an outsider into a participating member of the community. Law enforcement and reentry professionals recognize that creating community ties through participatory roles such as voting integrates an individual back into a society after a criminal conviction.

Research in Washington State showed that criminal justice debt caused poorer reentry outcomes, increased costs to counties and states for collection and re-incarceration, and lowered actual payments to the victims who are owed restitution.²⁴ Not a single policy goal used to justify criminal justice debt was met. In fact, the results were *contrary* to the policy goals.

Costs to Families

Policymakers often fail to account for the exorbitant financial and social costs of imposing criminal justice fees. Fees and fines associated with incarceration amount to a hidden regressive tax that disproportionately impacts the poor. Families shoulder these extra financial burdens while facing the reduced income inherent to having a family member incarcerated. Jail fees are often taken from inmate commissary accounts. Those accounts are usually funded by family members, who are often poor. When debt collection systems dock funds from an inmate's commissary account, usually the burden falls upon the inmate's family. The wife of an inmate at the Marin County Correctional Institute in Florida, criticizing jail-stay fees, told a reporter, "It's like [families] are a private ATM for the corrections department, and they know there's nothing we can do about it."²⁵

"I have scratched my head more than once trying to determine what public good is promoted by a statute that essentially authorized the seizure of 35 percent of every cent that a prison inmate's spouse sends to the inmate... I feel comfortable believing that many, if not most, of the spouses of inmates are low income individuals... These spouses, who are mostly women, must then dig deep again if they are to offset the State's cut. In doing so they undoubtedly deprive themselves of funds that could be devoted to the purchase of necessities for them and their children. Such a scheme strikes me as not only unwise but unfair."

—Washington State Supreme Court Chief Justice Gerry Alexander²⁶





DEBTORS' PRISONS: CONSTITUTIONAL VIOLATIONS

Many criminal justice debt-collection practices employed today violate the Constitution. The Supreme Court has made clear that incarceration can only be used to collect criminal justice debt when a person has the ability to make payments but refuses to do so. In *Williams v. Illinois* (1970), the Supreme Court ruled that extending a maximum prison term because a person is too poor to pay violates equal protection under the Fourteenth Amendment. In *Tate v. Short* (1971), the Supreme Court held that courts cannot automatically convert an indigent person's unpaid fines into a jail sentence because it violates the Fourteenth Amendment. In *Bearden v. Georgia* (1983), the Supreme Court ruled that the Fourteenth Amendment bars courts from revoking probation for failure to pay a fine without first inquiring into a person's ability to pay and considering adequate alternatives to imprisonment.

Right to an Inquiry into Ability to Pay

The *Bearden* ruling established the constitutional right to a judicial inquiry into ability to pay. Yet, despite this, states' imposition of fees and fines is often capricious. Courts often fail to make a comprehensive inquiry into a person's ability to pay before sending people to a modern-day debtors' prison. A public defender in Illinois observed a judge who simply asked people who came before him if they smoked. If the person was a smoker and had paid nothing since the last court date, the judge found willful nonpayment and put them in jail without any further inquiry.²⁷ A judge in Michigan presumed that if someone had cable television service, they were able to pay.²⁸ Most egregiously, in certain states, such as California and Missouri,²⁹ judges strong-arm poor people into a Hobson's choice of incarceration to satisfy debt they cannot pay: defendants are allowed to "request" incarceration to satisfy their debt.

Right to Counsel

Some practices related to the imposition and collection of criminal justice debt also undermine the right to counsel. Public defender fees discourage people from seeking representation, eroding the principles of *Gideon v. Wainwright* and decreasing access to fair trials. Then, after the criminal case is concluded, some states do not allow a person a right to counsel in fee collection proceedings, even though the proceeding may result in incarceration. For example, Florida,³⁰ Georgia,³¹ and Ohio³² refuse to recognize a right to counsel in civil proceedings that could result in incarceration (although lower courts in Ohio are divided about whether this continues to be good law³³).

In response to these issues, advocates have been challenging wrongful criminal justice debt policies. In *Washington v. Stone*, Mr. Stone was able to obtain counsel to assist in his appeal from a jail sentence imposed for failure to pay criminal justice debt. Mr. Stone did not have counsel at the initial proceeding. In that case, the Washington State Court of Appeals affirmed a person's right to counsel at enforcement proceedings for payment obligations.³⁴ The court found that a person has a right to counsel at "ability-to-pay" proceedings where incarceration may result. The court further held Mr. Stone's due process rights were violated when he was charged with jail time without a finding as to his ability to pay. In Hamilton County, Ohio, civil rights attorneys won a ruling where a court struck down a practice of confiscating any "cash-on-hand" from arrested individuals to pay up to \$30 for a booking fee as a violation of due process.³⁵



RECOMMENDED REFORMS

Key Reform 1: Conduct Impact Analysis Of Proposed And Existing Fees

In their study of criminal justice debt, the Rhode Island Family Life Center interviewed Ricardo Graham. In 2007, Mr. Graham was incarcerated for 40 days because he was unable to keep up with payments on his \$745 court debt. His incarceration cost the state of Rhode Island approximately \$4,000. As a result of his imprisonment, Mr. Graham lost his job, and fell even further behind in his payments.³⁶

More states are turning to evidence-based approaches to determine whether imposing fees actually increases revenue or lowers recidivism. Evidence-based practices significantly lower the costs borne by the state, and benefit the people involved in the system, making those practices a popular, bipartisan approach for criminal justice reform.

Advocacy organizations can conduct their own studies to determine the impact of a criminal justice fee. They can also lobby state legislatures to form committees that comprehensively study the financial and social costs of imposing fees and fines. A thorough accounting will demonstrate whether a policy is fiscally sound, or merely a hypothetical revenue source that will actually cost more to implement than it generates in revenue.

Success Story: Massachusetts

The experience of the Massachusetts Special Commission to Study the Feasibility of Establishing Inmate Fees demonstrates how an impact analysis can reveal the negative fiscal impact criminal justice fees have on states, and the anti-rehabilitative impact they have on people. From 2002-2004, Bristol County, Massachusetts charged inmates \$5 in daily jail stay fees, plus additional fees for medical care, haircuts, and other expenses. This program was halted in 2004 when a class action lawsuit filed by prisoners reached the Massachusetts Supreme Court. The court ruled that a fee system could only be imposed by the State legislature.³⁷ In June 2010, the Massachusetts state legislature created a special seven-member commission to study the impact of a proposed jail fee; they released their report in 2011. The commission conducted a thorough impact analysis, considering such factors as: the revenue that could be generated from the fees; the cost of administering the fees; the impact of the fees on inmates; methods and sources of collecting the fees; the impact of the fees on prisoner work programs; and waiver of the fees for indigent people.³⁸ The bipartisan commission represented a variety of perspectives, including input from the Department of Public Safety, the Sheriffs' Association, Prisoners' Legal Services, and the Correctional System Union.³⁹

The Commission conducted a literature review, interviews with representatives from the New York and Pennsylvania Departments of Correction (DOC) regarding their systems of inmate fees, and two surveys administered in Massachusetts. This comprehensive inquiry provided insights that a simple profit-centric analysis might have ignored. The first survey demonstrated that 10 counties lacked systems for tracking inmates who owed debt upon release.⁴⁰

Recognizing that any reasonable fee system must adjust for indigence, advisors from New York's DOC recommended that the costs of staffing persons or developing programs to track inmate accounts and debts should be calculated when considering implementation of the new jail fee system in Massachusetts.⁴¹ The Commission concluded that establishing additional inmate fees would create a "host of negative and unintended consequences."⁴² The Commission predicted that additional fees would increase the number of inmates qualifying as indigent, increase the financial burdens on inmates and their families, and jeopardize successful reentry.⁴³ The Commission believed that imposing a fee would increase costs to taxpayers and make recidivism more likely.⁴⁴ Following the report of the

Special Commission, Massachusetts did not adopt a state-wide jail fee.

Massachusetts is just one example. Other states have also recognized the importance of evidence-based practices. In 2011, Kentucky collaborated with the Pew Center on the States to implement reforms such as strengthening parole and probation programs in order to reduce recidivism and control costs based on evidence and focused research.⁴⁵ South Carolina passed an omnibus criminal justice reform bill requiring that fiscal impact statements accompany proposed changes to sentencing.⁴⁶ Such actions are promising in their application of cost-benefit analysis to review systems of criminal justice debt collection.

Success Story: Rhode Island

Advocacy organizations such as the Rhode Island Family Life Center (FLC) have also spearheaded impact analysis studies. In 2008, FLC conducted a three-year, in-depth study of court debt and related incarceration in Rhode Island. The results of the study were striking.

FLC found that court debt was the most common reason people in Rhode Island were jailed. It accounted for 18 percent of all jailings.⁴⁸ The average amount of debt owed was approximately \$826.⁴⁹ Many of the people arrested were homeless, mentally or physically disabled, and unemployed—effectively unable to pay. Incarceration created significant obstacles to people’s attempts to overcome the causes of their original convictions, and made it harder for them to establish stable lives and livelihoods.⁵⁰ Thus, in many instances, the state was spending more money incarcerating people than those people *owed* in total court debt—let alone the amounts they were actually able to pay.⁵¹ Rhode Island was creating a new era of debtors’ prisons.

A study by the Rhode Island Family Life Center found that court debt was the most common reason people in the state were jailed.⁴⁷





Using the results of their research, FLC advocated for a series of comprehensive legislative reforms.⁵² Their compelling statistics regarding both the unfair impact of criminal justice debt on poor clients, as well as the unnecessary associated costs incurred by the state, led to several key reforms in 2008, which amended procedures for the assessment, collection, and waiver of all court costs, fines, fees, and assessments associated with the prosecution of criminal cases.⁵³ These amendments will hopefully reduce unfair, counterproductive debt burdens and collateral consequences on people unable to pay.

A 2009 Rhode Island Family Life Center follow-up study indicated that less incarceration for court debt had resulted in significant savings for the state, including \$190,000 in marginal costs.

The reforms have had positive impacts in Rhode Island. In the last four years, advocates have been able to use some of the new statutory provisions to help indigent people obtain waivers of certain fees and fines, as well as more manageable payment plans.⁵⁴ When warrants are issued for failure to appear at payment hearings, procedural guidelines dictate prompt court hearings, which reduce the amount of time that people languish in jails before even seeing a judge.

An FLC follow-up study in 2009 indicated that less incarceration for court debt had resulted in significant savings for the state, including \$190,000 in marginal costs.⁵⁵ At the same time, Rhode Island courts actually *increased* the amount of funds collected yearly by \$160,599.⁵⁶

Key Reform 2: Create and Enforce Exemptions for Indigence

In 2006 the *Atlanta Journal Constitution* reported that a county Judge required Ora Lee Hurley be held until she paid \$705 in fines. Ms. Hurley was incarcerated in a diversion center in Atlanta. She was not considered a threat to anyone: she was solely being punished for her debt. As part of the diversion program, she was permitted to work during the day and return to the center at night. Five days a week she worked full-time at a restaurant, earning \$6.50 an hour and, after taxes, netting about \$700 a month. Room and board at the center cost \$600, her monthly transportation cost \$52, and miscellaneous other expenses ate up what was left each month.⁵⁷ A senseless system kept Ms. Hurley perpetually imprisoned because of her poverty.

Create Exemptions and Opportunities to Petition for Waivers

Criminal justice debt holds little promise of revenue for states and is unjust. All states should adopt mechanisms to exempt indigent people from criminal justice debt. A comprehensive system for exemptions includes an up-front determination by the court of a person's ability to pay, prior to the imposition of fees and fines. Such an evaluation is necessary if people are to avoid the immediate penalties for nonpayment such as probation revocation, loss of driving privileges, damaged credit, or loss of public benefits. Timely ability-to-pay determinations also save states money, allowing states to avoid needless costs incurred in futile collection attempts.

As recent economic developments in the country have made abundantly clear, a person's economic situation can change. Statutes should be written so that people who are initially found to be able to pay criminal justice debts will have an opportunity to petition for waivers after the imposition of fees and fines, should their circumstances change. Courts should create personalized payment plans that allow people to pay affordable weekly or monthly amounts for people who do not initially qualify for waivers or exemptions, but cannot afford lump-sum payments.

Several states have statutes instructing courts to grant full or partial waivers or exemptions for people such as Ms. Hurley, who are unable to pay fees or fines. These states include Hawaii, Kansas, Connecticut, and Ohio.⁵⁸ Hawaii has explicit statutory language exempting people unable to pay from court fees and fines and is one of the best examples of fee waivers in use.⁵⁹

Enforcing Fee Exemptions

Statutory exemptions for criminal justice fees often fall short because many people are unaware that the exemptions exist, and they lack the legal resources to become aware or apply for them. Therefore, states and local jurisdictions need to include procedures that require relevant personnel to inform people of the exemptions.

Creating an explicit statutory requirement that people on probation and parole must be notified of exemptions is a first step in protecting people's constitutional rights. In *Bearden v. Georgia* the Supreme Court held that under the Constitution, probation or parole can only be revoked after a court makes an ability to pay inquiry.⁶⁰ A number of states punish supervisees with incarceration for willfully missing payments. In places where exemptions exist for those unable to pay, many people may not be able to obtain them because the process for obtaining one is poorly defined or overly complicated.

MODEL LANGUAGE – ENFORCE FEE EXEMPTIONS

Upon release of a supervisee the [relevant department: probation/parole] and the appropriate local detention center shall provide the supervisee with an oral and written notice that:

- a. **States the criteria listed that the [relevant department: probation/parole] uses to exempt a supervisee from the supervision fee, and**
- b. **Explains the process for applying for an exemption from a supervisee, and**
- c. **Makes explicit that a supervisee may seek waivers, exemptions or modifications at any time his/her circumstances merit such changes.**

Success Story: Telling Maryland Supervisees About Exemptions

In 2011, the Brennan Center and the Job Opportunities Task Force (JOTF) in Maryland successfully advocated for a bill that ensures people learn of exemptions from parole fees.

In 1991, the Maryland Legislature instituted a \$40 monthly fee for persons on parole. The Legislature explicitly sought to exempt people who were unable to pay the fee.⁶¹ The Maryland General Assembly had predicted that only about 15 percent of the parolee population would be able to actually pay the fee.⁶² In recognition of that prediction, the Legislature created a number of exemptions based upon a person's ability to pay.⁶³ Yet few parolees eligible for an exemption were actually able to obtain one. For example, 89 percent of parolees listed in Maryland's Division of Probation and Parole (DPP) records as unemployed were still required to pay the fee, despite the fact that unemployment was a specified ground for exemptions.⁶⁴ Among those listed in DPP's records as students, another exemption ground, 75 percent were required to pay the fee.⁶⁵

There were two major barriers to enforcing the exemptions of parole and probation extension. First, people were unaware that the exemptions existed because corrections and court officials failed to inform them. Second, even when people were aware of potential exemptions, the mechanism for obtaining exemptions was convoluted and inaccessible. Under Maryland law, the sole power to grant exemptions does not rest with the DPP, whose agents have regular contact with parolees, but rather with the Parole Commission, a body that has little contact with parolees and does not conduct evaluations of whether or not parolees receive exemptions.⁶⁶ Official policy had prohibited probation and parole agents, who had the most regular contact with parolees, from assisting parolees in applying for exemptions; instead, agents were instructed to advise parolees to consult with a lawyer.⁶⁷ Apparently, little thought was given as to how someone unable to pay a \$40 supervision fee could afford lawyer's fees.

In response to the failings of the exemption system, and assisted by the advocacy of the Brennan Center and the JOTF, the legislature passed House Bill 749 and the governor signed it into law in May 2011. The law requires that the DPP and the detention center provide supervisees with information regarding the exemptions, including the existence of the exemptions, the criteria used to determine exemptions, and the process for applying for an exemption.⁶⁸

The bill was before the Legislature for two years and underwent numerous revisions before it finally passed. Recognizing that Maryland's fiscal climate wouldn't allow for the complete abolition of the fee, the initial draft of the legislation proposed that authority to grant fee exemptions be transferred from the Parole Commission to DPP, whose agents meet regularly with parolees and are best poised to know whether people may qualify for an exemption.

When the 2010 version of the bill was introduced, the JOTF and its partners faced unexpected opposition from the union who represented the DPP agents. Union representatives argued that parole agents were already overworked with unmanageable caseloads and that they would not be able to handle this extra task of determining fee exemptions. Though the bill failed, JOTF and the Brennan Center succeeded in raising legislators' awareness of this important issue.

Having learned from what transpired in 2010, the revised 2011 legislation required the Department of Public Safety and Correctional Services (DPSCS) to provide information about the parole fee exemption process to people upon their release from incarceration, both orally and in writing. This time around, the JOTF worked with DPSCS officials to garner their support prior to the bill hearings.

In addition, the JOTF engaged numerous partners, both nonprofit service providers and people who had been burdened by the fee, to testify in support at the hearings. Legislators were particularly moved by the people who spoke about how the imposition of the fee had impeded their reentry to the community. One man's testimony was particularly compelling when he produced for the committee the threatening letter that had been sent to him just days after his release.

With the momentum built from previous efforts, the changes in the law, the new partners and new voices in support of the 2011 bill, there was virtually no opposition to the 2011 bill. The legislation passed the House and Senate with nearly unanimous support⁶⁹ and was signed into law by Governor Martin O'Malley on May 10, 2011.⁷⁰ JOTF has since continued working with DPSCS to ensure that the printed exemption information be presented in terms that are easily understood by people with low levels of education.



Key Reform 3: Eliminate Unnecessary Interest, Late Fees, and Collateral Consequences

“I have made regular payments for five years, and I have not seen my total debt load decrease. At this rate, I don’t think it’s ever going to decrease,” says Pam Reid.⁷¹ Ms. Reid, a 64-year-old resident of Washington State, has seen her debts double, and in some cases triple, due to interest accrued while she was in prison, and, of course, unable to earn money to pay the debt. Ms. Reid was incarcerated in 1994, her convictions were finalized in 1996, and she served slightly over fifteen years for theft and forgery convictions.⁷² One of her judgments was \$36,000 when she entered prison, and totaled well over \$100,000 upon her release. In order to earn money she does landscaping work independently, though at the time of an interview with the Brennan Center in April 2012, she was suffering from a broken ankle and was not working.⁷³ Ms. Reid only makes about \$1,000 a month, most of which goes to paying rent and basic living expenses. She makes monthly payments of \$225 on all her criminal justice debt. Her monthly payments first go to a processing fee that the county charges for paperwork.⁷⁴ Despite working hard and making regular monthly payments for over five years, she still hasn’t been able to make a dent in the majority of her debts.⁷⁵



When people fail to pay off their debts immediately, states often charge additional fees without ascertaining whether the debtor has the resources to pay, effectively penalizing people for being poor. A number of states charge interest or late fees for late or missing payments, even if the reasons for nonpayment are important, conflicting obligations such as child support.⁷⁶ Late fees can be significant, such as a late fee of \$300 in California, or late charges of \$10-20 every time a defendant makes a late payment in some Florida counties⁷⁷ (in comparison, the maximum late fee for a green American Express card is \$35⁷⁸). States also authorize exorbitant “collection fees,” frequently payable to private debt collection firms, as well as fees levied on individuals for entering into payment plans, without exemptions for poverty. Payment plan fee amounts in New Orleans can be as high as \$100.⁷⁹

MODEL LANGUAGE – ELIMINATE INTEREST AND LATE FEES

- a. **People who are assessed [insert specific criminal justice fees], shall not be assessed interest, surcharges, or late payments charges unless the court first conducts an on-the-record inquiry [hearing or similar court proceeding] to determine if the person is able but unwilling to pay.**
- b. **If the court determines that a person is unable to pay [insert specific criminal justice fees], the court shall waive any accrued interest, surcharges, or criminal justice debt related to any payments missed due to an inability to pay.⁸⁰ Such waiver shall be effective from the date at which the court determines the person became unable to pay.**
- c. **If the court initially finds that a person is able to pay such interest, surcharges and late payments, said person may petition for a waiver should their circumstances change. All payment requirements and interest accrual that are the subject of the petition shall be suspended from the date of filing the petition until the court rules on the petition.**

Success Story: Waiving Interest in Washington State

In Washington State, Columbia Legal Services (CLS) successfully fought for legislation that allows people to waive interest accrued on criminal justice debt while incarcerated.⁸¹ Criminal justice debt interest in Washington accrues at the rate of 12 percent per year during incarceration.⁸² During this period, people are most often unable to be employed or are making very little money,⁸³ if anything, working in prison industries.⁸⁴ Comparing estimates of expected earnings with median legal debt, sociology professors at the University of Washington determined

“Most of the time, the ideal piece of legislation is not passable. I think we did a good job of finding balance between keeping people responsible for their legal financial obligations and offering real options for relief to people who want to successfully re-enter their communities. These were two ideas legislators could buy into.”

—Nick Allen,
Columbia Legal Services in Washington

that formerly incarcerated white, black, and Hispanic men owed 60 percent, 50 percent, and 36 percent, respectively, of their annual incomes in legal debt.⁸⁵ The portion of this debt accrued in interest was often significant, as demonstrated by Ms. Reid’s story. In response to the plight of their clients, CLS, along with the American Civil Liberties Union of Washington and the Washington Defender Association in Washington State, successfully advocated for legislation that allows for waivers of interest on debt while people are incarcerated.

Due to CLS’ successful advocacy, upon release, people can petition for a waiver of interest accrued during their period of incarceration. The waiver is limited to non-restitution criminal justice debt. Court clerks can calculate the interest each

person accrues once they know the period of total confinement, making it a relatively simple process to obtain the information necessary to determine the amount of debt that can be waived.

The legislation received bipartisan support because CLS demonstrated that it would encourage realistic payments of criminal justice debt by creating a more manageable debt load, reducing the costs of collection and re-incarceration, and contributing to successful reentry. The advocacy efforts in Washington provide a good template for how other states can begin to tackle the negative impacts of criminal justice debt legislatively. By focusing on a particular poverty penalty, the campaign was able to highlight a number of the negative consequences of criminal justice debt: disproportionate impact on poor people, lack of uniformity, and insurmountable debt loads. Like the Job Opportunities Task Force in Maryland, CLS did not walk away from the issue once the bill was signed. CLS has established a “Legal Financial Obligations Community Legal Clinic” to make people aware of the new interest waivers, and provide direct advice and assistance to people seeking the waivers.

Reforming Suspended License Practices

One of the most widespread and detrimental methods of collecting fees is to suspend a person’s driver’s license for failure to pay. A lack of transportation jeopardizes a person’s efforts to seek or maintain employment,⁸⁶ making it even less likely that such people will be able to pay their debt.

Employment is a major part of the rehabilitative and reentry process, whether that involves securing a job or maintaining an existing one, and access to a car may mean the difference between success and failure.⁸⁷ One study of New Jersey drivers found that 42 percent of all drivers lost their jobs when their license was suspended, and almost half — 45 percent — could not find another job during the suspension.⁸⁸ Even more stunning, less than six percent of the license suspensions were directly tied to driving offenses.⁸⁹ Of course, these penalties fall disproportionately on poor people. The study found that while only 16.5 percent of New Jersey’s licensed drivers lived in low-income

zip codes (which, unlike many other states, tend to be densely urban with access to adequate public transportation), these zip codes accounted for 43 percent of all suspended licenses.⁹⁰

License suspension also increases the risk that people will be re-arrested (and incur new fees) for driving with a suspended license. Unable to legally drive to work, people face a choice between losing a job and suffering increased penalties for nonpayment. One study found that failure to pay fines was the leading cause of license suspensions.⁹¹ The same study found that 80 percent of participants were disqualified from employment opportunities because their license was suspended. In states where licenses may be suspended without an adequate determination of a person's ability to pay the underlying fees, poor people are disproportionately affected by suspensions and suspension-related unemployment. Because of the detrimental effects suspensions have on the employment prospects of indigent people and because debt-related suspensions have no relation to driver safety, the practice of suspending licenses for failure to pay fees is completely lacking in rehabilitative or deterrent value.

Creating exemptions to license suspensions can help break cycles of debt and re-incarceration. Under such a scheme, only drivers who are able to pay but who willfully refuse to satisfy court fees will be punished with suspension. In a 2004 state Supreme Court case, Washington established the principle that automatically suspending a driver's license without first affording the person an opportunity to be heard in an administrative hearing violates due process.⁹² Maryland has a similar policy in place.⁹³ These administrative hearings allow indigent persons to explain the circumstances behind their failure to pay and argue against suspension.

Another useful strategy for promoting fairness in suspensions is to provide a conditional or limited-use license for driving to work, school, or certain medical or family emergencies. These are most effective when the fees for obtaining a conditional license are waived for indigent people and, perhaps more importantly, when the state is required to notify a defendant of the option for a conditional license at the same time the suspension is imposed. Ideally, use of these conditional licenses should not be tied to existing full-time employment, since that would disqualify people who work part-time, as well as certain self-employed people, and it could discourage people from seeking employment during the suspension period. Indiana permits drivers to obtain restricted licenses to go to work, church, or to participate in parenting time consistent with a court order.⁹⁴

Statutes should be drafted to make conditional licenses explicitly available for debt-related suspensions, since many states that have conditional licenses exclude people who have not paid fines and fees from eligibility. Ironically, some states that exclude drivers who can't pay fees from getting conditional licenses *will* issue conditional licenses to drivers who have been convicted of driving under the influence, where the ability to drive is actually related to the offense and connected to public safety.⁹⁵



Key Reform 4: End Incarceration and Supervision for Non-Willful Failure To Pay

Advocates at Community Legal Services of Philadelphia received a request for help from Gregory.⁹⁶ Gregory is a 56-year-old man who is intellectually disabled. He is being chased for over \$15,000 in unpaid criminal justice debt from a 1995 case. He has not had any run-ins with the law in many years. Gregory's only income is SSI disability benefits. He owns no property. Gregory is scared out of his mind, literally to tears, by the thought of being locked up again (which is what he's been threatened will happen if he doesn't make payments).⁹⁷

End extension of probation and parole for failure to pay

At least 13 states have a statute or practice allowing courts to extend probation terms for failure to pay debt in some cases.⁹⁸ This creates a system where people who have met the other terms of their sentence, satisfied the conditions of probation, and paid their debt to society remain under supervision by criminal justice authorities because of a monetary violation. Extending the supervision of people for criminal justice debt creates an unnecessary financial burden on states and negatively interferes with public safety.

A few states have statutes, regulations, or policies that do not permit the extension of probation or parole due to failure to pay criminal justice debt. Ohio also has a rule explicitly prohibiting extended supervision for people who are unable to pay fees and fines.⁹⁹ Virginia passed a bill in 2009 that prohibited keeping people under supervised probation solely because of a failure to make complete payment of fees, fines, or costs.¹⁰⁰ The new law stemmed from the recommendations of a 28-member task force on non-violent offenders. The panel included judges, police chiefs, corrections officials and budget analysts.¹⁰¹ According to the panel's report, the annual cost to incarcerate a person was about \$25,000 in 2009.¹⁰² (By contrast, Virginia spent about \$11,300 per pupil in its education system in the same year.)¹⁰³ And, of all the people admitted to Virginia prisons in 2008, about 13 percent of the approximately 13,503 people incarcerated were there for "technical probation and parole violations."¹⁰⁴ The average expected length of stay for these people was 31 months.¹⁰⁵

The state was spending about \$43 million each year to incarcerate people who had committed non-violent technical violations while on probation or parole (instead of educating the students of Virginia).

In addition, the report noted that there were about 4,500 offenders still under supervision for their failure to pay fines, fees and restitution.¹⁰⁶ If those who owed fees and fines were freed from probation, "[T]hen probation and parole officers would have more time and resources to supervise more serious and higher-risk offenders. In addition, it would reduce the number of technical violators brought back to court and returned to prison."¹⁰⁷ As the Virginia report makes clear, this collision between rising costs and limited resources provides legislators with a powerful rationale for ending the practice of extending probation and parole simply because of failure to pay.

Good fiscal notes can be crucial to the passage of criminal justice debt reform legislation. Unfortunately, official state estimates of the savings or cost of proposed reforms often lack the information necessary for good decision-making, or are not produced at all.¹⁰⁸ Advocates must therefore both seek fiscal reviews of proposed policies, and then be ready to challenge them if the reports are incomplete or inaccurate.

MODEL LANGUAGE – END SUPERVISION FOR FAILURE TO PAY

- a. **No defendant shall be kept under supervision, parole, or probation solely because of a failure to make full payments of fees, fines, or costs.**
- b. **No supervisee shall have supervision, parole, or probation extended solely because of a failure to make full payments of fees, fines, or costs.**

Cancelling Writs, Arrest Warrants, and Summonses for Those Unable to Pay

Missing debt payments or failure to appear at debt-related proceedings triggers arrests in many jurisdictions. In some jurisdictions, a missed payment automatically triggers an arrest warrant, while in others probation officers seek arrest warrants when people fall behind on payments.¹⁰⁹ In some jurisdictions, arrests and pre-hearing incarceration occur prior to any assessment of the person's ability to pay.¹¹⁰ Using arrest as a collections practice raises due process and constitutional questions since it effectively creates criminal punishment for poverty.

Florida allows courts to arrest people unable to pay court fees and fines.¹¹¹ However, two Florida counties have recently recognized the enormous costs associated with trying to capture and punish poor people incapable of paying criminal justice debt.

Success Story: Cancelling Writs in Florida

The Brennan Center partnered with local public defender offices in two counties in Florida to successfully advocate for the cancellation of thousands of arrest warrants issued for people in nonpayment. Since 1996, Florida has added more than 20 categories of criminal justice fees and fines.¹¹² Examples of new fees included a "\$40 fee imposed for contesting alleged violation of local ordinances in county court" and a \$30 surcharge for criminal traffic violations.¹¹³ Since 2004, legislators have required that courts substantially support their operating expenses through fee levies.¹¹⁴ Increasing the number of fees made it more likely that persons going through the judicial system would end up with a great deal of debt.

Following the publication of the Brennan Center's report, *The Hidden Costs of Florida's Criminal Justice Fees* (2010), Florida Collections Courts in Leon County and Orange County made changes to stem the growing tide of debtors' prisons. The report revealed that in one year, from October 1, 2007 to September 30, 2008, Leon County spent \$62,085 attempting to capture and punish indigent people while it only received \$80,450 of a possible \$347,084 in revenue. For this \$18,365 windfall, which represents a generous estimate,¹¹⁵ "the manpower required for record-keeping along with the physical housing and storage of [warrants for arrest placed] a tremendous burden on the Clerk of Court and [interfered] with the efficient administration of justice."¹¹⁶ By using their time to locate and arrest these persons, "law-enforcement officials [used up] resources needed to pursue violent offenders."¹¹⁷

To reduce this inefficiency in Leon County, Chief Judge Charles A. Francis closed the collections court and, as a result, terminated approximately 8,000 outstanding arrest warrants for nonpayment.¹¹⁸ Judge Francis has expressed his concerns about what he calls "fee justice."¹¹⁹ He worries that "the 'haves' will unfairly get better deals than the 'have nots.'"¹²⁰

In Orange County, outstanding writs issued between January 1, 2007 and May 13, 2010 were canceled for people deemed transient.¹²¹

The Florida system still has limitations. The law places burdens on a potentially indigent litigant to know of the existence of payment plans and to request them, when the person may not have the knowledge or legal resources to do so. Litigants can only set up partial payments through payment plans if they raise the issue.¹²² Further, payment plans are presently "presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent

of the person's annual net income...divided by 12."¹²³ This system assumes an ability to pay solely based on income without an assessment of other financial obligations or limitations.

However, the bold step of cancelling thousands of writs is still important in combating modern day debtors' prisons.

Right to Counsel

In the absence of ending outright the practice of incarcerating people who owe criminal justice debt, advocates should work to establish the right to counsel in nonpayment hearings that could result in incarceration or an extension of probation or parole.

The presence of counsel at enforcement proceedings can make a huge difference for an indigent defendant. Attorneys can collect and present evidence regarding defendants' abilities to pay, help them navigate confusing rules for altering payment plans or debt loads, and ensure that their rights are protected and that they understand the implications of any future payment commitments.¹²⁴ Guaranteeing the right to counsel can thus help protect people from being incarcerated for debt just because they are poor.

The Constitution guarantees a criminal defendant the right to counsel.¹²⁵ Furthermore, the Supreme Court ruled in *Gagnon v. Scarpelli*¹²⁶ that state courts must determine whether appointment of counsel is necessary at probation and parole revocation hearings.

A recent decision by the Washington State Court of Appeals affirmed a defendant's right to counsel at enforcement proceedings for payment obligations arising from his criminal sentences. In *Washington v. Stone*, James Stone appealed a trial court's orders imposing jail time for his failure to make criminal justice debt payments. Stone was tried in Jefferson County, which has a policy of placing defendants who owe criminal justice debt on a "pay or appear" calendar and requiring them to defend themselves without appointment of counsel. The Court of Appeals found that enforcement proceedings for criminal justice debt that can lead to incarceration are criminal in nature, not civil, and trigger the fundamental right to counsel. Furthermore, the court held that Stone's due process rights were violated when he was charged with jail time without a finding as to his ability to pay.

Conduct Meaningful Willful Failure to Pay Determinations

The process of collecting criminal justice debt is difficult to decipher for those at its mercy.¹²⁷ Courts have generally treated the concept of "willful failure to pay" as ill-defined and amorphous, exacerbating existing confusions. This lack of structure makes it easier for judges to act on a whim rather than investigate claims.

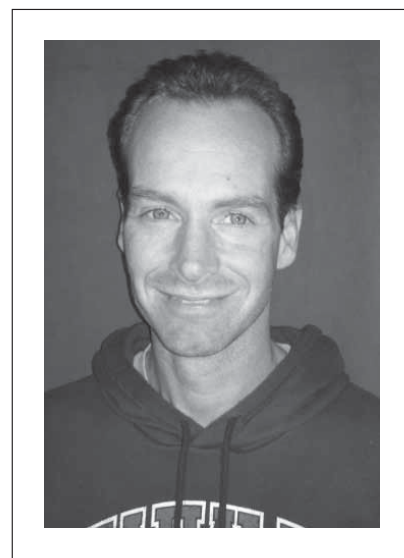
Advocates should consider researching and compiling local or state-based standards of indigence, to help people prove an actual inability to pay.

There is also a lack of structure in the terms of an indigent person's incarceration. According to a report in Washington state there were occasions when "incarceration was reported to be a sanction for nonpayment that in some cases increased [the indigent person's] debt," while "in other cases, serving time in jail was reported to have been a means of reducing [an indigent person's debt.]"¹²⁸ Finally, the collateral consequences associated with a willful failure to pay may include the loss of federal benefits upon the issuance of a bench warrant for people dependent upon these benefits.¹²⁹

Rhode Island has a willful failure to pay statute listing a series of conditions that constitute prima facie evidence of a defendant's indigency and limited ability to pay. These include qualification for or receipt of Temporary Assistance for Needy Families, Supplemental Security Income, public assistance, or food stamps. Outstanding court orders for other kinds of debt, such as outstanding restitution, child support payments, or outstanding payments for counseling resulting as a condition of sentence, also constitute prima facie evidence of inability to pay.¹³⁰

Key Reform 5: Focus On Rehabilitation through Meaningful Workforce Development

Dolphy Jordan, a 38-year-old Washington State resident, was released from prison in April 2010 after being incarcerated for 21 years. Upon release, Mr. Jordan found out that he had about \$2800 in criminal justice debt to pay off. He became involved with a nonprofit called The Post Prison Education Program in Seattle, which helped connect him to educational opportunities and reentry support. Mr. Jordan worked two part-time jobs, slept on his mother's couch to save rent money, pursued a post-secondary degree as a student, and managed to pay off his debts in a year. "It was very stressful... I'm getting released after all this time with nothing, with the stigma of being a convicted felon, and I'm already starting out in debt... I was willing to sacrifice other things just to pay that off. And that was my ultimate goal. I think it has a big impact on pretty much everything — I'm a lucky case because I really didn't owe that much money — but I've heard outrageous amounts of money and interest that guys would never be able to pay off, no matter what. And [I] just don't get it."¹³¹



Meaningful community service and workforce development alternatives can provide people with the skills and experience necessary to obtain jobs while also allowing them to avoid the cycles of debt, poverty, and re-incarceration that accompany criminal justice debt. Compulsory community service can interfere with employment or job training, but time-limited voluntary community service that is directly tied to job training and placement is a useful model for addressing criminal justice debt.

For those who cannot pay, statutes in several states currently provide for at least limited community service options.¹³² However, courts often limit or altogether avoid their implementation, leaving many people without access to these options in practice. In Florida, for example, judges are permitted to convert statutory financial obligations into court-imposed community service for those unable to pay, but the courts seldom take advantage of this option. Only 16 of 67 counties converted any mandatory criminal debt imposed in felony cases into community service.¹³³ In Georgia, community service is generally only offered to offset particular categories of financial obligations, such as fines.¹³⁴ This can leave poor people saddled with significant amounts of debt in other categories.

Even in states where community service alternatives or work programs are offered and implemented, poor program design can stymie potential rehabilitative effects. When community service is a mandatory alternative to paying fees and fines, defendants who are unable to pay and should be exempt from incurring debt are being coerced into community service that may actually hinder rehabilitation efforts, by interfering with time that could be spent looking for a job. Similarly, when community service alternatives are not paired with job training and placement programs, people are forced to spend time performing labor that could otherwise be spent looking for jobs or building skills that could result in employment. Finally, when community service is not a pre-set duration and is instead tied to an hourly wage, people facing thousands of dollars in criminal justice debt may end up performing community service indefinitely. Successful community service and workforce development models should be voluntary, focused on skill-building, and of a time-limited duration resulting in debt forgiveness.¹³⁵

Success Story: Massachusetts

The Clapham Set, a pilot program in Suffolk County, Massachusetts, shows how a voluntary workforce development program can encourage rehabilitation and financial independence. The founder of the program, a former prosecutor named Robert Constantino, sought to address the myriad negative impacts that criminal justice debt has on people, and reform existing community service alternatives that did not address the underlying rehabilitative needs of poor participants. In collaboration with community partners and the Roxbury Division of the Boston Municipal Court, The Clapham Set offered young, unemployed men a curriculum designed to discourage underground employment, and encourage occupational skill development. The program helped participants work on a resume, complete job training, go on job interviews, and attend mental health or substance abuse counseling. In exchange for participation, they received credit towards outstanding court costs, fees and fines.¹³⁶

The program collaborated with the Black Ministerial Alliance of Greater Boston, as well as StreetSafe Boston, two organizations already deeply involved with the local populations involved in the criminal justice system. Through persistent outreach efforts, it cultivated strong partnerships with local businesses that were potential employers for program participants. Participation in the program was entirely voluntary. People who obtained employment during the course of the program were exempt from participation during hours that conflicted with their jobs, and were still eligible for credit towards their criminal justice debt.

Men enrolled in the program voluntarily, motivated by the opportunity to earn credit towards fines and fees that they would otherwise be unable to pay. The credit system incentivized them to maintain strong program participation. The court offered successful participants credit towards all financial obligations except restitution. Appropriate credit amounts were determined by judges on a case-by-case basis.

In its three-year pilot period, about 26 men went through the program. Eleven men completed the program and received full credit for the amount they owed. Others did not complete the class but received partial credit from the judge. About 20 found work during the course of the program, though a smaller number were able to maintain long-term employment. Only five of the 26 are known to have reoffended, which is promising considering that just over half of all people with prior convictions reoffend in the first three years in Massachusetts.¹³⁷

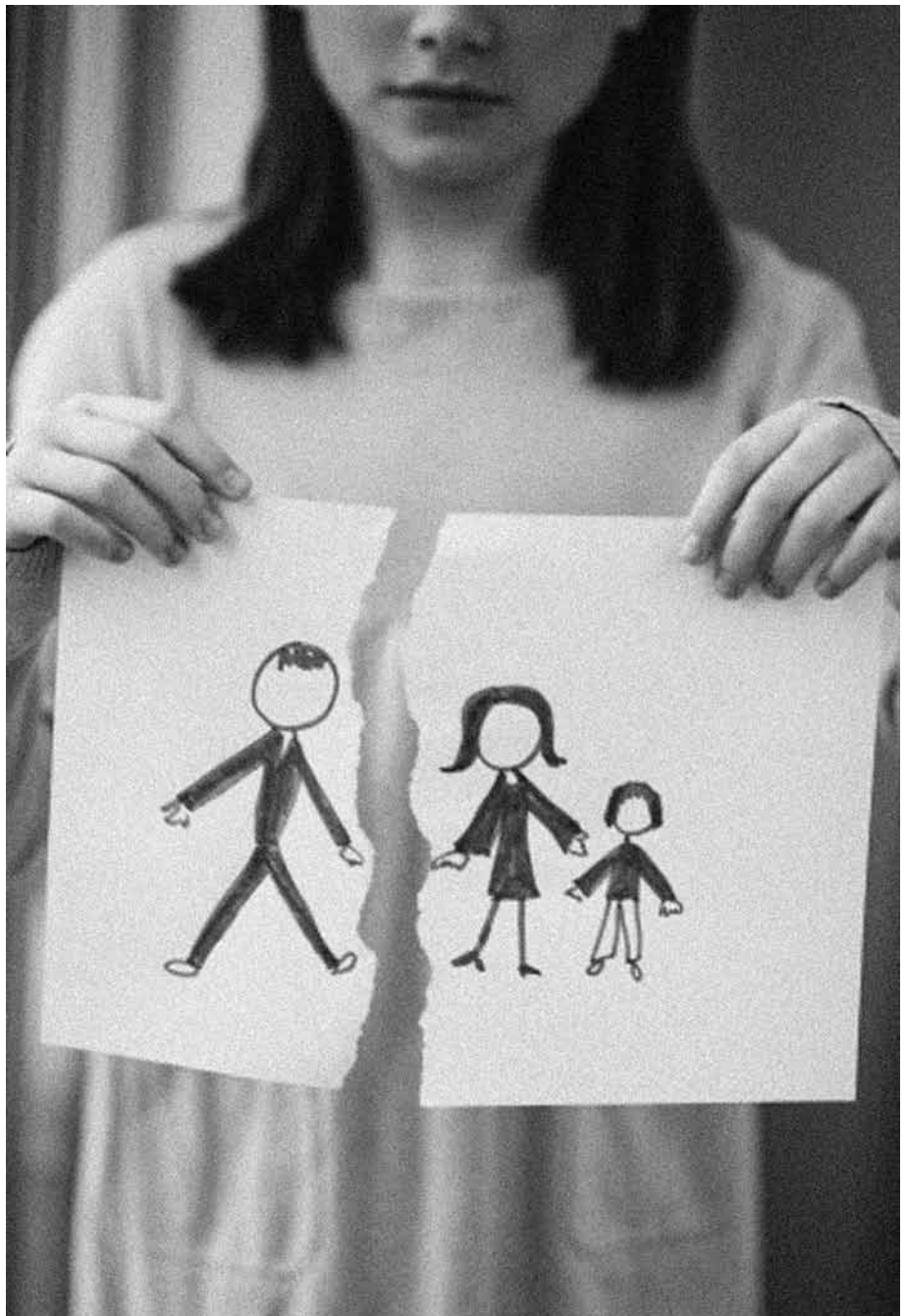
The Clapham Set model emphasizes a few key elements that are crucial to a well-designed alternative to legal financial obligations: collaborations with various stakeholders in the system; community-based connections; and a focus on enhancing economic mobility. By involving judges, prosecutors, and correctional officers in the development phase of the program, it gained legitimacy and prominence in the courtroom. By partnering with local, community-based

programs, it capitalized on existing connections and trust networks within the community to help rehabilitate ex-offenders. Finally, by making economic mobility its top priority, the program enhanced the employment prospects of its participants and helped them overcome the negative reentry impacts of criminal justice debt.



CONCLUSION

States are increasingly forcing poor people to fund the criminal justice system. The imposition of criminal justice debt is a short-sighted effort to generate revenue. These policies exact unforeseen costs on governments, communities, taxpayers, families, and the indigent people caught up in the system. Advocates can create meaningful solutions to the problem of criminal justice debt by challenging the unsound fiscal assumptions such policies are based upon, providing creative alternatives to incarceration and supervision, and building coalitions with other advocates who are fighting to reform such practices. Such reform-minded actions can stem the rising tide of the new debtors' prisons.



ENDNOTES

- 1 In 2008 the Rhode Island Family Life Center conducted interviews of people managing court debt and facing debt-based incarceration. The Rhode Island Family Life Center was renamed OpenDoors R.I. in 2010. Harold Brooks' interview is available here <http://opendoorsri.org/courtdebtreform>.
- 2 R.I. FAMILY LIFE CTR., *JAILING THE POOR: COURT DEBT AND INCARCERATION IN R.I.* 2 (2008), *available at* http://opendoorsri.org/sites/default/files/brief_debt.pdf.
- 3 *See, e.g., Bearden v. Georgia*, 461 U.S. 660 (1983); *Williams v. Illinois*, 399 US 235 (1970).
- 4 Fees, fines and related court proceedings go by various names in different jurisdictions. This Toolkit refers to fees and fines as criminal justice debt and legal financial obligations. Proceedings to collect fees and fines may be referred to as collections proceedings, nonpayment hearings, or enforcement proceedings. Fees and fines are generally referred to in the toolkit as criminal justice debt.
- 5 ALICIA BANNON, MITALI NAGRECHA, & REBEKAH DILLER, BRENNAN CTR. FOR JUSTICE, *CRIMINAL JUSTICE DEBT: A BARRIER TO RE-ENTRY* 4 (2010), *available at* http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf.
- 6 *Id.*
- 7 Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, 74 AM. SOC. REV. 339, 344-354 (2009).
- 8 BANNON ET AL., *supra* note 5 at 7.
- 9 CARL REYNOLDS ET AL., *A FRAMEWORK TO IMPROVE HOW FINES, FEES, RESTITUTION, AND CHILD SUPPORT ARE ASSESSED AND COLLECTED FROM PEOPLE CONVICTED OF CRIMES* (2009), *available at* <http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf>.
- 10 *Id.* at 21; *see also* Eric Dexheimer, *Even Court Officials Find Fees Hard to Untangle*, STATESMAN, Mar. 3, 2012, http://www.statesman.com/news/statesman-investigates/even-court-officials-find-fees-hard-to-untangle-2215171.html?cxtype=rss_ece_frontpage.
- 11 BANNON ET AL., *supra* note 5 at 7.
- 12 *Id.* at 15.
- 13 BANNON ET AL., *supra* note 5 at 4.
- 14 *Id.* at 4.
- 15 *Id.* at 11.
- 16 *Id.* at 22.
- 17 *Id.*
- 18 *Id.* at 26.
- 19 *Id.*
- 20 *Id.* at 60.
- 21 *Id.* at 5.
- 22 42 U.S.C. § 608(a)(9)(A); 7 U.S.C. § 2015(k)(1); 42 U.S.C. § 1437d(1)(9); 42 U.S.C. § 1382(e)(4)(A)(ii).
- 23 BANNON ET AL., *supra* note 5 at 29.
- 24 KATHERINE A. BECKETT ET AL., *WASH. STATE MINORITY AND JUSTICE COMM'N, THE ASSESSMENT AND CONSEQUENCES OF LEGAL FINANCIAL OBLIGATIONS IN WASHINGTON STATE* 4-6 (2008), *available at* http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf.
- 25 Richard Luscombe, *Cash-Strapped Jails Begin Charging Inmates for Snacks—Even Room and Board*, CHRISTIAN SCI. MONITOR, May 15, 2009, <http://www.csmonitor.com/USA/2009/0515/p25s10-usgn.html>.
- 26 *Dean v. Lehman*, 143 Wash.2d 12, 43 (Wash. 2001) (Alexander dissenting).

27 BANNON ET AL., *supra* note 5 at 21.

28 *Id.* at 22.

29 *Id.* at 23.

30 *Andrews v. Walton*, 428 So.2d 663 (Fla. 1983).

31 *Adkins v. Adkins*, 248 S.E.2d 646 (Ga. 1978).

32 *In re Calhoun*, 350 N.E.2d 665 (Ohio 1976).

33 *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).

34 *Washington v. Stone*, 268 P.3d 226 (Wash. Ct. App. 2012).

35 *Allen v. Leis*, 213 F.Supp.2d 819 (S.D. Ohio 2002).

36 R.I. FAMILY LIFE CTR., JAILING THE POOR: COURT DEBT AND INCARCERATION IN R.I. 2 (2008), *available at* http://opendoorsri.org/sites/default/files/brief_debt.pdf.

37 REPORT OF THE SPECIAL COMM'N TO STUDY THE FEASIBILITY OF ESTABLISHING INMATE FEES, INMATE FEES AS A SOURCE OF REVENUE: REVIEW OF CHALLENGES 96 (2011), *available at* http://www.prisonpolicy.org/scans/inmate_fee_final_7-1-11.pdf.

38 2010 Mass. Acts Ch. 131 §177, *available at* <http://www.malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter131>.

39 *Id.*

40 REPORT OF THE SPECIAL COMM'N TO STUDY THE FEASIBILITY OF ESTABLISHING INMATE FEES, INMATE FEES AS A SOURCE OF REVENUE: REVIEW OF CHALLENGES 27 (2011), *available at* http://www.prisonpolicy.org/scans/inmate_fee_final_7-1-11.pdf.

41 *Id.* at 50.

42 *Id.* at 4.

43 *Id.*

44 *Id.*

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- 71 Telephone Interview by Roopal Patel with Pam Reid (Apr. 16, 2012 12:00 PM).
- 72 *Id.*
- 73 *Id.*
- 74 Telephone Interview by Meghna Philip with Nick Allen, Equal Justice Fellow, Wash. Columbia Legal Servs. (Nov. 17, 2011, 4:00 PM).
- 75 Telephone Interview by Meghna Philip with Pam Reid (Feb. 24, 2012, 3:00 PM).
- 76 BANNON ET AL., *supra* note 5 at 17,18. (Some of these fees are flat charges, such as a one-time \$300 charge in California. CAL. PENAL CODE § 1214.1 (A). Others are late charges repeatedly levied every time defendants make late payments. States also authorize exorbitant "collection fees," frequently payable to private debt collection firms, as well as fees levied on people for entering into payment plans, without exemptions for poverty. Payment plan fee amounts in New Orleans can be as high as \$100).
- 77 *Id.* at 17.
- 78 Telephone Conversation with American Express Customer Service, 1-800-528-4800 (Mar. 3, 2012).
- 79 BANNON ET AL., *supra* note 5 at 18.
- 80 In some states, some interest or charges may not be subject to judicial alternation, such as restitution-related charges.
- 81 WASH. REV. CODE § 10.82.090; WASH. REV. CODE § 4.56.110(4); WASH. REV. CODE § 19.52.020.
- 82 Alexes Harris, Heather Evans, & Katherine Beckett, *Drawing Blood From Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. OF SOC. 1753, 1759 (2010).
- 83 Prison Policy Initiative, Section III: The Prison Economy, <http://www.prisonpolicy.org/prisonindex/prisonlabor.html> (last visited Feb. 15, 2012).
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- 90 *Id.*
- 91 MARGY WALLER ET AL., *supra* note 86 at 2.
- 92 *City of Redmond v. Moore*, 151 Wash. 2d 664, 667 (Wash. 2004).
- 93 MD. CODE ANN., TRANSP. § 12-202.
- 94 IND. CODE § 9-24-15-6.7 (West 2012).As amended by IND. LEGIS. SERV. P.L. 125-2012 (S.E.A. 257) (WEST 2012)
- 95 MARGY WALLER ET AL., *supra* note 88 at 57. (describing a workforce study in Louisville, Kentucky, where hardship licenses are only available to drivers whose licenses were suspended for driving under the influence).
- 96 Name changed to protect anonymity.
- 97 Email from Rebecca Vallas, Staff Attorney, Community Legal Services of Philadelphia, to Meghna Philip (Mar. 15, 2012, 16:37 EST) (on file with author).
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- 103 VA. DEP’T OF EDUC., *SUPERINTENDENT’S ANNUAL REPORT* 3 tbl. 15 (2008-09), http://www.doe.virginia.gov/statistics_reports/supts_annual_report/2008_09/table15.pdf (last visited April 25, 2012).
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- 110 *Id.*
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- 114 See John Schwartz, *Pinched Courts Push to Collect Fees and Fines*, N.Y. TIMES, Apr. 6, 2009, <http://www.nytimes.com/2009/04/07/us/07collection.html?pagewanted=all>.
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- 117 Jessica Silver-Greenberg, *Welcome to Debtors' Prison, 2011 Edition*, WALL ST. J., Mar. 17, 2011, <http://online.wsj.com/article/SB10001424052748704396504576204553811636610.html?KEYWORDS=priso>.
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- 133 *Id.* at 23.
- 134 *Id.* at 15.
- 135 While alternative courts and community courts do not directly address the issue of combating fees and fines, the alternative sentencing structures they create could be adopted to help produce meaningful community service that results in employment. For example, the Midtown Community Court in Manhattan, with assistance from East Harlem Employment Services, a non-profit leader in workforce development, partners with Time Square Ink to create a 10 week job readiness program. The program has an 85 percent placement rate, and 73 percent of graduates are still working after one year. *Community Court*, CTR. FOR COURT INNOVATION (Feb. 15, 2012), <http://www.courtinnovation.org/research/job-training-times-square-ink?mode=4&curl=research%2F4%2Farticle>; Homeless courts also use voluntary community service and participation in social services to dismiss misdemeanor convictions and help reduce homelessness amongst persons.

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at New York University School of Law

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