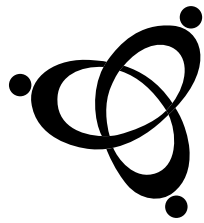


Debtors' Prisons Redux

How Legal Loopholes Let Courts Across the Country Criminalize Poverty



ALLIANCE FOR A JUST SOCIETY

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Debtors' Prisons Redux: How Legal Loopholes Let Courts Across the Country Criminalize Poverty

Across the country, poverty itself has become a crime. A \$150 traffic ticket can result in thousands of dollars in court-related debt, years in the criminal justice system, and even incarceration for those unable to pay. In the wake of the Great Recession, many state and local courts throughout the country have created debtors' prisons by using excessive fines and fees, private collection companies, and the threat of jail to collect from defendants. Many defendants are low-income and have committed offenses as minor as unpaid parking tickets.

This resurgence of debtors' prisons is prohibited by the 14th amendment; it's unconstitutional to imprison individuals for debts they cannot pay. However, court systems across the country have found legal loopholes to effectively jail people for inability to pay and in some states, even restrict the voting rights of individuals too poor to pay off their criminal debt.

This policy brief examines the increasingly common practice of county and municipal courts charging exorbitant fees and financial penalties against those who receive traffic citations and other low-level criminal infractions and the devastating effects this practice has on low-income racial and ethnic minorities, their families and their communities. Poor people face serious legal and financial consequences solely due to inability to pay, resulting in a two-tiered justice system. This report refers to the myriad of court-imposed costs, monetary sanctions and resulting debt as legal financial obligations, or LFOs.

Many communities and organizations are working to fight back against this criminalization of poverty, and others are in a strong position to join the fight. Additionally, though, policy tools like limiting the amount of fees that can be added to citations, regulating debt collection companies, and preventing

local governments from relying on revenue from fines and fees can help put an end to the new system of debtors' prisons.

THE CRIME OF BEING POOR

Many counties and cities are bolstering budget deficits with revenue generated from legal fees and fines associated with low-level criminal infractions such as traffic violations, jaywalking and unpaid parking tickets. In addition, people of color are more likely to be issued citations for such violations.¹ This is done through predatory and sometimes unconstitutional practices similar to those of Ferguson, Missouri, as documented by a 2015 U.S. Department of Justice report.²

Furthermore, an alarming number of courts are imposing exorbitant fees, fines, and predatory collection methods against those who commit such minor offenses and cannot afford to pay the citation, essentially creating a modern-day debtors' prison that especially targets low-income people of color and their communities.³

Since 2010, 48 states have instituted new court fees for low-level offenses and/or raised existing fees associated with traffic citations and parking tickets.⁴ For example, in California running a red light results in a \$549 ticket - only \$100 of which is for the traffic violation itself. The additional \$390 consists of a various fees, including contributions to the state's DNA Fund and court construction costs, as well as an automatic 20 percent surcharge applied to every citation issued in the state.⁵ While the significant number and type of fees is questionable in itself, for low-income drivers such a high-cost ticket can result in even more severe consequences.

Court systems across the country have found legal loopholes to effectively jail people for inability to pay.

In California, for example, a person unable to pay on-time is required to attend an initial court hearing. For many low-income people, however, there can be significant barriers to attending, including an inability to take time off work, lack of available transportation, lack of child care, or lack of a reliable or permanent address where they can receive notice of the hearing.⁶ Additionally, many poor people don't show up because they do not have the money and fear that they will be thrown in jail as a result.⁷ Regardless of the reason, those who miss the initial payment deadline and miss their initial court hearing in California are charged an additional \$325 in penalties, resulting in a new total amount due of \$815– \$715 more than the cost of the original traffic violation.⁸

In addition to implementing a multitude of costly court fees, some state and local governments have passed laws making it extremely difficult for low-income people to pay, such as eliminating fee waivers for the poor. In 43 states and the District of Columbia, defendants are charged fees to apply for a public defender (typically ranging from \$25 to \$200),⁹ and two states - Florida and North Carolina - have both passed laws prohibiting judges from waiving public defense application fees for the indigent.¹⁰

As a result, often the only accommodation available to the poor is a payment plan, regardless of whether the defendant has the ability to make regular payments. Because of this, several Florida judges have reported ordering payment plans even when they know the defendant truly is unable to pay; essentially sentencing them to years of debt and possible jail time for failing to comply with court orders if they are unable to make the necessary payments.¹¹ Additionally, not only has Florida added 20 new court fees since 1996¹² including \$40 to contest a traffic citation in any county court and a \$30 surcharge for all traffic violations,¹³ but the state has simultaneously eliminated exemptions for the indigent.¹⁴

It is not just a handful of states that charge excessive fees. All but two states - Alaska and North Dakota - have instituted new court fees and/or increased criminal fees since 2010.¹⁵ Many states, including Louisiana, Michigan, Ohio and Washington also routinely charge indigent defendants fees without regard to ability to pay.¹⁶

The criminalization of poverty observed in court systems nationwide has an even greater impact on

low-income racial and ethnic minorities. Not only are black and Latino drivers pulled over and issued traffic citations at higher rates than those of white drivers,¹⁷ but people of color are also more likely to live in poverty¹⁸ and experience unemployment¹⁹ than whites, and are therefore more vulnerable to excessive court costs.

WHERE DOES THE MONEY GO?

Many municipalities are heavily reliant of traffic citations as a source of revenue. In Austin, Texas, for example, traffic fines constitute 45 percent of all General Fund revenues for the city's Municipal Court.²⁰ Court fees and surcharges applied to traffic citations and other crimes are also a significant source of revenue for many court systems. As James Tignanelli, president of the Police Officers Association of Michigan union, noted in 2009, "When elected officials say, 'We need more money,' they can't look to the department of public works to raise revenues, so where do they find it? Police departments."²¹ This has been the case in Normandy, Missouri, where more than 40 percent of general revenue comes from municipal court fines and fees.²²

In some cases, these fees go toward literally keeping the lights on in the building, and to other less necessary expenditures. In 2013 the ACLU filed a brief on behalf of Frederick Cunningham, a criminal defendant in Allegan County, Michigan who was ordered to pay \$1,918 upon conviction, \$1,000 of which was court fees.²³ When Cunningham challenged these fees, a court official testified that \$500 reimbursed the public defender program that provided the indigent defendant's attorney.²⁴ The remaining \$500 went towards court operating costs, which included: court employee salaries; utility bills; building maintenance and insurance; and construction of an employee gym.²⁵

Additionally, some of the surcharges assessed by local courts are dedicated to state government programs. The State of California, for example, mandates that all courts collect a state penalty assessment in addition to local court fees, which is then deposited into The State Penalty Fund.²⁶ This revenue is then allocated to a variety of sources, including: a Corrections Training Fund; Fish and Game Preservation Fund; Local Public Prosecutors and Public Defender Training Fund; and the Traumatic Brain Injury Fund.²⁷

POVERTY PENALTIES AND INESCAPABLE DEBT

The debt accrued from court fees, otherwise known as legal financial obligations (LFOs) are then compounded by “poverty penalties” – added costs which those with the means to pay on-time are not subject to – which include late payment charges, monthly service fees, exorbitant interest rates on outstanding balances and various other financial penalties.

These poverty penalties have been observed in states across the country. California courts issue late penalties of up to \$300 for tickets not paid within 30 days and all other late court payments.²⁸ And, in some places, even setting up a payment plan costs money. Those who can only afford to pay monthly installments in New Orleans are charged a \$100 mandatory fee, which cannot be added to the total amount due, but rather is due up-front.²⁹

Additionally, a growing number of states contract third-party private collection agencies to collect LFO debt. For example, Florida state law allows private collection companies to add up to a 40 percent surcharge on unpaid LFOs.³⁰ The National Association for Public Defense has documented the predatory and threatening collection methods often used by such companies, which can even include stalking and illegal asset forfeiture.³¹ Outstanding balances with these private collection agencies are also reported to credit agencies, which can result in barriers to obtain

housing, employment and other essential needs.³²

Due to high interest rates, annual fees, and late payment surcharges, it can literally take decades for a low-income person to pay off legal debt, even when each monthly payment is on time.³³ The table below illustrates just how long it takes for a low-income Washington resident to pay off \$2,540 (the average LFO amount imposed on in Washington) assuming every monthly payment is made on time and in full.³⁴

As illustrated by the table below, poverty penalties trap low-income individuals into a cycle of poverty. For example, a person who pays **\$25 on time each month** for five years on an LFO of \$2,540 -- that is, paying a total of \$1,500 out-of-pocket – will still owe \$2,073 after five years of regular payments: only \$467 less than the original amount owed. A person who can only afford \$10 per month, in fact, will owe **\$6,083 after ten years and \$56,362 after thirty years**; having only owed \$2,540 before a single payment was made. This is not an isolated example; low-income individuals owing tens of thousands of dollars for decades-old tickets or other low-level offenses have been reported on in Washington,³⁵ and similar cases have been seen in California³⁶ and Florida.³⁷

Inescapable debt is not the only consequence for low-income individuals who commit traffic violations and other low-level offenses; being poor and unable to pay criminal debt also carries severe legal ramifications.

AVERAGE AMOUNT OWED BY MONTHLY PAYMENT IN WASHINGTON STATE FOR LEGAL FINANCIAL OBLIGATION OF \$2,540				
	Remaining Balance in Five Years	Remaining Balance in Ten Years	Remaining Balance in Fifteen Years	Remaining Balance in Thirty Years
\$10 Monthly Payment	\$3,798	\$6,083	\$10,234	\$56,362
\$25 Monthly Payment	\$2,073	\$2,632	\$2,740	\$3,938
\$50 Monthly Payment	\$531	Paid in full after 6 years of payments	0	0
\$100 Monthly Payment	Paid in full after 30 months of payments	0	0	0

Source: Washington State Minority and Justice Commission

CRIMINAL CONSEQUENCES OF UNPAID DEBT

In an increasing number of county and municipal courts, poverty itself has become a crime, as evidenced by the criminal prosecution and routine jailing of those unable to pay LFOs. This criminalization of poverty, observed in courts across the country, is essentially a modern-day debtors' prison: the historical practice of jailing those with outstanding debts as a means of payment.

In 1833, debtors' prisons were abolished under federal law by the United States Congress and eventually declared unconstitutional. In a series of rulings and, most notably, the 1983 landmark case of *Bearden vs. Georgia*, The U.S. Supreme Court affirmed that to hold an individual in detention due to inability to pay is unconstitutional and a violation of the Equal Protection Clause of the 14th amendment.³⁸

Although debtors' prisons are explicitly illegal per the U.S. Constitution, failure to pay legal financial obligations due to poverty can and does result in incarceration in courts across the country. But because judges may not order jail just for failure to pay, court systems have instituted alternate ways to detain the poor for nonpayment. The most common ways courts are able to legally able to jail poor people for unpaid LFOs are: driver's license suspension and subsequent conviction if caught driving; failure to appear charges; contempt of court charges; and "pay-or-stay" jailing practices.

DRIVER'S LICENSE SUSPENSION

One way in which courts criminalize poverty is through driver's license suspension, which can be particularly devastating for low-income people. It is legal in all 50 states and the District of Columbia to suspend driving privileges for reasons unrelated to driving.³⁹ This practice is so common, in fact, that an estimated 40 percent of all suspended licenses in the U.S. are due to unpaid traffic tickets and/or low-level, non-violent criminal offenses unrelated to driving.⁴⁰

Following the loss of driving privileges, low-income people may have no legal method in which to seek or maintain employment, care for children and other family, purchase basic needs such as food, or attend mandatory court hearings and social services appointments required to maintain public assistance.

Public transportation is simply not a feasible option for many living in poverty, due to lack of availability in their region and/or inability to afford multiple daily fares for each member of their family.⁴¹ As such, when poor people who rely on a vehicle lose their license, they often must break the law on a daily basis in order to keep a job and care for their family. In fact, according to the National Highway Traffic Safety Administration, at least three-fourths of those with suspended licenses continue driving.⁴²

Penalties for Driving with a Suspended License (DWSL) vary by state, but can include fees of up to \$2,500, mandatory jail time, probation, and/or vehicle impoundment.⁴³ Unlike traffic citations, DWSL is a misdemeanor or gross misdemeanor in 48 states and the District of Columbia,⁴⁴ which can further limit employment and housing opportunities to low-income people.⁴⁵

Employment is key to repaying LFO debt and paying the fees necessary for license restoration; however, driver's license suspensions significantly reduce the ability to work and earn a living wage, compounding the economic vulnerability of persons living in poverty. A 2006 survey in New Jersey found that of those with suspended licenses, 42 percent of drivers were unable to keep their job immediately following license suspension and of those drivers 45 percent were unable to find another job.⁴⁶ Less than 6 percent of these license suspensions were due to driving-related offenses.⁴⁷ This same study found that while only 16.5 percent of all licensed New Jersey drivers reside in low-income zip codes, these zip codes accounted for 43 percent of all suspended licenses in the state.⁴⁸

People of color – and particularly African-Americans – are disproportionately more likely to have their driver's license suspended.⁴⁹ Some of this is due to the higher poverty rates for people of color,⁵⁰ as there is an established relationship between poverty and suspended driver's licenses,⁵¹ as those experiencing poverty may be less able to pay even minor traffic tickets. Additionally, the documentation of racial bias in policing, including in traffic stops and citations,⁵² illustrates that racial bias is also at play in putting a disproportionate share of people of color in a situation where they can lose their license due to their financial obligations to the court.

FAILURE TO APPEAR

Another way municipal courts arrest and jail people essentially for being poor is through Failure to Appear (FTA) charges. Typically, those who receive citations can either pay in full within a given time-frame or attend a scheduled court hearing.

However, many defendants who cannot pay the cost of a citation miss the initial court appearance because they fear being arrested. Additionally, as previously mentioned, low-income people can face significant barriers to attending court.⁵³

What most citations do not communicate, though, is that by failing to attend this initial court date a judge may issue a bench warrant for arrest and issue a charge of Failure to Appear,⁵⁴ which can include additional fines and fees, and the possibility of jail time.

It should also be noted that many states suspend driver's licenses for failure to appear as well as unpaid legal financial obligations. In California, for example, over 4.2 million people, or more than 17 percent of adult Californians, have suspended driver's licenses as a direct result of failure to pay or failure to appear.⁵⁵

In some cases, even defendants who arrive at court still receive FTA charges due to illegal municipal court policies and practices. A 2015 U.S. Department of Justice investigation in Ferguson, Missouri, found that some people who attend court to pay their fines near the end of the day found the court window already closed, despite notices on the court's website stating that it should still be open.⁵⁶ Additionally, the court

will sometimes begin hearing cases early and then lock the doors to the building "as early as five minutes after the official hour," leaving any defendant who arrives late to receive a charge of Failure to Appear.⁵⁷

Parents also reported arriving to courts in Missouri with their children, for whom they could not obtain or afford childcare, only to be told that their young children are not allowed in the courtroom and that to attend the hearing, their children must wait in the parking lot unattended.⁵⁸ These parents either had to leave their children unattended, or risk receiving a Failure to Appear charge.

CONTEMPT OF COURT

In the absence of or in addition to Failure to Appear or Driving with a Suspended license charges, many judges routinely jail traffic violators on the basis of Contempt of Court charges, even if the only basis for which is inability to pay LFOs.⁵⁹

Ironically, judges who detain defendants for contempt, solely based on nonpayment, are able to do so using a technicality contained in the same 1983 Supreme Court ruling that found jailing individuals for inability to pay is a violation of the 14th amendment and unconstitutional. Despite establishing this, the ruling also held that judges must first determine whether a defendant has the ability to pay, but "willfully" refuses to do so.⁶⁰ But because the Supreme Court provided no uniform standard or procedure for judges to use in determining whether a person's

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Illinois, Michigan, Louisiana, Ohio and Texas are just a few of the states with jurisdictions that routinely find defendants in contempt for inability to pay.⁶² Whether their detainment is lawful or not, defendants are often unaware of their rights, unable to pay defense application fees, or are simply denied their right to counsel.⁶³

Some judges use arbitrary and discriminatory methods to determine a defendant’s true ability to pay outstanding debt. Judge Robert Swisher of Benton County, Washington, for example, reports the following factors as the basis of his determination: whether the defendant appears to be wearing expensive clothes, particularly NFL jackets; whether they smoke cigarettes; and if they have tattoos that appear expensive.⁶⁴ Unsurprisingly, about 20 percent of those detained in Benton County Jail in 2014 were serving jail time for failure to pay LFO debt, costing Benton County \$68.59 a day to house each inmate.⁶⁵

Additionally, some judges demand that defendants use their public assistance benefits to pay LFOs.⁶⁶ This is particularly problematic for those who survive solely on cash assistance such as Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI): programs which were created to ensure basic needs such as housing, child care, and medical care for the most vulnerable populations, so using these for court fees leaves little to no ability to cover other vital expenses. Yet, faced with the threat of jail time and additional legal sanctions, many feel that they have no other choice but to hand over their benefits, to the detriment of themselves and their families.

PAY-OR-STAY: JAIL AS AN ALTERNATIVE TO PAYMENT

Poor people also serve time for unpaid LFOs through a practice referred to as “pay-or-stay” in which a judge grants the option of paying debt in full or serve jail time to satisfy debts. Washington State, for example, allows judges to detain defendants and apply a credit to their outstanding balance for each day in jail served.⁶⁷ Many, including the American Civil Liberties Union have cited this practice as an overt violation of the Equal Protection Clause because jail time only applies to those unable to pay.⁶⁸

In September 2015, The New York Times published video of a municipal court judge in Bowdon County, Georgia explicitly stating to two traffic violators that they must pay their fines immediately or be remanded to custody.⁶⁹ Neither defendant had a lawyer present, despite the fact that in Georgia, “poor defendants are supposed to have access to a court-appointed lawyer if they face jail or probation.”⁷⁰

Although some judges claim that “pay-or-stay” programs provide an alternative method for indigent defendants to reduce or eliminate debt,⁷¹ it is unclear whether this practice actually saves court systems any money. In Benton County, Washington, for example, at least one judge routinely provides low-income defendants with the option of earning a \$50 credit for each day served in jail, but considering the county jail spends over \$68 per day just to house and feed each inmate, this program only results in a net loss to the county.⁷² It is unclear how many county courts use this method, but an investigation by NPR and the Brennan Center for Justice contained multiple accounts from those who claim to have been offered reduced debt in exchange for a jail sentence.⁷³

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COMMUNITY IMPLICATIONS

Municipal and local courts that criminalize poverty by targeting low-income racial or ethnic minorities worsen the existing economic, social, and racial disparities between low-income communities of color and middle-class neighborhoods. Although blacks and Latinos have been consistently employed at lower rates than whites over the past 50 years,⁷⁴ the employment gap between whites and racial and ethnic minorities has widened in many states following the Great Recession.⁷⁵ During this same period, courts across the nation began to increase court fees, generating revenue through modern-day debtors' prisons and the criminalization of poverty.⁷⁶

As previously discussed, legal sanctions for unpaid criminal debt can impact one's ability to maintain or find employment. The impact of this, though, can extend beyond individuals to their families⁷⁷ and to the greater community.⁷⁸ Because those with unpaid LFOs are already more likely to be poor, and poverty is often concentrated by neighborhood,⁷⁹ LFOs can only serve to exacerbate the debt and poverty of poor neighborhoods - especially in poor communities of color,⁸⁰ whose residents may be even more likely to be pulled over in the first place. Neighborhoods of concentrated poverty are significantly more likely to have high crime - particularly violent crime - rates; limited job opportunities due to reduced private sector investment; inadequate educational opportunities and increased prices for goods and services,⁸¹ creating additional barriers for those with LFOs to pay.

When legal financial obligations lead to prison and/or extreme debt and poverty, it can also impact the

children of those with the unpaid court fees, potentially creating an intergenerational cycle of poverty and involvement with the criminal justice system. The effects on children with an incarcerated parent can include "negative behavioral manifestations" including truancy and use of drugs or alcohol.⁸² Additionally, suspension and dropout rates are higher for children with an incarcerated parent than for other children.⁸³ These risky behaviors have long-term negative implications for the community as a whole. Additionally, children of parents with debt are also more likely to be unhappy at school,⁸⁴ regardless of whether that debt led to the parent's incarceration. Neighborhoods with concentrated poverty also have high rates of intergenerational poverty,⁸⁵ making it more likely that children of parents who are poor and who cannot afford to pay their LFOs will likewise end up in poverty as adults.

Additionally, when municipal courts criminalize poverty and target low-income communities of color, it can create racial hostility, which can in turn lead to increased violence within the community. While many African-Americans are historically distrustful of police,⁸⁶ racially targeted policing, disproportionate police violence against people of color,⁸⁷ and a system that criminalizes poor people of color has reinforced and exacerbated existing mistrust and fear. This can lead to unpredictable, and sometimes violent, outcomes, as evidenced by the death of Michael Brown and subsequent clashes between police and other members of the community in Ferguson, Missouri,⁸⁸ that can endanger the safety of residents and police.

COMMUNITY RESPONSE

The 2014 murder of Michael Brown in Ferguson, Missouri and subsequent Department of Justice investigation into predatory court practices in Ferguson, have generated political momentum for many organizations and community activists in Ferguson and throughout the country, resulting in political reform at the state and county level.

Several organizations in Missouri have successfully influenced recent criminal justice reform. ArchCity Defenders, a Missouri-based collection of lawyers and activists, was the first to document how several St. Louis County courts routinely barred children

from courtrooms, essentially forcing parents to miss their court date and face Failure to Appear charges, steep fees and arrest warrants.⁸⁹ Based in part on the organization's work, in June 2014 the Presiding Judge of St. Louis County Circuit Courts admonished all 81 municipal courts for closing courtrooms to anyone not "named on the docket or a counsel of record," and therefore limiting the ability to ensure those courts are not engaging in discriminatory and unconstitutional policies.⁹⁰

Organizations including the St. Louis County Municipal Court Improvement Commission,

Missourians Organizing for Reform and Empowerment (MORE) and The Center for Popular Democracy have also directly influenced reforms through issuing several policy recommendations,⁹¹ many of which were later adopted. Recommendations included assessing fines proportionate to income; elimination of Failure to Appear charges for traffic violations; and elimination of automatic license suspension for failure to appear. Many of these recommendations were reflected in a 2015 Missouri bill that limits fees, bans failure to appear charges for missing a municipal court date, prohibits jail for most minor driving-related infractions and limits the costs of traffic citations combined with court costs to \$300.⁹² This bill, signed into law on July 9, 2015, also lowers the cap on general operating revenues generated by traffic citations from 30 percent to 20 percent across Missouri and places a cap of 12.5 percent general operating revenue deriving from traffic citations within St. Louis County and municipalities.

The American Civil Liberties Union (ACLU) is a prominent critic of excessive legal financial obligations and has conducted several investigative reports and campaigns regarding modern-day debtors' prisons in such states as Washington, Louisiana, Michigan, Ohio and Georgia.⁹³ Some of these reports have led to substantive changes. In 2013, for example, The ACLU of Ohio released a report on the resurgence of debtors' prisons, titled, "The Outskirts of Hope: How Ohio's Debtors' Prisons are Ruining Lives and Costing Communities." This report included a series of recommendations, including that the Ohio Supreme Court "institute administrative rules to ensure that all courts properly determine whether a person can afford to pay her criminal fines, in order to ensure that those who are unable to pay are not incarcerated for these debts."⁹⁴ In response to pressure from the ACLU and other groups, in February 2014 the Ohio State Supreme Court created a bench card that includes clear instructions and rules for enforcing fines, and distributed it to municipal and local courts statewide. The bench card states, among other instructions, that defendants cannot be found in contempt of court on the basis of nonpayment nor ordered to jail for "willful" nonpayment, until an ability-to-pay hearing takes place, at which a public defender must be provided.⁹⁵

The ACLU of Washington released a joint report in 2014 with Columbia Legal Services titled, "Modern-Day Debtors' Prisons: How Court-Imposed Debts Punish Poor People in Washington." This report highlighted particularly egregious practices observed in Benton County, Washington where one in four people jailed for misdemeanors are there due to inability to pay court fines and costs.⁹⁶ In October of 2015, the ACLU of Washington, on behalf of three plaintiffs, sued Benton County for operating a modern-day debtors prison.⁹⁷

In Washington, a coalition of organizations including Washington Community Action Network (Washington CAN!), the Statewide Poverty Action Network, and Columbia Legal Services, has also tirelessly campaigned for Washington State Legislature bill HB 1390, which would limit interest rates on LFOs and create a transparent process of LFO waivers for the indigent.⁹⁸ Specifically, the bill would "eliminate interest accrual on the non-restitution portions of legal financial obligations (LFOs) imposed in a criminal judgment" and mandate that judges only order defendants to pay upon review of their circumstances and ability to pay.⁹⁹ The bill passed 94-4 by the state House¹⁰⁰ and will be considered by the state Senate during the upcoming legislation session.¹⁰¹ Washington CAN! and other community activist groups continue to campaign in support of this bill.

Organizations in Virginia, including Virginia Organizing and the ACLU of Virginia, have worked tirelessly in coalition to ensure barriers like LFOs do not restrict voting rights. Prior to 2013, Virginia was one of only four states nationwide that permanently disenfranchised those with a felony conviction.¹⁰² Even after streamlining the voting rights restoration process in 2013,¹⁰³ allowing some people with felony convictions to vote, LFO repayment was still required prior to restoration.¹⁰⁴ This left many former felons, otherwise eligible to vote, disenfranchised on the sole basis of poverty and inability to pay. That changed in 2015 when Governor Terry McAuliffe ordered that unpaid court costs and fees no longer bar former felons from voting rights restoration.¹⁰⁵ Although administrative hurdles still keep many felons in Virginia from the right to vote,¹⁰⁶ this recent reform is a small, but significant step.

POLICY RECOMMENDATIONS

Imprisonment due to poverty was outlawed by the equal protection clause of the 14th Amendment, yet today courts across the country continue to find ways to imprison people for being poor. The following policy tools can help ensure that poverty does not equal a jail sentence.

Limit automatic fees attached to citations.

By limiting fees attached to citations to a percent of the initial citation, a small infraction would not grow to an impossible burden. Additionally, though, fees should have direct correlation to the specific citation and requirement of payment should be based on an individual's ability to pay.

Limit interest rates and fees attached to unpaid financial obligations.

Inability to pay should not result in a never-ending penalty due to high interest rates. Interest rates should be capped at 6 percent, and based on ability to pay. Additionally, mandatory annual fees for payment plans should be eliminated.

Cap operating revenue from fees.

Government entities should not rely on fees from citations to survive. Capping the percentage of revenue that can come from these fees would help prevent a policy where police are encouraged to write as many tickets as possible just to raise revenue for general funds.

Establish more clear criteria for determining ability to pay fines and fees.

When judges have no clear criteria for setting fines and fees, and no criteria for determining ability to pay, it is left to the judge's discretion. More clear criteria including employment history and status, public assistance status, and more can help prevent bias in fines and fees and in determining whether a defendant is willfully refusing to pay or simply cannot pay. A bench card such as the one distributed in Ohio, could help limit bias and help judges rule fairly.

Prohibit driver's license suspension for inability to pay.

Inability to pay should not result in suspension of a driver's license that is necessary to remain or gain employment. Lack of a driver's license can only increase the chance that someone will be unable to pay and then end up in a cycle of poverty.

Restrict courts' ability to send unpaid fines and fees to outside debt collection agencies, and better regulate the debt collection industry.

Even when a financial obligation is relatively modest, if it is unpaid it often ends up in the hands of debt collectors. These debt collectors not only charge extremely high interest rates, they often use bullying tactics and add additional fees of their own that leave those paying fines and fees in a cycle of debt and poverty. Restricting circumstances where debt from fees and fines can go to collections agencies and regulating the ability to add additional fees, regulating interest rates, and prohibiting bullying tactics like threatening jail time for unpaid debts would help stop this cycle.

CONCLUSION

In courtrooms throughout the country, poverty itself has become a crime. Those living in poverty – and especially communities of color – are often unfairly targeted, then punished for their inability to pay.

Solutions to this problem must include community activism efforts from within the community as well as policy change. Community pressure to reduce police targeting and to reduce fines and fees, along with structural policy changes that prevent government from relying on fees to stay afloat, can help end the criminalization of poverty.

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APPENDIX 1: TERMS TO KNOW

Bench Warrant

An arrest warrant issued by a judge when a person violates the rules of the court, most often for Failure to Appear.

Contempt of Court

A charge issued for not complying with court orders. For example, this can be issued along with Failure to Appear charges or, in some cases, if a judge deems a person is willfully not paying their LFOs. A Contempt of Court charge often involves jail time and/or additional fines.

Debtors' Prison

The historical practice of jailing those with outstanding debts as a means of payment. Debtors' prisons were officially abolished by federal law in 1833 and affirmed as unconstitutional in 1983.

Failure to Appear

A charge issued when a person does not show up for a scheduled courtroom proceeding. A Failure to Appear charge can lead to other charges like Contempt of Court, and/or to additional penalties including jail time or fines.

Fees

Costs added to the initial fine to fund other court or government expenditures such as jail booking fees, bail investigation fees, public defender application fees, indigent application fees, and payments to the jail for the cost of pretrial detention. In some cases, fees cover other tangentially related expenditures such as employee fitness centers.

Fines

The initial cost of an infraction, such as a \$100 fine for a traffic violation.

Legal Financial Obligation

The total debts owed to a federal, state or local court as the result of an infraction or crime. LFOs include the original amount owed, as well as any surcharges, accumulated interest and penalties. Note that the definition in this report may differ slightly from that of some state and local governments.

Pay-or-Stay

The practice of serving time in jail to offset unpaid LFOs.

Pay-to-Stay

Fees charged to inmates for room-and-board or other necessities, such as laundry services or feminine hygiene products.

Restitution

Money paid to victims for personal or property damage.

Willful Nonpayment

When a person chooses not to pay their LFOs despite an ability to do so. In most states, deciding whether nonpayment is willful is up to an individual judge's discretion.

APPENDIX 2: MODERN DAY DEBTORS' PRISONS: HOW A \$100 TRAFFIC TICKET CAN LEAD TO THOUSANDS IN DEBT AND JAIL TIME

Following the death of Michael Brown in Ferguson, Missouri, the Department of Justice found that the City of Ferguson, like many state and local courts across the nation, not only disproportionately issues citations to low-income blacks in an attempt to maximize revenue, but adds excessive fees, fines and arrest warrants for those unable to pay.

In New York City, Kalief Browder's inability to pay \$3,000 bail for allegedly stealing a backpack resulted in three years at Rikers Island jail, including two years in solitary confinement. Prosecutors eventually dropped the charges due to lack of evidence, but the abuse he endured while incarcerated led to his suicide a year and a half after he was released.

Across the country, poverty itself has become a crime. A \$100 traffic ticket can result in thousands of dollars in fines, years in the criminal justice system, and even incarceration. In the wake of the Great Recession, many state and local courts throughout the country have created debtors' prisons by using excessive fines and fees, private collection companies, and the threat of jail to collect from defendants. Many are low-income and have committed offenses as minor as unpaid parking tickets.

This resurgence of debtors' prisons is prohibited by the 14th amendment; it's unconstitutional to imprison individuals for being poor. Here's how court systems across the country have found legal loopholes to effectively jail people for failure to pay:

1. **Contempt of Court:** A judge may not order jail for failure to pay, but they do have the authority to determine whether nonpayment is "willful." Judges can decide that a defendant is willfully not paying their debt and jail them on the basis of contempt of court.
2. **Driving with a Suspended License:** In 47 states a driver's license can be suspended for failure to pay criminal debt, even if the original infraction had nothing to do with driving. Driving without a license to get to work, care for family, or make court appearances, they are charged with a new criminal infraction, steep fines and even jail time.
3. **Failure to Appear:** Defendants fail to show up to court for various reasons, including fear of being arrested for not paying their fine. However, missing court altogether can lead to a failure to appear charge, punishable by jail time and even more fines on top of their existing debt.

TERMS TO KNOW

LFOs: Legal financial obligations are the total debts owed to a federal, state or local court as the result of an infraction or crime. LFOs include the original amount owed, as well as any surcharges, accumulated interest and penalties. They originate from three main sources:

Fines imposed as a condition of sentencing, such as a \$400 fine for public intoxication.

Fees added onto the initial fine, including jail booking fees, bail investigation fees, public defender application fees, indigent application fees, and payments to the jail for the cost of pretrial detention. This is how a minor traffic ticket balloons into a significant debt.

Restitution money paid to victims for personal or property damage.

Poverty Penalties: In addition to LFOs, the penalties, surcharges, and high interest rates charged by state and local court systems and the private collection companies they contract make it difficult or impossible for poor people to pay off legal debt.

Pay-to-stay: Jails sometimes charge a daily fee for room-and-board. (Note: some facilities charge additional fees for laundry services, feminine hygiene products, and medical/dental care received while in custody.)

Pay-or-stay: If a defendant is unable to pay, a judge may impose a jail sentence to satisfy the debt. For example, for each day served in jail, \$25 is subtracted from the total amount owed, until the debt is satisfied. (Note: if the jail charges for room-and-board, a person incurs new debts to pay upon release.)

How a \$100 traffic ticket turns into a mountain of criminal debt

Sarah, a single mother with two children living in California, receives a \$100 traffic ticket. With automatic fees & assessments, she is unable to pay the \$490 total due.

**TRAFFIC CITATION: \$100 + AUTOMATIC FEES & ASSESSMENTS: \$390
TOTAL AMOUNT DUE: \$490**

Sarah misses the initial payment and is unable to miss work for the court hearing

**FAILURE TO APPEAR FEE: \$25 + 30 DAY LATE FEE: \$300 + DRIVER'S LICENSE SUSPENSION
TOTAL AMOUNT DUE: \$815**

Sarah must drive to work. She is pulled over for a broken taillight, charged with Driving with a Suspended License and sentenced to five days in county jail.

**BROKEN TAIL LIGHT CITATION & FEES: \$125 + DRIVING WITH A SUSPENDED LICENSE FEE: \$300 - \$1000 + PUBLIC DEFENDER APPLICATION FEE: \$50 + ROOM-AND-BOARD FOR FIVE DAYS IN JAIL: \$100
TOTAL AMOUNT DUE: \$2090**

Sarah starts a payment plan, but she lost her job and cannot make the first payment

**PAYMENT PLAN FEE: \$35 + LATE PAYMENT FEE: \$50 + 12% INTEREST RATE
TOTAL AMOUNT DUE: \$2501**

Sarah is given two choices: pay debt in full within 60 days or serve jail time to "pay off" debt, costing the county approximately \$110 for every day she is in custody.

**PAY-TO-STAY JAIL: EARN \$30 OFF OF DEBT BALANCE FOR EACH DAY SERVED IN JAIL
JAIL TIME: 84 DAYS**

Sources: Brennan Center for Justice of NYU Law School; Lawyers' Committee for Civil Rights; the National Conference for State Legislatures



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