New Jersey Courts

Independence • Integrity • Fairness • Quality Service

REPORT OF THE

SUPREME COURT COMMITTEE

ON

Municipal Court Operations, Fines, and Fees

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I. EXECUTIVE SUMMARY

New Jersey's Municipal Courts handle approximately six million cases each year. Municipal Courts are often referred to as the face of the Judiciary. For most citizens, it is their only exposure to the courts and judges of this State. Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri. The Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement and imposition of fines and fees, and all grounded in the rights to due process and equal protection.

> *Most interactions between the public and the Judiciary take place in the municipal court system. Millions of people who come into contact with the municipal courts each year form their impressions of the justice system based primarily on those interactions.*
> *– Chief Justice Stuart Rabner*

New Jersey Municipal Courts have faced similar criticism. The 2017 report issued by New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts pointed out significant concerns about the independence of Municipal Courts. A series of newspaper articles beginning in late 2016 articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. These concerns were also exposed in two recent cases involving municipal court judges.

Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March 2017 to address these concerns. **The Committee was charged with conducting a reform-minded review of Municipal Court practices**. This review emphasized several important concepts that affect all defendants in municipal court—particularly those of lesser economic means—including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts.

In accordance with the charge of the Chief Justice, the Committee conducted a detailed examination of New Jersey Municipal Court operations, considered national standards for municipal courts, and carefully reviewed various reports and recommendations made by the National Center for State Courts and the National Task Force on Fines, Fees and Bail Practices created by the Conference of Chief Justices and Conferences of State Court Administrators.

Despite the many significant concerns outlined in this report, the Committee concluded that New Jersey Municipal Courts compared very positively with similar courts around the country. This is due in large part to the significant reform efforts of the last 25 years, the increased oversight by the Judiciary both at the State and vicinage level, the mandatory training required of judges and staff, and the many excellent Municipal Court judges.

Nonetheless, **the Committee's review revealed a number of significant concerns where aggressive reform is needed**. Many of those issues identified by the Committee undermine both the administration of justice and the independence of the Municipal Courts. What follows is a summary of the main findings and conclusions of the report.

SIGNIFICANT CONCERNS IDENTIFIED BY THE COMMITTEE

- The excessive imposition of financial obligations on certain defendants;
- The excessive use of bench warrants and license suspensions as collection mechanisms; and
- The excessive use of discretionary contempt assessments.

The Committee is profoundly concerned with **the excessive imposition of financial obligations on certain defendants**, and what can be the never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration of justice. They can be financially overwhelming to defendants, have a disproportionately negative impact on the poor, and often become the starting point for an ongoing cycle of court involvement for defendants with limited resources.

The Committee is equally concerned about **the excessive use of bench warrants and license suspensions as collection mechanisms**. There are 2.5 million outstanding municipal court bench warrants for failure to appear and failure to pay. These warrants often involve minor offenses and minimal amounts. The cost and collateral consequences in the enforcement of these warrants can also be devastating to individuals and families.

The Committee is particularly alarmed by **the excessive use of discretionary contempt assessments**, which are imposed by Municipal Court judges with all collected amounts going to the municipalities. Between calendar year 2015 and calendar year 2017 a total of $22 million in these contempt amounts were assessed. In the report, the Committee identifies that these practices at times have more to do with generating revenue than the fair administration of justice.

The Committee **strongly recommends statutorily mandating consolidation of smaller courts**, which often only meet once or twice a month, taking into account factors such as total annual filings, frequency of court sessions, and geography. Consolidated and streamlined courts not only enhance efficiencies, but can also protect the independence of the Municipal Courts. The Committee found that of the 515 courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings.

To address the Chief Justice's charge and the concerns expressed above, the Committee's report includes 49 separate recommendations and eight principles for Municipal Courts that capture the driving tenets of an independent judiciary. Those principles serve as guideposts in the honing and finalization of current and future reform, and emphasize the maxim that above all, Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. Central to this is the preservation of the independence of the Municipal Courts and ensuring that the Municipal Courts and Municipal Court judges are not affected by the generation of revenue, a concern repeatedly highlighted by the Committee.

A number of the Committee's guiding principles directly address the concerns regarding revenue generation:

- The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government;
- The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality;
- The appointment and reappointment of Municipal Court judges shall never be based on the revenue a Municipal Court judge generates for a municipality; and
- Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary.

> *It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. The imposition of punishment should in no way be linked to a town's need for revenue.*
> *– Chief Justice Stuart Rabner*

Significant Committee recommendations are summarized below:

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES:

- Develop policies and procedures that would monitor the imposition of contempt sanction amounts;
- Develop sentencing guidelines for discretionary, ranged financial penalties;
- Develop policies for the widespread review and dismissal of old complaints;
- The continued encouragement of the use of authorized post-disposition sentencing alternatives through additional policies and procedures;
- The development of policies and tools that would assist Municipal Courts in imposing such sentencing alternatives; and
- The legislative creation of additional sentencing alternatives.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE:

- Significant changes to the Municipal Court's response to a defendant's post-disposition failure to pay, including the mandatory scheduling of an ability-to-pay hearing upon a failure to pay;
- Limiting the issuance of bench warrants to certain serious offenses or when outstanding fines and fees are substantial; and
- The development of a formalized policy for recalling existing bench warrants for failure to appear and failure to pay.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS:

- The provision of automated text, email, and/or telephonic reminders of upcoming court dates and payment due dates;

- Modifying court notices to fully advise defendants in plain language of the consequences of a failure to appear or failure to pay;
- Advising defendants in plain language of the availability of sentencing alternatives; and
- Expanding the use of video and telephonic appearances.

INDEPENDENCE OF THE MUNICIPAL COURTS:

- A voluntary, transparent, and impartial appointment and reappointment process for Municipal Court judges;
- The establishment of a Municipal Court judge evaluation process that resembles that used for Superior Court judges, and would be based on both quantitative and qualitative data collected during the course of a judge's term;
- Legislatively increasing the term of service for Municipal Court judges from three to five years;
- Legislatively mandating the consolidation of small courts; and
- Legislatively adopting a transparent, impartial appointment and reappointment process for Municipal Court judges.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY:

- Offering NJMCdirect.com (an online payment center) at every Municipal Court's payment window, giving defendants the ability to pay all Municipal Court fines with a credit or debit card;
- Expanding remote appearances and actions that defendants can take on their case;
- Increasing the types of offenses that can be resolved online without a court appearance;
- Allowing the online rescheduling of an initial court date; and
- Allowing for the online completion of various Municipal Court forms in the NJMCdirect.com portal.

To capitalize on the momentum of this report**, the Committee recommends the establishment of a working group comprised of all three branches of government to implement the recommendations made by the Committee to achieve necessary reforms, and to create a forum for the discussion of additional relevant issues**.

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all as a means to further the State of New Jersey's ongoing commitment to equal justice for all.

II. INTRODUCTION

Municipal Courts across the country have been subjected to scrutiny as a result of court practices highlighted in the Department of Justice's 2015 investigation of the Ferguson Police Department in Missouri, and directly addressed in the subsequent Department of Justice "Dear Colleagues" letter [1] to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A). In that letter, the Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement of fines and fees, and all grounded in the rights to due process and equal protection. New Jersey Municipal Courts have faced similar criticism. A November 27, 2016 article, and a follow-up article published on November 30, 2016, both from the Asbury Park Press, articulate a public perception that municipalities are increasingly relying on fines from tickets as a source of significant revenue, calling into question the overall fairness of such practices. (Appendix B).

The principles expressed in that letter–equal access to the courts and fair justice for all–mirror the core values of the New Jersey Judiciary. Those values have been the driving force of every Judiciary initiative in recent history. They are the bedrock of the Judiciary's tireless commitment to ensuring that the avenues of justice remain open and fair to all members of society, including the most vulnerable, and have provided the inspiration for the New Jersey Judiciary to remain on the forefront of equal justice initiatives. New Jersey's 2017 implementation of criminal justice reform[2], the effective elimination of cash-based bail, is the most recent example of those efforts.

Building on ongoing court improvement efforts, significant concerns regarding New Jersey Municipal Courts, and motivated by the urgency suggested in the "Dear Colleagues" letter to examine the courts most frequently accessed by members of the public, Chief Justice Stuart Rabner constituted the Supreme Court Committee on Municipal Court Operations, Fines, and Fees in March of 2017. The Committee was charged with conducting a holistic review of Municipal Court practice, with an eye towards reform. The review required an examination of current laws and policies, including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an

[1] On December 21, 2017, the Department of Justice rescinded this letter and 24 other documents as "unnecessary, inconsistent with existing law, or otherwise improper." Press Release, Dep't of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 25 Guidance Documents (December 21, 2017), available at https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents. (Appendix A-3).

[2] This monumental change in New Jersey's justice system was authorized by Constitutional amendment, N.J. Const., art. I, ¶ 11, and by statute, N.J.S.A. 2A:162-15 to 2A:162-26, and is referred to as "criminal justice reform."

acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and their users, and the independence of our Municipal Courts. (Appendix C).

Committee membership was comprised of Superior Court judges, Presiding Municipal Court judges, Municipal Court judges, court executives from both the Administrative Office of the Courts (AOC)[3] and vicinages, Certified Municipal Court Administrators, members of the executive branch, representatives of the New Jersey State Bar Association and New Jersey League of Municipalities, and esteemed legal practitioners familiar with Municipal Court practice.

This report and the recommendations that it contains are the result of the Committee's diligent efforts to develop proposals that will further the Judiciary's goal of providing equal justice for all court users, including the most impoverished. The approach is multi-faceted, emphasizing all components of a fair justice system: judicial independence; notice and access to court; the review and modification of the tools used by Municipal Courts to both bring defendants into court and to collect financial obligations; appropriately limiting the use of warrants and license suspensions to enforce financial obligations; and the exploration of all available sentencing alternatives. The Committee has carefully balanced this noble objective with the need to maintain an appropriate level of defendant accountability, equally integral to the justice system. To that end, the Committee has developed both principles to guide Municipal Courts through this and future reform, as well as recommendations in furtherance of each maxim.

A. METHODOLOGY

After convening in March of 2017, the Committee split into four subcommittees to address subject matter areas consistent with its charge:

INDEPENDENCE OF MUNICIPAL COURTS

Charge: Review and make recommendations to change the appointment and reappointment process for Municipal Court judges, to enhance the independence of the Municipal Courts, and to recommend procedural and statutory changes in conformance with the above.

[3] The Administrative Office of the Courts is tasked with fulfilling the court management duties constitutionally assigned to the Chief Justice. N.J. Const., art. VI, § VII, ¶ 1 ("The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.").

DRIVER'S LICENSE SUSPENSION[4]

Charge: Review and make recommendations to enhance fairness in the process of license suspension surcharges and fees, to explore alternatives to license suspensions, to review the adequacy of notices provided to defendants before a driver's license suspension, to explore the use of excessive and automatic surcharges and fines, and to recommend procedural and statutory changes in conformance with the above.

INDIGENT DEFENDANTS, ABILITY TO PAY, AND CONTEMPT

Charge: Review and make recommendations for sentencing alternatives to fines, to limit the use of contempt, to require consideration of the economic hardship a fine may have on a defendant, to reduce fines and fees for less serious offenses, to establish a uniform statewide guideline for fines and fees, and to recommend procedural and statutory changes in conformance with the above. This subcommittee will also be tasked with determining whether an acquitted defendant can be assessed court costs.

TECHNOLOGY IN THE MUNICIPAL COURTS

Charge: Determine whether sufficient technology is available to the Municipal Courts, identify technological improvements that can be made to better assist court users both in and outside of the courtroom, and to make recommendations for technological enhancements to improve processes in all Municipal Courts.

Subcommittee membership was structured to include a balance of Judges, non-judge court officials, legal practitioners, and other experts.

Both the larger Committee and each subcommittee met multiple times over the remainder of 2017 and into 2018. Committee meetings were used to discuss major themes of the charge. Subcommittee meetings were used to review significant policy papers, discuss the assigned subject area, review research, and propose and develop recommendations. Both Committee and subcommittee meetings included presentations from persons involved or familiar with various aspects of Municipal Court reform, including Assignment Judge Linda R. Feinberg (ret.); Assignment Judge Lawrence M. Lawson (ret.); Presiding Municipal Court Judge Frank J. Zinna (ret.); Laurie Dudgeon, Esq., Administrative Director of the Courts of Kentucky; and Daniel Phillips, then Legislative Liaison, AOC.

[4] A Municipal Court can order or initiate the suspension of a driver's license or vehicle registration as part of a defendant's sentence or due to a failure to appear or failure to pay a fine, fee, or surcharge. N.J.S.A. 2C:46-2, consequences of nonpayment, summary collection; N.J.S.A. 39:4-139.10, failure to respond, pay parking judgment, penalties; R. 7:8-9, procedures on failure to appear. For the sake of brevity, references to license suspensions throughout this report should be read as encompassing both license suspensions and vehicle registration suspensions.

The Committee also looked to the work, guidance, and expertise demonstrated by other pre-existing groups:

- The National Task Force on Fines, Fees and Bail Practices (National Center for State Courts), of which Chief Justice Stuart Rabner is a member;
- The Subcommittee on Judicial Independence in the Municipal Courts (New Jersey State Bar Association), of which Assignment Judges Feinberg and Lawson were members;
- The Equal Justice Working Group of the Municipal Conferences[5], chaired by Judge Louis J. Belasco, Jr., P.J.M.C., member to the Committee; and
- The Contempt Working Group of the Municipal Conferences, which was also chaired by Judge Belasco, Jr., P.J.M.C.

At later meetings of the Committee, the chair of each subcommittee made an oral presentation of the proposed recommendations to the full Committee. Discussions and comments were solicited from members, both verbally and in writing. Those recommendations were incorporated into this report, which was reviewed, revised, and approved by the full Committee.

Throughout this process, great care has been taken to obtain a cross-section of all pertinent points of view in addressing each subject area, with an emphasis on achieving a consensus amongst members on all recommendations.

B. Overview of Municipal Courts in New Jersey

An examination of Municipal Court operations, fines, and fees requires first an understanding of current practices. What follows is a primer on the structure of the Municipal Court system, current enforcement and collection practices, the effects of these practices on indigent defendants, and a discussion of prior reform efforts.

1. Structure of the Municipal Court

New Jersey Municipal Courts are courts of limited jurisdiction, constitutionally authorized by N.J. Const., art. VI, § I, ¶ 1. Their creation and operation is governed by statutes primarily found in N.J.S.A. 2B:12-1 et seq. The organizational structure, financial funding, and collection processes of the Municipal Courts are discussed below.

[5] The Conference of Presiding Municipal Court Judges meets on a monthly basis to discuss ongoing, new, and upcoming issues relating to the municipal courts. The Conference of Municipal Division Managers holds similar meetings in schedule and substance. The two conferences are collectively referred to as the "Municipal Conferences."

i. ORGANIZATIONAL STRUCTURE

By statute, every municipality in New Jersey must establish a Municipal Court to adjudicate traffic and petty criminal offenses that occur within its borders. N.J.S.A. 2B:12-1a. Although a Municipal Court is required, municipalities may choose from three types of Municipal Courts that can meet the particular needs of a municipality: a single municipal court; a joint court; or a shared municipal court.[6]

Single Municipal Courts serve a single municipality. Joint courts or shared service courts are created through an agreement between municipalities. A joint Municipal Court is one in which two or more municipalities agree to form a single court. N.J.S.A. 2B:12-1b. Their caseloads and bank accounts are commingled to form one unified court. Therefore, four municipalities that agree to form a joint Municipal Court will be counted as having only one Municipal Court. Conversely, municipalities participating in a shared services agreement simply share resources as a way to hold down costs. This may include sharing courtrooms, chambers, equipment, supplies, employees, judges, and/or the court administrator. N.J.S.A. 2B:12-1c. Importantly, though, neither the cases nor the bank accounts are commingled, and the courts retain their individual identities. Thus, if four municipalities agree to only share services, they are treated as four individual Municipal Courts.

The majority of Municipal Courts do not meet daily, with most having court sessions on a part-time basis. This could mean meeting two to three times a week, once a week, or even once a month. In light of this, many municipalities in New Jersey take advantage of the cost-saving measures presented by a shared services or joint agreement. As of the writing of this report, New Jersey has 565 municipalities and 515 Municipal Courts.[7] Of those 565 municipalities, 316 have individual, stand alone courts, 173 municipalities share services, while the remaining 76 municipalities have agreed to form 24 separate joint Municipal Courts. This is an area that the Committee found ripe for reform. Consolidated and streamlined courts not only enhance efficiencies, but can protect the independence of the Municipal Courts. As will be discussed later in this report, the Committee strongly recommends statutorily mandating consolidation in furtherance of both of these endeavors.

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[6] Additionally, if a county meets certain population and density requirements, that county may establish a central Municipal Court that has county-wide jurisdiction. N.J.S.A. 2B:12-1e.

[7] Two of the 515 Municipal Courts are unique and warrant further explanation. First is the Bergen Central Municipal Court, a Municipal Court with vicinage-wide jurisdiction. Bergen County is the only county to meet the statutory population and population density requirements. N.J.S.A. 2B:12-1e. Second is the Court of Palisades Interstate Park, which has the same powers and jurisdiction of a municipal court with respect to offenses that occur in the portion of the Palisades Interstate Park that is within the State of New Jersey. This court was also created by statute. N.J.S.A. 32:14-22, 32:14-23.

Leadership at Municipal Courts is helmed by that court's Municipal Court judge or chief judge, in instances where a court has multiple municipal judges. N.J.S.A. 2B:12-8. Municipal Court judges are appointed to serve for three-year terms, and although eligible for repeated reappointment, are not eligible for tenure. N.J.S.A. 2B:12-4a. The appointment process is governed by statute and in most instances rests with the governing body of the municipality. N.J.S.A. 2B:12-4b. The exception is for judges of joint Municipal Courts and a central Municipal Court, who must be nominated and appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 2B:12-4b, c.

Notably, there is no uniform appointment or reappointment process or procedure utilized in the State of New Jersey, and, similarly, there is no uniform salary requirement, as most positions are part-time. Municipal judges are thus paid annual salaries set by ordinance or resolution of the establishing county or municipality, N.J.S.A. 2B:12-7b, with many Municipal Court judges sitting as judge in multiple Municipal Courts. Indeed, as of the publication of this report, there are approximately 314 Municipal Court judges sitting in the 515 Municipal Courts that serve New Jersey's 565 municipalities.

Although appointment and compensation for a Municipal Court judgeship is reliant on the other two branches of government, either locally or statewide, significant oversight remains with the Supreme Court and the vicinage Assignment Judge. The Chief Justice has the authority to designate a judge of the Superior Court or one of the Municipal Courts to serve as the Presiding Judge of the Municipal Courts for a vicinage, who may exercise powers delegated to him or her by the Chief Justice, or as established by the Rules of Court. N.J.S.A. 2B:12-9. Presently, all Presiding Municipal Court Judges also sit as Municipal Court judges. Presiding Judges that are Municipal Court judges are to be paid by the State for the time related to assigned duties, N.J.S.A. 2B:12-9, and Presiding Judges who are Superior Court judges are fully funded by the State. Further, deviations from the above appointment procedures, such as the authority for a municipality to appoint one or more additional or temporary municipal court judges, and the cross-assignment responsibilities of each municipal court judge fall under the authority of the vicinage Assignment Judge. N.J.S.A. 2B:12-6.

The approximately 2,800 remaining Municipal Court employees across the state are hired by the municipality where the court is located. Those employees include, amongst others, Municipal Court Directors, violations clerks, and other clerical staff. Although all are critical to the operation of the Municipal Courts, there are two that are significant because their scope of responsibilities can include quasi-judicial determinations. They are Municipal Court Administrators and Deputy Municipal Court Administrators (hereinafter referred to jointly as "Court Administrators").

Court Administrators are statutorily mandated Municipal Court employees who are compensated by the municipality/county and who, pursuant to statute, can be authorized by a Municipal Court Judge to "administer oaths for complaints filed with the Municipal

Court and to issue warrants and summonses." N.J.S.A. 2B:12-10, -21a. In light of this potential for great responsibility, all administrators are either credentialed by way of certification, accreditation, or conditional accreditation, or in the process of obtaining one of those credentials.

The credentials are administered by the Municipal Court Administrator Certification Board (Certification Board), an entity created and overseen by the New Jersey Supreme Court. N.J.S.A. 2B:12-11; R. 1:41-4(f); M.C.A.C.B.Reg. 2.2. All include completion of some or all of the Principles of Municipal Court Administration (POMCA) training, a four-part, 25 day training implemented by the Municipal Court Services Division.[8] Certification candidates are also required to pass a written and oral examination, as administered by the Certification Board, and complete a court improvement project that is reviewed and approved by the Certification Board. Once a certification candidate completes POMCA, passes the oral and written examinations, and completes a court improvement project, they are recommended by the Certification Board to the Supreme Court for certification. Only the Supreme Court can designate a candidate as a certified Municipal Court Administrator. R. 1:41.

ii. FINANCIAL STRUCTURE – FUNDING AND COLLECTION

The funding structure for Municipal Courts is straightforward—each court is funded by the municipality, or municipalities, in the case of joint or shared courts. This funding includes salaries for judges and staff, facilities, and all other expenses, and is established as part of the governing body's annual budget. It is important to note that prior to the Municipal Court budget being established, it must first be reviewed and approved by the vicinage Assignment Judge to ensure that the proposed budget sufficiently captures the resources that the court will need to operate.

The financial collection structure for Municipal Courts is much broader, and what follows is a non-exhaustive glimpse of the collection complexities faced by the courts. The Municipal Courts collect a number of legal financial obligations, including fines for offenses, court costs, and surcharges, not all of which are retained by the municipality. Penalties for state offenses are generally governed by state statutes, with state law setting an exact amount or range for a fine. N.J.S.A. 2C:43-3(c); N.J.S.A. 40:49-5; N.J.S.A. 40:69A-29. For disorderly persons offenses, petty disorderly persons offenses, and local ordinances (including most parking offenses), all fines go to the municipality. N.J.S.A. 2C:46-4(c). For traffic offenses, in most instances in which a local police officer wrote the ticket, one-half of the fine money goes to the municipality, with the other half going to the

[8] The Municipal Court Services Division is a division in the Office of Trial Court Services of the Administrative Office of the Courts. The Municipal Court Services Division develops and coordinates implementation of high-level policy for the municipal courts; provides technical and legal support as needed; and gathers statistics regarding municipal courts.

county. N.J.S.A. 39:5-40 to –41. Otherwise, the collected money is forwarded to the state. N.J.S.A. 39:5-40. For local ordinance violations, municipalities may set their own fine amounts or ranges within the statutory maximum, as established by N.J.S.A. 40:49-5, and collected fines go to the municipality. Finally, approximately 60 funds linked to individual statutes have been created, and where appropriate, collected amounts are sent to those funds. The processes described above are the norm, and are followed unless otherwise required by statute.

Taken together, the Municipal Courts can be a considerable source of revenue—during calendar year 2017, more than $400 million was collected, with more than half of that total being turned over to municipalities. While a significant portion of the collected monies goes to the state and counties, the vast majority of monies turned over to municipalities from the courts go to the respective municipality general fund and can be used for any purpose. This includes salaries of elected officials, judges, and municipal employees, roads, and other public works projects. The costs for operating the municipal court in a municipality is just one of those costs to which court funding is allocated.

Beyond the assessment and collection of penalties, the Municipal Courts collect court costs intended to fund their operation, as well as other important state initiatives. A Municipal Court can assess court costs up to $33, with all but $5.50 going to the municipality to fund municipal court operations. That remaining $5.50 is used to fund the statewide municipal computer systems and training for emergency medical technicians (EMT). N.J.S.A. 22A:3-4. A similar funding structure is found in N.J.S.A. 2B:24-17, which allows municipalities to pass an ordinance requiring a defendant to pay up to $200 when applying for a municipal public defender. The fee may be waived in whole or in part if the defendant demonstrates an inability to pay.

Additionally, there are other mandatory penalties and costs that the Municipal Court must collect. These are generally referred to as surcharges. They must be imposed as part of sentencing, and are governed by state statute. Collected surcharges are then electronically conveyed to the appropriate specific funds established by the state. The surcharges mandated are dependent on the type of offense for which a defendant has been convicted.

For all Title 39 motor vehicle offenses, as set forth in N.J.S.A. 39:5-41, the below surcharges are universal, and must be assessed and transferred to the appropriate fund:

- $1 for the Body Armor Replacement Fund, as created by N.J.S.A. 52:17B-4.4;
- $1 for the New Jersey Spinal Cord Research Fund, as created by N.J.S.A. 52:9E-9;
- $1 for the Autism Medical Research and Treatment Fund, as created by N.J.S.A. 30:6D-62.2;
- $2 for the New Jersey Forensic DNA Laboratory Fund, as created by N.J.S.A. 53:1-20.28a; and
- $1 for the New Jersey Brain Injury Research Fund, as created by N.J.S.A. 52:9E-9.

The above list is not exhaustive, and defendants may be subject to other individual statutory surcharges that are associated with certain offenses.

The below list includes some statute-specific surcharges. In these instances, some of the amounts indicated are both assessed and collected by the Motor Vehicle Commission (MVC):

- For the Unsafe Driving Surcharge Revenue Fund, as created by N.J.S.A. 17:29A-35b(2), $250 is assessed for violations of N.J.S.A. 39:4-97.2, unsafe driving. This surcharge is assessed and collected by the court.
- For the New Jersey Automobile Insurance Guaranty Fund, as created by N.J.S.A. 17:29A-35b(2), the following fees are assessed and collected by MVC:
    - $3,000 assessed for first and second convictions under N.J.S.A. 39:4-50, driving while intoxicated;
    - $3,000 assessed for violations of N.J.S.A. 39:4-50.a4, refusal; and
    - $4,500 assessed for third conviction of N.J.S.A. 39:4-50, driving while intoxicated.
- The following fees are also assessed and collected by MVC, pursuant to N.J.A.C. 13:19-13.1:
    - $300 assessed for violations of N.J.S.A. 39:3-10, unlicensed driver or driving with an expired license;
    - $300 assessed for violations of N.J.S.A. 39:4-14.3e, failure to insure a motorized bicycle;
    - $750 assessed for violations of N.J.S.A. 39:3-40, driving with a suspended license; and
    - $750 assessed for violations of N.J.S.A. 39:6B-2, operating an uninsured vehicle.

SCENARIO 1:
JULIE'S SPEEDING TICKET

Julie received a speeding ticket for traveling 65 in a 55 mph zone. The ticket was payable, and could be paid online on NJMCdirect.com for a penalty of $95.00. That amount included the fine, court costs, and surcharges. Because a guilty finding results in 2 motor vehicle points being assessed by MVC, Julie appeared for her court date to seek a different result. After discussion with the prosecutor, the charge was amended to unsafe driving, N.J.S.A. 39:4-97.2, a violation that carries no motor vehicle points but a $250 surcharge. Julie's total penalties went from $95 to $389.

$100	FINE
$33	COURT COSTS
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$250	UNSAFE DRIVING FUND
$389	TOTAL

The landscape is even more complex for disorderly persons offenses and petty disorderly persons offenses, as the assessment of a particular surcharge is dependent on convictions in specific chapters of the criminal code. As there are many individual statutes with unique

surcharges, what follows is a small sample of the surcharges assessed and imposed by the Municipal Court at the time of sentencing:

- $100 assessed on domestic violence offenders to fund grants for domestic violence prevention, training, and assessment, as created by N.J.S.A. 2C:25-29.4;
- $250 for the Computer Crime Prevention Fund for disorderly persons/petty disorderly persons violations under Title 2C, Chapter 20, as created by N.J.S.A. 2C:43-3.8;
- $500 for the Drug Enforcement and Demand Reduction Fund for disorderly persons/petty disorderly persons violations under Title 2C Chapter 35, controlled dangerous substances, or Chapter 36, drug paraphernalia, as created by N.J.S.A. 2C:35-15;
- $50 criminal laboratory fee for each conviction under Title 2C, pursuant to N.J.S.A. 2C:35-20a;
- $50 for the Victims of Crime Compensation Office for disorderly persons/petty disorderly persons violations under Title 2C, and certain Title 39 violations, as created by N.J.S.A. 2C:43-3.1a(2)(a), (c); and
- $75 for the Safe Neighborhoods Services Fund for disorderly persons/petty disorderly persons violations under Title 2C, and N.J.S.A. 39:4-50, driving under the influence, as created by N.J.S.A. 2C:43-3.2.

SCENARIO 2:
STEVE'S DRUG CHARGE

Steve received a summons for possession of a small amount of marijuana. He applied for a Municipal Public Defender (a $200 fee) and was assessed a $100 fine by the court. However, the $675 in related surcharges, as well as the public defender fee, ballooned Steve's total costs for resolving the charge from $100 to $1,008.

$200	APPLICATION FEE FOR PUBLIC DEFENDER
$100	FINE
$33	COURT COSTS
$500	DRUG ENFORCEMENT AND DEMAND REDUCTION
$50	LAB FEE
$50	VICTIMS OF CRIME COMPENSATION
$75	SAFE NEIGHBORHOOD SERVICES FUND
$1,008	TOTAL

Finally, there are application fees that are assessed by the Municipal Court for participation in diversionary programs. They include the following:

- $75 application fee for participation in conditional discharge, N.J.S.A. 2C:36A-1, pursuant to N.J.S.A. 2C:43-3.1(2)(d);
- $75 application fee for participation in conditional dismissal, N.J.S.A. 2C:43-13.1, et seq., pursuant to N.J.S.A. 2C:43-13.8;

The Committee is deeply concerned about what can be a never-ending imposition of mandatory financial obligations upon defendants that extend beyond the fine that is associated with the violation. While many of these fees and surcharges, and the funds that they support, are well intended, they ultimately have little to do with the fair administration

of justice. They can be financially devastating on defendants, have a disproportionately negative impact on the poor, and often become the starting point for a perpetual cycle of court involvement for defendants with limited resources. Because most of these fees are statutorily mandated, giving no option to the courts in terms of their being ordered, this is an issue that can only be addressed by the legislature.

As indicated above, while the collection responsibilities of a municipal court are complex, these responsibilities are seamlessly executed by the technology that has been developed by the AOC. The scope of that technology, and its complete integration into case processing, will be discussed below.

iii. TECHNOLOGY IN THE MUNICIPAL COURTS

Over the last 30 years there has been a tremendous evolution in New Jersey's Municipal Court system, one driven by technical innovation and aspirations of excellence in the service of justice and the face of an ever-increasing case load. In 1985, the New Jersey Supreme Court approved the first Improvement Plan for the Municipal Courts. Prior to and at that time, the Municipal Court system was made up of 540 local courts that operated largely independently and without integrated and uniform statewide technology. That plan outlined several major initiatives and established a vision of a court system in which its citizens would be treated consistently and with the highest level of efficiency.

Today, New Jersey's 515 Municipal Courts utilize the same, unified computer system. As a result, court processes are standardized statewide, fiscal operations are computerized, police enter tickets electronically, information flows automatically to numerous other agencies, defendants pay financial penalties online, and more than a million matters are resolved without a single court employee ever touching a paper document. The Municipal Courts process approximately six million cases annually, and these technological enhancements have been crucial to ensuring that the courts meet their goal of resolving cases that come before them within 60 days. (Appendix D). Further, currently over half of all tickets in Municipal Courts are filed electronically, ensuring accuracy, data integrity, and speeding processing exponentially. The Automated Traffic System/Automated Complaint System (ATS/ACS) and NJMCdirect.com are the central elements of this unified system. These components together form the core of the technology in our Municipal Courts and are central to our efficient administration of justice.

AUTOMATED TRAFFIC SYSTEM/AUTOMATED COMPLAINT SYSTEM

The Automated Traffic System (ATS), initially piloted in 1986, allows traffic tickets from anywhere in the state to be entered into a centralized computer system and then tracked and processed automatically. The Automated Complaint System (ACS) followed via a 1993 pilot, provides for the automated court processing of all disorderly persons/petty

disorderly persons and other non-motor vehicle municipal offenses, such as local municipal ordinances and Administrative Code violations. The ACS system is the technical starting point for almost all indictable charges. The indictable complaint is accepted for filing by the Municipal Court, then transferred to Superior Court. Referred to jointly as ATS/ACS, both systems have been in place statewide in every municipal court since January 1, 1997.

Together, ATS/ACS provides for an electronic case management procedure that offers consistent, uniform court processes and operations guided by both law and court administration protocol. This ensures the efficient management of resources and flow of data between the courts and other agencies, including issuance of bench warrants and license suspensions. Crucially, the ATS/ACS system also automates the handling of financial matters relating to Municipal Court cases. Fines, surcharges, court costs, and other monies collected by each Municipal Court are disbursed electronically to state government executive branch entities and agencies, and to the numerous special funds discussed above. The system thus handles everything from initial processing or issuance of a traffic ticket to final disposition and payment, and all aspects of case management in-between. Processing more than one million computer transactions daily, ATS/ACS has been crucial to enhanced and standardized customer service in the Municipal Courts.

NJMCDIRECT.COM

In 2002 the Judiciary premiered an online ticket payment service, NJMCdirect.com. This is a website with a portal that allows the public to access court information and satisfy certain moving and parking tickets quickly and conveniently, providing court users with services that previously would require them to appear in court. These include the ability for members of the public to conduct a statewide search for all outstanding tickets; providing drivers with the opportunity to view and pay fines without the need to come to court; granting access to an electronic record of court ordered time payments; the ability to make required installment payments on-line; payment of tickets where the defendant's license has been suspended; a direct link to the Motor Vehicle Commission's website for license restoration; and driving directions to each Municipal Court.

NJMCdirect.com is fully integrated with ATS/ACS, which means that following a payment, court records and motor vehicle records are updated immediately, and, where appropriate, matters will be adjudicated and the funds distributed. The success and utilization of NJMCdirect.com cannot be understated. Nearly half of all eligible tickets are resolved remotely through NJMCdirect.com, demonstrating its central role in enhanced customer service and court efficiency.

FUTURE ENHANCEMENTS

As a result of the prior technological enhancements, Municipal Courts have been better able to handle the increase in caseload. Approximately six million cases are processed by

the Municipal Courts annually, each of which the courts strive to resolve within 60 days. While prior technological enhancements have made this goal attainable, all future enhancements must be made with an eye toward further efficiency. Fully converting ATS/ACS into a more comprehensive web-based system called the Municipal Automated Complaint System (MACS). This new system will allow uninterrupted and seamless operation by the Municipal Courts and increased access to the Internet. Additionally, expanded website functions are also being explored, to ensure that the interactive Municipal Court webpage is continually upgraded for better customer service.

Technology improvements in the Municipal Courts have come a long way over the last 20 years, but as in other areas, more must be done. The Committee is recommending additional enhancements that will improve efficiencies for both court users and Municipal Court staff, such as significantly expanding remote actions that defendants can take on their case, including rescheduling an initial court date and the availability of partial payment options. The Committee is also recommending enhancements that will provide for better accountability to ensure fairness in the administration of justice, such as in the tracking of the imposition of contempt sanctions by judges and the establishment of objective, measurable criteria by which sitting Municipal Court judges can be evaluated. The Committee is confident that the benefits to these improvements will impact all Municipal Court stakeholders and court users, regardless of economic status.

2. LIFE OF A MUNICIPAL MATTER

A municipal matter begins with the service of a charging document—a complaint-warrant or summons. Depending on the type of matter, the defendant may plead guilty and pay the fine or be required to appear in court to enter a plea. Of the approximately six million matters processed through the Municipal Courts on an annual basis, over five million are nearly evenly split between traffic and parking matters, and approximately 3.1 million are resolved without a defendant coming to court. Those matters are instead resolved by the court user pleading guilty and paying his or her penalties online through NJMCdirect.com, via check sent to the municipal court, or cash or credit card processed at (where accepted) a municipal court. Resolution via these methods is swift, the majority of which occur within two weeks of the charging document being issued.

For the remaining matters, the time between complaint initiation and disposition of a municipal matter can be quick. Oftentimes a mandatory court appearance will result in the first appearance, arraignment, plea agreement, plea colloquy, and sentencing all occurring during one court appearance. In some instances disposition is delayed by a defendant's failure to appear or because of delays in obtaining discovery. Other times, although a matter is regarded as disposed upon a finding or admission of guilt and sentencing, defendants remain engaged with the Municipal Court until their sentence is satisfied and their legal financial obligations are paid in full.

Because this report contains recommendations addressing enforcement mechanisms utilized in Municipal Courts to gain compliance, the below section will explain the current processes used to both bring a defendant to court and to ensure the complete payment of court-assessed fines and fees, as divided into pre- and post-disposition processes.

i. PRE-DISPOSITION ENFORCEMENT: BRINGING A DEFENDANT TO COURT

Regardless of the charging document used, a defendant charged in Municipal Court must either respond by or appear in court on a date certain. A failure to do so is referred to as a failure to appear (FTA), and triggers a sequence of escalating court responses that are governed by statute and R. 7:8-9, and have been programmed into ATS/ACS. The first step in this sequence is always the issuance of a notice informing the defendant of the failure to appear, instructing the defendant to appear in court on a date certain or to contact the court, and advising of the potential consequences of a continued failure: issuance of a bench warrant or a license suspension. A defendant receiving this notice is also assessed a $10 surcharge for the notice, N.J.S.A. 2B:12-31e(2)(b), and for each supplemental failure to appear notice. N.J.S.A. 22A:3-4.

If a defendant fails to respond to the notice, the court may issue a bench warrant for the defendant's arrest. R. 7:8-9. Simultaneous to the issuance of a warrant or after, a Municipal Court may also seek to have a defendant's license suspended. N.J.S.A. 2B:12-31; N.J.S.A. 39:4-139.10. There are two paths to license suspension, each dependent on the type of offense for which a defendant has been charged. For unanswered moving violations, the court may issue an order sending a matter to "close out". This does not result in an immediate suspension, but rather, the Municipal Court "closes" the matter in its records and notifies the Motor Vehicle Commission of the

SCENARIO 3:
TINA'S PARKING TICKET

Tina received a parking ticket after parking in front of her driveway. The ticket could be paid online for $54 through NJMCdirect.com. Tina misplaced the ticket and missed the due date. Although still able to pay online, a late fee was assessed and a notice was issued.

$54	PAYABLE AMOUNT
$10	FIRST LATE FEE FOR FAILURE TO PAY
$64	NEW PAYABLE AMOUNT

Tina once again misplaced the notice and did not pay the new payable amount by the new due date. A second late fee was assessed, and Tina was advised that if she did not pay by a date certain, her driver's license would be suspended.

$64	PRIOR PAYABLE AMOUNT
$10	SECOND LATE FEE
$74	NEW PAYABLE AMOUNT

Tina does not pay despite the notice. Her license is suspended and another fee is assessed for the order of suspension. Once she resolves her ticket, she will then need to pay a $100 license restoration fee to MVC to reinstate her license.

$74	PRIOR PAYABLE AMOUNT
$15	THIRD LATE FEE AND NOTICE OF LICENSE SUSPENSION
$3	MVC FEE ADDED UPON THE ISSUANCE OF AN ORDER OF LICENSE SUSPENSION
$100	MVC LICENSE RESTORATION FEE – TO BE PAID TO REINSTATE LICENSE
$192	TOTAL

unanswered charge. The MVC will then initiate its own procedures to suspend the license or driving privileges should the defendant remain unresponsive. For all other violations, the court may simply issue an order suspending the driver's license. A recent modification to this practice, provided pursuant to P.L. 2017, c.75, effective December 1, 2017, provides that for court-ordered suspensions for failures to appear for parking violations, MVC must delay the effective date of any suspension until 30 days after a supplemental notice is sent to the defendant advising of the reason for the suspension. Further, when a license suspension is ordered by the court, the defendant is assessed a $15 penalty and a $3 fee, the latter of which is transferred to MVC. N.J.S.A. 2B:12-31e(2)(a), (c).

These processes, guided by law and implemented through technology, are seamless. The New Jersey Municipal Court System benefits from a single, unified network system that allows for the efficient, uniform implementation of policies and practices. The enforcement process, implemented through ATS/ACS, places warrant and, where discretionary, license suspension eligible defendants on a list indicating their status that is available to the Municipal Court. The Municipal Court judge then makes a determination as to whether a bench warrant is issued or a license suspension is initiated.

ii. POST-DISPOSITION: COLLECTING FINES, FEES, AND SURCHARGES

A defendant who appears or responds to the municipal matter by the date certain can dispose of the charge through a guilty plea and payment of fine (either in court or, for traffic offenses only, online via www.NJMCdirect.com); guilty plea by way of a plea agreement and satisfaction of the penalty; or plead not guilty and try the matter to disposition.[9] In the event of a guilty plea or verdict, legal financial obligations—fines, fees, and surcharges—are expected due in full at the time of sentencing. However, there are a variety of sentencing alternatives available to defendants that are unable to pay their court-imposed legal financial obligations.

Alternatives are split into two general categories: those available at the time of sentencing, and those available after default. Eligibility for either is determined by statute. Defendants unable to pay a penalty in full at sentencing may be entitled to a time payment order; short-term payment order; or community service as a waiver of the financial component of the sentence. N.J.S.A. 2B:12-23.1a; N.J.S.A. 39:4-203.1. Time payment orders allow a defendant to pay a fine in monthly installments over a period of time. Short-term payment orders are utilized where a defendant is logistically unable to access funds to pay a legal financial obligation at the time of sentencing. As many Municipal Courts do not accept credit cards, short-term payment orders provide a defendant a brief opportunity, generally a few days or weeks, to secure the funds needed to pay a fine.

[9] Eligible defendants may also participate in diversionary programs available in municipal court, such as conditional dismissal, N.J.S.A 2C:43-13.1, and conditional discharge, N.J.S.A. 2C:36A-1.

There are a myriad of sentencing options available after a defendant defaults[10] on a time payment plan, including the following:

- Reduction or suspension of the penalty, or modification of the installment plan. N.J.S.A. 2B:12-23.1a(1); N.J.S.A. 39:4-203.1[11];
- Give credit against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default. N.J.S.A. 2B:12-23.1a(2);
- Revocation of any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment. N.J.S.A. 2B:12-23.1a(3);
- Community service in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(4);
- Imposition of any other alternative permitted by law in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(5);
- Community service in lieu of incarceration related to nonpayment of the fine. N.J.S.A. 2B:12-23a; or
- Modification of the sentence with the person's consent. N.J.S.A. 2B:12-23a.

However, just as with a defendant who misses a court appearance, a failure to make a time payment triggers a sequence of notices and escalating court responses that, in the absence of a response from the defendant, can result in a bench warrant being issued and/or a license suspension. N.J.S.A. 2C:46-2; N.J.S.A. 2B:12-31; N.J.S.A. 39:4-203.2.

[10] A default occurs when a defendant has failed to comply with the court-ordered payment plan; note that most defaults result in a driver's license suspension and/or the issuance of a warrant. N.J.S.A. 2B:12-31(a)(2), R. 7:8-9.

[11] Additionally, Title 39 defendants that the court has found to be indigent or participating in a government-based income maintenance program that demonstrate an inability to comply with a time payment order are eligible for waiver of any unpaid portion of that order up to $200, except for sentences for N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50a. Defendants that receive this waiver are required to "perform community service for a period of time to be determined by the court, or participate in any program authorized by law, or satisfy any other aspect of a sentence imposed." N.J.S.A. 39:4-203.1.

3. Impact of These Processes on Indigent Defendants

The pre- and post-disposition processes detailed above are legislatively created, authorized, and at times, mandated. These tools are regularly and lawfully used by the Municipal Court system to encourage compliance with court notices to appear and court orders to pay legal financial obligations. Many of the protocols are programmed into the Municipal Court computer system, ATS/ACS. However, these tools have very real, sometimes unintended consequences that can be economically overwhelming to an individual, quickly pushing a person living on the margins of low income into poverty or continuing the vicious cycle of impoverished defendants perpetually beholden to court fines and fees.

A defendant arrested on a bench warrant who is unable to satisfy bail often remains incarcerated until either his or her next scheduled court appearance or their bail is reduced. This scenario highlights the very purpose of criminal justice reform—to end pre-disposition incarceration due to an inability to pay money bail. Further, in the majority of instances, this consequence is in all likelihood disproportionately harsh compared to the ultimate penalty for the offense charged—a monetary fine. The detrimental effects cannot be overstated. Even a brief period of incarceration may cause a person to lose his or her job and their dependents, their home, and may ultimately be more costly to taxpayers than the total fines due. The Committee is profoundly concerned about the excessive imposition of financial obligations and the equally excessive use of warrants as a collection mechanism. As a result, the Committee makes several recommendations in this report to put limits on the excessive enforcement and issuance of bench warrants to collect financial obligations that have little or no connection to the fair administration of justice.

Scenario 4:
Dan's Ticket for Failure to have his Car Inspected

Dan received a ticket for failing to have his car inspected. He had the option of paying the ticket online via NJMCdirect.com. The $130 payable amount includes the fines, court costs, and surcharges. Dan did not have the resources to pay the ticket by the due date and he did not contact the court.

As a result of the failure, a failure to appear notice was sent and a $10 late fee imposed. If Dan wishes to pay off the ticket without going to court he now must pay $140 by the date provided on the notice.

$130	Original Payable Amount
$10	Late Fee for Failure to Pay
$140	New Payable Amount

Dan remains unable to pay the amount assessed by the court. The Municipal Court has the discretion to issue a warrant for Dan's arrest. Instead, the Municipal Court opts to "close out" his case to MVC, who will initiate the suspension process. Once Dan is able to satisfy his $140 ticket, he will then need to pay a $100 license restoration fee to MVC to reinstate his license.

$140	New Payable Amount Due After License Suspension
$100	MVC License Restoration Fee – to be paid once license is reinstated
$240	TOTAL

License suspensions also have far-reaching effects, as highlighted by the 2006 Motor Vehicles Affordability and Fairness Task Force Report. (Appendix E). In a survey conducted of individuals that had at that time or previously had their license suspended, 42% lost their jobs as a result of the suspension; 45% who lost their job as a result of the suspension could not find another job; and 88% of those that were unable to find another job reported a decrease in income. (Appendix E). Economically destabilized families and dependents of those defendants also suffer the aftermath of these effects.

Other jurisdictions have been receptive to this reality, and a trend has emerged to cease the practice of suspending a driver's license unless the court first determines that a defendant has the ability to pay but is willfully refusing to do so. (Appendix F). Prior to a license suspension occurring, New Jersey provides multiple court notices to defendants who fail to pay their court-imposed financial obligations, with direction that the defendant can come to court to address the matter. The Committee proposes, in Recommendation 20, pp. 52-53, that such notices be made even more user-friendly and informative. The Committee strongly urges that New Jersey explore ways to alleviate the impact of license suspensions with the goal of reducing the number of license suspensions, particularly for minor offenses and for minimal outstanding financial obligations.

SCENARIO 4 (CONT'D): DAN'S TICKET FOR FAILURE TO HAVE HIS CAR INSPECTED

Dan was not able to pay the $140 ticket or the anticipated restoration fee. He continued to drive to and from his place of employment on his now suspended license. He was pulled over, charged, and found guilty of the new offense of driving with a suspended license. He was ordered to pay the following:

$500	FINE TOTAL
$33	COURT COSTS TOTAL
$1	BODY ARMOR FUND
$1	SPINAL CORD FUND
$1	AUTISM FUND
$2	DNA LAB FUND
$1	BRAIN INJURY FUND
$750	MVC SURCHARGE (ASSESSED AND COLLECTED BY MVC OVER THE COURSE OF 3 YEARS)
$1,289	TOTAL FOR DRIVING WHILE SUSPENDED

At that same court appearance, Dan was also found guilty and ordered to pay the following on his outstanding ticket for the failure to have his car inspected:

$140	FINE, COURT COSTS, SURCHARGES, AND LATE FEE
$100	MVC LICENSE RESTORATION FEE
$249	TOTAL FOR SPEEDING
$1538	GRAND TOTAL

As a result of his inability to pay his original $130 penalty and contact the court, Dan's penalties have gone from $130 to $1,538.

Regardless of whether a bench warrant and/or license suspension has been issued, additional fees related to delinquency and unrelated to other surcharges can be assessed on the delinquent defendant. For each supplemental notice related to a failure to appear, a defendant is assessed an additional $10. N.J.S.A. 22A:3-4; N.J.S.A. 2B:12-31e(2)(b). If the

Municipal Court determines that a license suspension is required, a $15 penalty is assessed for an order of suspension, N.J.S.A. 2B:12-31e(2)(c), as well as an additional $3 fee that is ultimately transferred to the Motor Vehicle Commission. N.J.S.A. 2B:12-31e(2)(a). When a defendant is able to seek license reinstatement, generally after disposition or efforts are made to dispose of the Municipal Court matter, a $100 restoration fee must first be paid to the Motor Vehicle Commission. N.J.S.A. 39:3-10a.

The Committee fully recognizes the negative impact current statutorily authorized Municipal Court enforcement practices have on certain defendants, particularly those of lesser means. The Committee, however, is also cognizant of the goals behind the legislation authorizing or requiring such practices, which generally aim to promote public safety and uphold the authority and integrity of the judicial process. Balancing these oftentimes competing principles is the specific responsibility and challenge accepted by this Committee, and by other committees and judicial systems across the country. The recommendations later specified in this report are the by-product of this balancing.

4. PRIOR REFORM EFFORTS

Prior to the formation of this Committee, perhaps the most extensive committee-led examination of the Municipal Courts was undertaken in 1983 by the Supreme Court's Task Force on the Improvement of the Municipal Courts (hereinafter referred to as the "1983 Task Force"). The 1983 Task Force was charged with the goal of upgrading the status and improving the operation of New Jersey's Municipal Courts. To that end, the 1983 Task Force conducted an exhaustive study of the operation and administration of the Municipal Courts; statewide management structure; calendar management; Municipal Court personnel; budget and finances; trial and case processing; accountability and issues of public interest; and court facilities and operations. In 1985, a 200 page report was issued containing a number of significant recommendations. (Appendix G).

Over the course of the following decades, many recommendations contained within that report have been adopted, including a suite of 1993 legislative changes that have formed the Municipal Court system as we know it today. N.J.S.A. 2B:12-1 to -31. Significant recommendations from that report that have been adopted are identified below.

- The creation of a Municipal Presiding Judge position within each vicinage to assist the Assignment Judge in overseeing the operation of the Municipal Courts. This was codified by legislation in 1993, N.J.S.A. 2B:12-9;
- Requiring that a candidate for a Municipal Court judgeship be an attorney admitted to the practice of law for a minimum of five years. This was codified by legislation in 1993, N.J.S.A. 2B:12-7;
- The creation of a certification process for Municipal Court Administrators, as overseen by the Supreme Court and the AOC, N.J.S.A. 2B:12-11. The Supreme Court established the Municipal Court Administrator Certification Board in 1994;

- The creation of the Administrative Office of the Court's Municipal Court Services Division. The Municipal Court Services Division was formally established as a division within the Administrative Office of the Courts in 1986;
- The establishment of a uniform budget format to be promulgated by the Administrative Office of the Courts to aid the Presiding Municipal Court Judge and Municipal Court judge in ensuring that sufficient resources are allocated to operate the courts. A statewide budget package was officially promulgated in 2002; and
- The creation of a statewide computer system (ATS/ACS) for the issuance of traffic tickets and complaints by the local or state police or through citizen complaints. ATS was initially piloted in 1986, while ACS was piloted in 1993. The ATS/ACS system was fully functioning in every municipal court by January 1, 1997.

Notably, 1983 Task Force recommendations that were not adopted related to changing the appointment process, establishing the provision of tenure, and requiring uniform, capped salaries for Municipal Court Judges. Efforts to institute structural changes to the municipal system, be it through the creation of regional courts or the urging of consolidation of courts, have similarly been unsuccessful.

Those efforts preceded the 1983 Task Force, beginning in 1958 when then Chief Justice Joseph Weintraub called for the institution of a system of regional courts with judges appointed by the governor. These sentiments were again proffered in 1969 by then Administrative Director of the Courts Edward McConnell, in 1971 via an outside consultant who urged a similar restructuring, and, finally, in 1979 by then Chief Justice Richard J. Hughes, who further proffered that if the Legislature refuses to take initiative, the Court could do so as a "last resort." (Appendix G, pp. 241-242; Appendix H).

These and other recommendations for change, however, never gained the necessary public support needed for implementation. Former Chief Justice Robert N. Wilentz analyzed these early attempts and noted that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government … the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I). The Judiciary has instead been left to repeatedly urge and recommend that municipalities consider consolidation as it is authorized within the current legislative framework. Most recently, in 2010, Chief Justice Stuart Rabner distributed a report to the Governor and legislative leaders in the Senate and the Assembly. That report, titled the Municipal Court Consolidation Plan, provided a recommended blueprint to be followed by municipalities considering the establishment of either a joint court or shared court. (Appendix J).

Despite these obstacles, in the years since the 1983 Task Force, the Municipal Courts have continuously made statewide improvements to the operation of New Jersey's Municipal Courts. New Jersey remains on the forefront in regard to technological advancements, utilizing one of the United State's few unified systems based on a physically connected network. This has been accomplished through a number of statewide initiatives to support

the Municipal Courts, including upgraded networks and support systems; continuous enhancements to ATS/ACS; the roll-out of the Judiciary's online payment system, NJMCdirect.com; email; the provision of and continuous upgrade to computers for all users; printers; and the presence of internet access in all Municipal Courts.

Additionally, the AOC, through its Municipal Court Services Division, now provides oversight and assistance to the operation and administration of all local Municipal Courts. This ensures consistent statewide policy development and includes centralized training for both Court Administrators and Municipal Court judges. Further local oversight is provided by the vicinage Presiding Municipal Court Judge and Municipal Division Manager. Specifically, the Presiding Municipal Court Judge and Municipal Division Manager work together to provide crucial training, mentoring, oversight and support to the Municipal Court judges and staff in the vicinage, on behalf of the vicinage Assignment Judge.

There have likewise been significant reforms led by the Legislature. In 1997, the Legislature passed a law requiring each municipality to appoint at least one public defender, N.J.S.A. 2B:24-1 to -17, and in 1999, passed legislation requiring municipal prosecutors in every municipal court. N.J.S.A. 2B:25-1 to -12. To ensure the professionalism of Municipal Court staff, in 2006 a law was passed requiring the mandatory certification of Municipal Court Administrators. N.J.S.A. 2B:12-11. In 2011 this was complemented by a court rule requiring Deputy Court Administrators and Court Directors to hold the credential of accreditation. R. 1:41-3.

Over the past several years, there has been an increasing public focus on the impact of monetary court penalties on individuals, particularly those of limited income. (Appendix K). This focus culminated with the Department of Justice's 2015 investigation of the Ferguson, Missouri Police Department and Municipal Court, and was later addressed in the subsequent, since-retracted, Department of Justice "Dear Colleagues" letter to state Supreme Court Justices and state Court Administrators in the United States. (Appendix A-1, A-2). This scrutiny has included local media coverage of Municipal Court practices in New Jersey, with a concern regarding the high levels of fines and fees, and the court practices and use of enforcement tools to collect them. (Appendix L). This led to a legislative call for investigation into the Municipal Courts and reform, (Appendix B-2), but also inspired Judiciary-led efforts to document and address these concerns, both before and after distribution of the "Dear Colleagues" letter.

Preceding the Department of Justice's investigation and "Dear Colleagues" letter, the Municipal Conferences of the Judiciary created the Contempt of Court Working Group, which consisted of Municipal Presiding Judges, Municipal Division Managers, and AOC staff. That group reviewed the long-standing Municipal Court practice of imposing monetary sanctions on defendants who fail to appear or fail to pay penalties imposed after conviction. Such amounts—colloquially referred to as "contempt of court" amounts—are distributed to the municipality, entered into ATS/ACS with that notation, and have at times

called into question the independence of the Municipal Courts. Moreoever, the Contempt Working Group determined that the procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, the only legal mechanisms for the imposition of contempt sanctions, are by all accounts not fully followed.

The Working Group completed a report capturing these findings, which was ultimately submitted to the Municipal Court Practice Committee during the 2015-2017 rule cycle. The Committee recommended that the Supreme Court adopt rule changes that would place financial caps on court sanctions for failure to appear, failure to pay, and contempt. (Appendix M). Further, upon issuance of those conclusions and notification to Municipal Court judges of the contempt amounts collected, significant internal effort has been made to decrease the oftentime unnecessary assessment of contempt amounts. (A more detailed discussion appears at pages 31-33). Assignment Judges and Municipal Presiding Judges have become increasingly involved in these efforts, monitoring and shepherding their Municipal Courts through the process. As a result of those efforts, between calendar year 2015 and 2017, the Judiciary reduced its total contempt assessments by 27%:

TOTAL MUNICIPAL COURT FILINGS	CASES WITH CONTEMPT ASSESSMENTS	TOTAL CONTEMPT ASSESSED	PER CASE AVERAGE
2015			
5,719,650	**125,105**	**$8,433,180.61**	**$67.41**
2016			
5,907,289	**112,672**	**$7,727,945.94**	**$68.59**
2017			
6,141,628	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.)]

Following receipt of the "Dear Colleagues" letter, in May of 2016 the Municipal Conferences established the Equal Justice Working Group. The Equal Justice Working Group generated materials that together comprised an educational campaign for court users and Municipal Courts regarding the availability of sentencing alternatives. Prepared materials that have either been implemented or are still being finalized include a revised opening statement; an informational poster intended to be displayed in municipal court; a

bench card for judge use; and suggested court notice language changes that include an expansion of response dates.

More recently, Chief Justice Stuart Rabner issued an April 17, 2018 memorandum to all judges of the Municipal and Superior Courts regarding fines and penalties in Municipal Court. (Appendix O). In that memo, Chief Justice Rabner highlighted two recent events that demonstrate the precise conduct this Committee was convened to address. The first was a Municipal Court judge who "diverted fines against defendants in a way that generated more revenue for municipalities and less for the county." (Appendix O, p. 948). That Municipal Court judge pled guilty to a fourth-degree crime of falsifying records, and is barred from ever holding public office. (Appendix O, p. 948; Appendix P). The second relates to a Municipal Court judge who opened a 2014 court session "by announcing that any fines imposed were due that day, and that any defendants who refused to pay would be sentenced to county jail." (Appendix O, p. 948). The judge later fined a defendant $239, including court costs, and when that defendant was unable to make a payment, the judge sentenced him to five days in jail and had him arrested. (Appendix O, p. 948; Appendix Q; Appendix R).

In his memorandum, the Chief Justice issued a reminder to all judges of "certain basic principles and features of our justice system." (Appendix O, p. 948). They include the unique position of authority held by a judge, a judge's responsibility to ensure that justice is provided in each case based on the merits as opposed to any "outside pressures," and that any punishment imposed relate to the defendant's conduct and history. (Appendix O, p. 949). Chief Justice Rabner went on to highlight the "equally straightforward" principle that "defendants may not be jailed because they are too poor to pay court-ordered financial obligations." (Appendix O, p. 949). Summarizing relevant case law, the Chief Justice concluded: "[I]n a modern system of justice, people should not be sent to jail because they are too poor to pay a fine and do not have access to other resources." (Appendix O, p. 949). Although these sage words were issued near the completion of the Committee's work, they capture the goal of many of the Committee's efforts.

The Committee has carefully considered the charge from the Chief Justice, Municipal Court reform efforts, both successful and unsuccessful, that have preceded it, as well as recent efforts to address the administration of justice concerns in crafting this report and its recommendations.

III. GUIDING PRINCIPLES FOR THE MUNICIPAL COURTS

During the course of its work, in addition to an analysis of current practices in Municipal Courts, the Committee reviewed a number of reform-minded policy papers and reports from other similarly-charged committees. (Appendix K, S, T, U). From that review, the Committee developed core principles that captured the driving ethos of prior Municipal Court improvement efforts, guided the refinement of current practices, and would be crucial to the development of recommendations in line with the forward-looking charge of Municipal Court reform. Those principles, presented below, were used as guideposts in the honing and finalization of the recommendations that follow them.

PRINCIPLE 1 – PURPOSE OF COURTS: New Jersey Municipal Courts are a forum for the fair, just, and independent resolution of disputes in order to preserve the rule of law and protect the individual rights and liberties of all that come before them.

The judicial system is the branch of government that upholds the rule of law and is central to the doctrine of separation of powers. Our courts provide the forum in which disputes are resolved, laws are both tested and enforced, and justice is provided. All of this must be accomplished in a fair and rational manner, independent from the other branches of government, and through means that are transparent, readily accessible, and understood by the public. Each principle below addresses a crucial piece of what makes New Jersey courts able to perform their true purpose, and it is for this reason that this principle is listed first.

PRINCIPLE 2 – OVERSIGHT OF COURTS: Municipal Courts must operate under the authority and supervision of the judicial branch in a manner that ensures an independent Judiciary and enhances the public trust, and all operations and facilities must continue to be separate from law enforcement and prosecution activities.

An independent Judiciary is central to the Judiciary's duty to the public. It ensures that decisions made are solely in the pursuit of justice, and that every actor within the court operates without outside influence. Maintaining systematic integrity through independent judges ensures that decisions are made without regard for their effects beyond justice in

the individual case. Critical to accomplishing this is ensuring that Municipal Courts are managed in the same way as other courts in New Jersey—by the judicial branch.

This is not a new endeavor for the Judiciary. The AOC and vicinages currently provide significant oversight to the Municipal Courts. Much of this is accomplished by the direct support and oversight provided by the vicinage Municipal Presiding Judge and Municipal Division Manager, who report directly to the vicinage Assignment Judge. In addition to this local oversight and support, there is a formalized training process for all new Municipal Court judges comprised of five days of classroom instruction, as well as direct one-on-one training provided by the Municipal Presiding Judge; structured court session visits and mentoring for all new judges by the Presiding Municipal Court Judge; and an annual Municipal Court Judges' training conference.

For court staff, there is a 25-day training program (referred to as the Principles of Municipal Court Administration or POMCA required of all Municipal Court Directors, Court Administrators and Deputy Court Administrators, and which is made available to all other municipal court staff. Further, there are numerous other AOC and vicinage sponsored training events; a formal in-session visitation program that focuses on the activities of the judge and court staff at the municipal court session; and a formal visitation program that focuses on the overall health of the municipal court and whether the court is complying with state and Judiciary requirements.

Recommendations made in pursuit of this principle, including Recommendations 34 and 35, pp. 61-62, seek only to enhance AOC and vicinage involvement with Municipal Courts, and provide further assurances that the court remains both independent and separate from police and prosecution.

PRINCIPLE 3 – JUDICIAL SELECTION AND RETENTION: Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary. Appointment and reappointment shall never be based on the revenue a Municipal Court judge generates for a municipality.

New Jersey's Municipal Courts handle six million cases each year. In light of this significant volume and use, they are often referred to as the face of the Judiciary, and "are critical to our judicial system. [Indeed, m]ore cases are processed annually through those courts than any other brand of the judicial system." In re Samay, 166 N.J. 25, 43 (2001). "For many citizens, it is their only exposure to the courts and judges of this State. Accordingly, the entire system is measured by their experience in the municipal court." In re Horan, 85 N.J. 535, 538 (1981). "[M]unicipal courts, from the standpoint of contact,

observation and acceptance by the public, are in a preeminent position for the sustaining of universal respect for the administration of justice." In re Yengo, 72 N.J. 425, 434 (1977).

Municipal Court judges, in turn, are the face of the Municipal Courts. State v. McCabe, 201 N.J. 34, 42 (2010)("[M]unicipal court judges are the face of the Judiciary."). They are the first point of contact for many court users, and set the tone for the courtroom experience. Recent and prior news reports, as well as the 2017 report of the New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts, have suggested waning public confidence in the integrity and impartiality of Municipal Courts. (Appendix V). This perception—that Municipal Courts operate with a goal to fill the town's coffers—is contrary to the purpose of the courts. Indeed, under no circumstances should judicial performance be measured by, or judicial or court staff compensation tied to, revenue generation. A judge's decision to impose a court-ordered financial obligation must be detached from, and unrelated to, any decision concerning the use to which revenues from such obligations should be attributed. This disconnect between the articulated public perception and the driving forces of the courts must be addressed, and improving confidence in those judicial officers ultimately held accountable by the public is thus crucial.

To that end, the Committee's review of various policy papers revealed a number of best practices that foster judicial independence, many of which emphasize an objective appointment process. (Appendix K-1, K-4, K-10; Appendix T). The Committee recommends the development of a similarly impartial and transparent process for the appointment and reappointment of Municipal Court judges. (Recommendations 24 through 30, pp. 56-59). Crucially, the proposed evaluations will be free of inappropriate considerations such as revenue generation—a factor that has at times infiltrated the calculus in some Municipal Judge reappointments due to a years-long culture of imposing excessive financial penalties that are oftentimes not related to the fair administration of justice.

While the Committee highlights that there are many exceptional Municipal Court judges who serve with great distinction and independence, the perception and reality is that some judges are evaluated based on inappropriate considerations, which in turn impacts the independence of those judges. The proposed protocol intends to relieve judges of those pressures, improve public confidence in the impartiality of the Municipal Courts by ensuring that appropriately qualified judges are both appointed and retained, and, in the process, enhance judicial independence.

PRINCIPLE 4 – COURT-IMPOSED FINANCIAL OBLIGATIONS: The imposition of fines, fees, and other financial obligations shall only be based on the fair administration of justice, and not the generation of revenue for a municipality. The Municipal Courts, as part of the Judiciary, are separate from the Legislative and Executive branches and are not a revenue-generating arm of the government.

As a general principle, courts should be entirely funded from general governmental revenue sources to enable them to fulfill their mandates. Additionally, no court function should be directly tied to revenues generated by the imposition of court-imposed fines, fees, and other financial obligations. In New Jersey, this is structurally the case, as the Municipal Court budget is part of the larger municipal budget and funded by the general revenue of a municipality. The Municipal Courts must be a forum for the fair and just resolution of disputes in order to preserve the rule of law. The imposition of fines, fees, and other financial obligations should be made only in the pursuit of the administration of justice, and never with an intention to generate revenue. However, there are discretionary monetary penalties that judges may impose that create the potential for departure from this principle.

An example of one such penalty that has resulted in concern in New Jersey is the excessive use of discretionary contempt assessments in Municipal Courts. Those contempt assessments are imposed by Municipal Court judges, with all collected amounts going to the municipalities. As outlined in the charts below, between calendar year 2015 and calendar year 2017, a total of $22 million in these contempt amounts were assessed.

2015 CONTEMPT OF COURT ASSESSMENTS

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	138,159	5,239	$338,791.07	$64.67
BERGEN	595,387	13,866	$412,038.00	$29.72
BURLINGTON	199,375	10,179	$1,127,556.01	$110.77
CAMDEN	345,738	7,297	$1,092,475.30	$149.72
CAPE MAY	78,719	1,301	$33,251.00	$25.56
CUMBERLAND	69,467	1,135	$86,570.70	$76.27
ESSEX	910,474	10,626	$475,589.88	$44.76
GLOUCESTER	125,051	4,880	$351,803.14	$72.09
HUDSON	986,992	11,544	$290,342.04	$25.15
HUNTERDON	56,409	533	$40,393.00	$75.78
MERCER	195,093	6,604	$580,642.07	$87.92
MIDDLESEX	393,685	12,011	$863,022.00	$71.85
MONMOUTH	330,268	11,894	$1,112,822.07	$93.56
MORRIS	205,172	5,181	$468,067.61	$90.34

OCEAN	183,849	2,686	$269,312.60	$100.27
PASSAIC	315,055	8,124	$251,577.50	$30.97
SALEM	26,054	574	$31,650.50	$55.14
SOMERSET	117,423	1,346	$72,834.95	$54.11
SUSSEX	32,072	976	$66,642.23	$68.28
UNION	369,910	7,596	$395,242.48	$52.03
WARREN	45,298	1,513	$72,556.46	$47.96
TOTAL	**5,719,650**	**125,105**	**$8,433,180.61**	**$67.41**

2016 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	144,534	4,671	$264,112.30	$56.54
BERGEN	618,076	12,099	$380,714.50	$31.47
BURLINGTON	215,894	9,842	$1,075,836.92	$109.31
CAMDEN	341,480	4,945	$752,056.26	$152.08
CAPE MAY	74,607	1,242	$29,119.50	$23.45
CUMBERLAND	75,199	1,356	$112,632.42	$83.06
ESSEX	915,506	10,579	$857,000.51	$81.01
GLOUCESTER	133,283	4,551	$317,849.50	$69.84
HUDSON	1,067,443	11,609	$288,074.50	$24.81
HUNTERDON	55,309	396	$38,358.00	$96.86
MERCER	202,603	6,123	$583,842.75	$95.35
MIDDLESEX	417,893	10,222	$754,529.77	$73.81
MONMOUTH	344,023	11,029	$865,798.14	$78.50
MORRIS	209,561	4,373	$389,822.50	$89.14
OCEAN	178,259	2,239	$214,134.82	$95.64
PASSAIC	327,257	8,387	$265,402.50	$31.64
SALEM	25,209	607	$37,786.00	$62.25
SOMERSET	109,010	874	$64,259.50	$73.52
SUSSEX	30,801	798	$54,254.00	$67.99
UNION	379,451	5,855	$341,973.50	$58.41
WARREN	41,891	875	$40,388.05	$46.16
TOTAL	**5,907,289**	**112,672**	**$7,727,945.94**	**$68.59**

2017 Contempt of Court Assessments

COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	149,211	3,966	$217,225.05	$54.77
BERGEN	631,410	11,947	$402,310.00	$33.67
BURLINGTON	200,253	7,974	$880,957.93	$110.48
CAMDEN	338,368	3,933	$525,749.50	$133.68
CAPE MAY	75,530	860	$21,605.78	$25.12
CUMBERLAND	74,166	1,314	$105,699.60	$80.44
ESSEX	989,746	9,674	$449,528.80	$46.47
GLOUCESTER	130,046	4,132	$297,772.12	$72.06
HUDSON	1,138,304	11,908	$284,032.76	$23.85
HUNTERDON	59,986	382	$49,274.00	$128.99

MERCER	219,310	4,808	$484,284.45	$100.72
MIDDLESEX	425,335	8,926	$613,435.99	$68.72
MONMOUTH	351,125	9,574	$662,182.52	$69.16
MORRIS	207,738	4,004	$345,429.50	$86.27
OCEAN	175,644	1,253	$106,899.60	$85.31
PASSAIC	352,778	6,612	$254,813.50	$38.54
SALEM	26,787	417	$23,828.00	$57.14
SOMERSET	114,274	821	$62,367.00	$75.96
SUSSEX	31,541	510	$39,560.00	$77.57
UNION	401,941	5,377	$307,234.00	$57.14
WARREN	48,135	781	$26,987.06	$34.55
TOTAL	**6,141,628**	**99,173**	**$6,161,177.16**	**$62.13**

[(Appendix N.]

As discussed above, the Contempt of Court Working Group of the Municipal Conferences reviewed the Municipal Court's history of routinely imposing "contempt" amounts on defendants, pp. 25-26, and determined that the appropriate procedures required by R. 1:10-1, Contempt in Presence of Court; R. 1:10-2, Summary Contempt Proceedings on Order to Show Cause or Order for Arrest, and R. 1:2-4, Sanctions; Failure to Appear; Motions and Briefs, have not been fully followed. The Contempt Working Group's conclusions have resulted in a Judiciary-led movement to decrease or prohibit the collecting of both appropriate and inappropriate contempt monies. This effort continued with the creation of this Committee, and has come into even sharper focus. Assignment Judges and Municipal Presiding Judges have become increasingly involved in these pursuits, monitoring and shepherding their Municipal Courts through the process of decreasing the oftentime unnecessary assessment of contempt amounts. As shown in the chart above, these local efforts have resulted in a reduction in contempt assessments in nearly every vicinage for each of the past three years.

Although the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2, or to amend R. 1:2-4, more work needs to be done in this area. The Committee recommends that this ongoing process continue and makes proposals to limit the historical use of "contempt" by emphasizing monitoring, education, and establishing procedures that avoid the inappropriate use of contempt, as furthered by the use of technology. (Recommendations 1 and 46, pp. 39, 71-72.

PRINCIPLE 5 – SENTENCING: Judges shall set fair and reasonable penalties, including in the imposition of discretionary financial penalties. Judges shall consider all legally available sentencing alternatives where permitted. Driver's license suspensions shall be used as a last resort or when legally required.

Underpinning this principle, and its call for fair and reasonable penalties, are the core concepts that were outlined by the Chief Justice in his April 17, 2018 memorandum:

> It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. That means that each defendant is entitled to have his or her case decided on the merits; that any punishment imposed should reflect the defendant's conduct and history; and that incarceration should only be ordered if the circumstances of the case require it.
>
> Certain related principles are equally straightforward. The imposition of punishment should in no way be linked to a town's need for revenue. And defendants may not be jailed because they are too poor to pay court-ordered financial obligations.
>
> [(Appendix O, p. 949).]

Thus, the initial setting of uniform, reasonable penalties, to the extent discretion is allowed by law, is crucial to ensuring a defendant's ability to satisfy the sentence. Disparate treatment from court to court and from judge to judge is a concern of the Committee. This disparate treatment is reflected in sentencing with respect to fines, periods of incarceration, license suspensions, and other penalties. Guidance for judges regarding sentencing options and alternatives is necessary to ensure the fair administration of justice, as "[r]andom and unpredictable sentencing is anathema to notions of due process. State v. Moran, 202 N.J. 311, 326 (2010) (citing United States v. Batchelder, 442 U.S. 114, 123 (1979) and New Jersey State Parole Bd. v. Byrne, 93 N.J. 192, 210-12 (1983)). "Vague laws violate due process by failing to 'provide adequate notice of their scope and sufficient guidance for their application.'" Moran, 202 N.J. at 311 (quoting State v. Cameron, 100 N.J. 586, 591 (1985)). In this regard, the Committee seeks guidance from the Court in the Municipal Court's setting of discretionary sentences.

The Supreme Court has made clear its position that indigent defendants be provided the opportunity to pay fines in installment payments. State v. De Bonis, 58 N.J. 182, 199 (1971) ("If a defendant is unable to pay a fine at once, he shall, upon a showing of that inability,

be afforded an opportunity to pay the fine in reasonable installments…."); In re Broome, 193 N.J. 36 (2007) (finding that a Municipal Court judge that opened his court sessions by advising court users that fines of less than $100 would have to be paid in full had "disregarded the De Bonis rule of law, which clearly mandates that indigent defendants be provided the opportunity to pay fines in installment payments.") (Appendix R).

Further, for those defendants that are unable to satisfy their sentences or default on their time payments, the Committee acknowledges the robust state of legislatively-available sentencing alternatives. These alternatives, some available at the time of sentencing and some only available following default, include long and short-term time payment plans, modification of a time payment plan, community service, revocation of the unpaid fine, a reduction or suspension of the sentence, consensual modification of the sentence, credit for any jail time served as a result of the default, and "any other alternative permitted by law in lieu of payment of the penalty." N.J.S.A. 2B:12-23; 2B:12-23.1; 39:4-203.1. The AOC has provided guidance as to the application of these sentencing alternatives via Administrative Directive 02-10, "Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives" (March 2, 2010), and a May 9, 2011 memorandum from Judge Grant. (Appendix W).

The Committee also recognizes that despite the availability of this broad spectrum of alternatives, those most regularly used are for the granting and modification of time payment plans. This almost exclusive reliance on time payments was also identified by the Equal Justice Working Group of the Municipal Conferences, which in response developed materials to initiate an educational campaign regarding the full panoply of sentencing alternatives. Those materials are intended to inform both court users and court personnel of the various sentencing alternatives that are available for request and use. They include additions to the municipal court opening statement, the promulgation of a poster posted prominently in courthouses to advise members of the public of the availability of sentencing alternatives, revisions to existing court notices, as well as a bench card available to judges to easily ascertain whether a sentencing alternative is available for a defendant. The Committee endorses all of these materials, each of which has either been implemented or is in development.

The Committee makes a number of recommendations that intend to build on that educational campaign, including the creation of systematic processes for courts to use to accurately and swiftly assess the appropriateness of sentencing alternatives, and propose additional sentencing alternatives that are either within the authority of the Judiciary to initiate or require legislative change. (Recommendations 3-4, 6-7, 9-11, pp. 41-42, 43-46). All of these recommendations rely on the judgment and discretion of our Municipal Courts in their application and are based on the belief that with knowledge, the appropriate granting of one of a variety of sentencing alternatives is inevitable.

Finally, the Committee acknowledges that for many residents of the State of New Jersey, possession of a driver's license is a geographical necessity. A suspension can quickly place an otherwise secure defendant on a dangerous path of escalating consequences, affecting not only a defendant, but families and dependents as well. (Appendix E, pp. 203-206). The Committee strongly encourages the State of New Jersey to conduct a full review of the use and impact of license suspensions. The Committee also recommends that the Judiciary consider the development of a policy that would reinstate certain licenses that were suspended either for delinquencies related to minor offenses or for failure to pay a nominal financial obligation.

In recognition of the potential impact of this enforcement tool and its widespread, unintended consequences, and in acknowledgement that there are instances when suspension is needed, the Committee strongly cautions against the routine issuance of a discretionary license suspension. The Committee thus recommends that discretionary license suspensions be used both deliberately and sparingly. The avoidance of maxims and absolutes here by the Committee is deliberate. The Committee believes, as with the use of sentencing alternatives, that some amount of judicial discretion, predicated on the particulars of a given case, is fundamental to the fair administration of justice.

PRINCIPLE 6 – ENFORCEMENT OF COURT-IMPOSED FINANCIAL OBLIGATIONS: Courts shall not incarcerate a defendant for nonpayment absent a determination of a willful failure to pay. When a defendant has not paid a penalty, courts shall consider a defendant's ability to pay in setting a payment schedule or looking at sentencing alternatives.

The United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden v. Georgia, 461 U.S. 660 (1983). Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with an incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the Committee's recommendations in this regard instead rely on a proposed balanced approach to bench warrants for failure to pay that will

incorporate an ability-to-pay hearing as a precursory step. (Recommendation 12, pp. 47-49).

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed further in Recommendations 13 and 14, pp. 49-50.

PRINCIPLE 7 – ENCOURAGE COMPLIANCE: Municipal Courts shall employ practices that provide notices to defendants in plain language that promote voluntary appearances and encourage compliance.

The encouragement of voluntary court appearances by defendants will prevent failures to appear and failures to pay, which would otherwise trigger the escalating court responses that result in, at a minimum, additional fees and, at worst, a driver's license suspension or bench warrant. Such enforcement mechanisms can quickly launch a defendant on a trajectory that may take years to escape. The Committee is confident that the utilization of compliance gaining measures will be crucial to prevent the cycle of poverty that so many indigent defendants who have contact with the court find themselves in, while also benefiting all court users and stakeholders.

To that end, the Committee proposes a number of simple, common sense noncompliance remedies that have been put forth by various policy papers. (Appendix X). They include, but are not limited to, providing technological reminders of upcoming significant dates to court users and revising notices to provide court users with the information they need. (Recommendations 19 and 20, pp. 53-54). These recommendations have a common theme: providing the public ready access to critical information that advises them to either fulfill their obligation to the court, or to contact the court if they are unable to do so.

The Committee also endorses the various materials that have been developed by the Equal Justice Working Group of the Municipal Conferences. Those materials include proposed revisions to current delinquent notices that provide more time to respond; a poster to be prominently posted in Municipal Courts advising defendants of the availability of time payments and time payment alternatives; and a bench card that summarizes the statutes governing time payments and time payment alternatives as sentencing options. Each of these developed materials emphasize a multi-pronged educational campaign regarding the availability of time payments and time payment alternatives in the event of an inability to

pay, as well as suggested modifications to court practices that will encourage court appearances and timely payments.

The recommendations developed by the Committee and the draft materials developed by the Equal Justice Working Group are designed to benefit all defendants equally, regardless of economic status, while encouraging defendants to contact the court if they have issues with making an appearance or payment.

PRINCIPLE 8 – ENHANCE ACCESS TO COURTS: Access to the Municipal Courts should be enhanced through the expansion or adjustment of traditional hours and the use of technology.

Increased access to Municipal Courts is crucial to ensuring that defendants do not become delinquent. (Appendix K). While perhaps the easiest method of enhancing access is via the expansion or adjustment of traditional court hours, in recognition that Municipal Courts may not have the budget to accommodate such a change, the use of technology provides alternatives.

The Committee has developed a number of recommendations that envision these technological enhancements to be based on the significant expansion of cases that can be resolved remotely. The proposals recommend the creation of an online portal that will allow defendants to initiate certain actions related to their cases. (Recommendation 36-39, pp. 63-67). This will provide a means for defendants to comply with their legal obligations while at the same time continue to work or satisfy other family obligations, and increase the likelihood of defendants responding to a complaint or court order, all while reducing the number of defendants who have to come to court.

Those recommendations emphasize improving the quality and amount of relevant case-related data that is made available, while integrating and expanding case management programs to further benefit the courts and the public. They will provide stakeholders in the Municipal Court system the benefit of a vastly improved flow of information through case management programs. It is the belief of the Committee that these recommendations, taken together, will be felt equally by all Municipal Court users, regardless of economic status.

IV. RECOMMENDATIONS

The recommendations of the Committee, based on the preceding principles, follow.

FAIR SENTENCING AND THE USE OF SENTENCING ALTERNATIVES

The concept of fair and equitable sentencing encompasses all aspects of a sentence that is imposed by the Municipal Court—including fines, fees, penalties, and sanctions—as well as the availability of sentencing alternatives in the event a defendant is unable to satisfy a financial penalty. The issue of contempt is one that is ripe for reform, as it remains on the forefront of Judiciary endeavors despite the significant reduction in total contempt assessments.

The recommendations that follow intend to enhance fairness and equity in sentencing in the Municipal Courts in two important regards: 1 further decreasing the unnecessary or improper assessment of contempt amounts; and 2 ensuring the provision of uniform, reasonable penalties, to the extent discretion is allowed by law, including through the provision of a variety of sentencing alternatives.

RECOMMENDATION 1	**Develop a Judiciary policy to monitor the imposition of contempt of court financial assessments by Municipal Court judges to avoid the inappropriate use of contempt of court, to require compliance with court rules, and to require justification on the record and a separate court order.**

Upon its creation, the Committee prepared and provided contempt reports detailing contempt amounts collected in each county and in a county's individual municipalities to Assignment Judges. This information has been utilized by the Assignment Judges to monitor and limit the inappropriate use of contempt in their Municipal Courts. As a result of these efforts and review, as of the writing of this report, all Assignment Judges have issued an order that requires Municipal Court judges in their vicinage who wish to impose a contempt sanction to not only follow the procedural protections outlined in R. 1:10, but to also place "findings of fact and conclusions of law on the record and provide a written copy of those determinations to the Assignment Judge." The Committee approves of this practice and the system of checks that it places on contempt, a judicial tool of last resort.

Additionally, the Committee recommends that the AOC's Municipal Court Services Division continue to provide necessary support to assist in the continued monitoring of the use of contempt, be it in the form of preparing future reports on imposition of contempt or otherwise, to the Assignment Judges.

RECOMMENDATION 2 **Develop a Judiciary policy establishing guidelines that Municipal Court judges are to follow when the corresponding statute or ordinance provides for a range of possible financial penalties, and requiring a Municipal Court judge to state on the record his or her reasons for ordering that amount.**

The Supreme Court has long recognized that "there can be no justice without a predictable degree of uniformity in sentencing." State v. Hodge, 95 N.J. 369, 379 (1984). "Disparate sentencing undermines public confidence in the fairness of our justice system." Moran, 202 N.J. at 326. "The dominant goal of the Code of Criminal Justice was uniformity in sentencing, State v. Kromphold, 162 N.J. 345, 352 (2000), replacing 'the unfettered sentencing discretion of prior law with a structured discretion designed to foster less arbitrary and more equal sentences[.]'" Id. (citing State v. Roth, 95 N.J. 334, 345 (1984); N.J.S.A. 2C:1-2(b) (listing "general purposes of the provisions governing the sentencing of offenders," including "[t]o safeguard offenders against excessive, disproportionate or arbitrary punishment" and "[t]o give fair warning of the nature of the sentences that may be imposed on conviction of an offense")).

The majority of offenses heard in Municipal Court have set statutory fines. To the extent there are sentences that include discretionary ranges, R. 7:9-1(b) mandates that Municipal Court sentences for Title 2C violations include a statement of reasons from the judge for the imposed sentence, including findings under N.J.S.A. 2C:44-1(a) (aggravating factors) and 2C:44-1(b) (mitigating factors). New Jersey Court Rule 7:9-1(c) provides that for non-criminal code cases that involve a consequence of magnitude, the court shall also provide its reasons for imposing sentence at the time of sentencing. However, no such guidance exists for the sentencing of traffic or local ordinance offenses that carry discretionary, ranged sentences.

The Committee recommends the creation of a policy regarding the establishment of discretionary, ranged monetary sentences, including factors that should be considered in the imposition of any such sentence. The Supreme Court has the constitutional authority to address the disparate treatment of defendants in our Municipal Courts. N.J. Const. art. VI, § 2, ¶ 3; Moran, 202 N.J. at 328 ("To ensure uniformity in sentencing, and that defendants similarly situated are-to a reasonable degree-similarly treated, we draw on our constitutional powers, N.J. Const. art. VI, § 2, ¶ 3, to set standards for our municipal court and Law Division judges in exercising their discretion under N.J.S.A. 39:5-31."). The Committee additionally suggests that any developed policy require that the court place on the record the reasons for imposing the sentence selected. The Committee believes that developed guidelines will provide judges with appropriate direction in the setting of fair sentences while furthering the Judiciary's goal of uniformity in sentencing.

The development of such a policy would be consistent with prior actions of the Supreme Court, which has historically taken "affirmative steps to ensure that sentencing and disposition procedures, whether authorized by statute or court rule, will not produce widely disparate results for similarly situated defendants." Moran, 202 N.J. at 326 (citing State v. Brimage, 153 N.J. 1, 22-25 (1998) (ordering Attorney General to promulgate plea offer guidelines to eliminate inter-county disparity in sentencing); State v. Yarbough, 100 N.J. 627, 643-44 (1985) (adopting six criteria as general guidelines for judges in determining whether to impose concurrent or consecutive sentences), cert. denied, 475 U.S. 1014 (1986); State v. Leonardis (Leonardis I), 71 N.J. 85, 97-98, 109 (1976) (requiring pretrial intervention programs be implemented according to formal, uniform guidelines and instituting procedures for judicial review to "alleviate existing suspicions about the arbitrariness of given decisions"), aff'd on reh'g, State v. Leonardis (Leonardis II), 73 N.J. 360, 388 (1977)). In requesting the establishment of guidelines for discretionary sentences, particularly for traffic and local ordinances, the Committee asks the Court to do the same here.

This will also address a particular practice of which the Committee has significant concern. In some Municipal Courts, there is a common practice of amending charges to an offense that carries a discretionary fine, with the understanding that any fine imposed will be on the higher end of the spectrum. Often, the amended charge is a local ordinance, which carries a higher maximum monetary penalty than the original State charge. N.J.S.A. 40:49-5. In such instances, as well as for petty disorderly persons offenses and disorderly persons offenses, the entirety of the collected fine goes to the municipality. N.J.S.A. 2C:46-4(c). The Committee believes that the promulgation of sentencing guidelines will address this practice.

RECOMMENDATION 3	**Develop a Judiciary policy providing Municipal Court judges guidelines for consideration of all available sentencing alternatives both at time of sentencing and as part of post-sentencing enforcement.**

The Committee determined that although there are numerous sentencing alternatives available legislatively, very few are regularly utilized by the courts. To encourage the use of the full panoply of sentencing alternatives, and building on the educational materials developed by the Equal Justice Working Group, the Committee recommends that the AOC develop guidance for Municipal Court judges to assist them in determining when various sentencing alternatives should be considered.

RECOMMENDATION 4	**Develop policy and tools that would assist the Municipal Courts in establishing payment plans, determining defendant eligibility for other post-disposition sentencing alternatives, and making ability-to-pay determinations.**

The Committee is cognizant of the volume of matters Municipal Courts hear, the lengthy nature of many court sessions, and the impact increased consideration of sentencing alternatives may have on those sessions. To balance those legitimate administrative concerns, the Committee recommends that efforts be made to streamline these determinations, including the collection of information for a Municipal Court judge to utilize in making the determination. The Committee recommends that consideration be given to the development of an ability-to-pay tool that may be based in part on the Financial Questionnaire to Establish Indigency, (Appendix Y); a payment plan calculator that establishes a payment plan based on factors such as income, expenses, and outstanding fines and fees; and publicly available forms that would allow a defendant to apply for waiver or a reduction in sentence, mirroring the practice currently used when an incarcerated defendant requests relief, pursuant to R. 7:7-2(d). (Appendix Z). Taken together, these tools will both formalize the largely ad hoc process —the only exception being for applications for time payment plans— and encourage the expeditious review of requests for sentencing alternatives.

RECOMMENDATION 5	**Municipal Court judges and staff should regularly be provided ongoing training in the following areas:** **1) The serious ramification of license suspensions and bench warrants;** **2) The scope of their discretion in the issuance of bench warrants and license suspensions;** **3) The full range of sentencing alternatives available, including the vacating of financial obligations; and** **4) That with just cause, and within the operational needs of the court, courts should be relatively liberal in granting adjournments.**

The Committee recommends regular training for Municipal Court judges and staff that emphasizes both the real-life consequences of the issuance of bench warrants and license suspensions, and the scope of judicial discretion in the use of those enforcement tools. These training modifications should be made available as part of the regular training

offered to Municipal Court judges and staff, as well as in training for newly-appointed judges.

RECOMMENDATION 6	**Encourage the creation and expansion of diversionary programs wherein participating defendants who perform volunteer services or complete appropriate treatment services have matters against them dismissed.**

The Committee acknowledges the informal practice in a number of municipalities wherein the municipal prosecutor will refer a defendant to perform volunteer services or complete a treatment program as a condition of the prosecutor making a motion to the court for dismissal. Such services fall outside the purview of probation and are oftentimes not conducted at official Judiciary community service sites. The Committee seeks to formalize and expand this process to provide similar opportunities to eligible defendants.

The Committee thus recommends the creation and expansion of programs that would have participating defendants perform volunteer services at local service providers or receive appropriate treatment for mental health issues, addiction, or other counseling needs at program providers. When satisfactorily performed, the prosecutor would then initiate the dismissal of the charges against that defendant. The Committee envisions that the referral process will be similar to that done in the Veteran's Diversion Program, N.J.S.A. 2C:43-23 et seq. The Committee notes that such efforts would benefit from communication with the New Jersey Department of Health, the county Mental Health Board, and the Addiction Services Board, all of which may be useful in identifying appropriate service providers.

RECOMMENDATION 7	**Develop a vicinage-wide, community-led program similar to the model used in Atlantic/Cape May Vicinage that would seek to encourage the voluntary appearance and safe surrender of defendants with outstanding bench warrants.**

Currently, there are nearly 2,500,000 outstanding bench warrants for failure to appear and failure to pay. (Appendix AA). This number is cumulative, increasing since the inception of both database systems, 1986 for ATS and 1993 for ACS, and must be regarded in the context of the six million matters the Municipal Courts handle annually. Nonetheless, the Committee is united in the position that there must be both a review process for existing warrants, and the establishment of mechanisms that allow for the review and cancellation of existing warrants where appropriate.

In addition to the other recommendations contained in this report that call for the review of existing warrants, limiting the issuance of warrants, and the anticipated statewide plan

for the cancellation of pending bench warrants, the Committee recommends that each vicinage develop and implement an ongoing vicinage-led program that would seek to encourage the voluntary appearance of defendants who have outstanding, unpaid time payment orders. This would provide Municipal Courts with the opportunity to resolve open detainers, rescind warrants, and to set new payment plans where appropriate, for these defendants. This is consistent with other Judiciary-led incentive programs, including those used in Atlantic/Cape May Vicinage, that encourage persons wanted for non-violent, less serious offenses to voluntarily surrender to law enforcement in neutral settings. However, this differs from fugitive safe surrender programs, as those initiatives are based on statewide jurisdiction. The proposal here is to be led by the local vicinage, and limited to the vicinage's jurisdiction. Finally, this recommendation is meant to only supplement local efforts approved by the Assignment Judge.

RECOMMENDATION 8	**Develop procedures consistent with N.J.S.A. 2B:12-26 and N.J.S.A. 39:8-73a to automate the collection of significant Municipal Court debt in the Superior Court.**

The Committee determined that in an effort to move away from the routine issuance of bench warrants for failures to pay, alternative collection methods should be pursued. The Committee recommends that in instances where appropriate, reducing an outstanding fine to a judgment and pursuing enforcement in the Superior Court should be considered. Members suggested that appropriate automation and protocols for this process be developed and piloted, with consideration being given to the potential assessment and exploration of the waiver of Superior Court docketing fees. Currently, by statute, outstanding Title 39 sentences can be docketed in Superior Court without the assessment of any fee. N.J.S.A. 39:8-73a. This would address concerns regarding a cost-benefit analysis for a municipality to seek civil relief, as well as the Committees concerns about habitual warrant issuance.

LEGISLATIVE PROPOSALS

The below recommendations consist of recommendations developed by the Committee linked to fairness in sentencing by way of sentencing alternatives that would require legislation to implement.

RECOMMENDATION 9	**Allow defendants to receive credit towards a legal financial obligation for hours spent in clinical treatment, including participation in recovery Drug Court, N.J.S.A. 2C:35-14, that is related to the underlying offense(s).**

Literature has shown that in some instances an underlying cause for criminal behavior can be identified, including, but not limited to, a mental health concern, substance abuse issue, or combination of both. The Committee recommends that in those instances, and where the offense is non-violent and otherwise lesser/petty, the legislature should permit that defendants to receive credit towards their fines and fees for hours spent in treatment in a substance abuse/mental health program/individual or group therapy, including Drug Court, so long as the treatment is related to the commission of the underlying offense. Such defendants should be rewarded for successful completion of treatment or Drug Court by being provided a mechanism to eliminate or substantially reduce any related outstanding financial obligations. This will further create an incentive for their participation in appropriate treatment programs. The Committee believes that this sentencing alternative could be captured in amendments to N.J.S.A. 2B:12-23, N.J.S.A. 39:4-203.1, and N.J.S.A. 2C:46-2(a)(2). As part of this recommendation, and Recommendation 6, the Committee urges the legislature to review and consider the availability of appropriate clinical programs, particularly for people of lesser means.

RECOMMENDATION 10	**The enactment of legislative alternatives to license suspension, such as the denial of renewal of a driver's license or vehicle registration, or the creation of a restricted use driver's license.**

In recognition of the potentially catastrophic outcome that may result from a license suspension, as tempered by the fact that the threat of a license suspension is a municipal court's strongest tool for enforcement, the Committee determined that an alternative should be considered to provide Municipal Courts with a full panoply of sentencing options. The Committee recommends that the legislature consider an alternative penalty that would prevent a defendant from renewing a driver's license or a restricted use driver's license for drivers, while providing defendants notice prior to renewal. Either would give defendants the ability to continue to work as they strive to satisfy their financial obligations, and would complement the municipal collection of enforcement mechanisms. Additionally, it should be noted that a high percentage of license suspensions are not court ordered, but rather are the result of defendants not paying MVC surcharges or otherwise not complying with certain MVC administrative requirements. The Committee believes that these areas are also worthy of review by the legislature.

RECOMMENDATION 11	**Legislatively establish and update an incarceration conversion rate to reflect the actual costs of incarceration.**

The current minimum incarceration conversion rate is $50 a day. N.J.S.A. 2C:46-2(a)(2); N.J.S.A. 39:5-36. Defendants that are incarcerated, or opt to convert their fine to a jail term, are eligible to receive a credit of $50 a day towards their outstanding financial obligations.

Committee members determined that this is unfair to both defendants and the State of New Jersey in that it is not reflective of the true cost of incarceration. To address this deficiency, the Committee recommends that consideration be given to support legislation setting the incarceration conversion rate more in line with the actual cost of incarceration, and that this number should either be reviewed periodically or contingent on an evolving threshold, similar to the way the Federal Poverty Guidelines are used to determine indigency. N.J.S.A. 39:4-203.1, Indigents; Fine for Traffic Offense; Payment in Installments.

PROCEDURAL SAFEGUARDS FOR DEFENDANTS UNABLE TO PAY A FINE

The recommendations that follow are intended to both satisfy and expand upon the United States Supreme Court's maxim in Bearden—that courts may not incarcerate a defendant due to an inability to pay a court-ordered financial obligation. 461 U.S. 660. To satisfy Bearden, the Committee recommends that a defendant who is delinquent in paying a financial penalty be automatically scheduled for an ability-to-pay hearing. To expand upon Bearden, the Committee proposes severely limiting the use of bench warrants in instances of both failure to pay and failure to appear. Recommendations in alignment with these intentions follow.

RECOMMENDATION 12	**No bench warrant or license suspension shall be issued against a defendant who becomes delinquent on time payments unless an ability-to-pay hearing is scheduled on proper notice to the defendant.**

Currently, a Municipal Court may issue a bench warrant following a court user's failure to pay a legal financial obligation and the issuance of a single notice. To ensure that any incarceration resulting from a failure to pay bench warrant is not due to a court user's lack of financial resources, as prohibited by Bearden, 461 U.S. at 667-69, the Committee recommends the discontinuation of the practice of issuing such bench warrants for defaulting defendants without first scheduling an ability-to-pay hearing. The delinquent court user should instead be scheduled to appear before the court to answer for the nonpayment, and given until that date to satisfy the arrears. This would provide defendants who fail to pay an opportunity to explain the reason to the court, to seek a sentence alternative, if applicable, and for the Municipal Court to conduct an ability-to-pay hearing, if necessary.

In those instances when a defendant is incarcerated due to an executed municipal bench warrant, the Committee recommends the prompt review of the matter before a court, but in no case later than 48 hours after arrest. The Committee recommends that, absent a statewide protocol, each Vicinage develop a local protocol to ensure that defendants unable to post bail are not spending an undue amount of time waiting for a court event. The Committee highlights current ongoing practices in some Vicinages that will allow for this review period to be met, including the use of video appearances, the practice of requiring the immediate release of defendants whose bail is set below $500, and allowing the warrant review process to be handled by a cross-assigned central judicial processing municipal court judge.

In the event a defendant is brought before a court due to an inability to satisfy bail, at the time of his or her court appearance, the court user can articulate the reason(s for the failure to pay, seek a sentencing alternative, or articulate an inability to pay. This will allow the court to make an ability-to-pay determination if need be, and closely mirror the current practice captured in Administrative Directive 15-08, "Use of Warrants and Incarceration in the Enforcement of Child Support Orders" (November 17, 2008), which requires an ability-to-pay hearing prior to the use of incarceration for the enforcement of child support orders. (Appendix BB).

Additionally, license suspensions are a legislatively-authorized Municipal Court response to a defendant's failure to pay that requires in some instances notice of the intention to suspend, and in others no such notice.[12] To ensure that delinquent defendants do not suffer the consequences of a license suspension during the pendency of their ability-to-pay hearing, the Committee recommends that any license suspension related to a failure to pay occur only after an ability-to-pay hearing has been scheduled. If a defendant fails to appear at that ability-to-pay hearing, the Municipal Court retains the authority to utilize the enforcement tool of a license suspension, as referenced in Recommendation 13, p. 49.

The practices proposed above would be in addition to current procedural protections provided to delinquent defendants, as well as the proposed revisions to notice language proposed by the Committee in Recommendation 20. Such revisions include the advisement that a defendant will not be incarcerated for an inability to pay. Taken together, these measures will ensure that any incarceration resulting from a failure to pay will only occur when that failure is willful, and that a defendant will not be subjected to a license suspension while awaiting an ability-to-pay hearing.

As noted earlier, the United States Supreme Court has made clear that courts may not incarcerate a defendant for an inability or failure to pay a court-ordered financial obligation unless the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay. Bearden, 461 U.S. 660. Said another way, a court may not jail a person for failure to pay unless there is a finding that the person is able to pay without manifest hardship and has not made good faith efforts to comply.

[12] N.J.S.A. 2C:46-2 (providing that a defaulting defendant may be subjected to a license suspension following "notice and an opportunity to be heard on the issue of default."); N.J.S.A. 2B:12-31 (if a defendant fails to pay a court-ordered financial obligation, the court may order the suspension of a defendant's driver's license with notice of the intention to suspend and the provision to the defendant of the opportunity to contest the validity of the suspension); N.J.S.A. 39:4-203.2 (for Title 39 offenses, the court may order the suspension of a defendant's driver's license upon a failure to comply with any term of an time payment order).

In Municipal Court, there are two potential paths to incarceration for nonpayment. The first is via the issuance of a bench warrant for failure to pay, when coupled with incidental arrest and incarceration upon an inability to make bail. The second is through the contempt mechanisms provided by New Jersey Court Rules 1:10-1 and 1:10-2. Upon careful review, the Committee saw no need to disturb the careful procedural protections provided by R. 1:10-1 and R. 1:10-2. Therefore, the recommendations that follow demonstrate the Committee's balanced approach to bench warrants for failure to pay that will incorporate an ability-to-pay hearing as a precursory step to issuance.

While the Committee notes that the recommendations made do not diminish a Municipal Court's authority to issue a bench warrant for a failure to appear, the Committee takes the position that such a powerful enforcement tool should not be used indiscriminately for a failure to appear for minor offenses or for failures to pay when the amount owed is minimal. These proposed limitations to the use of bench warrants will be discussed below.

RECOMMENDATION 13	**Bench warrants should only be authorized for defendants who fail to appear for an ability-to-pay hearing where the outstanding fines and fees owed by that defendant equal or exceed $250.**

The Committee recommends that in the event a noticed defendant fails to appear, and the outstanding monies owed is less than $250, the Municipal Court should only issue a bench warrant if required in the interest of justice. Vicinage management should establish protocols for monitoring compliance with such an established policy. The Committee cautions that this authority should not be read as mandating issuance when the amount exceeds $250. This threshold is consistent with the Committee's proposal in Recommendation 14, pp. 49-50, to limit the use of failure to appear bench warrants to certain, serious offenses. For those defendants with outstanding fines that do not meet the proposed threshold, Municipal Courts retain the authority to utilize other enforcement tools.

RECOMMENDATION 14	**Develop a policy limiting the issuance of failure to appear bench warrants to certain, serious offenses, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

The Committee acknowledges that the concerns regarding incidental incarceration from failure to pay bench warrants remain for failure to appear bench warrants. To balance the use of this powerful enforcement tool with the potential for incarceration, the Committee recommends the development of a policy limiting the use of failure to appear bench warrants to certain, serious offenses. The Committee acknowledges that, as of the drafting

of this report, all vicinages have issued a local court order limiting the use of bench warrants for failures to appear in traffic cases to enumerated, serious offenses. In the pursuit of parity in the treatment of defendants across the State of New Jersey, the Committee recommends that a universal policy (i.e. Administrative Directive or Court Rule) be promulgated.

RECOMMENDATION 15	**Develop a policy formalizing the process for the recalling of existing bench warrants for failure to pay for complaints that have been disposed, taking into account the following: the age of the bench warrant; the seriousness of the conviction; the amount owed; and any other relevant factors.**

Building on the issues identified in Recommendations 13 and 14, pp. 49-50, the Committee recommends the development of a statewide policy that would provide a systematic way for courts to review the approximately 300,000 outstanding bench warrants that have been issued by municipal courts for failure to pay. This total includes all outstanding failure to pay bench warrants that have been issued from 1986 until the end of the 2017 calendar year. It is worth noting that 42,000 of those 300,000 outstanding bench warrants were issued during calendar year 2017. It is also worth noting that these totals need to be considered in the context that the Municipal Courts handle approximately 6 million cases annually. (Appendix AA). Any developed protocol should consider critical factors, such as the age of the case, the seriousness of the original charge(s), the remaining balance, and other relevant factors. As part of that protocol, strong consideration should also be given to identifying situations where the remaining balances should be vacated in the interest of justice, consistent with R. 7:9-4 and N.J.S.A. 2B:12-23.1.

The Committee recommends that the process to review and recall existing failure to appear warrants begin promptly, with an emphasis on rescinding warrants for defendants convicted of minor offenses or who have minimal outstanding legal financial obligations. As an intermediary option pending review of outstanding warrants, vicinages may issue standing orders providing for the immediate release of defendants arrested on municipal failure to pay bench warrants when the bail amount owed is under a certain threshold, generally $250 to $500 dollars. In those instances, the defendant is released and provided a date to appear before the court.

Finally, the Committee recommends that in instances where a bench warrant is recalled, the matter be scheduled for court to determine whether a defendant needs to make new arrangements or avail himself/herself of sentencing alternatives. The Committee urges the consideration of revocation of the fine in full or in part, if appropriate, and strongly

encourages municipalities to develop or avail themselves of existing collection programs or processes, such as private collections, to avoid reliance on bench warrants and license suspensions as the primary means of collection.

RECOMMENDATION 16	**Develop a policy formalizing the process for dismissal of old complaints that have not been disposed, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.**

Municipal Court judges may dismiss open cases in instances governed by R. 7:8-9(f), Dismissal of Parking Tickets. The Committee is also aware of current discussions within the Judiciary regarding the statewide dismissal of certain less serious, outstanding municipal court matters that have an open, active failure to appear bench warrant. The Committee thus recommends that additional court rules or policy be developed to further encourage or mandate the dismissal of old, open cases based on the following principles: the age of the case; the seriousness of the charge; the current status of the matter; and other relevant factors.[13] In many instances, these outstanding matters may have active warrants and license suspensions attached to them, but have little likelihood of resulting in a guilty finding if the matter was brought to trial. The ongoing utilization of these enforcement methods in the face of an unlikely prosecution must be addressed.

For that reason, the Committee suggests that a court rule or policy be developed to provide for the dismissal of certain complaints by the municipal court that are over ten years old, with notice given to the prosecutor. The Committee hopes that creating a clear process for final resolution will remove the risk of potential unintended consequences caused by these open matters, while giving the prosecutor an opportunity to object. This process will also clear court backlog and provide some finality to these old, open cases. The Committee envisions that matters falling outside of any newly-established threshold will remain subject to the procedures captured in R. 7:8-5, which authorize dismissal of a Municipal Court complaint "by the court for good cause at any time on its own motion, on the motion of the State, county or municipality or on defendant's motion." Id.

[13] The ATS/ACS system was implemented statewide as of January 1, 1997. Although many open municipal court complaints that pre-date statewide implementation were entered into the ATS/ACS system, many outstanding complaints were not. The Committee recommends that any policy that is developed encompass these unlogged complaints.

RECOMMENDATION 17 **The AOC should develop additional tools and procedures for Municipal Court judges and staff to determine whether a defendant who has failed to appear or pay is incarcerated before a bench warrant or license suspension is issued.**

Currently, to determine whether a defendant is incarcerated in county jail, court staff must do a state-wide search through the County Corrections Information System (CCIS). To determine whether a defendant is incarcerated in state prison, court staff can search for the defendant on the Department of Correction's online Offender Search Form.[14] To minimize the risk that defendants are issued warrants or license suspensions for failure to appear or pay when they are incarcerated and physically unable to do so, particularly for larger Municipal Courts that do not have resources to allocate towards individual looks-ups for each delinquency, the Committee recommends that Municipal Courts be provided the appropriate technological tools to more easily and swiftly determine whether a defendant is incarcerated.

The Committee acknowledges that implementation of this recommendation would require significant updating of the County Corrections Information System database, and to the databases used by the New Jersey Department of Corrections. It would also require reconciliation of the complaint-driven nature of the Municipal Court computer system to better capture the State Bureau Identification (SBI) number that is used for defendants who are incarcerated.

RECOMMENDATION 18 **Municipal Courts should recall bench warrants or rescind driver's license and vehicle registration suspensions when a defendant makes a subsequent good faith effort to report to court or to satisfy a legal financial obligation.**

The Committee determined that a common practice across Municipal Courts is to allow a judicial officer (Municipal Court judge or authorized Court Administrator or Deputy Court Administrator) to recall a bench warrant when the defendant contacts the court. Similarly, many courts will rescind a driver's license suspension when a defendant makes a good faith effort to either report to court or to pay a portion of the outstanding payment balance. The Committee approves of this practice and recommends that courts apply it liberally, where appropriate. Additionally, the Committee recommends that this practice be highlighted and encouraged via training and however else deemed appropriate by the AOC. This will ensure that this approach to delinquency shifts from being commonplace in various Municipal Courts to being universally and consistently practiced.

[14] The URL for that portal is https://www20.state.nj.us/DOC_Inmate/inmatefinder?i=I.

VOLUNTARY COMPLIANCE WITH COURT-ORDERED APPEARANCES AND LEGAL FINANCIAL OBLIGATIONS

The following recommendations emphasize encouraging court user compliance with Municipal Court obligations. The recommendations share the objective of providing court users with access to critical information that will both advise of an obligation to the court and encourage court contact if that obligation cannot be met.

RECOMMENDATION 19	**Establish a system for automated text, email, and/or telephonic reminders to defendants of upcoming or missed court dates and upcoming or missed legal financial obligation due dates.**

Several studies reviewed by the Committee concluded that reminder notifications are a significant factor in reducing failures to appear and failures to pay. (Appendix X). For that reason, the Committee recommends implementation of text, email, and/or telephonic notifications to municipal defendants regarding upcoming or missed court appearances and payment due dates. The Committee also recommends that information regarding possible sentencing alternatives and links to online case management or resolution options be incorporated into any developed reminders. The Committee envisions this recommendation will build on the auto-notifications developed for defendants participating in criminal justice reform's pretrial monitoring.

For implementation, the Committee proposes that consideration be given to establishing procedures to ensure the voluntary collection of cell phone, email, and/or phone information from defendants to facilitate automated reminders through: 1) the modification of Judiciary-issued charging documents and forms; 2) the creation of an online portal for self-registration; and 3) direct court contact to opt in to receive reminders.

RECOMMENDATION 20	**Modify court notices to advise defendants in plain language that: 1) inability to pay will not result in incarceration; 2) defendants can contact the court to seek alternative ways to meet their financial obligations; and 3) the failure to appear or respond to notices may result in additional monetary penalties, license suspension, and/or issuance of a warrant for arrest that may lead to incarceration.**

Although current notices encourage defendants to contact the court, their formality and brevity fail to properly advise defendants of the availability of sentencing alternatives, in

part because of the current outdated dot matrix printing process, as well as space and character limitations of the notices. This is to the detriment of both the defendant and the court, as members of the Committee agreed that in many instances of a failure to appear or failure to pay, defendants were unable to satisfy a fine or time payment, but were fearful of contacting the court due to that inability.

The Committee thus proposes building on the notice revisions recommended by the Equal Justice Working Group of the Municipal Conferences, and significantly revising the scheduling and delinquent notices. Those revisions should include an advisement to court users that an inability to pay will not result in incarceration and instructions that a court appearance is required to determine the availability of sentencing alternatives.

Such revisions will reinforce to defendants the need to contact the court to schedule an appearance in the event of any inability to pay, and give defendants information regarding the availability of sentencing options. Taken together, the proposed revisions should assist defendants that are otherwise fearful of contacting the court by providing them with information on their options. The Committee additionally recommends that consideration be given to translation of the revised notices into other commonly-used languages where practicable.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability-to-pay and potentially modify the sentence.

RECOMMENDATION 21	**Centralize and modernize Municipal Court notice generation and printing to improve the quality and functionality of notice processing and to take advantage of high volume printing and postage discounts for courts across the state.**

New Jersey Municipal Courts generate in excess of 10 million official court notices through the existing automated case management systems annually. In addition, Municipal Courts manually generate tens of thousands of non-automated notifications to defendants. This high volume of notifications is currently handled locally, requiring each court to manage its notice and printing supplies and its postage budget based on its volume and usage. The Committee recommends consolidating and centralizing this process, significantly reducing expense, overhead, staffing, and postage costs to each court. This centralization will also facilitate the updating of the physical notice to a new, more dynamic form which will significantly improve its appearance and clarity, benefiting the defendant receiving the notice.

RECOMMENDATION 22 **The AOC shall develop policies expanding the use of video and telephonic appearances in appropriate instances in Municipal Courts.**

The availability of video and telephonic appearances encourage court appearances when such appearance would be a hardship, inconvenient, or impractical. This can facilitate the continuous and swift resolution of municipal matters by avoiding adjournments. Currently, Municipal Courts have varying policies on the use of video and telephonic appearances. This variation can be explained by a number of factors, including local budgetary limitations or the preferences of the Municipal Court judge. The Committee recommends that the AOC develop policies and procedures to encourage the greater use of technologies allowing for remote appearances, including for those defendants that are incarcerated. This would involve collaboration on technical issues with the Department of Corrections and county jails. Any procedures developed should be cognizant of the budgetary issues that may otherwise discourage a Municipal Court from allowing the use of these technologically-enhanced appearances.

RECOMMENDATION 23 **The AOC should explore the establishment of a uniform online adjournment request process.**

Currently, there is no uniform adjournment request protocol for Municipal Court matters. Consequently, the requirements for a defendant to request an adjournment vary amongst the vicinages and Municipal Courts. To address this, and simultaneously enhance court access, the Committee recommends that the AOC explore the establishment of a uniform online adjournment request process that would be implemented through a customer service portal added onto NJMCdirect.com – the existing page where defendants can pay traffic tickets online. This would allow court users, on their own behalf or through counsel, to request adjournments online, to more easily access the court, and to avoid possible failure to appear penalties.

The Committee further recommends that any portal which is developed indicate to the requestor that the submission of the request for an adjournment does not guarantee its approval by the court, and that proof of the court's receipt of the request be provided to the requestor. The Committee also suggests that the AOC require that requests be submitted on a timely basis, to ensure there is sufficient time to give the prosecutor an opportunity to review and object, and to allow for court review.

INDEPENDENCE OF THE MUNICIPAL COURTS

An independent Municipal Court is central to the Judiciary's ability to serve the public. To enhance the independence of the Municipal Courts, the Committee makes a collection of recommendations that together create two new processes: 1) a voluntary qualification process for the appointment and reappointment of Municipal Court judges; and 2) an evaluation process for sitting Municipal Court judges. The former will provide an impartial and transparent process for the appointment and reappointment of qualified judges, free from inappropriate considerations such as revenue generation. The latter will enhance the already-present AOC and vicinage involvement and oversight of the Municipal Courts, and provide further assurances that the Municipal Court remains both independent and separate from police and prosecution. Recommendations describing both processes follow.

VOLUNTARY QUALIFICATION PROCESS FOR THE APPOINTMENT AND REAPPOINTMENT OF MUNICIPAL COURT JUDGES

The recommendations below put forth the proposed qualification process for the appointment and reappointment of Municipal Court judges. Statutorily, the local or state executive branch appoints Municipal Court judges. N.J.S.A. 2B:12-4. Therefore, although the qualification process will be led by the Judiciary, because it is the municipality that retains the final authority to appointment, the municipality must choose to voluntarily participate in the qualification process. These recommendations are proposed as a group, and for that reason should be read together.

RECOMMENDATION 24	**Establish a statewide uniform and transparent process to assess the qualifications for the appointments and reappointments of all Municipal Court judges.**
RECOMMENDATION 25	**All appointing authorities and municipalities shall be encouraged to participate in an appointment and reappointment qualifications process. Participating municipalities retain the authority to appoint Municipal Court judges.**
RECOMMENDATION 26	**Utilizing guidelines of the Administrative Office of the Courts, establish a Municipal Judge Qualifications Committee (Qualifications Committee) to evaluate and assess the qualifications of attorneys being considered for appointment or reappointment to Municipal Court judgeships.**

RECOMMENDATION 27	**The composition of the Qualifications Committee shall include: 1) the Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, who will serve as chair of the committee; 2) a member of the appointing municipality or municipalities, or their designee; 3) two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting, as appointed by the Assignment Judge of the Vicinage; and 4) a non-attorney citizen from the county.**
RECOMMENDATION 28	**All participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. After carefully reviewing the background and qualifications of the Municipal Court judicial candidate, the Qualifications Committee shall promptly issue a report to the Assignment Judge. It is further recommended that a sitting Municipal Court judge who is up for reappointment may, with the permission of the Assignment Judge, submit his or her name to the Qualifications Committee for review. All materials created by the Qualifications Committee during the course of their review of a candidate are confidential.**
RECOMMENDATION 29	**When a Municipal Court judge candidate is deemed not qualified by the Qualifications Committee, the Assignment Judge will first notify the candidate and then the town solicitor. If appropriate, the Assignment Judge will request that another candidate be submitted for consideration by the Qualifications Committee.**

RECOMMENDATION 30	**When a Municipal Court judge candidate is deemed qualified, the Assignment Judge will notify the governing body, town solicitor, and the President of the County Bar Association. The notice will trigger the municipal governing body to vote or promptly take action on the candidate.**

The Committee proposes the creation of a qualification process for the appointment and reappointment of Municipal Court judges. The process will be based on an objective analysis of a candidate's qualifications, as assessed by a committee representing stakeholders in the municipal court—the local Qualifications Committee. Because municipalities retain the ultimate appointing authority, participating in the qualifications evaluation process will be voluntary, although strongly encouraged. Thus, the processes articulated in the above recommendations are made with full acknowledgement that they do not disturb the inherent authority of the governing body or Assignment Judge.

To conduct the qualification evaluation, the Committee proposes the establishment of a local Qualifications Committee. Each local committee would be established by the Assignment Judge, and will be comprised of the following:

1) The Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, to serve as chair of the committee;
2) A member of the appointing municipality or municipalities, or their designee;
3) Two members of the county bar association that have extensive Municipal Court practice, one with defense and one with prosecution, as appointed by the Assignment Judge of the Vicinage; and
4) A non-attorney citizen from the county.

As part of the qualifications review process, participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. Additionally, a sitting Municipal Court judge, with the prior approval of the Assignment Judge, may be allowed to submit his or her own name to the Qualifications Committee of a participating municipality, in the event that it was not submitted by the municipality. This proposed procedure will enhance the independence of sitting Municipal Court judges who are qualified, and address concerns raised by testimony provided during the public hearings held by the New Jersey State Bar Association Subcommittee on Judicial Independence in the Municipal Court. (Appendix V-1, p. 1106)("The testimony was that towns rely on the revenues that Municipal Courts generate to assist with their budgets, allowing them to not raise taxes on their citizens. Towns often will review the revenues generated by a Municipal Court judge prior to deciding whether a judge will be reappointed.").

The Qualifications Committee will examine the background and qualifications of a candidate, as well as quantitative and qualitative data from sources such as the evaluation report discussed in Recommendation 34, p. 61, prior to preparing a report for the Assignment Judge. Although the proposal allows for the Qualifications Committee to rely on confidential and non-confidential materials in preparing its report, any materials created by the Committee during the course of its review of a candidate will be regarded as confidential. The recommended qualification process will simply be a determination of whether a candidate is qualified or not qualified to sit as a Municipal Court judge, and will not include a comparison of potential candidates. That ultimate determination is left to the appointing authority.

In the event the Committee determines that the candidate is qualified, the Assignment Judge shall notify the appropriate stakeholders: the governing body, the town solicitor, and the President of the County Bar Association. In the event a candidate is found to not be qualified, the Committee recommends that the Assignment Judge first notify the candidate and then the town solicitor. The Assignment Judge will then, if no other candidates were submitted and deemed qualified or if otherwise appropriate, request that another candidate be submitted. The Committee is hopeful that participating municipalities, through membership on the Qualifications Committee, will be engaged with the process, and find it to be useful in evaluating a candidate for a Municipal Court judgeship.

The qualifications procedure will ensure that only qualified candidates are appointed to serve while also protecting qualified sitting Municipal Court judges. Candidates found to not be qualified will simply not gain the support of the Qualifications Committee. This procedure will enhance credibility to the appointment process, protect towns from criticism, assist towns in vetting candidates, and, ultimately, enhance the public trust in the courts. At the same time, it will bring to the forefront the need for statutory changes to insulate judges from local pressure and politics and increase the independence of those courts. A statewide improvement to the current selection and retention of all Municipal Court judges, as opposed simply for those judges in voluntarily participating municipalities, may be inevitable.

LEGISLATIVE PROPOSALS

As discussed previously, the basic structure of our municipal court system has been established by statute. In developing our recommendations, the Committee fully acknowledges that certain fundamental changes being suggested fall outside the scope of the current statutory structure. For that reason, the below series of recommendations, which fall generally within the purview of the other two branches of government, would best be implemented through legislative change.

RECOMMENDATION 31 **The legislature should consider modifying the current legislative scheme to mandate municipalities to participate in the proposed qualifications process for appointment and reappointment of Municipal Court judges.**

The Committee recommends that the legislature mandate municipal participation in the proposed voluntary qualification evaluation process for appointment and reappointment.[15] This will ensure statewide uniformity in the municipal bench while enhancing independence and trust in the municipal court system.

RECOMMENDATION 32 **The legislature should modify the current legislative scheme to increase the term of service for Municipal Court judges from three to five years.**

Municipal Court judge appointments are limited to three-year terms. N.J.S.A. 2B:12-4. Tenure is not available, and reappointment is at the discretion of the municipality. The Committee recommends a longer term of appointment, with membership agreeing that it will result in a more experienced bench and provide further stability to the leadership of a municipal court. It will also represent a shared commitment from all branches of government to provide additional protection to judicial integrity and independence. This commitment has preliminarily been demonstrated by its unanimous support from Committee members. This change in the term of service legislation will be even more meaningful if the qualifications process outlined in Recommendations 24 through 30, pp. 56-59, are also mandated by legislation, as is proposed in Recommendation 31, p. 60.

RECOMMENDATION 33 **The legislature should mandate the consolidation of small courts, taking into account factors such as total annual filings, frequency of court sessions, and geography.**

The Committee reviewed data relating to total court filings for municipal courts for the 2017 court year (July 1, 2016 to June 30, 2017). Of 515 municipal courts, 225 had less than 3,000 filings in the 2017 court year, 166 had less than 2,000 filings, and 105 had less than 1,000 filings. (Appendix U). Based on this data, and the benefits associated with consolidated municipal courts, the Committee recommends that consideration be given to legislatively-mandated consolidation. The Committee suggests that any mandate for

[15] Although the Committee acknowledges that the Court has the obligation and authority to ensure the integrity of the Judiciary and to preserve judicial independence, N.J. Const. art. VI, § II ¶ 3, alterations to the appointment and reappointment process for Municipal Court judges are best done through the legislature.

consolidation consider not only the annual filings, but also the number of court sessions and the geography of various municipal courts, which will ensure that there is no decrease in court access as a result of consolidation.

EVALUATION PROCESS FOR SITTING MUNICIPAL COURT JUDGES

The recommendations below put forth a proposed evaluation process for sitting Municipal Court judges that utilizes and builds on current evaluation methods used in the Municipal Court and Superior Court. These recommendations are proposed as a group and for that reason should be read together.

RECOMMENDATION 34	**Establish a Municipal Court judge evaluation process, similar to the evaluation process utilized for Superior Court judges. The Judicial Education and Performance Unit of the Administrative Office of the Courts will administer the aforementioned evaluation process.**

Superior Court judges are evaluated via the New Jersey Judicial Performance Program, adopted in 1986 and implemented the following year. That program provides anonymous questionnaires to attorneys who participate in cases before judges in the program. Attorneys are asked to evaluate judges on over 30 performance standards in areas such as legal ability, judicial management skills, and comportment. Appellate judges are also sent anonymous questionnaires, and asked to evaluate trial judges when their rulings are appealed. With a goal to improve judicial performance, education, and enhance the reappointment process, the results of the evaluations are shared with the individual judge, assignment judge, Supreme Court, Governor, Senate Judiciary Committee, and Judicial Evaluation Commission.

The Committee recommends that a process similar to the New Jersey Judicial Performance Program for Superior Court judges be developed to include Municipal Court judges, and to maintain and expand the current evaluation process of Municipal Court judges to include in-court observations by the Municipal Presiding Judge or an independent review of court session recordings, attendance at all required training sessions offered, compliance with guidelines, and an objective review of the imposition of penalties, including discretionary fines, contempt assessments, jail terms, and license suspensions assessed by the Municipal Court judge. Altogether, this will ensure the uniform and fair application of law and provide an objective measure by which the Judiciary can evaluate a sitting Municipal Court judge. This evaluation process will also serve to increase the independence of sitting Municipal Court judges. Any report generated as part of this evaluation process will be regarded as confidential.

RECOMMENDATION 35	**Any confidential evaluation report produced pursuant to Recommendation 34 shall be shared with the evaluated judge, the Assignment Judge, the Presiding Municipal Court Judge, and the county Municipal Judge Qualifications Committee as part of the qualifications process for appointment and reappointments.**

In acknowledgment of the benefit of an objective evaluation process, the Committee recommends that any evaluation report produced pursuant to the processes proposed in Recommendation 34 be shared with the individual judge, Assignment Judge, and Presiding Municipal Court Judge. A similar process is followed for evaluated Superior Court judges, with appropriate mentoring following distribution.

Additionally, the Committee recommends that when available, the evaluation report should be shared with the Qualifications Committee (as referenced in Recommendations 24 through 30, pp. 56-59) to be utilized in their determination as to whether a candidate is qualified or not qualified. Likewise, because the Qualifications Committee will have data that will include a sitting Municipal Court judge's use of contempt and the imposition of financial obligations, the Committee recommends that this data related to a judge's performance on the bench be included in the evaluation process.

IMPROVE ACCESS TO THE MUNICIPAL COURTS THROUGH TECHNOLOGY

The future of enhanced access to the Municipal Courts will be dependent on technology. Building further on current endeavors and improvements sought by the Municipal Courts, the Committee recommends a number of key enhancements that rely on the significant expansion of the use of NJMCdirect.com for both court users and court staff. This includes options for remote resolution of municipal matters and remote access to Municipal Courts. The recommendations that follow also include technological enhancements that will assist in the execution of other recommendations made by the Committee.

RECOMMENDATION 36	**Expand the opportunity for defendants to resolve Municipal Court matters remotely without court appearance via NJMCdirect.com or through plea by mail by:** **1) Expanding the scope of "payable offenses" that can be resolved on NJMCdirect.com;** **2) Expanding NJMCdirect.com to accept payments on all matters where a court appearance is not required, all time payments, and bail where permitted;** **3) Allowing for the online submission of an application for plea by mail, pursuant to R. 7:6-3 and R. 7:12-3; and** **4) Removing the requirement of hardship for plea by mail.**

Remote resolution of Municipal Court matters is available in two instances: 1) a guilty plea and concomitant payment of the fine that is established in the Statewide Violations Bureau Schedule, Administrative Office of the Courts, New Jersey Judiciary, available at https://www.njcourts.gov/attorneys/violations.html [16] pursuant to R. 7:12-4; or 2) resolution through the plea by mail protocols established in R. 7:6-3, Guilty Plea by Mail in Non-Traffic Offenses, and R. 7:12-3, Pleas of Not Guilty and Pleas of Guilty by Mail in Certain Traffic or Parking Offenses.

The Statewide Violations Bureau Schedule identifies statutes and administrative code violations that the Court has approved for resolution through the payment of an established

[16] Municipalities can also establish a Local Supplemental Violations Bureau Schedule. R. 7:12-4. Prior to promulgation, the schedule, and any additions after its creation, must first be approved by the vicinage Assignment Judge. Traffic ordinances on the local schedule can be paid through NJMCdirect.com as long as no court appearance is required and there is no open warrant.

fine that includes court costs and fees. These offenses are colloquially referred to as "payable offenses" in that they can be paid without a court appearance, unless required by law enforcement. For those defendants that wish to resolve payable traffic and parking tickets, the AOC offers the convenient alternative of using the NJMCdirect.com website instead of personally going to court to pay or mailing a payment. This option may also be used to satisfy time payment plans for traffic or parking matters.

Court rules also encourage remote resolution for matters where a court appearance is required by providing defendants with the opportunity to plea by mail in order to plead not guilty or guilty in traffic or parking cases, R. 7:12-3, or guilty in non-traffic cases, R. 7:6-3, if appearing in court would cause an undue hardship. Generally, defendants wishing to avail themselves of these procedures must make a written or telephonic request for the Plea by Mail (Statement in Mitigation or Defense by Certification (R. 7:12-3 and R. 7:6-3)) form. It is then sent to the defendant by the municipal court, and it must be completed and returned to the municipality by a date specified on the form. If the defendant fails to return the form by the date listed, or the court determines that an appearance is required, the defendant will be so notified.

To expand the availability of remote resolution, the Committee recommends that the Statewide Violations Bureau Schedule be reviewed and expanded to include additional appropriate offenses, including petty disorderly persons offenses, disorderly persons offenses, and other quasi-criminal matters. The Committee also recommends that the NJMCdirect.com website be enhanced to accept payments via credit card, debit card, and if possible, through bank account deductions. The availability of these payment methods should be expanded to the following (in addition to payable and ATS time payments as they are currently): 1) payable criminal complaint summons; 2) disposed criminal complaints where a Time Payment Order has been issued by the court; and 3) the posting of bail on traffic or criminal matters and application of bail waiver, where permitted. Further, for all time payments, the Committee recommends that NJMCdirect.com give defendants the option of establishing a monthly automatic charging or installment deduction process. As an example, a defendant that owes $250 dollars would establish a one-time agreement to have automatic monthly credit card charges of $25 for 10 months. This will allow defendants to pay their obligations on a regularized and efficient basis without the need for continual court reminders, and will likely reduce delinquent or missed payments.

Finally, the Committee recommends that R. 7:6-3 and R. 7:12-3 be amended to allow defendants charged with certain offenses to enter a plea through completion of an online form and without a showing of hardship. Expanding this process to allow for remote resolution will benefit both court users and the courts by allowing for resolution without the need for a potentially costly and time-consuming court appearance, thereby encouraging responsiveness from defendants.

RECOMMENDATION 37 **All Municipal Courts shall offer defendants the ability to pay fines with a credit card or debit card using NJMCdirect.com at the payment window.**

Currently, online payment through NJMCdirect.com is available only to defendants for payable offenses and for time payments. Although approximately half of the Municipal Courts in New Jersey accept credit and debit card payments, that arrangement is entirely dependent on an individual municipality's desire to engage in a contract with a vendor for credit card processing.

Consistent with recommendations regarding the significant expansion of NJMCdirect.com, the Committee thus proposes that the online portal be incorporated into front-end court processing to give defendants the ability to immediately, after a guilty finding, pay their fines, fees, and penalties at the court window using NJMCdirect.com. The widespread availability of NJMCdirect.com would allow court users to more easily and efficiently resolve their court obligations, thus avoiding time payment plans and possible failure to pay and/or failure to appear penalties. This process would also allow municipalities to avoid the costly necessity of contracting independently with credit card companies to offer credit card payment options to court users, as the contract would be negotiated by the state. The Committee notes that this initiative will likely require review and modifications to Administrative Directive 8-98, "Procedures for Credit Card and Electronic Payments of Municipal Court Fees and Financial Obligations" (November 17, 1998). (Appendix CC).

RECOMMENDATION 38 **Defendants shall be permitted to make partial payments on "payable offenses" without a court appearance.**

As discussed previously, the Supreme Court has approved a list of "payable" offenses which do not require a court appearance (unless required by the law enforcement officer) by the defendant in order to plead guilty and pay/resolve the matter without coming in to court. Each offense has been assigned a "payable amount" which falls within the statutorily-authorized range. These offenses are included on a statewide payable list referred to as the Statewide Violations Bureau Schedule. Additionally, each municipal court has created a list of "payable" local ordinances to which defendants may plead guilty and pay without coming to court. Presently, defendants are not permitted to make partial payments on these state or local payable offenses without first coming to court and then demonstrating an inability to pay a fine in full, and otherwise qualifying for a time payment order.

The Committee recognizes that many defendants may seek to plead guilty and take advantage of the remote resolution option made available for payable offenses, but have

limited available funds to satisfy the full payable amount. The Committee believes that many of these individuals would comply with their financial obligations if they were permitted to pay in partial payments without the need for a court appearance. The Committee thus recommends that defendants be given the opportunity to satisfy payable offenses in installments without a court appearance or determination of eligibility. These installment plans would be offered though NJMCdirect.com, by mail, and in person at the violations window, based on guidance promulgated by the Administrative Office of the Courts as to the specific parameters of installment schedules.

A failure to satisfy the installment payments would result in a court date being scheduled, Recommendation 12, pp. 47-49. At the time of that court appearance, the judge – as currently is the case – can assess the defendant's ability to pay and potentially modify the sentence.

RECOMMENDATION 39 **Enhancing customer service by allowing defendants to: 1) reschedule an initial court date, pursuant to policy promulgated by the AOC; and 2) apply online for a public defender.**

The date of a defendant's initial appearance in Municipal Court is established in one of two ways, depending on whether the defendant is charged on a summons or a warrant. A defendant in New Jersey who is charged on a warrant for committing a crime or disorderly persons offense is eligible for criminal justice reform. Those defendants will have their first appearance and determination of pretrial release conditions set in a vicinage's central judicial processing (CJP) court. The Committee believes that the current CJP procedures in place for scheduling the next court appearance for these defendants should continue without change.

The Committee, however, recommends some flexibility in the scheduling of the first appearance for defendants who are charged on a summons. Specifically, each of the summons charging documents generally includes the date by which the defendant is to come to court for his or her first appearance. To provide defendants with greater scheduling flexibility, and to encourage compliance with the initial court date, the Committee recommends giving defendants charged on a summons the limited flexibility to reschedule that initial first appearance date (e.g., move from Monday to Wednesday of the same week). This will likely reduce failures to appear due to personal/professional conflicts, and give defendants more control and ownership of the scheduled court date. Because of the limited frequency with which some municipal courts schedule their court sessions, it is recommended that the AOC develop strong guiding criteria and parameters for how this rescheduling would function to ensure that any new court date is timely. Moreover, the Committee recommends that consideration be given as to whether defendants charged with certain serious offenses, such as driving while intoxicated, should be excluded from this process to ensure that those defendants are promptly advised of the enhanced penalties.

To further expedite proceedings during the initial court date, the Committee recommends that defendants be given the ability to apply for a public defender online. Currently, defendants that seek to apply for a public defender must report to court, make their request, fill out a Financial Questionnaire to Establish Indigency, and pay an application fee of up to $200. An online application process would expedite not only the potential appointment of a public defender, but also the resolution of the Municipal Court matter. It would also allow the Judiciary to require that the form be completed in full, and would encourage accuracy on the part of the defendant, who could complete the form using appropriate documentation.

RECOMMENDATION 40	**Enhance the ability of all court users to easily access their outstanding Municipal Court obligations and pending matters across the state, and give Municipal Court judges and staff the ability to consolidate payments within the municipality through automation.**

Defendants will often owe fines and fees in numerous courts, which can translate to multiple time payment plans in various Municipal Courts. This can easily lead to confusion on the part of a defendant, ultimately contributing to failures to pay where a defendant puts money towards some, but not all, outstanding time payment plans due to lack of knowledge of all obligations.

In an effort to facilitate a defendant's ability to assess his or her outstanding fines, fees, and penalties, the Committee recommends that technology be developed to enable a defendant to effectively search for all of his or her matters, including pending and disposed charges, the status of each matter, total penalties assessed in each matter, and total amount owed for each charge. This information will facilitate a defendant's understanding of all municipal financial obligations, and allow a defendant to prioritize which matter to address.

The Committee additionally proposes that this information be made available to Municipal Court staff, as oftentimes the administrative burden of identifying for defendants these overlapping but jurisdictionally-distinct time payment plans is carried out by staff. The Committee realizes that Municipal Court Administrators spend significant amounts of time collecting payments from defendants, including determining the precise scope of a defendant's time payment plans. Finally, the Committee recommends that Municipal Court judges be provided access to this information following disposition only. An overall view of a defendant's outstanding time payments will greatly assist Municipal Court judges in developing appropriate and realistic time payments.

Further, in those instances where a defendant has multiple time payment orders within a municipality, the Committee recommends that technological enhancement be provided to allow the Municipal Court to easily identify, consolidate, and recalculate those payments. Multiple time payments within a court prove to be as difficult as multi-jurisdictional time payments for defendants to monitor and for court staff to identify. Allowing for the easy consolidation of multiple time payment orders will ensure that a defendant does not miss a payment and inadvertently become delinquent.

RECOMMENDATION 41 **Expand eCourts technology in the Municipal Courts to include all case-related documents and court filings, such as motions and orders, and to explore the availability of discovery through electronic means.**

eCourts is a web-based application that is designed to allow attorneys, in good standing, to electronically file documents with the courts. The Judiciary intends to implement eCourts in all trial court divisions, building on four essential functionalities:

- Electronic filing and information exchange between the court and attorneys;
- The creation of an electronic filing system;
- The establishment of an electronic case jacket;
- The maintenance of an electronic records management system that provides both attorneys and the public with access to case information.

Currently, municipal integration into eCourts is related exclusively to criminal justice reform and the electronic storage and transfer of criminal justice reform documents in the eCourts application.

To improve the efficiency and accuracy of case management and reduce the physical space demands of the local courts, the Committee endorses the expansion of eCourts functionality to capture all case-related documents within an electronic case file specific to each complaint or ticket. This will improve case lookups and save staff time, as well as reduce the overwhelming demand for file storage. This effort will require coordination with the Superior Court Clerk's Office who oversees court records retention and management. The Committee further recommends that the AOC be tasked with exploring the availability of exchanging discovery through eCourts, as well as any other expansion beyond that identified in this recommendation.

RECOMMENDATION 42	**To continue current efforts to modernize and integrate MACS and PromisGavel to improve case management coordination between the municipal and criminal courts.**

The Municipal Automated Complaint System (MACS was introduced in 2009 to replace the outdated mainframe ATS/ACS application. Whereas ATS/ACS utilized a series of key-prompt commands to navigate, MACS is a Windows-based system that is far more intuitive to the user. This change provided a major shift in the look, feel and capability of the system. Currently, MACS allows for inquiries into cases, complaint entry, ticket entry, and scheduling.

PromisGavel is the corresponding mainframe system used for criminal case management. It has been around in varying formats since 1973, but was fully rolled-out statewide in its present form in 1994. It utilizes a series of key-prompt commands to navigate and enter data, make inquiries into cases, and update information. It has yet to be updated to a Windows-based system, and it has not been integrated into MACS. There have been longstanding data quality and missing data issues related to municipal traffic and criminal cases transferred to the Superior Court for handling and disposition. These gaps have been further emphasized now that criminal justice reform technological system enhancements have been implemented. There is a heightened need to ensure that all case dispositions are correctly entered into the case management systems and reported nightly to the Computerized Criminal History system at State Police, as those offenses can have an immediate impact on a defendant's participation in criminal justice reform and the level of pretrial release that defendant receives.

To accomplish this, the municipal case processing functionality must be integrated with the PromisGavel functionality. A joint effort initiated by the Municipal and Criminal Divisions of the AOC has the immediate goal of bringing common case management functions together under a common system, taking advantage of the current MACS system as the host platform; and a long-term goal of ultimately replacing PromisGavel with MACS, much in the same way that MACS has replaced ATS/ACS.

The Committee fully endorses the work of this project to ensure that the computer systems of criminal and municipal communicate effectively and efficiently.

RECOMMENDATION 43	**The AOC shall continue to encourage the expansion of the eTicketing model to New Jersey municipalities. The AOC shall also develop eSummons technology to enable quick entry of Special Form of Complaint/Summons cases.**

eTicketing web services were introduced in 2009, and have been utilized by the State Police and local municipalities with increasing regularity since that time. eTicketing allows local municipality law enforcement to budget and contract with third party vendors to utilize vendor systems to connect with the AOC's computer systems. The vendor systems offer a modern, efficient and streamlined process for entry of traffic tickets into ATS. That process allows police officers in the field to scan an individual's driver's license, print the ticket, and automatically interface with the ATS case management system directly from their police cars. This eliminates the cumbersome paper-driven protocol, and ensures greater accuracy in the absence of handwriting deciphering issues, translating issues, and the system allowing for real-time editing. The reduction of errors increases efficiency for both law enforcement and the courts. Currently, as of the drafting of this report, just over 330 local police departments utilize eTicketing, and all New Jersey State Police vehicles are similarly equipped.

The Committee proposes that the AOC continue its endorsement of eTicketing and encourage municipalities to upgrade to the eTicketing system for a new, safer and more efficient option to the paper ticket books.

Building on the eTicketing model, the AOC is currently developing eSummons web services for the direct entry of Special Form of Complaint and Summons complaints. The Special Form of Complaint is a form regularly used by law enforcement and municipal courts to file disorderly persons and petty disorderly persons offenses, local ordinance violations, code enforcement actions, penalty enforcement proceedings, boating offenses, and select parking and traffic offenses. Vendors would develop a complementary software program for complaint entry. Much like eTicketing, this process would reduce paper complaints and improve accuracy and efficiency.

The Committee recommends that the AOC expedite the completion of this project, and develop the technical process to allow third party vendors to connect to the AOC Automated Complaint System database for the entry, docketing, and scheduling of the Special Form of Complaint and Summons matters by law enforcement and the entry of the summons for the various local code enforcement agencies within a municipality.

RECOMMENDATION 44 **Implement the WebFOCUS Reporting Software Upgrade for Municipal Courts for improved reporting and analytics.**

Reports on Demand is a computer function that provides statistics for all New Jersey Municipal Courts to use in managing their caseloads and tracking the progress of cases. At present, Municipal Courts use an outdated version of WebFOCUS software for their Reports on Demand functions.

However, other areas of the New Jersey Judiciary currently use a newer version of WebFOCUS that provides far greater reporting functionality and data analysis. Collection of accurate, useful analytical data is crucial to analyzing the success of current processes, and to encourage the refinement and development of existing and new policies. Upgrading the WebFOCUS software is crucial to ensuring that certain Municipal Court processes and policies can be more easily evaluated and will lead to greater efficiency and effectiveness. The Committee recommends that this pending upgrade be given a high priority for implementation.

RECOMMENDATION 45 **Establish minimum uniform requirements for all Municipal Court websites.**

As part of enhancing access to the courts, the Committee recommends that uniform standards be developed to ensure that important information is accurately packaged and presented on various local Municipal Court websites, should that municipality choose to have a webpage for their municipal court. This can include establishing web links on the municipality website to the State Judiciary website. This will ensure that key information is being disseminated in a consistent, uniform fashion to the public through Judiciary portals at both the state and local level. The Committee recommends that the AOC be tasked with identifying information that should be uniformly available on all Municipal Court websites, as well as information that is prohibited.

RECOMMENDATION 46 **Program ATS/ACS to technologically require compliance with R. 1:2-4.**

New Jersey Court Rule 1:2-4 currently permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding. The rule currently states that the amount should be paid to the "Treasurer, State of New Jersey." In light of this prohibition from municipal collection, the Committee recommends that ATS/ACS be hardcoded to ensure that the sanction amounts collected be distributed pursuant to the Rules of Court.

Additionally, the Committee notes that the Supreme Court Committee on Municipal Court Practice has recommended a court rule modification that would limit failure to appear sanctions to $25 for parking matters and $50 for all other matters, except for consequence of magnitude cases, Guidelines for Determining a Consequence of Magnitude, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part VII (2018), where the aggregate sanction could not exceed $100. (Appendix M). The Committee supports the pending amendment as another step in imposing limitations on the excessive use of inappropriately imposed contempt amounts by Municipal Court judges, and recommends that in the event the Court adopts this proposed rule modification, the automated systems should be updated accordingly.

RECOMMENDATION 47	**Program ATS/ACS to allow court costs to be assessed only in statutorily-authorized instances.**

The bulk of assessed court costs are retained by the Municipal Court, and are intended to be used to fund its operation. The Judiciary has promulgated the policy that defendants who are acquitted or who have their matter dismissed cannot be assessed court costs unless such action is explicitly permitted by statute. (Appendix DD). The Committee recommends that the ATS/ACS system be hardcoded to allow court costs to only be assessed in permitted instances.

RECOMMENDATION 48	**Reaffirm the Judiciary's commitment to encouraging diversity in the judges and staff of the Municipal Courts and in the development of court policy and procedures to address the changing needs of the diverse population of New Jersey's court users.**

The Committee acknowledges the extensive diversity of the population of the State of New Jersey. The millions of litigants who come to the courts each year for a just resolution of their cases must believe they are being treated fairly, regardless of income, language barriers, disability, cultural diversity, or educational level. To address the shifting needs of various Municipal Courts in how services are provided to an ever-changing local population, the Committee reaffirms the Judiciary's commitment to respond to the needs of such populations in all aspects of court business. Such efforts include supporting recruitment of a more diverse bench and workforce, providing training on cultural competency, offering enhanced language access services, and the like.

RECOMMENDATION 49 **Establish a working group comprised of all three branches of government and key stakeholders to implement needed reform and statutory changes to the structure of the Municipal Courts and to create a forum for the discussion of additional relevant issues.**

To maintain the momentum of reform, the Committee recommends the creation of a working group composed of the three branches of government and key stakeholders to implement the recommendations made by the Committee. Many of the recommendations contained in the report are within the control of the Judiciary, and can be implemented through training, policy, administrative directive, or court rule. For those recommendations that fall outside the scope of the Judiciary's authority, the other branches of government should consider legislative changes.

The Committee engaged in exhaustive discussions regarding changing the structural foundation of the Municipal Courts as a means of ensuring judicial independence and improving their operation. Such changes to the statutory framework of the Municipal Court are an important and necessary step to achieve and implement reform, and have been the subject of prior unsuccessful reform efforts. Former Chief Justice Robert N. Wilentz analyzed these early attempts and succinctly framed the issue that the failure to restructure the municipal system was due in part to "a strong tradition of local self-government…the people who have the power to make the appointment want to keep the power to make the appointment." (Appendix I).

The Committee recommends, in addition to implementation of the other recommendations proffered in the report, that the working group address the following:

1. The creation of regional and/or county Municipal Courts;
2. The funding and efficiencies of consolidating Municipal Courts;
3. The shift from part-time Municipal Court judgeships[17] to full-time, tenured judgeships funded by the State of New Jersey's general fund;
4. Modifying the current legislative scheme for the appointment and reappointment process of Municipal Judges to enhance judicial independence;
5. Extending the term of municipal prosecutors and municipal public defenders from one to three years;
6. Discussing the expansion of subject matter jurisdiction for Municipal Courts;
7. Exploring the greater use of sentences that emphasize public safety and deterrence, as opposed to the current reliance on fines, surcharges, incarceration, and license suspensions;

[17] "Judgeship" refers to a judicial position available in a municipal court. Many Municipal Court judges have multiple judgeships in various municipal courts. Currently, the approximately 650 Municipal Court judgeships are satisfied by 314 Municipal Court judges.

8. The examination of the use of Motor Vehicle Commission surcharges, which are not subject to forgiveness or reduction, and their impact on indigent defendants;
9. The review of the excessive use of license suspensions;
10. Examining ways to further remove incentives for municipalities to turn to Municipal Courts to generate local revenue; and
11. Any other reforms identified by the working group that will lead to improving the Municipal Courts in New Jersey.

V. CONCLUSION

The prior accomplishments and reform efforts that have occurred within the New Jersey Municipal Courts are not to be understated. The committees, organizations, and institutions that have come before ours have done much to elevate the stature of our Municipal Courts. The Committee commends those efforts, and acknowledges the ongoing work of those close to municipal matters, including the Assignment Judges; AOC's Municipal Court Services Division; Presiding Municipal Court Judges; Municipal Division Managers; Municipal Court Judges; Municipal Court Administrators and Deputy Municipal Court Administrators; and all Municipal Court staff. The professionalism displayed by these key personnel on a daily basis, and particularly the expertise that was brought to Committee discussions, provided significant assistance in the findings and recommendations. They also know, as we do now, that despite all that has been done, there is still much more to do.

This need is evidenced not only by the Department of Justice's since rescinded "Dear Colleagues" letter, or even from persistent criticism from then-sitting Chief Justices of the very structure of the municipal court system as insufficient to protect the independence of Municipal Court judges. Articles from local press, (Appendix B, L), instances of judicial misconduct, (Appendix O, P, Q), and public hearings held by the New Jersey State Bar Association, (Appendix V-1), have all together laid out both the public perception and at times the unfortunate reality of the Municipal Courts as revenue-generators for the municipality, and reaffirmed the need for independence-enhancing reform. Committee members, cognizant of the above, were engaged in finding solutions to these issues, and at the same time the report challenges all stakeholders to engage in the important conversation required to achieve the necessary change.

The Committee anticipates that this report will provide a road map to improve Municipal Courts. Its proffer of principles and recommendations is made in an earnest attempt to enhance access and fairness to all litigants and court users, to increase the independence of the Municipal Courts, and to enhance public confidence in those courts, all done as a means of furthering the State of New Jersey's ongoing commitment to equal justice for all.

Respectfully Submitted,

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JUNE 2018

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Appendix A

Investigation of the Ferguson Police Department

United States Department of Justice
Civil Rights Division

March 4, 2015

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I. REPORT SUMMARY

The Civil Rights Division of the United States Department of Justice opened its investigation of the Ferguson Police Department ("FPD") on September 4, 2014. This investigation was initiated under the pattern-or-practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"). This investigation has revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.

Over the course of the investigation, we interviewed City officials, including City Manager John Shaw, Mayor James Knowles, Chief of Police Thomas Jackson, Municipal Judge Ronald Brockmeyer, the Municipal Court Clerk, Ferguson's Finance Director, half of FPD's sworn officers, and others. We spent, collectively, approximately 100 person-days onsite in Ferguson. We participated in ride-alongs with on-duty officers, reviewed over 35,000 pages of police records as well as thousands of emails and other electronic materials provided by the police department. Enlisting the assistance of statistical experts, we analyzed FPD's data on stops, searches, citations, and arrests, as well as data collected by the municipal court. We observed four separate sessions of Ferguson Municipal Court, interviewing dozens of people charged with local offenses, and we reviewed third-party studies regarding municipal court practices in Ferguson and St. Louis County more broadly. As in all of our investigations, we sought to engage the local community, conducting hundreds of in-person and telephone interviews of individuals who reside in Ferguson or who have had interactions with the police department. We contacted ten neighborhood associations and met with each group that responded to us, as well as several other community groups and advocacy organizations. Throughout the investigation, we relied on two police chiefs who accompanied us to Ferguson and who themselves interviewed City and police officials, spoke with community members, and reviewed FPD policies and incident reports.

We thank the City officials and the rank-and-file officers who have cooperated with this investigation and provided us with insights into the operation of the police department, including the municipal court. Notwithstanding our findings about Ferguson's approach to law enforcement and the policing culture it creates, we found many Ferguson police officers and other City employees to be dedicated public servants striving each day to perform their duties lawfully and with respect for all members of the Ferguson community. The importance of their often-selfless work cannot be overstated.

We are also grateful to the many members of the Ferguson community who have met with us to share their experiences. It became clear during our many conversations with Ferguson residents from throughout the City that many residents, black and white, genuinely embrace Ferguson's diversity and want to reemerge from the events of recent months a truly inclusive, united community. This Report is intended to strengthen those efforts by recognizing the harms caused by Ferguson's law enforcement practices so that those harms can be better understood and overcome.

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community. Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities. Over time, Ferguson's police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular.

Focus on Generating Revenue

The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved. City officials routinely urge Chief Jackson to generate more revenue through enforcement. In March 2010, for instance, the City Finance Director wrote to Chief Jackson that "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. . . . Given that we are looking at a substantial sales tax shortfall, it's not an insignificant issue." Similarly, in March 2013, the Finance Director wrote to the City Manager: "Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try." The importance of focusing on revenue generation is communicated to FPD officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership. The evidence we reviewed supports this perception.

Police Practices

The City's emphasis on revenue generation has a profound effect on FPD's approach to law enforcement. Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on "productivity," meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those who live in Ferguson's predominantly African-American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.

This culture within FPD influences officer activities in all areas of policing, beyond just ticketing. Officers expect and demand compliance even when they lack legal authority. They are inclined to interpret the exercise of free-speech rights as unlawful disobedience, innocent movements as physical threats, indications of mental or physical illness as belligerence. Police supervisors and leadership do too little to ensure that officers act in accordance with law and policy, and rarely respond meaningfully to civilian complaints of officer misconduct. The result is a pattern of stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment; infringement on free expression, as well as retaliation for protected

expression, in violation of the First Amendment; and excessive force in violation of the Fourth Amendment.

Even relatively routine misconduct by Ferguson police officers can have significant consequences for the people whose rights are violated. For example, in the summer of 2012, a 32-year-old African-American man sat in his car cooling off after playing basketball in a Ferguson public park. An officer pulled up behind the man's car, blocking him in, and demanded the man's Social Security number and identification. Without any cause, the officer accused the man of being a pedophile, referring to the presence of children in the park, and ordered the man out of his car for a pat-down, although the officer had no reason to believe the man was armed. The officer also asked to search the man's car. The man objected, citing his constitutional rights. In response, the officer arrested the man, reportedly at gunpoint, charging him with eight violations of Ferguson's municipal code. One charge, Making a False Declaration, was for initially providing the short form of his first name (e.g., "Mike" instead of "Michael"), and an address which, although legitimate, was different from the one on his driver's license. Another charge was for not wearing a seat belt, even though he was seated in a parked car. The officer also charged the man both with having an expired operator's license, and with having no operator's license in his possession. The man told us that, because of these charges, he lost his job as a contractor with the federal government that he had held for years.

Municipal Court Practices

Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson's municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests. This has led to court practices that violate the Fourteenth Amendment's due process and equal protection requirements. The court's practices also impose unnecessary harm, overwhelmingly on African-American individuals, and run counter to public safety.

Most strikingly, the court issues municipal arrest warrants not on the basis of public safety needs, but rather as a routine response to missed court appearances and required fine payments. In 2013 alone, the court issued over 9,000 warrants on cases stemming in large part from minor violations such as parking infractions, traffic tickets, or housing code violations. Jail time would be considered far too harsh a penalty for the great majority of these code violations, yet Ferguson's municipal court routinely issues warrants for people to be arrested and incarcerated for failing to timely pay related fines and fees. Under state law, a failure to appear in municipal court on a traffic charge involving a moving violation also results in a license suspension. Ferguson has made this penalty even more onerous by only allowing the suspension to be lifted after payment of an owed fine is made in full. Further, until recently, Ferguson also added charges, fines, and fees for each missed appearance and payment. Many pending cases still include such charges that were imposed before the court recently eliminated them, making it as difficult as before for people to resolve these cases.

The court imposes these severe penalties for missed appearances and payments even as several of the court's practices create unnecessary barriers to resolving a municipal violation. The court often fails to provide clear and accurate information regarding a person's charges or court obligations. And the court's fine assessment procedures do not adequately provide for a defendant to seek a fine reduction on account of financial incapacity or to seek alternatives to

payment such as community service. City and court officials have adhered to these court practices despite acknowledging their needlessly harmful consequences. In August 2013, for example, one City Councilmember wrote to the City Manager, the Mayor, and other City officials lamenting the lack of a community service option and noted the benefits of such a program, including that it would "keep those people that simply don't have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again."

Together, these court practices exacerbate the harm of Ferguson's unconstitutional police practices. They impose a particular hardship upon Ferguson's most vulnerable residents, especially upon those living in or near poverty. Minor offenses can generate crippling debts, result in jail time because of an inability to pay, and result in the loss of a driver's license, employment, or housing.

We spoke, for example, with an African-American woman who has a still-pending case stemming from 2007, when, on a single occasion, she parked her car illegally. She received two citations and a $151 fine, plus fees. The woman, who experienced financial difficulties and periods of homelessness over several years, was charged with seven Failure to Appear offenses for missing court dates or fine payments on her parking tickets between 2007 and 2010. For each Failure to Appear, the court issued an arrest warrant and imposed new fines and fees. From 2007 to 2014, the woman was arrested twice, spent six days in jail, and paid $550 to the court for the events stemming from this single instance of illegal parking. Court records show that she twice attempted to make partial payments of $25 and $50, but the court returned those payments, refusing to accept anything less than payment in full. One of those payments was later accepted, but only after the court's letter rejecting payment by money order was returned as undeliverable. This woman is now making regular payments on the fine. As of December 2014, over seven years later, despite initially owing a $151 fine and having already paid $550, she still owed $541.

Racial Bias

Ferguson's approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson's police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race.

Ferguson's law enforcement practices overwhelmingly impact African Americans. Data collected by the Ferguson Police Department from 2012 to 2014 shows that African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson's population. African Americans are more than twice as likely as white drivers to be searched during vehicle stops even after controlling for non-race based variables such as the reason the vehicle stop was initiated, but are found in possession of contraband 26% less often than white drivers, suggesting officers are impermissibly considering race as a factor when determining whether to search. African Americans are more likely to be cited and arrested following a stop regardless of why the stop was initiated and are more likely to receive multiple citations during a single incident. From 2012 to 2014, FPD issued four or more citations to African Americans on 73 occasions, but issued four or more citations to non-African Americans only twice. FPD appears to bring certain offenses almost exclusively against African Americans. For example, from 2011 to 2013, African Americans accounted for 95% of Manner of Walking in Roadway charges, and 94% of all Failure to Comply charges. Notably, with

respect to speeding charges brought by FPD, the evidence shows not only that African Americans are represented at disproportionately high rates overall, but also that the disparate impact of FPD's enforcement practices on African Americans is 48% larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer's own visual assessment.

These disparities are also present in FPD's use of force. Nearly 90% of documented force used by FPD officers was used against African Americans. In every canine bite incident for which racial information is available, the person bitten was African American.

Municipal court practices likewise cause disproportionate harm to African Americans. African Americans are 68% less likely than others to have their cases dismissed by the court, and are more likely to have their cases last longer and result in more required court encounters. African Americans are at least 50% more likely to have their cases lead to an arrest warrant, and accounted for 92% of cases in which an arrest warrant was issued by the Ferguson Municipal Court in 2013. Available data show that, of those actually arrested by FPD only because of an outstanding municipal warrant, 96% are African American.

Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans. We have found substantial evidence of racial bias among police and court staff in Ferguson. For example, we discovered emails circulated by police supervisors and court staff that stereotype racial minorities as criminals, including one email that joked about an abortion by an African-American woman being a means of crime control.

City officials have frequently asserted that the harsh and disparate results of Ferguson's law enforcement system do not indicate problems with police or court practices, but instead reflect a pervasive lack of "personal responsibility" among "certain segments" of the community. Our investigation has found that the practices about which area residents have complained are in fact unconstitutional and unduly harsh. But the City's personal-responsibility refrain is telling: it reflects many of the same racial stereotypes found in the emails between police and court supervisors. This evidence of bias and stereotyping, together with evidence that Ferguson has long recognized but failed to correct the consistent racial disparities caused by its police and court practices, demonstrates that the discriminatory effects of Ferguson's conduct are driven at least in part by discriminatory intent in violation of the Fourteenth Amendment.

Community Distrust

Since the August 2014 shooting death of Michael Brown, the lack of trust between the Ferguson Police Department and a significant portion of Ferguson's residents, especially African Americans, has become undeniable. The causes of this distrust and division, however, have been the subject of debate. Police and other City officials, as well as some Ferguson residents, have insisted to us that the public outcry is attributable to "outside agitators" who do not reflect the opinions of "real Ferguson residents." That view is at odds with the facts we have gathered during our investigation. Our investigation has shown that distrust of the Ferguson Police Department is longstanding and largely attributable to Ferguson's approach to law enforcement. This approach results in patterns of unnecessarily aggressive and at times unlawful policing;

reinforces the harm of discriminatory stereotypes; discourages a culture of accountability; and neglects community engagement. In recent years, FPD has moved away from the modest community policing efforts it previously had implemented, reducing opportunities for positive police-community interactions, and losing the little familiarity it had with some African-American neighborhoods. The confluence of policing to raise revenue and racial bias thus has resulted in practices that not only violate the Constitution and cause direct harm to the individuals whose rights are violated, but also undermine community trust, especially among many African Americans. As a consequence of these practices, law enforcement is seen as illegitimate, and the partnerships necessary for public safety are, in some areas, entirely absent.

Restoring trust in law enforcement will require recognition of the harms caused by Ferguson's law enforcement practices, and diligent, committed collaboration with the entire Ferguson community. At the conclusion of this report, we have broadly identified the changes that are necessary for meaningful and sustainable reform. These measures build upon a number of other recommended changes we communicated verbally to the Mayor, Police Chief, and City Manager in September so that Ferguson could begin immediately to address problems as we identified them. As a result of those recommendations, the City and police department have already begun to make some changes to municipal court and police practices. We commend City officials for beginning to take steps to address some of the concerns we have already raised. Nonetheless, these changes are only a small part of the reform necessary. Addressing the deeply embedded constitutional deficiencies we found demands an entire reorientation of law enforcement in Ferguson. The City must replace revenue-driven policing with a system grounded in the principles of community policing and police legitimacy, in which people are equally protected and treated with compassion, regardless of race.

II. BACKGROUND

The City of Ferguson is one of 89 municipalities in St. Louis County, Missouri.[1] According to United States Census Data from 2010, Ferguson is home to roughly 21,000 residents.[2] While Ferguson's total population has stayed relatively constant in recent decades, Ferguson's racial demographics have changed dramatically during that time. In 1990, 74% of Ferguson's population was white, while 25% was black.[3] By 2000, African Americans became the new majority, making up 52% of the City's population.[4] According to the 2010 Census, the black population in Ferguson has grown to 67%, whereas the white population has decreased to 29%.[5] According to the 2009-2013 American Community Survey, 25% of the City's population lives below the federal poverty level.[6]

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[1] *See 2012 Census of Governments*, U.S. Census Bureau (Sept. 2013), *available at* http://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG13.ST05P?slice=GEO~0400000US29 (last visited Feb. 26, 2015).

[2] *See 2010 Census*, U.S. Census Bureau (2010), *available at* http://factfinder.census.gov/bkmk/table/1.0/en/DEC/10_SF1/QTP3/1600000US2923986 (last visited Feb. 26, 2015).

[3] *See 1990 Census of Population General Population Characteristics Missouri*, U.S. Census Bureau (Apr. 1992), *available at* ftp://ftp2.census.gov/library/publications/1992/dec/cp-1-27.pdf (last visited Feb. 26, 2015).

[4] *See Race Alone or in Combination: 2000*, U.S. Census Bureau (2000), *available at* http://factfinder.census.gov/bkmk/table/1.0/en/DEC/00_SF1/QTP5/1600000US2923986 (last visited Feb. 26, 2015).

[5] *2010 Census*, *supra* note 2.

[6] *See Poverty Status in the Past 12 Months 2009-2013 American Community Survey 5-Year Estimates,* U.S. Census Bureau (2014), *available at*

Residents of Ferguson elect a Mayor and six individuals to serve on a City Council. The City Council appoints a City Manager to an indefinite term, subject to removal by a Council vote. *See* Ferguson City Charter § 4.1. The City Manager serves as chief executive and administrative officer of the City of Ferguson, and is responsible for all affairs of the City. The City Manager directs and supervises all City departments, including the Ferguson Police Department.

The current Chief of Police, Thomas Jackson, has commanded the police department since he was appointed by the City Manager in 2010. The department has a total of 54 sworn officers divided among several divisions. The patrol division is the largest division; 28 patrol officers are supervised by four sergeants, two lieutenants, and a captain. Each of the four patrol squads has a canine officer. While all patrol officers engage in traffic enforcement, FPD also has a dedicated traffic officer responsible for collecting traffic stop data required by the state of Missouri. FPD has two School Resource Officers ("SROs"), one who is assigned to the McCluer South-Berkeley High School and one who is assigned to the Ferguson Middle School. FPD has a single officer assigned to be the "Community Resource Officer," who attends community meetings, serves as FPD's public relations liaison, and is charged with collecting crime data. FPD operates its own jail, which has ten individual cells and a large holding cell. The jail is staffed by three non-sworn correctional officers. Of the 54 sworn officers currently serving in FPD, four are African American.

FPD officers are authorized to initiate charges—by issuing citations or summonses, or by making arrests—under both the municipal code and state law. Ferguson's municipal code addresses nearly every aspect of civic life for those who live in Ferguson, and regulates the conduct of all who work, travel through, or otherwise visit the City. In addition to mirroring some non-felony state law violations, such as assault, stealing, and traffic violations, the code establishes housing violations, such as High Grass and Weeds; requirements for permits to rent an apartment or use the City's trash service; animal control ordinances, such as Barking Dog and Dog Running at Large; and a number of other violations, such as Manner of Walking in Roadway. *See, e.g.*, Ferguson Mun. Code §§ 29-16 *et seq.*; 37-1 *et seq.*; 46-27; 6-5, 6-11; 44-344.

FPD files most charges as municipal offenses, not state violations, even when an analogous state offense exists. Between July 1, 2010, and June 30, 2014, the City of Ferguson issued approximately 90,000 citations and summonses for municipal violations. Notably, the City issued nearly 50% more citations in the last year of that time period than it did in the first. This increase in enforcement has not been driven by a rise in serious crime. While the ticketing rate has increased dramatically, the number of charges for many of the most serious offenses covered by the municipal code—e.g., Assault, Driving While Intoxicated, and Stealing—has remained relatively constant.[7]

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http://factfinder.census.gov/bkmk/table/1.0/en/ACS/13_5YR/S1701/1600000US2923986 (last visited Feb. 26, 2015).

[7] This is evidenced not only by FPD's own records, but also by Uniform Crime Reports data for Ferguson, which show a downward trend in serious crime over the last ten years. *See Uniform Crime Reports,* Federal Bureau of Investigation, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s (last visited Feb. 26, 2015).

Because the overwhelming majority of FPD's enforcement actions are brought under the municipal code, most charges are processed and resolved by the Ferguson Municipal Court, which has primary jurisdiction over all code violations. Ferguson Mun. Code § 13-2. Ferguson's municipal court operates as part of the police department. The court is supervised by the Ferguson Chief of Police, is considered part of the police department for City organizational purposes, and is physically located within the police station. Court staff report directly to the Chief of Police. Thus, if the City Manager or other City officials issue a court-related directive, it is typically sent to the Police Chief's attention. In recent weeks, City officials informed us that they are considering plans to bring the court under the supervision of the City Finance Director.

A Municipal Judge presides over court sessions. The Municipal Judge is not hired or supervised by the Chief of Police, but is instead nominated by the City Manager and elected by the City Council. The Judge serves a two-year term, subject to reappointment. The current Municipal Judge, Ronald Brockmeyer, has presided in Ferguson for approximately ten years. The City's Prosecuting Attorney and her assistants officially prosecute all actions before the court, although in practice most cases are resolved without trial or a prosecutor's involvement. The current Prosecuting Attorney was appointed in April 2011. At the time of her appointment, the Prosecuting Attorney was already serving as City Attorney, and she continues to serve in that separate capacity, which entails providing general counsel and representation to the City. The Municipal Judge, Court Clerk, Prosecuting Attorney, and all assistant court clerks are white.

While the Municipal Judge presides over court sessions, the Court Clerk, who is employed under the Police Chief's supervision, plays the most significant role in managing the court and exercises broad discretion in conducting the court's daily operations. Ferguson's municipal code confers broad authority on the Court Clerk, including the authority to collect all fines and fees, accept guilty pleas, sign and issue subpoenas, and approve bond determinations. Ferguson Mun. Code § 13-7. Indeed, the Court Clerk and assistant clerks routinely perform duties that are, for all practical purposes, judicial. For example, documents indicate that court clerks have disposed of charges without the Municipal Judge's involvement.

The court officially operates subject to the oversight of the presiding judge of the St. Louis County Circuit Court (21st Judicial Circuit) under the rules promulgated by that Circuit Court and the Missouri Supreme Court. Notwithstanding these rules, the City of Ferguson and the court itself retain considerable power to establish and amend court practices and procedures. The Ferguson municipal code sets forth a limited number of protocols that the court must follow, but the code leaves most aspects of court operations to the discretion of the court itself. *See* Ferguson Mun. Code Ch. 13, Art. III. The code also explicitly authorizes the Municipal Judge to "make and adopt such rules of practice and procedure as are necessary to hear and decide matters pending before the municipal court." Ferguson Mun. Code § 13-29.

The Ferguson Municipal Court has the authority to issue and enforce judgments, issue warrants for search and arrest, hold parties in contempt, and order imprisonment as a penalty for contempt. The court may conduct trials, although it does so rarely, and most charges are resolved without one. Upon resolution of a charge, the court has the authority to impose fines, fees, and imprisonment when violations are found. Specifically, the court can impose imprisonment in the Ferguson City Jail for up to three months, a fine of up to $1,000, or a combination thereof. It is rare for the court to sentence anyone to jail as a *penalty* for a violation of the municipal code; indeed, the Municipal Judge reports that he has done so only once.

Rather, the court almost always imposes a monetary penalty payable to the City of Ferguson, plus court fees. Nonetheless, as discussed in detail below, the court issues arrest warrants when a person misses a court appearance or fails to timely pay a fine. As a result, violations that would normally not result in a penalty of imprisonment can, and frequently do, lead to municipal warrants, arrests, and jail time.

As the number of charges initiated by FPD has increased in recent years, the size of the court's docket has also increased. According to data the City reported to the Missouri State Courts Administrator, at the end of fiscal year 2009, the municipal court had roughly 24,000 traffic cases and 28,000 non-traffic cases pending. As of October 31, 2014, both of those figures had roughly doubled to 53,000 and 50,000 cases, respectively. In fiscal year 2009, 16,178 new cases were filed, and 8,727 were resolved. In 2014, by contrast, 24,256 new offenses were filed, and 10,975 offenses were resolved.

The court holds three or four sessions per month, and each session lasts no more than three hours. It is not uncommon for as many as 500 people to appear before the court in a single session, exceeding the court's physical capacity and leading individuals to line up outside of court waiting to be heard. Many people have multiple offenses pending; accordingly, the court typically considers 1,200-1,500 offenses in a single session, and has in the past considered over 2,000 offenses during one sitting. Previously there was a cap on the number of offenses that could be assigned to a particular docket date. Given that cap, and the significant increase in municipal citations in recent years, a problem developed in December 2011 in which more citations were issued than court sessions could timely accommodate. At one point court dates were initially scheduled as far as six months after the date of the citation. To address this problem, court staff first raised the cap to allow 1,000 offenses to be assigned to a single court date and later eliminated the cap altogether. To handle the increasing caseload, the City Manager also requested and secured City Council approval to fund additional court positions, noting in January 2013 that "each month we are setting new all-time records in fines and forfeitures," that this was overburdening court staff, and that the funding for the additional positions "will be more than covered by the increase in revenues."

III. FERGUSON LAW ENFORCEMENT EFFORTS ARE FOCUSED ON GENERATING REVENUE

City officials have consistently set maximizing revenue as the priority for Ferguson's law enforcement activity. Ferguson generates a significant and increasing amount of revenue from the enforcement of code provisions. The City has budgeted for, and achieved, significant increases in revenue from municipal code enforcement over the last several years, and these increases are projected to continue. Of the $11.07 million in general fund revenue the City collected in fiscal year 2010, $1.38 million came from fines and fees collected by the court; similarly, in fiscal year 2011, the City's general fund revenue of $11.44 million included $1.41 million from fines and fees. In its budget for fiscal year 2012, however, the City predicted that revenue from municipal fines and fees would increase over 30% from the previous year's amount to $1.92 million; the court exceeded that target, collecting $2.11 million. In its budget for fiscal year 2013, the City budgeted for fines and fees to yield $2.11 million; the court exceeded that target as well, collecting $2.46 million. For 2014, the City budgeted for the municipal court to generate $2.63 million in revenue. The City has not yet made public the actual revenue collected that year, although budget documents forecasted lower revenue than

was budgeted. Nonetheless, for fiscal year 2015, the City's budget anticipates fine and fee revenues to account for $3.09 million of a projected $13.26 million in general fund revenues.[8]

City, police, and court officials for years have worked in concert to maximize revenue at every stage of the enforcement process, beginning with how fines and fine enforcement processes are established. In a February 2011 report requested by the City Council at a Financial Planning Session and drafted by Ferguson's Finance Director with contributions from Chief Jackson, the Finance Director reported on "efforts to increase efficiencies and maximize collection" by the municipal court. The report included an extensive comparison of Ferguson's fines to those of surrounding municipalities and noted with approval that Ferguson's fines are "at or near the top of the list." The chart noted, for example, that while other municipalities' parking fines generally range from $5 to $100, Ferguson's is $102. The chart noted also that the charge for "Weeds/Tall Grass" was as little as $5 in one city but, in Ferguson, it ranged from $77 to $102. The report stated that the acting prosecutor had reviewed the City's "high volume offenses" and "started recommending higher fines on these cases, and recommending probation only infrequently." While the report stated that this recommendation was because of a "large volume of non-compliance," the recommendation was in fact emphasized as one of several ways that the code enforcement system had been honed to produce more revenue.

In combination with a high fine schedule, the City directs FPD to aggressively enforce the municipal code. City and police leadership pressure officers to write citations, independent of any public safety need, and rely on citation productivity to fund the City budget. In an email from March 2010, the Finance Director wrote to Chief Jackson that "unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year. What are your thoughts? Given that we are looking at a substantial sales tax shortfall, it's not an insignificant issue." Chief Jackson responded that the City would see an increase in fines once more officers were hired and that he could target the $1.5 million forecast. Significantly, Chief Jackson stated that he was also "looking at different shift schedules which will place more officers on the street, which in turn will increase traffic enforcement per shift." Shortly thereafter, FPD switched to the 12-hour shift schedule for its patrol officers, which FPD continues to use. Law enforcement experience has shown that this schedule makes community policing more difficult—a concern that we have also heard directly from FPD officers. Nonetheless, while FPD heavily considered the revenue implications of the 12-hour shift and certain other factors such as its impact on overtime and sick time usage, we have found no evidence that FPD considered the consequences for positive community engagement. The City's 2014 budget itself stated that since December 2010, "the percent of [FPD] resources allocated to traffic enforcement has increased," and "[a]s a result, traffic enforcement related collections increased" in the following two years. The 2015 budget added that even after those initial increases, in fiscal year 2012-2013, FPD was once again "successful in increasing their proportion of resources dedicated to traffic enforcement" and increasing collections.

[8] Each of these yearly totals excludes certain court fees that are designated for particular purposes, but that nonetheless are paid directly to the City. For example, $2 of the court fee that accompanies every citation for a municipal code violation is set aside to be used for police training. That fee is used only by the City of Ferguson and is deposited in the City's general fund; nonetheless, the City's budget does not include that fee in its totals for "municipal court" revenue. In 2012 and 2013, the police training fee brought in, respectively, another $24,724 and $22,938 in revenue.

As directed, FPD supervisors and line officers have undertaken the aggressive code enforcement required to meet the City's revenue generation expectations. As discussed below in Part III.A., FPD officers routinely conduct stops that have little relation to public safety and a questionable basis in law. FPD officers routinely issue multiple citations during a single stop, often for the same violation. Issuing three or four charges in one stop is not uncommon in Ferguson. Officers sometimes write six, eight, or, in at least one instance, fourteen citations for a single encounter. Indeed, officers told us that some compete to see who can issue the largest number of citations during a single stop.

The February 2011 report to the City Council notes that the acting prosecutor—with the apparent approval of the Police Chief—"talked with police officers about ensuring all necessary summonses are written for each incident, i.e. when DWI charges are issued, are the correct companion charges being issued, such as speeding, failure to maintain a single lane, no insurance, and no seat belt, etc." The prosecutor noted that "[t]his is done to ensure that a proper resolution to all cases is being achieved and that the court is maintaining the correct volume for offenses occurring within the city." Notably, the "correct volume" of law enforcement is uniformly presented in City documents as related to revenue generation, rather than in terms of what is necessary to promote public safety.[9] Each month, the municipal court provides FPD supervisors with a list of the number of tickets issued by each officer and each squad. Supervisors have posted the list inside the police station, a tactic officers say is meant to push them to write more citations.

The Captain of FPD's Patrol Division regularly communicates with his Division commanders regarding the need to increase traffic "productivity," and productivity is a common topic at squad meetings. Patrol Division supervisors monitor productivity through monthly "self-initiated activity reports" and instruct officers to increase production when those reports show they have not issued enough citations. In April 2010, for example, a patrol supervisor criticized a sergeant for his squad only issuing 25 tickets in a month, including one officer who issued "a grand total" of 11 tickets to six people on three days "devoted to traffic stops." In November 2011, the same patrol supervisor wrote to his patrol lieutenants and sergeants that "[t]he monthly self-initiated activity totals just came out," and they "may want to advise [their] officers who may be interested in the open detective position that one of the categories to be considered when deciding on the eligibility list will be self-initiated activity." The supervisor continued: "Have any of you heard comments such as, why should I produce when I know I'm not getting a raise? Well, some people are about to find out why." The email concludes with the instruction to "[k]eep in mind, productivity (self-initiated activity) cannot decline for next year."

FPD has communicated to officers not only that they must focus on bringing in revenue, but that the department has little concern with how officers do this. FPD's weak systems of supervision, review, and accountability, discussed below in Part III.A., have sent a potent message to officers that their violations of law and policy will be tolerated, provided that officers

[9] FPD's financial focus has also led FPD to elevate municipal enforcement over state-law enforcement. Even where individuals commit violations of state law, if there is an analogous municipal code provision, the police department will nearly always charge the offense under municipal law. A senior member of FPD's command told us that all Ferguson police officers understand that, when a fine is the likely punishment, municipal rather than state charges should be pursued so that Ferguson will reap the financial benefit.

continue to be "productive" in making arrests and writing citations. Where officers fail to meet productivity goals, supervisors have been instructed to alter officer assignments or impose discipline. In August 2012, the Captain of the Patrol Division instructed other patrol supervisors that, "[f]or those officers who are not keeping up an acceptable level of productivity and they have already been addressed at least once if not multiple times, take it to the next level." He continued: "As we have discussed already, regardless of the seniority and experience take the officer out of the cover car position and assign them to prisoner pick up and bank runs. . . . Failure to perform *can* result in disciplinary action not just a bad evaluation." Performance evaluations also heavily emphasize productivity. A June 2013 evaluation indicates one of the "Performance-Related Areas of Improvements" as "Increase/consistent in productivity, the ability to maintain an average ticket [sic] of 28 per month."

Not all officers within FPD agree with this approach. Several officers commented on the futility of imposing mounting penalties on people who will never be able to afford them. One member of FPD's command staff quoted an old adage, asking: "How can you get blood from a turnip?" Another questioned why FPD did not allow residents to use their limited resources to fix equipment violations, such as broken headlights, rather than paying that money to the City, as fixing the equipment violation would more directly benefit public safety.[10]

However, enough officers—at all ranks—have internalized this message that a culture of reflexive enforcement action, unconcerned with whether the police action actually promotes public safety, and unconcerned with the impact the decision has on individual lives or community trust as a whole, has taken hold within FPD. One commander told us, for example, that when he admonished an officer for writing too many tickets, the officer challenged the commander, asking if the commander was telling him not to do his job. When another commander tried to discipline an officer for over-ticketing, he got the same response from the Chief of Police: "No discipline for doing your job."

The City closely monitors whether FPD's enforcement efforts are bringing in revenue at the desired rate. Consistently over the last several years, the Police Chief has directly reported to City officials FPD's successful efforts at raising revenue through policing, and City officials have continued to encourage those efforts and request regular updates. For example, in June 2010, at the request of the City, the Chief prepared a report comparing court revenues in Ferguson to court revenues for cities of similar sizes. The Chief's email sending the report to the City Manager notes that, "of the 80 St. Louis County Municipal Courts reporting revenue, only 8, including Ferguson, have collections greater than one million dollars." In the February 2011 report referenced above, Chief Jackson discussed various obstacles to officers writing tickets in previous months, such as training, injury leave, and officer deployment to Iraq, but noted that those factors had subsided and that, as a result, revenues were increasing. The acting prosecutor echoed these statements, stating "we now have several new officers writing tickets, and as a result our overall ticket volume is increasing by 400-700 tickets per month. This increased volume will lead to larger dockets this year and should have a direct effect in increasing overall revenue to the municipal court."

[10] After a recommendation we made during this investigation, Ferguson has recently begun a very limited "correctable violation" or "fix-it" ticket program, under which charges for certain violations can be dismissed if corrected within a certain period of time.

Similarly, in March 2011, the Chief reported to the City Manager that court revenue in February was $179,862.50, and that the total "beat our next biggest month in the last four years by over $17,000," to which the City Manager responded: "Wonderful!" In a June 2011 email from Chief Jackson to the Finance Director and City Manager, the Chief reported that "May is the 6th straight month in which court revenue (gross) has exceeded the previous year." The City Manager again applauded the Chief's efforts, and the Finance Director added praise, noting that the Chief is "substantially in control of the outcome." The Finance Director further recommended in this email greater police and judicial enforcement to "have a profound effect on collections." Similarly, in a January 2013 email from Chief Jackson to the City Manager, the Chief reported: "Municipal Court gross revenue for calendar year 2012 passed the $2,000,000 mark for the first time in history, reaching $2,066,050 (not including red light photo enforcement)." The City Manager responded: "Awesome! Thanks!" In one March 2012 email, the Captain of the Patrol Division reported directly to the City Manager that court collections in February 2012 reached $235,000, and that this was the first month collections ever exceeded $200,000. The Captain noted that "[t]he [court clerk] girls have been swamped all day with a line of people paying off fines today. Since 9:30 this morning there hasn't been less than 5 people waiting in line and for the last three hours 10 to 15 people at all times." The City Manager enthusiastically reported the Captain's email to the City Council and congratulated both police department and court staff on their "great work."

Even as officers have answered the call for greater revenue through code enforcement, the City continues to urge the police department to bring in more money. In a March 2013 email, the Finance Director wrote: "Court fees are anticipated to rise about 7.5%. I did ask the Chief if he thought the PD could deliver 10% increase. He indicated they could try." Even more recently, the City's Finance Director stated publicly that Ferguson intends to make up a 2014 revenue shortfall in 2015 through municipal code enforcement, stating to Bloomberg News that "[t]here's about a million-dollar increase in public-safety fines to make up the difference."[11] The City issued a statement to "refute[]" the Bloomberg article in part because it "insinuates" an "over reliance on municipal court fines as a primary source of revenues when in fact they represented less than 12% of city revenues for the last fiscal year." But there is no dispute that the City budget does, in fact, forecast an increase of nearly a million dollars in municipal code enforcement fines and fees in 2015 as reported in the Bloomberg News report.

The City goes so far as to direct FPD to develop enforcement strategies and initiatives, not to better protect the public, but to raise more revenue. In an April 2014 communication from the Finance Director to Chief Jackson and the City Manager, the Finance Director recommended immediate implementation of an "I-270 traffic enforcement initiative" in order to "begin to fill the revenue pipeline." The Finance Director's email attached a computation of the net revenues that would be generated by the initiative, which required paying five officers overtime for highway traffic enforcement for a four-hour shift. The Finance Director stated that "there is nothing to keep us from running this initiative 1,2,3,4,5,6, or even 7 days a week. Admittedly at 7 days per week[] we would see diminishing returns." Indeed, in a separate email to FPD

[11] Katherine Smith, *Ferguson to Increase Police Ticketing to Close City's Budget Gap*, Bloomberg News (Dec. 12, 2014), http://www.bloomberg.com/news/articles/2014-12-12/ferguson-to-increase-police-ticketing-to-close-city-s-budget-gap.

supervisors, the Patrol Captain explained that "[t]he plan behind this [initiative] is to PRODUCE traffic tickets, not provide easy OT." There is no indication that anyone considered whether community policing and public safety would be better served by devoting five overtime officers to neighborhood policing instead of a "revenue pipeline" of highway traffic enforcement. Rather, the only downsides to the program that City officials appear to have considered are that "this initiative requires 60 to 90 [days] of lead time to turn citations into cash," and that Missouri law caps the proportion of revenue that can come from municipal fines at 30%, which limits the extent to which the program can be used. *See* Mo. Rev. Stat. § 302.341.2. With regard to the statewide-cap issue, the Finance Director advised: "As the RLCs [Red Light Cameras] net revenues ramp up to whatever we believe its annualized rate will be, then we can figure out how to balance the two programs to get their total revenues as close as possible to the statutory limit of 30%."[12]

The City has made clear to the Police Chief and the Municipal Judge that revenue generation must also be a priority in court operations. The Finance Director's February 2011 report to the City Council notes that "Judge Brockmeyer was first appointed in 2003, and during this time has been successful in significantly increasing court collections over the years." The report includes a list of "what he has done to help in the areas of court efficiency and revenue." The list, drafted by Judge Brockmeyer, approvingly highlights the creation of additional fees, many of which are widely considered abusive and may be unlawful, including several that the City has repealed during the pendency of our investigation. These include a $50 fee charged each time a person has a pending municipal arrest warrant cleared, and a "failure to appear fine," which the Judge noted is "increased each time the Defendant fails to appear in court or pay a fine." The Judge also noted increasing fines for repeat offenders, "especially in regard to housing violations, [which] have increased substantially and will continue to be increased upon subsequent violations." The February 2011 report notes Judge Brockmeyer's statement that "none of these changes could have taken place without the cooperation of the Court Clerk, the Chief of Police, and the Prosecutor's Office." Indeed, the acting prosecutor noted in the report that "I have denied defendants' needless requests for continuance from the payment docket in an effort to aid in the court's efficient collection of its fines."

Court staff are keenly aware that the City considers revenue generation to be the municipal court's primary purpose. Revenue targets for court fines and fees are created in consultation not only with Chief Jackson, but also the Court Clerk. In one April 2010 exchange with Chief Jackson entitled "2011 Budget," for example, the Finance Director sought and received confirmation that the Police Chief and the Court Clerk would prepare targets for the court's fine and fee collections for subsequent years. Court staff take steps to ensure those targets are met in operating court. For example, in April 2011, the Court Clerk wrote to Judge

[12] Ferguson officials have asserted that in the last fiscal year revenue from the municipal court comprised only 12% of City revenue, but they have not made clear how they calculated this figure. It appears that 12% is the proportion of Ferguson's *total* revenue (forecasted to amount to $18.62 million in 2014) derived from fines and fees (forecasted to be $2.09 million in 2014). Guidelines issued by the Missouri State Auditor in December 2014 provide, however, that the 30% cap outlined in Mo. Rev. Stat. § 302.341.2 imposes a limit on the makeup of fines and fees in *general* use revenue, excluding any revenue designated for a particular purpose. Notably, the current 30% state cap only applies to fines and fees derived from "traffic violations." It thus appears that, for purposes of the state cap, Ferguson must ensure that its traffic-related fines and fees do not exceed 30% of its "General Fund" revenue. In 2014, Ferguson's General Fund revenue was forecasted to be $12.33 million.

Brockmeyer (copying Chief Jackson) that the fines the new Prosecuting Attorney was recommending were not high enough. The Clerk highlighted one case involving three Derelict Vehicle charges and a Failure to Comply charge that resulted in $76 in fines, and noted this "normally would have brought a fine of all three charges around $400." After describing another case that she believed warranted higher fines, the Clerk concluded: "We need to keep up our revenue." There is no indication that ability to pay or public safety goals were considered.

The City has been aware for years of concerns about the impact its focus on revenue has had on lawful police action and the fair administration of justice in Ferguson. It has disregarded those concerns—even concerns raised from within the City government—to avoid disturbing the court's ability to optimize revenue generation. In 2012, a Ferguson City Councilmember wrote to other City officials in opposition to Judge Brockmeyer's reappointment, stating that "[the Judge] does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn't let all the pertinent witnesses testify before rendering a verdict." The Councilmember then addressed the concern that "switching judges would/could lead to loss of revenue," arguing that even if such a switch did "lead to a slight loss, I think it's more important that cases are being handled properly and fairly." The City Manager acknowledged mixed reviews of the Judge's work but urged that the Judge be reappointed, noting that "[i]t goes without saying the City cannot afford to lose any efficiency in our Courts, nor experience any decrease in our Fines and Forfeitures."

IV. FERGUSON LAW ENFORCEMENT PRACTICES VIOLATE THE LAW AND UNDERMINE COMMUNITY TRUST, ESPECIALLY AMONG AFRICAN AMERICANS

Ferguson's strategy of revenue generation through policing has fostered practices in the two central parts of Ferguson's law enforcement system—policing and the courts—that are themselves unconstitutional or that contribute to constitutional violations. In both parts of the system, these practices disproportionately harm African Americans. Further, the evidence indicates that this harm to African Americans stems, at least in part, from racial bias, including racial stereotyping. Ultimately, unlawful and harmful practices in policing and in the municipal court system erode police legitimacy and community trust, making policing in Ferguson less fair, less effective at promoting public safety, and less safe.

A. Ferguson's Police Practices

FPD's approach to law enforcement, shaped by the City's pressure to raise revenue, has resulted in a pattern and practice of constitutional violations. Officers violate the Fourth Amendment in stopping people without reasonable suspicion, arresting them without probable cause, and using unreasonable force. Officers frequently infringe on residents' First Amendment rights, interfering with their right to record police activities and making enforcement decisions based on the content of individuals' expression.

FPD's lack of systems to detect and hold officers responsible for misconduct reflects the department's focus on revenue generation at the expense of lawful policing and helps perpetuate the patterns of unconstitutional conduct we found. FPD fails to adequately supervise officers or review their enforcement actions. While FPD collects vehicle-stop data because it is required to

do so by state law, it collects no reliable or consistent data regarding pedestrian stops, even though it has the technology to do so.[13] In Ferguson, officers will sometimes make an arrest without writing a report or even obtaining an incident number, and hundreds of reports can pile up for months without supervisors reviewing them. Officers' uses of force frequently go unreported, and are reviewed only laxly when reviewed at all. As a result of these deficient practices, stops, arrests, and uses of force that violate the law or FPD policy are rarely detected and often ignored when they are discovered.

1. FPD Engages in a Pattern of Unconstitutional Stops and Arrests in Violation of the Fourth Amendment

FPD's approach to law enforcement has led officers to conduct stops and arrests that violate the Constitution. We identified several elements to this pattern of misconduct. Frequently, officers stop people without reasonable suspicion or arrest them without probable cause. Officers rely heavily on the municipal "Failure to Comply" charge, which appears to be facially unconstitutional in part, and is frequently abused in practice. FPD also relies on a system of officer-generated arrest orders called "wanteds" that circumvents the warrant system and poses a significant risk of abuse. The data show, moreover, that FPD misconduct in the area of stops and arrests disproportionately impacts African Americans.

a. FPD Officers Frequently Detain People Without Reasonable Suspicion and Arrest People Without Probable Cause

The Fourth Amendment protects individuals from unreasonable searches and seizures. Generally, a search or seizure is unreasonable "in the absence of individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). The Fourth Amendment permits law enforcement officers to briefly detain individuals for investigative purposes if the officers possess reasonable suspicion that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Reasonable suspicion exists when an "officer is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed." *United States v. Givens*, 763 F.3d 987, 989 (8th Cir. 2014) (internal quotation marks omitted). In addition, if the officer reasonably believes the person with whom he or she is dealing is armed and dangerous, the officer may conduct a protective search or frisk of the person's outer clothing. *United States v. Cotter*, 701 F.3d 544, 547 (8th Cir. 2012). Such a search is not justified on the basis of "inchoate and unparticularized suspicion;" rather, the "issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.* (quoting *Terry*, 392 U.S. at 27). For an arrest to constitute a reasonable seizure under the Fourth Amendment, it must be supported by probable cause, which exists only if "the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had

[13] FPD policy states that "[o]fficers should document" all field contacts and field interrogation "relevant to criminal activity and identification of criminal suspects on the appropriate Department approved computer entry forms." FPD General Order 407.00. Policy requires that a "Field Investigation Report" be completed for persons and vehicles "in all instances when an officer feels" that the subject "may be in the area for a questionable or suspicious purpose." FPD General Order 422.01. In practice, however, FPD officers do not reliably document field contacts, particularly of pedestrians, and the department does not evaluate such field contacts.

committed an offense at the time of the arrest." *Stoner v. Watlingten*, 735 F.3d 799, 803 (8th Cir. 2013).

Under Missouri law, when making an arrest, "[t]he officer must inform the defendant by what authority he acts, and must also show the warrant if required." Mo. Rev. Stat. § 544.180. In reviewing FPD records, we found numerous incidents in which—based on the officer's own description of the detention—an officer detained an individual without articulable reasonable suspicion of criminal activity or arrested a person without probable cause. In none of these cases did the officer explain or justify his conduct.

For example, in July 2013 police encountered an African-American man in a parking lot while on their way to arrest someone else at an apartment building. Police knew that the encountered man was not the person they had come to arrest. Nonetheless, without even reasonable suspicion, they handcuffed the man, placed him in the back of a patrol car, and ran his record. It turned out he was the intended arrestee's landlord. The landlord went on to help the police enter the person's unit to effect the arrest, but he later filed a complaint alleging racial discrimination and unlawful detention. Ignoring the central fact that they had handcuffed a man and put him in a police car despite having no reason to believe he had done anything wrong, a sergeant vigorously defended FPD's actions, characterizing the detention as "minimal" and pointing out that the car was air conditioned. Even temporary detention, however, constitutes a deprivation of liberty and must be justified under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996).

Many of the unlawful stops we found appear to have been driven, in part, by an officer's desire to check whether the subject had a municipal arrest warrant pending. Several incidents suggest that officers are more concerned with issuing citations and generating charges than with addressing community needs. In October 2012, police officers pulled over an African-American man who had lived in Ferguson for 16 years, claiming that his passenger-side brake light was broken. The driver happened to have replaced the light recently and knew it to be functioning properly. Nonetheless, according to the man's written complaint, one officer stated, "let's see how many tickets you're going to get," while a second officer tapped his Electronic Control Weapon ("ECW") on the roof of the man's car. The officers wrote the man a citation for "tail light/reflector/license plate light out." They refused to let the man show them that his car's equipment was in order, warning him, "don't you get out of that car until you get to your house." The man, who believed he had been racially profiled, was so upset that he went to the police station that night to show a sergeant that his brakes and license plate light worked.

At times, the constitutional violations are even more blatant. An African-American man recounted to us an experience he had while sitting at a bus stop near Canfield Drive. According to the man, an FPD patrol car abruptly pulled up in front of him. The officer inside, a patrol lieutenant, rolled down his window and addressed the man:

Lieutenant:	Get over here.
Bus Patron:	Me?
Lieutenant:	Get the f*** over here. Yeah, you.
Bus Patron:	Why? What did I do?

Lieutenant: Give me your ID.
Bus Patron: Why?
Lieutenant: Stop being a smart ass and give me your ID.

The lieutenant ran the man's name for warrants. Finding none, he returned the ID and said, "get the hell out of my face." These allegations are consistent with other, independent allegations of misconduct that we heard about this particular lieutenant, and reflect the routinely disrespectful treatment many African Americans say they have come to expect from Ferguson police. That a lieutenant with supervisory responsibilities allegedly engaged in this conduct is further cause for concern.

This incident is also consistent with a pattern of suspicionless, legally unsupportable stops we found documented in FPD's records, described by FPD as "ped checks" or "pedestrian checks." Though at times officers use the term to refer to reasonable-suspicion-based pedestrian stops, or "*Terry* stops," they often use it when stopping a person with no objective, articulable suspicion. For example, one night in December 2013, officers went out and "ped. checked those wandering around" in Ferguson's apartment complexes. In another case, officers responded to a call about a man selling drugs by stopping a group of six African-American youths who, due to their numbers, did not match the facts of the call. The youths were "detained and ped checked." Officers invoke the term "ped check" as though it has some unique constitutional legitimacy. It does not. Officers may not detain a person, even briefly, without articulable reasonable suspicion. *Terry*, 392 U.S. at 21. To the extent that the words "ped check" suggest otherwise, the terminology alone is dangerous because it threatens to confuse officers' understanding of the law. Moreover, because FPD does not track or analyze pedestrian *Terry* stops—whether termed "ped checks" or something else—in any reliable way, they are especially susceptible to discriminatory or otherwise unlawful use.

As with its pattern of unconstitutional stops, FPD routinely makes arrests without probable cause. Frequently, officers arrest people for conduct that plainly does not meet the elements of the cited offense. For example, in November 2013, an officer approached five African-American young people listening to music in a car. Claiming to have smelled marijuana, the officer placed them under arrest for disorderly conduct based on their "gathering in a group for the purposes of committing illegal activity." The young people were detained and charged—some taken to jail, others delivered to their parents—despite the officer finding no marijuana, even after conducting an inventory search of the car. Similarly, in February 2012, an officer wrote an arrest notification ticket for Peace Disturbance for "loud music" coming from a car. The arrest ticket appears unlawful as the officer did not assert, and there is no other indication, that a third party was disturbed by the music—an element of the offense. *See* Ferguson Mun. Code § 29-82 (prohibiting certain conduct that "unreasonably and knowingly disturbs or alarms another person or persons"). Nonetheless, a supervisor approved it. These warrantless arrests violated the Fourth Amendment because they were not based on probable cause. *See Virginia v. Moore*, 553 U.S. 164, 173 (2008).

While the record demonstrates a pattern of stops that are improper from the beginning, it also exposes encounters that start as constitutionally defensible but quickly cross the line. For example, in the summer of 2012, an officer detained a 32-year-old African-American man who

was sitting in his car cooling off after playing basketball. The officer arguably had grounds to stop and question the man, since his windows appeared more deeply tinted than permitted under Ferguson's code. Without cause, the officer went on to accuse the man of being a pedophile, prohibit the man from using his cell phone, order the man out of his car for a pat-down despite having no reason to believe he was armed, and ask to search his car. When the man refused, citing his constitutional rights, the officer reportedly pointed a gun at his head, and arrested him. The officer charged the man with eight different counts, including making a false declaration for initially providing the short form of his first name (e.g., "Mike" instead of "Michael") and an address that, although legitimate, differed from the one on his license. The officer also charged the man both with having an expired operator's license, and with having no operator's license in possession. The man told us he lost his job as a contractor with the federal government as a result of the charges.

b. FPD Officers Routinely Abuse the "Failure to Comply" Charge

One area of FPD activity deserves special attention for its frequency of Fourth Amendment violations: enforcement of Ferguson's Failure to Comply municipal ordinance.[14] Ferguson Mun. Code § 29-16. Officers rely heavily on this charge to arrest individuals who do not do what they ask, even when refusal is not a crime. The offense is typically charged under one of two subsections. One subsection prohibits disobeying a lawful order in a way that hinders an officer's duties, § 29-16(1); the other requires individuals to identify themselves, § 29-16(2). FPD engages in a pattern of unconstitutional enforcement with respect to both, resulting in many unlawful arrests.

i. Improper Enforcement of Code Provision Prohibiting Disobeying a Lawful Order

Officers frequently arrest individuals under Section 29-16(1) on facts that do not meet the provision's elements. Section 29-16(1) makes it unlawful to "[f]ail to comply with the lawful order or request of a police officer in the discharge of the officer's official duties where such failure interfered with, obstructed or hindered the officer in the performance of such duties." Many cases initiated under this provision begin with an officer ordering an individual to stop despite lacking objective indicia that the individual is engaged in wrongdoing. The order to stop is not a "lawful order" under those circumstances because the officer lacks reasonable suspicion that criminal activity is afoot. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882-83 (1975); *United States v. Jones*, 606 F.3d 964, 967-68 (8th Cir. 2010). Nonetheless, when individuals do not stop in those situations, FPD officers treat that conduct as a failure to comply with a lawful order, and make arrests. Such arrests violate the Fourth Amendment because they are not based on probable cause that the crime of Failure to Comply has been committed. *Dunaway v. New York*, 442 U.S. 200, 208 (1979).

FPD officers apply Section 29-16(1) remarkably broadly. In an incident from August 2010, an officer broke up an altercation between two minors and sent them back to their homes. The officer ordered one to stay inside her residence and the other not to return to the first's

[14] FPD officers are not consistent in how they label this charge in their reports. They refer to violations of Section 29-16 as both "Failure to Comply" and "Failure to Obey." This report refers to all violations of this code provision as "Failure to Comply."

residence. Later that day, the two minors again engaged in an altercation outside the first minor's residence. The officer arrested both for Failure to Comply with the earlier orders. But Section 29-16(1) does not confer on officers the power to confine people to their homes or keep them away from certain places based solely on their verbal orders. At any rate, the facts of this incident do not satisfy the statute for another reason: there was no evidence that the failure to comply "interfered with, obstructed or hindered the officer in the performance" of official duties. § 29-16(1). The officer's arrest of the two minors for Failure to Comply without probable cause of all elements of the offense violated the Fourth Amendment.

ii. Improper Enforcement of Code Provision Requiring Individuals to Identify Themselves to a Police Officer

FPD's charging under Section 29-16(2) also violates the Constitution. Section 29-16(2) makes it unlawful to "[f]ail to give information requested by a police officer in the discharge of his/her official duties relating to the identity of such person." This provision, a type of "stop-and-identify" law, is likely unconstitutional under the void-for-vagueness doctrine. It is also unconstitutional as typically applied by FPD.

As the Supreme Court has explained, the void-for-vagueness doctrine "requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). In *Kolender*, the Supreme Court invalidated a California stop-and-identify law as unconstitutionally vague because its requirement that detained persons give officers "credible and reliable" identification provided no standard for what a suspect must do to comply with it. Instead, the law "vest[ed] complete discretion in the hands of the police" to determine whether a person had provided sufficient identity information, which created a "potential for arbitrarily suppressing First Amendment liberties" and "the constitutional right to freedom of movement." *Id.* at 358. The Eighth Circuit has applied the doctrine numerous times. In *Fields v. City of Omaha*, 810 F.2d 830 (8th Cir. 1987), the court struck down a city ordinance that required a person to "identify himself" because it did not make definite what would suffice for identification and thereby provided no "standard to guide the police officer's discretionary assessment" or "prevent arbitrary and discriminatory law enforcement." *Id.* at 833-34; *see also Stahl v. City of St. Louis*, 687 F.3d 1038, 1040 (8th Cir. 2012) (holding that an ordinance prohibiting conduct that would impede traffic was unconstitutionally vague under the Due Process Clause because it "may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits") (internal quotation marks omitted).

Under these binding precedents, Ferguson's stop-and-identify law appears to be unconstitutionally vague because the term "information . . . relating to the identity of such person" in Section 29-16(2) is not defined. Neither the ordinance nor any court has narrowed that language. *Cf. Hiibel v. Sixth Judicial Dist. Ct. of Nevada*, 542 U.S. 177, 188-89 (2004) (upholding stop-and-identify law that was construed by the state supreme court to require only that a suspect provide his name). As a consequence, the average person has no understanding of precisely how much identity information, and what kind, he or she must provide when an FPD officer demands it; nor do officers. Indeed, we are aware of several people who were asked to provide their Social Security numbers, including one man who was arrested after refusing to do

so. Given that the ordinance appears to lend itself to such arbitrary enforcement, Section 29-16(2) is likely unconstitutional on its face.[15]

Even apart from the facial unconstitutionality of the statute, the evidence is clear that FPD's enforcement of Section 29-16(2) is unconstitutional in its application. Stop-and-identify laws stand in tension with the Supreme Court's admonition that a person approached by a police officer "need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." *Florida v. Royer*, 460 U.S. 491, 497-98 (1983). For this reason, the Court has held that an officer cannot require a person to identify herself unless the officer first has reasonable suspicion to initiate the stop. *See Brown v. Texas*, 443 U.S. 47, 52-53 (1979) (holding that the application of a Texas statute that criminalized refusal to provide a name and address to a peace officer violated the Fourth Amendment where the officer lacked reasonable suspicion of criminal activity); *see also Hiibel*, 542 U.S. at 184 (deeming the reasonable suspicion requirement a "constitutional limitation[]" on stop-and-identify statutes). FPD officers, however, routinely arrest individuals under Section 29-16(2) for failure to identify themselves despite lacking reasonable suspicion to stop them in the first place.

For example, in an October 2011 incident, an officer arrested two sisters who were backing their car into their driveway. The officer claimed that the car had been idling in the middle of the street, warranting investigation, while the women claim they had pulled up outside their home to drop someone off when the officer arrived. In any case, the officer arrested one sister for failing to provide her identification when requested. He arrested the other sister for getting out of the car after being ordered to stay inside. The two sisters spent the next three hours in jail. In a similar incident from December 2011, police officers approached two people sitting in a car on a public street and asked the driver for identification. When the driver balked, insisting that he was on a public street and should not have to answer questions, the officers ordered him out of the car and ultimately charged him with Failure to Comply.

In another case, from March 2013, officers responded to the police station to take custody of a person wanted on a state warrant. When they arrived, they encountered a different man—not the subject of the warrant—who happened to be leaving the station. Having nothing to connect the man to the warrant subject, other than his presence at the station, the officers nonetheless stopped him and asked that he identify himself. The man asserted his rights, asking the officers "Why do you need to know?" and declining to be frisked. When the man then extended his identification toward the officers, at their request, the officers interpreted his hand motion as an attempted assault and took him to the ground. Without articulating reasonable suspicion or any other justification for the initial detention, the officers arrested the man on two counts of Failure to Comply and two counts of Resisting Arrest.

In our conversations with FPD officers, one officer admitted that when he conducts a traffic stop, he asks for identification from all passengers as a matter of course. If any refuses, he considers that to be "furtive and aggressive" conduct and cites—and typically arrests—the

[15] Other broad quality-of-life ordinances in the Ferguson municipal code, such as the disorderly conduct provision, may also be vulnerable to attack as unconstitutionally vague or overbroad. *See* Ferguson Mun. Code § 29-94 (defining disorderly conduct to include the conduct of "[a]ny person, while in a public place, who utters in a loud, abusive or threatening manner, any obscene words, epithets *or similar abusive language*") (emphasis added).

person for Failure to Comply. The officer thus acknowledged that he regularly exceeds his authority under the Fourth Amendment by arresting passengers who refuse, as is their right, to provide identification. *See Hiibel*, 542 U.S. at 188 ("[A]n officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop."); *Stufflebeam v. Harris*, 521 F.3d 884, 887-88 (8th Cir. 2008) (holding that the arrest of a passenger for failure to identify himself during a traffic stop violated the Fourth Amendment where the passenger was not suspected of other criminal activity and his identification was not needed for officer safety). Further, the officer told us that he was trained to arrest for this violation.

Good supervision would correct improper arrests by an officer before they became routine. But in Ferguson, the same dynamics that lead officers to make unlawful stops and arrests cause supervisors to conduct only perfunctory review of officers' actions—when they conduct any review at all. FPD supervisors are more concerned with the number of citations and arrests officers produce than whether those citations and arrests are lawful or promote public safety. Internal communications among command staff reveal that FPD for years has failed to ensure even that officers write their reports and first-line supervisors approve them. In 2010, a senior police official complained to supervisors that every week reports go unwritten, and hundreds of reports remain unapproved. "It is time for you to hold your officers accountable," he urged them. In 2014, the official had the same complaint, remarking on 600 reports that had not been approved over a six-month period. Another supervisor remarked that coding errors in the new records management system is set up "to hide, do away with, or just forget reports," creating a heavy administrative burden for supervisors who discover incomplete reports months after they are created. In practice, not all arrests are given incident numbers, meaning supervisors may never know to review them. These systemic deficiencies in oversight are consistent with an approach to law enforcement in which productivity and revenue generation, rather than lawful policing, are the priority. Thus, even as commanders exhort line supervisors to more closely supervise officer activity, they perpetuate the dynamics that discourage meaningful supervision.

c. <u>FPD's Use of a Police-run "Wanted" System Circumvents Judicial Review and Poses the Risk of Abuse</u>

FPD and other law enforcement agencies in St. Louis County use a system of "wanteds" or "stop orders" as a substitute for seeking judicial approval for an arrest warrant. When officers believe a person has committed a crime but are not able to immediately locate that person, they can enter a "wanted" into the statewide law enforcement database, indicating to all other law enforcement agencies that the person should be arrested if located. While wanteds are supposed to be based on probable cause, *see* FPD General Order 424.01, they operate as an end-run around the judicial system. Instead of swearing out a warrant and seeking judicial authorization from a neutral and detached magistrate, officers make the probable cause determination themselves and circumvent the courts. Officers use wanteds for serious state-level crimes and minor code violations alike, including traffic offenses.

FPD command staff express support for the wanted system, extolling the benefits of being able to immediately designate a person for detention. But this expedience carries constitutional risks. If officers enter wanteds into the system on less than probable cause, then

the subsequent arrest would violate the Fourth Amendment. Our interviews with command staff and officers indicate that officers do not clearly understand the legal authority necessary to issue a wanted. For example, one veteran officer told us he will put out a wanted "if I do not have enough probable cause to arrest you." He gave the example of investigating a car theft. Upon identifying a suspect, he would put that suspect into the system as wanted "because we do not have probable cause that he stole the vehicle." Reflecting the muddled analysis officers may employ when deciding whether to issue a wanted, this officer concluded, "you have to have reasonable suspicion and some probable cause to put out a wanted."

At times, FPD officers use wanteds not merely in spite of a lack of probable cause, but *because* they lack probable cause. In December 2014, a Ferguson detective investigating a shooting emailed a county prosecutor to see if a warrant for a suspect could be obtained, since "a lot of state agencies won't act on a wanted." The prosecutor responded stating that although "[c]hances are" the crime was committed by the suspect, "we just don't have enough for a warrant right now." The detective responded that he would enter a wanted.

There is evidence that the use of wanteds has resulted in numerous unconstitutional arrests in Ferguson. Internal communications reveal problems with FPD officers arresting individuals on wanteds without first confirming that the wanteds are still valid. In 2010, for instance, an FPD supervisor wrote that "[a]s of late we have had subjects arrested that were wanted for other agencies brought in without being verified first. You guessed it, come to find out they were no longer wanted by the agencies and had to be released." The same supervisor told us that in 2014 he cleared hundreds of invalid wanteds from the system, some of them over ten years old, suggesting that invalid wanteds have been an ongoing problem.

Wanteds can also be imprecise, leading officers to arrest in violation of the Fourth Amendment. For example, in June 2011, officers arrested a man at gunpoint because the car he was driving had an active wanted "on the vehicle and its occupants" in connection with an alleged theft. In fact, the theft was alleged to have been committed by the man's brother. Nonetheless, according to FPD's files, the man was arrested solely on the basis of the wanted.

This system creates the risk that wanteds could be used improperly to develop evidence necessary for arrest rather than to secure a person against whom probable cause already exists. Several officers described wanteds as an investigatory tool. According to Chief Jackson, "a wanted allows us to get a suspect in for booking and potential interrogation." One purpose, he said, is "to conduct an interview of that person." While it is perfectly legitimate for officers to try to obtain statements from persons lawfully detained, it is unconstitutional for them to jail individuals on less than probable cause for that purpose. *Dunaway*, 442 U.S. at 216. One senior supervisor acknowledged that wanteds could be abused. He agreed that the potential exists, for example, for an officer to pressure a subject into speaking voluntarily to avoid being arrested. These are risks that the judicially-reviewed warrant process is meant to avoid.

Compounding our concern is the minimal training and supervision provided on when to issue a wanted, and the lack of any meaningful oversight to detect and respond to improperly issued wanteds. Some officers told us that they may have heard about wanteds in the training academy. Others said that they received no formal training on wanteds and learned about them

from their field training officers. As for supervision, officers are supposed to get authorization from their supervisors before entering a wanted into a law enforcement database. They purportedly do this by providing the factual basis for probable cause to their supervisors, orally or in their written reports. However, several supervisors and officers we spoke with acknowledged that this supervisory review routinely does not happen. Further, the supervisors we interviewed told us that they had never declined to authorize a wanted.

Finally, a Missouri appellate court has highlighted the constitutional risks of relying on a wanted as the basis for an arrest. In *State v. Carroll*, 745 S.W.2d 156 (Mo. Ct. App. 1987), the court held that a robbery suspect was arrested without probable cause when Ferguson and St. Louis police officers picked him up on a wanted for leaving the scene of an accident. *Id.* at 158. The officers then interrogated him three times at two different police stations, and he eventually made incriminating statements. Despite the existence of a wanted, the court deemed the initial arrest unconstitutional because "[t]he record . . . fail[ed] to show any *facts* known to the police at the time of the arrest to support a reasonable belief that defendant had committed a crime." *Id.* *Carroll* highlights the fact that wanteds do not confer an authority equal to a judicial arrest warrant. Rather, the *Carroll* court's holding suggests that wanteds may be of unknown reliability and thus insufficient to permit custodial detention under the Fourth Amendment. *See also* Steven J. Mulroy, *"Hold" On: The Remarkably Resilient, Constitutionally Dubious 48-Hour Hold*, 63 Case W. Res. L. Rev. 815, 823, 842-45 (2013) (observing that one problem with police "holds" is that, although they require probable cause, "in practice they often lack it").

We received complaints from FPD officers that the County prosecutor's office is too restrictive in granting warrant requests, and that this has necessitated the wanted practice. This investigation did not determine whether the St. Louis County prosecutor is overly restrictive or appropriately cautious in granting warrant requests. What is clear, however, is that current FPD practices have resulted in wanteds being issued and executed without legal basis.

2. FPD Engages in a Pattern of First Amendment Violations

FPD's approach to enforcement results in violations of individuals' First Amendment rights. FPD arrests people for a variety of protected conduct: people are punished for talking back to officers, recording public police activities, and lawfully protesting perceived injustices.

Under the Constitution, what a person says generally should not determine whether he or she is jailed. Police officers cannot constitutionally make arrest decisions based on individuals' verbal expressions of disrespect for law enforcement, including use of foul language. *Buffkins v. City of Omaha*, 922 F.2d 465, 472 (8th Cir. 1990) (holding that officers violated the Constitution when they arrested a woman for disorderly conduct after she called one an "asshole," especially since "police officers are expected to exercise greater restraint in their response than the average citizen"); *Copeland v. Locke*, 613 F.3d 875, 880 (8th Cir. 2010) (holding that the First Amendment prohibited a police chief from arresting an individual who pointed at him and told him "move the f*****g car," even if the comment momentarily distracted the chief from a routine traffic stop); *Gorra v. Hanson*, 880 F.2d 95, 100 (8th Cir. 1989) (holding that arresting a person in retaliation for making a statement "constitutes obvious infringement" of the First Amendment). As the Supreme Court has held, "the First Amendment protects a significant

amount of verbal criticism and challenge directed at police officers." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461 (1987) (striking down as unconstitutionally overbroad a local ordinance that criminalized interference with police by speech).

In Ferguson, however, officers frequently make enforcement decisions based on what subjects say, or how they say it. Just as officers reflexively resort to arrest immediately upon noncompliance with their orders, whether lawful or not, they are quick to overreact to challenges and verbal slights. These incidents—sometimes called "contempt of cop" cases—are propelled by officers' belief that arrest is an appropriate response to disrespect. These arrests are typically charged as a Failure to Comply, Disorderly Conduct, Interference with Officer, or Resisting Arrest.

For example, in July 2012, a police officer arrested a business owner on charges of Interfering in Police Business and Misuse of 911 because she objected to the officer's detention of her employee. The officer had stopped the employee for "walking unsafely in the street" as he returned to work from the bank. According to FPD records, the owner "became verbally involved," came out of her shop three times after being asked to stay inside, and called 911 to complain to the Police Chief. The officer characterized her protestations as interference and arrested her inside her shop.[16] The arrest violated the First Amendment, which "does not allow such speech to be made a crime." *Hill*, 482 U.S. at 462. Indeed, the officer's decision to arrest the woman after she tried to contact the Police Chief suggests that he may have been retaliating against her for reporting his conduct.

Officers in Ferguson also use their arrest power to retaliate against individuals for using language that, while disrespectful, is protected by the Constitution. For example, one afternoon in September 2012, an officer stopped a 20-year-old African-American man for dancing in the middle of a residential street. The officer obtained the man's identification and ran his name for warrants. Finding none, he told the man he was free to go. The man responded with profanities. When the officer told him to watch his language and reminded him that he was not being arrested, the man continued using profanity and was arrested for Manner of Walking in Roadway.

In February 2014, officers responded to a group of African-American teenage girls "play fighting" (in the words of the officer) in an intersection after school. When one of the schoolgirls gave the middle finger to a white witness who had called the police, an officer ordered her over to him. One of the girl's friends accompanied her. Though the friend had the right to be present and observe the situation—indeed, the offense reports include no facts suggesting a safety concern posed by her presence—the officers ordered her to leave and then attempted to arrest her when she refused. Officers used force to arrest the friend as she pulled away. When the first girl grabbed an officer's shoulder, they used force to arrest her, as well.

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[16] The ordinance on interfering with arrest, detention, or stop, Ferguson Mun. Code § 29-17, does not actually permit arrest unless the subject uses or threatens violence, which did not occur here. Another code provision the officer may have relied on, § 29-19, is likely unconstitutionally overbroad because it prohibits obstruction of government operations "in any manner whatsoever." *See Hill*, 482 U.S. at 455, 462, 466 (invalidating ordinance that made it unlawful to "in any manner oppose, molest, abuse, or interrupt any policeman in the execution of his duty").

Officers charged the two teenagers with a variety of offenses, including: Disorderly Conduct for giving the middle finger and using obscenities; Manner of Walking for being in the street; Failure to Comply for staying to observe; Interference with Officer; Assault on a Law Enforcement Officer; and Endangering the Welfare of a Child (themselves and their schoolmates) by resisting arrest and being involved in disorderly conduct. This incident underscores how officers' unlawful response to activity protected by the First Amendment can quickly escalate to physical resistance, resulting in additional force, additional charges, and increasing the risk of injury to officers and members of the public alike.

These accounts are drawn entirely from officers' own descriptions, recorded in offense reports. That FPD officers believe criticism and insolence are grounds for arrest, and that supervisors have condoned such unconstitutional policing, reflects intolerance for even lawful opposition to the exercise of police authority. These arrests also reflect that, in FPD, many officers have no tools for de-escalating emotionally charged scenes, even though the ability of a police officer to bring calm to a situation is a core policing skill.

FPD officers also routinely infringe on the public's First Amendment rights by preventing people from recording their activities. The First Amendment "prohibit[s] the government from limiting the stock of information from which members of the public may draw." *First Nat'l Bank v. Belloti*, 435 U.S. 765, 783 (1978). Applying this principle, the federal courts of appeal have held that the First Amendment "unambiguously" establishes a constitutional right to videotape police activities. *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011); *see also ACLU v. Alvarez*, 679 F.3d 583, 600 (7th Cir. 2012) (issuing a preliminary injunction against the use of a state eavesdropping statute to prevent the recording of public police activities); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (recognizing a First Amendment right to film police carrying out their public duties); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (recognizing a First Amendment right "to photograph or videotape police conduct"). Indeed, as the ability to record police activity has become more widespread, the role it can play in capturing questionable police activity, and ensuring that the activity is investigated and subject to broad public debate, has become clear. Protecting civilian recording of police activity is thus at the core of speech the First Amendment is intended to protect. *Cf. Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) (First Amendment protects "news gathering"); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (news gathering enhances "free discussion of governmental affairs"). "In a democracy, public officials have no general privilege to avoid publicity and embarrassment by preventing public scrutiny of their actions." *Walker v. City of Pine Bluff,* 414 F.3d 989, 992 (8th Cir. 2005).

In Ferguson, however, officers claim without any factual support that the use of camera phones endangers officer safety. Sometimes, officers offer no rationale at all. Our conversations with community members and review of FPD records found numerous violations of the right to record police activity. In May 2014, an officer pulled over an African-American woman who was driving with her two sons. During the traffic stop, the woman's 16-year-old son began recording with his cell phone. The officer ordered him to put down the phone and refrain from using it for the remainder of the stop. The officer claimed this was "for safety reasons." The situation escalated, apparently due to the officer's rudeness and the woman's response. According to the 16 year old, he began recording again, leading the officer to wrestle the phone

from him. Additional officers arrived and used force to arrest all three civilians under disputed circumstances that could have been clarified by a video recording.

In June 2014, an African-American couple who had taken their children to play at the park allowed their small children to urinate in the bushes next to their parked car. An officer stopped them, threatened to cite them for allowing the children to "expose themselves," and checked the father for warrants. When the mother asked if the officer had to detain the father in front of the children, the officer turned to the father and said, "you're going to jail because your wife keeps running her mouth." The mother then began recording the officer on her cell phone. The officer became irate, declaring, "you don't videotape me!" As the officer drove away with the father in custody for "parental neglect," the mother drove after them, continuing to record. The officer then pulled over and arrested her for traffic violations. When the father asked the officer to show mercy, he responded, "no more mercy, since she wanted to videotape," and declared "nobody videotapes me." The officer then took the phone, which the couple's daughter was holding. After posting bond, the couple found that the video had been deleted.

A month later, the same officer pulled over a truck hauling a trailer that did not have operating tail lights. The officer asked for identification from all three people inside, including a 54-year-old white man in the passenger seat who asked why. "You have to have a reason. This is a violation of my Fourth Amendment rights," he asserted. The officer, who characterized the man's reaction as "suspicious," responded, "the reason is, if you don't hand it to me, I'll arrest you." The man provided his identification. The officer then asked the man to move his cell phone from his lap to the dashboard, "for my safety." The man said, "okay, but I'm going to record this." Due to nervousness, he could not open the recording application and quickly placed the phone on the dash. The officer then announced that the man was under arrest for Failure to Comply. At the end of the traffic stop, the officer gave the driver a traffic citation, indicated at the other man, and said, "you're getting this ticket because of him." Upon bringing that man to the jail, someone asked the officer what offense the man had committed. The officer responded, "he's one of those guys who watches CNBC too much about his rights." The man did not say anything else, fearing what else the officer might be capable of doing. He later told us, "I never dreamed I could end up in jail for this. I'm scared of driving through Ferguson now."

The Ferguson Police Department's infringement of individuals' freedom of speech and right to record has been highlighted in recent months in the context of large-scale public protest. In November 2014, a federal judge entered a consent order prohibiting Ferguson officers from interfering with individuals' rights to lawfully and peacefully record public police activities. That same month, the City settled another suit alleging that it had abused its loitering ordinance, Mun. Code § 29-89, to arrest people who were protesting peacefully on public sidewalks.

Despite these lawsuits, it appears that FPD continues to interfere with individuals' rights to protest and record police activities. On February 9, 2015, several individuals were protesting outside the Ferguson police station on the six-month anniversary of Michael Brown's death. According to protesters, and consistent with several video recordings from that evening, the protesters stood peacefully in the police department's parking lot, on the sidewalks in front of it, and across the street. Video footage shows that two FPD vehicles abruptly accelerated from the police parking lot into the street. An officer announced, "everybody here's going to jail,"

causing the protesters to run. Video shows that as one man recorded the police arresting others, he was arrested for interfering with police action. Officers pushed him to the ground, began handcuffing him, and announced, "stop resisting or you're going to get tased." It appears from the video, however, that the man was neither interfering nor resisting. A protester in a wheelchair who was live streaming the protest was also arrested. Another officer moved several people with cameras away from the scene of the arrests, warning them against interfering and urging them to back up or else be arrested for Failure to Obey. The sergeant shouted at those filming that they would be arrested for Manner of Walking if they did not back away out of the street, even though it appears from the video recordings that the protesters and those recording were on the sidewalk at most, if not all, times. Six people were arrested during this incident. It appears that officers' escalation of this incident was unnecessary and in response to derogatory comments written in chalk on the FPD parking lot asphalt and on a police vehicle.

FPD's suppression of speech reflects a police culture that relies on the exercise of police power—however unlawful—to stifle unwelcome criticism. Recording police activity and engaging in public protest are fundamentally democratic enterprises because they provide a check on those "who are granted substantial discretion that may be misused to deprive individuals of their liberties." *Glik*, 655 F.3d at 82. Even profane backtalk can be a form of dissent against perceived misconduct. In the words of the Supreme Court, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Hill*, 482 U.S. at 463. Ideally, officers would not encounter verbal abuse. Communities would encourage mutual respect, and the police would likewise exhibit respect by treating people with dignity. But, particularly where officers engage in unconstitutional policing, they only exacerbate community opposition by quelling speech.

3. FPD Engages in a Pattern of Excessive Force in Violation of the Fourth Amendment

FPD engages in a pattern of excessive force in violation of the Fourth Amendment. Many officers are quick to escalate encounters with subjects they perceive to be disobeying their orders or resisting arrest. They have come to rely on ECWs, specifically Tasers®, where less force—or no force at all—would do. They also release canines on unarmed subjects unreasonably and before attempting to use force less likely to cause injury. Some incidents of excessive force result from stops or arrests that have no basis in law. Others are punitive and retaliatory. In addition, FPD records suggest a tendency to use unnecessary force against vulnerable groups such as people with mental health conditions or cognitive disabilities, and juvenile students. Furthermore, as discussed in greater detail in Part III.C. of this report, Ferguson's pattern of using excessive force disproportionately harms African-American members of the community. The overwhelming majority of force—almost 90%—is used against African Americans.

The use of excessive force by a law enforcement officer violates the Fourth Amendment. *Graham v. Conner*, 490 U.S. 386, 394 (1989); *Atkinson v. City of Mountain View*, *Mo.*, 709 F.3d 1201, 1207-09 (8th Cir. 2013). The constitutionality of an officer's use of force depends on whether the officer's conduct was "'objectively reasonable' in light of the facts and

circumstances," which must be assessed "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. Relevant considerations include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.*; *Johnson v. Caroll*, 658 F.3d 819, 826 (8th Cir. 2011).

FPD also imposes limits on officers' use of force through department policies. The use-of-force policy instituted by Chief Jackson in 2010 states that "force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under a particular set of circumstances." FPD General Order 410.01. The policy also sets out a use-of-force continuum, indicating the force options permitted in different circumstances, depending on the level of resistance provided by a suspect. FPD General Order 410.08.

FPD's stated practice is to maintain use-of-force investigation files for all situations in which officers use force. We reviewed the entire set of force files provided by the department for the period of January 1, 2010 to September 8, 2014.[17] Setting aside the killing of animals (e.g., dogs, injured deer) and three instances in which the subject of the use of force was not identified, FPD provided 151 files. We also reviewed related documentation regarding canine deployments. Our finding that FPD force is routinely unreasonable and sometimes clearly punitive is drawn largely from FPD's documentation; that is, from officers' own words.

a. FPD's Use of Electronic Control Weapons Is Unreasonable

FPD's pattern of excessive force includes using ECWs in a manner that is unconstitutional, abusive, and unsafe. For example, in August 2010, a lieutenant used an ECW in drive-stun mode against an African-American woman in the Ferguson City Jail because she had refused to remove her bracelets.[18] The lieutenant resorted to his ECW even though there were five officers present and the woman posed no physical threat.

Similarly, in November 2013, a correctional officer fired an ECW at an African-American woman's chest because she would not follow his verbal commands to walk toward a cell. The woman, who had been arrested for driving while intoxicated, had yelled an insulting remark at the officer, but her conduct amounted to verbal noncompliance or passive resistance at most. Instead of attempting hand controls or seeking assistance from a state trooper who was also present, the correctional officer deployed the ECW because the woman was "not doing as she was told." When another FPD officer wrote up the formal incident report, the reporting officer wrote that the woman "approached [the correctional officer] in a threatening manner." This "threatening manner" allegation appears nowhere in the statements of the correctional

[17] This set, however, did not include any substantive information on the August 9, 2014 shooting of Michael Brown by Officer Darren Wilson. That incident is being separately investigated by the Criminal Section of the Civil Rights Division and the U.S. Attorney's Office for the Eastern District of Missouri.

[18] ECWs have two modes. In dart mode, an officer fires a cartridge that sends two darts or prongs into a person's body, penetrating the skin and delivering a jolt of electricity of a length determined by the officer. In drive-stun mode, sometimes referred to as "pain compliance" mode, an officer presses the weapon directly against a person's body, pulling the trigger to activate the electricity. Many agencies strictly limit the use of ECWs in drive-stun mode because of the potential for abuse.

officer or witness trooper. The woman was charged with Disorderly Conduct, and the correctional officer soon went on to become an officer with another law enforcement agency.

These are not isolated incidents. In September 2012, an officer drive-stunned an African-American woman who he had placed in the back of his patrol car but who had stretched out her leg to block him from closing the door. The woman was in handcuffs. In May 2013, officers drive-stunned a handcuffed African-American man who verbally refused to get out of the back seat of a police car once it had arrived at the jail. The man did not physically resist arrest or attempt to assault the officers. According to the man, he was also punched in the face and head. That allegation was neither reported by the involved officers nor investigated by their supervisor, who dismissed it.

FPD officers seem to regard ECWs as an all-purpose tool bearing no risk. But an ECW—an electroshock weapon that disrupts a person's muscle control, causing involuntary contractions—can indeed be harmful. The Eighth Circuit Court of Appeals has observed that ECW-inflicted injuries are "sometimes severe and unexpected." *LaCross v. City of Duluth*, 713 F.3d 1155, 1158 (8th Cir. 2013). Electroshock "inflicts a painful and frightening blow, which temporarily paralyzes the large muscles of the body, rendering the victim helpless." *Hickey v. Reeder*, 12 F.3d 754, 757 (8th Cir. 1993). Guidance produced by the United States Department of Justice, Office of Community Oriented Policing Services, and the Police Executive Research Forum in 2011 warns that ECWs are "'less-lethal' and not 'nonlethal weapons'" and "have the potential to result in a fatal outcome." *2011 Electronic Control Weapon Guidelines* 12 (Police Executive Research Forum & U.S. Dep't of Justice Office of Community Oriented Policing Services, Mar. 2011) ("*2011 ECW Guidelines*").

FPD officers' swift, at times automatic, resort to using ECWs against individuals who typically have committed low-level crimes and who pose no immediate threat violates the Constitution. As the Eighth Circuit held in 2011, an officer uses excessive force and violates clearly established Fourth Amendment law when he deploys an ECW against an individual whose crime was minor and who is not actively resisting, attempting to flee, or posing any imminent danger to others. *Brown v. City of Golden Valley*, 574 F.3d 491, 497-99 (8th Cir. 2011) (upholding the denial of a qualified immunity claim made by an officer who drive-stunned a woman on her arm for two or three seconds when she refused to hang up her phone despite being ordered to do so twice); *cf. Hickey*, 12 F.3d at 759 (finding that the use of a stun gun against a prisoner for refusing to sweep his cell violated the more deferential Eighth Amendment prohibition against cruel and unusual punishment). Courts have found that even when a suspect resists but does so only minimally, the surrounding factors may render the use of an ECW objectively unreasonable. *See Mattos v. Agarano*, 661 F.3d 433, 444-46, 448-51 (9th Cir. 2011) (en banc) (holding in two consolidated cases that minimal defensive resistance—including stiffening the body to inhibit being pulled from a car, and raising an arm in defense—does not render using an ECW reasonable where the offense was minor, the subject did not attempt to flee, and the subject posed no immediate threat to officers); *Parker v. Gerrish*, 547 F.3d 1, 9-11 (1st Cir. 2008) (upholding a jury verdict of excessive use of force for an ECW use because the evidence supported a finding that the subject who had held his hands together was not actively resisting or posing an immediate threat); *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1282-83 (10th Cir. 2007) (holding that the use of an ECW was not objectively reasonable when the

subject pulled away from the officer but did not otherwise actively resist arrest, attempt to flee, or pose an immediate threat).

Indeed, officers' unreasonable ECW use violates FPD's own policies. The department prohibits the use of force unless reasonable alternatives have been exhausted or would clearly be ineffective. FPD General Order 410.01. A separate ECW policy describes the weapon as "designed to overcome active aggression or overt actions of assault." FPD General Order 499.00. The policy states that an ECW "will never be deployed punitively or for purposes of coercion. It is to be used as a way of averting a potentially injurious or dangerous situation." FPD General Order 499.04. Despite the existence of clearly established Fourth Amendment case law and explicit departmental policies in this area, FPD officers routinely engage in the unreasonable use of ECWs, and supervisors routinely approve their conduct.

It is in part FPD officers' approach to policing that leads them to violate the Constitution and FPD's own policies. Officers across the country encounter drunkenness, passive defiance, and verbal challenges. But in Ferguson, officers have not been trained or incentivized to use de-escalation techniques to avoid or minimize force in these situations. Instead, they respond with impatience, frustration, and disproportionate force. FPD's weak oversight of officer use of force, described in greater detail below, facilitates this abuse. Officers should be required to view the ECW as one tool among many, and "a weapon of need, not a tool of convenience." *2011 ECW Guidelines* at 11. Effective policing requires that officers not depend on ECWs, or any type of force, "at the expense of diminishing the fundamental skills of communicating with subjects and de-escalating tense encounters." *Id.* at 12.

b. FPD's Use of Canines on Low-level, Unarmed Offenders Is Unreasonable

FPD engages in a pattern of deploying canines to bite individuals when the articulated facts do not justify this significant use of force. The department's own records demonstrate that, as with other types of force, canine officers use dogs out of proportion to the threat posed by the people they encounter, leaving serious puncture wounds to nonviolent offenders, some of them children. Furthermore, in every canine bite incident for which racial information is available, the subject was African American. This disparity, in combination with the decision to deploy canines in circumstances with a seemingly low objective threat, suggests that race may play an impermissible role in officers' decisions to deploy canines.

FPD currently has four canines, each assigned to a particular canine officer. Under FPD policy, canines are to be used to locate and apprehend "dangerous offenders." FPD General Order 498.00. When offenders are hiding, the policy states, "handlers will not allow their K-9 to engage a suspect by biting if a lower level of force could reasonably be expected to control the suspect or allow for the apprehension." *Id.* at 498.06. The policy also permits the use of a canine, however, when any crime—not just a felony or violent crime—has been committed. *Id.* at 498.05. This permissiveness, combined with the absence of meaningful supervisory review and an apparent tendency to overstate the threat based on race, has resulted in avoidable dog bites to low-level offenders when other means of control were available.

In December 2011, officers deployed a canine to bite an unarmed 14-year-old African-American boy who was waiting in an abandoned house for his friends. Four officers, including a

canine officer, responded to the house mid-morning after a caller reported that people had gone inside. Officers arrested one boy on the ground level. Describing the offense as a burglary in progress even though the facts showed that the only plausible offense was trespassing, the canine officer's report stated that the dog located a second boy hiding in a storage closet under the stairs in the basement. The officer peeked into the space and saw the boy, who was 5'5" and 140 pounds, curled up in a ball, hiding. According to the officer, the boy would not show his hands despite being warned that the officer would use the dog. The officer then deployed the dog, which bit the boy's arm, causing puncture wounds.

According to the boy, with whom we spoke, he never hid in a storage space and he never heard any police warnings. He told us that he was waiting for his friends in the basement of the house, a vacant building where they would go when they skipped school. The boy approached the stairs when he heard footsteps on the upper level, thinking his friends had arrived. When he saw the dog at the top of the steps, he turned to run, but the dog quickly bit him on the ankle and then the thigh, causing him to fall to the floor. The dog was about to bite his face or neck but instead got his left arm, which the boy had raised to protect himself. FPD officers struck him while he was on the ground, one of them putting a boot on the side of his head. He recalled the officers laughing about the incident afterward.

The lack of sufficient documentation or a supervisory force investigation prevents us from resolving which version of events is more accurate. However, even if the officer's version of the force used were accurate, the use of the dog to bite the boy was unreasonable. Though described as a felony, the facts as described by the officer, and the boy, indicate that this was a trespass—kids hanging out in a vacant building. The officers had no factual predicate to believe the boy was armed. The offense reports document no attempt to glean useful information about the second boy from the first, who was quickly arrested. By the canine officer's own account, he saw the boy in the closet and thus had the opportunity to assess the threat posed by this 5'5" 14 year old. Moreover, there were no exigent circumstances requiring apprehension by dog bite. Four officers were present and had control of the scene.

There is a recurring pattern of officers claiming they had to use a canine to extract a suspect hiding in a closed space. The frequency with which this particular rationale is used to justify dog bites, alongside the conclusory language in the reports, provides cause for concern. In December 2012, a 16-year-old African-American boy suspected of stealing a car fled from an officer, jumped several fences, and ran into a vacant house. A second officer arrived with a canine, which reportedly located the suspect hiding in a closet. Without providing a warning outside the closet, the officer opened the door and sent in the dog, which bit the suspect and dragged him out by the legs. This force appears objectively unreasonable. *See Kuha v. City of Minnetonka*, 365 F.3d 590, 598 (8th Cir. 2004), abrogated on other grounds by *Szabla v. City of Brooklyn Park, Minn.*, 486 F.3d 385, 396 (8th Cir. 2007) (en banc) (holding that "a jury could find it objectively unreasonable to use a police dog trained in the bite and hold method without first giving the suspect a warning and opportunity for peaceful surrender"). The first officer, who was also on the scene by this point, deployed his ECW against the suspect three times as the suspect struggled with the dog, which was still biting him. The offense reports provide only minimal explanation for why apprehension by dog bite was necessary. The pursuing officer claimed the suspect had "reached into the front section of his waist area," but the report does not

say that he relayed this information to the canine officer, and no weapon was found. Moreover, given the lack of a warning at the closet, the use of the dog and ECW at the same time, and the application of three ECW stuns in quick succession, the officers' conduct raises the possibility that the force was applied in retaliation for leading officers on a chase.

In November 2013, an officer deployed a canine to bite and detain a fleeing subject even though the officer knew the suspect was unarmed. The officer deemed the subject, an African-American male who was walking down the street, suspicious because he appeared to walk away when he saw the officer. The officer stopped him and frisked him, finding no weapons. The officer then ran his name for warrants. When the man heard the dispatcher say over the police radio that he had outstanding warrants—the report does not specify whether the warrants were for failing to appear in municipal court or to pay owed fines, or something more serious—he ran. The officer followed him and released his dog, which bit the man on both arms. The officer's supervisor found the force justified because the officer released the dog "fearing that the subject was armed," even though the officer had already determined the man was unarmed.

As these incidents demonstrate, FPD officers' use of canines to bite people is frequently unreasonable. Officers command dogs to apprehend by biting even when multiple officers are present. They make no attempt to slow situations down, creating time to resolve the situation with lesser force. They appear to use canines not to counter a physical threat but to inflict punishment. They act as if every offender has a gun, justifying their decisions based on what might be possible rather than what the facts indicate is likely. Overall, FPD officers' use of canines reflects a culture in which officers choose not to use the skills and tactics that could resolve a situation without injuries, and instead deploy tools and methods that are almost guaranteed to produce an injury of some type.

FPD's use of canines is part of its pattern of excessive force in violation of the Fourth Amendment. In addition, FPD's use of dog bites only against African-American subjects is evidence of discriminatory policing in violation of the Fourteenth Amendment and other federal laws.

c. FPD's Use of Force Is Sometimes Retaliatory and Punitive

Many FPD uses of force appear entirely punitive. Officers often use force in response to behavior that may be annoying or distasteful but does not pose a threat. The punitive use of force by officers is unconstitutional and, in many cases, criminal. *See, e.g.*, *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1197 (9th Cir. 2002) ("The Due Process clause protects pretrial detainees from the use of excessive force that amounts to punishment."); *see also* 18 U.S.C. § 242 (making willful deprivation of rights under color of law, such as by excessive force, a federal felony punishable by up to ten years in prison).

We reviewed many incidents in which it appeared that FPD officers used force not to counter a physical threat but to inflict punishment. The use of canines and ECWs, in particular, appear prone to such abuse by FPD. In April 2013, for example, a correctional officer deployed an ECW against an African-American prisoner, delivering a five-second shock, because the man had urinated out of his cell onto the jail floor. The correctional officer observed the man on his security camera feed inside the booking office. When the officer came out, some of the urine hit

his pant leg and, he said, almost caused him to slip. "Due to the possibility of contagion," the correctional officer claimed, he deployed his ECW "to cease the assault." The ECW prongs, however, both struck the prisoner in the back. The correctional officer's claim that he deployed the ECW to stop the ongoing threat of urine is not credible, particularly given that the prisoner was in his locked cell with his back to the officer at the time the ECW was deployed. Using less-lethal force to counter urination, especially when done punitively as appears to be the case here, is unreasonable. *See Shumate v. Cleveland*, 483 F. App'x 112, 114 (6th Cir. 2012) (affirming denial of summary judgment on an excessive-force claim against an officer who punched a handcuffed arrestee in response to being spit on, when the officer could have protected himself from further spitting by putting the arrestee in the back of a patrol car and closing the door).

d. FPD Use of Force Often Results from Unlawful Arrest and Officer Escalation

A defining aspect of FPD's pattern of excessive force is the extent to which force results from unlawful stops and arrests, and from officer escalation of incidents. Too often, officers overstep their authority by stopping individuals without reasonable suspicion and arresting without probable cause. Officers frequently compound the harm by using excessive force to effect the unlawful police action. Individuals encountering police under these circumstances are confused and surprised to find themselves being detained. They decline to stop or try to walk away, believing it within their rights to do so. They pull away incredulously, or respond with anger. Officers tend to respond to these reactions with force.

In January 2013, a patrol sergeant stopped an African-American man after he saw the man talk to an individual in a truck and then walk away. The sergeant detained the man, although he did not articulate any reasonable suspicion that criminal activity was afoot. When the man declined to answer questions or submit to a frisk—which the sergeant sought to execute despite articulating no reason to believe the man was armed—the sergeant grabbed the man by the belt, drew his ECW, and ordered the man to comply. The man crossed his arms and objected that he had not done anything wrong. Video captured by the ECW's built-in camera shows that the man made no aggressive movement toward the officer. The sergeant fired the ECW, applying a five-second cycle of electricity and causing the man to fall to the ground. The sergeant almost immediately applied the ECW again, which he later justified in his report by claiming that the man tried to stand up. The video makes clear, however, that the man never tried to stand—he only writhed in pain on the ground. The video also shows that the sergeant applied the ECW nearly continuously for 20 seconds, longer than represented in his report. The man was charged with Failure to Comply and Resisting Arrest, but no independent criminal violation.

In a January 2014 incident, officers attempted to arrest a young African-American man for trespassing on his girlfriend's grandparents' property, even though the man had been invited into the home by the girlfriend. According to officers, he resisted arrest, requiring several officers to subdue him. Seven officers repeatedly struck and used their ECWs against the subject, who was 5'8" and 170 pounds. The young man suffered head lacerations with significant bleeding.

In the above examples, force resulted from temporary detentions or attempted arrests for which officers lacked legal authority. Force at times appeared to be used as punishment for non-

compliance with an order that lacked legal authority. Even where FPD officers have legal grounds to stop or arrest, however, they frequently take actions that ratchet up tensions and needlessly escalate the situation to the point that they feel force is necessary. One illustrative instance from October 2012 began as a purported check on a pedestrian's well-being and ended with the man being taken to the ground, drive-stunned twice, and arrested for Manner of Walking in Roadway and Failure to Comply. In that case, an African-American man was walking after midnight in the outer lane of West Florissant Avenue when an officer asked him to stop. The officer reported that he believed the man might be under the influence of an "impairing substance." When the man, who was 5'5" and 135 pounds, kept walking, the officer grabbed his arm; when the man pulled away, the officer forced him to the ground. Then, for reasons not articulated in the officer's report, the officer decided to handcuff the man, applying his ECW in drive-stun mode twice, reportedly because the man would not provide his hand for cuffing. The man was arrested but there is no indication in the report that he was in fact impaired or indeed doing anything other than walking down the street when approached by the officer.

In November 2011, officers stopped a car for speeding. The two African-American women inside exited the car and vocally objected to the stop. They were told to get back in the car. When the woman in the passenger seat got out a second time, an officer announced she was under arrest for Failure to Comply. This decision escalated into a use of force. According to the officers, the woman swung her arms and legs, although apparently not at anyone, and then stiffened her body. An officer responded by drive-stunning her in the leg. The woman was charged with Failure to Comply and Resisting Arrest.

As these examples demonstrate, a significant number of the documented use-of-force incidents involve charges of Failure to Comply and Resisting Arrest only. This means that officers who claim to act based on reasonable suspicion or probable cause of a crime either are wrong much of the time or do not have an adequate legal basis for many stops and arrests in the first place. *Cf. Lewis v. City of New Orleans*, 415 U.S. 130, 136 (1974) (Powell, J., concurring) (cautioning that an overbroad code ordinance "tends to be invoked only where there is no other valid basis for arresting an objectionable or suspicious person" and that the "opportunity for abuse . . . is self-evident"). This pattern is a telltale sign of officer escalation and a strong indicator that the use of force was avoidable.

e. <u>FPD Officers Have a Pattern of Resorting to Force Too Quickly When Interacting with Vulnerable Populations</u>

Another dimension of FPD's pattern of unreasonable force is FPD's overreliance on force when interacting with more vulnerable populations, such as people with mental health conditions or intellectual disabilities and juvenile students.

i. Force Used Against People with Mental Health Conditions or Intellectual Disabilities

The Fourth Amendment requires that an individual's mental health condition or intellectual disability be considered when determining the reasonableness of an officer's use of force. *See Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 904 (6th Cir. 2004) (explaining in

case concerning use of force against a detainee with autism that "[t]he diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted"); *see also Phillips v. Community Ins. Corp.*, 678 F.3d 513, 526 (7th Cir. 2012); *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001); *Giannetti v. City of Stillwater*, 216 F. App'x 756, 764 (10th Cir. 2007). This is because people with such disabilities "may be physically unable to comply with police commands." *Phillips*, 678 F.3d at 526. Our review indicates that FPD officers do not adequately consider the mental health or cognitive disability of those they suspect of wrongdoing when deciding whether to use force.

Ferguson is currently in litigation against the estate of a man with mental illness who died in September 2011 after he had an ECW deployed against him three times for allegedly running toward an officer while swinging his fist. *See Estate of Moore v. Ferguson Police Dep't*, No. 4:14-cv-01443 (E.D. Mo. filed Aug. 19, 2014). The man had been running naked through the streets and pounding on cars that morning while yelling "I am Jesus." The Eighth Circuit recently considered a similar set of allegations in *De Boise v. Taser Intern., Inc.*, 760 F.3d 892 (8th Cir. 2014). There, a man suffering from schizophrenia, who had run naked in and out of his house and claimed to be a god, died after officers used their ECWs against him multiple times because he would not stay on the ground. *Id.* at 897-98. Although the court resolved the case on qualified immunity grounds without deciding the excessive-force issue, the one judge who reached that issue opined that the allegations could be sufficient to establish a Fourth Amendment violation. *Id.* at 899-900 (Bye, J., dissenting).

In 2013, FPD stopped a man running with a shopping cart because he seemed "suspicious." According to the file, the man was "obviously mentally handicapped." Officers took the man to the ground and attempted to arrest him for Failure to Comply after he refused to submit to a pat-down. In the officers' view, the man resisted arrest by pulling his arms away. The officers drive-stunned him in the side of the neck. They charged him only with Failure to Comply and Resisting Arrest. In August 2011, officers used an ECW device against a man with diabetes who bit an EMT's hand without breaking the skin. The man had been having seizures when he did not comply with officer commands.

In August 2010, an officer responded to a call about an African-American man walking onto the highway and lying down on the pavement. Seeing that the man was sweating, acting jittery, and had dilated pupils, the officer believed he was on drugs. The man was cooperative at first but balked, pushing the officer back when the officer tried to handcuff him for safety reasons. The officer struck the man several times with his Asp® baton—including once in the head, a form of deadly force—causing significant bleeding. Two other officers then deployed their ECWs against the man a total of five times.

Jail staff have also reacted to people with mental health conditions by resorting to greater force than necessary. For example, in July 2011, a correctional officer used an ECW to drive-stun an African-American male inmate three times after he tried to hang himself with material torn from a medical dressing and banged his head on the cell wall. That same month, a correctional officer used an ECW against an African-American inmate with bipolar disorder who broke the overhead glass light fixture and tried to use it to cut his wrists. According to the correctional officer, the glass was "safety glass" and could not be used to cut the skin.

These incidents indicate a pattern of insufficient sensitivity to, and training about, the limitations of those with mental health conditions or intellectual disabilities. Officers view mental illness as narcotic intoxication, or worse, willful defiance. They apply excessive force to such subjects, not accounting for the possibility that the subjects may not understand their commands or be able to comply with them. And they have been insufficiently trained on tactics that would minimize force when dealing with individuals who are in mental health crisis or who have intellectual disabilities.

ii. Force Used Against Students

FPD's approach to policing impacts how its officers interact with students, as well, leading them to treat routine discipline issues as criminal matters and to use force when communication and de-escalation techniques would likely resolve the conflict.

FPD stations two School Resource Officers in the Ferguson-Florissant School District,[19] one at Ferguson Middle School and one at McCluer South-Berkeley High School. The stated mission of the SRO program, according to the memorandum of understanding between FPD and the school district, is to provide a safe and secure learning environment for students. But that agreement does not clearly define the SROs' role or limit SRO involvement in cases of routine discipline or classroom management. Nor has FPD established such guidance for its SROs or provided officers with adequate training on engaging with youth in an educational setting. The result of these failures, combined with FPD's culture of unreasonable enforcement actions more generally, is police action that is unreasonable for a school environment.

For example, in November 2013, an SRO charged a ninth grade girl with several violations after she refused to follow his orders to walk to the principal's office. The student and a classmate, both 15-year-old African-American girls, had gotten into a fight during class. When the officer responded, school staff had the two girls separated in a hallway. One refused the officer's order to walk to the principal's office, instead trying to push past staff toward the other girl. The officer pushed her backward toward a row of lockers and then announced that she was under arrest for Failure to Comply. Although the officer agreed not to handcuff her when she agreed to walk to the principals' office, he forwarded charges of Failure to Comply, Resisting Arrest, and Peace Disturbance to the county family court. The other student was charged with Peace Disturbance.

FPD officers respond to misbehavior common among students with arrest and force, rather than reserving arrest for cases involving safety threats. As one SRO told us, the arrests he made during the 2013-14 school year overwhelmingly involved minor offenses—Disorderly Conduct, Peace Disturbance, and Failure to Comply with instructions. In one case, an SRO decided to arrest a 14-year-old African-American student at the Ferguson Middle School for Failure to Comply when the student refused to leave the classroom after getting into a trivial argument with another student. The situation escalated, resulting in the student being drive-

[19] The Ferguson-Florissant School District serves over 11,000 students, about 80% of whom are African American. *See* Ferguson-Florissant District Demographic Data 2014 & 2015, Mo. Dep't of Elementary & Secondary Educ., http://mcds.dese.mo.gov/guidedinquiry/Pages/District-and-School-Information.aspx (last visited Feb. 26, 2015).

stunned with an ECW in the classroom and the school seeking a 180-day suspension for the student. SROs' propensity for arresting students demonstrates a lack of understanding of the negative consequences associated with such arrests. In fact, SROs told us that they viewed increased arrests in the schools as a positive result of their work. This perspective suggests a failure of training (including training in mental health, counseling, and the development of the teenage brain); a lack of priority given to de-escalation and conflict resolution; and insufficient appreciation for the negative educational and long-term outcomes that can result from treating disciplinary concerns as crimes and using force on students. *See* Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, U.S. Dep't of Justice & U.S. Dep't of Education, http://www.justice.gov/crt/about/edu/documents/dcl.pdf (2014) (citing research and providing guidance to public schools on how to comply with federal nondiscrimination law).

f. FPD's Weak Oversight of Use of Force Reflects its Lack of Concern for Whether Officer Conduct Is Consistent with the Law or Promotes Police Legitimacy

FPD's use-of-force review system is particularly ineffectual. Force frequently is not reported. When it is, there is rarely any meaningful review. Supervisors do little to no investigation; either do not understand or choose not to follow FPD's use-of-force policy in analyzing officer conduct; rarely correct officer misconduct when they find it; and do not see the patterns of abuse that are evident when viewing these incidents in the aggregate.

While Chief Jackson implemented new department policies when he joined FPD in 2010, including on use-of-force reporting and review, these policies are routinely ignored. Under FPD General Order 410.00, when an officer uses or attempts to use any force, a supervisor must respond to the scene to investigate. The supervisor must complete a two-page use-of-force report assessing whether the use of force complied with FPD's force policy. Additional forms are required for ECW uses and vehicle pursuits. According to policy and our interviews with Chief Jackson, a use-of-force packet is assembled—which should include the use-of-force report and supplemental forms, all police reports, any photographs, and any other supporting materials—and forwarded up the chain of command to the Chief. The force reporting and review system is intended to "help identify trends, improve training and officer safety, and provide timely information for the department addressing use-of-force issues with the public." FPD General Order 410.07. The policy even requires that a professional standards officer conduct an annual review of all force incidents. *Id.* These requirements are not adhered to in practice.

Perhaps the greatest deviation from FPD's use-of-force policies is that officers frequently do not report the force they use at all. There are many indications that this underreporting is widespread. First, we located information in FPD's internal affairs files indicating instances of force that were not included in the force files provided by FPD. Second, in reviewing randomly selected reports from FPD's records management system, we found several offense reports that described officers using force with no corresponding use-of-force report. Third, we found evidence that force had been used but not documented in officers' workers compensation claims. Of the nine cases between 2010 and 2014 in which officers claimed injury sustained from using force on the job, three had no corresponding use-of-force paperwork. Fourth, the set of force investigations provided by FPD contains lengthy gaps, including six stretches of time ranging

from two to four months in which no incidents of force are reported. Otherwise, the files typically reflect between two and six force incidents per month. Fifth, we heard from community members about uses of force that do not appear within FPD's records, and we learned of many uses of force that were never officially reported or investigated from reviewing emails between FPD supervisors. Finally, FPD's force files reflect an overrepresentation of ECW uses—a type of force that creates a physical record (a spent ECW cartridge with discharged confetti) and that requires a separate form be filled out. It is much easier for officers to use physical blows and baton strikes without documenting them. Thus, the evidence indicates that a significant amount of force goes unreported within FPD. This in turn raises the possibility that the pattern of unreasonable force is even greater than we found.

Even when force is reported, the force review process falls so short of FPD's policy requirements that it is ineffective at improving officer safety or ensuring that force is used properly. First, and most significantly, supervisors almost never actually investigate force incidents. In almost every case, supervisors appear to view force investigations as a ministerial task, merely summarizing the involved officers' version of events and sometimes relying on the officers' offense report alone. The supervisory review starts and ends with the presumption that the officer's version of events is truthful and that the force was reasonable. As a consequence, though contrary to policy, supervisors almost never interview non-police witnesses, such as the arrestee or any independent witnesses. They do not review critical evidence even when it is readily available. For example, a significant portion of the documented uses of force occurs at the Ferguson jail, which employs surveillance cameras to monitor the area. Yet FPD records provide no indication that a supervisor has ever sought to review the footage for a jail incident. Nor do supervisors examine ECW camera video, even though it is available in FPD's newer model ECWs. Sometimes, supervisors provide no remarks on the use-of-force report, indicating simply, "see offense report."

Our review found the record to be replete with examples of this lack of meaningful supervisory review of force. For example, the use-of-force report for a May 2013 incident states that a suspect claims he had an ECW deployed against him and that he was punched in the head and face. The supervisor concludes simply, "other than the drive stun, no use of force was performed by the officers." The report does not clarify what investigation the supervisor did, if any, to assess the suspect's allegations, or how he determined that the allegations were false. Supervisors also fail to provide recommendations for how to ensure officer safety and minimize the need for force going forward. In January 2014, for instance, a correctional officer used force to subdue an inmate who tried to escape while the correctional officer was moving the inmate's cellmate to another cell without assistance. The supervisor missed the opportunity to recommend that correctional officers not act alone in such risky situations.

Second, supervisors either do not understand or choose not to follow FPD's use-of-force policy. As discussed above, in many of the force incidents we reviewed, it is clear from the officers' offense reports that the force used was, at the very least, contrary to FPD policy. Nonetheless, based on records provided by FPD, it appears that first-line supervisors and the command staff found all but one of the 151 incidents we reviewed to be within policy. This includes the instances of unreasonable ECW use discussed above. FPD policy advises that ECWs are to be used to "overcome active aggression or overt actions of assault." FPD General

Order 499.00. They are to be used to "avert[] a potentially injurious or dangerous situation," and never "punitively or for purposes of coercion." FPD General Order 499.04. Simply referring back to these policies should have made clear to supervisors that the many uses of ECWs against subjects who were merely argumentative or passively resistant violated policy.

For example, in April 2014, an intoxicated jail detainee climbed up on the bars in his cell and refused to get down when ordered to by the arresting officer and the correctional officer on duty. The correctional officer then fired an ECW at him, from outside the closed cell door, striking the detainee in the chest and causing him to fall to the ground. In addition to being excessive, this force violated explicit FPD policy that "[p]roper consideration and care should be taken when deploying the X26 TASER on subjects who are in an elevated position or in other circumstance where a fall may cause substantial injury or death." FPD General Order 499.04. The reviewing supervisor deemed the use of force within policy.

Supervisors seem to believe that any level of resistance justifies any level of force. They routinely rely on boilerplate language, such as the statement that the subject took "a fighting stance," to justify force. Such language is not specific enough to understand the specific behavior the officer encountered and thus to determine whether the officer's response was reasonable. Indeed, a report from September 2010 shows how such terms may obscure what happened. In that case, the supervisor wrote that the subject "turned to [the officer] in a fighting stance" even though the officer's report makes clear that he chased and tackled the subject as the subject fled. That particular use of force may have been reasonable, but the use-of-force report reveals how little attention supervisors give to their force investigations. Another common justification, frequently offered by officers who use ECWs to subdue individuals who do not readily put their hands behind their back after being put on the ground, is to claim that a subject's hands were near his waist, where he might have a weapon. Supervisors tend to accept this justification without question.

Third, the review process breaks down even further when officers at the sergeant level or above use force. Instead of reporting their use of force to an official higher up the chain, who could evaluate it objectively, they complete the use-of-force investigation themselves. We found several examples of supervisors investigating their own conduct. When force investigations are conducted by the very officers involved in the incidents, the department is less likely to identify policy and constitutional violations, and the public is less likely to trust the department's commitment to policing itself.

Fourth, the failure of supervisors to investigate and the absence of analysis from their use-of-force reports frustrate review up the chain of command. Lieutenants, the assigned captain, and the Police Chief typically receive at most a one- or two-paragraph summary from supervisors; no witness statements, photographs, or video footage that should have been obtained during the investigation is included. These reviewers are left to rely only on the offense report and the sergeant's cursory summary. To take one example, 21 officers responded to a fight at the high school in March 2013, and several of them used force to take students into custody. FPD records contain only one offense report, which does not describe the actions of all officers who used force. The use-of-force report identifies the involved officers as "multiple" (without names) and provides only a one-paragraph summary stating that students "were grabbed,

handcuffed, and restrained using various techniques of control." The offense report reflects that officers collected video from the school's security cameras, but the supervisor apparently never reviewed it. Further, while the offense report contains witness statements, those statements relate to the underlying fight, not the officer use of force, and there appear to be no statements from any of the 21 officers who responded to the fight. It is not possible for higher-level supervisors to adequately assess uses of force with so little information.

In fact, although a use-of-force packet is supposed to include all related documents, in practice only the two-page use-of-force report, that is, the supervisor's brief summary of the incident, goes to the Chief. In the example from the high school, then, the Chief would have known only that there was a fight at the school and that force was used—not which officers used force, what type of force was used, or what the students did to warrant the use of force. Offense reports are available in FPD's records management system, but Chief Jackson told us he rarely retrieves them when reviewing uses of force. The Chief also told us that he has never overturned a supervisor's determination of whether a use of force fell within FPD policy.

Finally, FPD does not perform any comprehensive review of force incidents sufficient to detect patterns of misconduct by a particular officer or unit, or patterns regarding a particular type of force. Indeed, FPD does not keep records in a manner that would allow for such a review. Within FPD's paper storage system, the two-page use-of-force reports (which are usually handwritten) are kept separately from all other documentation, including ECW and pursuit forms for the same incidents. Offense reports are attached to some use-of-force reports but not others. Some use-of-force reports have been removed from FPD's set of force files because the incidents became the subjects of an internal investigation or a lawsuit. As a consequence, when FPD provided us what it considers to be its force files—which, as described above, we have reason to believe do not capture all actual force incidents—a majority of those files were missing a critical document, such as an offense report, ECW report, or the use-of-force report itself. We had to make repeated requests for documents to construct force files amenable to fair review. There were some documents that FPD was unable to locate, even after repeated requests.

With its records incomplete and scattered, the department is unable to implement an early intervention system to identify officers who tend to use excessive force or the need for more training or better equipment—goals explicitly set out by FPD policy. It appears that no annual review of force incidents is conducted, as required by FPD General Order 410.07; indeed, a meaningful annual audit would be impossible. These recordkeeping problems also explain why Chief Jackson told us he could not remember ever imposing discipline for an improper use of force or ordering further training based on force problems.

These deficiencies in use-of-force review can have serious consequences. They make it less likely that officers will be held accountable for excessive force and more likely that constitutional violations will occur. They create potentially devastating liability for the City for failing to put in place systems to ensure officers operate within the bounds of the law. And they result in a police department that does not give its officers the supervision they need to do their jobs safely, effectively, and constitutionally.

B. Ferguson's Municipal Court Practices

The Ferguson municipal court handles most charges brought by FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. The impact that revenue concerns have on court operations undermines the court's role as a fair and impartial judicial body.[20] Our investigation has uncovered substantial evidence that the court's procedures are constitutionally deficient and function to impede a person's ability to challenge or resolve a municipal charge, resulting in unnecessarily prolonged cases and an increased likelihood of running afoul of court requirements. At the same time, the court imposes severe penalties when a defendant fails to meet court requirements, including added fines and fees and arrest warrants that are unnecessary and run counter to public safety. These practices both reflect and reinforce an approach to law enforcement in Ferguson that violates the Constitution and undermines police legitimacy and community trust.

Ferguson's municipal court practices combine to cause significant harm to many individuals who have cases pending before the court. Our investigation has found overwhelming evidence of minor municipal code violations resulting in multiple arrests, jail time, and payments that exceed the cost of the original ticket many times over. One woman, discussed above, received two parking tickets for a single violation in 2007 that then totaled $151 plus fees. Over seven years later, she still owed Ferguson $541—after already paying $550 in fines and fees, having multiple arrest warrants issued against her, and being arrested and jailed on several occasions. Another woman told us that when she went to court to try to pay $100 on a $600 outstanding balance, the Court Clerk refused to take the partial payment, even though the woman explained that she was a single mother and could not afford to pay more that month. A 90-year-old man had a warrant issued for his arrest after he failed to timely pay the five citations FPD issued to him during a single traffic stop in 2013. An 83-year-old man had a warrant issued against him when he failed to timely resolve his Derelict Auto violation. A 67-year-old woman told us she was stopped and arrested by a Ferguson police officer for an outstanding warrant for failure to pay a trash-removal citation. She did not know about the warrant until her arrest, and the court ultimately charged her $1,000 in fines, which she continues to pay off in $100 monthly increments despite being on a limited, fixed income. We have heard similar stories from dozens of other individuals and have reviewed court records documenting many additional instances of similarly harsh penalties, often for relatively minor violations.

Our review of police and court records suggests that much of the harm of Ferguson's law enforcement practices in recent years is attributable to the court's routine use of arrest warrants to secure collection and compliance when a person misses a required court appearance or payment. In a case involving a moving violation, procedural failures also result in the suspension of the defendant's license. And, until recently, the court regularly imposed a separate Failure to Appear charge for missed appearances and payments; that charge resulted in an additional fine in the amount of $75.50, plus $26.50 in court costs. *See* Ferguson Mun. Code § 13-58 (repealed Sept. 23, 2014). During the last three years, the court imposed roughly one Failure to Appear charge per every two citations or summonses issued by FPD. Since at least

[20] The influence of revenue on the court, described both in Part II and in Part III.B. of this Report, may itself be unlawful. *See Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972) (finding a violation of the due process right to a fair and impartial trial where a town mayor served as judge and was also responsible for the town's finances, which were substantially dependent on "fines, forfeitures, costs, and fees" collected by the court).

2010, the court has collected more revenue for Failure to Appear charges than for any other charge. This includes $442,901 in fines for Failure to Appear violations in 2013, which comprised 24% of the total revenue the court collected that year. While the City Council repealed the Failure to Appear ordinance in September 2014, many people continue to owe fines and fees stemming from that charge. And the court continues to issue arrest warrants in every case where that charge previously would have been applied. License suspension practices are similarly unchanged. Once issued, arrest warrants can, and frequently do, lead to arrest and time in jail, despite the fact that the underlying offense did not result in a penalty of imprisonment.[21]

Thus, while the municipal court does not generally deem the code violations that come before it as jail-worthy, it routinely views the failure to appear in court to remit payment to the City as jail-worthy, and commonly issues warrants to arrest individuals who have failed to make timely payment. Similarly, while the municipal court does not have any authority to impose a *fine* of over $1,000 for any offense, it is not uncommon for individuals to pay more than this amount to the City of Ferguson—in forfeited bond payments, additional Failure to Appear charges, and added court fees—for what may have begun as a simple code violation. In this way, the penalties that the court imposes are driven not by public safety needs, but by financial interests. And despite the harm imposed by these needless penalties, until recently, the City and court did little to respond to the increasing frequency of Failure to Appear charges, and in many respects made court practices more opaque and difficult to navigate.

1. Court Practices Impose Substantial and Unnecessary Barriers to the Challenge or Resolution of Municipal Code Violations

It is a hallmark of due process that individuals are entitled to adequate notice of the allegations made against them and to a meaningful opportunity to be heard. *See Cole v. Arkansas*, 333 U.S. 196, 201 (1948); *see also Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972) (applying due process requirements to case adjudicated by municipal traffic court). As documented below, however, Ferguson municipal court rules and procedures often fail to provide these basic protections, imposing unnecessary barriers to resolving a citation or summons and thus increasing the likelihood of incurring the severe penalties that result if a code violation is not quickly resolved.

We have concerns not only about the obstacles to resolving a charge even when an individual chooses not to contest it, but also about the trial processes that apply in the rare occasion that a person does attempt to challenge a charge. While it is "axiomatic that a fair trial in a fair tribunal is a basic requirement of due process," *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009), the adjudicative tribunal provided by the Ferguson municipal court appears deficient in many respects.[22] Attempts to raise legal claims are met with retaliatory conduct. In an August 2012 email exchange, for instance, the Court Clerk asked what the

[21] As with many of the problematic court practices that we identify in this report, other municipalities in St. Louis County also have imposed a separate Failure to Appear charge, fine, and fee for missed court appearances and payments. Many continue to do so.

[22] As discussed in Part II of this report, City officials have acknowledged several of these procedural deficiencies. In 2012, a City Councilmember, citing specific examples, urged against reappointing Judge Brockmeyer because he "often times does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn't let all the pertinent witnesses testify before rendering a verdict."

Prosecuting Attorney does when an attorney appears in a red light camera case, and the Prosecuting Attorney responded: "I usually dismiss them if the attorney merely requests a recommendation. If the attorney goes off on all of the constitutional stuff, then I tell the attorney to come . . . and argue in front [of] the judge—after that, his client can pay the ticket." We have found evidence of similar adverse action taken against litigants attempting to fulsomely argue a case at trial. The man discussed above who was cited after allowing his child to urinate in a bush attempted to challenge his charges. The man retained counsel who, during trial, was repeatedly interrupted by the court during his cross-examination of the officer. When the attorney objected to the interruptions, the judge told him that, if he continued on this path, "I will hold you in contempt and I will incarcerate you," which, as discussed below, the court has done in the past to others appearing before it. The attorney told us that, believing no line of questioning would alter the outcome, he tempered his defense so as not to be jailed. Notably, at that trial, even though the testifying officer had previously been found untruthful during an official FPD investigation, the prosecuting attorney presented his testimony without informing defendant of that fact, and the court credited that testimony.[23] The evidence thus suggests substantial deficiencies in the manner in which the court conducts trials.

Even where defendants opt not to challenge their charges, a number of court processes make resolving a case exceedingly difficult. City officials and FPD officers we spoke with nearly uniformly asserted that individuals' experiences when they become embroiled in Ferguson's municipal code enforcement are due not to any failings in Ferguson's law enforcement practices, but rather to those individuals' lack of "personal responsibility." But these statements ignore the barriers to resolving a case that court practices impose, including: 1) a lack of transparency regarding rights and responsibilities; 2) requiring in-person appearance to resolve most municipal charges; 3) policies that exacerbate the harms of Missouri's law requiring license suspension where a person fails to appear on a moving violation charge; 4) basic access deficiencies that frustrate a person's ability to resolve even those charges that do not require in-court appearance; and 5) legally inadequate fine assessment methods that do not appropriately consider a person's ability to pay and do not provide alternatives to fines for those living in or near poverty. Together, these barriers impose considerable hardship. We have heard repeated reports, and found evidence in court records, of people appearing in court many times—

[23] This finding of untruthfulness by a police officer constitutes impeachment evidence that must be disclosed in any trial in which the officer testifies for the City. Under the Fourteenth Amendment, the failure to disclose evidence that is "favorable to an accused" violates due process "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This duty applies to impeachment evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), and it applies even if the defendant does not request the evidence, *United States v. Agurs*, 427 U.S. 97, 107 (1976). The duty encompasses, furthermore, information that should be known to the prosecutor, including information known solely by the police department. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). This constitutional duty to disclose appears to extend to municipal court cases, which can result in jail terms of up to three months under Section 29-2 of Ferguson's municipal code. *See City of Kansas City v. Oxley*, 579 S.W.2d 113, 114 (Mo. 1979) (en banc) (holding that the due process standard of proof beyond a reasonable doubt applied in a municipal court speeding case because "the violation has criminal overtones"); *see also City of Cape Girardeau v. Jones*, 725 S.W.2d 904, 907-09 (Mo. Ct. App. 1987) (explaining that reasonable doubt standard applied to municipal trespass prosecution because municipal ordinance violations are "quasi-criminal," and reversing two convictions based on privilege against self-incrimination). We are aware of at least two cases, from January 2015, in which the City called this officer as a witness without disclosing the finding of untruthfulness to the defense.

in some instances on more than ten occasions—to try to resolve a case but being unable to do so, and subsequently having additional fines, fees, and arrest warrants issued against them.

a. Court Practices and Procedural Deficiencies Create a Lack of Transparency Regarding Rights and Responsibilities

It is often difficult for an individual who receives a municipal citation or summons in Ferguson to know how much is owed, where and how to pay the ticket, what the options for payment are, what rights the individual has, and what the consequences are for various actions or oversights. The initial information provided to people who are cited for violating Ferguson's municipal code is often incomplete or inconsistent. Communication with municipal court defendants is haphazard and known by the court to be unreliable. And the court's procedures and operations are ambiguous, are not written down, and are not transparent or even available to the public on the court's website or elsewhere.

The rules and procedures of the court are difficult for the public to discern. Aside from a small number of exceptions, the Municipal Judge issues rules of practice and procedure verbally and on an ad hoc basis. Until recently, on the rare occasion that the Judge issued a written order that altered court practices, those orders were not distributed broadly to court and other FPD officials whose actions they affect and were not readily accessible to the public. Further, Ferguson, unlike other courts in the region, does not include *any* information about its operations on its website other than inaccurate instructions about how to make payment.[24] Court staff acknowledged during our investigation that the public would benefit from increased information about how to resolve cases and about court practices and procedures. Yet neither the court nor other City officials have undertaken efforts to make court operations more transparent in order to ensure that litigants understand their rights or court procedures, or to enable the public to assess whether the court is operating in a fair manner.

Current court practices fail to provide adequate information even to those who are charged with a municipal violation. The lack of clarity about a person's rights and responsibilities often begins from the moment a person is issued a citation. For some offenses, FPD uses state of Missouri uniform citations, and typically indicates on the ticket the assigned court date for the offense. Many times, however, FPD officers omit critical information from the citation, which makes it impossible for a person to determine the specific nature of the offense charged, the amount of the fine owed, or whether a court appearance is required or some alternative method of payment is available. In some cases, citations fail to indicate the offense charged altogether; in November 2013, for instance, court staff wrote FPD patrol to "see what [a] ticket was for" because it "does not have a charge on it." In other cases, a ticket will indicate a charge but omit other crucial information. For example, speeding tickets often fail to indicate the alleged speed observed, even though both the fine owed and whether a court appearance is mandatory depends upon the specific speed alleged. Evidence shows that in some of these cases,

[24] *See City Courts*, City of Ferguson, http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts (last visited Feb. 26, 2015). By contrast, the neighboring municipality of Normandy operates a court website with an entire page containing information regarding fine due dates, methods of payment, and different payment options, including the availability of payment plans for those who cannot afford to pay a fine in full. *See How Do I Pay a Ticket / Fine*?, City of Normandy, http://www.cityofnormandy.gov/index.aspx?NID=570 (last visited Feb. 26, 2015).

a person has appeared in court but been unable to resolve the citation because of the missing information. In June 2014, for instance, a court clerk wrote to an FPD officer: "The above ticket . . . does not have a speed in it. The guy came in and we had to send him away. Can you email me the speed when you get time." Separate and apart from the difficulties these omissions create for people, the fact that the court staff routinely add the speed to tickets weeks after they are issued raises concerns about the accuracy and reliability of officers' assertions in official records.

We have also found evidence that in issuing citations, FPD officers frequently provide people with incorrect information about the date and time of their assigned court session. In November 2012, court staff emailed the two patrol lieutenants asking: "Would you please be so kind to tell your squads to check their ct. dates and times. We are getting quite a few wrong dates and times [on tickets]." In December 2012, a court clerk emailed an FPD officer to inform him that while he had been putting 6:00 p.m. on his citations that month, the scheduled court session was actually a morning session. More recently, in March 2014, an officer wrote a court clerk because the officer had issued a citation that listed the court date as ten days later than the actual court date assigned. Some of these emails indicate that court staff planned to send a letter to the person who was cited. As noted below, however, such letters often are returned to the court as undeliverable. It is thus unsurprising that, on one occasion, a City employee who works in the building where court was held wrote the Court Clerk to tell her that "[a] few people stopped by tonight looking for court and I referred them to you." The email notes that one person insisted on providing her information so the employee could "vouch for her appearance for Night Court." The email does not identify any other individual who showed up for court that night, nor does it state that any steps were taken to ensure that those assigned the incorrect court date did not have Failure to Appear charges and fines imposed, arrest warrants issued against them, or their licenses suspended.

Even if the citation a person receives has been properly filled out, it is often unclear whether a court appearance is required or if some other method of resolving a case is available. Ferguson has a schedule that establishes fixed fines for a limited number of violations that do not require court appearance. Nonetheless, this list—called the "TVB" or "Traffic Violations Bureau" list—is incomplete and does not provide sufficient clarity regarding whether a court appearance is mandatory. Court staff members have themselves informed us that there are certain offenses for which they will sometimes require a court appearance and other times not, depending on their own assessment of whether an appearance should be required in a given case. That information, however, is not reliably communicated to the person who has been given the citation.

Although the City of Ferguson frequently bears responsibility for giving people misinformation about when they must appear in court, Ferguson does little to ensure that persons who have missed a court date are properly notified of the consequences that result from an additional missed appearance, such as arrest or losing their driver's licenses, or that those consequences have already been levied. If a person misses a required appearance, it is the purported practice of court staff to send a letter that sets a new court date and informs the defendant that missing the next appearance will result in an arrest warrant being issued. But court staff do not even claim to send these letters before issuing warrants if an individual is on a payment plan and misses a payment, or if a person already has an outstanding warrant on a

different offense; in those cases, the court issues a warrant after a single missed payment or appearance. Further, even for the cases in which the court says it does send such letters prior to issuing a warrant, court records suggest that those letters are often not actually sent. Even where a letter is sent, some are returned to court, and court staff told us that in those cases, they make no additional effort to notify the individual of the new court date or the consequences of non-appearance. Court staff and staff from other municipal courts have informed us that defendants in poverty are more likely not to receive such a letter from court because they frequently change residence.

If an individual misses a second court date, an arrest warrant is issued, without any confirmation that the individual received notice of that second court date. In the past, when the court issued a warrant it would also send notice to the individual that a warrant was issued against them and telling them to appear at the police department to resolve the matter. This notice did not provide the basis of the arrest warrant or describe how it might be resolved. In any case, Ferguson stopped providing even this incomplete notice in 2012. In explaining the decision to stop sending this warrant notice, the Court Clerk wrote in a June 2011 email to Chief Jackson that "this will save the cost of warrant cards and postage" and "it is not necessary to send out these cards." Some court employees, however, told us that the notice letter had been useful—at least for those who received it—and that they believe it should still be sent. That the court discontinued what little notice it was providing to people in advance of issuing a warrant is particularly troubling given that, during our investigation, we spoke with several individuals who were arrested without ever knowing that a warrant was outstanding.[25]

Once a warrant is issued, a person can clear the warrant by appearing at the court window in the police department and paying a pre-determined bond. However, that process is itself not communicated to the public and, in any case, is only useful if an individual knows there is a warrant for her or his arrest. Court clerks told us that in some cases they deem sympathetic in their own discretion, they will cancel the warrant without a bond. Further, it appears that if a person is aware of an outstanding warrant but believes that the warrant was issued in error, that person can petition the Municipal Judge to cancel the warrant only after the bond is paid in full. If a person cannot afford to pay the bond, there is no opportunity to seek recourse from the court.

If a person is arrested on an outstanding warrant—or as the result of an encounter with FPD—it is often difficult to secure release with a bond payment, not only because of the inordinately high bond amounts discussed below, but also because of procedural obstacles. In practice, bond procedures depart from those articulated in official policy, and are arbitrary and confusing. FPD staff have told us that correctional officers have at times tried to find a warrant in the court's files to determine the bond amount owed, but have been unable to do so. This is unsurprising given the existence of what has been described to us as "drawers and drawers of warrants." In some cases, people have attempted to pay a bond to secure the release of a family

[25] Prior to September 2014, a second missed court appearance (or a single missed payment) would result not only in a warrant being issued, but also the imposition of an additional Failure to Appear *charge*. This charge was imposed automatically. It does not appear that there was any attempt by the court to inform individuals that a failure to appear could be excused upon a showing of good cause, or to provide individuals with an opportunity to make such a showing. Additionally, just as the court does not currently send any notice informing a defendant that an arrest warrant has been issued, the court did not send any notice that this additional Failure to Appear charge had been brought.

member in FPD custody, but were not even seen by FPD staff. On one occasion, an FPD staff member reported to an FPD captain that a person "came to the station last night and waited to post bond for [a detainee], from 1:00 until 3:30. No one ever came up to get her money and no one informed her that she was going to have to wait that long."

b. Needlessly Requiring In-Court Appearances for Most Code Violations Imposes Unnecessary Obstacles to Resolving Cases

Ferguson requires far more defendants to appear in court than is required under state law. Under Missouri Supreme Court rules, there is a short list of violations that require the violator's appearance in court: any violation resulting in personal injury or property damage; driving while intoxicated; driving without a proper license; and attempting to elude a police officer. *See* Mo. Sup. Ct. R. 37.49. The municipal judge of each court has the discretion to expand this list of "must appears," and Ferguson's municipal court has expanded it exponentially: of 376 actively charged municipal offenses, court staff informed us that approximately 229 typically require an appearance in court before the fine can be paid, including Dog Creating Nuisance, Equipment Violations, No Passing Zone, Housing – Overgrown Vegetation, and Failure to Remove Leaf Debris. Ferguson requires these court appearances regardless of whether the individual is contesting the charges.

Requiring an individual to appear at a specific place and time to pay a citation makes it far more likely that the individual will fail to appear or pay the citation on time, quickly resulting, in Ferguson, in an arrest warrant and a suspended license. Even setting aside the fact that people often receive inaccurate information about when they must appear in court, the in-person appearance requirement imposes particular difficulties on low-wage workers, single parents, and those with limited access to reliable transportation. Requiring an individual to appear in court also imposes particular burdens on those with jobs that have set hours that may conflict with an assigned court session. Court sessions are sometimes set during the workday and sometimes in the early evening. Additionally, while court dates can be set for several months after the citation was issued, in some cases they can also be issued as early as a week after a citation is received. For example, court staff have instructed FPD officers that derelict auto violations must be set for the "very next court date even if it is just a week . . . or so away." This can add an additional obstacle for those with firmly established employment schedules.

There are also historical reasons, of which the City is well-aware, that many Ferguson residents may not appear in court. Some individuals fear that if they cannot immediately pay the fines they owe, they will be arrested and sent to jail. Ferguson court staff members told us that they believe the high number of missed court appearances in their court is attributable, in part, to this popular belief. These fears are well founded. While Judge Brockmeyer has told us that he has never sentenced someone to jail time for being unable to pay a fine, we have found evidence that the Judge has held people appearing in court for contempt on account of their unwillingness to answer questions and sentenced those individuals to jail time. In December 2013, the FPD officer assigned to provide security at a court session directly emailed the City Manager to provide notice that "Judge Brockmeyer ordered [a defendant] arrested tonight after [he] refused to answer any questions and told the Judge that he had no jurisdiction. This happened on two separate occasions and with the second occasion when [the defendant] continued with his refusal

to answer the Judge, he was order[ed] to be arrested and held for 10 days."[26] We also spoke with a woman who told us that, after asking questions in court, FPD officers arrested her for Contempt of Court at the instructions of the Court Clerk. Moreover, we have also received a report of an FPD officer arresting an individual at court for an outstanding warrant. In that instance, which occurred in April 2014, the individual—who was in court to make a fine payment—was approached by an FPD officer, asked to step outside of the court session, and was immediately arrested. In addition, as Ferguson's Municipal Judge confirmed, it is not uncommon for him to add charges and assess additional fines when a defendant challenges the citation that brought the defendant into court. Appearing in court in Ferguson also requires waits that can stretch into hours, sometimes outdoors in inclement weather. Many individuals report being treated dismissively, or worse, by court staff and the Municipal Judge.

Further, as Ferguson officials have told us, many people have experience with the numerous other municipal courts in St. Louis County that informs individuals' expectations about the Ferguson municipal court. Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions. For instance, court clerks from other municipalities have told us that they have seen judges order people arrested if they appear in court with an outstanding warrant but are unable to pay the fine owed or post the bond amount listed on the warrant. Indeed, one municipal judge from a neighboring municipality told us that this practice has resulted in what he believes to be a widespread belief that those who attend court but cannot pay will be immediately arrested—a view that municipal judge says is "entirely the municipal courts' fault" for perpetuating because they have not taken steps to correct it. Recent reports have documented other problematic practices. For example, a June 2014 letter from Presiding Circuit Court Judge Maura McShane to municipal court judges in the region discussed troubling and possibly unlawful practices of municipal courts in St. Louis County that served to prevent the public from attending court sessions. These practices included not allowing children in court. Indeed, as late as October 2014, the municipal court website in the neighboring municipality of Bel Ridge—where Judge Brockmeyer serves as prosecutor—stated that children are not allowed in court. While it appears that Ferguson's court has always allowed children, we talked with people who assumed it did not because of their experiences in other courts. One man told us he was aggressively questioned by FPD officers after he left his child outside court with a friend because of this assumption. Thus, even though Ferguson might not engage in some of these practices, and while it may even be the case that other municipalities have themselves implemented reforms, the long history of these practices continues to shape community members' views of what might happen to them if they attend court.

Court officials have told us that Ferguson's expansive list of "must appear" offenses is not driven by any public safety need. That is underscored by the fact that, in some cases, attorneys are allowed to resolve such offenses over the phone without making any appearance in

[26] The email reports that the defendant, a black male, was booked into jail. This email does not provide the full context of the circumstances that led to the 10-day jail sentence and further information is required to assess the appropriateness of that order. Nonetheless, the email suggests that the court jailed a defendant for refusing to answer questions, which raises significant Fifth Amendment concerns. There is also no indication as to whether the defendant was represented or, if not, was allowed or afforded representation to defend against the contempt charge and 10-day sentence.

court. Nonetheless, despite the acknowledged obstacles to appearing in person in court and the lack of any articulated need to appear in court in all but a few instances, Ferguson has taken few, if any, steps to reduce the number of cases that require a court appearance.

c. Driver's License Suspensions Mandated by State Law and Unnecessarily Prolonged by Ferguson Make It Difficult to Resolve a Case and Impose Substantial Hardship

For many who have already had a warrant issued against them for failing to either appear or make a required payment, appearing in court is made especially difficult by the fact that their warrants likely resulted in the suspension of their driver's licenses. Pursuant to Missouri state law, anyone who fails to pay a traffic citation for a moving violation on time, or who fails to appear in court regarding a moving traffic violation, has his or her driver's license suspended. Mo. Rev. Stat. § 302.341.1. Thus, by virtue of having their licenses suspended, those who have already missed a required court appearance are more likely to fail to meet subsequent court obligations if they require physically appearing in court—fostering a cycle of missed appearances that is difficult to end. That is particularly so given what some City officials from Ferguson and surrounding communities have called substandard public transportation options. We spoke with one woman who had her license suspended because she received a Failure to Appear charge in Ferguson and so had to rely on a friend to drive her to court. When her friend canceled, she had no other means of getting to court on time, missed court, and had another Failure to Appear charge and arrest warrant issued against her—adding to the charges that required resolution before her license could be reinstated.[27]

To be clear, responsibility for the hardship imposed by automatically suspending a person's license for failing to appear in a traffic case rests largely with this state law. Notably, however, Ferguson's own discretionary practices amplify and prolong that law's impact. A temporary suspension can be lifted with a compliance letter from the municipal court, but the Ferguson municipal court does not issue compliance letters unless a person has satisfied the *entire fine* pending on the charge that caused the suspension. This rule is not mandated by state law, which instead provides a municipality with the authority to decide when to issue a compliance letter. *See* Mo. Rev. Stat. § 302.341.1 ("Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition."). Indeed, Ferguson court staff told us that they will issue compliance letters before full payment has been made for cases that they determine, in their unguided discretion, to be sympathetic.

This rule and the Ferguson practices that magnify its impact underscore how missed court appearances can have broad ramifications for individuals' ability to maintain a job and care for their families. We spoke with one woman who received three citations during a single incident in 2013 in which she pulled to the side of the road to allow a police car to pass, was confronted by the officer for doing so, and was cited for obstructing traffic, failing to signal, and not wearing a seatbelt. The woman appeared in court to challenge those citations, was told a new trial date would be mailed to her, and instead received notice from the Missouri Department of Revenue

[27] While Missouri provides a process to secure a temporary waiver of a license suspension, we have heard from many that this process can be difficult and, in any case, is only available in certain circumstances.

several months later that her license was suspended. Upon informing the Court Clerk that she never received notice of her court date, the Clerk told her the trial date had passed two weeks earlier and that there was now a warrant for her arrest pending.[28] Given that the woman's license was suspended only two weeks after her trial date, it appears the court did not send a warning letter before entering a warrant and suspending the license, contrary to purported policy. Court records likewise do not indicate a letter being sent. The woman asked to see the Municipal Judge to explain the situation, but court staff informed her that she could only see the Judge if she was issued a new court date and that she would only be issued a new court date if she paid her $200 bond. With no opportunity to further petition the court, she wrote to Mayor Knowles about her situation, stating:

> Although I feel I have been harassed, wronged and unjustly done by Ferguson . . . [w]hat I am upset and concerned about is my driver's license being suspended. I was told that I may not be able to [be] reinstate[d] until the tickets are taken care of. I am a hard working mother of two children and I cannot by any means take care of my family or work with my license being suspended and being unable to drive. I have to have [a] valid license to keep my job because I transport clients that I work with not to mention I drive my children back and forth to school, practices and rehearsals on a daily basis. I am writing this letter because no one has been able to help me and I am really hoping that I can get some help getting this issue resolved expediently.

It appears that, at the Mayor's request, the court entered "Not Guilty" dispositions on her cases, several months after they first resulted in the license suspension.

d. Court Operations Impose Obstacles to Resolving Even Those Offenses that Do Not Require In-Person Court Appearance

The limited number of code violations that do not require an in-person court appearance can likewise be difficult to resolve, even if a person can afford to do so. The court has accepted mailed payments for some time and has recently begun to accept online payments, but the court's website suggests that in-person payment is required and provides no information that payment online or by mail is an option. As a result, many people try to remit payment to the court window within the police department. But community members have informed us that the court window often closes earlier than the posted hours indicate. Indeed, during our investigation, we observed the court window close at 4:30 p.m. on days where an evening court session was not being held, despite the fact that both the Ferguson City website and the Missouri Courts website state that the window closes at 5:00 p.m.[29] On one such occasion, we observed two different sets

[28] By initiating the license suspension procedure after a single missed appearance and without first providing notice or an opportunity to remedy the missed appearance, the court appears to have violated Missouri law. *See* Mo. Rev. Stat. § 302.341.1 (providing that after a missed appearance associated with a moving violation, a court "shall within ten days . . . inform the defendant by ordinary mail at the last address shown on the court records that the court will order the director of revenue to suspend the defendant's driving privileges if the charges are not disposed of and fully paid within thirty days from the date of mailing").

[29] *See City Courts*, City of Ferguson, http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts (last visited Feb. 26, 2015); *Ferguson Municipal Court*, Your Missouri Courts, http://www.courts.mo.gov/page.jsp?id=8862 (last visited Feb. 26, 2015).

of people arrive after 4:30 p.m. but before 5:00 p.m. One man told us his ticket payment was due that day. Another woman arrived in the rain with her small child, unsuccessfully attempted to call someone to the window, and left. Even when the court window is technically open, we have seen people standing at the window waiting for a response to their knocks for long periods of time, sometimes in inclement weather—even as court staff sat inside the police department tending to their normal duties.

As noted above, documents we reviewed showed that even where individuals are successful in talking with court staff about a citation, FPD-issued citations are sometimes so deficient that court staff are unable to determine what the fine, or even charge, is supposed to be. Evidence also shows that court staff have at times been unable to even find a person's case file, often because the FPD officer who issued the ticket failed to properly file a copy. In these cases, a person is left unable to resolve her or his citation.

e. <u>High Fines, Coupled with Legally Inadequate Ability-to-Pay Determinations and Insufficient Alternatives to Immediate Payment, Impose a Significant Burden on People Living In or Near Poverty</u>

It is common for a single traffic stop or other encounter with FPD to give rise to fines in amounts that a person living in poverty is unable to immediately pay. This fact is attributable in part to FPD's practice of issuing multiple citations—frequently three or more—on a single stop. This fact is also attributable to the fine assessment practices of the Ferguson municipal court, including not only the high fine amounts imposed, but also the inadequate process available for those who cannot afford to pay a fine. Even setting aside cases where additional fines and fees were imposed for Failure to Appear violations, our investigation found instances in which the court charged $302 for a single Manner of Walking violation; $427 for a single Peace Disturbance violation; $531 for High Grass and Weeds; $777 for Resisting Arrest; and $792 for Failure to Obey, and $527 for Failure to Comply, which officers appear to use interchangeably.

For many, the hardship of the fine amounts imposed is exacerbated by the fact that they owe similar fines in other, neighboring municipalities. We spoke with one woman who, in addition to owing several hundred dollars in fines to Ferguson, also owed fines to the municipal courts in Jennings and Edmundson. In total, she owed over $2,500 in fines and fees, even after already making over $1,000 in payments and clearing cases in several other municipalities. This woman's case is not unique. We have heard reports from many individuals and even City officials that, in light of the large number of municipalities in the area immediately surrounding Ferguson, most of which have their own police departments and municipal courts, it is common for people to face significant fines from many municipalities.

City officials have extolled that the Ferguson preset fine schedule establishes fines that are "at or near the top of the list" compared with other municipalities across a large number of offenses. A more recent comparison of the preset fines of roughly 70 municipal courts in the region confirms that Ferguson's fine amounts are above regional averages for many offenses, particularly discretionary offenses such as non-speeding-related traffic offenses. That comparison also shows that Ferguson imposes the highest fine of any of those roughly 70 municipalities for the offense of Failing to Provide Proof of Insurance; Ferguson charges $375, whereas the average fine imposed is $186 and the median fine imposed is $175. In 2013 alone,

the Ferguson court collected over $286,000 in fines for that offense—more than any other offense except Failure to Appear.

The fines that the court imposes for offenses without preset fines are more difficult to evaluate precisely because they are imposed on a case-by-case basis. Typically, however, in imposing fines for non-TVB offenses during court sessions, the Municipal Judge adopts the fine recommendations of the Prosecuting Attorney—who also serves as the Ferguson City Attorney. As discussed above, court staff have communicated with the Municipal Judge regarding the need to ensure that the prosecutor's recommended fines are sufficiently high because "[w]e need to keep up our revenue." We were also told of at least one incident in which an attorney received a fine recommendation from the prosecutor for his client, but when the client went to court to pay the fine, a clerk refused payment, informing her that there was an additional $100 owed beyond the fine recommended by the prosecutor.

The court imposes these fines without providing any process by which a person can seek a fine reduction on account of financial incapacity. The court does not provide any opportunity for a person unable to pay a preset TVB fine to seek a modification of the fine amount. Nor does the court consider a person's financial ability to pay in determining how much of a fine to impose in cases without preset fines. The Ferguson court's failure to assess a defendant's ability to pay stands in direct tension with Missouri law, which instructs that in determining the amount and the method of payment of a fine, a court "shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual." Mo. Rev. Stat. § 560.026.

In lieu of proportioning a fine to a particular individual's ability to pay or allowing a process by which a person could petition the court for a reduction, the court offers payment plans to those who cannot afford to immediately pay in full. But such payment plans do not serve as a substitute for an ability-to-pay determination, which, properly employed, can enable a person in some cases to pay in full and resolve the case. Moreover, the court's rules regarding payment plans are themselves severe. Unlike some other municipalities that require a $50 monthly payment, Ferguson's standard payment plan requires payments of $100 per month, which remains a difficult amount for many to pay, especially those who are also making payments to other municipalities. Further, the court treats a single missed, partial, or untimely payment as a missed appearance. In such a case, the court immediately issues an arrest warrant without any notice or opportunity to explain why a payment was missed—for example, because the person was sick, or the court closed its doors early that day. The court reportedly has softened this rule during the course of our investigation by allowing a person who has missed a payment to go to court to seek leave for not paying the full amount owed. However, even this softened rule provides minimal relief, as making this request requires a person to appear in court the first Wednesday of the month at 11:00 a.m. If a person misses that session, the court immediately issues an arrest warrant.

Before the court provided this Wednesday morning court session for those on payment plans, court staff frequently rejected requests from payment plan participants to reduce or continue monthly payments—leaving individuals unable to make the required payment with no recourse besides incurring a Failure to Appear charge, receiving additional fines, and having an arrest warrant issued. In July 2014, an assistant court clerk wrote in an email that she rejected a defendant's request for a reduced monthly payment on account of inability to pay and told the

defendant, "everyone says [they] can't pay." This is consistent with earlier noted statements by the acting Ferguson prosecutor that he stopped granting "needless requests for continuances from the payment docket." Another defendant who owed $1,002 in fines and fees stemming from a Driving with a Revoked License charge wrote to a City official that he would be unable to make his required monthly payment but hoped to avoid having a warrant issued. He explained that he was unemployed, that the court had put him on a payment plan only a week before his first payment was due, and that he did not have enough time to gather enough money. He implored the City to provide "some kind of community service to work off the fines/fees," stating that "I want to pay you guys what I owe" and "I have been trying to scrape up what I can," but that "with warrants it's hard to get a job." The City official forwarded the request to a court clerk, who noted that the underlying charge dated back to 2007, that five Failure to Appear charges had been levied, and that no payments had yet been made. The clerk responded: "In this certain case [the defendant] will go to warrant." Records show that, only a week earlier, this same clerk asked a court clerk from another municipality to clear a ticket for former Ferguson Police Chief Moonier as a "courtesy." And, only a month later, that same clerk also helped the Ferguson Collector of Revenue clear two citations issued by neighboring municipalities.

Ferguson does not typically offer community service as an alternative to fines. City officials have emphasized to us that Ferguson is one of only a few municipalities in the region to provide *any* form of a community service program, and that the program that is available is well run. But the program, which began in February 2014, is only available on a limited basis, mostly to certain defendants who are 19 years old or younger.[30] We have heard directly from individuals who could not afford to pay their fines—and thus accumulated additional charges and fines and had warrants issued against them—that they requested a community service alternative to monetary payment but were told no such alternative existed. One man who still owes $1,100 stemming from a speeding and seatbelt violation from 2000 told us that he has been arrested repeatedly in connection with the fines he cannot afford to pay, and that "no one is willing to work with him to find an alternative solution." City officials have recognized the need to provide a meaningful community service option. In August 2013, one City Councilmember wrote to the City Manager and the Mayor that, "[f]or a few years now we have talked about offering community service to those who can't afford to pay their fines, but we haven't actually made it happen." The Councilmember noted the benefits of such a program, including that it would "keep those people that simply don't have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again."

2. The Court Imposes Unduly Harsh Penalties for Missed Payments or Appearances

The procedural deficiencies identified above work together to make it exceedingly difficult to resolve a case and exceedingly easy to run afoul of the court's stringent and confusing rules, particularly for those living in or near poverty. That the court is at least in part responsible for causing cases to protract and result in technical violations has not prevented it from imposing

[30] Recently, the court has allowed some individuals over age 19 to resolve fines through community service, but that remains a rarity. *See City of Ferguson Continues Court Reform Initiative by Offering Community Service Program*, City of Ferguson (Dec. 15, 2014), http://www.fergusoncity.com/CivicAlerts.aspx?AID=370&ARC=699 (stating community service program was launched in partnership with Ferguson Youth Initiative in February 2014 "to assist teenagers and certain other defendants").

significant penalties when those violations occur. Although Ferguson's court—unlike many other municipal courts in the region—has ceased imposing the Failure to Appear charge, the court continues to routinely issue arrest warrants for missed appearances and missed payments. The evidence we have found shows that these arrest warrants are used almost exclusively for the purpose of compelling payment through the threat of incarceration. The evidence also shows that the harms of the court's warrant practices are exacerbated by the court's bond procedures, which impose unnecessary obstacles to clearing a warrant or securing release after being arrested on a warrant and often function to further prolong a case and a person's involvement in the municipal justice system. These practices—together with the consequences to individuals and communities that result—raise significant due process and equal protection concerns.

a. The Ferguson Municipal Court Uses Arrest Warrants Primarily as a Means of Securing Payment

Ferguson uses its police department in large part as a collection agency for its municipal court. Ferguson's municipal court issues arrest warrants at a rate that police officials have called, in internal emails, "staggering." According to the court's own figures, as of December 2014, over 16,000 people had outstanding arrest warrants that had been issued by the court. In fiscal year 2013 alone, the court issued warrants to approximately 9,007 people. Many of those individuals had warrants issued on multiple charges, as the 9,007 warrants applied to 32,975 different offenses.

In the wake of several news accounts indicating that the Ferguson municipal court issued over 32,000 warrants in fiscal year 2013, court staff determined that it had mistakenly reported to the state of Missouri the number of charged offenses that had warrants (32,975), not the number of people who had warrants outstanding (9,007). Our investigation indicates that is the case. In any event, it is probative of FPD's enforcement practices that those roughly 9,000 warrants were issued for over 32,000 offenses. Moreover, for those against whom a warrant is issued, the number of offenses included within the warrant has tremendous practical importance. As discussed below, the bond amount a person must pay to clear a warrant before an arrest occurs, or to secure release once a warrant has been executed, is often dependent on the number of offenses to which the warrant applies. And, that the court issued warrants for the arrest of roughly 9,000 people is itself not insignificant; even under that calculation, Ferguson has one of the highest warrant totals in the region.

The large number of warrants issued by the court, by any count, is due exclusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations. With extremely limited exceptions, every warrant issued by the Ferguson municipal court was issued because: 1) a person missed consecutive court appearances, or 2) a person missed a single required fine payment as part of a payment plan. Under current court policy, the court issues a warrant in every case where either of those circumstances arises—regardless of the severity of the code violation that the case involves. Indeed, the court rarely issues a warrant for any other purpose. FPD does not request arrest or any other kind of warrants from the Ferguson municipal court; in fact, FPD officers told us that they have been instructed not to file warrant applications with the municipal court because the court does not have the capacity to consider them.

While issuing municipal warrants against people who have not appeared or paid their municipal code violation fines is sometimes framed as addressing the failure to abide by court rules, in practice, it is clear that warrants are primarily issued to coerce payment.[31] One municipal judge from a neighboring municipality told us that the use of the Failure to Appear charge "provides cushion for judges against the attack that the court is operating as a debtor's prison." And the Municipal Judge in Ferguson has acknowledged repeatedly that the warrants the court issues are not put in place for public safety purposes. Indeed, once a warrant issues, there is no urgency within FPD to actually execute it. Court staff reported that they typically take weeks, if not months, to enter warrants into the system that enables patrol officers to determine if a person they encounter has an outstanding warrant. As of December 2014, for example, some warrants issued in September 2014 were not yet detectable to officers in the field. Court staff also informed us that no one from FPD has ever commented on that lag or prioritized closing it. Nor does there seem to be any public safety obstacle to eliminating failure to appear warrants altogether. The court has, in fact, adopted a temporary "warrant recall program" that allows individuals who show up to court to immediately have their warrants recalled and a new court date assigned. And, under longstanding practice, once an attorney makes an appearance in a case, the court automatically discharges any pending warrants.

That the primary role of warrants is not to protect public safety but rather to facilitate fine collection is further evidenced by the fact that the warrants issued by the court are overwhelmingly issued in non-criminal traffic cases that would not themselves result in a penalty of imprisonment. From 2010 to December 2014, the offenses (besides Failure to Appear ordinance violations) that most often led to a municipal warrant were: Driving While License Is Suspended, Expired License Plates, Failure to Register a Vehicle, No Proof of Insurance, and Speed Limit violations. These offenses comprised the majority of offenses that led to a warrant not because they are more severe than other offenses, but rather because every missed appearance or payment on any charge results in a warrant, and these were some of the most common charges brought by FPD during that period.

Even though these underlying code violations would not on their own result in a penalty of imprisonment, arrest and detention are not uncommon once a warrant enters on a case. We have found that FPD officers frequently check individuals for warrants, even when the person is not reasonably suspected of engaging in any criminal activity, and, if a municipal warrant exists, will often make an arrest. City officials have told us that the decision to arrest a person for an outstanding warrant is "highly discretionary" and that officers will frequently not arrest unless the person is "ignorant." Records show, however, that officers do arrest individuals for outstanding municipal warrants with considerable frequency. Jail records are poorly managed, and data on jail bookings is only available as of April 2014. But during the roughly six-month period from April to September 2014, 256 people were booked into the Ferguson City Jail after being arrested at least in part for an outstanding warrant—96% of whom were African American. Of these individuals, 28 were held for longer than two days, and 27 of these 28 people were black.

[31] As stated in the Missouri Municipal Court Handbook produced by the Circuit Court: "Defendants who fail or refuse to pay their fines and costs can be extremely difficult to deal with, but if there is a credible threat of incarceration if they do not pay, the job of collection becomes much easier." Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.6 (2010).

Similarly, data collected during vehicle stops shows that, during a larger period of time between October 2012 and October 2014, FPD arrested roughly 460 individuals following a vehicle stop *solely* because they had outstanding warrants. This figure is likely a significant underrepresentation of the total number of people arrested for outstanding warrants during that period, as it does not include those people arrested on outstanding warrants not during traffic stops; nor does it include those people arrested during traffic stops for multiple reasons, but who might not have been stopped, much less arrested, without the officer performing a warrant check on the car and finding an outstanding warrant. Even among this limited pool, the data shows the disparate impact these arrests have on African Americans. Of the 460 individuals arrested during traffic stops solely for outstanding warrants, 443 individuals—or 96%—were African American.

That data also does not include those people arrested by *other* municipal police departments on the basis of an outstanding warrant issued by Ferguson. As has been widely reported in recent months, many municipal police departments in the region identify people with warrants pending in other towns and then arrest and hold those individuals on behalf of those towns. FPD's records show that it routinely arrests individuals on warrants issued by other jurisdictions. And, although we did not review the records of other departments, we have heard reports of many individuals who were arrested for a Ferguson-issued warrant by police officers outside of Ferguson. On some occasions, Ferguson will decline to pick up a person arrested in a different municipality for a Ferguson warrant and, after however long it takes for that decision to be made, the person will be released, sometimes after being required to pay bond. On other occasions, Ferguson will send an officer to retrieve the person for incarceration in the Ferguson City Jail; FPD supervisors have in fact instructed officers to do so "regardless of the charge or the bond amount, or the number of prisoners we have in custody." We found evidence of FPD officers traveling more than 200 miles to retrieve a person detained by another agency on a Ferguson municipal warrant.

Because of the large number of municipalities in the region, many of which have warrant practices similar to Ferguson, it is not unusual for a person to be arrested by one department, have outstanding warrants pending in other police departments, and be handed off from one department to another until all warrants are cleared. We have heard of individuals who have run out of money during this process—referred to by many as the "muni shuffle"—and as a result were detained for a week or longer.

The large number of municipal court warrants being issued, many of which lead to arrest, raises significant due process and equal protection concerns. In particular, Ferguson's practice of automatically treating a missed payment as a failure to appear—thus triggering an arrest warrant and possible incarceration—is directly at odds with well-established law that prohibits "punishing a person for his poverty." *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *see also Tate v. Short*, 401 U.S. 395, 398 (1971). In *Bearden,* the Supreme Court found unconstitutional a state's decision to revoke probation and sentence a defendant to prison because the defendant was unable to pay a required fine. *Bearden*, 461 U.S. at 672-73. The Court held that before imposing imprisonment, a court must first inquire as to whether the missed payment was attributable to an inability to pay and, if so, "consider alternate measures of punishment other than imprisonment." *Id.* at 672; *see also Martin v. Solem*, 801 F.2d 324, 332 (8th Cir. 1986)

(noting that the state court had failed to adequately determine, as required by *Bearden*, whether the defendant had "made sufficient bona fide efforts legally to acquire the resources to pay," but nonetheless denying habeas relief because the defendant's failure to pay was due not to indigency but his "willful refusal to pay").

The Ferguson court, however, has in the past routinely issued arrest warrants when a person is unable to make a required fine payment without any ability-to-pay determination. While the court does not *sentence* a defendant to jail in such a case, the result is often equivalent to what *Bearden* proscribes: the incarceration of a defendant solely because of an inability to pay a fine. In response to concerns about issuing warrants in such cases, Ferguson officials have told us that without issuing warrants and threatening incarceration, they have no ability to secure payment. But the Supreme Court rejected that argument, finding that states are "not powerless to enforce judgments against those financially unable to pay a fine," and noting that—especially in cases like those at issue here in which the court has already made a determination that penological interests do *not* demand incarceration—a court can "establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state's goals of punishment and deterrence, given the defendant's diminished financial resources."[32] ***Id.*** As discussed above, however, Ferguson has not established any such alternative.[33]

Finally, in light of the significant portion of municipal charges that lead to an arrest warrant, as well as the substantial number of arrest warrants that lead to arrest and detention, we have considerable concerns regarding whether individuals facing charges in Ferguson municipal court are entitled to, and being unlawfully denied, the right to counsel.

b. Ferguson's Bond Practices Impose Undue Hardship on Those Seeking to Secure Release from the Ferguson City Jail

Our investigation found substantial deficiencies in the way Ferguson police and court officials set, accept, refund, and forfeit bond payments. Recently, in response to concerns raised during our investigation, the City implemented several changes to its bond practices, most of which apply to those detained after a warrantless arrest.[34] These changes represent positive

[32] Ferguson officials have also told us that the arrest warrant is issued not because of the missed payment per se, but rather because the person missing the payment failed to abide by the court's rules. But the Supreme Court has rejected that contention, too. In *Bearden,* the Court noted that the sentencing court's stated concern "was that the petitioner had disobeyed a prior court order to pay the fine," but found that the sentence nonetheless "is no more than imprisoning a person solely because he lacks funds" to pay. *Bearden*, 461 U.S. at 674.

[33] Additionally, Ferguson's municipal code provides: "When a sentence for violation of any provision of this Code or other ordinance of the city . . . includes a fine and such fine is not paid, or if the costs of prosecution adjudged against an offender are not paid, the person under sentence shall be imprisoned one day for every ten dollars ($10.00) of any such unpaid fine or costs . . . not to exceed a total of four (4) months." Ferguson Mun. Code § 1-16. Our investigation did not uncover any evidence that the court has sentenced anyone to imprisonment pursuant to this statute in the past several years. Nonetheless, it is concerning that this statute, which unconstitutionally sanctions imprisonment for failing to pay a fine, remains in effect. *Cf. Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

[34] In December 2014, the court set forth a bond schedule for warrantless arrests, which provides that, for all but 14 code violations, a person arrested pursuant to a municipal code violation and brought to Ferguson City Jail shall be issued a citation or summons and released on his or her own recognizance without any bond payment required. For those 14 code violations requiring a bond, the court has set "fixed" bond amounts, although these are subject to the court's discretion to raise or lower those amounts at the request of the City or the detained individual. The court's

developments, but many deficiencies remain.[35] Given the high number of arrest warrants issued by the municipal court—and given that in many cases a person can only clear a pending warrant or secure release from detention by posting bond—the deficiencies identified below impose significant harm to individuals in Ferguson.

Current bond practices are unclear and inconsistent. Information provided by the City reveals a haphazard bond system that results in people being erroneously arrested, and some people paying bond but not getting credit for having done so. Documents describe officers finding hundred dollar bills in their pockets that were given to them for bond payment and not remembering which jail detainee provided them; bond paperwork being found on the floor; and individuals being arrested after their bonds had been accepted because the corresponding warrants were never cancelled. At one point in 2012, Ferguson's Court Clerk called such issues a "daily problem." The City's practices for receiving and tracking bond payments have not changed appreciably since then.

The practices for setting bond are similarly erratic. The Municipal Judge advised us that he sets all bonds upon issuing an arrest warrant. We found, however, that bond amounts are mostly set by court staff, and are rarely even reviewed by the Judge. While court staff told us that the current bond schedule requires a bond of $200 for up to four traffic offenses, $100 for every traffic offense thereafter, $100 for every Failure to Appear charge, and $300 for every criminal offense, FPD's own policy includes a bond schedule that departs from these figures. In practice, bond amounts vary widely. *See* FPD General Order 421.02. Our review of a random sample of warrants indicates that bond is set in a manner that often departs from both the schedule referenced by court staff and the schedule found in FPD policy. In a number of these cases, the bond amount far exceeded the amount of the underlying fine.

The court's bond practices, including the fact that the court often imposes bonds that exceed the amount owed to the court, do not appear to be grounded in any public safety need. In a July 2014 email to Chief Jackson and other police officials, the Court Clerk reported that "[s]tarting today we are going to reduce anyone's bond that calls and is in warrant[] to half the amount," explaining that "[t]his may bring in some extra monies this way." The email identifies no public safety obstacle or other reason not to implement the bond reduction. Notably, the email also states that "[w]e will only do this between the hours of 8:30 to 4" and that no half-bond will be accepted after those hours unless the Court Clerk approves it.[36] Thus, as a result of this policy, an individual able to appear at the court window during business hours would pay half as much to clear a warrant as an individual who is actually arrested on a warrant after hours. That Ferguson's bond practices do not appear grounded in public safety is underscored by the

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recent order further provides that, even if an individual does not pay the bond required, he or she shall in any case be released after 12 hours, rather than the previous 72-hour limit.

[35] For example, the recent orders fail to specify that, in considering whether to adjust the bond imposed, the court shall make an assessment of an individual's ability to pay, and assign bond proportionately. *Cf. Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (noting that the incarceration of those who cannot afford to meet the requirements of a fixed bond schedule "without meaningful consideration of other possible alternatives" infringes on due process and equal protection requirements).

[36] The court's website states that the court window is open from 8:30 a.m. to 5:00 p.m., not 4:00 p.m. *See City Courts,* City of Ferguson, http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts (last visited Feb. 26, 2015).

fact that the court will typically cancel outstanding warrants without requiring the posting of *any* bond for people who have an attorney enter an appearance on their behalf. Records show that this practice is also applied haphazardly, and there do not appear to be any rules that govern the apparent discretion court staff have to waive or require bond following an attorney's appearance.

It is not uncommon for an individual charged with only a minor violation to be arrested on a warrant, be unable to afford bond, and have no recourse but to await release. Longstanding court rules provide for a person arrested pursuant to an arrest warrant to be held up to 72 hours before being released without bond, and the court's recent orders do not appear to change this. Records show that individuals are routinely held for 72 hours. FPD's records management system only began capturing meaningful jail data in April 2014; but from April to September 2014 alone, 77 people were detained in the jail for longer than two days, and many of those detentions neared, reached, or exceeded the 72-hour mark. Of those 77 people, 73, or 95%, were black. Many people, including the woman described earlier who was charged with two parking code violations, have reported being held up until the 72-hour limit—despite having no ability to pay.

Indeed, many others report being held for far longer, and documentary evidence is consistent with these reports. In April 2010, for example, the Chief of Police wrote an email to the Captain of the Patrol Division stating that the "intent is that when the watch commander / street supervisor gets the census from the jail he asks who will come up on 72 hrs.," and, if there is any such person, "he can have them given the next available court date and released, or authorize they remain in jail, since he will be the designate." The email continues: "If someone has already been there more than 72 hours, it may be assumed their continued hold was previously authorized." Further, as noted above, while comprehensive jail records do not exist for detentions prior to April 2014, records do show several recent instances in which FPD detained a person for longer than the purported 72-hour limit.

Despite the fact that those arrested by FPD for outstanding municipal warrants can be held for several days if unable to post bond, the Ferguson municipal court does not give credit for time served. As a result, there have been many cases in which a person has been arrested on a warrant, detained for 72 hours or more, and released owing the same amount as before the arrest was made. Court records do not even track the total amount of time a person has spent in jail as part of a case. When asked why this is not tracked, a member of court staff told us: "It's only three days anyway."

These prolonged detentions for those who cannot afford bond are alarming, and raise considerable due process and equal protection concerns. The prolonged detentions are especially concerning given that there is no public safety need for those who receive municipal warrants to be jailed at all. The Ferguson Municipal Judge has acknowledged that for most code violations, it is "probably a good idea to do away with jail time."

Further, there are many circumstances in which court practices preclude a person from making payment against the underlying fine owed—and thus resolving the case, or at least moving the case toward resolution—and instead force the person to pay a bond. If, for example, an individual is jailed on a "must appear" charge and has not yet appeared in court to have the

fine assessed, the individual will not be allowed to make payment on the underlying charge. Rather, the person must post bond, receive a new court date, appear in court, and start the process anew. Even when the underlying fine has been assessed, a person in jail may still be forced to make a bond payment instead of a fine payment to secure release if court staff are unavailable to determine the amount the person owes. And when a person attempts to resolve a warrant before they end up arrested, a bond payment will typically be required unless the person can afford to pay the underlying fine in full, as, by purported policy, the court does not accept partial payment of fines outside of a court-sanctioned payment plan.

Bond forfeiture procedures also raise significant due process concerns. Under current practice, the first missed appearance or missed payment following a bond payment results in a warning letter being sent; after the second missed appearance or payment, the court initiates a forfeiture action (and issues another arrest warrant). As with "warrant warning letters" described above, our investigation has been unable to verify that the court *consistently* sends bond forfeiture warning letters. And, as with warrant warning letters, bond forfeiture warning letters are sometimes returned to the court, but court staff members do not appear to make any further attempt to contact the intended recipient.

Upon a bond being forfeited, the court directs the bond money into the City's account and does not apply the amount to the individual's underlying fine. For example, if a person owes a $200 fine payment, is arrested on a warrant, and posts a bond of $200, the forfeiture of the bond will result in the fine remaining $200 and an arrest warrant being issued. If, instead, Ferguson were to allow this $200 to go toward the underlying fine, this would resolve the matter entirely, obviating the need for any warrant or subsequent court appearance. Not applying a forfeited bond to the underlying fine is especially troubling considering that this policy does not appear to be clearly communicated to those paying bonds. Particularly in cases where the bond is set at an amount near the underlying fine owed—which we have found to be common—it is entirely plausible that a person paying bond would mistakenly believe that payment resolves the case.

When asked why the forfeited bond is not applied to the underlying fine, court staff asserted that applicable law prohibits them from doing so without the bond payer's consent.[37] That explanation is grounded in an incorrect view of the law. In *Perry v. Aversman*, 168 S.W.3d 541 (Mo. Ct. App. 2005), the Missouri Court of Appeals explicitly upheld a rule requiring that forfeited bonds be applied to pending fines of the person who paid bond and found that such practices are acceptable so long as the court provides sufficient notice. *Id.* at 543-46. In light of the fact that applicable law permits forfeited bonds to be applied to pending fines, Ferguson's longstanding practice of directing forfeited bond money to the City's general fund is troubling. In fiscal year 2013 alone, the City collected forfeited bond amounts of $177,168, which could instead have been applied to the fines of those making the payments.

Ferguson's rules and procedures for *refunding* bond payments upon satisfaction of the underlying fine raise similar concerns. Ferguson requires that when a person pays the underlying

[37] Critically, however, when a person attends court after paying a bond and is assessed a fine, court staff members *do* automatically apply the bond already paid to the fine owed, and in fact require application of the bond to the fine regardless of the defendant's wishes. Thus, the court has simultaneously asserted that it *can* apply a bond to a fine without a defendant's consent when the bond would otherwise be returned to the defendant, but that it *cannot* apply a bond to a fine without a defendant's consent when the bond would otherwise be forfeited into the City's own accounts.

fine to avoid bond forfeiture, he or she must pay in person and provide photo identification. Yet, where the underlying fine is less than the bond amount—a common occurrence—the City does not immediately refund the difference to the individual. Rather, pursuant to a directive issued by the current City Finance Director approximately four years ago, bond refunds *cannot* be made in person, and instead must be sent via mail. According to Ferguson's Court Clerk, it is not entirely uncommon for these refund checks to be returned as undeliverable and become "unclaimed property."

C. Ferguson Law Enforcement Practices Disproportionately Harm Ferguson's African-American Residents and Are Driven in Part by Racial Bias

Ferguson's police and municipal court practices disproportionately harm African Americans. Further, our investigation found substantial evidence that this harm stems in part from intentional discrimination in violation of the Constitution.

African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system. Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014. Other statistical disparities, set forth in detail below, show that in Ferguson:

- African Americans are 2.07 times more likely to be searched during a vehicular stop but are 26% less likely to have contraband found on them during a search. They are 2.00 times more likely to receive a citation and 2.37 times more likely to be arrested following a vehicular stop.

- African Americans have force used against them at disproportionately high rates, accounting for 88% of all cases from 2010 to August 2014 in which an FPD officer reported using force. In all 14 uses of force involving a canine bite for which we have information about the race of the person bitten, the person was African American.

- African Americans are more likely to receive multiple citations during a single incident, receiving four or more citations on 73 occasions between October 2012 and July 2014, whereas non-African Americans received four or more citations only twice during that period.

- African Americans account for 95% of Manner of Walking charges; 94% of all Fail to Comply charges; 92% of all Resisting Arrest charges; 92% of all Peace Disturbance charges; and 89% of all Failure to Obey charges.[38]

- African Americans are 68% less likely than others to have their cases dismissed by the Municipal Judge, and in 2013 African Americans accounted for 92% of cases in which an arrest warrant was issued.

[38] As noted above, FPD charges violations of Municipal Code Section 29-16 as both Failure to Obey and Failure to Comply. Court data carries forward this inconsistency.

- African Americans account for 96% of known arrests made exclusively because of an outstanding municipal warrant.

These disparities are not the necessary or unavoidable results of legitimate public safety efforts. In fact, the practices that lead to these disparities in many ways undermine law enforcement effectiveness. *See, e.g.*, Jack Glaser, *Suspect Race: Causes and Consequence of Racial Profiling* 96-126 (2015) (because profiling can increase crime while harming communities, it has a "high risk" of contravening the core police objectives of controlling crime and promoting public safety). The disparate impact of these practices thus violates federal law, including Title VI and the Safe Streets Act.

The racially disparate impact of Ferguson's practices is driven, at least in part, by intentional discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. Racial bias and stereotyping is evident from the facts, taken together. This evidence includes: the consistency and magnitude of the racial disparities throughout Ferguson's police and court enforcement actions; the selection and execution of police and court practices that disproportionately harm African Americans and do little to promote public safety; the persistent exercise of discretion to the detriment of African Americans; the apparent consideration of race in assessing threat; and the historical opposition to having African Americans live in Ferguson, which lingers among some today. We have also found explicit racial bias in the communications of police and court supervisors and that some officials apply racial stereotypes, rather than facts, to explain the harm African Americans experience due to Ferguson's approach to law enforcement. "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Based on this evidence as a whole, we have found that Ferguson's law enforcement activities stem in part from a discriminatory purpose and thus deny African Americans equal protection of the laws in violation of the Constitution.

1. Ferguson's Law Enforcement Actions Impose a Disparate Impact on African Americans that Violates Federal Law

African Americans are disproportionately represented at nearly every stage of Ferguson law enforcement, from initial police contact to final disposition of a case in municipal court. While FPD's data collection and retention practices are deficient in many respects, the data that is collected by FPD is sufficient to allow for meaningful and reliable analysis of racial disparities. This data—collected directly by police and court officials—reveals racial disparities that are substantial and consistent across a wide range of police and court enforcement actions.

African Americans experience the harms of the disparities identified below as part of a comprehensive municipal justice system that, at each juncture, enforces the law more harshly against black people than others. The disparate impact of Ferguson's enforcement actions is compounding: at each point in the enforcement process there is a higher likelihood that an African American will be subjected to harsher treatment; accordingly, as the adverse consequences imposed by Ferguson grow more and more severe, those consequences are imposed more and more disproportionately against African Americans. Thus, while 85% of

FPD's vehicle stops are of African Americans, 90% of FPD's citations are issued to African Americans, and 92% of all warrants are issued in cases against African Americans. Strikingly, available data shows that of those subjected to one of the most severe actions this system routinely imposes—actual arrest for an outstanding municipal warrant—96% are African American.

a. Disparate Impact of FPD Practices

i. Disparate Impact of FPD Enforcement Actions Arising from Vehicular Stops

Pursuant to Missouri state law on racial profiling, Mo. Rev. Stat. § 590.650, FPD officers are required to collect race and other data during every traffic stop. While some law enforcement agencies collect more comprehensive data to identify and stem racial profiling, this information is sufficient to show that FPD practices exert a racially disparate impact along several dimensions.

FPD reported 11,610 vehicle stops between October 2012 and October 2014. African Americans accounted for 85%, or 9,875, of those stops, despite making up only 67% of the population. White individuals made up 15%, or 1,735, of stops during that period, despite representing 29% of the population. These differences indicate that FPD traffic stop practices may disparately impact black drivers.[39] Even setting aside the question of whether there are racial disparities in FPD's traffic *stop* practices, however, the data collected during those stops reliably shows statistically significant racial disparities in the *outcomes* people receive *after* being stopped. Unlike with vehicle stops, assessing the disparate impact of post-stop outcomes—such as the rate at which stops result in citations, searches, or arrests—is not dependent on population data or on assumptions about differential offending rates by race; instead, the enforcement actions imposed against stopped black drivers are compared directly to the enforcement actions imposed against stopped white drivers.

In Ferguson, traffic stops of black drivers are more likely to lead to searches, citations, and arrests than are stops of white drivers. Black people are significantly more likely to be searched during a traffic stop than white people. From October 2012 to October 2014, 11% of stopped black drivers were searched, whereas only 5% of stopped white drivers were searched.

[39] While there are limitations to using basic population data as a benchmark when evaluating whether there are racial disparities in vehicle stops, it is sufficiently reliable here. In fact, in Ferguson, black drivers might account for *less* of the driving pool than would be expected from overall population rates because a lower proportion of blacks than whites is at or above the minimum driving age. *See 2009-2013 5-Year American Community Survey*, U.S. Census Bureau (2015) (showing higher proportion of black population in under-15 and under-19 age categories than white population). Ferguson officials have told us that they believe that black drivers account for *more* of the driving pool than their 67% share of the population because the driving pool also includes drivers traveling from neighboring municipalities—many of which have higher black populations than Ferguson. Our investigation casts doubt upon that claim. An analysis of zip-code data from the 53,850 summonses FPD issued from January 1, 2009 to October 14, 2014, shows that the African-American makeup for all zip codes receiving a summons—weighted by population size and the number of summonses received by people from that zip code—is 63%. Thus, there is substantial reason to believe that the share of drivers in Ferguson who are black is in fact *lower* than population data suggests.

Despite being searched at higher rates, African Americans are 26% *less* likely to have contraband found on them than whites: 24% of searches of African Americans resulted in a contraband finding, whereas 30% of searches of whites resulted in a contraband finding. This disparity exists even after controlling for the type of search conducted, whether a search incident to arrest, a consent search, or a search predicated on reasonable suspicion. The lower rate at which officers find contraband when searching African Americans indicates either that officers' suspicion of criminal wrongdoing is less likely to be accurate when interacting with African Americans or that officers are more likely to search African Americans without any suspicion of criminal wrongdoing. Either explanation suggests bias, whether explicit or implicit.[40] This lower hit rate for African Americans also underscores that this disparate enforcement practice is ineffective.

Other, more subtle indicators likewise show meaningful disparities in FPD's search practices: of the 31 *Terry* stop searches FPD conducted during this period between October 2012 to October 2014, 30 were of black individuals; of the 103 times FPD asked both the driver and passenger to exit a vehicle during a search, the searched individuals were black in 95 cases; and, while only one search of a white person lasted more than half an hour (1% of all searches of white drivers), 59 searches of African Americans lasted that long (5% of all searches of black drivers).

Of all stopped black drivers, 91%, or 8,987, received citations, while 87%, or 1,501, of all stopped white drivers received a citation.[41] 891 stopped black drivers—10% of all stopped black drivers—were arrested as a result of the stop, whereas only 63 stopped white drivers—4% of all stopped white drivers—were arrested. This disparity is explainable in large part by the high number of black individuals arrested for outstanding municipal warrants issued for missed court payments and appearances. As we discuss below, African Americans are more likely to have warrants issued against them than whites and are more likely to be arrested for an outstanding warrant than their white counterparts. Notably, on 14 occasions FPD listed the only reason for an arrest following a traffic stop as "resisting arrest." In all 14 of those cases, the person arrested was black.

These disparities in the outcomes that result from traffic stops remain even after regression analysis is used to control for non-race-based variables, including driver age; gender; the assignment of the officer making the stop; disparities in officer behavior; and the stated reason the stop was initiated. Upon accounting for differences in those variables, African Americans remained 2.07 times more likely to be searched; 2.00 times more likely to receive a citation; and 2.37 times more likely to be arrested than other stopped individuals. Each of these

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[40] Assessing contraband or "hit rates" is a generally accepted practice in the field of criminology to "operationaliz[e] the concept of 'intent to discriminate.'" The test shows "bias against a protected group if the success rate of searches on that group is lower than on another group." Nicola Persico & Petra Todd, *The Hit Rates Test for Racial Bias in Motor-Vehicle Searches*, 25 Justice Quarterly 37, 52 (2008). Indeed, as noted below, in assessing whether racially disparate impact is motivated by discriminatory intent for Equal Protection Clause purposes, disparity can itself provide probative evidence of discriminatory intent.

[41] As noted above, African Americans received 90% of all citations issued by FPD from October 2012 to July 2014. This data shows that 86% of people receiving citations following an FPD traffic stop between October 2012 and October 2014 were African American.

disparities is statistically significant and would occur by chance less than one time in 1,000.[42] The odds of these disparities occurring by chance together are significantly lower still.

ii. Disparate Impact of FPD's Multiple Citation Practices

The substantial racial disparities that exist within the data collected from traffic stops are consistent with the disparities found throughout FPD's practices. As discussed above, our investigation found that FPD officers frequently make discretionary choices to issue multiple citations during a single incident. Setting aside the fact that, in some cases, citations are redundant and impose duplicative penalties for the same offense, the issuance of multiples citations also disproportionately impacts African Americans. In 2013, for instance, more than 50% of all African Americans cited received multiple citations during a single encounter with FPD, whereas only 26% of non-African Americans did. Specifically, 26% of African Americans receiving a citation received two citations at once, whereas only 17% of white individuals received two citations at once. Those disparities are even greater for incidents that resulted in more than two citations: 15% of African Americans cited received three citations at the same time, whereas 6% of cited whites received three citations; and while 10% of cited African Americans received four or more citations at once, only 3% of cited whites received that many during a single incident. Each of these disparities is statistically significant, and would occur by chance less than one time in 1,000. Indeed, related data from an overlapping time period shows that, between October 2012 to July 2014, 38 black individuals received four citations during a single incident, compared with only two white individuals; and while 35 black individuals received five or more citations at once, not a single white person did.[43]

iii. Disparate Impact of Other FPD Charging Practices

From October 2012 to July 2014, African Americans accounted for 85%, or 30,525, of the 35,871 *total* charges brought by FPD—including traffic citations, summonses, and arrests. Non-African Americans accounted for 15%, or 5,346, of all charges brought during that period.[44] These rates vary somewhat across different offenses. For example, African Americans represent a relatively low proportion of those charged with Driving While Intoxicated and Speeding on State Roads or Highways. With respect to speeding offenses for all roads, African Americans account for 72% of citations based on radar or laser, but 80% of citations based on other or unspecified methods. Thus, as evaluated by radar, African Americans violate the law at lower rates than as evaluated by FPD officers. Indeed, controlling for other factors, the disparity in speeding tickets between African Americans and non-African Americans is 48% larger when

[42] It is generally accepted practice in the field of statistics to consider any result that would occur by chance less than five times out of 100 to be statistically significant.

[43] Similar to the post-stop outcome disparities—which show disparities in FPD practices after an initial stop has been made—these figures show disparities in FPD practices after a decision to issue a citation has been made. Thus, these disparities are not based in any part on population data.

[44] Although the state-mandated racial profiling data collected during traffic stops captures ethnicity in addition to race, most other FPD reports capture race only. As a result, these figures for non-African Americans include not only whites, but also non-black Latinos. That FPD's data collection methods do not consistently capture ethnicity does not affect this report's analysis of the disparate impact imposed on African Americans, but it has prevented an analysis of whether FPD practices also disparately impact Latinos. In 2010, Latinos comprised 1% of Ferguson's population. *See 2010 Census*, U.S. Census Bureau (2010), *available at* http://factfinder.census.gov/bkmk/table/1.0/en/DEC/10_SF1/QTP3/1600000US2923986 (last visited Feb. 26, 2015).

citations are issued not on the basis of radar or laser, but by some other method, such as the officer's own visual assessment. This difference is statistically significant.

Data on charges issued by FPD from 2011-2013 shows that, for numerous municipal offenses for which FPD officers have a high degree of discretion in charging, African Americans are disproportionately represented relative to their representation in Ferguson's population. While African Americans make up 67% of Ferguson's population, they make up 95% of Manner of Walking in Roadway charges; 94% of Failure to Comply charges; 92% of Resisting Arrest charges; 92% of Peace Disturbance charges; and 89% of Failure to Obey charges. Because these non-traffic offenses are more likely to be brought against persons who actually live in Ferguson than are vehicle stops, census data here does provide a useful benchmark for whether a pattern of racially disparate policing appears to exist. These disparities mean that African Americans in Ferguson bear the overwhelming burden of FPD's pattern of unlawful stops, searches, and arrests with respect to these highly discretionary ordinances.

iv. Disparate Impact of FPD Arrests for Outstanding Warrants

FPD records show that once a warrant issues, racial disparities in FPD's warrant execution practices make it exceedingly more likely for a black individual with an outstanding warrant to be arrested than a white individual with an outstanding warrant. Arrest data captured by FPD often fails to identify when a person is arrested *solely* on account of an outstanding warrant. Nonetheless, the data FPD collects during traffic stops pursuant to Missouri state requirements does capture information regarding when arrests are made for no other reason than that an arrest warrant was pending. Based upon that data, from October 2012 to October 2014, FPD arrested 460 individuals exclusively because the person had an outstanding arrest warrant. Of those 460 people arrested, 443, or 96%, were black. That African Americans are disproportionately impacted by FPD's warrant execution practices is also reflected in the fact that, during the roughly six-month period from April to September 2014, African Americans accounted for 96% of those booked into the Ferguson City Jail at least *in part* because they were arrested for an outstanding municipal warrant.

v. Concerns Regarding Pedestrian Stops

Although available data enables an assessment of the disparate impact of many FPD practices, many other practices cannot be assessed statistically because of FPD's inadequate data collection. FPD does not reliably collect or track data regarding pedestrian stops, or FPD officers' conduct during those stops. Given this lack of data, we are unable to determine whether African Americans are disproportionately the subjects of pedestrian stops, or the rate of searches, arrests, or other post-pedestrian stop outcomes. We note, however, that during our investigation we have spoken with not only black community members who have been stopped by FPD officers, but also non-black community members and employees of local businesses who have observed FPD conduct pedestrian stops of others, all of whom universally report that pedestrian stops in Ferguson almost always involve African-American youth. Even though FPD does not specifically track pedestrian stops, other FPD records are consistent with those accounts. Arrest and other incident reports sometimes describe encounters that begin with pedestrian stops, almost all of which involve African Americans.

b. Disparate Impact of Court Practices

Our investigation has also found that the rules and practices of the Ferguson municipal court also exert a disparate impact on African Americans. As discussed above, once a charge is filed in Ferguson municipal court, a number of procedural barriers imposed by the court combine to make it unnecessarily difficult to resolve the charge. Data created and maintained by the court show that black defendants are significantly more likely to be adversely impacted by those barriers. An assessment of every charge filed in Ferguson municipal court in 2011 shows that, over time, black defendants are more likely to have their cases persist for longer durations, more likely to face a higher number of mandatory court appearances and other requirements, and more likely to have a warrant issued against them for failing to meet those requirements.[45]

In light of the opaque court procedures previously discussed, the likelihood of running afoul of a court requirement increases when a case lasts for a longer period of time and results in more court encounters. Court cases involving black individuals typically last longer than those involving white individuals. Of the 2,369 charges filed against white defendants in 2011, over 63% were closed after six months. By contrast, only 34% of the 10,984 charges against black defendants were closed within that time period. 10% of black defendants, however, resolved their case between six months and a year from when it was filed, while 9% of white defendants required that much time to secure resolution. And, while 17% of black defendants resolved their charge over a year after it was brought against them, only 9% of white defendants required that much time. Each of these cases was ultimately resolved, in most instances by satisfying debts owed to the court; but this data shows substantial disparities between blacks and whites regarding how long it took to do so.

On average, African Americans are also more likely to have a high number of "events" occur before a case is resolved. The court's records track all activities that occur in a case—from payments and court appearances to continuances and Failure to Appear charges. 11% of cases involving African Americans had three "events," whereas 10% of cases involving white defendants had three events. 14% of cases involving black defendants had four to five events, compared with 9% of cases involving white defendants. Those disparities increase as the recorded number of events per case increases. Data show that there are ten or more events in 17% of cases involving black defendants but only 5% of cases involving white defendants. Given that an "event" can represent a variety of different kinds of occurrences, these particular disparities are perhaps less probative; nonetheless, they strongly suggest that black defendants have, on average, more encounters with the court during a single case than their white peers.

Given the figures above, it is perhaps unsurprising that the municipal court's practice of issuing warrants to compel fine payments following a missed court appearance or missed payment has a disparate impact on black defendants. 92% of all warrants issued in 2013 were issued in cases involving an African-American defendant. This figure is disproportionate to the representation of African Americans in the court's docket. Although the proportion of court cases involving black defendants has increased in recent years—81% of all cases filed in 2009,

[45] The universe of cases in this and subsequent analyses consisted of cases filed in 2011 because, given that some cases endure for years, a more recent sample would have excluded a greater amount of data from case events that have not yet occurred.

compared with 85% of all cases filed in 2013—that proportion remains substantially below the proportion of warrants issued to African Americans.

These disparities are consistent with the evidence discussed above that African Americans are often unable to resolve municipal charges despite taking appropriate steps to do so, and the evidence discussed below suggesting that court officials exercise discretion in a manner that disadvantages the African Americans that appear before the court.

Notably, the evidence suggests that African Americans are not only disparately impacted by court procedures, but also by the court's discretionary rulings in individual cases. Although court data did not enable a comprehensive assessment of disparities in fines that the court imposes, we did review fine data regarding ten different offenses and offense categories, including the five highly discretionary offenses disproportionately brought against African Americans noted above.[46] That analysis suggests that there may be racial disparities in the court's fine assessment practices. In analyzing the initial fines assessed for those ten offenses for each year from 2011-2013—30 data points in total—the average fine assessment was higher for African Americans than others in 26 of the 30 data points. For example, among the 53 Failure to Obey charges brought in 2013 that did not lead to added Failure to Appear fines—44 of which involved an African-American defendant—African Americans were assessed an average fine of $206, whereas the average fine for others was $147. The magnitude of racial disparities in fine amounts varied across the 30 yearly offense averages analyzed, but those disparities consistently disfavored African Americans.

Further, an evaluation of dismissal rates throughout the life of a case shows that, on average, an African-American defendant is 68% less likely than other defendants to have a case dismissed. In addition to cases that are "Dismissed," court records also show cases that are "Voided" altogether. There are only roughly 400 cases listed as Voided from 2011-2013, but the data that is available for that relatively small number of Voided cases shows that African Americans are three times less likely to receive the Voided outcome than others.

c. Ferguson's Racially Disparate Practices Violate Federal Law

This data shows that police and court practices impose a disparate impact on black individuals that itself violates the law. Title VI and the Safe Streets Act prohibit law enforcement agencies that receive federal financial assistance, such as FPD, from engaging in law enforcement activities that have an unnecessary disparate impact based on race, color, or national origin. 42 U.S.C. § 2000d. Title VI's implementing regulations prohibit law enforcement agencies from using "criteria or methods of administration" that have an unnecessary disparate impact based on race, color, or national origin. 28 C.F.R. § 42.104(b)(2); *see also Alexander v. Sandoval*, 532 U.S. 275, 281-82 (2001). Similarly, the Safe Streets Act applies not only to intentional discrimination, but also to any law enforcement practices that

[46] The ten offenses or offense categories analyzed include: 1) Manner of Walking in Roadway; 2) Failure to Comply; 3) Resisting Arrest; 4) Peace Disturbance; 5) Failure to Obey; 6) High Grass and Weeds; 7) One Headlight; 8) Expired License Plate; 9) aggregated data for 14 different parking violation offenses; and 10) aggregated data for four different headlight offenses, including: One Headlight; Defective Headlights; No Headlights; and Failure to Maintain Headlights.

unnecessarily disparately impact an identified group based on the enumerated factors. 28 C.F.R. § 42.203. *Cf. Charleston Housing Authority v. USDA*, 419 F.3d 729, 741-42 (8th Cir. 2005) (finding in the related Fair Housing Act context that where official action imposes a racially disparate impact, the action can only be justified through a showing that it is necessary to non-discriminatory objectives).

Thus, under these statutes, the discriminatory impact of Ferguson's law enforcement practices—which is both unnecessary and avoidable—is unlawful regardless of whether it is intentional or not. As set forth below, these practices also violate the prohibitions against intentional discrimination contained within Title VI, the Safe Streets Act, and the Fourteenth Amendment.

2. Ferguson's Law Enforcement Practices Are Motivated in Part by Discriminatory Intent in Violation of the Fourteenth Amendment and Other Federal Laws

The race-based disparities created by Ferguson's law enforcement practices cannot be explained by chance or by any difference in the rates at which people of different races adhere to the law. These disparities occur, at least in part, because Ferguson law enforcement practices are directly shaped and perpetuated by racial bias. Those practices thus operate in violation of the Fourteenth Amendment's Equal Protection Clause, which prohibits discriminatory policing on the basis of race. *Whren*, 517 U.S. at 813; *Johnson v. Crooks,* 326 F.3d 995, 999 (8th Cir. 2003).[47]

An Equal Protection Clause violation can occur where, as here, the official administration of facially neutral laws or policies results in a discriminatory effect that is motivated, at least in part, by a discriminatory purpose. *See Washington v. Davis*, 426 U.S. 229, 239-40 (1976). In assessing whether a given practice stems from a discriminatory purpose, courts conduct a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available," including historical background, contemporaneous statements by decision makers, and substantive departures from normal procedure. *Vill. of Arlington Heights*, 429 U.S. at 266; *United States v. Bell*, 86 F.3d 820, 823 (8th Cir. 1996). To violate the Equal Protection Clause, official action need not rest *solely* on racially discriminatory purposes; rather, official action violates the Equal Protection Clause if it is motivated, at least in part, by discriminatory purpose. *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

We have uncovered significant evidence showing that racial bias has impermissibly played a role in shaping the actions of police and court officials in Ferguson. That evidence, detailed below, includes: 1) the consistency and magnitude of the racial disparities found throughout police and court enforcement actions; 2) direct communications by police supervisors and court officials that exhibit racial bias, particularly against African Americans; 3) a number of other communications by police and court officials that reflect harmful racial stereotypes; 4) the background and historic context surrounding FPD's racially disparate enforcement practices; 5)

[47] Ferguson's discriminatory practices also violate Title VI and the Safe Streets Act, which, in addition to prohibiting some forms of unintentional conduct that has a disparate impact based on race, also prohibit intentionally discriminatory conduct that has a disparate impact. *See* 42 U.S.C. § 2000d; 42 U.S.C. § 3789d.

the fact that City, police, and court officials failed to take any meaningful steps to evaluate or address the race-based impact of its law enforcement practices despite longstanding and widely reported racial disparities, and instead consistently reapplied police and court practices known to disparately impact African Americans.

a. Consistency and Magnitude of Identified Racial Disparities

In assessing whether an official action was motivated in part by discriminatory intent, the actual impact of the action and whether it "bears more heavily on one race or another" may "provide an important starting point." *Vill. of Arlington Heights*, 429 U.S. at 266 (internal citations and quotation marks omitted). Indeed, in rare cases, statistical evidence of discriminatory impact may be sufficiently probative to itself establish discriminatory intent. *Hazelwood School Dist. v. United States*, 433 U.S. 299, 307-08 (1977) (noting in the Title VII context that where "gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof of a pattern or practice of discrimination").

The race-based disparities we have found are not isolated or aberrational; rather, they exist in nearly every aspect of Ferguson police and court operations. As discussed above, statistical analysis shows that African Americans are more likely to be searched but less likely to have contraband found on them; more likely to receive a citation following a stop and more likely to receive multiple citations at once; more likely to be arrested; more likely to have force used against them; more likely to have their case last longer and require more encounters with the municipal court; more likely to have an arrest warrant issued against them by the municipal court; and more likely to be arrested solely on the basis of an outstanding warrant. As noted above, many of these disparities would occur by chance less than one time in 1000.

These disparities provide significant evidence of discriminatory intent, as the "impact of an official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions." *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 487 (1997); *see also Davis*, 426 U.S. at 242 ("An invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the [practice] bears more heavily on one race than another."). These disparities are unexplainable on grounds other than race and evidence that racial bias, whether implicit or explicit, has shaped law enforcement conduct.[48]

b. Direct Evidence of Racial Bias

Our investigation uncovered direct evidence of racial bias in the communications of influential Ferguson decision makers. In email messages and during interviews, several court and law enforcement personnel expressed discriminatory views and intolerance with regard to race, religion, and national origin. The content of these communications is unequivocally derogatory, dehumanizing, and demonstrative of impermissible bias.

[48] Social psychologists have long recognized the influence of implicit racial bias on decision making, and law enforcement experts have similarly acknowledged the impact of implicit racial bias on law enforcement decisions. *See, e.g.*, R. Richard Banks, Jennifer L. Eberhardt, & Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 Cal. L. Rev. 1169 (2006); Tracey G. Gove, *Implicit Bias and Law Enforcement*, The Police Chief (October 2011).

We have discovered evidence of racial bias in emails sent by Ferguson officials, all of whom are current employees, almost without exception through their official City of Ferguson email accounts, and apparently sent during work hours. These email exchanges involved several police and court supervisors, including FPD supervisors and commanders. The following emails are illustrative:

- A November 2008 email stated that President Barack Obama would not be President for very long because "what black man holds a steady job for four years."

- A March 2010 email mocked African Americans through speech and familial stereotypes, using a story involving child support. One line from the email read: "I be so glad that dis be my last child support payment! Month after month, year after year, all dose payments!"

- An April 2011 email depicted President Barack Obama as a chimpanzee.

- A May 2011 email stated: "An African-American woman in New Orleans was admitted into the hospital for a pregnancy termination. Two weeks later she received a check for $5,000. She phoned the hospital to ask who it was from. The hospital said, 'Crimestoppers.'"

- A June 2011 email described a man seeking to obtain "welfare" for his dogs because they are "mixed in color, unemployed, lazy, can't speak English and have no frigging clue who their Daddies are."

- An October 2011 email included a photo of a bare-chested group of dancing women, apparently in Africa, with the caption, "Michelle Obama's High School Reunion."

- A December 2011 email included jokes that are based on offensive stereotypes about Muslims.

Our review of documents revealed many additional email communications that exhibited racial or ethnic bias, as well as other forms of bias. Our investigation has not revealed any indication that any officer or court clerk engaged in these communications was ever disciplined. Nor did we see a single instance in which a police or court recipient of such an email asked that the sender refrain from sending such emails, or any indication that these emails were reported as inappropriate. Instead, the emails were usually forwarded along to others.[49]

[49] We did find one instance in 2012 in which the City Manager forwarded an email that played upon stereotypes of Latinos, but within minutes of sending it, sent another email to the recipient in which he stated he had not seen the offensive part of the email and apologized for the "inappropriate and offensive" message. Police and court staff took no such corrective action, and indeed in many instances expressed amusement at the offensive correspondence.

Critically, each of these email exchanges involved supervisors of FPD's patrol and court operations.[50] FPD patrol supervisors are responsible for holding officers accountable to governing laws, including the Constitution, and helping to ensure that officers treat all people equally under the law, regardless of race or any other protected characteristic. The racial animus and stereotypes expressed by these supervisors suggest that they are unlikely to hold an officer accountable for discriminatory conduct or to take any steps to discourage the development or perpetuation of racial stereotypes among officers.

Similarly, court supervisors have significant influence and discretion in managing the court's operations and in processing individual cases. As discussed in Parts I and III.B of this report, our investigation has found that a number of court rules and procedures are interpreted and applied entirely at the discretion of the court clerks. These include: whether to require a court appearance for certain offenses; whether to grant continuances or other procedural requests; whether to accept partial payment of an owed fine; whether to cancel a warrant without a bond payment; and whether to provide individuals with documentation enabling them to have a suspended driver's license reinstated before the full fine owed has been paid off. Court clerks are also largely responsible for setting bond amounts. The evidence we found thus shows not only racial bias, but racial bias by those with considerable influence over the outcome of any given court case.

This documentary evidence of explicit racial bias is consistent with reports from community members indicating that some FPD officers use racial epithets in dealing with members of the public. We spoke with one African-American man who, in August 2014, had an argument in his apartment to which FPD officers responded, and was immediately pulled out of the apartment by force. After telling the officer, "you don't have a reason to lock me up," he claims the officer responded: "N*****, I can find something to lock you up on." When the man responded, "good luck with that," the officer slammed his face into the wall, and after the man fell to the floor, the officer said, "don't pass out motherf****r because I'm not carrying you to my car." Another young man described walking with friends in July 2014 past a group of FPD officers who shouted racial epithets at them as they passed.

Courts have widely acknowledged that direct statements exhibiting racial bias are exceedingly rare, and that such statements are not necessary for establishing the existence of discriminatory purpose. *See, e.g.*, *Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010) (noting that "discriminatory intent is rarely susceptible to direct proof"); *see also Thomas v. Eastman Kodak Co.*, 183 F.3d 38, 64 (1st Cir. 1999) (noting in Title VII case that "[t]here is no requirement that a plaintiff . . . must present direct, 'smoking gun' evidence of racially biased decision making in order to prevail"); *Robinson v. Runyon*, 149 F.3d 507, 513 (6th Cir. 1998) (noting in Title VII case that "[r]arely will there be direct evidence from the lips of the defendant proclaiming his or her racial animus"). Where such evidence does exist, however, it is highly probative of discriminatory intent. That is particularly true where, as here, the communications exhibiting bias are made by those with considerable decision-making authority. *See Doe v.*

[50] We were able to review far more emails from FPD supervisors than patrol officers. City officials informed us that, while many FPD supervisors have their email accounts on hard drives in the police department, most patrol officers use a form of webmail that does not retain messages once they are deleted.

Mamaroneck, 462 F. Supp. 2d 520, 550 (S.D.N.Y. 2006); *Eberhart v. Gettys*, 215 F. Supp. 2d 666, 678 (M.D.N.C. 2002).

c. Evidence of Racial Stereotyping

Several Ferguson officials told us during our investigation that it is a lack of "personal responsibility" among African-American members of the Ferguson community that causes African Americans to experience disproportionate harm under Ferguson's approach to law enforcement. Our investigation suggests that this explanation is at odd with the facts. While there are people of all races who may lack personal responsibility, the harm of Ferguson's approach to law enforcement is largely due to the myriad systemic deficiencies discussed above. Our investigation revealed African Americans making extraordinary efforts to pay off expensive tickets for minor, often unfairly charged, violations, despite systemic obstacles to resolving those tickets. While our investigation did not indicate that African Americans are disproportionately irresponsible, it did reveal that, as the above emails reflect, some Ferguson decision makers hold negative stereotypes about African Americans, and lack of personal responsibility is one of them. Application of this stereotype furthers the disproportionate impact of Ferguson's police and court practices. It causes court and police decision makers to discredit African Americans' explanations for not being able to pay tickets and allows officials to disown the harms of Ferguson's law enforcement practices.

The common practice among Ferguson officials of writing off tickets further evidences a double standard grounded in racial stereotyping. Even as Ferguson City officials maintain the harmful stereotype that black individuals lack personal responsibility—and continue to cite this lack of personal responsibility as the cause of the disparate impact of Ferguson's practices—white City officials condone a striking lack of personal responsibility among themselves and their friends. Court records and emails show City officials, including the Municipal Judge, the Court Clerk, and FPD supervisors assisting friends, colleagues, acquaintances, and themselves in eliminating citations, fines, and fees. For example:

- In August 2014, the Court Clerk emailed Municipal Judge Brockmeyer a copy of a Failure to Appear notice for a speeding violation issued by the City of Breckenridge, and asked: "[FPD patrol supervisor] came to me this morning, could you please take [care] of this for him in Breckenridge?" The Judge replied: "Sure." Judge Brockmeyer also serves as Municipal Judge in Breckenridge.

- In October 2013, Judge Brockmeyer sent Ferguson's Prosecuting Attorney an email with the subject line "City of Hazelwood vs. Ronald Brockmeyer." The Judge wrote: "Pursuant to our conversation, attached please find the red light camera ticket received by the undersigned. I would appreciate it if you would please see to it that this ticket is dismissed." The Prosecuting Attorney, who also serves as prosecuting attorney in Hazelwood, responded: "I worked on red light matters today and dismissed the ticket that you sent over. Since I entered that into the system today, you may or may not get a second notice – you can just ignore that."

- In August 2013, an FPD patrol supervisor wrote an email entitled "Oops" to the Prosecuting Attorney regarding a ticket his relative received in another municipality for traveling 59 miles per hour in a 40 miles-per-hour zone, noting "[h]aving it dismissed would be a blessing." The Prosecuting Attorney responded that the prosecutor of that other municipality promised to nolle pros the ticket. The supervisor responded with appreciation, noting that the dismissal "[c]ouldn't have come at a better time."

- Also in August 2013, Ferguson's Mayor emailed the Prosecuting Attorney about a parking ticket received by an employee of a non-profit day camp for which the Mayor sometimes volunteers. The Mayor wrote that the person "shouldn't have left his car unattended there, but it was an honest mistake" and stated, "I would hate for him to have to pay for this, can you help?" The Prosecuting Attorney forwarded the email to the Court Clerk, instructing her to "NP [nolle prosequi, or not prosecute] this parking ticket."

- In November 2011, a court clerk received a request from a friend to "fix a parking ticket" received by the friend's coworker's wife. After the ticket was faxed to the clerk, she replied: "It's gone baby!"

- In March 2014, a friend of the Court Clerk's relative emailed the Court Clerk with a scanned copy of a ticket asking if there was anything she could do to help. She responded: "Your ticket of $200 has magically disappeared!" Later, in June 2014, the same person emailed the Court Clerk regarding two tickets and asked: "Can you work your magic again? It would be deeply appreciated." The Clerk later informed him one ticket had been dismissed and she was waiting to hear back about the second ticket.

These are just a few illustrative examples. It is clear that writing off tickets between the Ferguson court staff and the clerks of other municipal courts in the region is routine. Email exchanges show that Ferguson officials secured or received ticket write-offs from staff in a number of neighboring municipalities. There is evidence that the Court Clerk and a City of Hazelwood clerk "fixed" at least 12 tickets at each other's request, and that the Court Clerk successfully sought help with a ticket from a clerk in St. Ann. And in April 2011, a court administrator in the City of Pine Lawn emailed the Ferguson Court Clerk to have a warrant recalled for a person applying for a job with the Pine Lawn Police Department. The court administrator explained that "[a]fter he gets the job, he will have money to pay off his fines with Ferguson." The Court Clerk recalled the warrant and issued a new court date for more than two months after the request was made.

City officials' application of the stereotype that African Americans lack "personal responsibility" to explain why Ferguson's practices harm African Americans, even as these same City officials exhibit a lack of personal—and professional—responsibility in handling their own and their friends' code violations, is further evidence of discriminatory bias on the part of decision makers central to the direction of law enforcement in Ferguson.

d. Historical Background

Until the 1960s, Ferguson was a "sundown town" where African Americans were banned from the City after dark. The City would block off the main road from Kinloch, which was a poor, all-black suburb, "with a chain and construction materials but kept a second road open during the day so housekeepers and nannies could get from Kinloch to jobs in Ferguson."[51] During our investigative interviews, several older African-American residents recalled this era in Ferguson and recounted that African Americans knew that, for them, the City was "off-limits."

The Ferguson of half a century ago is not the same Ferguson that exists today. We heard from many residents—black and white—who expressed pride in their community, especially with regard to the fact that Ferguson is one of the most demographically diverse communities in the area. Pride in this aspect of Ferguson is well founded; Ferguson is more diverse than most of the United States, and than many of its surrounding cities. It is clear that many Ferguson residents of different races genuinely embrace that diversity.

But we also found evidence during our investigation that some within Ferguson still have difficulty coming to terms with Ferguson's changing demographics and seeing Ferguson's African American and white residents as equals in civic life. While total population rates have remained relatively constant over the last three decades, the portion of Ferguson residents who are African American has increased steadily but dramatically, from 25% in 1990 to 67% in 2010. Some individuals, including individuals charged with discretionary enforcement decisions in either the police department or the court, have expressed concerns about the increasing number of African Americans that have moved to Ferguson in recent years. Similarly, some City officials and residents we spoke with explicitly distinguished Ferguson's African-American residents from Ferguson's "normal" residents or "regular" people. One white third-generation Ferguson resident told us that in many ways Ferguson is "progressive and quite vibrant," while in another it is "typical—trying to hang on to its 'whiteness.'"

On its own, Ferguson's historical backdrop as a racially segregated community that did not treat African Americans equally under the law does not demonstrate that law enforcement practices today are motivated by impermissible discriminatory intent. It is one factor to consider, however, especially given the evidence that, among some in Ferguson, these attitudes persist today. As courts have instructed, the historical background of an official practice that leads to discriminatory effects is, together with other evidence, probative as to whether that practice is grounded in part in discriminatory purposes. *See Vill. of Arlington Heights*, 429 U.S. at 267; *see also Rogers v. Lodge*, 458 U.S. 613, *passim* (1982).

e. Failure to Evaluate or Correct Practices that Have Long Resulted in a Racially Disparate Impact

That the discriminatory effect of Ferguson's law enforcement practices is the result of intentional discrimination is further evidenced by the fact that City, police, and court officials have consistently failed to evaluate or reform—and in fact appear to have redoubled their

[51] Richard Rothstein, *The Making of Ferguson*, Econ. Policy Inst. (Oct. 2014), *available at* http://www.epi.org/publication/making-ferguson/.

commitment to—the very practices that have plainly and consistently exerted a disparate impact on African Americans.

The disparities we have identified appear to be longstanding. The statistical analysis performed as part of our investigation relied upon police and court data from recent years, but FPD has collected data related to vehicle stops pursuant to state requirements since 2000. Each year, that information is gathered by FPD, sent to the office of the Missouri Attorney General, and published on the Missouri Attorney General's webpage.[52] The data show disparate impact on African Americans in Ferguson for as long as that data has been reported. Based on that racial profiling data, Missouri publishes a "Disparity Index" for each reporting municipality, calculated as the percent of stops of a certain racial group compared with that group's local population rate. In each of the last 14 years, the data show that African Americans are "over represented" in FPD's vehicular stops.[53] That data also shows that in most years, FPD officers searched African Americans at higher rates than others, but found contraband on African Americans at lower rates.

In 2001, for example, African Americans comprised about the same proportion of the population as whites, but while stops of white drivers accounted for 1,495 stops, African Americans accounted for 3,426, more than twice as many. While a white person stopped that year was searched in 6% of cases, a black person stopped was searched in 14% of cases. That same year, searches of whites resulted in a contraband finding in 21% of cases, but searches of African Americans only resulted in a contraband finding in 16% of cases. Similar disparities were identified in most other years, with varying degrees of magnitude. In any event, the data reveals a pattern of racial disparities in Ferguson's police activities. That pattern appears to have been ignored by Ferguson officials.

That the extant racial disparities are intentional is also evident in the fact that Ferguson has consistently returned to the unlawful practices described in Parts III.A. and B. of this Report knowing that they impose a persistent disparate impact on African Americans. City officials have continued to encourage FPD to stop and cite aggressively as part of its revenue generation efforts, even though that encouragement and increased officer discretion has yielded disproportionate African-American representation in FPD stops and citations. Until we recommended it during our investigation, FPD officials had not restricted officer discretion to issue multiple citations at once, even though the application of that discretion has led officers to issue far more citations to African Americans at once than others, on average, and even though only black individuals (35 in total) ever received five or more citations at once over a three-year period. FPD has not provided further guidance to constrain officer discretion in conducting searches, even though FPD officers have, for years, searched African Americans at higher rates than others but found contraband during those searches less often than in searches of individuals of other races.

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[52] *See Missouri Vehicle Stops Report*, Missouri Attorney General, http://ago.mo.gov/VehicleStops/Reports.php?lea=161 (last visited Feb. 13, 2015).

[53] Data for the entire state of Missouri shows an even higher "Disparity Index" for those years than the disparity index present in Ferguson. This raises, by the state's own metric, considerable concerns about policing outside of Ferguson as well.

Similarly, City officials have not taken any meaningful steps to contain the discretion of court clerks to grant continuances, clear warrants, or enable driver's license suspensions to be lifted, even though those practices have resulted in warrants being issued and executed at highly disproportionate rates against African Americans. Indeed, until the City of Ferguson repealed the Failure to Appear statute in September 2014—after this investigation began—the City had not taken meaningful steps to evaluate or reform any of the court practices described in this Report, even though the implementation of those practices has plainly exerted a disparate impact on African Americans.

FPD also has not significantly altered its use-of-force tactics, even though FPD records make clear that current force decisions disparately impact black suspects, and that officers appear to assess threat differently depending upon the race of the suspect. FPD, for example, has not reviewed or revised its canine program, even though available records show that canine officers have exclusively set their dogs against black individuals, often in cases where doing so was not justified by the danger presented. In many incidents in which officers used significant levels of force, the facts as described by the officers themselves did not appear to support the force used, especially in light of the fact that less severe tactics likely would have been equally effective. In some of these incidents, law enforcement experts with whom we consulted could find no explanation other than race to explain the severe tactics used.

During our investigation, FPD officials told us that their police tactics are responsive to the scenario at hand. But records suggest that, where a suspect or group of suspects is white, FPD applies a different calculus, typically resulting in a more measured law enforcement response. In one 2012 incident, for example, officers reported responding to a fight in progress at a local bar that involved white suspects. Officers reported encountering "40-50 people actively fighting, throwing bottles and glasses, as well as chairs." The report noted that "one subject had his ear bitten off." While the responding officers reported using force, they only used "minimal baton and flashlight strikes as well as fists, muscling techniques and knee strikes." While the report states that "due to the amount of subjects fighting, no physical arrests were possible," it notes also that four subjects were brought to the station for "safekeeping." While we have found other evidence that FPD later issued a wanted for two individuals as a result of the incident, FPD's response stands in stark contrast to the actions officers describe taking in many incidents involving black suspects, some of which we earlier described.

Based on this evidence, it is apparent that FPD requires better training, limits on officer discretion, increased supervision, and more robust accountability systems, not only to ensure that officers act in accordance with the Fourth Amendment, but with the Fourteenth Amendment as well. FPD has failed to take any such corrective action, and instead has actively endorsed and encouraged the perpetuation of the practices that have led to such stark disparities. This, together with the totality of the facts that we have found, evidences that those practices exist, at least in part, on account of an unconstitutional discriminatory purpose. *See Feeney*, 442 U.S. at 279 n.24 (noting that the discriminatory intent inquiry is "practical," because what "any official entity is 'up to' may be plain from the results its actions achieve, or the results they avoid").

D. Ferguson Law Enforcement Practices Erode Community Trust, Especially Among Ferguson's African-American Residents, and Make Policing Less Effective, More Difficult, and Less Safe

The unlawful police misconduct and court practices described above have generated great distrust of Ferguson law enforcement, especially among African Americans.[54] As described below, other FPD practices further contribute to distrust, including FPD's failure to hold officers accountable for misconduct, failure to implement community policing principles, and the lack of diversity within FPD. Together, these practices severely damaged the relationship between African Americans and the Ferguson Police Department long before Michael Brown's shooting death in August 2014. This divide has made policing in Ferguson less effective, more difficult, and more likely to discriminate.

1. Ferguson's Unlawful Police and Court Practices Have Led to Distrust and Resentment Among Many in Ferguson

The lack of trust between a significant portion of Ferguson's residents, especially its African-American residents, and the Ferguson Police Department has become, since August 2014, undeniable. The causes of this distrust and division, however, have been the subject of debate. City and police officials, and some other Ferguson residents, have asserted that this lack of meaningful connection with much of Ferguson's African-American community is due to the fact that they are "transient" renters; that they do not appreciate how much the City of Ferguson does for them; that "pop-culture" portrays alienating themes; or because of "rumors" that the police and municipal court are unyielding because they are driven by raising revenue.

Our investigation showed that the disconnect and distrust between much of Ferguson's African-American community and FPD is caused largely by years of the unlawful and unfair law enforcement practices by Ferguson's police department and municipal court described above. In the documents we reviewed, the meetings we observed and participated in, and in the hundreds of conversations Civil Rights Division staff had with residents of Ferguson and the surrounding area, many residents, primarily African-American residents, described being belittled, disbelieved, and treated with little regard for their legal rights by the Ferguson Police Department. One white individual who has lived in Ferguson for 48 years told us that it feels like Ferguson's police and court system is "designed to bring a black man down . . . [there are] no second chances." We heard from African-American residents who told us of Ferguson's "long history of targeting blacks for harassment and degrading treatment," and who described the steps they take to avoid this—from taking routes to work that skirt Ferguson to moving out of state. An African-American minister of a church in a nearby community told us that he doesn't allow his two sons to drive through Ferguson out of "fear that they will be targeted for arrest."

African Americans' views of FPD are shaped not just by *what* FPD officers do, but by *how* they do it. During our investigation, dozens of African Americans in Ferguson told us of

[54] Although beyond the scope of this investigation, it appears clear that individuals' experiences with other law enforcement agencies in St. Louis County, including with the police departments in surrounding municipalities and the County Police, in many instances have contributed to a general distrust of law enforcement that impacts interactions with the Ferguson police and municipal court.

verbal abuse by FPD officers during routine interactions, and these accounts are consistent with complaints people have made about FPD for years. In December 2011, for example, an African-American man alleged that as he was standing outside of Wal-Mart, an officer called him a "stupid motherf****r" and a "bastard." According to the man, a lieutenant was on the scene and did nothing to reproach the officer, instead threatening to arrest the man. In April 2012, officers allegedly called an African-American woman a "bitch" and a "mental case" at the jail following an arrest. In June 2011, a 60-year-old man complained that an officer verbally harassed him while he stood in line to see the judge in municipal court. According to the man, the officer repeatedly ordered him to move forward as the line advanced and, because he did not advance far enough, turned to the other court-goers and joked, "he is hooked on phonics."

Another concern we heard from many African-American residents, and saw in the files we reviewed, was of casual intimidation by FPD officers, including threats to draw or fire their weapons, often for seemingly little or no cause. In September 2012, a 28-year resident of Ferguson complained to FPD about a traffic stop during which a lieutenant approached with a loud and confrontational manner with his hand on his holstered gun. The resident, who had a military police background, noted that the lieutenant's behavior, especially having his hand on his gun, ratcheted up the tension level, and he questioned why the lieutenant had been so aggressive. In another incident captured on video and discussed below in more detail, an officer placed his gun on a wall or post and pointed it back and forth to each of two store employees as he talked to them while they took the trash out late one night. In another case discussed above, a person reported that an FPD officer removed his ECW during a traffic stop and continuously tapped the ECW on the roof of the person's car. These written complaints reported to FPD are consistent with complaints we heard from community members during our investigation about officers casually threatening to hurt or even shoot them.

It appears that many police and City officials were unaware of this distrust and fear of Ferguson police among African Americans prior to August 2014. Ferguson's Chief, for example, told us that prior to the Michael Brown shooting he thought community-police relations were good. During our investigation, however, City and police leadership, and many officers of all ranks, acknowledged a deep divide between police and some Ferguson residents, particularly black residents. Mayor Knowles acknowledged that there is "clearly mistrust" of FPD by many community members, including a "systemic problem" with youth not wanting to work with police. One FPD officer estimated that about a quarter of the Ferguson community distrusts the police department.

A growing body of research, alongside decades of police experience, is consistent with what our investigation found in Ferguson: that when police and courts treat people unfairly, unlawfully, or disrespectfully, law enforcement loses legitimacy in the eyes of those who have experienced, or even observed, the unjust conduct. *See, e.g.*, Tom R. Tyler & Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (2002). Further, this loss of legitimacy makes individuals more likely to resist enforcement efforts and less likely to cooperate with law enforcement efforts to prevent and investigate crime. *See, e.g.*, Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 Law & Soc'y Rev. 513, 534-36 (2003); *Promoting Cooperative Strategies to Reduce Racial Profiling* 20-21 (U.S. Dep't of Justice, Office of Community

Oriented Policing Services, 2008) ("Being viewed as fair and just is critical to successful policing in a democracy. When the police are perceived as unfair in their enforcement, it will undermine their effectiveness."); Ron Davis et al., *Exploring the Role of the Police in Prisoner Reentry* 13-14 (Nat'l Inst. of Justice, New Perspectives in Policing, July 2012) ("Increasingly, research is supporting the notion that legitimacy is an important factor in the effectiveness of law, and the establishment and maintenance of legitimacy are particularly important in the context of policing.") (citations omitted). To improve community trust and police effectiveness, Ferguson must ensure not only that its officers act in accord with the Constitution, but that they treat people fairly and respectfully.

2. FPD's Exercise of Discretion, Even When Lawful, Often Undermines Community Trust and Public Safety

Even where lawful, many discretionary FPD enforcement actions increase distrust and significantly decrease the likelihood that individuals will seek police assistance even when they are victims of crime, or that they will cooperate with the police to solve or prevent other crimes. Chief Jackson told us "we don't get cooperating witnesses" from the apartment complexes. Consistent with this statement, our review of documents and our conversations with Ferguson residents revealed many instances in which they are reluctant to report being victims of crime or to cooperate with police, and many instances in which FPD imposed unnecessary negative consequences for doing so.

In one instance, for example, a woman called FPD to report a domestic disturbance. By the time the police arrived, the woman's boyfriend had left. The police looked through the house and saw indications that the boyfriend lived there. When the woman told police that only she and her brother were listed on the home's occupancy permit, the officer placed the woman under arrest for the permit violation and she was jailed. In another instance, after a woman called police to report a domestic disturbance and was given a summons for an occupancy permit violation, she said, according to the officer's report, that she "hated the Ferguson Police Department and will never call again, even if she is being killed."

In another incident, a young African-American man was shot while walking on the road with three friends. The police department located and interviewed two of the friends about the shooting. After the interview, they arrested and jailed one of these cooperating witnesses, who was 19 years old, on an outstanding municipal warrant.

We also reviewed many instances in which FPD officers arrested individuals who sought to care for loved ones who had been hurt. In one instance from May 2014, for example, a man rushed to the scene of a car accident involving his girlfriend, who was badly injured and bleeding profusely when he arrived. He approached and tried to calm her. When officers arrived they treated him rudely, according to the man, telling him to move away from his girlfriend, which he did not want to do. They then immediately proceeded to handcuff and arrest him, which, officers assert, he resisted. EMS and other officers were not on the scene during this arrest, so the accident victim remained unattended, bleeding from her injuries, while officers were arresting the boyfriend. Officers charged the man with five municipal code violations (Resisting Arrest, Disorderly Conduct, Assault on an Officer, Obstructing Government Operations, and Failure to

Comply) and had his vehicle towed and impounded. In an incident from 2013, a woman sought to reach her fiancé, who was in a car accident. After she refused to stay on the sidewalk as the officer ordered, she was arrested and jailed. While it is sometimes both essential and difficult to keep distraught family from being in close proximity to their loved ones on the scene of an accident, there is rarely a need to arrest and jail them rather than, at most, detain them on the scene.

Rather than view these instances as opportunities to convey their compassion for individuals at times of crisis even as they maintain order, FPD appears instead to view these and similar incidents we reviewed as opportunities to issue multiple citations and make arrests. For very little public safety benefit, FPD loses opportunities to build community trust and respect, and instead further alienates potential allies in crime prevention.

3. FPD's Failure to Respond to Complaints of Officer Misconduct Further Erodes Community Trust

Public trust has been further eroded by FPD's lack of any meaningful system for holding officers accountable when they violate law or policy. Through its system for taking, investigating, and responding to misconduct complaints, a police department has the opportunity to demonstrate that officer misconduct is unacceptable and unrepresentative of how the law enforcement agency values and treats its constituents. In this way, a police department's internal affairs process provides an opportunity for the department to restore trust and affirm its legitimacy. Similarly, misconduct investigations allow law enforcement the opportunity to provide community members who have been mistreated a constructive, effective way to voice their complaints. And, of course, effective internal affairs processes can be a critical part of correcting officer behavior, and improving police training and policies.

Ferguson's internal affairs system fails to respond meaningfully to complaints of officer misconduct. It does not serve as a mechanism to restore community members' trust in law enforcement, or correct officer behavior. Instead, it serves to contrast FPD's tolerance for officer misconduct against the Department's aggressive enforcement of even minor municipal infractions, lending credence to a sentiment that we heard often from Ferguson residents: that a "different set of rules" applies to Ferguson's police than to its African-American residents, and that making a complaint about officer misconduct is futile.

Despite the statement in FPD's employee misconduct investigation policy that "[t]he integrity of the police department depends on the personal integrity and discipline of each employee," FPD has done little to investigate external allegations that officers have not followed FPD policy or the law, or, with a few notable exceptions, to hold officers accountable when they have not. Ferguson Police Department makes it difficult to make complaints about officer conduct, and frequently assumes that the officer is telling the truth and the complainant is not, even where objective evidence indicates that the reverse is true.

It is difficult for individuals to make a misconduct complaint against an officer in Ferguson, in part because Ferguson both discourages individuals from making complaints and discourages City and police staff from accepting them. In a March 2014 email, for example, a

lieutenant criticized a sergeant for taking a complaint from a man on behalf of his mother, who stayed in her vehicle outside the police station. Despite the fact that Ferguson policy requires that complaints be taken "from any source, identified or anonymous," the lieutenant stated "I would have had him bring her in, or leave." In another instance, a City employee took a complaint of misconduct from a Ferguson resident and relayed it to FPD. An FPD captain sent an email in response that the City employee viewed as being "lectured" for taking the complaint. The City Manager agreed, calling the captain's behavior "not only disrespectful and unacceptable, but it is dangerous in [that] it is inciteful [sic] and divisive." Nonetheless, there appeared to be no follow-up action regarding the captain, and the complaint was never logged as such or investigated.

While official FPD policy states clearly that officers must "never attempt to dissuade any citizen from lodging a complaint," FPD General Order 301.3, a contrary leadership message speaks louder than policy. This message is reflected in statements by officers that indicate a need to justify their actions when they do accept a civilian complaint. In one case, a sergeant explained: "Nothing I could say helped, he demanded the complaint forms which were provided." In another: "I spoke to [two people seeking to make a complaint] . . . but after the conversation, neither had changed their mind and desired still to write out a complaint." We saw many instances in which people complained of being prevented from making a complaint, with no indication that FPD investigated those allegations. In one instance, for example, a man alleging significant excessive force reported the incident to a commander after being released from jail, stating that he was unable to make his complaint earlier because several different officers refused to let him speak to a sergeant to make a complaint about the incident and threatened to keep him in jail longer if he did not stop asking to make a complaint.

Some individuals also fear that they will suffer retaliation from officers if they report misconduct or even merely speak out as witnesses when approached by someone from FPD investigating a misconduct complaint. For instance, in one case FPD acknowledged that a witness to the misconduct was initially reluctant to complete a written statement supporting the complainant because he wanted no "repercussions" from the subject officer or other officers. In another case involving alleged misconduct at a retail store that we have already described, the store's district manager told the commander he did not want an investigation—despite how concerned he was by video footage showing an officer training his gun on two store employees as they took out the trash—because he wanted to "stay on the good side" of the police.

Even when individuals do report misconduct, there is a significant likelihood it will not be treated as a complaint and investigated. In one case, FPD failed to open an investigation of an allegation made by a caller who said an officer had kicked him in the side of the head and stepped on his head and back while he was face down with his hands cuffed behind his back, all the while talking about having blood on him from somebody else and "being tired of the B.S." The officer did not stop until the other officer on the scene said words to the effect of, "[h]ey, he's not fighting he's cuffed." The man alleged that the officer then ordered him to "get the f*** up" and lifted him by the handcuffs, yanking his arms backward. The commander taking the call reported that the man stated that he supported the police and knew they had a tough job but was reporting the incident because it appeared the officer was under a lot of stress and needed counseling, and because he was hoping to prevent others from having the experience he did. The

commander's email regarding the incident expressed no skepticism about the veracity of the caller's report and was able to identify the incident (and thus the involved officers). Yet FPD did not conduct an internal affairs investigation of this incident, based on our review of all of FPD's internal investigation files. There is not even an indication that a use-of-force report was completed.

In another case, an FPD commander wrote to a sergeant that despite a complainant being "pretty adamant that she was profiled and that the officer was rude," the commander "didn't even bother to send it to the chief for a control number" before hearing the sergeant's account of the officer's side of the story. Upon getting the officer's account second hand from the sergeant, the commander forwarded the information to the Police Chief so that it could be "filed in the non-complaint file." FPD officers and commanders also often seek to frame complaints as being entirely related to complainants' guilt or innocence, and therefore not subject to a misconduct investigation, even though the complaint clearly alleges officer misconduct. In one instance, for example, commanders told the complainant to go to court to fight her arrest, ignoring the complainant's statement that the officer arrested her for Disorderly Conduct and Failure to Obey only after she asked for the officer's name. In another instance, a commander stated that the complainant made no allegations unrelated to the merits of the arrest, even though the complainant alleged rudeness and being "intimidated" during arrest, among a number of other non-guilt related allegations.

FPD appears to intentionally *not* treat allegations of misconduct as complaints even where it believes that the officer in fact committed the misconduct. In one incident, for example, a supervisor wrote an email directly to an officer about a complaint the Police Chief had received about an officer speeding through the park in a neighboring town. The supervisor informed the officer that the Chief tracked the car number given by the complainant back to the officer, but assured the officer that the supervisor's email was "[j]ust for your information. No need to reply and there is no record of this other than this email." In another instance referenced above, the district manager of a retail store called a commander to tell him that he had a video recording that showed an FPD officer pull up to the store at about midnight while two employees were taking out the trash, take out his weapon, and put it on top of a concrete wall, pointed at the two employees. When the employees said they were just taking out the trash and asked the officer if he needed them to take off their coats so that he could see their uniforms, the officer told the employees that he knew they were employees and that if he had not known "I would have put you on the ground." The commander related in an email to the sergeant and lieutenant that "there is no reason to doubt the Gen. Manager because he said he watched the video and he clearly saw a weapon—maybe the sidearm or the taser." Nonetheless, despite noting that "we don't need cowboy" and the "major concern" of the officer taking his weapon out of his holster and placing it on a wall, the commander concluded, "[n]othing for you to do with this other than make a mental note and for you to be on the lookout for that kind of behavior."[55]

[55] This incident raises another concern regarding whether a second-hand informal account of a complaint, often the only record Ferguson retains, conveys the seriousness of the allegation of misconduct. In this illustrative instance, our conversation with a witness to this incident indicates that the officer pointed his weapon at each employee as he spoke to him, and threatened to shoot both, despite knowing that they were simply employees taking out the trash.

In another case, an officer investigating a report of a theft at a dollar store interrogated a minister pumping gas into his church van about the theft. The man alleged that he provided his identification to the officer and offered to return to the store to prove he was not the thief. The officer instead handcuffed the man and drove him to the store. The store clerk reported that the detained man was not the thief, but the officer continued to keep the man cuffed, allegedly calling him "f*****g stupid" for asking to be released from the cuffs. The man went directly to FPD to file a complaint upon being released by the officer. FPD conducted an investigation but, because the complainant did not respond to a cell phone message left by the investigator within 13 days, reclassified the complaint as "withdrawn," even as the investigator noted that the complaint of improper detention would otherwise have been sustained, and noted that the "[e]mployee has been counseled and retraining is forthcoming." In still another case, a lieutenant of a neighboring agency called FPD to report that a pizza parlor owner had complained to him that an off-duty FPD officer had become angry upon being told that police discounts were only given to officers in uniform and said to the restaurant owner as he was leaving, "I hope you get robbed!" The allegation was not considered a complaint and instead, despite its seriousness, was handled through counseling at the squad level.[56]

Even where a complaint is actually investigated, unless the complaint is made by an FPD commander, and sometimes not even then, FPD consistently takes the word of the officer over the word of the complainant, frequently even where the officer's version of events is clearly at odds with the objective evidence. On the rare occasion that FPD does sustain an external complaint of officer misconduct, the discipline it imposes is generally too low to be an effective deterrent.[57]

Our investigation raised concerns in particular about how FPD responds to untruthfulness by officers. In many departments, a finding of untruthfulness pursuant to internal investigation results in an officer's termination because the officer's credibility on police reports and in providing testimony is subsequently subject to challenge. In FPD, untruthfulness appears not even to always result in a formal investigation, and even where sustained, has little effect. In one case we reviewed, FPD sustained a charge of untruthfulness against an officer after he was found to have lied to the investigator about whether he had engaged in an argument with a civilian over the loudspeaker of his police vehicle. FPD imposed only a 12-hour suspension on the officer. In addition, FPD appears not to have taken the officer's untruthfulness into sufficient account in

[56] We found additional examples of FPD officers behaving in public in a manner that reflects poorly on FPD and law enforcement more generally. In November 2010, an officer was arrested for DUI by an Illinois police officer who found his car crashed in a ditch off the highway. Earlier that night he and his squad mates—including his sergeant—were thrown out of a bar for bullying a customer. The officer received a thirty-day suspension for the DUI. Neither the sergeant nor any officers was disciplined for their behavior in the bar. In September 2012, an officer stood by eating a sandwich while a fight broke out at an annual street festival. After finally getting involved to break up the fight, he publically berated and cursed at his squad mates, screamed and cursed at the two female street vendors who were fighting, and pepper-sprayed a handcuffed female arrestee in the back of his patrol car. The officer received a written reprimand.

[57] While the Chief's "log" of Internal Affairs ("IA") investigations contains many sustained allegations, most of these were internally generated; that is, the complaint was made by an FPD employee, usually a commander. In addition, we found that a majority of complaints are never investigated as IA cases, or even logged as complaints. The Chief's log, which he told us included all complaint investigations, includes 56 investigations from January 2010 through July 2014. Our review indicates that there were significantly more complaints of misconduct during this time period. Despite repeated requests, FPD provided us no other record of complaints received or investigated.

several subsequent complaints, including in at least one case in which the complainant alleged conduct very similar to that alleged in the case in which FPD found the officer untruthful. Nor, as discussed above, has FPD or the City disclosed this information to defendants challenging charges brought by the officer. In another case a supervisor was sustained for false testimony during an internal affairs investigation and was given a written reprimand. In another case in which an officer was clearly untruthful, FPD did not sustain the charge.[58] In that case, an officer in another jurisdiction was assigned to monitor an intersection in that city because an FPD-marked vehicle allegedly had repeatedly been running the stop sign at that intersection. While at that intersection, and while receiving a complaint from a person about the FPD vehicle, the officer saw that very vehicle "dr[iving] through the stop sign without tapping a brake," according to a sergeant with the other jurisdiction. When asked to respond to these allegations, the officer wrote, unequivocally, "I assure you I don't run stop signs." It is clear from the investigative file that FPD found that he did, in fact, run stop signs, as the officer was given counseling. Nonetheless, the officer received a counseling memo that made no mention of the officer's written denial of the misconduct observed by another law enforcement officer. This officer continues to write reports regarding significant uses of force, several of which our investigation found questionable.[59]

By failing to hold officers accountable, FPD leadership sends a message that FPD officers can behave as they like, regardless of law or policy, and even if caught, that punishment will be light. This message serves to condone officer misconduct and fuel community distrust.

4. FPD's Lack of Community Engagement Increases the Likelihood of Discriminatory Policing and Damages Public Trust

Alongside its divisive law enforcement practices and lack of meaningful response to community concerns about police conduct, FPD has made little effort in recent years to employ community policing or other community engagement strategies. This lack of community engagement has precluded the possibility of bridging the divide caused by Ferguson's law enforcement practices, and has increased the likelihood of discriminatory policing.

Community policing and related community engagement strategies provide the opportunity for officers and communities to work together to identify the causes of crime and disorder particular to their community, and to prioritize law enforcement efforts. *See Community Policing Defined* 1-16 (U.S. Dep't of Justice, Office of Community Oriented Policing Services, 2014). The focus of these strategies—in stark contrast to Ferguson's current law enforcement approach—is on crime prevention rather than on making arrests. *See Effective Policing and Crime Prevention: A Problem Oriented Guide for Mayors, City Managers, and County Executives* 1-62 (U.S. Dep't of Justice, Office of Community Oriented Policing Services, 2009). When implemented fully, community policing creates opportunities for officers and community

[58] FPD may have initially accepted this as a formal complaint, but then informally withdrew it after completion of the investigation. No rationale is provided for doing so, but the case does not appear on the Chief's IA investigation log, and another case with this same IA number appears instead.

[59] Our review of FPD's handling of misconduct complaints is just one source of our concern about FPD's efforts to ensure that officers are truthful in their reports and testimony, and to take appropriate measures when they are not. As discussed above, our review of FPD offense and force reports also raises this concern.

members to have frequent, positive interactions with each other, and requires officers to partner with communities to solve particular public safety problems that, together, they have decided to address. Research and experience show that community policing can be more effective at crime prevention and at making people feel safer. *See* Gary Cordner, *Reducing Fear of Crime: Strategies for Police* 47 (U.S. Dep't of Justice, Office of Community Oriented Policing Services, Jan. 2010) ("Most studies of community policing have found that residents like community policing and feel safer when it is implemented where they live and work.") (citations omitted).

Further, research and law enforcement experience show that community policing and engagement can overcome many of the divisive dynamics that disconnected Ferguson residents and City leadership alike describe, from a dearth of positive interactions to racial stereotyping and racial violence. *See, e.g.*, Glaser, *supra*, at 207-11 (discussing research showing that community policing and similar approaches can help reduce racial bias and stereotypes and improve community relations); L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 Ohio St. J. of Crim. L. 115, 143-47 (2014) (describing how fully implemented and inclusive community policing can help avoid racial stereotyping and violence); *Strengthening the Relationship Between Law Enforcement and Communities of Color: Developing an Agenda for Action* 1-20 (U.S. Dep't of Justice, Office of Community Oriented Policing Services, 2014).

Ferguson's community policing efforts appear always to have been somewhat modest, but have dwindled to almost nothing in recent years. FPD has no community policing or community engagement plan. FPD currently designates a single officer the "Community Resource Officer." This officer attends community meetings, serves as FPD's public relations liaison, and is charged with collecting crime data. No other officers play any substantive role in community policing efforts. Officers we spoke with were fairly consistent in their acknowledgment of this, and of the fact that this move away from community policing has been due, at least in part, to an increased focus on code enforcement and revenue generation in recent years. As discussed above, our investigation found that FPD redeployed officers to 12-hour shifts, in part for revenue reasons. There is some evidence that community policing is more difficult to carry out when patrol officers are on 12-hour shifts, and this appears to be the case in Ferguson. While many officers in Ferguson support 12-hour shifts, several told us that the 12-hour shift has undermined community policing. One officer said that "FPD used to have a strong community policing ethic—then we went to a 12-hour day." Another officer told us that the 12-hour schedule, combined with a lack of any attempt to have officers remain within their assigned area, has resulted in a lack of any geographical familiarity by FPD officers. This same officer told us that it is viewed as more positive to write tickets than to "talk with your businesses." Another officer told us that FPD officers should put less energy into writing tickets and instead "get out of their cars" and get to know community members.

One officer told us that officers could spend more time engaging with community members and undertaking problem-solving projects if FPD officers were not so focused on activities that generate revenue. This officer told us, "everything's about the courts . . . the court's enforcement priorities are money." Another officer told us that officers cannot "get out of the car and play basketball with the kids," because "we've removed all the basketball hoops—there's an ordinance against it." While one officer told us that there was a police substation in

Canfield Green when FPD was more committed to community policing, another told us that now there is "nobody in there that anybody knows."

City and police officials note that there are several active neighborhood groups in Ferguson. We reached out to each of these during our investigation and met with each one that responded. Some areas of Ferguson are well-represented by these groups. But City and police officials acknowledge that, since August 2014, they have realized that there are entire segments of the Ferguson community that they have never made an effort to know, especially African Americans who live in Ferguson's large apartment complexes, including Canfield Green. While some City officials appear well-intentioned, they have also been too quick to presume that outreach to more disconnected segments of the Ferguson community will be futile. One City employee told us, "they think they do outreach, but they don't," and that some Ferguson residents do not even realize their homes are in Ferguson. Our investigation indicated that, while the City and police department may have to use different strategies for engagement in some parts of Ferguson than in others, true community policing efforts can have positive results. As an officer who has patrolled the area told us, "most of the people in Canfield are good people. They just don't have a lot of time to get involved."

5. Ferguson's Lack of a Diverse Police Force Further Undermines Community Trust

While approximately two-thirds of Ferguson's residents are African American, only four of Ferguson's 54 commissioned police officers are African American. Since August 2014, there has been widespread discussion about the impact this comparative lack of racial diversity within FPD has on community trust and police behavior. During this investigation we also heard repeated complaints about FPD's lack of racial diversity from members of the Ferguson community. Our investigation indicates that greater diversity within Ferguson Police Department has the potential to increase community confidence in the police department, but may only be successful as part of a broader police reform effort.

While it does appear that a lack of racial diversity among officers decreases African Americans' trust in a police department, this observation must be qualified. Increasing a police department's racial diversity does not necessarily increase community trust or improve officer conduct. There appear to be many reasons for this. One important reason is that African-American officers can abuse and violate the rights of African-American civilians, just as white officers can. And African-American officers who behave abusively can undermine community trust just as white officers can. Our investigation indicates that in Ferguson, individual officer behavior is largely driven by a police culture that focuses on revenue generation and is infected by race bias. While increased vertical and horizontal diversity, racial and otherwise, likely is necessary to change this culture, it probably cannot do so on its own.

Consistent with our findings in Ferguson and other departments, research more broadly shows that a racially diverse police force does not guarantee community trust or lawful policing. *See Diversity in Law Enforcement: A Literature Review* 4 n.v. (U.S. Dep't of Justice, Civil Rights Division, Office of Justice Programs, & U.S. Equal Employment Opportunity Commission, Submission to President's Task Force on 21st Century Policing, Jan. 2015). The

picture is far more complex. Some studies show that Africa-American officers are less prejudiced than white officers as a whole, are more familiar with African-American communities, are more likely to arrest white suspects and less likely to arrest black suspects, and receive more cooperation from African Americans with whom they interact on the job. *See* David A. Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. Crim. L. & Criminology 1209, 1224-25 (2006). But studies also show that African Americans are equally likely to fire their weapons, arrest people, and have complaints made about their behavior, and sometimes harbor prejudice against African-American civilians themselves. *Id.*

While a diverse police department does not guarantee a constitutional one, it is nonetheless critically important for law enforcement agencies, and the Ferguson Police Department in particular, to strive for broad diversity among officers and civilian staff. In general, notwithstanding the above caveats, a more racially diverse police department has the potential to increase confidence in police among African Americans in particular. *See* Joshua C. Cochran & Patricia Y. Warren, *Racial, Ethnic, and Gender Differences in*, *Perceptions of the Police: The Salience of Officer Race Within the Context of Racial Profiling,* 28(2) J. Contemp. Crim. Just. 206, 206-27 (2012). In addition, diversity of all types—including race, ethnicity, sex, national origin, religion, sexual orientation and gender identity—can be beneficial both to police-community relationships and the culture of the law enforcement agency. Increasing gender and sexual orientation diversity in policing in particular may be critical in re-making internal police culture and creating new assumptions about what makes policing effective. *See, e.g.*, Sklansky, *supra*, at 1233-34; Richardson & Goff, *supra*, at 143-47; Susan L. Miller, Kay B. Forest, & Nancy C. Jurik, *Diversity in Blue, Lesbian and Gay Police Officers in a Masculine Occupation,* 5 Men and Masculinities 355, 355-85 (Apr. 2003).[60] Moreover, aside from the beneficial impact a diverse police force may have on the culture of the department and police-community relations, police departments are obligated under law to provide equal opportunity for employment. *See* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

Our investigation indicates that Ferguson can and should do more to attract and hire a more diverse group of qualified police officers.[61] However, for these efforts to be successful at increasing the diversity of its workforce, as well as effective at increasing community trust and improving officer behavior, they must be part of a broader reform effort within FPD. This reform effort must focus recruitment efforts on attracting qualified candidates of *all* demographics with the skills and temperament to police respectfully and effectively, and must ensure that *all* officers—regardless of race—are required to police lawfully and with integrity.

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[60] While the emphasis in Ferguson has been on racial diversity, FPD also, like many police agencies, has strikingly disparate gender diversity: in Ferguson, approximately 55% of residents are female, but FPD has only four female officers. *See* 2010 *Census*, U.S. Census Bureau (2010), *available at* factfinder.census.gov/bkmk/table/1.0/en/DEC/10_DP/DPDP1/1600000US2923986 (last visited Feb. 26, 2015). During our investigation we received many complaints about FPD's lack of gender diversity as well.

[61] While not the focus of our investigation, the information we reviewed indicated that Ferguson's efforts to retain qualified female and black officers may be compromised by the same biases we saw more broadly in the department. In particular, while the focus of our investigation did not permit us to reach a conclusive finding, we found evidence that FPD tolerates sexual harassment by male officers, and has responded poorly to allegations of sexual harassment that have been made by female officers.

V. CHANGES NECESSARY TO REMEDY FERGUSON'S UNLAWFUL LAW ENFORCEMENT PRACTICES AND REPAIR COMMUNITY TRUST

The problems identified within this letter reflect deeply entrenched practices and priorities that are incompatible with lawful and effective policing and that damage community trust. Addressing those problems and repairing the City's relationship with the community will require a fundamental redirection of Ferguson's approach to law enforcement, including the police and court practices that reflect and perpetuate this approach.

Below we set out broad recommendations for changes that Ferguson should make to its police and court practices to correct the constitutional violations our investigation identified. Ensuring meaningful, sustainable, and verifiable reform will require that these and other measures be part of a court-enforceable remedial process that includes involvement from community stakeholders as well as independent oversight. In the coming weeks, we will seek to work with the City of Ferguson toward developing and reaching agreement on an appropriate framework for reform.

A. Ferguson Police Practices

1. Implement a Robust System of True Community Policing

Many of the recommendations included below would require a shift from policing to raise revenue to policing in partnership with the entire Ferguson community. Developing these relationships will take time and considerable effort. FPD should:

a. Develop and put into action a policy and detailed plan for comprehensive implementation of community policing and problem-solving principles. Conduct outreach and involve the entire community in developing and implementing this plan;
b. Increase opportunities for officers to have frequent, positive interactions with people outside of an enforcement context, especially groups that have expressed high levels of distrust of police. Such opportunities may include police athletic leagues and similar informal activities;
c. Develop community partnerships to identify crime prevention priorities, with a focus on disconnected areas, such as Ferguson's apartment complexes, and disconnected groups, such as much of Ferguson's African-American youth;
d. Modify officer deployment patterns and scheduling (such as moving away from the current 12-hour shift and assigning officers to patrol the same geographic areas consistently) to facilitate participating in crime prevention projects and familiarity with areas and people;
e. Train officers on crime-prevention, officer safety, and anti-discrimination advantages of community policing. Train officers on mechanics of community policing and their role in implementing it;
f. Measure and evaluate individual, supervisory, and agency police performance on community engagement, problem-oriented-policing projects, and crime prevention, rather than on arrest and citation productivity.

2. Focus Stop, Search, Ticketing and Arrest Practices on Community Protection

FPD must fundamentally change the way it conducts stops and searches, issues citations and summonses, and makes arrests. FPD officers must be trained and required to abide by the law. In addition, FPD enforcement efforts should be reoriented so that officers are required to take enforcement action because it promotes public safety, not simply because they have legal authority to act. To do this, FPD should:

a. Prohibit the use of ticketing and arrest quotas, whether formal or informal;
b. Require that officers report in writing all stops, searches and arrests, including pedestrian stops, and that their reports articulate the legal authority for the law enforcement action and sufficient description of facts to support that authority;
c. Require documented supervisory approval prior to:
    1) Issuing any citation/summons that includes more than two charges;
    2) Making an arrest on any of the following charges:
        i. Failure to Comply/Obey;
        ii. Resisting Arrest;
        iii. Disorderly Conduct/Disturbing the Peace;
        iv. Obstruction of Government Operations;
    3) Arresting or ticketing an individual who sought police aid, or who is cooperating with police in an investigation;
    4) Arresting on a municipal warrant or wanted;
d. Revise Failure to Comply municipal code provision to bring within constitutional limits, and provide sufficient guidance so that all stops, citations, and arrests based on the provision comply with the Constitution;
e. Train officers on proper use of Failure to Comply charge, including elements of the offense and appropriateness of the charge for interference with police activity that threatens public safety;
f. Require that applicable legal standards are met before officers conduct pat-downs or vehicle searches. Prohibit searches based on consent for the foreseeable future;
g. Develop system of correctable violation, or "fix-it" tickets, and require officers to issue fix-it tickets wherever possible and absent contrary supervisory instruction;
h. Develop and implement policy and training regarding appropriate police response to activities protected by the First Amendment, including the right to observe, record, and protest police action;
i. Provide initial and regularly recurring training on Fourth Amendment constraints on police action, as well as responsibility within FPD to constrain action beyond what Fourth Amendment requires in interest of public safety and community trust;
j. Discontinue use of "wanteds" or "stop orders" and prohibit officers from conducting stops, searches, or arrests on the basis of "wanteds" or "stop orders" issued by other agencies.

3. Increase Tracking, Review, and Analysis of FPD Stop, Search, Ticketing and Arrest Practices

At the first level of supervision and as an agency, FPD must review more stringently officers' stop, search, ticketing, and arrest practices to ensure that officers are complying with the

Constitution and department policy, and to evaluate the impact of officer activity on police legitimacy and community trust. FPD should:

a. Develop and implement a plan for broader collection of stop, search, ticketing, and arrest data that includes pedestrian stops, enhances vehicle stop data collection, and requires collection of data on all stop and post-stop activity, as well as location and demographic information;
b. Require supervisors to review all officer activity and review all officer reports before the supervisor leaves shift;
c. Develop and implement system for regular review of stop, search, ticketing, and arrest data at supervisory and agency level to detect problematic trends and ensure consistency with public safety and community policing goals;
d. Analyze race and other disparities shown in stop, search, ticketing, and arrest practices to determine whether disparities can be reduced consistent with public safety goals.

4. <u>Change Force Use, Reporting, Review, and Response to Encourage De-Escalation and the Use of the Minimal Force Necessary in a Situation</u>

FPD should reorient officers' approach to using force by ensuring that they are trained and skilled in using tools and tactics to de-escalate situations, and incentivized to avoid using force wherever possible. FPD also should implement a system of force review that ensures that improper force is detected and responded to effectively, and that policy, training, tactics, and officer safety concerns are identified. FPD should:

a. Train and require officers to use de-escalation techniques wherever possible both to avoid a situation escalating to where force becomes necessary, and to avoid unnecessary force even where it would be legally justified. Training should include tactics for slowing down a situation to increase available options;
b. Require onsite supervisory approval before deploying any canine, absent documented exigent circumstances; require and train canine officers to take into account the nature and severity of the alleged crime when deciding whether to deploy a canine to bite; require and train canine officers to avoid sending a canine to apprehend by biting a concealed suspect when the objective facts do not suggest the suspect is armed and a lower level of force reasonably can be expected to secure the suspect;
c. Place more stringent limits on use of ECWs, including limitations on multiple ECW cycles and detailed justification for using more than one cycle;
d. Retrain officers in use of ECWs to ensure they view and use ECWs as a tool of necessity, not convenience. Training should be consistent with principles set out in the *2011 ECW Guidelines*;
e. Develop and implement use-of-force reporting that requires the officer using force to complete a narrative, separate from the offense report, describing the force used with particularity, and describing with specificity the circumstances that required the level of force used, including the reason for the initial stop or other enforcement action. Some levels of force should require all officers observing the use of force to complete a separate force narrative;
f. Develop and implement supervisory review of force that requires the supervisor to conduct a complete review of each use of force, including gathering and considering

evidence necessary to understand the circumstances of the force incident and determine its consistency with law and policy, including statements from individuals against whom force is used and civilian witnesses;

g. Prohibit supervisors from reviewing or investigating a use of force in which they participated or directed;
h. Ensure that complete use-of-force reporting and review/investigation files—including all offense reports, witness statements, and medical, audio/video, and other evidence—are kept together in a centralized location;
i. Develop and implement a system for higher-level, inter-disciplinary review of some types of force, such as lethal force, canine deployment, ECWs, and force resulting in any injury;
j. Improve collection, review, and response to use-of-force data, including information regarding ECW and canine use;
k. Implement system of zero tolerance for use of force as punishment or retaliation rather than as necessary, proportionate response to counter a threat;
l. Discipline officers who fail to report force and supervisors who fail to conduct adequate force investigations;
m. Identify race and other disparities in officer use of force and develop strategies to eliminate avoidable disparities;
n. Staff jail with at least two correctional officers at all times to ensure safety and minimize need for use of force in dealing with intoxicated or combative prisoners. Train correctional officers in de-escalation techniques with specific instruction and training on minimizing force when dealing with intoxicated and combative prisoners, as well as with passive resistance and noncompliance.

5. <u>Implement Policies and Training to Improve Interactions with Vulnerable People</u>

Providing officers with the tools and training to better respond to persons in physical or mental health crisis, and to those with intellectual disabilities, will help avoid unnecessary injuries, increase community trust, and make officers safer. FPD should:

a. Develop and implement policy and training for identifying and responding to individuals with known or suspected mental health conditions, including those observably in mental health crisis, and those with intellectual or other disabilities;
b. Provide enhanced crisis intervention training to a subset of officers to allow for ready availability of trained officers on the scenes of critical incidents involving individuals with mentally illness;
c. Require that, wherever possible, at least one officer with enhanced crisis intervention training respond to any situation concerning individuals in mental health crisis or with intellectual disability, when force might be used;
d. Provide training to officers regarding how to identify and respond to more commonly occurring medical emergencies that may at first appear to reflect a failure to comply with lawful orders. Such medical emergencies may include, for example, seizures and diabetic emergencies.

6. Change Response to Students to Avoid Criminalizing Youth While Maintaining a Learning Environment

FPD has the opportunity to profoundly impact students through its SRO program. This program can be used as a way to build positive relationships with youth from a young age and to support strategies to keep students in school and learning. FPD should:

a. Work with school administrators, teachers, parents, and students to develop and implement policy and training consistent with law and best practices to more effectively address disciplinary issues in schools. This approach should be focused on SROs developing positive relationships with youth in support of maintaining a learning environment without unnecessarily treating disciplinary issues as criminal matters or resulting in the routine imposition of lengthy suspensions;
b. Provide initial and regularly recurring training to SROs, including training in mental health, counseling, and the development of the teenage brain;
c. Evaluate SRO performance on student engagement and prevention of disturbances, rather than on student arrests or removals;
d. Regularly review and evaluate incidents in which SROs are involved to ensure they meet the particular goals of the SRO program; to identify any disparate impact or treatment by race or other protected basis; and to identify any policy, training, or equipment concerns.

7. Implement Measures to Reduce Bias and Its Impact on Police Behavior

Many of the recommendations listed elsewhere have the potential to reduce the level and impact of bias on police behavior (e.g., increasing positive interactions between police and the community; increasing the collection and analysis of stop data; and increasing oversight of the exercise of police discretion). Below are additional measures that can assist in this effort. FPD should:

a. Provide initial and recurring training to all officers that sends a clear, consistent and emphatic message that bias-based profiling and other forms of discriminatory policing are prohibited. Training should include:
    1) Relevant legal and ethical standards;
    2) Information on how stereotypes and implicit bias can infect police work;
    3) The importance of procedural justice and police legitimacy on community trust, police effectiveness, and officer safety;
    4) The negative impacts of profiling on public safety and crime prevention;
b. Provide training to supervisors and commanders on detecting and responding to bias-based profiling and other forms of discriminatory policing;
c. Include community members from groups that have expressed high levels of distrust of police in officer training;
d. Take steps to eliminate all forms of workplace bias from FPD and the City.

8. Improve and Increase Training Generally

FPD officers receive far too little training as recruits and after becoming officers. Officers need a better knowledge of what law, policy, and integrity require, and concrete training on how to

carry out their police responsibilities. In addition to the training specified elsewhere in these recommendations, FPD should:

a. Significantly increase the quality and amount of all types of officer training, including recruit, field training (including for officers hired from other agencies), and in-service training;
b. Require that training cover, in depth, constitutional and other legal restrictions on officer action, as well as additional factors officers should consider before taking enforcement action (such as police legitimacy and procedural justice considerations);
c. Employ scenario-based and adult-learning methods.

9. Increase Civilian Involvement in Police Decision Making

In addition to engaging with all segments of Ferguson as part of implementing community policing, FPD should develop and implement a system that incorporates civilian input into all aspects of policing, including policy development, training, use-of-force review, and investigation of misconduct complaints.

10. Improve Officer Supervision

The recommendations set out here cannot be implemented without dedicated, skilled, and well-trained supervisors who police lawfully and without bias. FPD should:

a. Provide all supervisors with specific supervisory training prior to assigning them to supervisory positions;
b. Develop and require supervisors to use an "early intervention system" to objectively detect problematic patterns of officer misconduct, assist officers who need additional attention, and identify training and equipment needs;
c. Support supervisors who encourage and guide respectful policing and implement community policing principles, and evaluate them on this basis. Remove supervisors who do not adequately review officer activity and reports or fail to support, through words or actions, unbiased policing;
d. Ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide close and effective supervision to each officer under the supervisor's direct command, provide officers with the direction and guidance necessary to improve and develop as officers, and to identify, correct, and prevent misconduct.

11. Recruiting, Hiring, and Promotion

There are widespread concerns about the lack of diversity, especially race and gender diversity, among FPD officers. FPD should modify its systems for recruiting hiring and promotion to:

a. Ensure that the department's officer hiring and selection processes include an objective process for selection that employs reliable and valid selection devices that comport with best practices and federal anti-discrimination laws;
b. In the case of lateral hires, scrutinize prior training and qualification records as well as complaint and disciplinary history;

c. Implement validated pre-employment screening mechanisms to ensure temperamental and skill-set suitability for policing.

12. <u>Develop Mechanisms to More Effectively Respond to Allegations of Officer Misconduct</u>

Responding to allegations of officer misconduct is critical not only to correct officer behavior and identify policy, training, or tactical concerns, but also to build community confidence and police legitimacy. FPD should:

a. Modify procedures and practices for accepting complaints to make it easier and less intimidating for individuals to register formal complaints about police conduct, including providing complaint forms online and in various locations throughout the City and allowing for complaints to be submitted online and by third parties or anonymously;
b. Require that all complaints be logged and investigated;
c. Develop and implement a consistent, reliable, and fair process for investigating and responding to complaints of officer misconduct. As part of this process, FPD should:
    1) Investigate all misconduct complaints, even where the complainant indicates he or she does not want the complaint investigated, or wishes to remain anonymous;
    2) Not withdraw complaints without reaching a disposition;
d. Develop and implement a fair and consistent system for disciplining officers found to have committed misconduct;
e. Terminate officers found to have been materially untruthful in performance of their duties, including in completing reports or during internal affairs investigations;
f. Timely provide in writing to the Ferguson Prosecuting Attorney all impeachment information on officers who may testify or provide sworn reports, including findings of untruthfulness in internal affairs investigations, for disclosure to the defendant under *Brady v. Maryland*, 373 U.S. 83 (1963);
g. Document in a central location all misconduct complaints and investigations, including the nature of the complaint, the name of the officer, and the disposition of the investigation;
h. Maintain complete misconduct complaint investigative files in a central location;
i. Develop and implement a community-centered mediation program to resolve, as appropriate, allegations of officer misconduct.

13. <u>Publically Share Information about the Nature and Impact of Police Activities</u>

Transparency is a key component of good governance and community trust. Providing broad information to the public also facilitates constructive community engagement. FPD should:

a. Provide regular and specific public reports on police stop, search, arrest, ticketing, force, and community engagement activities, including particular problems and achievements, and describing the steps taken to address concerns;
b. Provide regular public reports on allegations of misconduct, including the nature of the complaint and its resolution;
c. Make available online and regularly update a complete set of police policies.

B. Ferguson Court Practices

1. Make Municipal Court Processes More Transparent

Restoring the legitimacy of the municipal justice system requires increased transparency regarding court operations to allow the public to assess whether the court is operating in a fair manner. The municipal court should:

a. Make public—through a variety of means, including prominent display on the City, police, and municipal court web pages—all court-related fines, fees, and bond amounts, and a description of the municipal court payment process, including court dates, payment options, and potential consequences for non-payment or missed court dates;
b. Create, adopt, and make public written procedures for all court operations;
c. Collect all orders currently in effect and make those orders accessible to the public, including by posting any such materials on the City, police, and municipal court web pages. Make public all new court orders and directives as they are issued;
d. Initiate a public education campaign to ensure individuals can have an accurate and complete understanding of how Ferguson's municipal court operates, including that appearance in court without ability to pay an owed fine will not result in arrest;
e. Provide broadly available information to individuals regarding low-cost or cost-free legal assistance;
f. Enhance public reporting by ensuring data provided to the Missouri Courts Administrator is accurate, and by making that and additional data available on City and court websites, including monthly reports indicating:
    1) The number of warrants issued and currently outstanding;
    2) The number of cases heard during the previous month;
    3) The amount of fines imposed and collected, broken down by offense, including by race;
    4) Data regarding the number of Missouri Department of Revenue license suspensions initiated by the court and the number of compliance letters enabling license reinstatement issued by the court.
g. Revise the municipal court website to enable these recommendations to be fully implemented.

2. Provide Complete and Accurate Information to a Person Charged with a Municipal Violation

In addition to making its processes more transparent to the public, the court should ensure that those with cases pending before the court are provided with adequate and reliable information about their case. The municipal court, in collaboration with the Patrol Division, should:

a. Ensure all FPD citations, summonses, and arrests are accompanied by sufficient, detailed information about the recipient's rights and responsibilities, including:
    1) The specific municipal violation charged;
    2) A person's options for addressing the charge, including whether in-person appearance is required or if alternative methods, including online payment, are available, and information regarding all pending deadlines;

3) A person's right to challenge the charge in court;
4) The exact date and time of the court session at which the person receiving the charge must or may appear;
5) Information about how to seek a continuance for a court date;
6) The specific fine imposed, if the offense has a preset fine;
7) The processes available to seek a fine reduction for financial incapacity, consistent with recommendation four set forth below;
8) The penalties for failing to meet court requirements.

b. Develop and implement a secure online system for individuals to be able to access specific details about their case, including fines owed, payments made, and pending requirements and deadlines.

3. <u>Change Court Procedures for Tracking and Resolving Municipal Charges to Simplify Court Processes and Expand Available Payment Options</u>

The municipal court should:

a. Strictly limit those offenses requiring in-person court appearance for resolution to those for which state law requires the defendant to make an initial appearance in court;
b. Establish a process by which a person may seek a continuance of a court date, whether or not represented by counsel;
c. Continue to implement its online payment system, and expand it to allow late payments, payment plan installments, bond payments, and other court payments to be made online;
d. Continue to develop and transition to an electronic records management system for court records to ensure all case information and events are tracked and accessible to court officials and FPD staff, as appropriate. Ensure electronic records management system has appropriate controls to limit user access and ability to alter case records;
e. Ensure that the municipal court office is consistently staffed during posted business hours to allow those appearing at the court window of the police department seeking to resolve municipal charges to do so;
f. Accept partial payments from individuals, and provide clear information to individuals about payment plan options.

4. <u>Review Preset Fine Amounts and Implement System for Fine Reduction</u>

The municipal court should:

a. Immediately undertake a review of current fine amounts and ensure that they are consistent not only with regional but also statewide fine averages, are not overly punitive, and take into account the income of Ferguson residents;
b. Develop and implement a process by which individuals can appear in court to seek proportioning of preset fines to their financial ability to pay.

5. Develop Effective Ability-to-Pay Assessment System and Improve Data Collection Regarding Imposed Fines

The municipal court should:

a. Develop and implement consistent written criteria for conducting an assessment of an individual's ability to pay prior to the assessment of any fine, and upon any increase in the fine or related court costs and fees. The ability-to-pay assessment should include not only a consideration of the financial resources of an individual, but also a consideration of any documented fines owed to other municipal courts;
b. Improve current procedures for collecting and tracking data regarding fine amounts imposed. Track initial fines imposed as an independent figure separate from any additional charges imposed during a case;
c. Regularly conduct internal reviews of data regarding fine assessments. This review should include an analysis of fines imposed for the same offenses, including by race of the defendant, to ensure fine assessments for like offenses are set appropriately.

6. Revise Payment Plan Procedures and Provide Alternatives to Fine Payments for Resolving Municipal Charges

The municipal court should:

a. Develop and implement a specific process by which a person can enroll in a payment plan that requires reasonable periodic payments. That process should include an assessment of a person's ability to pay to determine an appropriate periodic payment amount, although a required payment shall not exceed $100. That process should also include a means for a person to seek a reduction in their monthly payment obligation in the event of a change in their financial circumstances;
b. Provide more opportunities for a person to seek leave to pay a lower amount in a given month beyond the court's current practice of requiring appearance the first Wednesday of the month at 11:00 a.m. Adopt procedures allowing individuals to seek their first request for a one-time reduction outside of court, and to have such requests be automatically granted. Such procedures should provide that subsequent requests shall be granted liberally by the Municipal Judge, and denials of requests for extensions or reduced monthly payments shall be accompanied by a written explanation of why the request was denied;
c. Cease practice of automatically issuing a warrant when a person on a payment plan misses a payment, and adopt procedures that provide for appropriate warnings following a missed payment, consistent with recommendation eight set forth below;
d. Work with community organizations and other regional groups to develop alternative penalty options besides fines, including expanding community service options. Make all individuals eligible for community service.

7. Reform Trial Procedures to Ensure Full Compliance with Due Process Requirements

The municipal court should take all necessary steps to ensure that the court's trial procedures fully comport with due process such that defendants are provided with a fair and impartial forum to challenge the charges brought against them. As part of this effort, the court shall ensure that

defendants taking their case to trial are provided with all evidence relevant to guilt determinations consistent with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), and other applicable law.

8. Stop Using Arrest Warrants as a Means of Collecting Owed Fines and Fees

As Ferguson's own Municipal Judge has recognized, municipal code violations should result in jail in only the rarest of circumstances. To begin to address these problems, Ferguson should only jail individuals for a failure to appear on or pay a municipal code violation penalty, if at all, if the following steps have been attempted in a particular case and have failed:

a. Enforcement of fines through alternative means, including:
    1) Assessment of reasonable late fees;
    2) Expanding options for payment through community service;
    3) Modified payment plans with reasonable amounts due and payment procedures;
    4) A show cause hearing on why a warrant should not issue, including an assessment of ability to pay, where requested. At this hearing the individual has a right to counsel and, if the individual is indigent, the court will assign counsel to represent the individual. *See* Mo. Sup. Ct. R. 37.65; Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8;
b. Personal service on the individual of the Order to Show Cause Motion that provides notice of the above information regarding right to counsel and the consequences of non-appearance; and
c. If the above mechanisms are unsuccessful at securing payment or otherwise resolving the case, the court should ensure that any arrest warrant issued has the instruction that it be executed only on days that the court is in session so that the individual can be brought immediately before the court to enable the above procedures to be implemented. *See* Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8 ("If a defendant fails to appear in court on the return date of the order to show cause or motion for contempt, *a warrant should be issued to get the defendant before the court for the hearing.*") (emphasis added).

9. Allow Warrants to be Recalled Without the Payment of Bond

Ferguson recently extended its warrant recall program, also called an "amnesty" program, which allows individuals to have municipal warrants recalled and to receive a new court date without paying a bond. This program should be made permanent. The municipal court should:

a. Allow all individuals to seek warrant recall in writing or via telephone, whether represented by an attorney or not;
b. Provide information to a participating individual at the time of the warrant recall, including the number of charges pending, the fine amount due if a charge has been assessed, the options available to pay assessed fines, the deadlines for doing so, and the requirements, if any, for appearing in court.

10. Modify Bond Amounts and Bond and Detention Procedures

Ferguson has two separate municipal code bond schedules and processes: one for warrantless arrests, and another for arrests pursuant to warrants issued by the municipal court. Ferguson's municipal court recently limited the number of municipal code violations for which officers can jail an individual without a warrant, and reduced the amount of time the jail may hold a defendant who is unable to post bond from 72 to 12 hours. These changes are a positive start, but further reforms are necessary. The City and municipal court should:

a. Limit the amount of time the jail may hold a defendant unable to post bond on *all* arrests for municipal code violations or municipal arrest warrants to 12 hours;
b. Establish procedures for setting bond amounts for warrantless and warrant-based detainees that are consistent with the Equal Protection Clause's prohibition on incarcerating individuals on the basis of indigency, and that ensure bond shall in no case exceed $100 for a person arrested pursuant to a municipal warrant, regardless of the number of pending charges;
c. At the time of bond payment, provide individuals with the option of applying a bond fee to underlying fines and costs, including in the event of forfeiture;
d. Take steps necessary, including the continued development of a computerized court records management system as discussed above, to enable court staff, FPD officers, and FPD correctional officers to access case information so that a person has the option of paying the full underlying fine owed in lieu of bond upon being arrested;
e. Increase options for making a bond payment, including allowing bond payment by credit card and through the online payment system, whether by a person in jail or outside of the jail;
f. Institute closer oversight and tracking of bond payment acceptance by FPD officers and FPD correctional officers;
g. Initiate practice of issuing bond refund checks immediately upon a defendant paying their fine in full and being owed a bond refund;
h. Ensure that all court staff, FPD officers, and FPD correctional officers understand Ferguson's bond rules and procedures.

11. Consistently Provide "Compliance Letters" Necessary for Driver's License Reinstatement After a Person Makes an Appearance Following a License Suspension

Per official policy, the municipal court provides people who have had their licenses suspended pursuant to Mo. Rev. Stat. § 302.341.1 with compliance letters enabling the suspension to be lifted only once the underlying fine has been paid in full. Court staff told us, however, that in "sympathetic cases," they provide compliance letters that enable people to have their licenses reinstated. The court should adopt and implement a policy of providing individuals with compliance letters immediately upon a person appearing in court following a license suspension pursuant to this statute.

12. Close Cases that Remain on the Court's Docket Solely Because of Failure to Appear Charges or Bond Forfeitures

In September 2014, the City of Ferguson repealed Ferguson Mun. Code § 13-58, which allowed the imposition of an additional "Failure to Appear" charge, fines, and fees in response to missed appearances and payments. Nonetheless, many cases remain pending on the court's docket solely on account of charges, fines, and fees issued pursuant to this statute or because of questionable bond forfeiture practices. The City and municipal court should:

a. Close all municipal cases in which the individual has paid fines equal or greater to the amount of the fine assessed for the original municipal code violation—through Failure to Appear fines and fees or forfeited bond payments—and clear all associated warrants;
b. Remove all Failure to Appear related charges, fines, and fees from current cases, and close all cases in which only a Failure to Appear charge, fine, or fee remains pending;
c. Immediately provide compliance letters so that license suspensions are lifted for all individuals whose cases are closed pursuant to these reforms.

13. Collaborate with Other Municipalities and the State of Missouri to Implement Reforms

These recommendations should be closely evaluated and, as appropriate, implemented by other municipalities. We also recommend that the City and other municipalities work collaboratively with the state of Missouri on issues requiring statewide action, and further recommend:

a. Reform of Mo. Rev. Stat. § 302.341.1, which requires the suspension of individuals' driving licenses in certain cases where they do not appear or timely pay traffic charges involving moving violations;
b. Increased oversight of municipal courts in St. Louis County and throughout the state of Missouri to ensure that courts operate in a manner consistent with due process, equal protection, and other requirements of the Constitution and other laws.

VI. CONCLUSION

Our investigation indicates that Ferguson as a City has the capacity to reform its approach to law enforcement. A small municipal department may offer greater potential for officers to form partnerships and have frequent, positive interactions with Ferguson residents, repairing and maintaining police-community relationships. *See, e.g.*, Jim Burack, *Putting the "Local" Back in Local Law Enforcement*, *in*, *American Policing in 2022: Essays on the Future of the Profession* 79-83 (Debra R. Cohen McCullough & Deborah L. Spence, eds., 2012). These reform efforts will be well worth the considerable time and dedication they will require, as they have the potential to make Ferguson safer and more united.

U.S. Department of Justice

Civil Rights Division

Office for Access to Justice

Washington, D.C. 20530

March 14, 2016

Dear Colleague:

The Department of Justice ("the Department") is committed to assisting state and local courts in their efforts to ensure equal justice and due process for all those who come before them. In December 2015, the Department convened a diverse group of stakeholders—judges, court administrators, lawmakers, prosecutors, defense attorneys, advocates, and impacted individuals—to discuss the assessment and enforcement of fines and fees in state and local courts. While the convening made plain that unlawful and harmful practices exist in certain jurisdictions throughout the country, it also highlighted a number of reform efforts underway by state leaders, judicial officers, and advocates, and underscored the commitment of all the participants to continue addressing these critical issues. At the meeting, participants and Department officials also discussed ways in which the Department could assist courts in their efforts to make needed changes. Among other recommendations, participants called on the Department to provide greater clarity to state and local courts regarding their legal obligations with respect to fines and fees and to share best practices. Accordingly, this letter is intended to address some of the most common practices that run afoul of the United States Constitution and/or other federal laws and to assist court leadership in ensuring that courts at every level of the justice system operate fairly and lawfully, as well as to suggest alternative practices that can address legitimate public safety needs while also protecting the rights of participants in the justice system.

Recent years have seen increased attention on the illegal enforcement of fines and fees in certain jurisdictions around the country—often with respect to individuals accused of misdemeanors, quasi-criminal ordinance violations, or civil infractions.[1] Typically, courts do not sentence defendants to incarceration in these cases; monetary fines are the norm. Yet the harm

[1] *See, e.g.*, Civil Rights Division, U.S. Department of Justice, *Investigation of the Ferguson Police Department* (Mar. 4, 2015), http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf (finding that the Ferguson, Missouri, municipal court routinely deprived people of their constitutional rights to due process and equal protection and other federal protections); Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010), *available at* http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf (reporting on fine and fee practices in fifteen states); American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (2010), *available at* https://www.aclu.org/files/assets/InForAPenny_web.pdf (discussing practices in Louisiana, Michigan, Ohio, Georgia, and Washington state).

caused by unlawful practices in these jurisdictions can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community[2]; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.[3] Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.[4]

To help judicial actors protect individuals' rights and avoid unnecessary harm, we discuss below a set of basic constitutional principles relevant to the enforcement of fines and fees. These principles, grounded in the rights to due process and equal protection, require the following:

(1) Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful;

(2) Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees;

(3) Courts must not condition access to a judicial hearing on the prepayment of fines or fees;

(4) Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;

(5) Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;

(6) Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and

(7) Courts must safeguard against unconstitutional practices by court staff and private contractors.

In court systems receiving federal funds, these practices may also violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, when they unnecessarily impose disparate harm on the basis of race or national origin.

[2] Nothing in this letter is intended to suggest that courts may not preventively detain a defendant pretrial in order to secure the safety of the public or appearance of the defendant.

[3] *See* Council of Economic Advisers, Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, at 1 (Dec. 2015), *available at* https://www.whitehouse.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (describing the disproportionate impact on the poor of fixed monetary penalties, which "can lead to high levels of debt and even incarceration for failure to fulfil a payment" and create "barriers to successful re-entry after an offense").

[4] *See* Conference of State Court Administrators, 2011-2012 Policy Paper, *Courts Are Not Revenue Centers* (2012), *available at* https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf.

As court leaders, your guidance on these issues is critical. We urge you to review court rules and procedures within your jurisdiction to ensure that they comply with due process, equal protection, and sound public policy. We also encourage you to forward a copy of this letter to every judge in your jurisdiction; to provide appropriate training for judges in the areas discussed below; and to develop resources, such as bench books, to assist judges in performing their duties lawfully and effectively. We also hope that you will work with the Justice Department, going forward, to continue to develop and share solutions for implementing and adhering to these principles.

1. Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to pay was willful.

The due process and equal protection principles of the Fourteenth Amendment prohibit "punishing a person for his poverty." *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). Accordingly, the Supreme Court has repeatedly held that the government may not incarcerate an individual solely because of inability to pay a fine or fee. In *Bearden*, the Court prohibited the incarceration of indigent probationers for failing to pay a fine because "[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id.* at 672-73; *see also Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that state could not convert defendant's unpaid fine for a fine-only offense to incarceration because that would subject him "to imprisonment solely because of his indigency"); *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970) (holding that an indigent defendant could not be imprisoned longer than the statutory maximum for failing to pay his fine). The Supreme Court recently reaffirmed this principle in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), holding that a court violates due process when it finds a parent in civil contempt and jails the parent for failure to pay child support, without first inquiring into the parent's ability to pay. *Id.* at 2518-19.

To comply with this constitutional guarantee, state and local courts must inquire as to a person's ability to pay prior to imposing incarceration for nonpayment. Courts have an affirmative duty to conduct these inquiries and should do so sua sponte. *Bearden*, 461 U.S. at 671. Further, a court's obligation to conduct indigency inquiries endures throughout the life of a case. *See id.* at 662-63. A probationer may lose her job or suddenly require expensive medical care, leaving her in precarious financial circumstances. For that reason, a missed payment cannot itself be sufficient to trigger a person's arrest or detention unless the court first inquires anew into the reasons for the person's non-payment and determines that it was willful. In addition, to minimize these problems, courts should inquire into ability to pay at sentencing, when contemplating the assessment of fines and fees, rather than waiting until a person fails to pay.

Under *Bearden*, standards for indigency inquiries must ensure fair and accurate assessments of defendants' ability to pay. Due process requires that such standards include both notice to the defendant that ability to pay is a critical issue, and a meaningful opportunity for the defendant to be heard on the question of his or her financial circumstances. *See Turner*, 131 S. Ct. at 2519-20 (requiring courts to follow these specific procedures, and others, to prevent unrepresented parties from being jailed because of financial incapacity). Jurisdictions may benefit from creating statutory presumptions of indigency for certain classes of defendants—for example, those eligible for public benefits, living below a certain income level, or serving a term of confinement. *See, e.g.*, R.I. Gen. Laws § 12-20-10 (listing conditions considered "prima facie evidence of the defendant's indigency and limited ability to pay," including but not limited to "[q]ualification for and/or receipt of" public assistance, disability insurance, and food stamps).

2. Courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees.

When individuals of limited means cannot satisfy their financial obligations, *Bearden* requires consideration of "alternatives to imprisonment." 461 U.S. at 672. These alternatives may include extending the time for payment, reducing the debt, requiring the defendant to attend traffic or public safety classes, or imposing community service. *See id.* Recognizing this constitutional imperative, some jurisdictions have codified alternatives to incarceration in state law. *See, e.g.*, Ga. Code Ann. § 42-8-102(f)(4)(A) (2015) (providing that for "failure to report to probation or failure to pay fines, statutory surcharges, or probation supervision fees, the court shall consider the use of alternatives to confinement, including community service"); *see also Tate*, 401 U.S. at 400 n.5 (discussing effectiveness of fine payment plans and citing examples from several states). In some cases, it will be immediately apparent that a person is not and will not likely become able to pay a monetary fine. Therefore, courts should consider providing alternatives to indigent defendants not only after a failure to pay, but also in lieu of imposing financial obligations in the first place.

Neither community service programs nor payment plans, however, should become a means to impose greater penalties on the poor by, for example, imposing onerous user fees or interest. With respect to community service programs, court officials should consider delineating clear and consistent standards that allow individuals adequate time to complete the service and avoid creating unreasonable conflicts with individuals' work and family obligations. In imposing payment plans, courts should consider assessing the defendant's financial resources to determine a reasonable periodic payment, and should consider including a mechanism for defendants to seek a reduction in their monthly obligation if their financial circumstances change.

3. Courts must not condition access to a judicial hearing on prepayment of fines or fees.

State and local courts deprive indigent defendants of due process and equal protection if they condition access to the courts on payment of fines or fees. *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971) (holding that due process bars states from conditioning access to

compulsory judicial process on the payment of court fees by those unable to pay); *see also Tucker v. City of Montgomery Bd. of Comm'rs*, 410 F. Supp. 494, 502 (M.D. Ala. 1976) (holding that the conditioning of an appeal on payment of a bond violates indigent prisoners' equal protection rights and "'has no place in our heritage of Equal Justice Under Law'" (citing *Burns v. Ohio*, 360 U.S. 252, 258 (1959)).[5]

This unconstitutional practice is often framed as a routine administrative matter. For example, a motorist who is arrested for driving with a suspended license may be told that the penalty for the citation is $300 and that a court date will be scheduled only upon the completion of a $300 payment (sometimes referred to as a prehearing "bond" or "bail" payment). Courts most commonly impose these prepayment requirements on defendants who have failed to appear, depriving those defendants of the opportunity to establish good cause for missing court. Regardless of the charge, these requirements can have the effect of denying access to justice to the poor.

4. Courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *see also Turner*, 131 S. Ct. at 2519 (discussing the importance of notice in proceedings to enforce a child support order). Thus, constitutionally adequate notice must be provided for even the most minor cases. Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases. And inadequate notice can have a cascading effect, resulting in the defendant's failure to appear and leading to the imposition of significant penalties in violation of the defendant's due process rights.

Further, courts must ensure defendants' right to counsel in appropriate cases when enforcing fines and fees. Failing to appear or to pay outstanding fines or fees can result in incarceration, whether through the pursuit of criminal charges or criminal contempt, the imposition of a sentence that had been suspended, or the pursuit of civil contempt proceedings. The Sixth Amendment requires that a defendant be provided the right to counsel in any criminal proceeding resulting in incarceration, *see Scott v. Illinois*, 440 U.S. 367, 373 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), and indeed forbids imposition of a suspended jail sentence on a probationer who was not afforded a right to counsel when originally convicted and sentenced,

[5] The Supreme Court reaffirmed this principle in *Little v. Streater*, 452 U.S. 1, 16-17 (1981), when it prohibited conditioning indigent persons' access to blood tests in adversarial paternity actions on payment of a fee, and in *M.L.B. v. S.L.J.*, 519 U.S. 102, 107 (1996), when it prohibited charging filing fees to indigent persons seeking to appeal from proceedings terminating their parental rights.

see Alabama v. Shelton, 535 U.S. 654, 662 (2002). Under the Fourteenth Amendment, defendants likewise may be entitled to counsel in civil contempt proceedings for failure to pay fines or fees. *See Turner*, 131 S. Ct. at 2518-19 (holding that, although there is no automatic right to counsel in civil contempt proceedings for nonpayment of child support, due process is violated when neither counsel nor adequate alternative procedural safeguards are provided to prevent incarceration for inability to pay).[6]

5. Courts must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections.

The use of arrest warrants as a means of debt collection, rather than in response to public safety needs, creates unnecessary risk that individuals' constitutional rights will be violated. Warrants must not be issued for failure to pay without providing adequate notice to a defendant, a hearing where the defendant's ability to pay is assessed, and other basic procedural protections. *See Turner*, 131 S. Ct. at 2519; *Bearden*, 461 U.S. at 671-72; *Mullane*, 339 U.S. at 314-15. When people are arrested and detained on these warrants, the result is an unconstitutional deprivation of liberty. Rather than arrest and incarceration, courts should consider less harmful and less costly means of collecting justifiable debts, including civil debt collection.[7]

In many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant's driver's license to compel the payment of outstanding court debts. If a defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and thus "are not to be taken away without that procedural due process required by the Fourteenth Amendment"); *cf. Dixon v. Love*, 431 U.S. 105, 113-14 (1977) (upholding revocation of driver's license after conviction based in part on the due process provided in the underlying criminal proceedings); *Mackey v. Montrym*, 443 U.S. 1, 13-17 (1979) (upholding suspension of driver's license after arrest for driving under the influence and refusal to take a breath-analysis test, because suspension "substantially served" the government's interest in public safety and was based on "objective facts either within the personal knowledge of an impartial government official or readily ascertainable by him," making the risk of erroneous deprivation low). Accordingly, automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process.

[6] *Turner*'s ruling that the right to counsel is not automatic was limited to contempt proceedings arising from failure to pay child support to a custodial parent who is unrepresented by counsel. *See* 131 S. Ct. at 2512, 2519. The Court explained that recognizing such an automatic right in that context "could create an asymmetry of representation." *Id.* at 2519. The Court distinguished those circumstances from civil contempt proceedings to recover funds due to the government, which "more closely resemble debt-collection proceedings" in which "[t]he government is likely to have counsel or some other competent representative." *Id.* at 2520.

[7] Researchers have questioned whether the use of police and jail resources to coerce the payment of court debts is cost-effective. *See, e.g.*, Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 505, 527-28 (2011). This strategy may also undermine public safety by diverting police resources and stimulating public distrust of law enforcement.

Even where such suspensions are lawful, they nonetheless raise significant public policy concerns. Research has consistently found that having a valid driver's license can be crucial to individuals' ability to maintain a job, pursue educational opportunities, and care for families.[8] At the same time, suspending defendants' licenses decreases the likelihood that defendants will resolve pending cases and outstanding court debts, both by jeopardizing their employment and by making it more difficult to travel to court, and results in more unlicensed driving. For these reasons, where they have discretion to do so, state and local courts are encouraged to avoid suspending driver's licenses as a debt collection tool, reserving suspension for cases in which it would increase public safety.[9]

6. Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.

When indigent defendants are arrested for failure to make payments they cannot afford, they can be subjected to another independent violation of their rights: prolonged detention due to unlawful bail or bond practices. Bail that is set without regard to defendants' financial capacity can result in the incarceration of individuals not because they pose a threat to public safety or a flight risk, but rather because they cannot afford the assigned bail amount.

As the Department of Justice set forth in detail in a federal court brief last year, and as courts have long recognized, any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment. *See* Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, at 8 (M.D. Ala., Feb. 13, 2015) (citing *Bearden*, 461 U.S. at 671; *Tate*, 401 U.S. at 398; *Williams*, 399 U.S. at 240-41).[10] Systems that rely primarily on secured monetary bonds without adequate consideration of defendants' financial means tend to result in the incarceration of poor defendants who pose no threat to public safety solely because they cannot afford to pay.[11] To better protect constitutional rights while ensuring defendants' appearance in court and the safety of the community, courts should consider transitioning from a system based on secured monetary bail alone to one grounded in objective risk assessments by pretrial experts. *See, e.g.*, D.C. Code § 23-1321 (2014); Colo. Rev. Stat. 16-

[8] *See, e.g.*, Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles Affordability and Fairness Task Force: Final Report*, at xii (2006), *available at* http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf (a study of suspended drivers in New Jersey, which found that 42% of people lost their jobs as a result of the driver's license suspension, that 45% of those could not find another job, and that this had the greatest impact on seniors and low-income individuals).

[9] *See* Am. Ass'n of Motor Veh. Adm'rs, *Best Practices Guide to Reducing Suspended Drivers*, at 3 (2013), *available at* http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3723&libID=3709 (recommending that "legislatures repeal state laws requiring the suspension of driving privileges for non-highway safety related violations" and citing research supporting view that fewer driver suspensions for non-compliance with court requirements would increase public safety).

[10] The United States' Statement of Interest in *Varden* is available at http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/02/13/varden statement_ of_interest.pdf.

[11] *See supra* Statement of the United States, *Varden*, at 11 (citing Timothy R. Schnacke, U.S. Department of Justice, National Institute of Corrections, FUNDAMENTALS OF BAIL: A RESOURCE GUIDE FOR PRETRIAL PRACTITIONERS AND A FRAMEWORK FOR AMERICAN PRETRIAL REFORM, at 2 (2014), *available at* http://nicic.gov/library/028360).

4-104 (2014); Ky. Rev. Stat. Ann. § 431.066 (2015); N.J. S. 946/A1910 (enacted 2015); *see also* 18 U.S.C. § 3142 (permitting pretrial detention in the federal system when no conditions will reasonably assure the appearance of the defendant and safety of the community, but cautioning that "[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person").

7. Courts must safeguard against unconstitutional practices by court staff and private contractors.

In many courts, especially those adjudicating strictly minor or local offenses, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions—often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed and preserve "both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (internal quotation marks omitted); *see also* American Bar Association, MODEL CODE OF JUDICIAL CONDUCT, Canon 2, Rules 2.2, 2.5, 2.12.

Additional due process concerns arise when these designees have a direct pecuniary interest in the management or outcome of a case—for example, when a jurisdiction employs private, for-profit companies to supervise probationers. In many such jurisdictions, probation companies are authorized not only to collect court fines, but also to impose an array of discretionary surcharges (such as supervision fees, late fees, drug testing fees, etc.) to be paid to the company itself rather than to the court. Thus, the probation company that decides what services or sanctions to impose stands to profit from those very decisions. The Supreme Court has "always been sensitive to the possibility that important actors in the criminal justice system may be influenced by factors that threaten to compromise the performance of their duty." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 810 (1987). It has expressly prohibited arrangements in which the judge might have a pecuniary interest, direct or indirect, in the outcome of a case. *See Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (invalidating conviction on the basis of $12 fee paid to the mayor only upon conviction in mayor's court); *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972) (extending reasoning of *Tumey* to cases in which the judge has a clear but not direct interest). It has applied the same reasoning to prosecutors, holding that the appointment of a private prosecutor with a pecuniary interest in the outcome of a case constitutes fundamental error because it "undermines confidence in the integrity of the criminal proceeding." *Young*, 481 U.S. at 811-14. The appointment of a private probation company with a pecuniary interest in the outcome of its cases raises similarly fundamental concerns about fairness and due process.

* * * * *

The Department of Justice has a strong interest in ensuring that state and local courts provide every individual with the basic protections guaranteed by the Constitution and other federal laws, regardless of his or her financial means. We are eager to build on the December 2015 convening about these issues by supporting your efforts at the state and local levels, and we look forward to working collaboratively with all stakeholders to ensure that every part of our justice system provides equal justice and due process.

Sincerely,

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

Lisa Foster
Director
Office for Access to Justice

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Thursday, December 21, 2017

Attorney General Jeff Sessions Rescinds 25 Guidance Documents

Today, Attorney General Jeff Sessions announced that, pursuant to Executive Order 13777 and his November memorandum prohibiting certain guidance documents, he is rescinding 25 such documents that were unnecessary, inconsistent with existing law, or otherwise improper.

In making the announcement, the Attorney General said:

“Last month, I ended the longstanding abuse of issuing rules by simply publishing a letter or posting a web page. Congress has provided for a regulatory process in statute, and we are going to follow it. This is good government and prevents confusing the public with improper and wrong advice.”

“Therefore, any guidance that is outdated, used to circumvent the regulatory process, or that improperly goes beyond what is provided for in statutes or regulation should not be given effect. That is why today, we are ending 25 examples of improper or unnecessary guidance documents identified by our Regulatory Reform Task Force led by our Associate Attorney General Rachel Brand. We will continue to look for other examples to rescind, and we will uphold the rule of law.”

In March, President Donald Trump issued Executive Order 13777, which calls for agencies to establish Regulatory Reform Task Forces, chaired by a Regulatory Reform Officer, to identify existing regulations for potential repeal, replacement, or modification. The Department of Justice Task Force, chaired by Associate Attorney General Rachel Brand, began its work in May.

On November 17, the Attorney General issued a memorandum prohibiting DOJ components from using guidance documents to circumvent the rulemaking process and directed Associate Attorney General Brand to work with components to identify guidance documents that should be repealed, replaced, or modified.

The Task Force has already identified 25 guidance documents for repeal and is continuing its review of existing guidance documents to repeal, replace, or modify.

The list of 25 guidance documents that DOJ has withdrawn in 2017 is as follows:

1. ATF Procedure 75-4.
2. Industry Circular 75-10.
3. ATF Ruling 85-3.
4. Industry Circular 85-3.
5. ATF Ruling 2001-1.

6. ATF Ruling 2004-1.
7. Southwest Border Prosecution Initiative Guidelines (2013).
8. Northern Border Prosecution Initiative Guidelines (2013).
9. Juvenile Accountability Incentive Block Grants Program Guidance Manual (2007).
10. Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles (January 2017).
11. Dear Colleague Letter on Enforcement of Fines and Fees (March 2016).
12. ADA Myths and Facts (1995).
13. Common ADA Problems at Newly Constructed Lodging Facilities (November 1999).
14. Title II Highlights (last updated 2008).
15. Title III Highlights (last updated 2008).
16. Commonly Asked Questions About Service Animals in Places of Business (July 1996).
17. ADA Business Brief: Service Animals (April 2002).
18. Prior Joint Statement of the Department of Justice and the Department of Housing and Urban Development Group Homes, Local Land Use, and the Fair Housing Act (August 18, 1999).
19. Letter to Alain Baudry, Esq., with standards for conducting internal audit in a non-discriminatory fashion (December 4, 2009).
20. Letter to Esmeralda Zendejas on how to determine whether lawful permanent residents are protected against citizenship status discrimination (May 30, 2012).
21. Common ADA Errors and Omissions in New Construction and Alterations (June 1997).
22. Common Questions: Readily Achievable Barrier Removal and Design Details: Van Accessible Parking Spaces (August 1996).
23. Website guidance on bailing-out procedures under section 4(b) and section 5 of the Voting Rights Act (2004).
24. Americans with Disabilities Act Questions and Answers (May 2002).
25. Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. to State and Local Governments' Employment Service Systems for Individuals with Disabilities (October 31, 2016).

Component(s):
Office of the Attorney General

Press Release Number:
17-1469

Updated December 22, 2017

Appendix B

Exclusive: Inside the municipal court cash machine

EXPERTS QUESTION THE FAIRNESS OF NEW JERSEY'S MUNICIPAL COURT SYSTEM, SAYING LOCALITIES HAVE TOO MUCH POWER.

Kala Kachmar (/staff/33049/kala-kachmar), @NewsQuip

SHARE THIS STORY

As part of a follow-up to this series, the Asbury Park Press is looking for individuals who have had bad experiences with the municipal court system in New Jersey.

Somewhere in between burying her mother and taking care of her sick father in Maryland, Neptune resident Karen Marsh forgot to renew the licenses for her two rescue poodles.

Instead of paying the $17-per-dog renewal fee, she was compelled to spend a March day in municipal court and then pay $122 in fines and fees. The total would have been $178, but the judge suspended one of the fines in exchange for a guilty plea.

Marsh became prey to a system that increasingly treats hundreds of thousands of residents each year as human ATMs.

Many cash-strapped municipalities have turned to the law for new revenue, especially in small shore towns where municipal court revenues have nearly doubled in the last five years, an Asbury Park Press investigation found.

Karen Marsh holds Cricket, one of her two adopted poodles. She had to pay nearly $200 in court fines and dog license fees after she forgot to renew the licenses.
(Photo: Kala Kachmar)

Towns have the power to pass new rules or increase fines on old ones. And just like the singular judge-jury-and-jailer of the old Western days, a town first enforces the higher fines through its police force, then sends the defendant to its local court — which is headed by a judge appointed by the town leaders who started the revenue quest in the first place.

While municipal judges are sworn to follow the rule of law and judicial ethics, the pressure to bring in the money is potent in New Jersey, lawyers and former judges told the Press. In Eatontown, email records between town officials showed that increasing revenue generation by the local court was the main reason the council replaced the municipal judge in 2013.

Other findings by the Press showed:

- Municipal courts across Monmouth and Ocean counties raked in $26.2 million in 2015 — up $3.2 million, or 14 percent, from in 2010.

- Of the 37 municipal courts that showed an increase in revenue, from 2010 through 2015, the average hike was 39 percent. One small town, Loch Arbor, saw an 117-percent boost in revenue.

- Seven towns relied on municipal court revenue to support more than 5 percent of their municipal budgets last year. They were: Lake Como (9.4 percent); Englishtown (9.3 percent); Belmar (6.8 percent); Point Pleasant Beach (6.5 percent); Allentown (5.2 percent); and Bradley Beach and Neptune (both 5.1 percent).

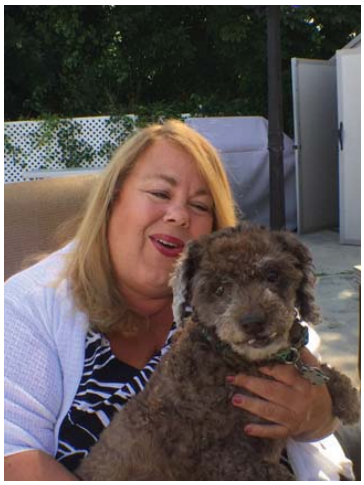
- The number of traffic and parking tickets issued increased in 27 Monmouth County and 16 Ocean County towns during the 2009/2010 court year through 2015/2016 court year. Tickets doubled in Hazlet, Keyport, Union Beach, Loch Arbor and Manalapan. Parking and traffic citations account for the bulk of municipal court cases. There are 86 towns in both counties.

- Being a municipal court judge can be a lucrative practice. While most towns hire part-time judges and pay $20,000 to $60,000 a year, there have been several judges paid a total of more than $150,000 a year because they can cobble together multiple judgeships. Damian G. Murray, a longtime municipal court judge in seven Ocean County towns, was paid $281,000 last year, according to public records.

With so many towns relying on cash from courts to fund parts of their budgets, several former municipal court judges, legal experts and lawyers argue that the independence of New Jersey's municipal courts are in jeopardy.

"The tension is very real because you're straddling the line of being part of the judiciary and being an employee of the town," said Esther Canty-Barnes, a former municipal judge in Irvington who's now a professor at Rutgers School of Law in Newark.

Canty-Barnes said she decided not to seek re-appointed after four years in Irvington because the job was too political.



Karen Marsh holds Cricket, one of her two adopted poodles. She had to pay nearly $200 in court fines and dog license fees after she forgot to renew the licenses.

(Photo: Kala Kachmar)

“The manner in which cases are disposed of can have a significant impact on a municipality’s budget and financial strength,” said Barbara Unger, an attorney and chair of the New Jersey State Bar Association’s subcommittee that’s studying the topic of demands on local courts. “We know there’s pressure on judges.”

At one point during Canty-Barnes' tenure, the township council passed a resolution to pay back a business owner the fine the judge had imposed for violating an ordinance. She had to tell the presiding judge at the county level, who then sent a letter to the township attorney letting them know the resolution was improper and overstepped the bounds of separation of power.

"I became the judge who wasn't playing the game," she said.

New Jersey is one of a handful states that gives the power to appoint municipal judges to localities, although when compared to the number of smaller states that elect local judges, it's an even split, said Bill Raftery, a senior analyst with the National Center for State Courts.

> The idea that locally appointed judges are pressured to make money has been a hot topic for decades, he said. Some states have tried to curb pressures by enacting legislation that insulates judges from politics.

"The internalized pressure of selection or reappointment is officially or unofficial contingent on the ability to generate revenue," Raftery said. "It's an issue in some places."

'Nickel and dime'

Nearly 4.6 million cases — equal to two-thirds of the state's adult population — moved through the state's 507 municipal courts in 2015. Most of the cases — about 75 percent — are resolved through guilty pleas that are usually enticed with offers of reduced fines and lesser penalties.

Municipalities keep 100 percent of the revenue from ordinance violations but have to split revenue with the county for traffic violations.

A review of court records showed that leaving court without a fine is rare. Just 2 percent of defendants choose to go to trial, and of those, 16 percent won their cases. A defendant accused of murder has a better chance of acquittal. Thirty percent of those accused of intentional homicide walk out of court free, according to the national Bureau of Justice Statistics (https://www.bjs.gov/index.cfm?ty=qa&iid=403).

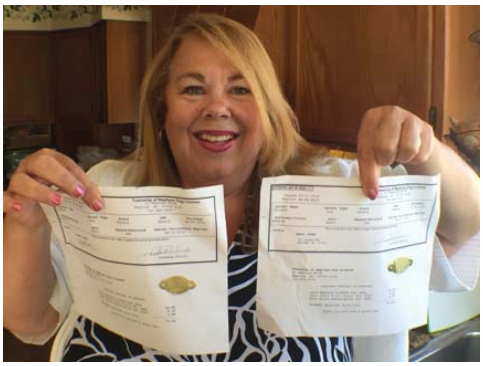
Michael Speck, a Freehold lawyer who has practiced in more than 350 of the state's municipal courts, said he found that it's tough for anyone to get a fair shake in New Jersey's municipal courts because revenue pressures can impact a judge's decision.

"Judges need to be free to decide their cases based on the law and the facts only," former Judge Paul Catanese, who was a judge for 20 years in South Brunswick, Lawrence and Hamilton townships. "They shouldn't be influenced directly or indirectly by the executive or legislative branch. I'm talking about police departments and governing bodies."

For Neptune homeowner Marsh, her payment to Neptune's municipal court was a tiny portion of the $800,000 in revenue Neptune's municipal court took in last year. That money offsets what otherwise might have been piled on to property taxes for local residents to pay.

When Marsh got the notice to appear in court, she went to township hall to pay the dog licenses — where they told her she had to go to municipal court even though her licenses were now up to date. She walked over to the municipal court to asked if she could get the case thrown out since the tags were up to date. The staff told her it would be up to the judge.

She wrote a note asking the judge to dismiss the case, but received a phone call later that day saying she had to appear in court to tell the judge why she shouldn't have to pay the fines. In exchange for a guilty plea, the judge dismissed one of her two $56 fines, but still made her pay one fine and court costs, for a total of $122.



Karen Marsh, of Neptune, holds up the dog licenses that cost her nearly $200.
(Photo: Kala Kachmar)

Marsh, who works as an administrative assistant in Manhattan, said in her experience in states like New York and Maryland, judges don't clog up court time with minor violations.

"I had to take off work twice — two full days — to handle the dog licenses," Marsh said. "Yeah, ($122) is an inconvenience, but that's not the point. They're nickel-and-diming and chasing down good citizens."

Municipal control

But those nickels and dimes add up to millions of dollars every year in fines, court costs and surcharges. In 2015, Monmouth and Ocean county towns collected $26.2 million in municipal court revenue — excluding the millions of dollars in fines, fees and surcharges that went to county and state governments who can share the bounty, depending on the type of violation.

As any motorist knows, traffic tickets in New Jersey are a part of life.

Court records showed that moving violations and parking citations issued in Monmouth and Ocean counties have increased by about 11 percent overall from 2009/10 through 2015/16. The number of traffic tickets written in Hazlet, Keyport and Matawan — which share a municipal court — quadrupled during that time period to 209 percent. Forty-one Monmouth and Ocean towns saw a 5 percent increase; 24 towns had an increase of 30 percent or more.

Although most maximum penalties are governed by state statute, the amount imposed on an individual is typically up to the judge. When it comes to ordinances, though, governing bodies of towns have the ability to set their own minimums, maximums and mandatory fines. And there's no shortage of that action.

In November, Howell decided to change the penalty for single- or multi-family landlords who fail to register rental units annually from "up to $2,000" to a mandatory $1,000 for the first offense and a mandatory $2,000 for the second offense.

McKenna Torcivia, Howell's township attorney, said to council members the fines being imposed by the judge weren't "as steep" as they'd like to see.

In June, Asbury Park Police Chief Anthony Salerno told members of the city's Chamber of Commerce that he was working with the city's municipal judge, Daniel DiBenedetto, to increase fines and penalties for those who come before the law as a way to deter late-night drunken behavior downtown.

Asbury Park acting Police Chief Anthony Salerno in 2016.
(Photo: Thomas P. Costello)

City Manager Michael Capabianco said the city is working on reviewing all the city's fines and fees.

In a May 2015 report from the New Jersey Bar Association on judicial independence, a panel of legal professional pointed out the need to study pressure on municipal judges to generate money for towns. Guilty findings — and the imposition of fines — could serve to assure a continuation of a municipal judge's position, the report said.

Municipal judges have the power to accept or decline a plea, determine the outcome of a trial and impose sentences and fines.

Asbury Park earned $1.4 million in municipal court revenue in 2015.
(Photo: Kala Kachmar)

Catanese, who now has a private law practice and was the presiding municipal court judge in Mercer County overseeing other judges and the support staff in those courts, recalled the pressures.

Although the judge said he never "succumbed" to thoughts about deciding a case a certain way to help his reappointment chances, it was always in the back of his mind.

Some of the towns Catanese worked for looked at the court revenue before determining whether he'd be reappointed, he said. While working in Lawrence Township, he was required to give a budget presentation about the state of revenue and spending within the court system.

Catanese recalled that certain cases had the "attention" of the municipality. He said a "not guilty" finding could be viewed as a personal affront to an officer, and a judge could find himself being disparaged by police and town employees.

"And the judges really shouldn't have to worry about that," he said. "They should be worrying about doing what is right, as we talk about individual justice in individual cases."

Making millions

Shore towns with small populations, but big summertime crowds, tended to have the highest increases in traffic tickets and court revenue, the Press found in its review of court data.

Asbury Park, for example, earned the most municipal court revenue of all Monmouth and Ocean towns in 2015: $1.4 million. From 2010 to 2015, revenue increased nearly 40 percent. That is about 3.2 percent of the city's $42.7 million budget.

It costs Asbury Park nearly $400,000 to operate its court, leaving it with a $1 million revenue windfall — enough to fund half of the city's general government salaries, the Press found.

Top revenue generators in 2015:

1. Asbury Park: $1.4 million
2. Freehold Township: $1.1 million
3. Belmar: $1 million
4. Toms River: $949,563
5. Point Pleasant Beach: $929,669

Towns with the highest court revenue hikes from 2010 to 2015:

1. Loch Arbor made $43,338 in 2015 (117 percent increase)
2. Sea Girt made $143,061 in 2015 (98.5 percent increase)
3. Oceanport made $177,625 in 2015 (91 percent increase)
4. Long Beach Township made $154,434 in 2015 (73 percent increase)
5. Little Silver made $125,017 in 2015 (67 percent increase)
6. Spring Lake made $134,422 in 2015 (65 percent increase)
7. Berkeley made $247,947 in 2015 (61 percent increase)
8. Harvey Cedars made $38,377 in 2015 (58 percent increase)
9. Manalapan made $618,577 in 2015 (54 percent increase)
10. Neptune made $799,266 in 2015 (51 percent increase)

Bigger towns, though, are less likely to look to their courts for added revenue. Although Toms River brings in nearly $950,000 in municipal court revenue, the amount is less than 1 percent of its $126.2 million municipal budget. Court revenue actually fell 9 percent from 2010 to 2015, with revenue fluctuating each year, depending on the number of cases.

Regardless of what portion of the budget the municipal court revenue is in a town, every little bit it important, said Jon Moran, executive director of the New Jersey League of Municipalities, a trade group for towns.

MORE: Town profits spiked under suspended judge (https://www.app.com/story/news/investigations/watchdog/2015/10/27/thompson-appointment-revenue-spikes/74704090/)

Revenue sources for cities and towns have taken a beating over the years, putting more financial strain on municipal leaders, Moran said. The most recent was a $320 million cut from the state's consolidated municipal property tax relief aid between 2008 and 2010.

"That money has never come back," Moran said. "That's what made property taxes skyrocket."

Towns are still being squeezed, even several years after the recession, said Bill Kearns, an attorney for the league.

"They want their trash picked up, their streets plowed, their communities protected," he said of residents. "But how do we pay for it?"

Kearns, who has been a practicing attorney for 51 years and has represented several towns over the years, said he's rarely seen a judge lose his or her job over revenue.

"Everyone who appears before the court thinks they're being taken advantage of," said Kearns, the League of Municipalities' attorney. "It's a natural human reaction."

In Howell, municipal court revenue is about 1.5 percent of the town's $46 million budget, but not having that money could be troublesome for the town, finance director Louis Palazzo said.

"If we anticipate $713,000 (in municipal court revenues) and we only receive half that during the year, we would need other revenue line items to make up that difference," Palazzo said. "And that's huge."

Ocean Township Municipal Court.
(Photo: Kala Kachmar)

Howell's municipal court revenue fluctuates slightly from year to year but has generally trended upward since 2010.

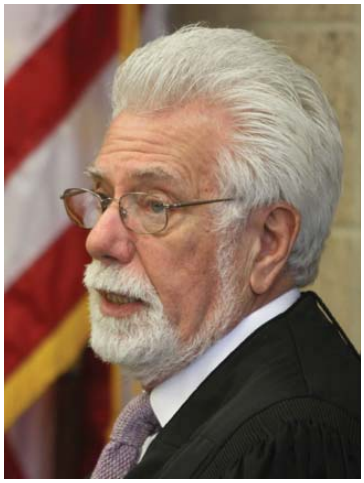
"It's a piece of the pie, but I don't think it's the book that's holding up the side of the table," he said.

'The right person' for the judgeship

When the Eatontown Council was preparing to appoint a new judge in 2013, it was all about the money, records show.

An email from Councilman Dennis J. Connelly, who is now the mayor, said the borough had lost thousands of dollars in expected revenue while Judge George Cieri was presiding over its municipal court. He said the borough council needed to appoint "the right person" who would "gain the respect" needed to be successful in his position.

Cieri, who is now the municipal judge in Long Branch, declined to comment and said it's improper for a sitting judge to discuss the system of appointing judges.



Judge George Cieri (above) was replaced as the municipal judge by Judge Richard B. Thompson in Eatontown after council members said they wanted the "right person" for the job.
(Photo: Tanya Breen)

"Our police department is full of young, aggressive officers that have been producing more summonses than we have seen in several years," Connolly said in one email obtained by the Press. "If these officers get discouraged by our selections for the position of judge and/or prosecutor, this town will see those numbers decline."

The email said the council would select Judge Richard Thompson, who held judgeships in at least nine towns in 2015.

Connolly also referred to a "known sentencing formula," and said defense attorneys were aware of Thompson's abilities and couldn't "try to outsmart or out-lawyer him," which also "saves time and money when moving the court's large calendars."

In October 2015, Thompson was temporarily suspended without pay by the state Administrative Office of Courts while the Advisory Committee on Judicial Conduct investigated him. His suspension, issued by the county assignment judge, stated Thompson may have broken rules that require a judge to uphold the "integrity and independence" of the judiciary. The investigation is still pending.

Fred Dennehy, an attorney representing Thompson, said the judge didn't have any communication with officials in Eatontown prior to being chosen.

Dennehy said he couldn't disclose the nature of the complaint against Thompson, but said he's confident that the judge will be vindicated at the conclusion of the investigation.

"I think he's known to be a judge who takes his duties seriously — whether that would translate to more money for a town or the state, I don't know," Dennehy said.

MORE: Judge Thompson suspended from 9 Monmouth jobs (https://www.app.com/story/news/2015/10/26/judge-thompson-suspended-9-jobs-monmouth-county/74654936/)

Records show Eatontown brought in nearly $700,000 in revenue in 2015, $587,000 of which went directly to the town's budget after deducting the court's operating costs.

After Thompson was appointed in 2014, municipal revenues from court fines rose from $505,000 in 2013 to $668,500 in 2014 — a 32 percent increase. Under Cierci, revenues were $494,700 in 2011 and dropped to $455,700 in 2012.

Examining the process

Moving and closing cases quickly means more room on the docket for new cases, which means more revenue for the municipality. Enter the guilty plea deals — the lifeblood of the municipal court system.

"If you walk into a municipal court, they're operated in such a fashion that the municipal prosecutor will make as many plea bargains as possible so they can get people to plead guilty," said John A. Sweeney, who presiding over Burlington County's municipal court judges from 2000 to 2008.

Anna Lichnowski, a 29-year-old Brick resident, was issued a ticket in Lavallette for littering. She pleaded not guilty and sent the ticket back for a court date.

Anna Lichnowski
(Photo: Kala Kachmar)

“When I went to municipal court, there wasn’t even an option to negotiate (with the prosecutor),” Lichnowski said. “They told me I had to pay the fee and there was no fighting it. I was stuck with $425.”

It’s seldom someone will get summoned to court and leave with not having to pay some kind of fine, New Jersey legal experts say.

So few cases go to trial because there's pressure on judges to get through caseloads quickly, in part because judges are responsible for their own budgets, Sweeney said. If the municipal court doesn't make money, at least enough to sustain itself, their budgets will be cut.

"It will never appear fair, even if a judge does his or her very best," Sweeney said. "People are always going to think they're guilty before they walk in."

With a traffic ticket, even if you go to court to fight it, you have the option of pleading to an “unsafe operation” charge, which means no points against your license - but a fine that’s almost twice the amount.

VIDEO: Courts or campuses: Who should decide sexual assault cases? (https://www.app.com/videos/news/nation/2016/01/04/78282062/)

"When you go to court for the first time, there's no expectation of a trial," said Arnold Fishman, a defense attorney on the State Bar Association's subcommittee on judicial independence. "They look at you like you have two heads."

A 26-year-old Ocean Township man, who didn't want to be named for fear that talking publicly about his discharged drug offense would hurt his employment status, was charged with possession of marijuana when he was 23.

He was given the opportunity to stay out of trouble for a year and then have the charge dismissed, which is a plea known as a conditional discharge, but not before having to pay more than $1,200 in fines and surcharges.

He had to go on a payment plan because he was also paying for college.

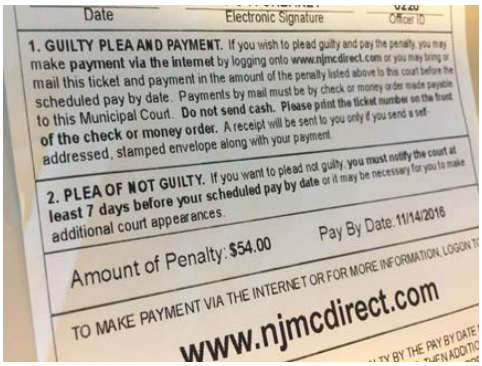
If he’d gone to trial and won, he wouldn’t have had to pay the surcharges. But if found guilty, the cost would have been the same or more.

"I paid it over 7 or 8 months," he said. "But there were times when I didn't make the payment, and I'd have warrants out for my arrest. It was an experience I don't want to have ever again."

Community service, rather than a hefty fine, was never an option, he said.

James Gerrow, a former prosecutor and defense attorney in Burlington County who has been practicing law for 41 years, says he still gets requests from prosecutors for dismissals with fines, even if he feels the case is worthy of an outright dismissal.

Municipal ordinances are key for local courts because the entirety of the fees goes to the municipality, Gerrow said.



Most municipal court cases are resolved through a guilty plea that results in some kind of fine.
(Photo: Kala Kachmar)

“I’ve seen cases where I come into a court, and again, there’s no way that if the case were to go to trial – let alone a fair trial – that it would survive,” he said. “For (municipal courts), that’s not what it’s about.”

Gerrow said the courts are funded “on the backs” of the people in the courts.

Sandra Solly, a 75-year-old Howell resident who also owns an unoccupied home in Ocean Grove, was issued a summons after she found out her house had been put on an abandoned property list.

MORE: Neptune homeowner wins court battle over 'abandoned' property (https://www.app.com/story/news/local/communitychange/2016/06/07/neptune-homeowner-wins-court-battle-over-abandoned-property/85341156/)

She owned the home outright, and while it was missing a few shingles and the backyard was overgrown, it wasn’t in poor condition, Solly said.

When she went to court, the Neptune the prosecutor asked her to plead guilty and pay $500 as a fine. She didn’t have to agree to fix the property, but the property would remain on the abandoned list.

“I said I’m not pleading guilty,” Solly said. “I’m not guilty of having an abandoned house. I own my house and it’s not abandoned.”

Solly, who represented herself, was convicted at trial. But on appeal to Superior Court — which Solly filed herself in a handwritten 10-page brief — the judge agreed with Solly and dismissed her fines.

He ruled that the wording in the ordinance was vague and arbitrary.

When Catanese was a prosecutor many years ago, he dealt with defendants who represented themselves. But today, people line up in the halls of New Jersey's municipal courts, day in and day out, waiting to talk to a prosecutor to make a deal instead of hiring their own attorney or fighting the charge themselves.

"What I've seen over the years, especially since the financial crisis, is courts bringing forward the lines of people to pay their fines and costs," he said.

Sandra Solly fought Neptune Township, saying her house was not abandoned. In May, a judge dismissed her fines.
(Photo: Payton Guion)

Police influence

Jeff Gold, a former prosecutor in Burlington County who is now in private practice, said there was a police chief in a town he worked in years ago that was "very influential" on what happened in that court.

Gold recalled one instance where he, as a defense attorney, and the prosecutor wanted to have a conference with the judge to discuss a legal issue that would likely have resolved the case. But the police chief knocked on the door and wanted to be part of the conference.

"And the judge really was hard-pressed to tell the chief to get out of that conference," Gold said. "And in fact, the chief stayed there for the conference. That's the kind of pressure municipal court judges are under. Because when they alienate the chief of police, they may not be in the position to have that judgeship very long."

Gold said there are police liaisons in almost every court he practices in.

READ: Police union director sentenced to prison for embezzlement (https://www.app.com/story/news/crime/jersey-mayhem/2016/11/22/police-union-director-sentenced-prison-embezzlement/94301160/)

“I see good people who are trying to do the right things as judges and prosecutors, but they’re constrained by the fact that they’d like to be reappointed,” Gerrow said. “They enjoy what they’re doing, and they’re trying to give themselves to the communities in which they serve. But there’s feedback. There’s feedback from the revenue sheets.”

Towns rely on the revenue from courts for their budgets, said Catanese, a former judge who recalls the pressure to make money.

"The more revenue, the less they need to raise taxes on the citizens who are going to re-elect council members," Catanese said.

Catanese said judges are borne of politics, but can't be political.

“You can’t be concerned that you will lose your job if you do the right thing,” Catanese said. “We need to rise above the money crunch.”

Former Linden Municipal Court Judge Luis DiLeo was reprimanded by the Supreme Court Advisory Committee on Judicial Conduct in January 2014 for denying two defendants their rights to due process during their trial in 2010, according to the decision.

Records show the judge let the trial go on in the absence of a municipal prosecutor, questioned the witnesses himself and then allowed a police officer to cross-examine the defendants. DiLeo then used the information to convict them.

He also wouldn't let them apply for public defenders and forced them to represent themselves at the trial before him.

"The court concluded that Judge DiLeo had 'transformed the role of the court from a neutral and detached magistrate and evoked the specter of the backwater judge, jury and executioner figure that has never had any place in American jurisprudence,'" according to a summary of the decision prepared by the New Jersey Supreme Court Clerk.

National problem

A national task force assembled in March by the Conference of Chief Justices and the Conference of State Court Administrators — both nonprofits whose members are the highest judicial officers and court administrators from each state — is studying the impact of politics, judicial selection and judicial compensation on local courts. The task force is also looking at revenue generation and its impact on municipal courts.

Raftery, the senior analyst with the National Center for State Courts and a staff member to one of the task force's subcommittees, said most states over the last several decades have absorbed municipal courts into the state court system as a way to prohibit revenue generation on the local level.

A 2012 policy paper published by the state court administrators conference said courts should be "substantially" funded from general government revenue sources, not exclusively from the fees and fines generated by the court itself.

In Missouri, where local court revenues were growing out of control, a 25-percent cap was put on municipal court revenues.

In Utah, the mayor of a town will pick the judge, but after that, the decision will go to the voters for a "yes-no retention vote," he said. They also use a performance evaluation system that's available to the public. The way judges are selected at the local level, whether appointed or elected, can be influenced by politics.

"It's a question that comes up over and over, and it's one of the important areas the task force is looking at," Raftery said. "The idea behind (the task force) is to figure out how to address these issues."

Former Burlington County muni court judge Sweeney, who made it a priority to make sure he understood the issues municipal court judges he presided over were facing, said New Jersey's municipal court system is unfair, especially because so much control is in the hands of the municipalities.

Superior Court judges — who are recommended to the state Senate by the governor and handle felony, civil, juvenile and matrimonial cases — don't have to worry about financial pressures. They are all full-time, most with tenure, he said.

"The public, I think, believes the judge, prosecutor, the police are all on one team," he said. "The rest of the courts don't work that way, so why should the municipal courts? It's just lousy."

Kala Kachmar: 732-643-4061; kkachmar@gannettnj.com.

NJ Assembly Judiciary chair: Study municipal courts

Kala Kachmar, **@NewsQuip** Published 5:02 a.m. ET Nov. 29, 2016 | **Updated 9:04 a.m. ET Nov. 30, 2016**

(Photo: Kala Kachmar)

The chairman of the Assembly's Judiciary Committee said Monday he wants state lawmakers to study municipal court reform after an Asbury Park Press investigation called the fairness of the system into question and showed how municipalities increasingly rely on court fines for revenue.

"(The story) gives cause to take a step back and think this is an area that we should study and look at to determine if there should be legislative fixes," said state Assemblyman John McKeon, D-Madison, chairman of the Judiciary Committee. "Justice should be just that at all levels."

Assemblyman Declan O'Scanlon, R-Little Silver, said the Press report raised issues that should be a concern of every elected official.

"We have to stop looking at motorists as ATM machines," he said. "You want to remove any profit motivation from police enforcement of any kind. When tickets are written that don't improve safety, it doesn't help anybody. It's not a reasonable way to raise revenue."

The Press investigation (https://www.app.com/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/) found that municipalities often turn to the law for new revenue, especially in small Shore towns where municipal court revenues have nearly doubled in the last five years. Towns have the power to pass new ordinances or increase fines in old ones, enforce the fines through its police force and then send defendants to local courts headed by judges appointed by the town leaders.

Against this backdrop, municipal courts in Monmouth and Ocean counties raked in more than $26.2 million in 2015 — up $3.2 million, or 14 percent, from 2010. Municipal court revenue in 37 Monmouth and Ocean county towns increased from 2010 through 2015. The average increase was 39 percent.

"Our courts and police should not be seen as revenue generators," said O'Scanlon, who added that his staff has been discussing the municipal money grab for a while and exploring legal remedies. "That's not what they're there for."

READ: Inside the municipal court cash machine (https://www.app.com/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/)

Assemblyman John McKeon
(Photo: Thomas P. Costello)

"It's fair that municipalities and governing bodies get to appoint those who serve as judges and prosecutors, but on the other end, maybe part of the answer is to insulate the judiciary from that kind of pressure," McKeon said.

Municipal judges are appointed every three years by governing bodies of towns. And while they're sworn to follow the rule of law and judicial ethics, the pressure to bring in the money is potent in New Jersey, lawyers and former judges told the Press.

The New Jersey State Bar Association earlier this year assembled a panel to study the independence of municipal judges and whether the political pressure they face through their appointment impacts decision-making. The panel hasn't yet disclosed its findings.

Assemblyman Declan O'Scanlon

MORE: Town profits spiked under suspended judge

Jr. *(Photo: Bob Bielk)*

(https://www.app.com/story/news/investigations/watchdog/2015/10/27/thompson-appointment-revenue-spikes/74704090/)

More than 75 percent of the 4.5 million-plus cases that move through municipal courts statewide are adjudicated with a guilty plea or a plea deal and some kind of payment to the court, according to data from the state Administrative Office of Courts.

The municipal court system can be altered or abolished by an act of the Legislature at any time, said Bob Ramsey, a Hamilton-based attorney who has written manuals on municipal law practice in New Jersey.

Ramsey, who was a public defender for 30 years and a former member of the New Jersey Supreme Court Committee on Municipal Courts, said the first step in fixing the broken municipal court system is to professionalize staff.

Most prosecutors and judges are part-time employees who work in multiple towns. Prosecutors, who only serve one-year terms, face a six-year learning curve when new, Ramsey said.

"You have to think about all the responsibilities municipal courts have — drunk driving, domestic violence, disorderly persons offenses, the traffic code, boating, fish and game, local ordinances," Ramsey said. "It's an enormous range of cases. Judges have to know the rules of evidence and Constitutional law, and so do prosecutors."

READ: Judge Thompson suspended from nine Monmouth jobs (https://www.app.com/story/news/2015/10/26/judge-thompson-suspended-9-jobs-monmouth-county/74654936/)

Judges and prosecutors should both be appointed by parties that are immune from local politics, he said. Taking money out of the equation — and reducing the pressure on judges to raise revenue — is also key, he said.

Regionalizing municipal courts or absorbing them into the state court system are possibilities, Ramsey said.

New Jersey's municipal court fines are also regressive and have a negative impact on the poor, who often end up with more charges and fines if they fail to respond to a ticket or miss a payment on a past violation, Ramsey said.

"The fines are the same whether you're a millionaire or not," he said. "It kills (poor) people. It clobbers them. They can't pay the fines."

The American Civil Liberties Union of New Jersey (https://www.aclu-nj.org/) is studying the impact of the state's municipal courts on the poor, said Alexi Velez, a law fellow with the organization.

Velez said she's examining the hefty monetary fines and sanctions for traffic offenses and low-level non-indictable crimes heard in municipal court. She said much of the data that have been collected correspond to the findings in the Press' investigation.

MORE: Town doubled penalties for cars parked at mall (https://www.app.com/story/news/2015/01/15/town-doubles-penalty-parked-cars-mall-street/21830435/)

"We're interested in how the shortcomings of due process impact all New Jerseyans," Velez said. "In particular, we are aware of the disproportionate impact on the 11 percent of those who live at or below the poverty line."

O'Scanlon said the public knows when they're getting tickets for revenue rather than education — and they resent it.

"For me, the goal should be to get the greatest amount of compliance and the greatest amount of safety with the least amount of punishment," O'Scanlon said. "Towns should be encouraged to educate people instead of punish them."

Kala Kachmar: 732-643-4061; kkachmar@gannettnj.com.

Appendix C

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
POST OFFICE BOX 023
TRENTON, NEW JERSEY 08625-0023

March 29, 2017

Hon. Julio L. Mendez, A.J.S.C.
Atlantic County Civil Courts Building
1201 Bacharach Boulevard, 3rd Floor
Atlantic City, NJ 08401

Re: Supreme Court Committee on Municipal Court Operations, Fines, and Fees

Dear Judge Mendez: Julio

Thank you for agreeing to serve as Chair of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees. Assignment Judge Lisa Thornton will serve as Vice-Chair of this important ad hoc committee. The full roster is enclosed.

Local courts across the country have been subjected to increasing scrutiny as a result of certain high profile events spotlighted in a March 2016 letter the Department of Justice sent to state judiciaries nationwide.[1] In the letter, the Department of Justice identified a number of basic constitutional principles required of courts, all related to the enforcement of fines and fees, and grounded in the right to due process and equal protection. The principles expressed in that letter – equal access to the courts and fair justice for all – mirror the core values of the New Jersey Judiciary. Those values are at the bedrock of our organization's commitment to ensure that the avenues of justice be open and fair to all members of society, including the most vulnerable.

To build on those ongoing principles and various recent initiatives, we have formed the Supreme Court Committee on Municipal Court Operations, Fines, and Fees. The Committee will conduct a holistic review of municipal court practices with an eye towards reform. That review should include an examination of current laws and policies, including, but not limited to, the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the municipal courts and their users, and the independence of our municipal courts.

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[1] That March 14, 2016 letter is available at https://www.justice.gov/crt/file/832461/download

We hope that the Committee will be able to present a report on its findings and recommendations within nine months. Luanh L. D'Mello, Esq., from the AOC's Municipal Court Services Division, will serve as staff to the committee. She will contact you soon about the meeting schedule.

Thank you again for your assistance in this important effort.

Very truly yours,

Stuart Rabner

cc: Hon. Glenn A. Grant, Acting Administrative Director
Hon. Lisa P. Thornton, A.J.S.C., Committee Vice-Chair
Steven D. Bonville, Chief of Staff
Luanh L. D'Mello, Committee Staff

Appendix D

Directive on Statewide DWI Backlog Reduction

Directive #1-84 July 26, 1984
Issued by: Chief Justice Robert N. Wilentz

For the last several years, issues relating to driving while intoxicated have been in the forefront of public attention in New Jersey and nationwide. The New Jersey Legislature has enacted a number of bills to increase statutory minimum penalties, and to provide financial support for increased enforcement and sanctions. The Executive Branch has pursued programs of increased enforcement of these laws with vigor.

I recognize that a number of conditions, in addition to increased filings, have combined to cause a backlog, including challenges to the reliability of breathalyzers. However, our duty is to dispose of cases swiftly and fairly, within reasonable time standards. We must and will meet that challenge.

The Supreme Court has, therefore, decided as a matter of policy that complaints charging offenses under *N.J.S.A.* 39-4:50, Operation or Allowing Operation by Persons Under the Influence of Liquor or Drugs and *N.J.S.A*. 39:4-50a. or [sic], Refusal to Submit to Chemical Test, must be disposed of within 60 days of filing. This is consistent with the standard suggested by all judges who attended the Annual Conference of Municipal Court Judges in October 1983. It shall apply to all but exceptional cases.

However, I want to emphasize that DWI backlog reduction must not be pursued at the expense of other court efforts especially the resolution of more serious disorderly persons complaints. Therefore, special sessions may be needed in many courts.

I want to note that the 60 day standard for DWI cases, established in this Directive, is a goal. Therefore, it does not replace the traditional guidelines established through case law for dismissals based on lack of a speedy trial. You should now consider and begin to implement management strategies designed to meet the 60 day standard for new DWI cases. Techniques such as arraignment and scheduling soon after complaint filing, expedited identification of defense counsel, pre-trial conferences and scheduled trial dates within 45 days should be considered in this context.

I cannot overemphasize the importance of this effort. Elected officials of both the legislative and executive branches of government have taken major steps to address the DWI problem. It is incumbent on all segments of the judiciary to address this issue with equal vigor. I would like to congratulate those courts that have succeeded in keeping their DWI caseloads current. For those courts that have DWI backlogs, immediate attention to this problem is crucial to New Jersey's statewide efforts to effectively adjudicate DWI cases.

Memorandum
Issued by: Robert D. Lipscher
Administrative Director

We will initiate a longer-term planning activity to reduce on-going delays in DWI cases, maintaining the standard of 60 days from complaint to disposition in all but exceptional cases. Your involvement as judge, or where applicable, presiding judge of your municipal court will be of paramount importance.

1. DWI Backlog Reduction Goal

The goal of the DWI Backlog Reduction program is to reduce the number of backlogged cases to tolerable levels. Backlog is defined as the number of DWI cases which are already older than the goal, here 60 days. The 60 day goal set by the Supreme Court is expected to be met in all but "exceptional" cases. It is estimated that approximately 10% of all cases are exceptional, having problems which will require more than 60 days for disposition. Therefore, a portion of your inventory of DWI cases may properly be over 60 days old. However, this should not represent more than 10% of the cases under 60 days old. Accordingly, your backlog reduction goal is to eliminate all DWI cases over 60 days old, with the exception of the number of cases representing 10% of your DWI inventory under 60 days old. Courts with less than 10 DWI cases total should not have more than one DWI case in backlog. If you are not currently clearing your calendar on DWI (that is, your monthly filings are exceeding dispositions), then your backlog will be increasing during the course of the year to the extent of the difference.

2. Backlog Reduction Strategies

As the Chief Justice EDITOR=S NOTEd in the Directive, DWI backlogs are not to be reduced at the expense of other caseloads. While his desire is to maximize local initiative in developing methods for backlog reduction plans, it is strongly urged that the following alternatives be seriously considered.

a. Case Conferences

Many municipalities have already successfully used calendar calls as a management tool to identify the nature of their DWI backlog. This allows for a discussion with each defendant and his or her attorney as to the needs of each case. If appointed counsel is required, then that process can be commenced. A municipal court prosecutor should be in attendance at all case conference sessions. Discovery needs can also be identified, and the judge should prepare an order scheduling future events in the case. This procedure can also identify those cases where the defendant does not intend to request a trial, allowing guilty pleas to be entered at an early stage in the proceedings.

b. Special Sessions

Consistent with the requirement not to delay other non-DWI

calendars, it is very likely that, even after case conferences have been held, special sessions will need to be scheduled to dispose of your DWI backlog. Again, this alternative has been successfully utilized in a growing number of municipalities. Reported experience is that between five and ten cases can be disposed of at such sessions, averaging seven cases (although some reports have been as high as 20 cases). Therefore, if you divide the total excessive backlog estimated at the bottom of the accompanying memorandum by seven, you will have a reasonable estimate of the number of special sessions that will be needed during the eight month period allotted for backlog reduction. Of course, you should closely monitor DWI filings and dispositions during the next eight months and adjust the number of special sessions accordingly.

c. Adjournments
Courts should develop a written and firm policy disfavoring the adjournment of DWI cases. This policy should be communicated to attorneys when cases are scheduled.

3. <u>Funding of Special Sessions</u>

In order to conduct special sessions for clearing the DWI backlog, it may be necessary to identify additional funds. Two major sources of funding are available for this purpose.

a. State Assistance for Special Sessions Funding. *N.J.S.A.* 26:2B-35 establishes a Municipal Court Administration Reimbursement Fund which provides moneys pursuant to the statutory formula for use by municipal courts in disposing of DWI inventories. The procedure for applying for these funds is to be found in subsection b(1) of *N.J.S.A*. 26:2B-35.

b. Emergency Municipal Appropriations. Such funds will be approved under an emergency resolution. Enclosed is a letter from the Director of Local Government Services, as well as an application form for approval of such appropriations.

4. <u>Calendar Conflict Avoidance</u>

In order to minimize conflict with Superior Court schedules, special sessions should be scheduled for evenings or Saturdays during the time of the project. If such sessions must be scheduled during weekdays, approval must be obtained from the Assignment Judge. A list of all attorneys involved in these matters should be submitted to the Assignment Judge so that conflicts with Superior Court cases can be considered.

5. <u>Municipal Public Defenders and Prosecutors</u>

If possible, a municipal public defender should be appointed for indigents for the purpose of the special sessions, and reimbursement will be allowed under the grant funds. The municipal prosecutor should examine his or

her needs and the contract under which he or she is employed to determine whether additional resources are needed for such sessions. Some courts have reported that special sessions run most smoothly when a second prosecutor is available to prepare the next case. This should be considered.

6. Municipal Court Administrators

If the number of special sessions required is large, then you may have to seek additional resources for your administrator. Perhaps an administrator from a non-backlogged neighboring municipality can assist on an overtime basis in preparing for or handling such special sessions. Your vicinage Trial Court Administrator's office will be familiar with the experience of special sessions in other municipal courts and will be available to assist in your planning.

7. Acting Judges

If an acting judge is needed to preside over special sessions, you should consult with your Trial Court Administrator's office regarding procedures to obtain an acting judge. Municipal governing bodies may appoint acting judges under *N.J.S.A.* 2A:8-5.2 for a term of up to one year. It would be most practical to use an experienced sitting municipal court judge for such special sessions, although it is obviously within the discretion of the governing body to make the appointment. Forms for approval of acting judge requests can be obtained from your Assignment Judge.

8. Expert and Other Witnesses

I am informed that cases with relatively lower blood-alcohol content readings sometimes utilize expert witnesses to ascertain alcohol burn-off and absorption rates, especially when such computations can be used to question whether the defendant was at or above .10 BAC at the time of operation. Your plan may provide for the scheduling of such cases specially to accommodate the needs of such expert witnesses. It may be further coordinated on a broader basis. This should be discussed when you meet with the Assignment Judge. As well, in planning special sessions, it will be obviously useful to coordinate them in a manner consistent with the needs and availability of local or state police witnesses, and these needs should be examined and discussed in your local meetings. These techniques should be employed at this time in order to meet the standard of 60 days from arrest to disposition for DWI cases so that we can examine their effectiveness. Your immediate attention to the DWI backlog in your court is crucial to our statewide efforts to address this very important problem.

EDITOR=S NOTE

This directive is in two parts consisting of a policy statement by the Chief Justice, followed by a memorandum implementing the plan by the Administrative Director.

The original directive had contemplated the development of a plan by each municipal court judge for the disposal of existing driving while intoxicated ("DWI") backlog by May 1, 1985. All references in the directive and its enclosures to the development of a plan or program have been deleted. Two of the enclosures, a form for transmitting backlog status as of June 1, 1984 and a reduction plan format, have also been removed.

The directive has been edited to delete the 1983 statistics in the first paragraph and all references to the plans in the remaining seven paragraphs. Only the second, third, and eighth paragraphs and portions of the first and seventh paragraphs have been retained, setting forth the 60 day standard for disposing of DWI cases.

The supplement to the directive, originally intended to provide material for the development of the plans, has been edited to delete all reference to those plans, but to retain the proposals for backlog strategies and for funding which are still valid. The original paragraph 1 suggesting the formation of local planning committees has been deleted and the remaining numbered paragraphs have been re-designated.

Paragraph 3 on funding has been changed. The Federal Highway Safety grant is no longer in operation and all reference to it has been deleted. The costs for special sessions based on 1984 computations have also been deleted from that section. In its place two new sources of funding have been added. *N.J.S.A.* 26:2B-35 enacted in 1983 and operative February 9, 1984 establishes the "Municipal Court Administration Reimbursement Fund" and allocates one third of the moneys dedicated for enforcement in the Alcohol Education, Rehabilitation and Enforcement Fund of the State Department of Health for use in reducing DWI inventories. In addition, legislation signed on December 23, 1990, (P.L. 1990, c.95 and 96) removes the municipal court budget from the municipal CAP law. These two new sources of funding have been added.

The third source, emergency appropriations, is still available, and the application form, list of documents required with the emergency resolution and letter, dated October 7, 1983 from the Director, Division of Local Government Services are still valid.

In paragraph 6, references to the "municipal court clerk" have been changed to "municipal court administrator" in accordance with the statutory change in title. (P.L. 1991, c.98, which amends *N.J.S.A.* 2A:8-13, *et. seq*.)

In paragraph 7 *N.J.S.A*. 2A:8-5.2 has been substituted for P.L. 1983, c.430 and the description of this legislation as "recent legislation" has been deleted. The language has been amended to render it gender neutral.

Chapter 7 of the Rules Governing the Courts of the State of New Jersey governs practice in municipal courts. This chapter was substantially revised in 1997 and users of this compilation should consult the revised chapter for any changes that may affect these directives.

Appendix E

MOTOR VEHICLES
AFFORDABILITY AND FAIRNESS TASK FORCE

FINAL REPORT

February 2006

Presented to

Governor Jon S. Corzine

and

The New Jersey State Legislature

Prepared by:

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NOTE: The appendices are available upon request in hard copy only as a separate volume.

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ACKNOWLEDGEMENTS

Task Force Members

The following individuals were appointed and/or designated to serve as members or alternates on the Motor Vehicles Affordability and Fairness Task Force:

*__Jean M. Bickal__, Assistant Commissioner, NJ Department of Banking & Insurance (serving for Director of the Division of Insurance in the NJ Department of Banking and Insurance)

__Lanuel J. Ferguson__, Major, New Jersey State Police

*__Judith Formalarie__, New Jersey State Employment & Training Commission (serving for Chairperson of the State Employment and Training Commission)

__Sharon A. Harrington__, Chair and Chief Administrator, NJ Motor Vehicle Commission

__Richard F. Liebler__, Hillside Auto Mall

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__William Margaretta__, President, NJ State Safety Council

*__Violet Marrero__, NJ Division of Highway Traffic Safety

__Honorable Joan Quigley__, NJ State Assembly (D-32)

__Roberto Rodriguez__, Director, NJ Division of Highway Traffic Safety

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__Robert L. Simmons__, Counsel, Allstate New Jersey Insurance Company

__Robert W. Smith__, Assistant Director, Municipal Court Services, NJ Administrative Office of the Courts (serving in an advisory capacity only)

__Robert G. St. John__, Jevic Transportation, Inc.

__Teresa M. Thomas__, South Jersey Traffic Safety Alliance

__Honorable José Torres__, Mayor, City of Paterson

__Honorable Shirley Turner__, NJ State Senate (D-15)

__Kenneth Zimmerman__, Executive Director, NJ Institute for Social Justice

* indicates alternate member or designee

The members of the Task Force would like to thank **Jon Carnegie**, Assistant Director of the Alan M. Voorhees Transportation Center at Rutgers, The State University of New Jersey, and Secretary to the Task Force and **Andrea Lubin**, Project Manager at the Voorhees Transportation Center who provided insightful research and skillful administrative support throughout the Task Force's tenure.

In addition, the Task Force would like to thank the following subject matter experts, invited guests and administrative support staff without whose help the work of the Task Force could not have been completed:

NJ Motor Vehicle Commission:
Donald Borowski
Kim Borowski
Mick Byers
Melissa Demko
Wayne Dirlam
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Carol Hollows
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Shawn Sheekey
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NJ Administrative Office of the Courts:
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Others:
Nancy Fishman, NJ Institute for Social Justice
Deborah Kole, NJ League of Municipalities
Sgt. Lazzaro Mazza , Paterson Police Department
Stephen Monson, NJ Deputy Attorney General
Adara Porter, Senator Shirley Turner's Office

Finally, the Task Force would also like to thank the members of the public who took the time to provide testimony and/or written comments to the Task Force and those individuals who participated in roundtable discussions and interviews conducted by the Motor Vehicle Commission and the Voorhees Transportation Center on behalf of the Task Force.

EXECUTIVE SUMMARY

Background and Introduction

The Motor Vehicles Affordability and Fairness Task Force was created by New Jersey statute, N.J.S.A. 39:2A-30 (L.2003,c.13,s.30). The charge of the Task Force as defined by that statute is as follows:

> …to study the impact of the current point system and non-driving related suspension of driving privileges, in particular, the Merit Rating Plan Surcharges, on the driving public and make recommendations for the reform of the surcharge suspension program to increase motorist safety. In addition, the task force shall examine 'The Parking Offenses Adjudication Act,' P.L.1985, c.14 (C.39:4-139.2 et seq.) and municipal court processes related thereto, as well as court actions on surcharge assessments and license suspensions related to nonpayment of fines or tickets as well as motor vehicle moving violations.

The Task Force convened for the first time on February 25, 2005. At that first meeting, New Jersey Motor Vehicle Commission (MVC) Chief Administrator Sharon Harrington was named chair of the Task Force and Jon Carnegie, assistant director of the Alan M. Voorhees Transportation Center at Rutgers University was named Task Force secretary. In addition, three Task Force subcommittees were formed as follows:

- Subcommittee 1: Parking Offenses Adjudication Act (POAA) and other non-driving related offenses
- Subcommittee 2: Point system & other driving related offenses
- Subcommittee 3: Insurance Surcharge Program

Including its first meeting, the full Task Force met four times during 2005/2006. In addition, each of the Task Force subcommittees met four times to examine and discuss the specific topics under their purview.

The Task Force understands that driving and registering a vehicle in New Jersey is a privilege and that every citizen has a duty to abide by the laws of the State. Similarly, the Task Force recognizes the important public safety purpose served by suspending the driving privileges of those that fail to live up to their obligation to drive safely. However, after a year of investigation, the Task Force has concluded that the current system of license suspension in New Jersey, as it has grown and evolved over the years, has de-emphasized motorist safety as the primary reason for suspension. Instead, the system results in license suspensions, most frequently, for reasons unrelated to promoting highway safety. Further, the Task Force finds that license

suspensions often have serious, albeit unintended, consequences especially for low income drivers. These consequences include loss of employment and/or income; higher insurance premiums; as well as a variety of psychological and social impacts.

As detailed in this report, the Task Force finds that key elements of the current system need reform. Specifically:

- The courts and MVC need to be given more flexibility and greater discretion to address the unique circumstances of each case, especially for suspensions resulting from financial reasons.
- There is a need for greater public education regarding license suspension laws and the potential direct and indirect consequences of license suspension.
- License suspension notification procedures and documents need to be improved to ensure notifications are received and to communicate better the importance of addressing suspension issues; and
- Social service agencies and employment counselors need to be educated regarding the license restoration process and resources available to help their clients regain driving privileges.

In addition, there was substantial discussion at Task Force meetings that let to a recommendation that the State consider creating a restricted-use license program to help those drivers who, for financial reasons, are unable to pay court-ordered installment plans, child support orders, and MVC insurance surcharges in order to gain their full driving privileges back.

Driver's License Suspension in New Jersey

New Jersey has approximately six million licensed drivers. The vast majority of these drivers remain violation and suspension free throughout their driving years. ***Only a small percentage of drivers (five percent) have their driving privileges suspended or revoked at any given time.*** Forty three percent of New Jersey drivers reside in urban areas, while 38 percent live in suburban areas and 19 percent live in rural parts of the State (see figure ES2). Most New Jersey drivers live in middle income areas. Only about 17 percent of all licensed drivers in the State live in lower income zip codes and 12 percent live in high income areas (see figure ES3).

Contrary to the legislative declaration that accompanied the Task Force legislation, it does not appear that there has been an upward trend in the number of license suspensions being ordered or confirmed by the MVC. An analysis of time series data indicates that over the past ten years the number of suspensions has fluctuated but has remained relatively constant at approximately 800,000 +/- per year. This figure represents the total of individual suspension actions taken, NOT the number

of drivers subject to those actions. For example, it is common for an individual driver to have several active suspension orders on his/her record at a given time. So, the number of suspended drivers at any given time is far less than the number of suspensions ordered or confirmed each year.

Driver's license suspension was originally conceived as a sanction used to punish "bad drivers." The logical nexus between driving behavior and sanction was clear. However, today in New Jersey, most license suspensions are not imposed to punish habitual bad driving. The reasons for driver's license suspension are diverse, complex and sometimes interrelated. Reasons include those that are clearly **driving related** (e.g., DUI, point accumulation, reckless driving, and driving while suspended); those that are clearly **not driving related** (e.g., compliance reasons such as failure to pay child support or failure to appear in court for a non-driving offense and suspensions imposed for drug-related offenses not involving the operation of a motor vehicle); and those that are for **compliance reasons indirectly related to driving behavior or motor vehicle use.** These include: failing to appear in court to pay/satisfy a parking ticket or moving violation; failing to maintain proper auto insurance; and failing to pay MVC insurance surcharges that stem from a driving related infraction.

Most suspended drivers (64 percent) have more than one active suspension. ***Less than six percent of all suspended drivers are suspended for purely driving-related reasons***. ***The vast majority of drivers are suspended not for habitual "bad driving," but for a variety of compliance reasons stemming from one or more motor vehicle infraction, parking tickets, or failing to maintain proper insurance. Only a small percentage of drivers, less than five percent, are suspended for purely non-driving, non-motor vehicle related reasons.*** It is noteworthy that most suspended drivers (59 percent) have zero motor vehicle violation points. However, it should also be noted that some serious driving offenses, such as DUI and driving while suspended do not result in the assessment of motor vehicle points. Instead, in most cases, these violations carry substantial fines and mandatory suspension periods.

A detailed analysis of suspension statistics and survey data specific to New Jersey indicates that suspended drivers tend to be younger male drivers. Furthermore, ***a disproportionate number of suspended drivers reside in urban and low-income areas*** when compared to the distribution of all New Jersey licensed drivers. Although only 43 percent of New Jersey licensed drivers reside in urban areas (see figure ES1), 63 percent of suspended drivers live there (see figure ES2). At the same time only 16.5 percent of New Jersey licensed drivers reside in lower income zip codes (see figure ES3), while 43 percent of all suspended drivers live there (see figure ES4).

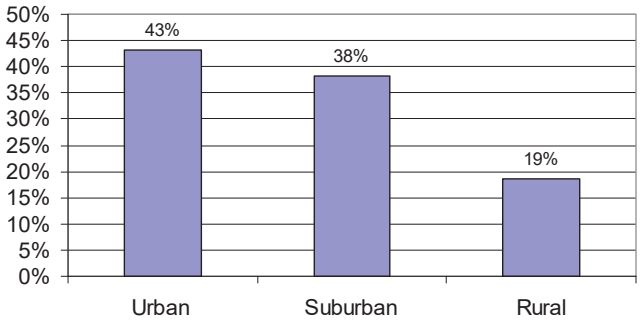


Figure ES1 – Distribution of New Jersey licensed drivers by population density

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: Density calculation based on zip code data from 2000 US Census - Urban = >800 persons/sq. mi; Suburban = 200-800 persons/sq. mi; Rural = < 200 persons/sq. mi.

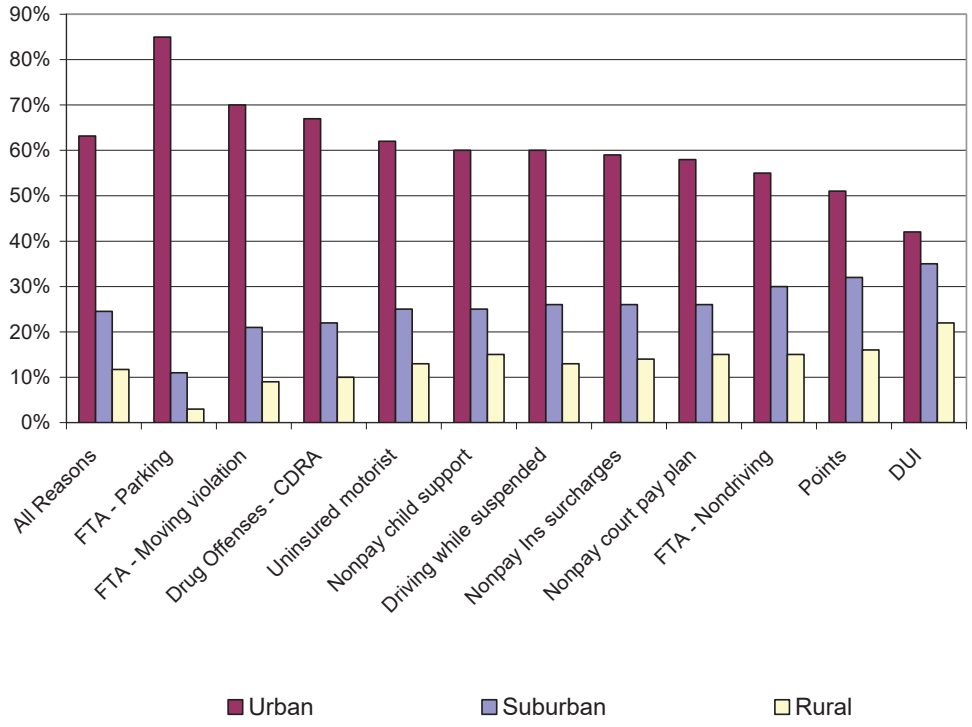


Figure ES2 – Distribution of suspended drivers by population density (May 2004)

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: FTA - Failure to Appear in a court of law; Suspended drivers include currently suspended drivers who have had their driving privileges withdrawn at least one time for the stated reason; Density calculation based on zip code data from 2000 US Census - Urban = >800 persons/sq. mi; Suburban = 200-800 persons/sq. mi; Rural = < 200 persons/sq. mi.

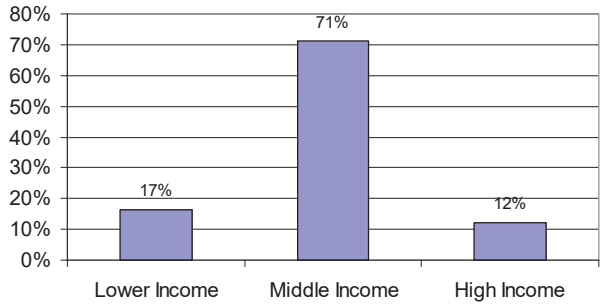


Figure ES3 – Distribution of New Jersey licensed drivers by income class

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: Income classifications based on zip code data from 2000 US Census – Lower income areas defined as having an average annual household income less than $40,000, middle income areas have an average household income between $40,000 and $85,000, high income areas have an average household income greater than $85,000.

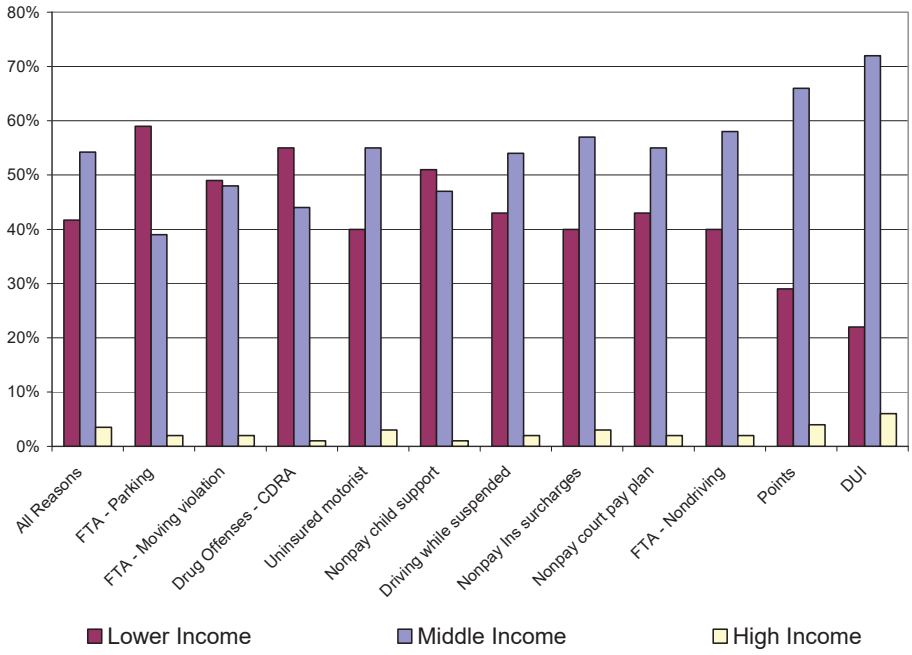


Figure ES4 – Distribution of suspended drivers by income class (May 2004)

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: FTA - Failure to Appear in a court of law; Suspended drivers include currently suspended drivers who have had their driving privileges withdrawn at least one time for the stated reason; Income classifications based on zip code data from 2000 US Census – Lower income areas defined as having an average annual household income less than $40,000, middle income areas have an average household income between $40,000 and $85,000, high income areas have an average household income greater than $85,000.

This may be due to a variety of reasons. For example, most parking infractions occur in urban areas because urban areas have more parking restrictions than suburban and rural areas. As such, urban residents have a greater chance of violating parking laws. Similarly, the street and highway network in urban areas is more dense, with higher levels of traffic, more intersections, stop signs, traffic lights, and slow speed zones than suburban and rural areas. Generally, there is also a greater law enforcement presence in urban communities. Consequently, there are more opportunities to violate traffic laws and urban residents may be at greater risk of being observed violating traffic laws. Finally and perhaps most obviously, low income residents are more concentrated in the State's urban areas. This population may be less able to pay fines, fees and surcharges given their more limited financial resources.

The Impacts of Driver's License Suspension

The obvious and most direct impact of license suspension is loss of personal mobility. However, ***suspension may also have collateral and/or unintended consequences such as job loss, difficulty in finding employment, and reduced income.*** Consequences can also include other financial impacts, such as ***increased insurance premiums*** and other costs associated with suspension; as well as ***psychological and social impacts such as loss of freedom, increased stress, and family strain.*** In addition, ***suspension can also have broader economic and societal impacts such as limiting the labor force for specific industries*** such as automobile sales and services, home health care aides and the construction trades. Jobs in each of these industries depend on semi-skilled workers with a valid driver's license.

According to a recent survey of suspended drivers conducted by researchers at Rutgers University, many respondents with a history of license suspension experienced employment impacts resulting from their suspension (Carnegie forthcoming):

- ***42 percent of survey respondents with a history of suspension lost their jobs when they had their driving privileges suspended.*** Job loss was experienced across all income and age groups; however it was most significant among low-income and younger drivers.

- ***45 percent of those that lost their job because of a suspension could not find another job.*** This was true across all income and age groups but most pronounced among low-income and older drivers.

- ***Of those that were able to find another job, 88 percent reported a decrease in income.*** This was true in all income and age groups but most significant among low-income drivers.

In addition, most survey respondents with a history of suspension also reported experiencing psychological and social impacts associated with license suspension:

- 85 percent of those with a history of suspension noted that they “often” or “sometimes” thought about the suspension when not intending to.

- 72 percent reported that any reminder of their suspension brought back negative feelings about it.

- 69 percent felt ashamed of their suspension; and 68 percent noted they were embarrassed to tell anyone about their suspension.

- 81 percent reported experiencing a loss of freedom.

- 83 percent experienced increased stress.

- 74 percent reported that suspension placed a strain on family, friends and colleagues.

- 46 percent reported lacking a form of identification.

A number of individuals providing testimony and/or comments noted that license suspension can have economic effects that go beyond impacts to the individual and family. They suggested that limitations on an individual’s mobility, such as that which occurs after license suspension, can limit the labor force available to fill jobs in some areas for certain types of jobs. For example:

- License suspension can limit the labor force available to fill jobs in key industries, such as home health care aides, motor vehicle sales and services, and the construction trades, which require a valid license as a condition of employment.

- In addition, many employers use possession of a valid driver’s license as a pre-qualifying “screening” question. This may unnecessarily limit the available labor force when driving a motor vehicle is not integral to job responsibilities.

The following other potential economic impacts were noted:

- Fewer drivers may result in fewer automobile sales and less automobile related purchases for gas, service and insurance, which in turn results in decreased tax revenue for the State.

- Drivers with suspended licenses that are unable to secure gainful employment or who are forced to take jobs that pay less may require public assistance payments, which is a cost to the State and its taxpayers. The costs to the State may also include lost income tax revenue from lower rates of employment and lower wages.

Restricted use driver's license programs

Conditional or restricted-use driver's licenses are available in 39 states and the District of Colombia. These licenses allow some or all suspended/revoked drivers to receive limited driving privileges during the time they are suspended. Program eligibility varies widely from state to state. Some states offer restricted-use licenses to drivers suspended for compliance reasons, but most states limit the use of restricted-use licenses to drivers with time delimited suspensions, such as those imposed for a first time DUI offense, for point accumulation and for other traffic violations after a specified minimum period of suspension is served. Most often, the waiting period ranges from 30 to 90 days, although a few states require all conditional license applicants to serve half of their suspension/revocation period prior to being considered eligible for the license.

In most states, conditional or restricted-use licenses are not available to drivers suspended/revoked for multiple DUI offenses, negligent vehicular homicide, or habitual offenders. Furthermore, in most states, drivers suspended for compliance reasons are not eligible.

Permitted travel and associated restrictions related to conditional use licenses also vary by state. Some limit travel for employment purposes, while others are more lenient and allow travel for many other reasons, including medical purposes, school, child/elder care, "homemaker" duties and travel to and from religious services. Penalties for violating program restrictions most typically involve the cancellation of the restricted-use license and reinstatement of the original suspension or revocation. Some states also extend the original suspension/revocation period, between several months to double the original period.

A recent survey of New Jersey drivers found that more than three-quarters of survey respondents supported the creation of a restricted-use license program for at least some suspended drivers under certain circumstances. Although support was greatest among drivers with a history of suspension, 69 percent of those drivers that have never been suspended expressed support for such a license (Carnegie, forthcoming).

Task Force Recommendations

The following recommendations were developed by the Task Force taking into consideration the data and information provided to the Task Force and its subcommittees by subject matter experts and outside researchers, public testimony and comment received as part of its outreach activities and deliberative discussions that took place at each of its meetings. The recommendations are intended to address the affordability and fairness of license suspension in New Jersey while balancing the need to maintain the deterrent and coercive effects license suspension provides as well as being sensitive to the potential revenue impacts of certain proposals. The

recommendations presented here have been abridged for quick reference. More detailed recommendations appear in section five of the report.

1. Provide judges with more discretion when establishing time payment orders.

2. Make payment of court-administered fines and time payment orders easier for drivers.

3. Amend the Parking Offenses Adjudication Act to permit suspension of vehicle registration as an alternative to license suspension.

4. Provide courts with greater discretion to allow payment plans in excess of 12 months for those failing to pay child support arrears and support initiatives to increase compliance with child support payments using driver's license suspension as a remedy of last resort.

5. Amend N.J.S.A 39:3-40 to provide courts with greater discretion regarding the imposition of additional mandatory suspension time when drivers are convicted of driving while suspended for non-driving reasons. Consider whether the current fine amounts defined in the statute are appropriate given the nature of each offense.

6. Make payment of outstanding MVC insurance surcharges and restoration fees easier and more affordable for low income drivers.

7. Conduct a revenue impact study to determine if lowering current surcharge amounts would increase overall collection rates and maintain or increase overall revenue from the insurance surcharge program.

8. Rename the insurance surcharge program to reflect its current purpose as a driver responsibility assessment.

9. Increase public awareness and understanding of the insurance surcharge program and the potential consequences of not paying the surcharges.

10. Develop informational materials to increase public awareness and understanding of the potential consequences of motor vehicle violations, including: fine amounts (for frequent violations), point accumulation, insurance surcharges and potential license suspension.

11. Conduct a comprehensive review of New Jersey's current point system and driver improvement programs to determine the effectiveness of the programs relative to ensuring highway safety.

12. Address issues that contribute to license suspensions for failing to maintain insurance.

13. Regulate and/or limit insurance premium increases that are based on license suspensions for non-driving reasons.

14. Consider creating a restricted-use license program for drivers suspended for financial reasons.

15. Change license suspension notification documents to make them easier to understand and include supplemental education materials to communicate the seriousness of license suspension and its potential consequences.

16. Improve communication with the public and increase awareness among drivers facing license suspension that MVC has an administrative hearing process available to address the individual circumstances of their suspensions.

17. Undertake a sustained and systemized effort to provide social service agencies, employment counseling agencies, One-Stop Career Centers, Department of Corrections personnel, parole officers and support staff at transitional facilities with the information, training and tools they need to more effectively assist clients to address license suspension and restoration issues.

18. Elevate the importance of dealing with license restoration issues as part of the Department of Corrections discharge planning process.

19. Increase awareness among county social service agencies that public assistance funds (e.g., TANF and other federal programs permitting the use of funds for transportation purposes) can be used to pay surcharges, fees and fines associated with license suspension as a means to promote employment opportunities among eligible recipients and increase collections.

20. Amend existing laws, policies and procedures governing address change notification to increase the accuracy of MVC mailing address data.

21. Monitor the License Restoration Program of the Essex County Vicinage and evaluate its effectiveness as a potential model for other jurisdictions.

Implementing these recommendations will require the participation and sustained commitment of many organizations, agencies and individuals. Section six of this report provides a framework for implementation by identifying potential implementation partners and specifying which entities might take a leadership and/or supporting role in advancing specific recommendations.

SECTION ONE: REPORT OUTLINE AND BACKGROUND

Report Outline

Section one of this report provides background on the Task Force and briefly describes the public outreach activities undertaken by the Task Force over the past year. Section two provides an overview of driver's license suspension in New Jersey, including a description of the various reasons for suspension and detailed statistics that document patterns of suspension in terms of age, gender and residence location. Section three describes the collateral and unintended consequences that result from license suspension as documented through survey research, public testimony and comment received by the Task Force, and input received through roundtable discussions and interviews conducted on behalf of the Task Force. Section four provides an overview of restricted use license programs used in other states. Section five presents the Task Force's detailed recommendations for addressing the affordability and fairness of license suspension in New Jersey. Finally, section six describes a framework for implementing the Task Force recommendations by identifying the agencies and organizations that could play a leadership or supporting role in advancing specific proposals.

Background

On April 25, 2002, former Governor James E. McGreevey signed Executive Order Number 19, which established the "Fix DMV" Commission. The twelve-member Commission was charged with conducting a comprehensive review of the Division of Motor Vehicles to determine what reform efforts would enable the Division to operate as a more secure, efficient and customer-focused Division. Once formed, the Commission was given 120 days to complete its analysis and prepare a report detailing its recommendations.

On November 7, 2002 the Commission issued its final report. The report focused on the urgent need to meet or exceed customer satisfaction and expectations and to improve the Division's security. The need for structural and organizational changes, as well as technological modernizations, including implementation of digital driver licenses and an overhaul of the DMV computer system, were also recommended.

On January 28, 2003, Governor McGreevey signed "The Motor Vehicle Security and Customer Service Act" into law. The law abolished the New Jersey Division of Motor Vehicles (DMV) and replaced it with the semi-autonomous New Jersey Motor Vehicle Commission (MVC), in but not of the New Jersey Department of Transportation. In addition, the law required a series of reforms designed to carry out the "Fix DMV" Commission's recommendations related to improved customer service, modernization of MVC technology, enhanced security, including the implementation of digital licensing, and improved efficiency.

The law also called for the creation of the Motor Vehicles Affordability and Fairness Task Force. As detailed below, the Task Force was charged with investigating "…the impact of the current point system and non-driving related suspension of driving privileges, in particular, the Merit Rating Plan Surcharges, on the driving public and make recommendations for the reform of the surcharge suspension program to increase motorist safety."

Task Force Mission and Charge

The Motor Vehicles Affordability and Fairness Task Force was created by New Jersey statute, N.J.S.A. 39:2A-30 (L.2003,c.13,s.30) and was intended to be comprised of nineteen members, at least nine of whom are public members. In total, seventeen individuals served on the Task Force.

The charge of the Task Force as defined by that statute is as follows:

> …to study the impact of the current point system and non-driving related suspension of driving privileges, in particular, the Merit Rating Plan Surcharges, on the driving public and make recommendations for the reform of the surcharge suspension program to increase motorist safety. In addition, the task force shall examine 'The Parking Offenses Adjudication Act,' P.L.1985, c.14 (C.39:4-139.2 et seq.) and municipal court processes related thereto, as well as court actions on surcharge assessments and license suspensions related to nonpayment of fines or tickets as well as motor vehicle moving violations.

The Task Force was also charged with developing recommendations regarding the following specific issues:

1. The rapid growth in the number of driver's license suspensions;

2. The identification and regulation of drivers to deter unlawful and unsafe acts;

3. The establishment of a mechanism to assist low-income residents that are hard pressed to secure the restoration of driving privileges;

4. The reform of the parking ticket suspension system and "The Parking Offenses Adjudication Act;" and

5. Increasing the collection of outstanding surcharges.

The law further specified that the study shall include, but not be limited to, investigating issues of motor vehicle safety, insurance, finance and socioeconomic conditions. The Task Force shall review and analyze studies examining the social impacts of driver's

license and registration suspensions. The Task Force shall also review and analyze studies and statistics regarding surcharges and suspensions to develop recommendations for reform.

The Task Force shall develop recommendations for public and private strategies and recommendations for legislative or regulatory action, if deemed appropriate, to address these issues. The recommendations shall include suggestions for the development of public information campaigns to educate and inform motorists about driver's license and registration suspensions, and methods of lessening financial and social burdens on motorists.

The Task Force's recommendations shall be aimed at developing and implementing an amnesty policy and a reform of the surcharge suspension. The Task Force shall review the impact of suspension of driving privileges upon businesses and individuals dependent upon having a valid driver's license for gainful employment and to conduct commerce in this State.

Task Force Organization

As noted above, seventeen members were designated and/or appointed to serve on the Task Force. The Task Force convened for the first time on February 25, 2005. At that first meeting, MVC Chief Administrator Sharon Harrington was named chair of the Task Force and Jon Carnegie, assistant director of the Alan M. Voorhees Transportation Center at Rutgers University, was named Task Force secretary. In addition, three Task Force subcommittees were formed as follows:

- Subcommittee 1: Parking Offenses Adjudication Act (POAA) and other non-driving related offenses
- Subcommittee 2: Point system & other driving related offenses
- Subcommittee 3: Insurance Surcharge Program

Including its first meeting, the full Task Force met four times during 2005/2006. In addition, each of the Task Force subcommittees met four times to examine and discuss the specific topics under their purview.

Public Outreach

The Task Force sponsored four public forums in June and July 2005 to receive testimony from the general public and interested parties on the impacts of license suspension and solicit ideas regarding potential remedies to address those impacts. The hearings were held at transit accessible locations in Newark, New Brunswick, Camden and Atlantic City. Thirty five participants provided testimony. In addition, 89

individuals sent comments to the Task Force via an email address advertised on the MVC website and by regular mail.

To supplement the input received from the public, the Task Force conducted two roundtable discussions and six telephone interviews with law enforcement officers, workforce development professionals, legal aid counselors, parole officers and representatives from relevant industry sectors and social service organizations. The roundtable discussions and interviews were conducted in September and October 2005. Highlights from the public comments received are included in section four. A complete summary of public testimony and comments and meeting reports from the roundtable discussions and interviews are included in Appendix E.

SECTION TWO: DRIVER'S LICENSE SUSPENSION IN NEW JERSEY

New Jersey has approximately six million licensed drivers. The vast majority of these drivers remain violation and suspension free throughout their driving years. Only a small percentage of drivers (five percent) have their driving privileges suspended or revoked at any given time.

In New Jersey, driving and registering a motor vehicle are considered privileges, not rights, which may be removed ("suspended") for reasonable grounds. New Jersey utilizes the term suspension, instead of revocation, to denote a temporary, rather than permanent, withdrawal of the privilege(s). Driver's license suspensions are distinguished broadly in New Jersey by the following factors:

1. Whether the suspension(s) is imposed by court action or by the MVC (administrative);

2. Whether the suspension(s) is for a finite or indefinite period of time. The latter term indicates that the suspension period is dependent upon compliance with some requirement or payment;

3. Whether the suspension(s) is mandatory (e.g., DUI penalties) or discretionary (e.g., point system with option for a hearing at MVC); and

4. What privilege(s) are affected by the suspension(s): driving, registration, driving & registration, or specific endorsements on commercial licenses (e.g., carrying school-age children).

When a driver's license is suspended by court action, the MVC's role involves record-keeping and confirmation to the customer only. When the MVC suspends a driver's license, the Commission is responsible for giving notice of the proposed suspension and for providing procedural due process in the form of pre-hearing conferences at the MVC and hearings before the Office of Administrative Law.

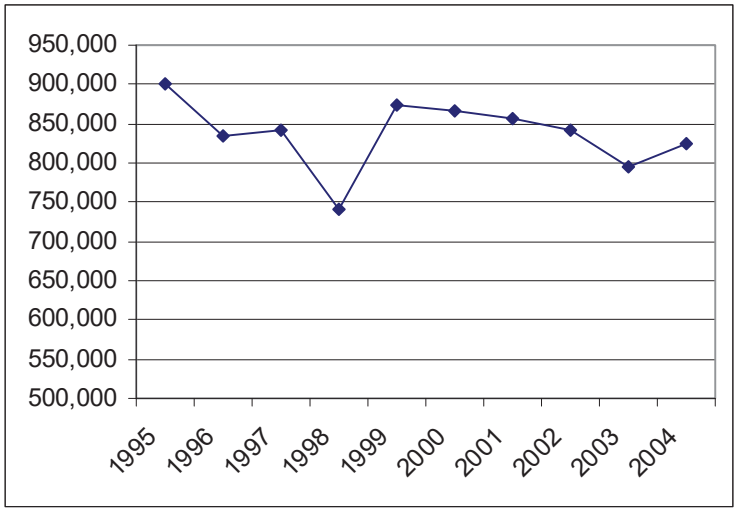
Overview of New Jersey Suspension Statistics

Over the past ten years, a yearly average of approximately 838,000 suspensions have been ordered and/or confirmed by MVC (see table 1 and figure 1). The number of annual suspensions has ranged from a high of approximately 900,000 in 1995 to a low of approximately 740,000 in 1998. These figures represent totals of individual suspension actions taken, NOT the number of drivers subject to those actions. For example, it is common for an individual driver to have several active suspension orders on his/her record at a given time. It is valuable to note that overall, at any given time, approximately five percent of New Jersey's approximately six million licensed drivers are suspended.

Table 1 - Number of suspensions ordered or confirmed by MVC annually

Year	Suspension Orders
2004	825,320
2003	795,258
2002	841,097
2001	856,816
2000	867,065
1999	874,866
1998	740,710
1997	842,105
1996	833,905
1995	902,033

Source: NJ Motor Vehicle Commission



Source: NJ Motor Vehicle Commission

Figure 1. Ten year history of suspensions ordered or confirmed by MVC

Characteristics of suspended drivers in New Jersey

The following suspended driver statistics were developed as part of the *Driver's License Suspension, Impacts, and Fairness Study* (Carnegie forthcoming), conducted by the Alan M. Voorhees Transportation Center at Rutgers University for the New Jersey Motor Vehicle Commission (MVC) and New Jersey Department of Transportation. Researchers derived the statistics using data sampled from the MVC driver history database in May 2004. For the purpose of the study, "active" suspended drivers were defined as New Jersey drivers possessing a current (not expired) driver's license and those with driver's licenses that expired after May 2001 who had one or more suspension orders recorded on their driver history record (Carnegie forthcoming).

Age and gender profile of suspended drivers

In May 2004, there were 289,600 suspended New Jersey drivers (see table 2). This represents slightly less than five percent of the State's approximately six million licensed drivers. As shown in table 2, the vast majority of suspended drivers in New Jersey are male (70 percent); and most (59 percent) are between the ages of 25 and 44.

A review of driver's license suspension statistics in other states reveals that suspension rates in New Jersey are slightly less than the rates observed in other states (see table 3). Furthermore, a review of driver's license suspension studies conducted in other states indicates that suspended drivers in those states tend to also be male and between the ages of 25 and 44 (Carnegie forthcoming).

Table 2 - Number of suspended drivers by gender and age group (May 2004)

	Male Drivers		Female Drivers		All Drivers	
Age Group	Number	Percent	Number	Percent	Number	Percent
16-17	194	0.1%	52	0.1%	246	0.1%
18-24	35,046	17.2%	12,875	14.9%	47,921	16.5%
25-34	69,082	34.0%	28,062	32.5%	97,144	33.5%
35-44	51,958	25.6%	22,098	25.6%	74,056	25.6%
45-54	26,778	13.2%	11,942	13.8%	38,720	13.4%
55-64	10,269	5.1%	4,662	5.4%	14,931	5.2%
65-84	7,657	3.8%	4,867	5.6%	12,524	4.3%
85+	2,322	1.1%	1,736	2.0%	4,058	1.4%
Total	203,306	100.0%	86,294	100.0%	289,600	100.0%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Table 3 – Suspension rates in other states

State	# of Licensed Drivers	# of Suspended Drivers	Rate
Alabama	480,000	27,213	6%
Arkansas	1,900,000	101,500	5%
Connecticut	2,300,000	134,000	6%
Delaware	570,000	78,660	14%
Idaho	1,000,000	70,000	7%
Illinois	8,400,000	258,511	3%
Iowa	2,000,000	57,000	3%
Kansas	1,900,000	103,000	5%
Minnesota	3,600,000	163,500	5%
Missouri	3,500,000	320,344	9%
Montana	450,000	31,931	7%
Nebraska	1,300,000	53,539	4%
New Jersey	6,100,000	290,000	5%
North Dakota	457,000	27,000	6%
Ohio	8,728,546	611,064	7%
Oklahoma	2,300,000	81,040	4%
Pennsylvania	8,300,000	600,000	7%
Tennessee	4,200,000	246,000	6%
Texas	15,000,000	430,000	3%
Washington	4,300,000	364,000	8%
Wisconsin	3,700,000	403,586	11%
Wyoming	455,000	15,000	3%
Average			6%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Incidence of multiple suspensions and suspended drivers with points

In addition to age and gender, researchers at Rutgers examined the incidence of multiple suspensions among New Jersey suspended drivers and the number of suspended drivers with motor vehicle moving violation points. As shown in table four, it is quite common for suspended drivers in New Jersey to have more than one suspension. Almost two thirds (64 percent) of suspended drivers have two or more active suspensions and almost one quarter (21 percent) have 10 or more active suspensions.

As described more fully later in this section, the MVC monitors driving behavior by means of a point system under which drivers are assessed points for motor vehicle moving violations. The accumulation of points is used as an indicator of "bad" driving behavior. It is interesting to note that most suspended drivers in New Jersey (59 percent) have zero points (see table 5). The vast majority (85 percent) have six points

or fewer, the threshold used by MVC to trigger advisory notification of potential corrective actions to be taken to address bad driving behavior.

Table 4 - Incidence of multiple suspensions among suspended drivers (May 2004)

No. of Suspensions	No. of drivers	Percent
1	105,020	36%
2	37,603	13%
3	22,575	8%
4	16,772	6%
5	13,166	5%
6	10,865	4%
7	9,249	3%
8	7,819	3%
9	6,673	2%
10	5,863	2%
11	4,989	2%
12	4,583	2%
13	3,959	1%
14	3,658	1%
15 or more	36,806	13%
Total	289,600	100%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Table 5 - Point accumulation by suspended drivers (May 2004)

No. of points	No. of drivers	Percent
0 points	170,407	59%
1-6 points	74,087	26%
7-12 points	25,970	9%
> 12 points	19,136	7%
Total	289,600	100%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Geographic profile of suspended drivers in New Jersey

Rutgers researchers also utilized MVC data to examine geographic patterns of suspension using residence location data. Residence information for suspended drivers was mapped and aggregated by zip code to determine if suspension patterns varied in different parts of the State. Suspension rates for each zip code were calculated by dividing the number of suspended drivers by the number of licensed drivers in each zip code to control for the density of licensed drivers in urban versus suburban and rural areas. Suspension rates for each zip code were then associated with population density and household income data from Census 2000 to facilitate an analysis of suspension patterns (Carnegie forthcoming).

As shown in the table 6, approximately 43 percent of the State's licensed drivers reside in urban areas. Approximately 46 percent reside in middle income zip codes; and approximately 16.5 percent reside in lower income areas. However, as shown in table 7, a significantly higher percentage of suspended drivers live in urban (63 percent) and low income (42 percent) areas.

Table 6 - Distribution of NJ licensed drivers by area type and income class (May 2004)

	Licensed Drivers			
	Male	Female	Total	% of total
Statewide	3,042,560	3,130,632	6,173,192	100%
By Population Density [1]				
Urban (>800 p/sq mi)	1,322,677	1,335,069	2,657,746	43.1%
Suburban (200-800 p/sq mi)	1,155,525	1,207,671	2,363,196	38.3%
Rural (<200 p/sq mi)	564,358	587,892	1,152,250	18.7%
By HH Income Class [2]				
High (>$85,000)	367,170	381,658	748,828	12.1%
Middle High ($65,001 - $85,000)	767,114	798,038	1,565,152	25.4%
Middle ($40,001 - $65,000)	1,402,046	1,439,537	2,841,583	46.0%
Low ($20,000 - $40,000)	492,436	496,546	988,982	16.0%
Low-Low(<$20,000)	13,794	14,853	28,647	0.5%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1- density calculation based on zip code data from 2000 US Census;
2 - income classifications based on zip code data from 2000 US Census
Special Note: 1,788 records could not be matched to zip code reference file

Table 7 - Distribution of suspended drivers by area type and income class (May 2004)

	Suspended Drivers			
	Male	Female	Total	% of total
Statewide	203,306	86,294	289,600	100.0%
By Population Density [1]				
Urban (>800 p/sq mi)	127,960	55,047	183,007	63.2%
Suburban (200-800 p/sq mi)	50,290	20,538	70,828	24.5%
Rural (<200 p/sq mi)	23,753	10,224	33,977	11.7%
Unknown *	1,303	485	1,788	0.6%
By HH Income Class [2]				
High (>$85,000)	7,129	2,952	10,081	3.5%
Middle High ($65,001 - $85,000)	25,238	10,288	35,526	12.3%
Middle ($40,001 - $65,000)	85,184	36,255	121,439	41.9%
Low ($20,000 - $40,000)	79,646	34,172	113,818	39.3%
Low-Low(<$20,000)	4,806	2,142	6,948	2.4%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1- density calculation based on zip code data from 2000 US Census;
2 - income classifications based on zip code data from 2000 US Census
Special Note: 1,788 records could not be matched to zip code reference file

Table 8 - Suspension rates by area type and income class (May 2004)

	Suspension Rates [1]		
	Male	Female	Total
Statewide	7%	3%	5%
By Population Density [2]			
Urban (>800 p/sq mi)	10%	4%	7%
Suburban (200-800 p/sq mi)	4%	2%	3%
Rural (<200 p/sq mi)	4%	2%	3%
Unknown *			
By HH Income Class[3]			
High (>$85,000)	2%	1%	1%
Middle High ($65,001 - $85,000)	3%	1%	2%
Middle ($40,001 - $65,000)	6%	3%	4%
Low ($20,000 - $40,000)	16%	7%	12%
Low-Low(<$20,000)	35%	14%	24%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 – Suspension rates were calculated by dividing the number of suspended drivers by the number of licensed drivers in each zip code. The rates reported in this table represent the ratio of suspended drivers to licensed drivers;
2- density calculation based on zip code data from 2000 US Census;
3 - income classifications based on zip code data from 2000 US Census;
Special Note: 1,788 records could not be matched to zip code reference file

As shown in table 8, researchers found that suspension rates among certain classes of drivers are disproportionately high. For example, 35 percent of male drivers residing in low-low income zip codes have suspended licenses, compared to the Statewide average of seven percent for all male drivers. Although there are only 4,806 suspended male drivers residing in low-low income zip codes, the disparity between income classes is significant. Also noteworthy is the finding that drivers living in urban areas (population density greater than 800 persons/mi^2) have suspension rates more than two times higher than their suburban and rural counterparts, seven percent versus three percent.

When reviewing the data presented in table 8, it is important to note that the MVC driver history database does not include specific demographic data on individual drivers. As such, the reader should be careful when interpreting the data with regard to income. No direct relationship can be drawn between individual suspended drivers and their income level. The data must be interpreted in the aggregate. Suspension rates reported in the table represent the ratio of suspended drivers to licensed drivers in any given zip code. (Carnegie forthcoming).

Reasons for Suspension

The MVC utilizes event codes to denote suspensions on driver history records. There are far fewer "reasons" for suspensions in New Jersey than there are "event codes." For example, there are at least seven event codes used to denote drivers suspended for accumulating motor vehicle violation points.

Specifically, there are over 600 suspension event codes, but approximately twelve underlying “reasons” for suspension that account for the vast majority (90 percent) of suspensions ordered or confirmed each year. Overall, the two categories of suspensions with the highest annual volume are failure to pay MVC insurance surcharges, followed by failure to appear in court to answer/pay parking tickets. Table 9 presents the average number of suspensions ordered or confirmed by MVC each year for the top twelve “reasons” for suspension.

Table 9 - Average number of suspensions ordered/confirmed by MVC annually – Top twelve “reasons”

Reason for suspension	Number of suspension orders	Percent of total
1. Failure to pay MVC insurance surcharge	228,000	28%
2. Failure to appear in court to satisfy a parking summons (Parking Offenses Adjudication Act)	140,000	17%
3. Failure to appear in court to satisfy a summons (moving violations, municipal ordinances)	121,000	15%
4. Failure to comply with a court ordered installment plan or to satisfy other requirements of a court sentence (rehabilitation program, community service, court surcharges or assessments)	70,000	8%
5. Driving while suspended	47,000	6%
6. Failure to comply with a child support order	25,000	3%
7. Operating a vehicle under the influence of alcohol or drugs	25,000	3%
8. Uninsured motorist – Insurance cancelled or court ordered suspension for driving an uninsured motor vehicle	25,000	3%
9. Accumulation of points from moving violations/persistent violator	22,000	3%
10. Drug related offenses under the Comprehensive Drug Reform Act	20,500	2%
11. Failure to make good on dishonored checks submitted to courts and/or MVC for fees	9,000	1%
12. Serious moving violations (reckless driving, leaving the scene of accident, high speed)	6,000	1%

Source: NJ Motor Vehicle Commission

As recognized in table 9, in New Jersey, driver’s license suspensions are imposed for both driving and non-driving related reasons. Some of the non-driving related reasons for license suspension, such as drug offenses and failure to pay child support, were instituted by the State in response to Federal statutory requirements.

New Jersey Point System

The MVC monitors driving behavior by means of a point system. The current point system has been in effect since March 1, 1977. As shown in table10, points are given to drivers for various moving violations. Ninety percent of New Jersey's licensed drivers have zero points on their driving records. Approximately one half of one percent has six points, the threshold for MVC advisory action/notice. Less than one half of one percent has twelve or more points, which places them at the level for MVC action in terms of suspension or mandatory Driver Improvement Program (DIP) attendance.

As noted earlier, the MVC utilizes "event codes" to record violations, suspensions and other MVC and court actions on driver history records. There are a total of 1,795 individual event codes. Of these, 332 are used to denote violations events. Of the latter, there are 100 codes for point-carrying violations, and 232 codes for non-point violations. In July 2000, the New Jersey Legislature passed legislation (N.J.S.A. 39:4-97.2, effective July 24, 2000) creating a new traffic violation, unsafe operation of a motor vehicle, for which no points are assessed for first and second offenses. The law makes it unlawful to operate a motor vehicle in an "…unsafe manner likely to endanger a person or property." This law change, which created the non-point carrying "unsafe driving" offense, provided an increased opportunity for prosecutors and the courts to downgrade point-carrying violations into penalties that only carry a fine. In 2004, the law was amended to add a $250 surcharge to the fines, fees and other charges already assessed when convicted of unsafe driving pursuant to N.J.S.A. 39:4-97.2

In terms of non-point violations, the most numerous violations entered on driver history records include the following, in descending order of volume:

- Unsafe driving, 39:4-97.2, (150-200,000/yr)
- Fictitious plates, 39:3-33, (65,000/yr)
- Unlicensed driving, 39:3-10, (52,000/yr)
- Operate while suspended, 39:3-40, (41,000/yr)
- Obstructing passage, 39:4-67, (25,000/yr)
- DUI, 39:4-50a, (24,000/yr)
- Uninsured vehicle, 39:6B-2, (10,000)

In 2003 and 2004 the annual percentages of point and non-point violations have held steady at around 45 percent point and 55 percent non-point violations as reported to MVC by the courts. However, since the year 2000, when the unsafe driving violation took effect, the percentage of non-point violations increased from 46 percent to 56

percent of total violations, and the percentage of point violations decreased from 54 percent to 44 percent of total.

Points are reduced for unbroken twelve month periods of violation-free driving and for attending mandatory State-run DIP, Probationary Driver Programs (PDP) and voluntary Defensive Driving Programs (DDP) approved by MVC. The DIP is designed as a three-hour classroom session managed by the MVC. The target audience for the program is experienced drivers who have accumulated twelve or more points under the MVC point system. There is a $100 “school” fee for participating in the Program (payable to MVC) and there are fifteen “school” sites located throughout New Jersey offering the Program.

Drivers who have accumulated 12-14 points in a period greater than two years are offered the program on their scheduled suspension notice as an option to suspension. Other drivers may go to school in lieu of part or all of a proposed point suspension as a result of a pre-hearing settlement conference, an administrative law judge's decision that is affirmed by the MVC, or a final MVC decision. Drivers who fail to attend the program as scheduled are suspended for the period specified in their original scheduled suspension notice, settlement agreement or hearing decision.

The PDP is a four hour classroom program managed by the MVC for new drivers who have accumulated four or more points for two violations committed within a two year period after their first driver exam permit is issued. The fee for participating in the program is $100, payable to MVC. PDPs are held at the same sites as the DIPs. If the offender fails to complete the program, he/she is suspended indefinitely until the course is completed and restoration fee paid.

Drivers who have completed the DIP or PDP receive a point reduction credit of three points against any points on their driving record. These credits may only be received once in any given two year period. Drivers are also warned they are subject to license suspension for any motor vehicle violation committed within one year after completing the course, with the precise suspension period dependent upon how soon the violation is committed following program completion.

Table 10 - New Jersey Point Schedule

N.J.S.A. Section	Offense	Points
	NJ Turnpike, Garden State Parkway and Atlantic City Expressway	
27:23-29	Moving against traffic	2
27:23-29	Improper passing	4
27:23-29	Unlawful use of median strip	2
	All roads and highways	
39:3-20	Operating constructor vehicle in excess of 45 mph	3
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bicycle	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through safety zone	2
39:4-52 and 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-66.2	Driving on public or private property to avoid a traffic sign or signal	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-97.2	Driving in an unsafe manner (pts assessed for the third or subsequent violation(s) w/in 5 year period.)	4
39:4-98 and 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper U-turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of frozen dessert truck	4
39:4-129	Leaving the scene of an accident - No personal injury	2
39:4-129	Leaving the scene of an accident - Personal injury	8
39:4-144	Failure to observe stop or yield signs	2
39:5D-4	Moving violation out of State	2

Drivers who complete a voluntary DDP approved by MVC receive a point reduction credit of two points against any points on their driving record. DDP credit is given for one program every five years.

As previously noted, an average of 22,000 license suspensions are ordered annually for accumulation of points (see table 9). Another 6,000 are ordered for serious moving violations. In May 2004, approximately 17,000 suspended drivers had at least one active suspension for accumulating points or other driving-related reasons. This excludes those suspended for driving while under the influence of alcohol or drugs (DUI). Of those, less than 10 percent (1,452) had only one active suspension for point accumulation, reckless driving or failing to complete a Probationary Driver Program with no other suspensions for other reasons. It is noteworthy that drivers suspended for purely driving-related reasons account for less than six percent of all suspended drivers (Carnegie forthcoming).

Table 11 - Suspension rates by area type and income – Point accumulation and other driving-related reasons, excluding DUI (May 2004)

	Distribution of licensed drivers	Distribution of Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		15,312	1,908	17,220		0.5%	0.1%	0.3%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	8,033	814	8,847	51%	0.6%	0.1%	0.3%
Suburban (200-800 p/sq mi)	38%	4,810	681	5,491	32%	0.4%	0.1%	0.2%
Rural (<200 p/sq mi)	19%	2,348	394	2,742	16%	0.4%	0.1%	0.2%
Unknown [4]		121	19	140	1%			
TOTAL	100%	15,312	1,908	17,220	100%			
By HH Income Class [5]								
High (>$85,000)	12%	636	107	743	4%	0.2%	0.0%	0.1%
Middle High ($65,001 - $85,000)	25%	2,536	354	2,890	17%	0.3%	0.0%	0.2%
Middle ($40,001 - $65,000)	46%	7,498	1,013	8,511	49%	0.5%	0.1%	0.3%
Low ($20,000 - $40,000)	16%	4,360	396	4,756	28%	0.9%	0.1%	0.5%
Low-Low(<$20,000)	0.5%	161	19	180	1%	1.2%	0.1%	0.6%
Unknown [4]		121	19	140	1%			
TOTAL	100%	15,312	1,908	17,220				

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have had their driving privileges withdrawn at least one time for the stated reason. Includes point accumulation (PTPA+ PTPB+ PTPC+ PTPD), reckless driving (0496), failure to complete probationary driver program (FCPD) & persistent violator (PVPS); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Table 11 presents the distribution of suspended drivers and suspension rates for those drivers suspended for point accumulation or selected other driving-related reasons (excluding DUI). As shown in the table, the distribution of drivers suspended for driving reasons is somewhat higher in urban areas than suburban and rural areas when compared to the distribution of all New Jersey licensed drivers. The same is true for lower income zip codes. However, suspension rates for driving reasons are generally similar in urban, suburban and rural areas when compared to the Statewide rate of 0.3 percent. Suspension rates for driving reasons are slightly higher in lower income zip codes are slightly less than twice that of rates in higher income areas (Carnegie forthcoming).

Operating a vehicle under the influence of drugs or alcohol

Under New Jersey law, a person who operates a motor vehicle, with a blood alcohol concentration (BAC) of 0.08 percent or above is considered to be driving under the influence (N.J.S.A. 39:4-50). Drivers convicted of driving under the influence are subject to serious fines and penalties, including court fines and fees, MVC surcharges and fees, license suspension, imprisonment, community service and participation in intoxicated driver/alcohol education programs. Mandatory driver's license suspension for DUI offenses is required by federal law.

In New Jersey, license suspensions for DUI offenses are ordered by the courts and confirmed administratively by MVC. Suspension periods range from three months for a first time DUI offense where the driver's BAC is 0.08 percent or higher but less than 0.10 percent, to 20 years when a driver is convicted of a third offense of DUI in a school zone or crossing. A complete schedule of DUI-related fines, fees and penalties is included in Appendix F.

As reported in table 9, approximately 25,000 DUI suspensions are confirmed by MVC each year. This represents three percent of total annual suspensions. In May 2004, approximately 32,000 suspended drivers had at least one active suspension for operating a vehicle under the influence of alcohol or drugs. As shown in table 12, the distribution of drivers suspended for DUI was very similar to the distribution of licensed drivers in urban, suburban and rural areas, slightly lower in higher income areas and slightly higher in lower income zip codes. Similarly, there is little variation in suspension rates by area type and income classification when comparing different groups to each other or to Statewide suspension rates for DUI offenses (Carnegie forthcoming)

Table 12 - Suspension rates by area type and income – Operating a motor vehicle under the influence of alcohol or drugs (DUI) (May 2004)

	Distribution of licensed drivers	Distribution of Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		26,764	5,182	31,946		0.9%	0.2%	0.5%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	11,589	1,898	13,487	42%	0.9%	0.1%	0.5%
Suburban (200-800 p/sq mi)	38%	9,305	1,958	11,263	35%	0.8%	0.2%	0.5%
Rural (<200 p/sq mi)	19%	5,658	1,269	6,927	22%	1.0%	0.2%	0.6%
Unknown [4]		212	57	269	1%			
TOTAL	100%	26,764	5,182	31,946	100%			
By HH Income Class [5]								
High (>$85,000)	12%	1,467	310	1,777	6%	0.4%	0.1%	0.2%
Middle High ($65,001 - $85,000)	25%	4,991	1,042	6,033	19%	0.7%	0.1%	0.4%
Middle ($40,001 - $65,000)	46%	14,118	2,971	17,089	53%	1.0%	0.2%	0.6%
Low ($20,000 - $40,000)	16%	5,820	791	6,611	21%	1.2%	0.2%	0.7%
Low-Low(<$20,000)	0.5%	156	11	167	1%	1.1%	0.1%	0.6%
Unknown [4]		212	57	269	1%			
TOTAL	100%	26,764	5,182	31,946	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for a DUI offense (0450); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Driving while suspended or revoked

New Jersey law establishes strict penalties for driving while suspended or revoked (N.J.S.A. 39:3-40). Depending on the offense and the reason for the original suspension, drivers convicted of driving while suspended or revoked are subject to fines ranging from $500 to $3,000, up to 180 days imprisonment, and mandatory license suspension for periods ranging from up to six months to 30 months in addition to the period of the original suspension. Table 14 provides a schedule of mandatory minimum and maximum fines and penalties for driving while suspended/revoked.

Approximately 47,000 suspensions for driving while suspended/revoked are confirmed by MVC each year. This accounts for about six percent of all annual suspensions. In May 2004, 58,726 suspended drivers had at least one active suspension for this reason. Table 13 presents the distribution of suspended drivers and suspension rates for those suspended for driving while suspended/revoked. As shown in the table, the distribution of drivers suspended for this reason is significantly higher in urban and lower income areas than in suburban and rural areas when compared to the distribution of all licensed

drivers. Although less than half of the State's licensed drivers reside in urban areas, 60 percent of drivers suspended for driving while suspended live in urban zip codes.

The same is true for lower income zip codes. Although drivers living in lower income zip codes make up only 16.5 percent of all licensed drivers in the State, 43 percent of drivers suspended for driving while suspended reside in low income areas. This pattern can also be seen when reviewing suspension rates by area type and income class. Suspension rates for driving while suspended or revoked for urban residents are two times higher than suspension rates for this reason among suburban and rural residents. In low income areas, suspension rates are 1.5 to five times higher than the Statewide average for both male and female drivers (Carnegie, forthcoming).

Table 13 - Suspension rates by area type and income – Driving while suspended or revoked (May 2004)

	Distribution of licensed drivers	Distribution of Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		48,136	10,590	58,726		1.6%	0.3%	1.0%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	29,193	6,146	35,339	60%	2.2%	0.5%	1.3%
Suburban (200-800 p/sq mi)	38%	12,328	2,811	15,139	26%	1.1%	0.2%	0.6%
Rural (<200 p/sq mi)	19%	6,320	1,578	7,898	13%	1.1%	0.3%	0.7%
Unknown [4]		295	55	350	1%			
TOTAL		48,136	10,590	58,726	100%			
By HH Income Class [5]								
High (>$85,000)	12%	990	235	1,225	2%	0.3%	0.1%	0.2%
Middle High ($65,001 - $85,000)	25%	4,820	1,110	5,930	10%	0.6%	0.1%	0.4%
Middle ($40,001 - $65,000)	46%	20,770	4,923	25,693	44%	1.5%	0.3%	0.9%
Low ($20,000 - $40,000)	16%	20,096	4,019	24,115	41%	4.1%	0.8%	2.4%
Low -low(<$20,000)	0.5%	1,165	248	1,413	2%	8.4%	1.7%	4.9%
Unknown [4]		295	55	350	1%			
TOTAL		48,136	10,590	58,726	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for a driving while suspended (0340); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Table 14 - Schedule of fines and penalties for driving while suspended/revoked

Original reason for suspension	Suspension of license and/or registration	Court Fine	Prison
General provisions [N.J.S.A. 39:3-40]			
1st Offense	Up to 6 months	$500	n/a
2nd Offense	Up to 6 months	$750	Up to 5 days
3rd Offense or subsequent	Up to 6 months	$1,000	10 days
Driving without insurance [N.J.S.A. 39:3-40 (f)(1)]			
1st Offense	12-30 months	$1,000	Up to 90 days
2nd Offense	12-30 months	$1,250	Up to 90 days
3rd Offense or subsequent	12-30 months	$1,500	10 - 90 days
DUI; Refusal to submit to a breath/chemical test; Habitual offender [N.J.S.A. 39:3-40 (f) (2)]			
1st Offense	12-30 months	$1,000	Up to 90 days
2nd Offense	12-30 months	$1,250	10-90 days
3rd Offense or subsequent	12-30 months	$1,500	10-90 days
DUI or refusal to submit to a breath/chemical test while in a school zone or crossing; [N.J.S.A. 39:3-40 (f) (3)]			
1st Offense	12-30 months	$1,000	60-90 days
2nd Offense	12-30 months	$1,250	120-150 days
3rd Offense or subsequent	12-30 months	$1,500	180 days
Non-payment of MVC insurance surcharge [39:3-40 (g)]			
1st Offense	Up to 6 months	$500	n/a
2nd Offense	Up to 6 months	$750	Up to 5 days
3rd Offense or subsequent	Up to 6 months	$1,000	10 days
Note: An additional fine of $3,000 is collected by MVC if the total surcharge imposed is not paid prior to court appearance.			
Failure to appear in court or pay a parking judgment [N.J.S.A. 39:3-40 (i)]	n/a	Up to $100	

Source: N.J.S.A. 39:3-40

Insurance Surcharge Program

In 1983, the New Jersey Legislature enacted the New Jersey Merit Rating Plan (N.J.S.A. 17:29 A-35), which required MVC to assess “insurance” surcharges based on certain motor vehicle offenses. According to the statute, motorists accumulating six or more points in a three year period are subject to a surcharge of $150 for the first six points and $25 for each additional point thereafter. Currently, New Jersey is one of only four States in the Nation with such a surcharge program. The other states include New York, Texas, and Michigan.

Surcharges are levied each year for three years and are in addition to any court-imposed fines and/or penalties. Point totals are based on the date the violation was posted, not when the violation occurred. Point system reductions received for participation in a DIP, PDP or through annual point reductions for violation-free driving do not apply to the surcharge program.

In addition to point-related surcharges, the statute also requires MVC to impose surcharges for certain other offenses. Table 15 lists the offenses which are subject to surcharge, annual surcharge amounts and the total surcharges to be paid at the end of the three year surcharge period.

Table 15 - Offenses subject to insurance surcharge

Offense	Annual Surcharge	Total Surcharge
Driving Under the Influence (DUI) and/or refusal to submit to chemical test (1st & 2nd offense)	$1,000	$3,000
DUI – 3rd offense in three year period	$1500	$4,500
Unlicensed driver	$100	$300
No insurance (Moped)	$100	$300
Driving while suspended	$250	$750
No liability insurance	$250	$750

Source: NJ Motor Vehicle Commission

Note: Surcharges apply each year for three years.

All new surcharges must be paid within 12 months of assessment either in full or as part of a payment plan. If a driver fails to make surcharge payments or fails to pay the full surcharge amount within 12 months, MVC will suspend all driving privileges indefinitely and file judgment action in the State Superior Court. Actions may include a lien against real property, garnishment of wages, or other similar actions.

MVC provides drivers with surcharge balances of $2,299 or less the option to enroll in a six-twelve month installment payment plan. Drivers with surcharge balances of $2,300 or more are offered installment payment plans up to 24 months. MVC has no discretion to extend payment plans beyond 24 months until after judgment action has been filed in Superior Court. After judgment has been filed, MVC can offer payment plans as requested by the offender for time periods ranging from 36-48 months or longer, depending on the circumstance. Current payment plans range from one month to more than 90 months. As shown in table 16, 45 percent of drivers with surcharge balances owe less than $1,000. At the same time, almost 25,000 drivers or six percent, owe more than $10,000.

For a driver to satisfy a surcharge suspension, he/she must pay 10 percent of the suspended amount. Interest continues to accrue on judgments only, even while participating in a payment plan. The interest rate this year is one percent. The driver must also pay MVC a $100 license restoration fee. It is critical to note that if the surcharge is not in judgment, failure to adhere to a payment plan can result in new fees, interest and possible re-suspension. If the surcharge is in judgment, failure to adhere to a payment plan can result in additional interest and possible re-suspension.

Table 16 - Number of drivers with outstanding surcharge balances (September 2005)

Surcharge balance	Number of drivers	Percent of total
Less than $1,000	199,482	45%
$1,000 - $3,000	111,319	25%
$3,001 - $5,000	59,523	13%
$5,001 - $7,500	30,214	7%
$7,501 - $10,000	15,691	4%
Greater than $10,000	24,943	6%
Total	441,172	100%

Source: NJ Motor Vehicle Commission

When enacted in 1983, the original purpose of the NJ Merit Rating Plan insurance surcharges was to provide revenue for the New Jersey Automobile Full Insurance Underwriting Association (a.k.a. - Joint Underwriters Association or JUA). In 1994, the Legislature directed that the surcharge revenues be used to pay debt service on a $705 million bond issue sold to eliminate the debt of the Market Transition Facility (MTF) to be paid off in 2011. In July 2003, surcharge revenues were also directed to pay $160 million in “Fix DMV” bonds (2011-2015). In July 2004, it was determined that as of 2007, revenue would be directed to the 2004 series A Bonds ($807m).

In calendar year 2004, the MVC billed more than $136 million in surcharges (see table 17). Of that amount, $123,863,221 was collected. Average collection rates over the first year of billing are approximately 36 percent. As shown in table 18, collection rates are highest for point-related surcharges (71 percent) and lowest for surcharges assessed for other non-point reasons. Currently, 441,484 New Jersey drivers owe approximately $1.2 billion dollars in outstanding surcharge principal and interest.

Table 17 - Surcharge amounts billed in 2004

Reason	Amount
Points	$19,978,100
DUI	$61,526,500
Other non-point reasons	$54,780,300
TOTAL	$136,284,900

Source: NJ Motor Vehicle Commission

Table 18 - Average surcharge collection rates

Reason	Collection Rate
Points	71%
DUI	35%
Other non-point reasons	25%
AVERAGE	36%

Source: NJ Motor Vehicle Commission

In September 2003, MVC offered a 60 day amnesty program. All drivers with surcharges, except those with surcharges resulting from DUI convictions, were eligible to participate. During this period, MVC waived all costs and interest if the participant paid the principal surcharge amount in full. The program yielded 74,139 payments totaling $17,469,008.35 on amnesty-eligible accounts. Total surcharge collections during this period were $38,440,636.69.

As highlighted earlier in the report, the top “reason” for driver’s license suspension in New Jersey is failure to pay MVC insurance surcharges. On average, 228,000 license suspensions are ordered for this reason annually. This represents 28 percent of all suspensions ordered or confirmed by MVC each year. In May 2004, more than 132,000 drivers with active suspensions had at least one suspension for failing to pay MVC insurance surcharges. Of those, slightly more than 10 percent (14,132 drivers) had only one suspension for this reason and no other suspensions for other reasons.

As shown in table 19, the distribution of drivers suspended for failing to pay MVC insurance surcharges is significantly higher in urban areas than in suburban and rural areas. While 43 percent of all New Jersey licensed drivers reside in urban zip codes, 59 percent of drivers suspended for failing to pay surcharges live there. Even more significant is the fact that although only 16.5 percent of licensed drivers reside in lower income zip codes, a full 40 percent of those suspended for failing to pay MVC insurance surcharges live there.

These patterns are similarly apparent when reviewing suspension rates among different groups of drivers. Suspension rates for non-payment of insurance surcharges are two times higher in urban areas than suburban and rural parts of the State. In lower income areas, suspension rates are two to four times higher than the Statewide average for both male and female drivers (Carnegie, forthcoming).

Table 19 - Suspension rates by area type and income – Non-payment of MVC insurance surcharges (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		103,097	29,558	132,655		3.4%	0.9%	2.1%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	61,929	16,809	78,738	59%	4.7%	1.3%	3.0%
Suburban (200-800 p/sq mi)	38%	26,847	8,035	34,882	26%	2.3%	0.7%	1.5%
Rural (<200 p/sq mi)	19%	13,580	4,507	18,087	14%	2.4%	0.8%	1.6%
Unknown [4]		741	207	948	1%			
TOTAL		103,097	29,558	132,655	100%			
By HH Income Class [5]								
High (>$85,000)	12%	2,894	807	3,701	3%	0.8%	0.2%	0.5%
Middle High ($65,001 - $85,000)	25%	12,299	3,554	15,853	12%	1.6%	0.4%	1.0%
Middle ($40,001 - $65,000)	46%	45,538	13,914	59,452	45%	3.2%	1.0%	2.1%
Low ($20,000 - $40,000)	16%	39,574	10,544	50,118	38%	8.0%	2.1%	5.1%
Low-Low(<$20,000)	0.5%	2,051	532	2,583	2%	14.9%	3.6%	9.0%
Unknown [4]		1,303	485	1,788	1%			
TOTAL		103,659	29,836	133,495	101%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for a non-payment of insurance surcharge (ISNP); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

The Parking Offenses Adjudication Act (POAA)

According to the New Jersey Administrative Office of the Courts (AOC), in fiscal year 2005 (July 1, 2004 to June 30, 2005), municipal jurisdictions in New Jersey issued more than 2.9 million parking tickets. Fines, which are established by municipal ordinance, range from $17 to $130 with most under $50.

The vast majority of parking tickets are paid without court action. The Parking Offenses Adjudication Act, N.J.S.A. 39:4-139.2 et seq., was enacted in January 1985 and became effective in July of the same year. The law authorized municipal court judges to suspend driving privileges when an individual cited for a parking offense fails to pay the fine and then fails to appear in court to pay or satisfy the ticket. Therefore, under the law, parking offense suspensions originate in the municipal court system.

As shown in figure 2, the POAA has been very effective in reducing the number of outstanding parking tickets pending over 60 days. In 1990, there were almost 4.4

million parking tickets that remained unpaid longer than two months. That number dropped precipitously through the 1990's as more municipal court systems became automated. In 2004, the number of parking tickets pending over 60 days was less than 400,000.

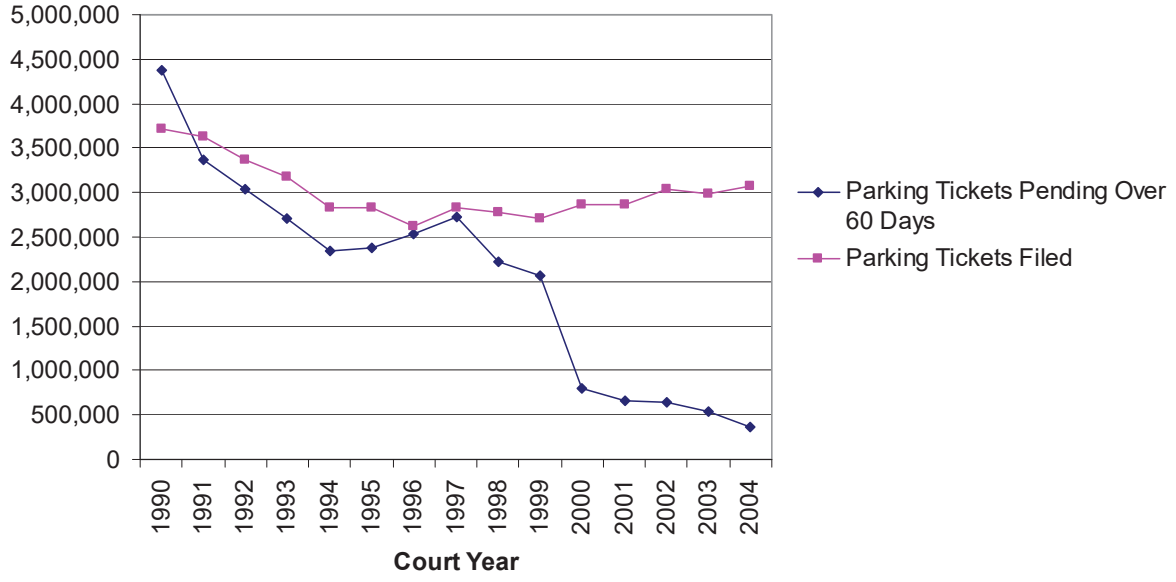


Figure 2 – Parking tickets pending over 60 days

Source: NJ Administrative Office of the Courts

Following issuance of the parking ticket itself, the court system is responsible for issuing notices to alert defendants to their outstanding ticket(s) and the potential suspension of the driver license privileges if the ticket(s) are not answered or paid. The preliminary court-issued notice is a Failure-to-Appear or "FTA" notice, which is issued if a defendant fails to pay the ticket or appear in court to dispute the ticket by the return date specified on the ticket. A proposed suspension notice, or "PSUS" notice, is then issued if the defendant fails to respond to the "FTA" notice. Finally, a judge signs a bench order suspending the defendant's driving privileges, which is mailed by the court to the defendant as well. Appendix D includes a flow chart of the notification process and copies of court notices.

The court then transmits suspension details to the MVC electronically via the Automated Traffic System, which links MVC with the 536 municipal courts. When the court-ordered suspension is posted to the defendant's driver history record, a notice confirming the suspension is prepared and mailed to the defendant by MVC. The confirming notice provides details concerning the court(s) and ticket(s), and explains how to regain driving

privileges by satisfying the outstanding tickets and paying MVC a $100 license restoration fee.

Traffic and parking tickets can be paid in-person in the municipality where the ticket was issued or by using the njmcdirect.com ticket information website maintained and operated by AOC. According to AOC, approximately eighteen percent of all eligible tickets are paid on-line via the njmcdirect.com website. In addition, it is critical to note that the law requires that offenders who are indigent or receiving public benefits be allowed to pay fines on an installment basis for a period not to exceed 12 months. According to court officials, payment plans for those that cannot pay the full amount are common, but cannot be arranged unless a defendant appears in court.

In May 2004, 68,614 suspended drivers had at least one active suspension for failing to appear in court to answer/satisfy a parking ticket. One third, or 22,738, were suspended for only parking offenses. Of those, 14,290 had only one POAA suspension and no other suspensions for other reasons; and 8,448 had more than one POAA suspension but no other suspensions for other reasons. This represents about eight percent of all active suspended drivers.

Table 20 shows suspension rates and the distribution of drivers suspended under POAA. Patterns of POAA suspension are even more pronounced than those observed for suspensions due to non-payment of insurance surcharge. The distribution of drivers suspended for parking offenses in urban areas is significantly higher than in suburban and rural areas. Although 43 percent of licensed drivers reside in urban zip codes, 85 percent of drivers suspended for parking offenses live there. Even more significant, 59 percent of those suspended for parking offenses live in lower income areas, while only 16.5 percent of licensed drivers reside there. It is worth noting that parking restrictions are far more common in urban areas. Consequently, urban residents have a greater chance of receiving a summons for parking violations than suburban and rural residents.

These patterns are similarly apparent when reviewing suspension rates among different groups of drivers. For urban drivers of both genders, suspension rates due to parking offenses are more than twice that of the Statewide average rates and are seven to ten times greater than residents living in suburban and rural areas. For lower income residents, suspension rates are more than ten times higher than Statewide rates for both male and female drivers (Carnegie, forthcoming).

Table 20 - Suspension rates by area type and income – Parking Offenses Adjudication Act (POAA) (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		39,271	29,343	68,614		1.3%	0.9%	1.1%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	33,555	25,079	58,634	85%	2.5%	1.9%	2.2%
Suburban (200-800 p/sq mi)	38%	4,468	3,270	7,738	11%	0.4%	0.3%	0.3%
Rural (<200 p/sq mi)	19%	1,085	899	1,984	3%	0.2%	0.2%	0.2%
Unknown [4]		163	95	258	0%			
TOTAL		39,271	29,343	68,614	100%			
By HH Income Class [5]								
High (>$85,000)	12%	888	530	1,418	2%	0%	0%	0%
Middle High ($65,001 - $85,000)	25%	2,951	2,126	5,077	7%	0%	0%	0%
Middle ($40,001 - $65,000)	46%	12,307	9,403	21,710	32%	1%	1%	1%
Low ($20,000 - $40,000)	16%	21,560	16,023	37,583	55%	4%	3%	4%
Low-Low(<$20,000)	0.5%	1,402	1,166	2,568	4%	10%	8%	9%
Unknown [4]		163	95	258	0%			
TOTAL		39,271	29,343	68,614	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn in accordance with the Parking Offenses Adjudication Act (POAA); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Failure to Comply with a Child Support Order

The law mandating license suspension for failing to comply with a child support order was enacted originally in March 1996 and amended in March 1998 (N.J.S.A. 2A:17-56.41a). The genesis of the law can be traced to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which required states to have statutes suspending the driver's license of those who owed outstanding child support.

The law allows for suspension under the following conditions: failure to pay child support for a period of 6 months or more; failure to provide health coverage for the child for 6 months; or if the obligor fails to respond to a subpoena related to a paternity test or child support action. An obligor has 30 days from the postmark date of the notice to take the required action or make a request for a court hearing. It is critical to note that if the suspension will result in a significant hardship, a 12-month payment plan can be arranged with the court once 25 percent of the arreared monies are paid.

In New Jersey, a suspension for failing to comply with a child support order becomes effective by operation of law upon the issuance of a child support-related warrant. The suspension may be terminated when the person who owes child support pays the amount due or otherwise satisfies the court's child support order, and pays the MVC license restoration fee. Recent statistics indicate that there were 24,613 suspensions for failing to comply with a child support order in 2004 and 25,506 in 2003.

Table 21 - Suspension rates by area type and income – Failure to comply with a child support order (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		21,763	2,131	23,894		0.7%	0.1%	0.4%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	13,358	1,058	14,416	60%	1.0%	0.1%	0.5%
Suburban (200-800 p/sq mi)	38%	5,265	632	5,897	25%	0.5%	0.1%	0.2%
Rural (<200 p/sq mi)	19%	3,044	430	3,474	15%	0.5%	0.1%	0.3%
Unknown [4]		96	11	107	0%			
TOTAL		21,763	2,131	23,894	100%			
By HH Income Class [5]								
High (>$85,000)	12%	274	30	304	1%	0.1%	0.0%	0.0%
Middle High ($65,001 - $85,000)	25%	1,702	182	1,884	8%	0.2%	0.0%	0.1%
Middle ($40,001 - $65,000)	46%	8,405	912	9,317	39%	0.6%	0.1%	0.3%
Low ($20,000 - $40,000)	16%	10,546	934	11,480	48%	2.1%	0.2%	1.2%
Low-Low(<$20,000)	0.5%	740	62	802	3%	5.4%	0.4%	2.8%
Unknown [4]		96	11	107	0%			
TOTAL		21,763	2,131	23,894	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for failing to comply with a child support order (FPCS); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

In May 2004, almost 24,000 suspended drivers had at least one suspension for failing to comply with a child support order. Of those, about 13 percent or 3,053 drivers had only one active suspension for this reason with no other suspensions for any other reason. As was the case with POAA suspensions and suspension for failing to pay insurance surcharge, a disproportionate number of drivers suspended for failing to comply with a child support order reside in urban and lower income areas (see table 21).

Once again, while 43 percent of licensed drivers reside in urban zip codes, 60 percent of drivers suspended for failing to pay child support live there. Fifty one percent of those suspended for child support reasons live in lower income areas, while only 16.5

percent of all licensed drivers reside there. Failure to pay child support suspension rates for drivers residing in lower income areas are ten times higher than the Statewide average for all drivers suspended for failing to pay child support (Carnegie, forthcoming).

Failure to Maintain Insurance

New Jersey became a compulsory insurance state in January 1973. A motor vehicle may not be registered or, if already registered, may not be operated, unless it is covered by specified limits of liability insurance coverage (N.J.S.A. 39:6B-1). If convicted of violations of the compulsory insurance statute, uninsured drivers/owners are suspended by the courts pursuant to the provisions of N.J.S.A. 39:6B-2. The current penalty for a first offense includes a mandatory one-year license suspension, a fine, and a period of community service. An MVC insurance surcharge is also imposed upon such offenders.

In addition, MVC enforces the law by means of the Uninsured Motorist Identification and Notification System (UMIS), administered by the New Jersey Office of Information Technology. Every month, insurance companies report auto insurance policies canceled or not renewed because of non-payment of policy premiums. The companies also report new business, replacement coverage, and reinstatement of policies without breaks in coverage.

One time each month, this clearinghouse identifies to MVC the vehicles affected by canceled policies not replaced by new coverage. MVC edits this data to determine if the target vehicles have been taken off the road, re-registered out-of-state, reported stolen or sold, or have lapsed registrations, and plates surrendered. Any target vehicle with current registration and plates is linked to its owner who receives a notice of scheduled suspension allowing 30 days to produce proof of current insurance or surrender of registration and plates. If the owner complies, the action is canceled. If there is no response, the owner's registration privilege is suspended indefinitely and MVC schedules the suspension of driving privileges effective in 30 days. Once both driving and registration privileges are suspended, they will not be restored until the owner complies with the above-mentioned requirements and pays MVC a $100 restoration fee for each privilege affected.

UMIS has been in operation since 1992, and since that time, over one million initial scheduled suspensions have been issued. Recent statistics indicate that court ordered suspensions for operating an uninsured vehicle numbered 9,047 in 2004 and 9,718 in 2003. MVC initiated 46,559 and 58,509 suspensions for failing to maintain proper insurance in calendar years 2004 and 2003 respectively.

In May 2004, 53,252 suspended drivers had active suspensions for failing to maintain proper insurance. Of those, 14,698 or 28 percent had only one active suspension for

this reason and no other suspensions for any other reason. Table 22 shows suspension rates and the distribution of drivers suspended for failing to maintain proper insurance. Drivers suspended for this reason are more heavily concentrated in urban and low-income areas than licensed drivers as a whole. Again, more than 60 percent of drivers suspended for insurance reasons reside in urban areas. Forty percent reside in lower income zip codes.

Table 22 - Suspension rates by area type and income – Failure to maintain proper insurance (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		34,641	18,611	53,252		1.1%	0.6%	0.9%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	21,860	11,082	32,942	62%	1.7%	0.8%	1.2%
Suburban (200-800 p/sq mi)	38%	8,391	4,796	13,187	25%	0.7%	0.4%	0.6%
Rural (<200 p/sq mi)	19%	4,204	2,638	6,842	13%	0.7%	0.4%	0.6%
Unknown [4]		186	95	281	1%			
TOTAL		34,641	18,611	53,252	100%			
By HH Income Class [5]								
High (>$85,000)	12%	1,131	606	1,737	3%	0.3%	0.2%	0.2%
Middle High ($65,001 - $85,000)	25%	4,311	2,324	6,635	12%	0.6%	0.3%	0.4%
Middle ($40,001 - $65,000)	46%	14,712	8,413	23,125	43%	1.0%	0.6%	0.8%
Low ($20,000 - $40,000)	16%	13,524	6,799	20,323	38%	2.7%	1.4%	2.1%
Low-Low(<$20,000)	0.5%	777	374	1,151	2%	5.6%	2.5%	4.0%
Unknown [4]		186	95	281	1%			
TOTAL		34,641	18,611	53,252	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for failing to maintain proper insurance (06B2+ICRG+ICLC); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Similar to the patterns observed for other primarily money-related reasons for suspension, there appears to be a relationship between suspension rates for failing to maintain proper insurance and income. Failure to maintain insurance suspension rates for drivers residing in lower income zip codes are almost seven times higher than the Statewide average rates for that offense (Carnegie forthcoming).

Comprehensive Drug Reform Act (CDRA)

The New Jersey Code of Criminal Justice (N.J.S.A. 2C:35-16) previously required mandatory driver's license suspension for those convicted of an offense involving a controlled dangerous substance (CDS) or drug paraphernalia. This law was enacted in 1987 in response to a federal law requiring states to enact license suspension for drug offenses as a condition of continuing to receive certain federal funds (e.g., Temporary Aid to Needy Families and others).

Federal requirements in this regard allow states several options for compliance. These include: 1) require driver's license suspension in all CDS cases; 2) require driver's license suspension in CDS cases unless there are "compelling circumstances warranting an exception"; and 3) certification by the Governor and the State Legislature that they are opposed to enacting such a law. Until January 5, 2006, New Jersey law required drivers' license suspension in all CDS cases. On January 5, 2006, the New Jersey Legislature passed an amendment to N.J.S.A. 2C:35-16 authorizing courts to refrain from imposing driver's license suspension on defendants convicted of CDS offenses if "compelling circumstances" exist.

Table 23 - Suspension rates by area type and income – Drug offenses under the Comprehensive Drug Reform Act (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		28,174	4,878	33,052		0.9%	0.2%	0.5%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	19,097	3,181	22,278	67%	1.4%	0.2%	0.8%
Suburban (200-800 p/sq mi)	38%	6,157	1,152	7,309	22%	0.5%	0.1%	0.3%
Rural (<200 p/sq mi)	19%	2,788	525	3,313	10%	0.5%	0.1%	0.3%
Unknown [4]		132	20	152	0%			
TOTAL		28,174	4,878	33,052	100%			
By HH Income Class [5]								
High (>$85,000)	12%	416	66	482	1%	0.1%	0.0%	0.1%
Middle High ($65,001 - $85,000)	25%	2,081	413	2,494	8%	0.3%	0.1%	0.2%
Middle ($40,001 - $65,000)	46%	9,824	1,945	11,769	36%	0.7%	0.1%	0.4%
Low ($20,000 - $40,000)	16%	14,447	2,190	16,637	50%	2.9%	0.4%	1.7%
Low-Low(<$20,000)	0.5%	1,274	244	1,518	5%	9.2%	1.6%	5.3%
Unknown [4]		132	20	152	0%			
TOTAL		28,174	4,878	33,052	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for convictions under the Comprehensive Drug Reform Act (CDRA); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

The MVC serves a purely administrative function regarding CDRA suspensions. MVC actions are limited to confirming suspension ordered by the courts. In 2003 and 2004, MVC confirmed 23,131 and 20,567 CDRA suspensions respectively. In May 2004, 33,052 suspended drivers had at least one active CDRA suspension. Of those, 4,199 or 12 percent had only one CDRA suspension and no other suspensions for any other reason.

Table 23 shows suspension rates and the distribution of drivers with CDRA suspensions. Once again, drivers suspended for this reason are more heavily concentrated in urban and low-income areas. Sixty seven percent of drivers suspended for drug offenses reside in urban areas. Fifty five percent reside in lower income zip codes. CDRA suspension rates for drivers residing in lower income zip codes are seven to ten times higher than the Statewide average rates (Carnegie forthcoming).

Failure to appear in court

As noted earlier in this report, driver's license suspension as a result of failing to appear in court (FTA) for reasons other than parking offenses is the third most frequent suspension ordered or confirmed by MVC each year. FTA suspensions can occur for both motor vehicle moving violations and for other violations of municipal ordinances.

The process for suspensions related to failure to appear in court for moving violations is generally as follows: The offender is ordered to appear in court. If s/he fails to appear, the judge can issue an arrest warrant. This course of action is rarely pursued. More typically, a Failure to Appear Notice (FTA) is generated and sent to the offender. If s/he fails to address the FTA within 30 days, the courts send the FTA to MVC who initiate the administrative suspension process. MVC provides FTA moving violation offenders 60 days to resolve the issue.

In terms of suspension for failure to appear for a non-traffic matter such as a local ordinance violation, a warrant is most typically issued; however, if the court has the license number of the offender, suspension can also be ordered. The MVC serves a purely administrative function regarding FTA suspensions for non-driving reasons. Its actions are limited to confirming suspension ordered by the courts. In 2004, MVC confirmed 15,316 suspensions ordered by the courts because defendants failed to appear to answer a summons for non-driving reasons other than parking offenses.

In 2004, MVC imposed 105,971 suspensions ordered against drivers who failed to appear in court to answer a summons for a moving violation. In May 2004, 119,733 suspended drivers had at least one suspension for failing to appear in a court of law to answer/satisfy a summons issued for a motor vehicle moving violation. This represents 41 percent of all drivers with active suspensions. While drivers suspended for FTA on a moving violation are not technically being suspended as a direct result of their driving

behavior, it is important to note that the underlying reason for them being called to court is because they violated a traffic law.

Table 24 - Suspension rates by area type and income – Failure to appear in court to answer a summons for a motor vehicle moving violation (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		90,011	29,722	119,733		3.0%	0.9%	1.9%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	63,180	20,439	83,619	70%	4.8%	1.5%	3.1%
Suburban (200-800 p/sq mi)	38%	18,541	6,263	24,804	21%	1.6%	0.5%	1.0%
Rural (<200 p/sq mi)	19%	7,851	2,888	10,739	9%	1.4%	0.5%	0.9%
Unknown [4]		439	132	571	0%			
TOTAL		90,011	29,722	119,733	100%			
By HH Income Class [5]								
High (>$85,000)	12%	1,978	650	2,628	2%	0.5%	0.2%	0.4%
Middle High ($65,001 - $85,000)	25%	8,556	2,860	11,416	10%	1.1%	0.4%	0.7%
Middle ($40,001 - $65,000)	46%	34,255	11,676	45,931	38%	2.4%	0.8%	1.6%
Low ($20,000 - $40,000)	16%	41,751	13,378	55,129	46%	8.5%	2.7%	5.6%
Low-Low(<$20,000)	0.5%	3,032	1,026	4,058	3%	22.0%	6.9%	14.2%
Unknown [4]		439	132	571	0%			
TOTAL		90,011	29,722	119,733	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for failing to appear in a court of law to answer/satisfy a summons issued for a motor vehicle moving violation (FSFA); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

Table 24 shows suspension rates and the distribution of drivers suspended for FTA for moving violations. As shown in the table, the distribution of drivers suspended for this reason is disproportionately high in urban and lower income areas. While 46 percent of licensed drivers live in urban areas, 70 percent of those suspended for FTA on moving violations reside there. Similarly, only 16.5 percent of the State's licensed drivers reside in lower income zip codes, while 49 percent of drivers suspended for FTA on moving violations live there.

These patterns are also evident when reviewing suspension rates for this offense. Suspension rates for drivers residing in urban areas are three times higher than for drivers living in suburban and rural areas. Suspension rates for drivers residing in lower income zip codes are seven times higher than residents living in higher income areas (Carnegie, forthcoming).

Table 25 - Suspension rates by area type and income – Failure to appear in court to answer a summons issued for other non-driving reasons, excluding POAA (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		19,104	6,181	25,285		0.6%	0.2%	0.4%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	10,516	3,326	13,842	55%	0.8%	0.2%	0.5%
Suburban (200-800 p/sq mi)	38%	5,654	1,809	7,463	30%	0.5%	0.1%	0.3%
Rural (<200 p/sq mi)	19%	2,833	1,014	3,847	15%	0.5%	0.2%	0.3%
Unknown [4]		101	32	133	1%			
TOTAL		19,104	6,181	25,285	100%			
By HH Income Class [5]								
High (>$85,000)	12%	390	125	515	2%	0.1%	0.0%	0.1%
Middle High ($65,001 - $85,000)	25%	2,166	669	2,835	11%	0.3%	0.1%	0.2%
Middle ($40,001 - $65,000)	46%	8,964	2,851	11,815	47%	0.6%	0.2%	0.4%
Low ($20,000 - $40,000)	16%	7,157	2,377	9,534	38%	1.5%	0.5%	1.0%
Low-Low(<$20,000)	0.5%	326	127	453	2%	2.4%	0.9%	1.6%
Unknown [4]		101	32	133	1%			
TOTAL		19,104	6,181	25,285	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for failing to appear in a court of law to answer/satisfy a summons issued for non-driving reason other than POAA (COFA); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

In May 2004, 25,285 suspended drivers had at least one suspension for failing to appear in a court to answer/satisfy a summons issued for violations of municipal ordinance other than moving violations and parking (i.e., FTA for non-driving reasons). This figure represents approximately nine percent of all drivers with active suspensions.

Table 25 shows suspension rates and the distribution of drivers suspended for FTA for non-driving reasons. As shown in the table, the distribution of drivers suspended for FTA associated with non-driving offenses is once again higher in urban and lower income areas. While 46 percent of licensed drivers live in urban areas, 55 percent of those suspended for FTA on non-moving violations reside there. Similarly, only 16.5 percent of the State's licensed drivers reside in lower income zip codes, while 40 percent of drivers suspended for FTA on non-moving violations live there. Suspension rates for drivers residing in urban areas are 1.6 times higher than for drivers living in suburban and rural areas. Suspension rates for drivers residing in lower income zip

codes are almost four times higher than for residents living in higher income areas (Carnegie forthcoming).

Failure to comply with a court-ordered installment plan

In accordance with N.J.S.A. 39:4-203.1, any defendant convicted of a traffic or parking offense shall, upon a satisfactory showing of indigency or participation in a government-based income maintenance program, be permitted by the court to pay the fine in installments. According to the statute, the courts have authority to set the amount and frequency of each installment, as long as the final installment is due no later than 12 months from the date of conviction.

In accordance with N.J.S.A. 39:4-203.2, if the defendant fails to comply with any of the terms of the installment order, the court may, in addition to any other penalties it may impose, order the suspension of the defendant's driver's license. Each year, the MVC confirms an average of 70,000 suspensions ordered by the courts for defendants that fail to make payments on court ordered installment plans. In terms of overall annual volume, this is the fourth most frequent reason for suspension. In May 2004, more than 75,000 suspended drivers had at least one active suspension for this reason.

As shown in table 26, the distribution of drivers suspended for failing to comply with a court ordered installment plan is higher in urban and lower income areas than the distribution of licensed drivers in these areas. While 58 percent of drivers suspended for failing to make payments on an installment plan reside in urban areas, only 43 percent of the State’s licensed drivers live there. Similarly, 43 percent of drivers suspended for this reason live in lower income zip codes. Only 16.5 percent of licensed drivers live in lower income areas.

Suspension rates for drivers suspended for failing to comply with a court ordered installment plan living in urban areas are two times higher than for those living in suburban and rural areas; and rates for those living in lower income zip codes are more than 4 times higher than for those living in higher income areas.

Table 26 - Suspension rates by area type and income – Failure to comply with a court ordered installment payment plan (May 2004)

	Distribution of licensed drivers	Suspended Drivers [1]				Suspension Rates [2]		
		Male	Female	Total	% of total	Male	Female	Total
Statewide		58,135	17,042	75,177		1.9%	0.5%	1.2%
By Population Density [3]								
Urban (>800 p/sq mi)	43%	34,303	9,611	43,914	58%	2.6%	0.7%	1.7%
Suburban (200-800 p/sq mi)	38%	15,279	4,632	19,911	26%	1.3%	0.4%	0.8%
Rural (<200 p/sq mi)	19%	8,217	2,708	10,925	15%	1.5%	0.5%	0.9%
Unknown [4]		336	91	427	1%			
TOTAL		58,135	17,042	75,177	100%			
By HH Income Class [5]								
High (>$85,000)	12%	1,075	306	1,381	2%	0.3%	0.1%	0.2%
Middle High ($65,001 - $85,000)	25%	5,794	1,658	7,452	10%	0.8%	0.2%	0.5%
Middle ($40,001 - $65,000)	46%	25,663	7,943	33,606	45%	1.8%	0.6%	1.2%
Low ($20,000 - $40,000)	16%	24,043	6,737	30,780	41%	4.9%	1.4%	3.1%
Low-Low(<$20,000)	0.5%	1,224	307	1,531	2%	8.9%	2.1%	5.3%
Unknown [4]		336	91	427	1%			
TOTAL		58,135	17,042	75,177	100%			

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

Notes: 1 - Suspended drivers include currently suspended drivers who have their driving privilege withdrawn for failing to with a court ordered installment payment plan (FCIO); 2 - Ratio of suspended drivers to licensed drivers; 3 - Density calculation based on zip code data from 2000 US Census; 4 - Records could not be matched to zip code reference file; 5 - Income classifications based on zip code data from 2000 US Census

Special Note: 1,788 records could not be matched to zip code reference file

SECTION THREE: THE IMPACTS OF DRIVER'S LICENSE SUSPENSION

As described in detail in section two, driver's license suspension is used as both a sanction to punish undesirable behavior(s), such as driving under the influence of drugs or alcohol and as a tool to encourage compliance with socially desirable behavior, such as paying fines and surcharges and making child support payments. While it is obvious that the threat of license suspension is intended to have deterrent as well as coercive affects, the actual suspension of someone's driving privileges may have collateral and unintended consequences. This section describes some of the collateral and unintended consequences that result from license suspension as documented through survey research, public comment received by the Task Force, and input received through roundtable discussions and interviews conducted on behalf of the Task Force.

Suspended driver survey

In December 2004, researchers at Rutgers University conducted a survey of suspended drivers. The purpose of the survey was to develop a more detailed demographic profile of suspended drivers, to document the collateral and unintended impacts of license suspension, and to gauge public opinion regarding restricted-use license programs. Areas of questioning included: suspension history; impacts of suspension on employment, income, job performance, travel behavior; costs of suspension and ability to pay; psychological impacts; opinions regarding various aspects of restricted-use license programs; and personal characteristics related to race, gender, income, education, and familial status.

Surveys were mailed to 5,000 New Jersey drivers who were currently or had previously been suspended, as well as to 2,500 drivers who had never been suspended. Three hundred eighty drivers with a history of suspension and more than 700 drivers who were never suspended returned the survey (Carnegie forthcoming).

The following is a summary of key findings from the survey:

- More than half (51 percent) of the survey respondents with a history of suspension were or had been suspended for non-driving related reasons.

- Survey respondents with a history of suspension were more likely to be low income (household income less than $30,000); younger (under 55 years of age); single; less educated; and non-white. In addition, drivers with a history of suspension were more likely to live in urban areas and to have children under the age of 18 living at home. While no causal relationships between these variables and suspension were confirmed by the survey analysis, when controlled for the effect of other independent variables, each of these variables remained highly correlated with license suspension.

These findings are consistent with the patterns of suspension observed as part of the analysis of detailed suspension statistics presented in section 2.

- The following employment effects on suspended drivers were documented by the survey (see tables 27 and 28):
    - 42 percent of survey respondents with a history of suspension lost their jobs when they had their driving privileges suspended. Job loss was experienced across all income and age groups; however it was most significant among low-income and younger drivers.
    - 45 percent of those that lost their job because of the suspension could not find another job. This was true across all income and age groups but most pronounced among low-income and older drivers.
    - Of those that were able to find another job, 88 percent reported a decrease in income. This was true in all income groups and age groups but most significant among low-income drivers.
    - More than half (58 percent) of those with a history of suspension reported that the suspension negatively impacted their job performance. This was true across all income and age groups.

Table 27 – Economic impacts of license suspension across income groups

Economic Impact	Low Income (Under $30,000) (N=102)	Middle Income ($30,000 to $100,000-) (N=174)	High Income (Over $100,000) (N=52)
Job status: Not able to keep job after suspension	64%	33%	17%
Job search: Unable to find new job after suspension (if not able to keep job after suspension)	51%	37%	13%
Income: negatively affected income (if not able to keep job after suspension)	96%	87%	86%
Job performance: Suspension negatively affected job performance	66%	50%	60%
Insurance costs: Not able to pay increased insurance costs	65%	48%	21%
Other costs:			
Experienced other costs related to suspension	64%	61%	51%
Not able to pay other costs?	90%	68%	33%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

- Other economic impacts included the following (see tables 27 and 28):

    - More than half of those with a history of suspension reported that they could not afford the increased cost of auto insurance resulting from their suspension. This was true across all income groups but was much more of a problem for low-income and younger drivers, and much less of a problem for higher income and older drivers.

    - Two-thirds of respondents with a history of suspension reported experiencing other costs (in addition to increased costs for insurance) resulting from their suspension. Approximately three-quarters of these respondents indicated they could not afford the additional costs. Again, this was true across all income and age groups but the impacts were greatest among low-income drivers. Examples of other costs cited by survey respondents include: MVC insurance surcharges, license reinstatement fees, court fees, legal fees, costs associated with obtaining alternative transportation during the time of suspension, and costs associated with participating in alcohol education programs.

Table 28 – Economic impacts of license suspension across age groups

Economic Impact	18-24 years	25-54 years	55 and up
Job status: Not able to keep job after suspension	62%	39 %	39%
Job search: Unable to find new job after suspension (if not able to keep job after suspension)	29%	39%	90%
Income: negatively affected income (if not able to keep job after suspension)	89%	90%	75%
Job performance: Suspension negatively affected job performance	59%	58%	55%
Insurance costs: Not able to pay increased insurance costs	79%	49%	35%
Other costs:			
Experienced other costs related to suspension	63%	59%	64%
Not able to pay other costs?	82%	75%	60%

Source: Driver's License Suspension, Impacts and Fairness Study, Carnegie forthcoming

- Most survey respondents with a history of suspension also reported experiencing psychological and social impacts associated with license suspension:

    - 85 percent of those with a history of suspension noted that they "often" or "sometimes" thought about the suspension when not intending to.

    - 72 percent reported that any reminder of their suspension brought back negative feelings about it.

- 69 percent felt ashamed of their suspension; and 68 percent noted they were embarrassed to tell anyone about their suspension.
- 81 percent reported experiencing a loss of freedom.
- 83 percent experienced increased stress.
- 74 percent reported that suspension placed a strain on family, friends and colleagues.
- 46 percent reported lacking a form of identification.

- Controlling for the effects of income and age, male drivers with a history of suspension were 2.6 times more likely to lose their jobs because of the suspension than female drivers.

- Male drivers were also more likely to experience negative psychological and social impacts from suspension compared to female drivers. However, there were no significant differences observed between the two groups in terms of finding a new job, income performance after suspension, or experiencing other economic effects such as increased costs of insurance and other suspension-related costs.

- Although race was highly correlated with having a history of suspension, there were no significant differences between whites and non-whites relative to employment, economic, psychological or social impacts of suspension.

- Residential location was also highly correlated with having a suspension history; however, with one exception, there were no significant differences observed between drivers living in urban, suburban or rural areas relative to the impacts of suspension. The one exception involved suspended drivers living in rural areas. This group was more likely to report that their suspension put a strain on family, friends and colleagues.

Public testimony and comments

Many of the survey findings reported above were confirmed by individuals that provided public testimony or comments to the Task Force. The following is a summary of findings from the testimony/comments received:

- License suspension has many personal and family impacts. For example, suspended drivers, regardless of the reason for their suspension, reported experiencing numerous difficulties meeting personal and family responsibilities

during the time they were suspended. Many emphasized the necessity of being able to drive in order to meet the needs of daily life.

- The suspension of a spouse or close relative living at home can have a significant impact on the entire family, including children and other dependents who typically rely upon the suspended driver to meet their daily transportation needs for purposes related to school, medical appointments and other essential trips. As one individual remarked, it was she who felt the burden and impacts most of her spouse's license suspension, since she had to take on numerous additional duties for her spouse and children during the suspension period.

- The economic impacts associated with license suspension, particularly for low-income individuals were frequently reported. These impacts were noted even by individuals who requested and received payment plans. Those who testified explained that meeting payment plan requirements can be overwhelming when having to make difficult choices between paying rent and utilities, buying food, and making required payments. For example, even a relatively low monthly payment requirement can be too burdensome for individuals on public assistance.

- Auto insurance costs increase as a result of license suspension. This was true whether drivers were suspended for driving or non-driving reasons. Many of those that testified or provided comments explained that following license restoration they were still unable to drive legally because they could not afford the increased cost of auto insurance.

- A number of those that testified or provided comments described a "vicious cycle" created by license suspension. For example, after being suspended, a driver is unable to secure or maintain employment. Consequently, they cannot pay their fines, fees and surcharges. This in turn leads to more fines and further difficulty in having driving privileges restored. This cycle was referenced by both suspended drivers as well as those representing broader interests, such as the Newark/Essex Construction Careers Program; First Occupational Center; Volunteers of America; Atlantic City Department of Health and Human Services; and the Alliance to End Homelessness in Mercer County.

- A number of individuals providing testimony and/or comments noted that license suspension can have economic effects that go beyond impacts to the individual and family. They suggested that limitations on an individual's mobility, such as that which occurs after license suspension, can limit the labor force available to fill jobs in some areas for certain types of jobs. For example:

    - License suspension can limit the labor force available to fill jobs in key industries, such as home health care, motor vehicle sales and services, and

the construction trades, which require a valid license as a condition of employment.

- In addition, many employers use possession of a valid driver's license as a pre-qualifying "screening" question. This may unnecessarily limit the available labor force when driving a motor vehicle is not integral to job responsibilities.

- The following other potential economic impacts were noted:

  - Fewer drivers may result in less automobile related purchases for gas, service and insurance, which in turn results in decreased tax revenue for the State.

  - Drivers with suspended licenses that are unable to secure gainful employment or who are forced to take jobs that pay less may require public assistance payments, which is a cost to the State and its taxpayers.

- Various drivers suspended for DUI reasons, as well as members of their families, testified regarding the unique hardships resulting from the long duration of DUI suspensions. Several individuals testified that the prolonged period of suspension has impeded their ability to become functioning members of society. Others suggested that it was unfair that suspension laws do not provide for "time off for good behavior," which could provide an incentive to continue controlling their addiction problems as well as help them secure better employment.

- In addition, a number of individuals testified regarding the hardships associated with suspensions for failing to pay child support. Specifically, they noted that license suspension limits employment options, which in turn limits a person's ability to meet outstanding support obligations. This creates barriers to family reunification.

- Finally, a number of individuals provided testimony and comments regarding the unique challenges facing parolees and inmates exiting the prison system. This population faces many obstacles related to driver's license suspension, including an immediate need for photo identification for employment and other general purposes. In addition, many individuals have accumulated significant fines/debt related to their license suspensions during their incarceration. They cannot afford to repay the debt or even make small payments when released because they are often faced with conflicting financial needs.

SECTION FOUR: RESTRICTED-USE DRIVER'S LICENSE PROGRAMS

In 2004, researchers at Rutgers University completed an inventory of state practices related to license suspension and the use of restricted-use license programs in other states. Researchers found that conditional or restricted-use driver's licenses are available in 39 states and the District of Colombia. These licenses allow some or all suspended/revoked drivers to receive limited driving privileges during the time they are suspended. Table 29 provides a detailed summary of the restricted use license programs used in other states.

In all cases, the programs were created by statute. In addition, administrative code/regulations also help to guide implementation of the programs in approximately half of the states. The programs in some states are relatively new, such as Hawaii and Arkansas, which established hardship/restricted license programs in 2002 and 1996 respectively. However, in most states the programs have been in place for several decades.

Program eligibility varies widely from state to state. Most states offer restricted-use licenses to drivers for time delimited suspensions, such as those imposed for a first-time DUI offense, for point accumulation and for other traffic violations after a specified minimum period of suspension is served. Most often, the waiting period ranges from 30 to 90 days, although a few states require all conditional license applicants to serve half of their suspension/revocation period prior to being considered eligible for the license.

In most states, conditional or restricted-use licenses are not available to drivers suspended/revoked for multiple DUI offenses, negligent vehicular homicide, habitual offenders and for failure to render aid. Furthermore, in most states, drivers suspended for compliance reasons are not eligible. Drivers suspended for failing to maintain insurance are eligible in California, New York, Pennsylvania, Alaska and the District of Colombia. In addition, certain states, such as New York, Minnesota, Nebraska, Wisconsin and Wyoming permit those suspended for failing to pay child support to receive a conditional license. Finally, there are a few states, including Washington, South Dakota and Arizona that permit the issuance of a conditional use license when a driver is suspended for failure to pay fines and/or failure to appear in court.

Permitted travel and associated restrictions related to conditional use licenses also vary by state. Some limit travel for employment purposes while others are more lenient and allow travel for many other reasons including for medical purposes, school, child/elder care, "homemaker" duties and travel to and from religious services.

All states with conditional or restricted-use license programs reported that enforcement of license restrictions is primarily limited to law enforcement personnel during the conduct of day to day traffic law enforcement. Some states also require participants to

periodically return to court to demonstrate continued compliance; require employers to notify the motor vehicle agency if the conditions of a participant's employment change; or conduct follow-up audits to verify a participant's employment status.

Penalties for violating program restrictions most typically involve the cancellation of the license and reinstatement of the original suspension or revocation. Some states also extend the original suspension/revocation period, between several months to double the original period. Tennessee noted that if a participant is convicted of violating program restrictions, a fine is levied but the license is not rescinded. Oregon reported that those who violate program restrictions may lose the hardship/probationary license and are not eligible for another such license for a period of one year. Colorado reported that those who are convicted of violating program restrictions lose the license and are not eligible for a conditional license for any subsequent suspensions. Finally, program violators in New York lose their conditional or restricted license and the period during which they held the license is not credited when computing their compliance with the originally specified suspension/revocation period.

Most states considered their conditional license programs to be "effective." Officials in Iowa specifically noted that their program has reduced the number of habitual offenders. The State of Washington noted that while they do not have a procedure in place to track the effectiveness of the program, only a small number of occupational/limited licenses are ever cancelled.

Wisconsin is the only state to report having completed a comprehensive evaluation of their occupational licensing program. In 2003, they issued a report that concluded the program was successful because program participants were generally satisfied with various aspects of the program and experts familiar with the use of Wisconsin's occupational licenses agreed that the occupational licenses reduced unemployment and helped families avoid serious hardships. In addition, an analysis of motor vehicle violation and crash data revealed that occupational license holders tended to receive fewer citations and be involved in fewer accidents in the year after using occupational licenses than in the year before using such licenses (Wisconsin Department of Transportation 2003).

A recent survey of New Jersey drivers found that more than three-quarters of survey respondents supported the creation of a restricted-use license program for at least some suspended drivers under certain circumstances. Although support was greatest among drivers with a history of suspension, 69 percent of those drivers that have never been suspended expressed support for such a license. More than half of the respondents thought that persons suspended for "money-related reasons" such as failing to pay insurance surcharges should be eligible to receive a restricted use license. Fewer respondents supported allowing those suspended for failing to pay child support (39 percent) and failing to appear in court (28 percent) to receive such a license.

The overwhelming majority (96 percent) of those respondents that supported the creation of a restricted-use license favored using the license for employment purposes. Three-quarters (75 percent) supported use of the license for medical purposes. About two-thirds supported using the license for school purposes (68 percent) and for child/elder care (65 percent). Slightly more than half (57 percent) supported using the license for rehabilitation and counseling purposes and slightly less than half (46 percent) supported use of the license for personal/family needs (Carnegie, forthcoming).

Table 29: Summary of Restricted-use License Programs

	Alaska	Arizona	◊ Arkansas	California	Colorado	Connecticut	Delaware	◊ District of Columbia	Georgia	Hawaii	Idaho	Illinois	Iowa	Kansas	◊ Louisiana	Michigan	Minnesota
Background and Eligibility																	
Differentiate b/w suspension & revocation	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Title of mitigation program	Limited Driver License	Restricted Driving Privilege	Restricted Driver License	Restricted Driving Permit	Conditional/Job-related Probationary License	Employment Permit	Conditional/ Occupational Driver License	Limited Occupational License	Limited License	Hardship/Restricted License	Restricted Driver License	Restricted Driving Permit	Temporary Restricted License	Restricted License	Restricted License	Restricted License	Work/School Limited License
Statute & administrative code reference for program	AS 28.15.201 and AAC Title 13, Chapt 4-8	ARS 28-3159 and AAC R17-4-402	AS Title 5, Chapter 65 Section 120	CVC Section 13352.5	CRS 42-2-126	CSL Title 14-37a-1 and Regs 14-37a	DC 21-2-27 Section 302.2733(a)(4) and Regs. 45	DCMR Title 18, Section 310	GC 40-5-64	HRC 286-109	IC 18-002(A), 49-325, 49-326 and AC 39.02.70	Chapt. 625 ILCS 5/6 – 205 (c), 206 (c)3, 206.1	IC Chapt. 321.215 and Regs. 761-615	KS Chapt. 8 Sec. 292	LRC 32.415.1	MCL 257.323c, 257.319(17)	MS Chapt. 171.30
**Types of offenses eligible for program*	1st DUI 1st & 2nd Failure to maintain insurance	1st DUI Point violations ▼Some compliance issues	DUI offenders 1st Refusal to submit Point violations	DUI offenders Repeated traffic convictions Failure to maintain insurance	1st DUI Point violations	1st DUI 1st refusal to submit Point violations	1st & 2nd DUI Repeated traffic convictions Reckless driving	Point violations ▼Some compliance issues	1st & 2nd DUI Point violations	1st DUI Point violations	1st DUI Reckless driving Point violations Leaving the scene	1st & 2nd DUI Repeated traffic convictions	1st & 2nd DUI Habitual traffic offenders 1st Drag racing	DUI convictions Habitual traffic violators Reckless driving	DUI convictions Refusal to submit Reckless driving ▼Some compliance issues	1st DUI offenders 1st Refusal to submit Habitual traffic offenders	DUI & Refusal to submit Habitual traffic offenders Child support
**Types of offenses not eligible for program*	Refusal to submit ▼Compliance issues	2nd or more DUI Refusal to submit Habitual offenders ▼Some compliance issues	2nd or more Refusal ▼Compliance issues	Refusal to submit ▼Compliance issues	2nd or more DUI Revoked licenses ▼Compliance issues	DWLS Reckless driving Leaving the scene ▼Compliance issues	Habitual traffic offenders ▼Compliance issues	DUI Reckless driving Leaving the scene	3rd DUI ▼Compliance issues	2nd or more DUI ▼Compliance issues	Refusal to submit Vehicular manslaughter ▼Compliance issues	▼Compliance issues	3rd or more DUI ▼Compliance issues	▼Compliance issues	▼Some compliance issues	2nd or more DUI 2nd or more Refusal ▼Compliance issues	Fleeing law enforcement ▼Compliance issues
Mandatory minimum waiting period for program eligibility	1st DUI - 30 days	1st DUI - 3 months	2nd & 3rd DUI - 1 year	1st DUI - 30 days	1st DUI - 30 days	Refusal - 3 months	1st DUI - 3 months 2nd DUI - 1 year	None	2nd DUI - 1 year	1st DUI - 30 days	1st DUI - 30 days	1st DUI - 30 days Under 21 DUI - 1 year 2nd or more DUI - 1 year	1st DUI - 30 days 2nd DUI - 1 year	1st DUI - 30 days 2nd or more DUI - 1 year	2nd & 3rd DUI - 1 year	1st DUI - 30 days	1st DUI - 15 days 2nd or more DUI - 90 days Refusal - 180 days
Enrollment Process & Requirements																	
Application	Yes	No	No	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes - Child Support
Application and/or license fee	$100 - DUI only	N/A	No fee	$15	$5	No fee	$10	N/A	$25	N/A	$35	$8 each	$20	No fee	$50	N/A	N/A
In-person/phone interview	No	No	Yes	No	Yes	No	No	No	No	Courts	No	Yes	No	No	Courts	No	Yes
Entity determining program(s) acceptance	Agency & Courts	Agency only	Agency & Courts	Agency only	Agency only	Agency only	Agency only	Agency only	Agency only	Courts only	Agency & Courts	Agency only	Agency & Courts	Agency & Courts	Courts only	Agency & Courts	Agency only
Appeals process	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Ignition Interlock Device (IID)	No vendors	No	Yes - 2nd or more DUI	Court Discretion	Court Discretion	No	Yes - 2nd DUI	No	Yes - 2nd DUI	No	Court Discretion	No	Yes - 2nd or more DUI	Yes - 2nd or more DUI	Court Discretion	No	No
Permitted Travel																	
Employment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Education (self and/or dependent)		X	X	X			X	N/A	X		X	X	X	X		X	X
Substance abuse treatment			X					N/A	X	X		X	X	X	X	X	X
Medical (self and/or dependent)	X		X		X		X	N/A	X		X	X	X	X	X	X	
Essential needs				X	X		X	N/A			X		X				X
New Document Issued																	
Surrender license	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	
License or permit w/ restrictions	X	X	X	X	X	X	X		X	X	X	X			X	X	X
Authorization letter								X					X	X	X		
Photo ID	X												X				
Driving Restrictions																	
Purpose	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Geography	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X
Hours of operation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Notification Of Eligibility																	
No notification		X				X			X	X							
Mail from agency	X		X	X	X		X				X	X	X	X	X		X
Courts																X	
Information on website	X					X		X									X
Program Administration																	
Licensed drivers	480,000	3.8 million	1.9 million	22 million	N/A	2.3 million	570,000	N/A	6.1 million	787,820	1 million	8.4 million	2 million	1.9 million	3 million	7.1 million	3.6 million
Suspended/revoked drivers	27,213	N/A	101,500	N/A	N/A	134,000	78,660	N/A	N/A	N/A	70,000	258,511	5,700	103,000	N/A	not tracked	163,500
Program participants	485	N/A	N/A	N/A	N/A	6,000	253	N/A	16,000	N/A	1,200	9,213	4,200	N/A	N/A	not tracked	16,560
Peer Advice/Comment	Conditional permits should go to first time offenders only and the program should be based on statute.	N/A	Statutes determining participant eligibility must be clear and explicit.	Design and administer the program with clear rules/restrictions.	N/A	Expressed mixed feelings, but noted the value and importance of the program, especially due to the lack of statewide transportation options.	Long-term suspensions/ revocations are not effective. Impose severe burdens on offenders & offenders are less likely to pay fines/fees.	N/A	N/A	N/A	Programs should be based upon statute and administrative rules allowing for administrative ease by providing objectivity.	Automation of the restricted permit process is necessary. Should also be designed in a dynamic and flexible manner so it can adjust to potential legislative changes.	Their program is effective in reducing number of habitual offenders and the program's eligibility is expanding over time.	N/A	N/A	Issuance of a restricted license should be based on state statute and on the type and prior frequency of the conviction in question.	Eligibility criteria must be clear and law enforcement/courts should be involved with program. Advertising program is beneficial.

Notes:
* - List not extensive, refer to full report
N/A - Information not available
▼ - Compliance issues include failure to pay fines and forfeitures, failure to appear, failure to maintain insurance, and child support
◊ - States also offering a payment reinstatement plan

Table 29: Summary of Restricted-use License Programs

	Missouri	Montana	Nebraska	Nevada	New York	North Carolina	North Dakota	◊ Ohio	Oklahoma	Oregon	Pennsylvania	South Dakota	◊ Tennessee	Texas	Virginia	Washington	Wisconsin	Wyoming
Background and Eligibility																		
Differentiate b/w Suspension & Revocation	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Type of mitigation program	Limited Driving Privilege	Restricted/Probationary License	Medical Hardship License & Employment Drive Permit	Restricted Driver License	Conditional Use License & Restricted Use License	Limited Privilege License	Work/School Permit Program	Limited Driving Privileges	Modified License	Hardship/Probationary License	Occupational Limited License	Work/School Permit Program	Restricted License	Essential Needs License	Restricted License	Occupational and Limited Driver License	Occupational License	Probationary/Job Related License
Statute & administrative code reference for program	MRS Title 19, Chapt. 302 Sec. 010 & 309	MCS 61-2-206 and ARM 23.2.122	NS 60-4,130.1; 60-4,130.2; 60-4,129; 60-4,130	NRS 483.490, 483.270, 483.390 and NAS Chapt 483.200	NYCL RUL-Article 21A Sect. 530 and Regs. Part 134-CUL & Part 135-RUL	NCGS 20-179.3	NDCC 39-06.1-10.1 and Regs. 37.03	ORC 4510.021	OS Chapt 47-6-113 and OAC Title 595, Subchapt. 7, Sect. 10-7-15	ORS 813.500, 807.240 & 270 & OAC 735-064-0020	PCS Title 75, Chapt. 15.53 and PAC Chapt. 86.1-3	SDS 32-12-49.4 and SDC 61.19	TS Title 55, Chapt. 50, Sec. 502	TS 521.241; 521.242 and TAC Chapt. 15	CV Title 18.2-271.1	RCW 46.20.391; 46.20.394	WS 343.10(2)(a)1 and WAC Chapt.117	WS Title 31, Chapt. 7, Sec. 105 and WDOT 4182, Sec. 20
**Types of offenses eligible for program*	DUI offenders Point violations Reckless driving	1st DUI Reckless driving Repeated traffic violations	1st DUI Point violations Child support	1st DUI Repeated traffic violations	DUI offenders Repeated traffic convictions ▼Some compliance issues	1st DUI 1st Refusal to submit Point violations	DUI offenders Point violations	DUI offenders Refusal to submit Point violations	DUI violators Reckless driving Point violations	1st & 2nd DUI 1st & 2nd Refusal Repeat traffic violations Habitual offenders	1st DUI 1st & 2nd Refusal Repeated traffic convictions ▼Some compliance issues	1st & 2nd DUI 1st & 2nd Refusal Point violations ▼Compliance issues	1st & 2nd DUI Point violations ▼Some compliance issues	DUI offenders Point violations	DUI offenders Reckless driving Repeat traffic convictions	1st DUI ▼Compliance issues	DUI offenders Habitual traffic convictions Child support 1st Drug racing	1st DUI Point violations Child support
**Types of offenses not eligible for program*	Habitual traffic offenders 2nd or more refusal ▼Compliance issues	2nd or more DUI Refusal to submit ▼Compliance issues	2nd or more DUI Refusal to submit ▼Compliance issues	Habitual traffic offenders 2nd or more DUI ▼Compliance issues	Leaving the scene Refusal to submit ▼Some compliance issues	2 or more DUI Leaving the scene ▼Compliance issues	Refusal to submit Revoked licenses ▼Compliance Issues	4th DUI 4th Refusal ▼Compliance Issues	Vehicular homicide ▼Compliance issues	Vehicular homicide Underage DUI ▼Compliance issues	2nd or more DUI Revoked licenses ▼Some compliance issues	Child support 3rd or more DUI 3rd Refusal Fleeing law	▼Some compliance issues	▼Compliance issues	Refusal to submit Vehicular homicide ▼Compliance issues	Refusal to submit 2nd or more DUI Habitual traffic offenders	Underage DUI ▼Compliance issues	2nd or more DUI Refusal to submit ▼Compliance issues
Mandatory minimum waiting period for program eligibility	1st DUI - 30 days 2nd DUI - 1 year	None	1st DUI - 30 days	1st DUI - 45 days	None	1st DUI - 30 days 1st refusal - 6 months	DUI - 30 days Point violations-7 days	1st DUI - 15 days 2nd DUI - 30 days 3rd DUI - 6 months	2nd or more DUI - 1 year	1st DUI - 30 days 2nd DUI - 90 days 1st Refusal- 90 days	1st DUI - 60 days 1st Refusal - 1 year Certain DWLS - 3 months	None	2nd DUI - 1 year	2nd or more DUI - 90 days to 1 year	2nd DUI - 1 year 3rd DUI - 3 year	1st DUI - 30 days	2nd DUI - 60 days 3rd or more DUI- 90 days	None
Enrollment Process & Requirements																		
Application	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Application and/or license fee	No fee	N/A	$45	N/A	$75	N/A	N/A	No	$150	$50	$50	N/A	$67	$10	N/A	$25	$40	$15
In-person/phone interview	No	No	No	No	No	No	No	No	Yes - DUI or Points	No	No	No	No	Yes - DUI	No	No	No	No
Entity determining program(s) acceptance	Agency & Courts	Agency & Courts	Agency & Courts	Agency only	Agency only	Courts only	Agency only	Courts only	Agency & Courts	Agency & Courts	Agency only	Agency & Courts	Agency & Courts	Agency & Courts	Agency & Courts	Agency only	Agency only	Agency only
Appeals process	Yes	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes - Cts No - DMV	Yes	Yes	Yes	Yes	Yes
Ignition Interlock Device (IID)	Yes - 2nd or more DUI	Court Discretion	No	Court Discretion	Court Discretion	No	No vendors	Court Discretion	Yes - 2nd or more DUI	Yes	Yes - Refusal to submit	No	Yes - 2nd DUI	Court Discretion	Court Discretion 1st DUI & required - 2nd or more DUI	No	Yes - 2nd or more DUI	No vendors
Permitted Travel																		
Employment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Education	X	X		X	X	X	X	X	X		X	X	X	X	X		X	X
Substance abuse treatment	X	X			X	X	X	X	X	X	X		X		X	X		X
Medical	X		X	X	X	X	X	X	X	X	X				X			X
Essential needs		X		X		X	X		X	X				X	X		X	X
New Document Issued																		
Surrender license	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X
License or permit w/ restrictions	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X
Authorization letter					X			X		X	X		X	X	X			
Photo ID																		
Driving Restrictions																		
Purpose	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Geography	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Hours of operation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Notification Of Eligibility																		
No notification	X						X				X	X	X	X	X	X		
Mail from Agency		X	X	X	X				X								X	X
Courts	X			X		X		X		X			X		X			
Website	X		X	X			X	X		X		X	X		X	X	X	
Program Administration																		
Number of Licensed Drivers	3.5 million	450,000	1.3 million	1.5 million	11 million	5.5 million	457,000	8,728,546	2.3 million	2.6 million	8.3 million	550,000	4.2 million	15 million	5 million	4.3 million	3.7 million	455,000
Number of suspended/revoked drivers	320,344	31,931	53,539	N/A	N/A	N/A	27,000	611,064	81,040	N/A	600,000	N/A	246,000	430,000	13,200 for Points	364,000	403,586	15,000
Number of program participants	3,508	1,716 for DUI	738	1,499	60,297	6,000	747	N/A	3,269	5,897	N/A	240 by DMV	5,000	12,197	15,600-18,000 for DUI	36,400	29,445	3,000
Peer Advice/Comment	Automated system is very successful. Program helps reduce the number of people driving while suspended by providing them with viable options.	Program helps achieve compliance while harsher sanctions make offenders more likely to violate their suspension/revocation.	N/A	Program is effective. A program's statutory language should be simple and eligibility made clear.	N/A	N/A	Regulations of program should be based upon statute and clear administrative rules.	Implementation of Limited Driving Privileges has been successful.	N/A	N/A	The program is difficult to enforce but is necessary due to lack of viable transit options.	If program is implemented by both agency and court, then a driver record sharing system must be in place between both entities.	Their suspended/ revoked driving population is often frustrated why most offenses other than DUI are not eligible for the restricted license.	To prevent fraud, occupational licenses should be issued as a photo license.	Program eligibility should be clear in statues, but if it is too rigid, DMV flexibility is sacrificed.	N/A	Program successful and keeps people working. License revocations are overused and the Tax Intercept program should be used to collect unpaid fines.	Eligibility for any conditional license program should be very specific

Notes:

* - List not extensive, refer to full report

N/A - Information not available

▼ - Compliance issues include failure to pay fines and forfeitures, failure to appear, failure to maintain insurance, and child support

◊ - States also offering a payment reinstatement plan

SECTION FIVE: DETAILED RECOMMENDATIONS

The following recommendations were developed by the Task Force taking into consideration the data and information provided to the Task Force and its subcommittees by subject matter experts and outside researchers, public comment received as part of its outreach activities, and deliberative discussions that took place at each of its meetings. It is important to note that any changes to the State's suspension laws must consider what impact the change may have relative to the deterrent and coercive effects of suspension and the potential effects the proposed changes may have on State and municipal revenue.

Many of the State's suspension laws are tied to compliance provisions, unrelated to motorist safety, that generate significant revenue for State and municipal governments. The two most notable examples are license suspension for non-payment of the MVC insurance surcharge program and failure to appear in court to pay/satisfy a parking ticket under the Parking Offenses Adjudication Act. In the case of the MVC insurance surcharge program, revenue derived from the program has been used to secure bonded debt until the year 2034.

The Task Force recommendations are intended to address the affordability and fairness of license suspension in New Jersey while balancing the need to maintain the deterrent and coercive effects license suspension provides as well as being sensitive to the potential revenue impacts of certain proposals. The recommendations are numbered for reference purposes only and are listed in no particular order:

1. **Provide judges with more discretion in establishing time payment orders.**

    a. Amend N.J.S.A. 39:4-203.1 to provide the court with discretion to enter into court-administered installment payment plans in excess of 12 months. In addition, provide the court with the authority to a) suspend or vacate any unpaid portion of court fines and fees assessed as a result of a conviction for motor vehicle moving violation or parking offense if the individual is indigent or participates in a government-based income maintenance program; and/or b) order the person to perform community service or participate in any other program authorized by law in lieu of the unpaid portion of the assessment.

2. **Make payment of court-administered fines and time payments easier for drivers.**

    a. Enhance the AOC NJMCdirect website to allow offenders to pay court ordered time payments and to resolve tickets with outstanding warrants or suspensions on-line. Provide NJMCdirect computer kiosks at MVC service centers to facilitate one-stop resolution of suspension requirements. Include information on the njmcdirect website informing customers how they may resolve outstanding suspension issues with MVC. Over time, improve

integration between MVC and AOC communication systems to allow drivers to restore driving privileges that have been suspended for failure to appear in court on-line. It should be noted that this recommendation has joint policy implications for both MVC and AOC.

3. **Amend the Parking Offenses Adjudication Act to permit suspension of vehicle registration as an alternative to license suspension.**

   Currently, the courts have only two remedies to address a driver's failure to appear in court in response to a parking summons – driver's license suspension and issuance of an arrest warrant. License suspension is the less severe and generally favored option. Given the potential impacts of license suspension on a driver's employment status and/or prospects, the courts should also have the option to suspend a vehicle registration. Accomodation should be made to exempt fleet vehicles.

4. **Provide courts with greater discretion when adjudicating cases involving failure to comply with a child support order.**

   a. Allow payment plans in excess of 12 months for those failing to pay child support arrears.

   b. To the extent permissible under Federal law, make license suspension for failing to comply with a child support order discretionary when "compelling circumstances" warrant an exception.

   c. Support initiatives to increase compliance with child support payments using driver's license suspension as a remedy of last resort.

5. **Amend N.J.S.A. 39:3-40 to provide courts with greater discretion regarding the imposition of additional mandatory suspension time when drivers are convicted of driving while suspended for non-driving reasons. Consider whether the current fine amounts defined in the statute are appropriate given the nature of each offense.**

6. **Make payment of outstanding MVC insurance surcharges and restoration fees easier and more affordable for low income drivers.**

   a. Provide MVC with discretion to waive the 10 percent principal payment threshold for license reinstatement based on the individual circumstances of each case.

   b. Provide MVC with greater discretion with regard to payment plan options for new surcharges. Currently, new surcharge balances must be paid within one year and only those with balances greater than $2,300 can enter into payment plans that extend beyond 12 months. Payment plan options should be permitted for up to 48 months or longer depending on the individual

circumstances of each case. Payment plans of this length are now limited to those drivers that have judgments filed against them in Superior Court.

c. Provide MVC with the authority to create periodic amnesty programs for drivers with surcharges. The program should be specific regarding who may participate based on the offense which resulted in the surcharge balance. Consideration should also be given to providing program options for those unable to pay the principal surcharge amount in full, as required as part of the MVC's 2003 amnesty program.

d. Allow deferment of payments and assessment of penalties for a certain period of time if a driver is unemployed, incarcerated or has been suspended for an extended period of time. Any payment deferment policies should include protections to prevent abuse by habitual offenders.

e. Provide MVC with the discretion to reduce and/or waive the $100 license restoration fee for "compelling reasons" and/or allow drivers to pay the $100 license restoration fee as part of a payment plan.

f. Allow license restoration to be satisfied at more MVC service center locations. Currently, license restoration can only be accomplished at one of MVC's four regional service centers.

It should be noted that some of the above recommendations may have implications in terms of future MVC revenue.

7. Conduct a revenue impact study to determine if lowering current surcharge amounts would increase overall collection rates and maintain or increase overall revenue from the insurance surcharge program.

8. Rename the Insurance Surcharge Program to reflect its current purpose as a driver assessment penalty.

The Insurance Surcharge Program is no longer related to insurance. As such its current name is misleading and confuses the public. While private insurance companies appropriately charge greater premiums for drivers who have engaged in dangerous driving behavior, this program assesses a supplemental fee or penalty on drivers in addition to the fine associated with the original offense and in addition to any increased insurance premium they may be charged. The new name should more accurately reflect the program's current function.

9. Increase public awareness and understanding of the insurance surcharge program and the potential consequences and added costs of not paying the surcharges.

a. Create and disseminate multi-lingual informational brochures, posters and other materials about the program written to a 4th grade literacy level. Include information on which offenses result in surcharges, surcharge amounts,

payment plan options, and the consequence of not paying. Information should be available via the Internet and at MVC service centers and should be clearly communicated as part of driver education programs. In addition, the information should be made available at schools, colleges, One-Stop Career Centers, court houses, municipal buildings and other public facilities.

b. Develop a new point advisory notice to be sent to all drivers convicted of a point carrying offense. The notice should indicate that the accumulation of six or more points will result in the assessment of insurance surcharges.

10. Increase public awareness and understanding of the potential consequences of motor vehicle violations, including: fine amounts (for frequent violations), point accumulation, insurance surcharges and potential license suspension.

a. Create and disseminate multi-lingual informational brochures, posters and other materials about the potential consequences of motor vehicle violations. The materials should be written to a 4th grade literacy level. Information should be available via the Internet and at MVC service centers and should be clearly communicated as part of driver education programs. In addition, the information should be made available at schools, colleges, One-Stop Career Centers, court houses, municipal buildings and other public facilities.

b. Mail an informational notice including information on the consequences of motor vehicle violations to drivers accumulating four or more points.

11. Conduct a comprehensive review of New Jersey's current point system, program of administrative sanctions and driver improvement programs to determine the effectiveness of the programs relative to ensuring highway safety.

a. Evaluate the effect of plea bargaining motor vehicle offenses on highway safety. Special emphasis should be given to assessing the impact of N.J.S.A. 39:4-97.2, which created a new traffic violation, unsafe operation of a motor vehicle, for which no points are assessed for first and second offenses. This statute is frequently used by municipal courts to downgrade point carrying moving violations as part of plea agreements.

b. Examine the effect of various administrative actions taken by MVC (e.g., point advisory notices, mandatory driver improvement programs, notices of scheduled suspension, and license suspension) on recidivism rates and highway safety.

c. Review MVC sponsored Driver Improvement Programs and Defensive Driver programs approved by MVC but offered by other organizations to rationalize program content, requirements and point reduction benefits.

d. Investigate programs used in other states to monitor driver behavior to determine if they are more or less effective than New Jersey's current program.

12. Address issues that contribute to license suspensions for failing to maintain insurance.

a. Amend N.J.S.A. 39:6B-2 to provide the courts with greater discretion when considering cases involving operation of an uninsured vehicle. MVC currently has discretion regarding license suspension when notification of insurance lapse occurs administratively. The courts should be provided with similar discretion in cases where proof of insurance can be provided at the time of trial.

b. Increase awareness and understanding related to New Jersey's alternative motor vehicle insurance programs (i.e., "Dollar-a-day" and "Basic" insurance coverage) among the general public and workforce development professionals.

13. Regulate and/or limit insurance premium increases that are based on license suspensions for non-driving reasons.

A recent survey of suspended drivers and numerous comments from members of the public support the finding that suspended drivers are subject to increased insurance premiums. Premium increases occur when drivers are suspended for driving as well as non-driving reasons. The fairness of premium increases resulting from suspension for non-driving reasons is questionable. The Department of Banking and Insurance (DOBI) should investigate current industry practices in this regard to determine if premium increases are justified.

14. Consider creating a restricted-use license program for drivers suspended for financial reasons.

The Task Force recognizes that the best way to address the unintended consequences of license suspension is to avoid the suspension of driving privileges in the first place. As such, many of the Task Force recommendations are designed to reduce the number of suspensions by (a) increasing public awareness regarding how and why a driver's license may be suspended, (b) improving suspension notification procedures and documents to increase compliance with suspension-related requirements before the suspension occurs, and (c) providing the courts and MVC with more flexibility and greater discretion to address the economic and other unique circumstances of each driver's situation.

Although these recommendations may address affordability and fairness issues for many suspended drivers, members of the Task Force recognize that for some drivers, restoration of full driving privileges may still be limited by financial means. As a result, the task force recommends the State consider creating a restricted use license for drivers suspended for financial reasons. Under such a program, drivers

unable to pay court-ordered installment plans, child support orders, and MVC insurance surcharges should be given the opportunity to obtain a limited purpose, restricted-use license for employment, job-training/education and self/dependent medical purposes. Such a proposal is not intended for drivers whose licenses were suspended for dangerous driving. The restricted use license proposed here would improve the employment prospects for these drivers and thereby increase the likelihood that they will be able to meet their financial obligations in the future and improve the state's ability to collect outstanding fines and fees.

The task force recognizes that there are a number of issues to be taken into account in developing the specifics of a restricted use license proposal, including (a) the effectiveness of other recommendations in eliminating economic hardship as a reason for license suspension and (b) the administrative resources involved in creating such a program.

15. Change license suspension notification documents to make them easier to understand and include supplemental education materials to communicate the seriousness of license suspension and its potential consequences.

a. Modify envelopes used to send suspension-related notifications to include elements that communicate the importance of the material enclosed.

b. Include information with notices that conveys MVC's openness and willingness to assist its customers to address suspension issues.

c. Communicate essential information at an appropriate literacy level, including the importance of contacting MVC to receive assistance in addressing suspension issues.

d. Display clearly on all notices that multilingual assistance is available via the telephone.

16. Improve communication with the public and increase awareness among drivers facing license suspension that MVC has an administrative hearing process available to address the individual circumstances of their suspensions.

a. Develop public information materials explaining the nature of the administrative hearing process, how to request a hearing and potential outcomes. For example, explain that legal representation is not needed at hearings and that the first step of the hearing process involves a pre-hearing conference with a MVC representative.

b. Prepare all notices and public information materials at an appropriate literacy level. Information should be reviewed annually to confirm its continued accuracy and relevancy.

c. Make clear that multilingual assistance is available upon request.

17. Undertake a sustained and systemized effort to provide social service agencies, employment counseling agencies, One-Stop Career Centers, Department of Corrections personnel, parole officers and support staff at transitional facilities with the information, training and tools they need to more effectively assist clients to address license suspension and restoration issues.

a. Develop training curricula and materials and provide regular staff training opportunities for employment counselors and others engaged in providing services to low income individuals and inmates transitioning from prison.

b. Simplify the process through which employment counselors and others engaged in providing services to low income individuals and inmates transitioning from prison may obtain driver history abstracts. According to MVC rule, government agencies are exempt from paying the $10 abstract fee.

18. Elevate the importance of dealing with license restoration issues as part of the Department of Corrections discharge planning process.

a. Provide guidance on license restoration issues and procedures to those working with the population exiting the prison system, so that those individuals can provide counseling on the topic both before and following inmate release.

19. Increase awareness among county administrators and social service agencies that public assistance funds (e.g., TANF and other federal programs permitting the use of funds for transportation purposes) can be used to pay surcharges, fees and fines associated with license suspension as a means to promote employment opportunities among eligible recipients. These funds are currently administered at the discretion of county human service agencies; however, very few counties use funds for these purposes.

a. Inform employment counselors and other social service providers that surcharges can be assessed and paid as one-time assessments rather than every three years, which permits greater use of public assistance funds for license restoration purposes. The current exception to this practice is DUI surcharge assessments.

20. Amend existing laws, policies and procedures governing address change notification to increase the accuracy of MVC mailing address data.

a. Implement a public education campaign designed to emphasize the law requiring drivers to notify MVC of address changes and communicating the potential consequences of not notifying MVC of address changes. If possible, develop incentives to encourage compliance with the law.

b. MVC should work with the United States Postal Service to develop a protocol for transmitting notification of address change requests submitted to the postal service. Once a protocol is in place, MVC should develop a procedure for confirming address changes with the driver. As needed, MVC should work with legislators to amend applicable laws to facilitate implementation of the new procedure.

21. Monitor the License Restoration Program of the Essex County Vicinage and evaluate its effectiveness as a potential model for other jurisdictions.

SECTION SIX: A FRAMEWORK FOR IMPLEMENTATION

Section five of this report presents a series of twenty detailed recommendations addressing issues related to: court fines, fees, payment plans and discretion regarding license suspension; the Parking Offenses Adjudication Act; the MVC insurance surcharge program; the New Jersey Point system; public awareness and education; insurance issues; as well as training for social service providers and others engaged in assisting low income drivers and individuals transitioning from prison regarding license suspension and restoration issues.

Implementing the recommendations made in this report will require the participation and sustained commitment of many organizations, agencies and individuals. Potential implementation partners include members of the New Jersey Legislature; a variety of State agencies, including: the New Jersey Motor Vehicle Commission (MVC), New Jersey Administrative Office of the Courts(AOC), New Jersey Department of Human Services (NJDHS); New Jersey Department of Labor and Workforce Development (DOL), New Jersey Department of Banking and Insurance(DOBI), New Jersey Department of Corrections (DOC); county government, municipalities; a variety of nonprofit and faith-based service and advocacy organizations, including but not limited to the New Jersey Institute for Social Justice, the New Jersey Automobile Dealers Association, the American Automobile Association (AAA), labor unions, and construction trade organizations; and members of the judiciary and legal services profession.

Table 30, presented on the following pages, provides a framework for implementation by identifying potential implementation partners and specifying which entities might take a leadership (identified with a ★) and/or supporting role (identified with a +) in advancing specific proposals.

Table 30 – Potential implementation partners

Recommendation	Potential Implementation Partners			
	MVC	AOC	NJ Legislature	Other
1. Provide judges with more discretion when establishing time payment orders		+	★	
2. Make payment of court-administered fines and time payments easier for drivers.		★		
3. Amend the Parking Offenses Adjudication Act to permit suspension of vehicle registration as an alternative to license suspension.		+	★	Municipal government
4. Provide courts with greater discretion to allow payment plans in excess of 12 months for those failing to pay child support arrears and support initiatives to increase compliance with child support payments using license suspension as a remedy of last resort.		+	★	Department of Human Services
5. Amend N.J.S.A. 39:3-40 to provide courts with greater discretion regarding the imposition of additional mandatory suspension time when drivers are convicted of driving while suspended for non-driving reasons. Consider whether the current fine amounts defined in the statute are appropriate given the nature of each offense.		+	★	
6. Make payment of outstanding MVC insurance surcharges and restoration fees easier and more affordable for low income drivers.	★		★	
7. Conduct a revenue impact study to determine if lowering current surcharge amounts would increase overall collection rates and maintain or increase overall revenue from the insurance surcharge program.	★			State Universities Department of Treasury

Table 30 (cont) – Potential implementation partner

Recommendation	Potential Implementation Partners			
	MVC	AOC	NJ Legislature	Other
8. Rename the insurance surcharge program to reflect its current purpose as a driver responsibility assessment.	+		★	
9. Increase public awareness and understanding of the insurance surcharge program and the potential consequences and added costs of not paying the surcharges.	★			
10. Develop informational materials to increase public awareness and understanding of the potential consequences of motor vehicle violations, including: fine amounts, point accumulation, insurance surcharges and potential license suspension.	★			
11. Conduct a comprehensive review of New Jersey's current point system and driver improvement programs to determine the effectiveness of the programs relative to ensuring highway safety.	★			State Universities
12. Address issues that contribute to license suspensions for failing to maintain insurance.		+	★	Department of Banking and Insurance
13. Regulate and/or limit insurance premium increases that are based on license suspensions for non-driving reasons.			★	Department of Banking and Insurance
14. Consider creating a restricted-use license program for drivers suspended for financial reasons.	+		★	Non-profit social service, employment & trade organizations
15. Change license suspension notification documents to make them easier to understand and include supplemental education materials to communicate the seriousness of license suspension and its potential consequences.	★			

Table 30 (cont) – Potential implementation partners

Recommendation	Potential Implementation Partners			
	MVC	AOC	NJ Legislature	Other
16. Improve communication with the public and increase awareness among drivers facing license suspension that MVC has an administrative hearing process available to address the individual circumstances of their suspensions.	★			
17. Undertake a sustained and systemized effort to provide social service agencies, employment counseling agencies, One-Stop Career Centers, Department of Corrections personnel, parole officers and support staff at transitional facilities with the information, training and tools they need to more effectively assist clients to address license suspension/restoration issues.	★			Department of Labor and Workforce Development Department of Human Services Department of Corrections State Parole Board Non-profit social service & advocacy organizations
18. Elevate the importance of dealing with license restoration issues as part of the Department of Corrections discharge planning process.	+			Department of Corrections State Parole Board Non-profit social service & advocacy organizations
19. Increase awareness among county social service agencies that public assistance funds can be used to pay surcharges, fees and fines associated with license suspension as a means to promote employment opportunities among eligible recipients.	+			County government Non-profit social service & advocacy organizations Dept. of Human Services Department of Labor and Workforce Development
20. Amend existing laws, policies and procedures governing address change notification to increase the accuracy of MVC mailing address data	★		★	U.S. Postal Service
21. Monitor the License Restoration Program of the Essex County Vicinage and evaluate its effectiveness as a model.	★	+		Essex County Non-profit social service & advocacy organizations

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Appendix F

UNCATEGORIZED

Department of Public Safety to reinstate tens of thousands driver's licenses

BY **ALEX ROZIER** DECEMBER 19, 2017

Tens of thousands of Mississippi drivers will be allowed back on the road in 2018.

In January, licenses suspended solely for failing to pay fines or fees will be reinstated after a reversal in the Department of Public Safety's policy. The Southern Poverty Law Center and the Roderick and Solange MacArthur Justice Center at the University of Mississippi School of Law announced the change Tuesday.

"Being poor in Mississippi is hard enough without having your license suspended just because you can't afford to pay off outstanding fines," said Cliff Johnson, director of the MacArthur Justice Center. "We don't have subways or other reliable public transportation in Mississippi, and a suspended license makes it impossible to legally drive to job interviews, take loved ones to the hospital, pick your kids up from school, or even go to church."

Johnson told Mississippi Today that, along with SPLC, the MacArthur Justice Center began talks with DPS at the beginning of the year, after the groups observed that there was no process being used to determine whether defendants failing to pay was willful or out of poverty.

"I had been told by judges in Mississippi that they often wound up imposing fines on the same people time after time because they would get stopped for driving with suspended licenses," Johnson said. "Its a fiction to think people in that situation are never going to drive."

"We're setting people up to be driven deeper into debt," he added.

Under the new procedures, DPS will also waive its $100 reinstatement fee, will notify drivers that their licenses are no longer suspended and will instruct motorists how to reinstate them.

"We will continue to suspend licenses for other reasons allowed under Mississippi law, and we certainly take it seriously when people drive with suspended licenses," said Marshall Fisher, Director of DPS. "The reinstatement of these licenses will not relieve the drivers of the legal obligation to pay the fines, fees, or assessments."

University of Mississippi

Director of the MacArthur Justice Center at the University of Mississippi Cliff Johnson.

Other reasons for license suspensions include finding a driver in contempt for failure to pay a fine and failing to respond to a traffic summons or citation.

SPLC and the MacArthur Justice Center contend that Mississippi courts have not been following the law regarding collection of fines and fees, and both entities have been pursuing litigation throughout Mississippi addressing the rights of indigent defendants, according to a joint press release.

"Poverty is not a traffic crime," said Sam Brooke, SPLC deputy legal director. "There is a growing recognition across the country that people should not face additional punishment just because of their poverty."

According to the DPS, over 100,000 licenses were suspended in-part from failing to pay fines; licenses suspended for other reasons, however, will not be reinstated. Johnson advised that suspended drivers wait until they receive a letter from DPS to see how the policy affects them, or to call 601-987-1224 for more information.

SPLC
Southern Poverty
Law Center

NEWS

SPLC reaches agreement with Mississippi to reinstate over 100,000 driver's licenses suspended for non-payment of fines

December 19, 2017

Mississippi will reinstate more than 100,000 driver's licenses that were suspended for non-payment of traffic tickets and will no longer suspend licenses for failure to pay fines, under an agreement that was announced today between the SPLC, the Mississippi Department of Public Safety (DPS) and another organization.

Under the new procedures, DPS will also waive its $100 reinstatement fee, will notify these drivers that their licenses are no longer suspended and – if their licenses have expired since they were suspended – will instruct motorists how to reinstate them.

The new policies could have far-reaching effects in Mississippi, where nearly 95 percent of residents travel to work by car. Low-income people with suspended licenses were often forced to choose between paying fines or using money for food, housing and health care – or to choose between driving with a suspended license and losing a job.

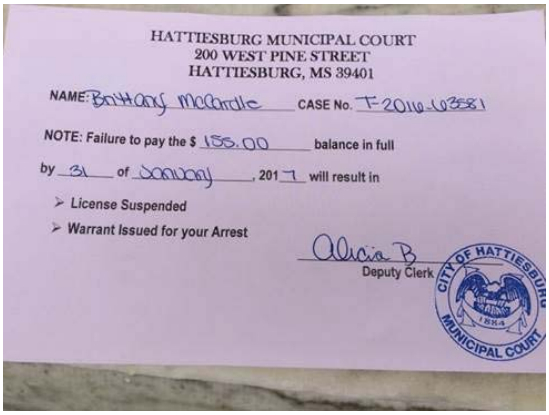
In a state where 22 percent of the population lives in poverty – the highest percentage in the nation – the new procedures could spare many people from further impoverishment.

Previously, DPS would automatically suspend a license, without asking people why they could not pay and without giving them extra time to pay or an alternative punishment like community service.

"We commend the state of Mississippi for taking steps to ensure that in the future, no one will lose their license if the only reason they failed to pay a traffic ticket is that they simply did not have enough money," said Sam Brooke, SPLC

deputy legal director. “We also welcome Mississippi’s decision to reinstate licenses that had been previously suspended because people were unable to pay.

“Poverty is not a traffic crime,” Brooke said. “There is a growing recognition across the country that people should not face additional punishment just because of their poverty, and that includes taking away their driver’s licenses when they can’t pay fines.”


HATTIESBURG MUNICIPAL COURT
200 WEST PINE STREET
HATTIESBURG, MS 39401

NAME: Brittany McCardle CASE No. T-2016-02581

NOTE: Failure to pay the $ 155.00 balance in full

by 31 of January, 2017 will result in

- License Suspended
- Warrant Issued for your Arrest

Alicia B
Deputy Clerk

CITY OF HATTIESBURG MUNICIPAL COURT 1884

Brittney McCardle faced license suspension after she was unable to pay a $155 fine and court costs related to her traffic case.

The agreement makes Mississippi the fifth state to require an ability-to-pay determination before suspending a driver’s license. Other states with a “willfulness” determination include Louisiana, Minnesota, New Hampshire and Oklahoma, according to a recent analysis from the Legal Aid Justice Center.

Additionally under the agreement, DPS will no longer enforce a statute that authorizes license suspension for non-payment without first determining whether the person willfully failed to pay. Drivers with multiple reasons for suspension will have suspensions for non-payment removed from their driving records, and DPS will notify them why their licenses remain suspended, as well as how to resolve the suspensions.

The policy changes came about after the SPLC and the Roderick and Solange MacArthur Justice Center raised concerns about the practices last year.

The settlement will help people like Vicki Smith of Columbia. Her license was suspended because she could not afford to pay two traffic tickets from 2013. She was working as an accounts payable specialist but had to leave her job when her doctor ordered her onto pregnancy bed rest soon after the tickets were issued.

> “My suspended license made it very difficult to get on my feet again and to find a job,” said Smith, whose only source of income is food stamps and her autistic son’s Social Security disability checks. “I recently lost my job as a health aide because I don’t have reliable transportation and there

Vicki Smith, of Columbia, had her license suspended because she could not afford to pay two traffic tickets from 2013.

is no mass transit. I would have paid the tickets if I could, but I can't afford it. I struggle to pay for my son's medical expenses and basic necessities."

Brittney McCardle of Petal, who is unemployed and receives food stamps to support herself as well as Social Security disability benefits for her autistic daughter, was facing license suspension after she was unable to pay a $155 fine and court costs related to her traffic case.

"I live on a fixed income and told the judge I couldn't afford to pay for the traffic ticket by the deadline," said McCardle, who also donates blood plasma for $45 to help pay for her living expenses. "I was worried that I was going to lose my license, which would have made it more difficult for me to find a job, go to the store, or take my daughter to the hospital if she couldn't breathe because of her bad asthma.

"I have been applying for jobs, but most require proof that I have a driver's license to get to work. Hopefully, this is something I won't have to worry about now with the state's new policy."

The SPLC and the MacArthur Justice Center say that Mississippi courts have not been following the law regarding collection of fines and fees, and both entities have been pursuing litigation throughout Mississippi, addressing the rights of indigent defendants.

For example, the SPLC has filed a lawsuit against the city of Corinth and Municipal Judge John C. Ross for operating a modern-day debtors' prison, unlawfully jailing poor people for their inability to pay bail and fines.

Photo credit Roy Adkins

* * *

Appendix G

SUPREME COURT

TASK FORCE

ON THE

IMPROVEMENT

OF

MUNICIPAL COURTS

1985

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Chairman

Robert D. Lipscher, Esquire
Administrative Director of the Courts

John P. McCarthy, Jr., Esquire
Assistant Director, Crim. Practice

John Podeszwa, Project Director

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Introduction

It is through the municipal courts that most citizens in the State of New Jersey come into contact with the judicial system as defendants, plaintiffs, or witnesses. More than five million cases ranging from minor criminal to zoning to motor vehicle and parking violations were heard in the New Jersey municipal courts in 1984, compared to 750,000 in all other courts in the state.

However, despite the large volume of cases and their significant impact on the individual citizens and communities that they serve, the municipal courts in New Jersey have until recently received relatively little statewide administrative and management attention. As a result, the municipal court system has often been described as the "stepchild" of the judiciary, that is, "in" the judiciary, but not "of" the judicial branch.

The goal of the Supreme Court Task Force on Municipal Court Improvement is to upgrade the status and improve the operation of New Jersey's municipal courts so that through better performance they may take an honored place in the state's system of justice.

HISTORICAL OVERVIEW AND BACKGROUND

The municipal court system traces its origin to the "justice courts" created by Lord Cornbury, the first Royal Governor of the colony that ultimately became the State of New Jersey. The justice courts, using English common law and principles of equity, exercised civil jurisdiction over small debts (similar to the small claims now heard in the Special Civil Part of Superior Court). The first state Constitution, adopted on July 2, 1776, incorporated these courts into New Jersey's court system.

Police courts joined the justice courts as local courts to handle minor criminal matters following the Constitution of 1844, which also set up a variety of county trial courts and state appellate courts that were to endure for 100 years. Local court judges were appointed by local governing bodies, and their work varied from community to community. In general, these local judges were not held in high esteem by the public or members of the legal profession.

By the mid-1940s, concern about the quality of justice produced by the multitude of overlapping and fragmented courts led to constitutional reform. The Court of 1947 gave rise to New Jersey's existing court structure, which includes municipal courts. The reforms of 1947 authorized the Supreme Court to adopt Rules for all courts, including the municipal courts and made the Chief Justice the administrative head of the entire Judiciary. To assist the Chief Justice, an Administrative Office of the Courts was established.

The creation of the Municipal Courts and subsequent rules setting minimum qualifications for judges and uniform procedures received national acclaim. Efforts at further improvement were undertaken periodically thereafter but no major reforms were accomplished over the next three decades. A system of regional courts with judges appointed by the Governor was formally advocated by Chief Justice Joseph Weintraub in 1958, and again in 1969 by Administrative Director of the Courts Edward McConnell. In 1971, a consultant report urged a similar

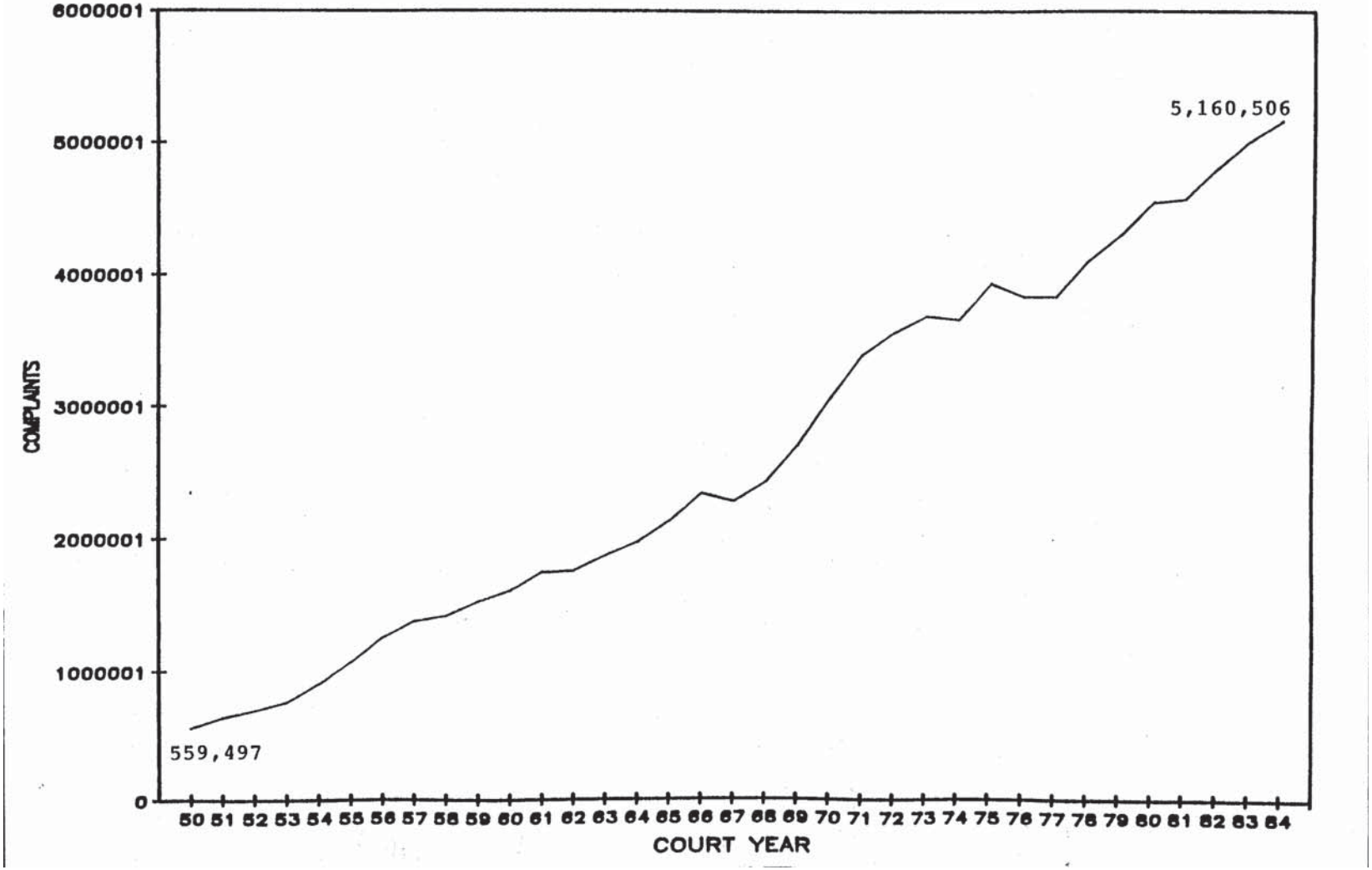
restructuring. These and other recommendations for change never gained sufficient public support for implementation.

While the Municipal Courts stagnated, the rest of the court system drew national praise. New Jersey became a national model for court reform and administrative strength. The uncertainty created by frequent public debate about the future of the Municipal Courts slowed improvement efforts. The cumulative impact of change during these decades was not as far-reaching or as effective as it might otherwise have been. Nevertheless, progress was recorded. Non-lawyer judges were phased out by attrition, and state training programs were developed for judges and court personnel. Assignment Judges assumed responsibility for scheduling annual visits to all municipal courts in their vicinage, and annual audits were required; and by 1975 proceedings were sound recorded, and special management studies were conducted in large urban courts. The Supreme Court created the Committee on Municipal Courts to recommend ways to improve the operations of the courts and to provide vicinage level training for municipal court judges. Budget preparation assistance was provided for judges and clerks, and comprehensive bench manuals and procedures manuals were developed.

While these efforts addressed specific municipal-court problems, the courts as a whole struggled with an avalanche of cases and added administrative responsibilities. As the table on the next page shows, in court year 1983-84 there were 4.2 million cases filed in municipal court, as compared to 559,497 in 1949-50. At the same time the courts acquired the additional responsibilities of collecting installment payments of fines and providing data to other agencies, such as the Division of Motor Vehicles, and changes in the law drastically affected the nature of the workload. This increased workload generally was not accompanied by equivalent funding boosts, thereby creating or exacerbating backlog conditions in most courts.

Chief Justice Robert N. Wilentz, convinced that a thorough review of municipal-court operations was necessary if the municipal courts were to be maintained, created the Task Force on the Improvement of Municipal Courts in October 1983. In announcing the Task Force, Chief

MUNICIPAL COURT FILINGS
1950 – 1984



Justice Wilentz noted the following:

> More citizens have contact with the municipal courts than any other part of the judicial system, and it is not without its critics. There has been a staggering increase in the municipal caseload over the years, including cases involving new laws placed under municipal jurisdiction. The system cannot keep up with the burden. Despite the best efforts of municipal judges and court personnel, backlog problems are compounded by a lack of modern technology and processing and by a lack of coordination between the individual courts. Creation of the Task Force represents a commitment to analyze these and other problems, and find solutions that will ensure maximum efficiency and a high quality of justice in the lower courts.

The Task Force, chaired by Associate Justice Robert L. Clifford, included judges, lawyers, state and local elected officials, court administrators, and private citizens. Municipal Court Judges were surveyed to identify those areas of municipal court operations most in need of revision and reform. As a result, the Task Force set up committees to examine the following areas: 1) administration; 2) budget, personnel and physical plant; 3) trial practice and procedure; 4) computerization and case processing techniques; and 5) issues involving the accountability of the courts to the public, inducing performance/evaluation standards and other topics of public concern. Representatives of the AOC, working in concert with judges, developed for each committee a tentative mandate that included those issues in need of review and possible reform. Ultimately, the Task Force produced over 50 position papers examining numerous aspects of municipal-court operations. The committee papers were reviewed and debated by the Task Force membership.

Local Advisory Committees (LAC), representing all sectors of the criminal justice system, including municipal court personnel, the bench, the bar, and private citizens, were established in each vicinage. Comments from the LACs were relayed directly to each committee as well as to the entire Task Force so that comments and criticisms could be taken into consideration when the papers were reviewed and rewritten. Thus, proposals were subjected to a wide range of scrutiny and review, thereby ensuring that all aspects of each issue were considered.

The final product, presented herein, is based on the position papers approved by the Task

Force and represent the culmination of its work.

The following sets forth the mandate of each Task Force Committee and summarizes its major recommendations:

ACCOUNTABILITY

Mandate: To ensure the accountability of the municipal courts to community expectations and to develop a means for evaluation of calendar performance.

* Public Access to Court Records - sets forth policy and procedures for providing the press and public with information.
* Domestic Violence - presents recommendations that would change the role of the municipal courts in issuing Temporary Restraining Orders.
* DWI Case Processing - identifies methods to aid courts in the timely disposition of DWI cases.
* Calendar Performance – presents a comprehensive view of calendar-management techniques and establishes goals for the disposition of cases.
* Community Advisory Committees - in conjunction with the recommendations of the Administrative Committee, recommends the establishment of a community-based committee to provide the local municipal court judge and other community groups with information and education materials.

ADMINISTRATION

Mandate: To establish a management structure that will ensure the proper and efficient administration of the municipal-court system.

* Presiding Judge and Case Manager - establishes these vicinage positions as a management team that will assist the Assignment Judge in overseeing the operation and improvement of the municipal courts.
* Pretrial Intervention - calls for the expansion of the existing Superior Court program to provide first-time municipal-court defendants with an opportunity to be diverted from the criminal justice system.
* Liability of Judges and Staff - presents a method for providing Attorney General representation for judges and staff sued for their actions while in office. -
* Courts in Crisis - provides a method to aid municipal courts when faced with either short-term or long-term administrative problems.
* Preparation of Complaints - identifies a long-standing "appearance of impropriety" issue and calls for the preparation of criminal complaints by the police, not court personnel.

BUDGETS, PERSONNEL AND SPACE

Mandate: To examine the basis budgetary needs of municipal courts and recommend the adoption of guidelines and standards for the preparation, presentation, review, and adoption of their budgets.

* Budgets - establishes a uniform budget format that when used with the proposed weighted caseload system will aid the Presiding Judge and municipal- court judge in obtaining sufficient resources to operate each municipal court.

* Budget Impasse Procedure - provides for a modification of the existing court rule, thereby giving the Assignment Judge the authority effectively to recommend a budget to the municipal governing body. Also provides the governing body with a way to appeal the recommendation of the Assignment Judge.
* Personnel - presents uniform criteria for the hiring, evaluation, and termination of municipal-court judges and staff. Also recommends the creation of the title of Municipal Court Clerk/Administrator to upgrade and standardize the qualifications of this critical position.
* Court Facilities - establishes minimum standards for court facilities and presents a plan for their incorporation during either new construction or renovation.
* Court Security - suggests a security study be conducted in each municipal court and recommends specific security precautions for the courtroom and the handing of prisoners.

TRAFFIC/COMPUTERIZATION

Mandate: To consider, independently, the areas of traffic cases and computerization as they may relate to each other.

* Computerization - presents a basis on which a comprehensive statewide computerized municipal-court system can be justified, established, and implemented for the purpose of unifying the flow of information among the municipal courts and the various agencies with which they must interact.
* Installment Payments - recognizes the authority of the court to take action when defendants fail to pay fines and costs, as ordered by the court, as well as the ability to suspend such payments when a defendant is found to be indigent.
* Revenues and Funding - suggests a uniform distribution scheme to aid the courts *in* the management of and planning for its collections and expenditures.

* Traffic Case Processing - presents solutions to multiple problems faced by the courts in disposing of its traffic cases.
* Violations Bureau - recognizes the extremely valuable role of the Violations Bureau in disposing of a court's cases, and therefore expands that role to include receipt of driver registration, insurance cards, etc., to help relieve the court calendar.

TRIALS

Mandate: To examine and recommend the adoption of standards and goals for more efficient case processing from the complaint stage through sentencing practice.

* Case Management - makes specific recommendations for improvements to the control and tracking of cases, as well as suggesting methods to expedite case flow.
* Plea Agreements - recognizes that the Municipal Courts are now more professional in virtually all areas of operations and are, therefore, capable of instituting, on an official basis, the use of plea agreements of its matters.
* Handling of Indictable Complaints - proposes improved communications between municipal and county prosecutors for the purpose of handling more effectively those cases originally filed as indictable.
* Role of the Municipal Prosecutor - a much debated issue, it sets forth a proposed full-time Municipal Court Prosecutor to handle cases filed in the municipality. Also suggests the prosecutor act as a screening agent for complaints filed in the municipality.
* Standards and Procedures in the Appointment of Counsel - sets forth a systematic procedure for the assignment of counsel that will allow attorneys sufficient time to prepare cases.

Chapter 1

Statewide Management Structure

Introduction

The New Jersey Constitution grants the Supreme Court broad authority to administer the practice and procedure in all courts. N. J. Const. of 1947 art. VI, § VII, para. 1. The Court early exercised that authority to build a centralized court system supported by a strong administrative structure. Consistent with its tradition of progressive management, New Jersey was one of the first states in the early 1970s to implement full-time county-level trial court administrators. More recently, the Supreme Court has reorganized the Superior Court management structure into separate divisions, under the overall authority of the Assignment Judges, with each division administered by a Presiding Judge aided by a division executive, the Case Manager.

In the shadow of this well-structured and increasingly efficient Superior Court system stand our municipal courts, approximately 530 in number, presided over by 369 municipal-court judges. The sheer breadth of this local-level court system creates formidable obstacles to the achievement of uniform and consistent statewide policies. The situation is compounded by the diverse nature and size of these courts.

While the Court Rules make Assignment Judges responsible for the proper administration of all courts in the vicinage, see Rule 1:33-4, the Assignment Judges can not be expected to carry

out this mandate effectively given the current defective organizational arrangements and inadequate level of resources. Past efforts to cure the organizational problems through abolishment or regionalization inadvertently may have resulted in making these courts even more remote from the Superior Court structure.

The inability of the Supreme Court to assure quality justice in the municipal courts has been a source of frustration to many, among them Chief Justice Weintraub, who said:

> It is idle and incongruous to charge the Supreme Court with administrative supervision as the Constitution does while the capacity to frustrate effective supervision and performance remains with 587 autonomous bodies. 81 N.J.L.J. 597, 602 (1958).

The rightful place of municipal courts in the judicial family is further confounded by the fact that they are wholly funded by local governing bodies, which also appoint and re-appoint the judges. This financial dependence on the municipality, in conjunction with the various other problems set forth above, tends to foster an attitude that these courts are "step-children" of the larger system, "in" but not really "of" the judiciary at large. Their close relationship with police agencies creates an environment that, as noted by Chief Justice Weintraub in the 1958 article quoted above, makes it "difficult for a magistrate to dispel the notion that the municipal court is not wholly detached from the executive agency charged with law enforcement."

Finally, most municipal courts receive low priority in the concerns of the municipality. While municipal courts generate substantial revenue for the three levels of government, through the imposition of fines and court costs, there is little incentive for the local governing body to assure first-rate judicial operations. As pointed out by Chief Justice Vanderbilt in a 1956 address, 10 Rutgers L. Rev. 647 (1956), "members of local governing branches lose sight of the fact that the court exists to perform an indispensable function of government and not for the purpose of producing a profit."

The cumulative effect of these problems has sapped the strength of municipal court management resulting in the relative autonomy of each municipal court. This has led to the multitude of organizational and structural problems. The municipal-court judges recognize these problems and resent then. For example, the municipal-court judges at their 1983 Conference identified weaknesses in the areas of judicial involvement in the hiring and retention of staff, as well as the difficulty in obtaining sufficient funds from the municipalities to operate the courts properly. Most municipal-court judges felt that without increased influence over these two key areas, there was little hope to improve a poorly run court. Another problem area identified at the 1983 conference was the lack of a strong central management authority from which the municipal judge could obtain advice or assistance when needed. The Assignment Judge and the Administrative Office of the Courts simply were not staffed adequately to respond to the multitude of courts in need of such assistance.

To combat such problems the Task Force has developed specifications for personnel that will improve and complement the existing system. The proposed management structure is modeled after that employed in the Superior Court, and provides for a separate Municipal Court Services division at both the vicinage and state level. This unit will be staffed with sufficient personnel to provide training, guidance, and technical assistance to the more than 530 municipal courts. Working in concert with this new division at the vicinage levels will be fifteen Presiding Municipal Court Judges and their Case Managers. The PJ/CM team will assist municipal courts on a daily basis, establish programs to prevent the occurrence of problems, and identify and correct problems that do arise.

Implementation of these recommendations will not only build a strong bridge between the local level courts and the Judiciary, but also enhance and advance the operation of every municipal court in the state.

Position 1.1

Vicinage Presiding Judge - Municipal Courts

Responsibilities, Eligibility, and Compensation

A State-funded Presiding Judge-Municipal Courts, shall be appointed by the Chief Justice in each vicinage with the advice of the Assignment Judge. The Presiding Judge shall be responsible for the management of all municipal courts within the vicinage and shall report directly to the Assignment Judge. The Presiding Judge shall perform these duties part-time or full-time, depending on the vicinage, at a prorated salary based on 95% of a Superior Court Judge's salary. The Presiding Judge will limit any outside law practice to non-litigated matters.

Commentary

In reviewing the management structure involving the municipal courts, the Task Force has determined that in recent years the increasing Superior Court-related responsibilities of the Assignment Judges have made it difficult for them to devote sufficient attention to municipal court matters. This has occurred at a time when municipal courts are in need of greater support and assistance to meet the demands of increased caseloads and administrative responsibilities within strict budget limitations. The needs of the municipal-court system will continue to demand and deserve increased attention, particularly as the proposals of the Task Force are

implemented. Accordingly, the Task Force concluded that the position of Presiding Judge-Municipal Courts be created, with direct accountability to the Assignment Judge and with responsibility for managing municipal courts within each vicinage.

The concept of a Presiding Judge to handle managerial, administrative, and judicial duties has already been successfully adopted in each of the three divisions in Superior Court (Civil, Criminal, and Family), as a result of the 1982 recommendations of the Supreme Court Committee on Efficiency. The Committee, composed of chief executive officers of New Jersey's largest corporations, found that the greatest obstacles to achieving efficiency within the judiciary included the absence of a coherent trial court management structure and the concomitant lack of well-defined lines of responsibility and accountability. The Task Force determined that municipal courts have also suffered from a lack of management structure that would be remedied by the creation of the Presiding Judge position. In the context of the municipal-court system, the Presiding Judge and Municipal Court Case Manager (see Position 1.2), working directly with the Assignment Judge and Trial Court Administrator, will provide the necessary expertise to implement the recommendations of the Task Force and to oversee the improvement of the municipal-court structure within each vicinage.

The Presiding Municipal Court Judge will be responsible for a wide range of administrative duties. In general, the Presiding Judge will be involved *in* those tasks requiring centralized management, such as the development and implementation of vicinage-wide policies, procedures and programs. Duties will include:

a. serving as a liaison among municipal court judges, the Assignment Judges, the Administrative Office of the Courts, and Supreme Court, to insure promulgation of and compliance with court rules and directives;

b. determining which judges within the vicinage shall hear all municipal-court conflict cases, as well as deciding when and where such cases will be heard;

c. assisting municipal-court judges and clerks in solving their day-to-day

administrative problems;

d. supervising the proposed Case Manager-Municipal Courts and support staff;

e. developing and encouraging municipal judges' education programs, both for new and sitting municipal judges;

f. coordinating evening and weekend emergency availability of municipal-court judges;

g. assisting in the preparation of annual individual municipal court budgets, and discussing matters of concern with local governing bodies, where necessary;

h. conducting studies of caseloads and backlogs in each municipal court and recommending methods for eliminating backlogs and efficiently processing all cases;

i. implementing the recommendations of the Task Force;

j. performing such other judicial and administrative duties and responsibilities as are designated by the Assignment Judge under the authority of the Chief Justice.

In addition to these administrative duties, the Presiding Judge might also ultimately discharge judicial duties, though not in the initial stages of the program. The matters listed below are viewed as being suitable for assignment to the Presiding Judge:

a. reviewing all County Prosecutor recommendations to downgrade, remand, or conditionally remand cases to municipal courts;

b. expediting the processing of municipal court matters that accompany indictable cases presented to the Prosecutor;

c. hearing all applications for bail reduction, except in capital cases;

d. considering all applications for temporary commitment;

e. reviewing jail population each morning and considering each detainee to determine whether the charges may be summarily disposed of by entry of a guilty plea or dismissal;

f. hearing conflict cases or matters in which a municipal court judge has been disqualified or is not available;

The Task Force has recommended that each Presiding Judge be appointed by the Chief Justice, with the advice of the Assignment Judge, from among sitting municipal-court judges, to ensure experience in the unique responsibilities, organization, and procedures of municipal courts. The Presiding Judge will sit at the pleasure of the Chief Justice, or until no longer sitting as a municipal court judge will. The time requirements of the position will vary among vicinages, but it is expected to require between one and three days per week depending on the geography of the vicinage, the number of municipal courts, and the particular management and program needs. The Task Force estimated that at least initially, a minimum of three days will be required in the busier or more complex vicinages. After the introduction of judicial responsibilities (as proposed), the required time commitments are expected to increase. The Task Force also recommended that if a Presiding Judge maintains an outside law practice, it should be restricted to non-litigated matters.

The compensation of the Presiding Municipal Court Judge will be provided by the State, and should include all benefits and pensions attendant to their status as State-funded Judges.[1] A Presiding Judge's annual salary will be equal to 95% of the current salary of a Superior Court Judge (i.e., 95% x $70,000 = $66,500), with actual compensation prorated on the basis of the number of days served (e.g., a judge serving as Presiding Judge one day a week will earn $13,300 annually in that position).

References

[1]At present, NJSA 43:6A-3(j) prevents anyone but state judges to be included in the judicial pension system. The Presiding Judge-Municipal Courts would not qualify as a "state judge" pursuant to that statute. This would, accordingly, exclude them from the Judicial Pension System. Tinder N . J. A. C. 17:9-4.1 and -4.2 the part-time nature of the position would exclude Presiding judges from inclusion in the State Fringe Benefit package.

"Case Manager for Municipal Courts, ~ Committee on Administration, Appendix B.

"Eligibility Requirements, Evaluations and Tenure," Committee on Budgets, Personnel and Space, Appendix C.

"Presiding Municipal Courts Judge," Committee on Administration, Appendix B.

"Judicial and Court Employees Salaries," Committee on Budget, Personnel and Space, Appendix C.

Exhibit 2. b, Rule 1:33-2. Court Managerial Structure.
Exhibit 5. c, 1985 Judicial Conference
Exhibit 5.d, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 1.1:

Position 1.2	Case Manager - Municipal Courts
Position 3.1	Qualifications of Municipal Court Judges
Position 3.4	Limitations on Practice
Position 4.1	Budget Reporting
Position 7.1	Minimum Standards for Municipal Court Facilities
Position 7.2	Court Security

Position 1.2

Case Manager - Municipal Courts

Each vicinage shall appoint a Case Manager-Municipal Courts. This person shall assist the Presiding Judge in providing support and services to the municipal courts in the vicinage.

Commentary

Each vicinage has developed its own procedures for attending to the needs of the municipal courts. Some vicinages have added particular personnel, such as Assistant Trial Court Administrators (ATCA) or Municipal Liaisons, who are specifically responsible for providing assistance to these courts. Duties of the ATCA include responding to the problems as they occur in the municipal courts, conducting visitations to the courts to ensure that proper administrative procedures are being followed, reviewing and assisting in the preparation of various statistical reports, and meeting with representatives of the governing bodies regarding problems and issues affecting the courts. The position, however, has been a reactive one, responding to situations only after problems have arisen, rather than acting to prevent them. In addition, such positions have been created on an ad hoc basis, and there has been little effort to address the issue on a uniform, statewide level. As a result, the duties and responsibilities of these people are often diverse and ill-defined, resulting in a reduction of their effectiveness in the administration of the municipal courts.

In place of the current positions, the Task Force has recommended that each vicinage establish the position of Case Manager-Municipal Courts (CM-MC), with the sole function of providing assistance to the municipal courts within the vicinage. The positions of Case Manager and Presiding Judge (see Position 1.1) are already in place in the Superior Court and serve to strengthen the management component of the Judiciary. It is anticipated that the CM-MC will assist the vicinage Presiding Judge in carrying out his duties and will report on a day-to-day basis to the vicinage Trial Court Administrator. The proposed duties of the CM-MC will be similar to those of the Presiding Municipal Court Judge and will include supplying extensive administrative support to all areas of municipal court operations. The CM-MC will also have responsibility for reviewing municipal-court reports, implementing and monitoring Task Force recommendations and other new programs as they are developed, investigating complaints, and providing assistance in such areas as sound recording, computerization, and budget preparation.

References

"Case Manager for Municipal Courts," Committee on Administration, Appendix B.

"Presiding Municipal Courts Judge," Committee on Administration, Appendix B

Exhibit 2. b, Rule 1:33-2. Court Managerial Structure.

Related Positions

The following Positions may be applicable in implementing Position 1.2:

Position	1.1	Vicinage Presiding Judge - Municipal Courts
Position	1.3	Vicinage Advisory/Liaison Committee
Position	1.4	Management Assistance Team
Position	2.5	Emergency Procedures
Position	2.11	Evaluation of Calendar Performance

Position 1.3

Vicinage Advisory/Liaison Committee

Each vicinage shall establish a Vicinage Advisory/Liaison Committee, which will assist the Presiding Judge and Case Manager in the administration of the municipal courts within the vicinage by addressing problems involving the courts and other governmental units and by serving as a liaison group between the courts and the community.

Commentary

To assist the vicinage Presiding Judge and Case Manager, the Task Force has recommended the creation of a vicinage-level committee responsible for handling a wide variety of problems involving the relationship of the courts with other governmental agencies and groups and for serving as a mechanism for bringing matters of public concern to the attention of the court system.

The need for such a committee has long been recognized by those involved in the operation of the municipal court system. In order to function effectively, each municipal court must interact with a myriad of municipal, county, and state agencies in all sectors of the criminal justice system. Such agencies include county penal institutions, probation departments,

alcohol/drug programs, and other social service groups. As the number and complexity of these "interacting agencies" have multiplied over time, so too have the problems of resolving matters of concern to the courts. Currently, each municipal court must develop its own relationship with these agencies, as there is no organized alternative. In addition to being inefficient, such a splintered approach increases the complexity of resolving common problems on a timely basis. Moreover, the failure to coordinate the programs and efforts of the various governmental units and agencies has allowed each department to act relatively independently, in disregard of the obvious interrelationships that exist among the various groups. Exacerbating these problems is the lack of any mechanism for informing new municipal court judges (as well as other court personnel) of the existence of various procedures and programs. As a result, a new judge or clerk must learn "on the job," thereby decreasing the efficiency of the court during this learning process.

In addition to interacting with other agencies, each municipal court must also interact with and be responsive to the community in which it operates. The policies of the courts obviously affect the public, especially in such areas as personnel, scheduling, condition of facilities, and management of the court itself. Despite this fact, there is generally no mechanism providing for exchange of information between the court and the public. The issue is further complicated by the unique status of the municipal court. Although it is an essential part of the State's court system; the municipal court clearly remains subject to local control, especially as to personnel and budgetary issues. Coupled with the lack of tenure for municipal-court judges and most court staff, this has often placed the municipal-court judge in the untenable position of having to preserve his judicial independence and strive to improve court operations, while at the same time be completely dependent upon local authorities for his very appointment and the funding of the court. The result has often been a certain alienation between the two branches of government. The Task Force has found no coherent program in existence that would enable the court to respond to local concerns, while at the same time assisting the court in providing quality services

by procuring public support for its operations. Even more basic is the lack of any procedure or mechanism to assist in educating the public in matters relating to court operations and procedures.

In view of the foregoing, the Task Force has recommended the creation of the Vicinage Advisory/Liaison Committee. This Committee, consisting of between 15 and 20 people, will be similar to the Local Advisory Committees that assisted the Task Force in its efforts. Committee members will include representatives of all sectors of the criminal justice system, such as the Assignment Judge, Presiding Judge, Case Manager, County Clerk, as well as representatives of the Probation Department, Public Defender, Sheriff, Warden, County Prosecutor, and the local police. Additional members will be sought from among municipal prosecutors, municipal public defenders, municipal court clerks, the defense bar, mayors, social service organizations, and the public at large. Members will be appointed by the Presiding Judge with the approval of the Assignment Judge. It is anticipated that the Committee will serve as a forum for addressing issues of primary importance to the functioning of the courts (e.g., bail issues, processing of complaints, implementing Task Force recommendations, caseload processing, and backlog problems), as well as for resolving problems affecting relations between the different sectors of the criminal justice system (e. g., jail overcrowding, sentencing alternatives, rehabilitation, vocational programs, and probation supervision). It is also envisioned that the group will serve as a vehicle for enabling newly-appointed judges and court personnel to become acquainted with programs and procedures at the vicinage level.

The Task Force has also recommended that this Vicinage Advisory/Liaison Committee serve as the catalyst for the development of two subcommittees, each charged with separate and distinct areas of responsibility. The first of these groups, the Subcommittee on Interacting Agencies, will be made up of some members of the Vicinage Advisory/Liaison Committee (VA/LC) and others from the municipal courts and from many of the previously identified interacting agencies. It is intended that this group encourage the development of effective

working relationships between the courts and the interacting agencies by exchanging information on activities, policies, and procedures on topics that affect each other's operations, by establishing contacts with the various groups, and by creating a regular forum for the discussion of pertinent issues. This subcommittee shall also be responsible for bringing relevant matters before the larger Vicinage Advisory/Liaison Committee as necessary.

The second subcommittee, to be designated the Community Advisory Committee, shall be similarly structured. That is, a small group (three or four members) from the VA/LC will be selected to establish a committee consisting of "politically neutral" citizens from the vicinage, including representatives from the clergy, Chamber of Commerce, service-oriented groups (e. g., Rotary, Kiwanis, YMCA Boards), Grand Jury associations, and any other local public group that may be active in a given vicinage. These members shall be appointed by the Presiding Judge with the approval of the Assignment Judge.

The Community Advisory Committee will be charged with the responsibility of providing community input into court operations and for providing the court with a means to educate the public and to advocate the court's position on matters requiring improvement. It is anticipated that such a subcommittee will lead to greater interaction between the citizenry of each municipality and its municipal court. It should be noted that it will not be the purpose of the subcommittee to review or to comment on the daily performance of the individual municipal-court judges, and it will be expressly prohibited from reviewing individual decisions. Rather, the subcommittee will serve to examine areas such as the level of budget and personnel support required by municipal courts, problems with scheduling and workloads, the adequacy and condition of court facilities, and relations between the courts and the public, lawyers, litigants, and police.

The Task Force has also recognized that in some situations, particularly in urban municipalities with larger and more complex courts, there may be a need and/or desire to establish several subcommittees to serve similar functions as the Community Advisory

Committee. Should that prove to be the case, it is anticipated that the vicinage Community Advisory Committee (CAC) would assist the individual municipality in establishing and maintaining such a group. Again, membership would be comprised of politically-neutral members of the local community who are interested in the functioning and operations of the local court. In addition to serving as a liaison between the community and the municipal court, a local CAC would also maintain contact with the vicinage CAC, referring such matters to it as may be appropriate.

References

"AOC Services to Municipal Courts," Committee on Administration, Appendix B.

"Community Advisory Committees to Municipal Courts," Committee on Accountability, Appendix A.

"Liaison With Interacting Agencies," Committee on Administration, Appendix B.

"Municipal Court Expanded Visitation Program," Committee on Administration, Appendix B.

"Vicinage Advisory/Management Teams," Committee on Administration, Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

Exhibit 5.b, 1985 Judicial Conference.

Related Positions

The following Positions may be applicable in implementing Position 1.3:

Position 2.1	Community Dispute Resolution Committees
Position 6.1	Domestic Violence
Position 6.4	Victim/Witness Services

Position 1.4

Management Assistance Team

Each vicinage shall establish a Management Assistance Team to act as a resource unit to take corrective actions in those courts that have been identified as being in need of major assistance. This unit, composed of existing municipal court personnel with demonstrated expertise in the different operating areas of the court, could be dispatched by the Assignment Judge/Presiding Judge to any municipal court found to have systemic operational problems.

Commentary

A recurring theme identified by the Task Force was that problems have developed in our municipal court system because of its rapid growth during the last decade. In almost every court there has been a significant increase in caseload and, equally important, court clerks and their support staff have been burdened with ever - increasing administrative responsibilities, many of which are of a technical and complex nature. Stringent, although necessary, time limitations on the performance of innumerable office functions have been imposed by the Administrative Office of the Courts as well as by other agencies with which courts interact. Furthermore, these new functions and concomitant time limits have been imposed upon the courts on a somewhat haphazard basis. As a result many courts have experienced difficulties in maintaining an orderly operational process. Fortunately, because of the dedication of their personnel, most courts have been able to meet the foregoing challenges. Unfortunately, however, some courts have experienced problems of such magnitude as to require action by the Assignment Judge ranging from temporary shutdown to seeking the assistance of competent personnel from other courts to

work in a beleaguered court until a state of normalcy resumes. While these crisis situations have been relatively few, they have arisen on a sufficient number of occasions to warrant consideration of the formation of a Management Assistance Team within each vicinage.

Unlike Position 2.5 (Emergency Procedures), which provides guidelines for coping with short-term problems, the Management Assistance Team will be called into action by the Assignment Judge/Presiding Judge when a court has been identified as having major structural difficulties -- difficulties that have developed over the years and cannot be resolved by the court's own staff. The team will provide staff assistance, including restructuring and staff training, to ensure that the problem will not recur.

The Presiding Judge will be responsible for the selection, with the approval of the Assignment Judge, of all members of the Assistance Team. Personnel selected might include the Case Manager for Municipal Courts, a court clerk, a person with expertise in docketing and scheduling, a violations clerk, and perhaps an experienced cashier. The above is not intended to formalize either the membership of the team or its number; rather, each vicinage Presiding Judge will be responsible for establishing an Assistance Team appropriates for the particular vicinage.

The team will constitute a reserve unit and will meet on a regular basis to formulate a detailed procedure to be followed should its services be required. It is recommended that within three months of the selection of the team members, each vicinage Presiding Judge prepare a procedure. The action plan must necessarily be in somewhat general terms. It will not be designed to deal with a particular court, but will strive to accomplish two equally important goals: re-establishing normalcy in the court and educating personnel in the team members' areas of expertise.

If a team is called into action by a PJ-AJ order, the question of reimbursement must be resolved. The Task Force has concluded that it is the responsibility of the municipality receiving the services of the team to provide compensation for the team members.

In order to ensure funding, it will be appropriate for the court itself, through the vicinage

Presiding Judge, to petition the Assignment Judge to request the appropriation of emergency funding by the municipality. If this effort proves unsuccessful, an order by the Assignment Judge compelling the municipality to provide funding will be appropriate.

Unfortunately, history has shown that courts do encounter real difficulties from which they cannot extricate themselves without outside help. This position recommends the designation in each vicinage of a professional group of highly-trained persons who will be prepared to provide immediate assistance to the courts.

References

"Municipal Court Expanded Visitation Program," Committee on Administration Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

Exhibit 5. d, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 1.4:

Position	1.1	Vicinage Presiding Judge - Municipal Courts
Position	1.2	Case Manager - Municipal Courts
Position	1.5	Expanded Municipal Court Services Unit
Position	2.5	Emergency Procedures
Position	2.11	Evaluation of Calendar Performance

Position 1.5

Expanded Municipal Court Services Unit

The Municipal Court Services Unit, currently a subdivision of the Criminal Practice Division, shall be established as a distinct division within the Administrative Office of the Courts.

In addition to providing assistance to the 530 municipal courts, the Municipal Court Services Unit will also be responsible for developing and implementing the policies and programs recommended by the Task Force, as approved by the Supreme Court.

Commentary

In its examination of the administrative structure, the Task Force has also examined the nature of the resources available to the municipal courts at the state level. Since its inception in the early 1950s, the Municipal Court Services Unit has grown only from two to three employees, who are charged with the responsibility of providing assistance and guidance to all 530 municipal courts. This small staff is not sufficient to respond to all the questions and problems

that currently arise from the field, and it clearly does not have the resources to plan constructively for long-term improvement of the municipal courts. The problem will become even more acute when this unit is called upon to assist in the task of implementing many of the Task Force recommendations. The Task Force, therefore, recommends that the present Municipal Court Services Unit (currently a subdivision of the Criminal Practice Division) be expanded into a separate and independent division of its own, with such additional personnel as may be required.

Even before the creation of the Task Force, the municipal-court bench indicated that the Administrative Office of the Courts should be providing more resources and greater assistance to the Municipal Court system. The implementation of Task Force recommendations will intensify that need. It is anticipated that the expanded Municipal Court Services Division will be charged with the following additional responsibilities:

1. The development of the Presiding Judge/Municipal Court Administrator concept.
2. The development of educational opportunities to be made available to municipal-court judges a: municipal-court personnel.
3. The development of new programs to meet the changing needs of our courts, as a result of recent changes in legislation and the recommendations of this Task Force.
4. The coordination with other sections of the Administrative Office of the Courts (e.g., Statistical Services, Legislative Services, Computer Services, and Criminal Practice), to assure coordinated activity, to avoid duplication and to maximi2e productivity.
5. The expansion of the capacity of the Administrative Office of the Courts to respond to problems in municipal courts in an active, rather than a reactive manner.
6. The Provision of on-going review and update of the new Municipal Court Procedures Manual.
7. The identification of contact persons within state agencies affecting municipal court

operations, for the purpose of addressing those interagency problems that must be resolved at the state level. In this way statewide policies and procedures may be promulgated. Meetings with Presiding Judges and Case Manager - Municipal Courts will also be held as a forum for identifying state-level problems and issues. A directory of state - agency contact persons should be prepared for distribution to the municipal courts.

The need for a separate Municipal Court Services Division within the Administrative Office of the Courts is apparent. It is only through the establishment of such a division that sufficient resources and personnel can be devoted to the municipal courts so as to ensure both the continuation of existing programs and the development and implementation of new practices and procedures as envisioned by the Task Force.

The responding Local Advisory Committees unanimously supported the concept of creating a new Municipal Court Division within the Administrative Office of the Courts. While some groups expressed a degree of concern regarding "bureaucratic growth," it was generally agreed that such an expansion was necessary to provide the municipal courts with adequate assistance. Moreover, several LACs commended the present Municipal Court Services Unit for its current service-orientation, indicated surprise that such a small staff could render such excellent support, and recommended the continuation and enlargement of such assistance.

References

"AOC Services to Municipal Courts," Committee on Administration, Appendix B.

"Liaison With Interacting Agencies," Committee on Administration, Appendix B.

"Municipal Court Expanded Visitation Program," Committee on Administration, Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

"Municipal Court Forms," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 1.5:

Position 1.4	Management Assistance Team
Position 3.7	Municipal Court Clerk/Administrator Qualifications and Compensation
Position 4. 1	Budget Reporting
Position 7. 1	Minimum Standards for Municipal Court Facilities
Position 7.3.a	Computerization and the Administrative Office of the Courts

Chapter 2

Calendar Management

Introduction

Other chapters in this report recite the numerous problems of the municipal courts with respect to defective organizational structure, low priority in the municipal budget process, nagging personnel concerns, and outmoded procedures. These problems, combined with burgeoning caseloads, have weakened the courts' ability to manage their calendars properly.

New Laws have contributed to this rising caseloads and have added administrative responsibilities. Legislation regarding domestic violence, drunk driving, increased traffic penalties, and the Violent Crimes Compensation Bureau, to mention a few, have increased and changed the nature of municipal-court operations.

New legislation imposes demands for data to which the Administrative Office of the Courts and other agencies must respond. For example, information is needed by the Administrative Office of the Courts and the Department of Motor Vehicles to track the progress of DWI cases if the State is to receive its share of federal funds and for other such purposes.

In 1980, the Supreme Court appointed a Committee on Efficiency in the Operation of the Courts, which found that chief among the problems faced by the trial courts was a lack of procedural cohesiveness "particularly with respect to such key centralized functions as case flow

management."[1] Although the Efficiency Committee was established for the review of caseload-management problems at the Superior Court level, it is clear that many of the same problems trouble the Municipal Courts. As noted in the 1984 Annual Report, New Jersey's Municipal Courts still operate largely under procedures established when these courts were created in 1948.

With these courts' existing procedures inadequate to meet the increased demands being placed upon them, the municipal courts must adopt the same positive case management approach taken by the Superior Courts. Also, in this time of limited resources, it is absolutely essential that the courts maximize the utility of each budget dollar. The courts must be able to decrease the amount it costs to process each complaint to a level that shows that the budgetary dollar is being properly spent.

The Task Force has examined techniques of diversionary programs (i.e., Community Dispute Resolution Committees and Pre-trial. Intervention on the Municipal Court level), as well as other methods to update Municipal Court procedures. These programs will help reduce case backlogs as well as provide for more effective ways to dispose of cases. Efforts to improve municipal-court efficiency need not diminish fairness and due process. Traditional justice concerns and efficiency should go hand-in-hand in any well-run judicial institution.

Reference

1. 1981 Annual Report of the New Jersey Judiciary, p. 31.

Position 2.1

Community Dispute Resolution Committees

Each municipal court should be encouraged to establish a Community Dispute Resolution Committee of citizens to assist in the resolution of neighborhood disputes and other selected non-criminal complaints.

Commentary

The use of alternative dispute resolution programs, designed to resolve disputes informally and out of court, has become popular around the country during the past 10 years. In New Jersey, the Supreme Court Committee on Complementary Dispute Resolution Programs, chaired by Associate Justice Marie L. Garibaldi, has been studying various programs, including the use of citizen committees, to hear certain types of complaints at the municipal level.

The primary purposes of Community Dispute Resolution Committees (CDRC) are as follows:

1. To provide an alternate method of disposition of minor quasi-criminal offenses to relieve court backlogs.
2. To establish a flexible and open forum, not constrained by sometimes complex

rules of procedure, to enable citizens with minor problems to resolve them without the expense of legal representation and the possibility of a record of conviction.

3. To encourage local citizens to become involved in the justice system, thereby increasing their awareness and support.

Conceptually, the only matters that will be referred to the CDRC will be those involving citizen complaints. Accordingly, the following "non-criminal" disputes will be appropriate referrals to local CDRCs: those involving neighbors or family members (other than those filed under the Domestic Violence Act), landlords and tenants, property, businesses and consumers, harassment, dog complaints, noise, bad checks, trespassing, destruction of property, and simple theft cases involving neighbors or relatives.

All such complaints involve citizen against citizen. The committees are "solution-oriented" and are not preoccupied, as are the courts, with an adversarial atmosphere to determine guilt or innocence and the imposition of a penalty. Committees allow the participants to disclose the genuine problem freely and to assist in formulating a lasting solution. No complaints signed by a police officer or a public official can be referred to the Committee.

It is the responsibility of the municipal courts to provide alternative methods so that citizens can resolve conflicts in a manner that will not generate another court appearance. Community dispute resolution committees have the potential to resolve disputes in a less formal setting and to assist the courts in decreasing their backlogs.

Other issues that are being studied by the Garibaldi Committee involve how to train mediators effectively and efficiently, whether referral should be voluntary or mandatory, and liability of individual members and the municipality.

In addition, all dispute programs instituted will be studied by this Committee to determine how mediation programming may be improved.

The Local Advisory Committees were in favor of the position, with only minor

reservations about the exclusive use of volunteers. It was recommended that volunteers at least be assisted by professional mediators who would possibly be more experienced in sensitive family and neighbor disputes. It was further stressed that all mediators should be well-trained.

References

E. Brody, "Mediating Minor Disputes", New Jersey Lawyer, Journal of the New Jersey State Bar Association, No. 107, May, 1984, p. 10.

Municipal Court Manual, Chapter II, Rule 7:3-2 allows judges to refer to a designated neutral person charged with an offense that may constitute a minor neighborhood or domestic dispute. The notice - in - lieu - of -complaint requests an appearance before the court and approval by the Assignment Judge in order to determine whether a complaint should issue or other appropriate action be taken.

"Community Dispute Resolution in the Municipal Courts," Committee on Administration, Appendix B.

Exhibit 5. d, 1985 Judicial Conference

Exhibit 5.g, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 2.1:

Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.11	The Role of the Prosecutor

Position 2.2

Pre-Trial Intervention on the Municipal Court Level

Pre-trial Intervention (PTI) is a diversion program that permits selected defendants to meet certain performance requirements and to have charges dismissed after a specific time. This program, which has been available since 1974 in Superior Court to those charged with indictable offenses, should be extended to defendants in municipal court charged with lesser offenses. The program should be operated by the Superior Court Pre-Trial Intervention staff.

Commentary

For more than a decade, Pre-trial Intervention (PTI) has been available to select first-time offenders in Superior Court indictable matters, successfully diverting many defendants amenable to rehabilitation from the traditional trial system. The recidivism rate for PTI participants is 4%. Defendants charged with lesser offenses (Disorderly Persons, Petty Disorderly Persons, and Local Ordinance Offenses) in the municipal courts should have the same opportunity for application to PTI as those charged with more serious offenses in Superior Court.

Through appropriate revision to the existing PTI Rule 3:28, a Municipal PTI Program

could be implemented in the municipal courts. Procedural rules adopted should be similar to those employed on the Superior Court level, but should emphasize less formality and minimal paperwork. In addition, the goals and objectives of such a program, as well as the criteria by which a defendant is evaluated for acceptance, should be consistent with those set forth on the Superior Court level.

The concept of Pre-Trial Intervention in the municipal courts received a significant number of valuable comments from the Local Advisory Committees. Uniformly the Local Advisory Committees' comments pointed out the need for a professionally-run program, which would be best administered by existing court personnel. This position was ultimately adopted by the Task Force. It should be noted, however, that there were very few Local Advisory Committees that did not see the need for PTI on this level or felt that PTI should be administered by the local municipal courts.

The need of diversionary programs also was recognized by the attendees at the Judicial Conference. In post-conference proceedings the Executive Committee decided that the conference comments on this topic were important, particularly insofar as they outlined alternative methods/procedures that might be used in place of those recommended in the Task Force report. The Executive Committee concluded that even if the Supreme Court did not adopt the foregoing proposal, the concept of diversionary programs within the municipal courts was of such importance as to merit a review of alternative approaches.

References

"Pre-Trial Intervention in the Municipal Courts", Committee in Administration, Appendix B.

Exhibit 2.g, Rule 3:28 Pre-Trial Intervention.

Exhibit 5.c, 1985 Judicial Conference

Exhibit 5. d, 1985 Judicial Conference

Exhibit 5.h, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 2.2:

Position 1.1	Presiding Judge - Municipal Courts
Position 2.1	Community Dispute Resolution Committees
Position 3.11	The Role of the Prosecutor

Position 2.3

Conflicts in Scheduling

The Supreme Court should establish guidelines for the resolution of attorney scheduling conflicts. This policy should be administered at the local level by the Court Clerk/Court Administrator and/or by the Municipal Court Judge. If a conflict cannot be resolved at the local level, the matter should be referred to and resolved by the Assignment Judge or the vicinage Presiding Judge, if so designated.

Commentary

One of the significant problems affecting case processing in municipal courts is that of conflicts in attorney schedules. The increased volume of cases and growing number of courts scheduling day-time sessions have increased the frequency c f. such conflicts. These conflicts involve situations in which municipal court sessions are being scheduled not only at the same time as other court sessions (e.g., Municipal, Superior, and Administrative Law Courts), but also at the same time that other legal proceedings (e.g., depositions) are routinely held. Therefore, it is necessary to promulgate guidelines to be followed when a conflict in scheduling arises, to avoid unnecessary delays in municipal-court proceedings.

To accomplish this goal in those rare instances when it is not possible to accommodate informally the needs of all the courts involved, the following priorities should be followed in determining which schedule should take precedence:

a. Supreme Court;

b. Appellate Division;

c. Superior Court - jury trials in progress;

d. Municipal Court - DWI cases (older case has priority);

e. Superior Court - jury trials not in progress;

f. Superior Court - non-jury trials in progress;

g. Municipal Court cases (other than DWI) older than sixty days (older case has priority);

h. Superior Court - non-jury; and

i. Depositions.

It is anticipated that it may be appropriate to amend Court Rule 1 : 2-5 in order to achieve the above priorities. Finally, any policy adopted in this regard should be clearly enunciated so that all judges, attorneys, and litigants are aware of it.

This approach was very well received by the Local Advisory Committees. Only two committees were opposed. One said the scheduling list of priorities should be strictly enforced, while the other said it should be flexibly enforced. The overall sense, however, was that such a list would be helpful and should be enforced to allow for only special exceptions.

References

"Conflicts in Scheduling," Committee on Administration, Appendix B. Exhibition 5. d, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 2.3:

Position 2.4	Postponements
Position 2.6	Case Processing

Position 2.4

Postponements

The Administrative Office of the Courts should develop statewide guidelines for continuances or postponements of municipal court cases. Incorporated within this policy should be a presumption that absent exceptional circumstances, all municipal court cases should be adjudicated within 90 days.

Commentary

The lack of uniform policy regarding postponements and adjournments causes frequent problems in case scheduling. Even within a single municipal court there may be no consistent approach to those requests. This absence of guidelines creates difficulties for attorneys, judges, and court personnel.

The problem is not unique to New Jersey. The President's Commission on Criminal Justice Standards and Goals recognized that "[i]n many jurisdictions judges have unlimited authority to grant continuances and often do so as a matter of routine or for frivolous or inconsequential reasons. It ultimately recommended that no continuance be granted without a verified, written motion and a showing of good cause.

The Task Force recommends development of uniform guidelines regarding postponements. These guidelines should include the following:

1. each municipal court judge should submit to the Presiding Judge, for review and approval, a written policy regarding adjournments;
2. the uniform traffic ticket should be revised to include a statement of rights and minimum mandatory penalties in more serious offenses to minimize appearances by uninformed defendants;
3. the policy of allowing police officers to schedule the date of court appearances should be abandoned to allow the court to control its calendar effectively;
4. breathalyzer machines used in the municipality should continuously meet testing requirements under the law; and
5. driver's record abstracts should be obtained by return mail to allow for prompt sentencing.

Virtually every Local Advisory Committee agreed that a postponement policy would be helpful, and it was therefore strongly endorsed. This position was further supported by the Task Force members' recognition that municipal court judges appropriately have the authority to discourage unnecessary delays and adjournments, and that much of the enforcement of any policy would occur at that level.

References

1 Courts, National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 1973, p. 97.

"Postponements," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.4:

Position 2.3	Conflicts in Scheduling
Position 2.6	Case Processing

Position 2.5

Emergency Procedures

Each municipal court should develop a set of priorities for work-flow that can be followed during periods of short-term crisis.

Commentary

It is not uncommon for a municipal court to face a workload crisis caused by an unusual increase in the number of complaints or by inadequate staff. During these periods of crisis some duties are more important than others, and work should be done by priority.

In order of priority, the Task Force suggests that the courts:

1. immediately docket new cases;
2. process and deposit monies;
3. perform post-court duties;
4. forward indictable complaints to county prosecutor;
5. establish court calendar;
6. carry out routine procedures (e.g., failure -to-appear notices, bench warrants, etc.).

The Task Force suggests that the Administrative Office of the Courts create a committee to develop guidelines for use by the courts in crisis. It should be the responsibility of the Presiding Judge or the Assignment Judge of each vicinage to aid the municipal courts in developing individualized crisis-management plans.

To support this effort, the Administrative Office of the Courts should promulgate a directive that requires a municipal court in crisis to contact the Assignment Judge, Presiding Judge, or Trial Court Administrator in its vicinage. After notification, the Presiding Judge or Assignment Judge should be authorized to require the expenditure of funds by the municipality for short-term clerical assistance until a permanent solution to the crisis is found.

It was suggested by several Local Advisory Committees that Court Clerks should be consulted when the final list of priorities for emergency situations is developed.

References

"Emergency Procedures," Committee on Administration, Appendix B.

"Municipal Court Expanded-Visitation Program," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.5:

Position 1.1 Presiding Judge - Municipal Courts
Position 1.2 Case Manager - Municipal Courts
Position 1.4 Management Assistance Team
Position 2.6 Case Processing in the Municipal Courts
Position 3. 7 Municipal Court Clerk/Administrator Qualifications and Compensation

Position 2.6

Case Processing

Each municipal court judge, in conjunction with his court clerk, should develop and actively administer case-processing procedures designed to ensure a just, prompt, and economical resolution of all matters. In addition, the Administrative Office of the Courts should develop and submit to the Supreme Court a Court Rule to resolve the problem of scheduling expert witnesses.

Commentary

Each municipal court may be regarded as an information-processing system, in that it serves to receive, create, maintain, use, distribute, store, and, eventually, discard court information. The problems to be solved involve proper management of new records and the maintenance of old ones, so as to improve the productivity and effectiveness of the Court.

The court clerk should exert control over establishing and maintaining the case-processing system. To initiate a case processing system, the court clerk should prepare an analysis of the information flow and designate (1) the source of the information, (2) who needs the information, (3) what to do with the information, and (4) the result of processing the information. In addition, the court clerk should examine the method in which cases are filed and the resources available to

the court to ensure that each is sufficient to meet the case-processing needs of the court. From there, the court clerk should propose solutions that will meet the court's needs.

After the court clerk prepares this analysis and proposes solutions to meet the court's needs, procedures should be introduced to assist in streamlining the workflow. One such method would require that the judge be involved in determining which cases need special treatment and designating them accordingly. Another method is one in which the court would set guidelines regarding appearances of expert witnesses. This has been a particular source of delay, especially with driving while intoxicated (DWI) cases. It is recommended that a Court Rule be established to correct this problem. (For background information on court-appointed expert witnesses, see Township of Wayne v. Kosoff, 73 N.J. 8, 14-15 (1977)).

The proposed Court Rule would establish guidelines pertaining to the appearances of expert witnesses and should be modeled on Rule 5:3-3, which involves the examination of experts in Family Court matters. In addition, the new Rules of Professional Conduct, effective September, 1984, specifically Rules 1.3 and 3.2, which require a lawyer to act with reasonable diligence and promptness in representing a client and to make a reasonable effort to expedite litigation, should be considered by the municipal court judge when implementing the aforementioned case-processing plan.

Reference

"Case Processing," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 2.6:

Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.8. a	Defense by Affidavit
Position 2.9	Violations Bureau
Position 2.11	Evaluation of Calendar Performance

Position 2.7

Municipal Court Forms

The Administrative Office of the Courts should issue a directive regarding the following:

1. No new forms shall be imposed upon the municipal courts by any agency without the review and authorization of the Administrative Office of the Courts
2. A Supreme Court Committee or Subcommittee shall be established (to include representatives of the Administrative Office of the Courts and interacting agencies) to study and review all forms and requests for information prior to these requirements being imposed on the courts.

Commentary

Since the inception of the municipal court system in New Jersey, the transfer of information to interacting agencies has been recognized as essential. For this purpose, a number of forms have been developed and promulgated to ensure uniformity when the information was transferred. Since there are many interacting agencies, each with its own need for information from the municipal court, three major problems appear:

a. Lack of coordination among the agencies resulting in the same data being sent to various agencies.

b. Lack of coordination within some agencies, resulting in requests for information

that they already have on file.

c. Poorly designed forms that are difficult to complete.

Any new forms, as well as already existing ones, should be evaluated by the committee recommended in this Position. The following considerations should be paramount:

1. whether the information being requested is really needed;
2. whether the information is important enough to justify the work necessary to collect it;
3. whether the information is already being received by another part of the agency, and if so, whether there is a need for the municipal court to resubmit the data;
4. whether the information requested is available from other sources, and if so, whether there is a need for the court to replicate;
5. whether the form is properly designed for easy collection and transmittal. All forms should be reviewed in order to expedite the collection and transmittal of data.

The informational demands on municipal court personnel are increasing on a day-to-day basis. It is only through the establishment of a review body that the amount of work and data processed by the municipal courts can be coordinated to ensure that each agency's requirements are satisfied without an undue burden being placed on municipal court personnel.

The position on municipal court forms was unanimously endorsed by Local Advisory Committees, with one LAC stating, "This action ... is long overdue." A representative of Local Advisory Committee of Vicinage XII, Mercer County, further noted "Anything that can be done to reduce the paper work burden on the Municipal Courts should be implemented immediately."

Reference

"Municipal Court Forms", Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.8:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.6	Case Processing

Position 2.8

Alternatives to Adjudication of Parking Matters

Methods and policies for processing parking matters should be modified to allow for informal adjudication. Parking matters, therefore, should be removed from the jurisdiction of the court and placed in other hands. However, the handling of traffic matters should remain under judicial control.

Commentary

All contested traffic matters, whether parking or non-parking, are heard by the judiciary under rules of criminal procedure. In other states, however, the authority to adjudicate parking matters is vested with persons other than judges. These non-judicial officers, who hold such titles as "hearing officer" (usually lawyers), or "judicial officer" (a person trained in the law), perform such quasi-judicial functions as the taking of pleas and the hearing of contested cases. In each instance certain characteristics of judicial proceedings are retained.

Professor Robert Force, in an assessment of problems facing administrative adjudication,

concluded:

> Regardless of whether administrative agencies will be judicial to some degree, or whether courts will function more like administrative agencies, it appears inevitable that traffic adjudication will be handled in a matter which incorporates some of the attributes of both.[1]

Those who have compared the two concepts find no significant differences between them. Therefore, at the very least, judges in a courtroom proceeding should be permitted to handle parking matters in a less formal manner (similar to Civil Hearing Officer proceedings used in other jurisdictions) when appropriate.

References

1. R. Force, "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers", in Arthur Young & Co. Effective Highway Safety Traffic Offense Adjudication, Vol. 3 at 97-186 U.S. Department of Transportation, Highway Traffic Safety Admin. (1974).

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8:

Position 7.3	Overview to Computerization
Position 7.3.a	Computerization and the Administrative Office of the Courts
Position 7.3. b	Existing Computerized Courts
Position 7.3. c	Courts Using Computer Bureaus
Position 7.3.d	Computerization of the Manual Courts

Position 2.8.a

Defense By Affidavit

Court Rules should be amended to allow a defendant to plead by way of written certification (signed statement) in those cases that now require an affidavit (signed, notarized statement), and the procedure should be extended beyond hardship cases.

Commentary

Pleas by affidavits to certain traffic violations have been permitted by Rule in hardship cases, such as when the defendant lives far away and/or would have to take time off from work. Liberalizing this Rule to permit pleas by certification and in circumstances other than hardship would allow judges to conduct summary proceedings using the certification and other documents to determine the facts and adjudicate the matter. This would reduce the number of formal trials, adjournments, and many police appearances, while meeting the needs of the court and preserving the rights of the parties.

Many appearances by police officers, as well as formal trials and adjournments, are avoided when the judge conducts a summary proceeding using any documentation in proper form, determines the relevant facts, and adjudicates the matter. Therefore, consideration should be given to the relaxation of Rule 7:6-6 procedurally to permit a certification, instead of affidavit, to liberalize its use in other than hardship cases.

References

New Jersey Municipal Court Manual, Chapter V, Rule 7:6-6.

Pressler, Sylvia Rules Governing the Courts of the State of New Jersey, 1983 Newark, 1982, p. 1092.

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8. a:

Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.9	Violations Bureau

Position 2.8.b

Parking Tickets Unable To Be Processed

A uniform policy shall be developed by the Administrative Office of the Courts to provide for the disposition of parking tickets that cannot be prosecuted due to the lack of an identifiable defendant.

Commentary

When a summons is issued to the owner of an unattended vehicle (virtually all parking matters), the owner's name and address is obtained through the Division of Motor Vehicles. Occasionally, this information cannot be obtained because it is not possible to match the data supplied by the courts with the data in the Division of Motor Vehicles file (a so-called "no hit"). There is currently no uniform policy governing the disposition of these matters, resulting in disparate handling by different courts. Guidelines should be developed to rectify this situation by either Court Rule or administrative policy that would provide for the clear and appropriate disposition of such tickets.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8.b:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.a	Defense by Affidavit
Position 2.8.c	Docketing of Uniform Traffic Ticket
Position 2.8.d	Return of Uniform Traffic Ticket

Position 2.8.c

Docketing of Uniform Traffic Ticket

The uniform traffic ticket should be revised to facilitate interpretation by court personnel responsible for docketing. Any revision should be in a format conducive to an automated system of operation.

Commentary

The uniform traffic ticket is ill-designed for manual processing and modern data entry. At best, the document serves the need of the officer to issue something at the site of the incident and the need of the court to have an original for adjudication.

The vital information to be recorded is scattered throughout the document and does not appear in logical data- entry order. Spaces for printing by the officer are too small and restrictive. The model form for data-entry purposes would place all vital information at one location, preferably the top of the form, in a logical sequence. Spaces would be boxed to restrict one bit of information (letter or number) to a box and would be large enough to be legible.

The uniform traffic ticket should be redesigned to accommodate current needs and uses.

Consistent with Position 2.7 entitled "Municipal Court Forms," it is suggested that before final adoption, the Uniform Traffic Ticket be reviewed by the assigned committee on Forms in order .to bring the ticket to a level that reflects a "state of the art" document.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8. c:

Position	1.5	Expanded Municipal Court Services Unit
Position	2.6	Case Processing
Position	2.7	Municipal Court Forms
Position	2.8	Alternatives to Adjudication of Parking Matters
Position	2.8. a	Defense by Affidavit
Position	2.8.b	Parking Tickets Unable To Be Processed
Position	2.8. d	Return of Uniform Traffic Ticket

Position 2.8.d

Return of Uniform Traffic Ticket

A statewide standard policy should be developed for the return of tickets to the municipal courts by the issuing law enforcement authority.

Commentary

The municipal courts and the general public are inconvenienced by the administrative delay between the issuance of a traffic ticket and its ultimate return to the court. Tickets may be issued by a variety of law- enforcement authorities, other than the local police, within the municipality. These include institutional police from universities and colleges, the Port Authority of New York and New Jersey, Amtrak, and other county, state, or municipal officers. Practices vary among enforcement agencies as to when their tickets reach the court. Factors that may affect this timing are proximity to the court, hand delivery versus mailing, and review practices within the agency itself.

However, whatever the practice, tardiness in returning the ticket to the court often results in delayed data entry, difficulties in spacing and planning of work, and processing problems, especially when a defendant pays (or attempts to pay) a ticket prior to its receipt or recording by the court.

In order to ensure that each traffic ticket is promptly returned to the municipal court, the Administrative Office of the Courts should develop a minimum standard to be followed uniformly by all agencies issuing those tickets.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8. d:

Position	1.5	Expanded Municipal Court Services Unit
Position	2.6	Case Processing
Position	2.8	Alternatives to Adjudication of Parking Matters
Position	2.8.b	Parking Tickets Unable To Be Processed
Position	2.8. c	Docketing of Uniform Traffic Ticket

Position 2.9

Violations Bureau

The responsibilities of the violations bureau of a municipal court should be expanded to include, in addition to the payment of fines and costs, the acceptance of proof of valid documents. Court personnel should be permitted to accept licenses, insurance cards, and registrations, thereby allowing for the disposition of matters that would otherwise require the attention of the prosecutor and/or judge.

Commentary

The first traffic-violations bureaus were established approximately 50 years ago, because the courts could not keep pace with the mandatory court-appearance requirement in light of the number of tickets being issued. Rule 7:7-1 permits a municipal court to establish a violations bureau, if required for the efficient disposition of the court's business and the convenience of defendants.

Typically, a violations bureau consists of court staff who may, under the direction of the court, accept a motorist's written appearance, waiver of plea of guilty, and payment of a pre-set penalty for scheduled non-hazardous traffic offenses.

According to the report entitled Proceedings in the Municipal Courts (September 1, 1982

- June 30, 1983), approximately 4,500,000 traffic summonses are being issued statewide. This report further indicates that 94% of all parking tickets and 65% of all non-parking traffic tickets disposed of by the municipal courts were handled by violations bureaus without the necessity of a court appearance by the defendant. The role of the bureau is, therefore, crucial to the effective functioning of the municipal court system.

However, the number of dispositions would increase if the Court Rules did not exclude certain matters from violations bureau authority. Violations bureaus should be allowed to handle an increased variety of offenses (see "references" for Rule 7:7-3 that lists offenses excluded from authority of Violations Clerk), such as by accepting proof of valid operator's license, insurance, or registration submitted by motorists charged with failure to produce any of these documents. Of course, to assure controls proper procedures would need to be implemented carefully.

The purpose in expanding the authority of the violations bureau to accept proof of documents is to reduce need for the formal processing of cases in which a defendant simply wishes to plead guilty and pay the fine, and to eliminate the necessity of a defendant having to travel great distances, which often requires a day off from work.

References

Eight offenses are specifically excluded from the authority of the violations clerk pursuant to Rule 7:7-3 as follows:

1. non-parking traffic offenses requiring an increased penalty for a subsequent violation;
2. offenses involving traffic accidents resulting in personal injury;
3. operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his custody or control;
4. reckless driving;
5. careless driving, when there has been an accident resulting in personal injury;
6. leaving the scene of an accident;
7. driving while on the revoked list;
8. driving without being licensed.

"Violations Bureau," Committee on Traffic and Computerization, Appendix D.

Exhibit 5. f, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 2.10:

Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.a	Defense by Affidavit

Position 2.10

Handling of Indictable Complaints

In the handling of indictable complaints, the following standards should be adopted:

1. A formal, working relationship, as well as regular communication, should be developed between county and municipal prosecutors.
2. The Attorney General and County Prosecutor should review alternatives to the current system of handling indictable complaints and should promote procedures that expedite prosecutorial screening.
3. A study should be conducted to examine the types of cases that result in remands. Upon completion of that study, consideration should be given either to change the jurisdiction of the municipal courts legislatively or expand their authority to allow them to proceed on these cases by "Waiver of Indictment" under N.J.S.A. 2A:8-22.

Commentary

Currently, all indictable complaints are filed in municipal courts. Following a first appearance (or occasionally after a probable cause hearing), the matter is referred to the county, at which time the County Prosecutor screens all cases to determine those that should be presented to the Grand Jury for indictment.

Indictable complaints that are referred by a municipal court to the County Prosecutor pursuant to Rule 3:4-3 may be disposed of by the County Prosecutor in a variety of manners short of indictment or accusation. These forms of non-indictable disposition are as follows:

1. Termination of the complaint by administrative dismissal.
2. Referral of the matter to the originating municipal court by administrative dismissal with referral (sometimes called "remand" or "downgrade") of the indictable complaint back to the municipal court for hearing as a lesser disorderly offense.
3. Dismissal of the indictable complaint by a grand jury.
4. Dismissal of the indictable complaint by a grand jury with referral back.
5. By Waiver under N.J.S.A. 2A:8-22. A seldom-used procedure by which certain indictable offenses (notably, thefts under $500.00) may, by written consent of the County Prosecutor and the defendant, be heard in the municipal court, which becomes vested with authority to sentence the defendant with the indictable-level penalties of the applicable statute upon judgment of conviction.

The practice of down-grading and returning complaints to the courts creates numerous problems at the municipal level. The current procedures delay the adjudication of these matters, often resulting in their dismissal, as witnesses and/or complainants lose interest or cannot be located. In addition, down-graded offenses are not always consistent with the facts that gave rise to the indictable offense, thereby resulting in further dismissals. Finally, the administrative demands of the process require a substantial commitment of time and resources at the municipal level.

Currently in New Jersey only 50% of persons charged with indictable offenses are ultimately indicted. Nearly one-third of those charged with indictable offenses are remanded to the municipal courts by the Prosecutor or grand jury for disposition on disorderly persons complaints. In addition, one of the more difficult and complex issues facing the municipal courts is the proper role of these courts as to indictable matters.

Therefore, a working relationship and formal Lines of communication should be developed between municipal prosecutors and the County Prosecutor's office. Such a system of communication would allow for the exchange of information regarding specific cases, significantly reducing the time required to determine whether a complaint should be handled as an indictable offense or remanded to the municipal court.

In addition, the Attorney General and County Prosecutors should review the procedures currently used to handle remands, explore alternative methods, and promote those that expedite prosecutorial screening. Several counties have developed programs that deserve close study and possible emulation by other jurisdictions.

Finally, a study examining the types of cases that result in remands should be conducted. That study will help determine the role Municipal Courts should play in expeditiously disposing of indictable complaints.

Local Advisory Committees strongly endorsed the position that screening should be done as early as possible, and preferably before forwarding indictable complaints to the county. By making an early decision to downgrade, substantial clerical and municipal court time would be saved. The LAC's were also favorable toward improving lines of communication between County and municipal Prosecutors as a method to avoid duplication of effort.

Reference

"Handling Indictable Complaints," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 2.10:

Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.11	The Role of the Prosecutor
Position 6.5	Plea Agreements in Municipal Courts

Position 2.11

Evaluation of Calendar Performance

The Administrative Office of the Courts should develop and promulgate standards of performance for the municipal courts. Those standards should be directed at improving such matters as calendar clearance, court productivity, and the realization of speedy trial goals.

Commentary

The task of establishing performance standards is particularly important in the context of municipal courts. Many aspects of court activity have escaped scrutiny, as these courts have never been held accountable to clearly enunciated goals or standards. In the past, the continued existence of the municipal court system was itself in question, and alternatives (such as regionalization of local courts) were under consideration. It is now evident, however, that not only will the municipal courts continue to function but that their status will be enhanced as they assume new responsibilities. Accordingly, it is imperative that standards of performance should be promulgated and that community and governmental officials at all levels be kept aware of how their courts adhere to those standards.

Several areas of concern have been identified as being central to effective court

management, including matters such as calendar clearance and backlog reduction, the implementation of speedy trial goals, and the development of productivity and cost-effectiveness standards. These matters will be discussed individually.

A. Calendar Clearance and Backlog Reduction

Simply defined, calendar clearance refers to the number of cases added to the system during a given time period compared with the number of cases disposed of during the same period. If a court disposes of as many cases as it has added, then it has "cleared" its calendar. The goal of 100% clearance is necessary to avoid adding to a continually expanding backlog. As the Chief Justice said at the October 1983 Conference of Municipal Court Judges:

> "There is a bottom line below which we cannot allow our court, your court, to fall. The test of minimum court performance is a concept called clearing the calendar. That is, for a given period disposing of at least as many cases as have been filed. It tests very simply whether we can keep up with the work the public asks us to perform... A court that doesn't clear its calendar can't even begin to make improvement, can't even begin to think about it. It simply has its hands full trying to survive. If your court can't even keep up with its work load it is in a crisis, a crisis that must be your first order of business."[1]

Calendar clearance of at least 100% is a basic goal for all courts. It is measured by dividing the number of dispositions by the number of filings. Therefore, if a court disposes of 3,000 cases in a month when 2,700 cases were filed, the calendar clearance rate is 3000/2700 or 111%. This ratio should be computed for each of the major classes of offenses, i.e., disorderly persons, parking, DWI, etc.

Once a court has begun to clear its calendar and is no longer adding to the backlog already accumulated, it is important for it to focus its efforts in disposing of "backlogged" cases. "Backlog" is defined as "the number of cases pending beyond the time goals established for their disposition." For it to be a useful standard or guideline, a backlog needs to be related to the "size" of the court. When the size of the backlog in the municipal court has been determined,

procedures must be implemented to reduce the accumulated pending inventory and ensure that it will not recur.

B. Speedy Trial

"Speedy Trial" must be included as one of the goals of every municipal court. There are several practical reasons why swift and fair disposition of cases must be pursued. It is axiomatic that when a case is delayed, the prosecutor's case becomes weaker. Witnesses can no longer be located, their recollections fade, and for one reason or another evidence becomes unavailable. In addition, delayed justice lessens the impact of deterrence. The Chief Justice noted, "We have made substantial improvement in criminal case processing. We have eliminated much delay but we still have far to go. Criminologists believe that speedy trials are essential to deterring crime. The achievement of speedy trial goals, therefore, continues to be in my highest administrative priority." To define the concept of "speedy," a survey was taken at the October 1983 Municipal Court Judges Conference in an attempt to ascertain what the judges in attendance thought were "reasonable" goals for the disposition of various cases. The following is their recommendation for each of the six categories of offenses that fall under the jurisdiction of the municipal court.

1. Indictable offenses: 48 hours from first appearance.
2. Parking: 14 days.
3. Ordinance violations: 21 days.
4. Moving violations: 30 days.
5. Disorderly Persons/Petty Disorderly Persons: 45 days.
6. Driving While Under the Influence N.J.S.A. 39:4-50): 60 days.

It is generally estimated that 90% of all cases should be disposed of within the respective time goals. The remainder would represent cases that are classified as having exceptional needs. These time goals may be implemented gradually over several phases of a statewide delay-reduction project.

To assist in ascertaining whether a court is achieving speedy trial goals, currently available

information allows for the estimation of the average age of the disposed-of cases ("the turn-around time"). This "turn-around time" may be useful in devising methods to gauge "speedy" trial. To calculate turn-around time the following ratio is used: average active inventory divided by average monthly dispositions. That is, if the average active inventory is 1 .000 cases, and the average monthly disposition is 250 cases, the "turn-around" ratio is 1000/250. This means the average turn-around time for all cases is approximately 4 months. Accordingly, it can be assumed that if a case is filed today, it will generally take 4 months to reach disposition. As with all other measurements discussed, standards must be established for an optimum turn-around time, which will enable the figures for a given court to be compared against both the optimum figure and a state or county-wide average. The statewide average "turn-around time" will initially be established as a standard for the first phase, and this figure will be reduced during following phases, consistent with goals that will be promulgated.

C. Productivity

Productivity is a measure of court efficiency. Courts should be encouraged to dispose of any eligible cases through the violations bureau and not to use bench time for taking guilty pleas for minor ordinance infractions and similar matters. Total judge hours, both time spent on the bench and on administrative duties, will be divided into the total number of disposed of cases. This analysis should reveal relationships between the amount of time the judge devotes to court-related matters and the volume of cases disposed of by the court. The performance of the court can then be measured against statewide averages for all courts and in particular for courts of similar size.

D. Cost Per Disposition

With the rapid rise of inflation and the decrease in available funding, frugality has become a way of life for both the public and private sector. As a result it becomes imperative to measure a court's level of efficiency in terms of productivity based on a cost-per-case. To derive cost-per-

case it is necessary to compare the total number of case dispositions against the cost of court operation. This would allow the cost of operating a court to be measured in terms of a weighted caseload to obtain a cost per "weighted" case. Weights have been set as follows: Parking - 1 .0, Traffic - 2.6, and Non-Traffic - 9.0. The above-listed weights are multiplied by the number of dispositions for each case type and added together. When the sum is divided into the expenditures of the court, it is then possible to obtain a reasonable gauge of cost per disposition. Courts can then be compared with each other to identify those that are most cost effective as well as those that fall below average standards of performance.

E. Presentation: The Collection and Dissemination of Data

Once the necessary standards of performance as discussed above have been identified and established, a system of rating the performance must be designed. It is suggested that a point system be used for this purpose. Grading will be done on either a country-wide basis or by individual courts. Goals or standards will be established with regard to the matters discussed above, i.e., for calendar clearance and backlog reduction, speedy trial (i.e., turn-around time), productivity, and cost effectiveness (cost per disposition). This will allow courts to be compared with each other as well as against statewide norms.

Local Advisory Committees expressed insightful ideas as to the use of the point system of rating a court's Calendar Management Procedure. One committee suggested that there should be a dual-rating system, one to include criteria over which the courts have direct supervisory control, and the other to include those criteria over which the court does not have direct supervisory control. It was believed that the dual-criteria approach would facilitate a fairer rating of a court's performance while at the same time identify those factors that, while not under the court's direct authority, do affect its performance. This comment, was initially rejected by the Task Force, however, it will be examined further during the implementation stage of this report if adopted by the Supreme Court.

References

"Calendar Management Evaluation," Committee on Accountability, Appendix A. "Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

Exhibit 5. a, 1985 Judicial Conference.

Related Positions

The following Positions may be applicable in implementing Position 2.11:

Position 1.1	Presiding Judge - Municipal Courts
Position 1.2	Case Manager - Municipal Courts
Position 1.5	Expanded Municipal Court Services Unit
Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.6	Case Processing
Position. 4.1	Budget Reporting

Chapter 3

Municipal Court Personnel

Introduction

Attention to issues regarding municipal court personnel – judges, counsel, and court staff – is not without a rich and extensive history. The 1947 Constitutional Convention resulted in an overhaul of the discredited 100-year-old system of police and recorders' courts in favor of the present system of locally-appointed municipal court judges. Although this development was heralded as a vast improvement over the abuse-ridden former system, it was not long before some of the unfinished work of that Convention again began to overshadow the progress it had made.

In 1956, in a renowned address, then Chief Justice Arthur T. Vanderbilt described a number of fundamental problems, including: "The lack. . of a municipal court prosecutor in all contested cases" (emphasis supplied); low salaries and the consequent inability of the courts to attract "qualified and experienced lawyers" to the bench; the lack of "sufficient competent clerical personnel . . . to permit the effective operation of the court"; and that each year some of the "best magistrates were not reappointed solely because of a change in the political complexion of the governing body," suggesting that a solution would be to provide "longer terms for magistrates and to provide for tenure on reappointment."

The following year Chief Justice Weintraub reaffirmed these concerns in an article published in the New Jersey Law Journal, 81 N.J.L.J. 597 (1958). He noted that the courts had severe problems in many areas, including "inadequate or incompetent clerical assistance." He pointed as well to "the inescapable shortcoming of the part-time judge," especially in that "lawyers are uncomfortable when, for example, they negotiate a settlement with or try a case against an attorney who is also a judge before whom they must practice." Finally, he acknowledged that the "magistrate is in the unhappy position of knowing that *if* he eschews politics, he is apt to be replaced at the end of his term by another who has labored for the organization," with "a change in the appointing authority almost certainly resulting in a change in magistrates."

During the ensuing years, several bills were introduced to create a unified full-time system of municipal courts. Law Journal editorials (92 N.J.L.J. 196 (1971)) supported this legislation to no avail. In the 1970s, the approach began to change from calls to abolish the municipal courts to demands for improvement of the courts within the current structure. These efforts are chronicled in an opinion written by Chief Justice Richard J. Hughes in 1977:

> The members of the present court are equally convinced that the municipal courts, from the standpoint of contact, observations, and acceptance of the public, are in a pre-eminent position for the sustaining of universal respect for the administration of justice. That is why we have persisted, through the Administrative Office of the Courts, in training and orientation, not only of judges but other municipal court personnel. Our rules deal extensively with municipal court practice. Seminars are conducted at frequent intervals. A municipal court bulletin issues monthly, discussing recent decisions and procedural reforms. Regular audits of municipal court accounts are filed with and examined by the Administrative Office of the Courts, which maintains a special municipal court section. Local trial Court administrators conduct periodic visitations of municipal courts for the program functioning of the municipal courts. This Court created the Advisory Committee on Judicial Conduct pointing out our adoption of the Code of Judicial Conduct. In re YENGO, 72 N.J. 425 (1977).

In 1983, the Task Force on Improvement in Municipal Courts was called upon to continue this approach. It again examined issues and problems relating to municipal court personnel. At

the October, 1983 Conference of Municipal Court Judges, each judge was asked to list problems he or she faced in a number of areas, including personnel. The personnel issues that surfaced on most judges' lists were: (1) inadequate salaries for judges and support staff; (2) insufficient prosecutorial and public defense resources; (3) role of the prosecutor in cross-civilian cases; and (4) control over hiring and firing of court personnel.

Also in 1984, at the request of a Task Force Subcommittee, the Chiefs of Police in each municipality were surveyed as to their perceptions of the municipal courts. They generally favored the current structure of the courts as meeting the needs of the police. The major disadvantages pointed out were: the concept of the part-time judge, the role of politics *in* judicial appointment, the dysfunction caused by turnover in judges, lack of experience or qualifications of judges, and judicial findings made on the basis of political pressure.

The Task Force - considered the various discussions of personnel-related problems occurring through the years, as well as the more recent reaffirmation of these problems in the Task Force process itself. The following recommendations are proposed.

Position 3.1

Qualifications of Municipal Court Judges

Minimum standards of character, education, and admission to the bar should be set for municipal court judges. A candidate for judgeship should satisfy the following requirements:

1. An attorney admitted to the practice of law in the State of New Jersey for a minimum of five years.
2. Cleared through a confidential investigative/background security check developed by the Administrative Office of the Courts. This "four-way check" would entail inquiries into the applicant's background on the state, federal, county, and local levels. A confidential check would also be made upon a judge's reappointment.
3. Within 90 days of his appointment and prior to sitting a municipal court judge shall be certified as having satisfied the requirements of a pre-qualification education program.

Commentary

Inherent in the judicial - appointment process should be the aim to secure high-quality persons for judicial office. It has been noted on more than one occasion that

> [t]he weakness in the system is that political influences often cloud the issue and affect the ultimate selection. Appointment to the judiciary has been a favorite means of satisfying political obligations and favors. It would be unrealistic not to recognize that many judicial appointments are primarily based on political considerations. The problem is that when political considerations become involved, the matter of judicial qualification fades into the background. it is a fact that judges have been appointed who have lacked the talent, ability, health, will to work, or integrity required. This is not to say that a person who has been active in politics should not be appointed to the bench. Many of our finest judges have had political backgrounds. Indeed, their political experience has been an invaluable help in the carrying out of their judicial duties.

The setting of minimum qualification standards for municipal court judges will enhance the integrity of the judicial-appointing process by insuring appointment of the highest quality people to the position. For example, the five-year-minimum admission requirement provides the appointing authority with the opportunity to review the practical experience and professional competence of those under consideration for the position of municipal court judge.

Further, a four-way check on a candidate's background also aids in this endeavor. Currently, the municipal court judge is the only judge who is not required to cooperate in a background investigation upon nomination. This Position proposes that the appointing authority provide the Assignment Judge with a list of candidates under consideration for appointment. As noted in later Positions, the information obtained from the four-way investigation would be sent to and reviewed by the vicinage Assignment Judge. It would then be determined whether the information should be released to the appointing authority. In this manner, any candidate who did not meet the highest qualifications could be passed over without having his or her deficiencies made public.

The requirements of a pre-qualification education program should be implemented by court Rule. Just as Rule 1:39 provides for the certification of attorneys as civil or criminal trial attorneys upon establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill, so also should provision be made for municipal court certification.

The program, consisting of seminars, shall be held every 3 months, to familiarize the certification candidates with the responsibilities, including administrative requirements, of the position of municipal court judge. The education program should be developed in cooperation with the Administrative Office of the Courts and will be open to all interested attorneys. In addition to instruction in substantive legal matters and municipal court trial procedures, the course should provide a full explanation of the municipal court statistical report as well as a strong emphasis on the provisions of the Code of Judicial Conduct arid Ethics Opinions applicable to municipal court judges.

The pre-qualification education program requirement may be waived upon application to the Assignment Judge and the Administrative Office of the Courts. Those who are currently municipal court judges will be "grandfather-in" and not required to satisfy the pre-qualification education program.

Only one of the fifteen Local Advisory Committees considered the requirement for a confidential background check unnecessary. Almost all unanimously endorsed the aforementioned Position in its entirety, in particular the five-year pre-qualification for appointment to the bench.

References

1 Hon. Mark A. Sullivan, then Judge, Superior Court of New Jersey, in "A Selective Appointment of Judges: A Key to A Qualified and Independent Judiciary." American Judicature Society. Selected Readings on the Administration of Justice and Its Improvement (Chicago, 1969), p. 24.

"Eligibility Requirements, Evaluations, and Tenure," Committee on Budgets, Personnel and Space, Appendix C.

President's Commission on Law Enforcement and Administration of Justice. "The Judiciary: Personnel and Institutions," Task Force Report: Courts. Commission on Criminal Justice Standards and Goals. (Washington, D . C.: Government Printing Office, 1973), pp. 145-149.

Exhibit 3, amended N.J.S.A. 2A:8-7.

Related Positions

The following Positions may be applicable in implementing Position 3.1:

Position 1.5	Vicinage Presiding Judge - Municipal Courts
Position 3.2	Tenure of Judges
Position 3.3	Evaluation of Judges

Position 3.2

Tenure of Judges

Tenure should be granted upon reappointment to a third consecutive three-year term to full-time or prime-time* municipal court judges who hold office during good behavior.

Commentary

Since the 1940s, many of the proposed reforms to the municipal-court system have focused on the need to develop a well-trained and professional municipal court bench. Without improvements in this key area, any other reforms to the system are of limited value. The first major step in this direction occurred in 1948 when eligibility requirements were promulgated mandating that all municipal court judges appointed henceforth would have to be attorneys. As a result, the number of lay (i.e., non-lawyer) judges decreased rapidly. Since then, the Administrative Office of the Courts and each vicinage have provided continuing education and training for both new and sitting judges. Such programs ensure that judges are informed and kept abreast of changes in case law and administrative policy. A monthly Municipal Court Bulletin Letter was established to communicate such developments to the bench.

The evolution of a professional cadre of municipal court judges was furthered by the imposition of limitations on both the professional and personal activities of these judges. Rule

1:15-1 currently prohibits a judge from representing clients in many criminal and civil actions that may conflict with his position as judge. As noted in Position 3.5, there was strong sentiment among a significant minority of Task Force members to impose additional limitations on the outside practice of law. In addition to laboring under professional restrictions, municipal- court judges are barred, pursuant to the Canons of Judicial Conduct and Rule 1:17-1, from any involvement in political activities, notwithstanding the fact that such activities may have facilitated the original judicial appointment.

The Task Force recognized that any attempts to improve the quality of the municipal bench, including those in this chapter, would be futile in the absence of provisions encouraging experienced and able judges to stay within the judiciary. A frequent and sizable turnover of judicial personnel is disruptive to the entire municipal- court system, to the municipality where it occurs, and to the judge who is relieved of his position despite expertise born of years of experience. Accordingly, the Task Force has recommended the adoption of tenure provisions to protect municipal- court judges. A tenure provision gives an assurance to lawyers who have taken municipal- court judgeships (with the concomitant limitations in practice, which greatly restrict income from his legal practice) that "they may continue in office and not be forced to go back and rebuild a practice."[1]

Local Advisory Committees were in agreement with this Position, one even stating that tenure should be extended to part-time judges as well. Some concern, however, was expressed that municipalities might resist granting tenure, and that a judge who might otherwise be reappointed would be denied reappointment if it resulted in the conferring of tenure. The Task Force membership recognized that adoption of this Position could result in some full-time or prime-time judges not being reappointed; however, the minimum five-year qualification and the annual evaluation program, set forth under Positions 3.1 and 3.3, would assist the tenure candidate in reappointment by the local appointing authority.

* A prime-time judge is defined as a judge whose private practice of law is limited by borough ordinance and who may not appear in court or represent clients in litigated matters. Prime-time judges may hold other judgeships.

References

1 Glenn R. Winters, Executive Director, American Judicature Society, "Good Judges Must Be Compensated," National Conference on the Judiciary 1971: Justice in the States. (St. Paul, Minn.: West Publishing Co., 1971), p. 175.

"Eligibility Requirements, Evaluations, and Tenure," Committee on Budgets, Personnel and Space.

Exhibit 3, amended N.J.S.A. 2A:8-5.

Exhibit 5. e, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.2:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.1	Qualifications of Municipal Court Judges
Position 3.2	Tenure of Judges
Position 3.3	Evaluation of Judges
Position 3.5	Judicial Compensation

Position 3.3

Evaluation of Judges

In order to ensure that the administration of justice is maintained at the highest possible level, all municipal court judges should be evaluated on at least an annual basis.

Commentary

An annual judicial- performance evaluation prepared and conducted by the appropriate Judicial Committee and supported by the Administrative Office of the Courts would assist a judge in identifying and correcting existing or potential problems. For example, the judge who consistently grants continuances without good reason is not exercising efficient control of the court calendar, thereby creating added paper work for his staff. An annual evaluation can provide a method for ensuring efficient, consistent practices by individual judges and the effective operation of municipal courts throughout the state. It has been noted that

> "[r]ules and methods are unquestionably important, but they alone cannot create a highly regarded system. Since judges exercise enormous discretionary power, and since trial judges function without any kind of direct supervisions and perform their work alone rather than with colleagues, the quality of judicial personnel is more important than the quality of the participants in many other systems".[1]

It is mandatory, therefore, that an evaluation program be instituted to ensure the highest quality of judicial performance.

Local Advisory Committees were supportive of this evaluation concept. It was stated by one committee that with fair and adequate criteria, the evaluation of municipal-court judges would indeed benefit not only the judge but also the operations of that judge's court, and in turn the judiciary itself.

References

"Eligibility Requirements, Evaluations, and Tenure" Committee on Budgets, Space and Personnel, Appendix C.

1 President's Commission on Law Enforcement and Administration of Justice. "The Judiciary: Personnel and Institutions," Task Force Report: Courts. Commission on Criminal Justice Standards and Goals. (Washington, D . C.: Government Printing Office, 1973), p. 145.

Related Positions

The following Positions may be applicable in implementing Position 3.3:

Position 3.1	Qualifications of Municipal Court Judges
Position 3.2	Tenure of Judges

Position 3.4

Limitations on Practice

The following position was presented to the Task Force and rejected at its final meeting:

To eliminate conflicts or the appearances of impropriety that arise when a judge is also a practicing attorney, all municipal- court judges should have a further limitation on their law practice that bars them from handling litigation.

Commentary

The rejected Position itself represented an attempt to reach a compromise on this issue. The earlier version of this Position had included a complete ban on the private practice of law by judges following a five year transition period. The comments received from Local Advisory Committees and Task Force members seemed to agree with the problem stated, at least insofar as the appearance of impropriety is concerned. It was reported that each month several complaints are filed by parties because of situations in which an opposing attorney was also a municipal court judge. There was no evidence presented nor was there a substantial consensus that actual conflicts were occurring at any significant level. However, the proposed position was disapproved in a very close vote, indicating that the Task Force was almost evenly divided on the issue.

It is important to note that most members did not disagree that there was at least an appearance of impropriety in many matters. The position of the majority, however, was that the proposed cure was worse than the disease. Many, if not all, municipal-court judges have developed a substantial practice before ascending to the bench, and they generally maintain that practice while they sit as judges. Therefore, a ban on maintaining a law practice would foreclose many highly -qualified attorneys from consideration. Even the compromise position of restricting their law practice to non-litigated matters would eliminate most active trial attorneys from the pool of potential candidates for a municipal court judgeship. Moreover, since some municipal courts meet only a few times a month, the salary paid to judges in such courts would not be sufficient to justify the giving up of their law practices. Therefore, it is the majority position that to ban law practices would cause a diminution in the quality of the municipal -court bench at a loss greater than the benefit that might be achieved by eliminating any appearances of impropriety or conflict in litigated cases.

MINORITY POSITION

To eliminate potential conflicts faced by judges who are also practicing attorneys, all municipal court judges should be prohibited from becoming involved in litigation.

a. The Administrative Office of the Courts should remind Assignment Judges and Municipal Court Judges of the limitations on practice set forth in Rule 1:15-1(b).

b. The Supreme Court should review Rule 1:15-4 concerning the limitations on practice of partners of municipal-court judges.

Of the more than 300 municipal-court judges, a few are employed full-time. The majority of municipal- court judges are part-time with varying degrees of activity in private practice. To avoid the appearance of impropriety, partiality, or conflict, the judge's involvement in practicing law is limited in some respects under both Court Rule and the Code of Judicial Conduct.

Also, there is a group of judges who are forbidden by local ordinance from engaging in

litigation. These are called "prime-time" judges. Theoretically, this status permits the municipal-court judge to maintain an office practice devoted largely to business relationships, estate planning and administration, and real estate practice, but avoids conflict of scheduling between trial court appearances as an attorney and maintenance of a court schedule as a judge. This concept further eliminates from the public awareness the role shift from opposing advocate to judge. Admittedly, however, problems arise from conflicting roles even in the office practice, frequently in negotiation of business transactions and real estate closings where there is a well-recognized adversarial interest.

Underlying all of these limitations and disqualifications is the mandate of impartiality and independence. Presumably, the part-time municipal- court judge is permitted to practice within the boundaries of the municipality in which he or she sits, and except as indicated above may practice law and represent clients among the local citizenry. However, in representing clients the judge comes in contact with attorneys who may later appear before him or her in the role of judge. The variations are infinite, but the range of the problem can be appreciated by considering the following, when counsel is either the prosecutor or defense counsel:

1. Counsel represents the mortgage in a real estate transaction and the municipal-court judge represents buyer or seller.
2. Counsel represents buyer or seller in a real estate transaction in which the municipal-court judge represents the other party.
3. Under real-estate contract of sale, counsel represents the buyer or seller who does not wish to perform and the municipal-court judge represents the other party.
4. Counsel represents the insurance carrier for defendant in a civil action and the municipal-court judge represents plaintiff;
5. Counsel represents one party in negotiation of a matrimonial property settlement and the municipal-court judge represents the other party.
6. Counsel represents one party in a bitterly contested matrimonial action and the

municipal-court judge represents the other party.

Many of the limitations extend to associates of the municipal- court judge. Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and more specifically in Rule 1:12-1 and in the Code of Judicial Conduct at 3C.

References

"Practice Limitations," Committee on Budgets, Space and Personnel, Appendix C.

Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and refer specifically to Rule 1:12-1 and Canon 3C of the Code of Judicial Conduct. See Appendix C.

Exhibit 1, Minority Opinion on Limitations on Practice

Exhibit 5. h, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.4:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.5	Judicial Compensation

Position 3.5

Judicial Compensation

Municipal - court judges should be paid not less than $150 a session. A session is defined as up to four hours, inclusive of both administrative and bench time. Full-time municipal-court judges should be paid at an annual salary rate of 95 percent of the salary of a Superior Court Judge. This amount should act as a salary cap on the judicial earnings of a municipal - court judge unless otherwise approved by the Assignment Judge.

Commentary

While the salaries of municipal - court judges since 1947 are no longer dependent "on the costs they assessed against defendants they found guilty," 10 Rut . L . Rev. 659 (1956), the Task Force found that there were still considerable problems involving compensation. The Task Force found abuses such as the "bid-a-judge" concept, in which a municipality offers a municipal-court judgeship to the lowest bidder rather than to the most qualified applicant.

Equally astounding and far more pervasive is the enormous disparity that characterizes judicial compensation. In order to gauge the magnitude of the problem, the Task Force authorized a study. The results revealed that even when controlling for court size and caseloads,

there were substantial differences in judicial salary levels. (For details concerning the methodology and findings of this study, see the Task Force position paper entitled "Judicial and Court Employees' Salaries", Appendix C).

As more fully discussed in Position 3.2, one of the major goals of the Task Force was to encourage the development of a professional municipal- court bench staffed by the most qualified people available. To assist in realizing this goal, the Task Force has recommended the promulgation of standards concerning uniform compensation levels for all municipal-court judges. Achieving uniformity, however, was not the primary purpose of these proposals. Rather, the Task Force found that most judges receive inadequate salaries given the workload presented and time required by the position. It was concluded that only by establishing adequate minimum compensation levels ($150 per court session) could municipalities hope to attract the best qualified candidates for the position. The figure of $150 per court session is meant to be a minimum and is not meant to prohibit a municipality from paying a higher amount. To aid in the implementation of the minimum salary, the Assignment Judge, when reviewing municipal-court budgets, should when the circumstances warrant, take appropriate action. Competitive salaries will also encourage judges to devote the required time to administrative matters connected with the position.

By simultaneously establishing a "cap" on judicial salaries, the Task Force has not attempted to inhibit the practice of holding [or accepting appointment to] multiple judgeships. However, it was decided that abuses might occur if judges were to over-extend themselves and consequently not devote sufficient time to each court's management and administration. Therefore, the ban should not be absolute, and should be subject to waiver at the discretion of the Assignment Judge.

After balancing the competing interests in establishing minimum and maximum compensation levels, the Task Force has recommended that the salary for a full-time municipal court judge be equivalent to 95% of the salary of a Superior Court Judge i.e. 95% of $70,000 =

$66,500. It should be noted that a raise in the salary for the Superior Court would also result in an increase in the maximum allowed for a municipal court.

The reactions of the Local Advisory Committees to the original Task Force proposals concerning compensation issues were widely divergent. While generally not disagreeing with the concept that municipal court judges should receive adequate compensation, many of the LACs expressed concern over particular recommendations. The Task Force reconsidered the proposals in light of the LAC comments and substantially modified and amended many of the original positions but held to the requirement that absent Assignment Judge waiver, salaries for municipal court judges should be capped at 95% of a Superior Court Judge's salary.

References

"Court Employees, Duties, Qualifications and Appointments," Committee on Budgets, Personnel and Space, Appendix C.

"Judicial and Court Employees Salaries" Committee on Budget, Personnel, and Space, Appendix C.

Exhibit 5.e, 1985 Judicial Conference

Related Positions

The following positions may be applicable in implementing Position 3.5:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.4	Limitations on Practice
Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 3.6

Liability of Judges and Staff

To remedy the lack of civil and criminal liability coverage for municipal-court judges and staff, the Legislature should amend the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 to :12-3), to include judges and staff, under chapter 10 (Indemnification) and chapter 1OA (Defense of Employees). Until such time as the amendment becomes enacted, municipalities should be encouraged to pass an ordinance to provide a similar level of coverage.

It is further recommended that the Administrative Office of the Courts establish a training program to educate judges and staff on the issue of liability.

Commentary

In recent years there has been a dramatic increase in the number of civil and criminal actions instituted against judges and other judicial personnel at all levels. Under current law there exists only a qualified rather than absolute judicial immunity for judges, which is inapplicable to the judge when his action or inaction is negligent, intentional, malicious, fraudulent, or criminal.

In an opinion of the Attorney General of New Jersey, dated July 16, 1984, municipal-court judges are left unprotected as to representation in any action brought against them on any grounds, with or without merit. An exception can be made if the case involves statewide questions of law or unique issues. Court clerks and other staff members on the municipal-court level are also not immune from liability. Court personnel are subject to civil and criminal liability for any conduct outside the scope of their authority or when they are acting within the scope of authority but without good faith.

We therefore recommend that:

1. the New Jersey Tort Claims Act be amended to provide liability coverage for municipal-court judges and staff;
2. until this amendment becomes enacted, municipalities be encouraged to pass an appropriate ordinance to provide coverage for its municipal-court judges and staff; and
3. the Administrative Office of the Courts institute a training program to educate municipal-court judges and staff on the issue of liability.

The reaction of the Local Advisory Committees to the proposal of liability coverage for municipal- court judges and staff was one of unanimous agreement. One LAC agreed that the current system is unacceptable, but was not in favor of the Attorney-General assuming defense of municipal-court judges and court staff. The reason for its objection was that this would still not address the problem of an award of attorney's fees against a judge, nor would it provide for the payment of damages assessed against court staff.

Concerning training programs the LACs fully endorsed the need for the Administrative Office of the Courts to establish on-going training programs for judges and staff in order to ensure that all court personnel are kept up-to-date on the very important issues of civil liability.

References

"Liability of Judges and Staff," Committee on Budgets, Personnel and Space, Appendix C.

Exhibit 3, proposed amended N.J.S.A. 59:1-3.

Related Positions

The following Positions may be applicable in implementing Position 3.6:

Position 1.5	Expanded Municipal Court Services Unit
Position 3.1	Qualifications of Municipal Court Judges

Position 3.7

Municipal Court Clerk/Administrator

Qualifications and Compensation

To reflect the differences in levels and amount of responsibilities and experience, the position of "Municipal Court Clerk" should be redesignated as "Municipal Court Clerk/Administrator" at three distinct levels with appropriate qualifications for each. Further, the title Municipal Court Clerk/Administrator should then be removed from the classified category of the Civil Service System (existing Court Clerks would not be required to meet the new qualifications).

Commentary

There are currently two distinct systems for selecting and appointing municipal -court clerks in New Jersey. In approximately one-third of the state's local jurisdictions, including most of the larger municipalities, court clerks are hired through the Civil Service system. In these municipalities, the court clerk position is defined by a standardized job description. Candidates for this position are tested by use of standardized test instruments. Selection is then made from a

list of eligible candidates by following strictly controlled Civil Service rules and procedures. Under this system there is often no provision for input by a municipal-court judge in the appointment of a court clerk.

The majority of municipalities, however, are not under the Civil Service system; instead, the selection process and appointment of court clerks is left to local personnel and is often unsystematic. In the non-Civil Service jurisdictions, appointments of court clerks usually are made by elected or appointed non-judicial municipal officials, who are not required to, and therefore rarely do, consult with the local municipal judge or any other judicial officer before hiring court personnel. Many, if not most, non-Civil Service jurisdictions do not state specific job descriptions for court clerks such as the required minimum education, prior experience or training in other words, those items that would assure the appointment of qualified municipal-court employees.

To ensure that qualified people are appointed and retained in Municipal Court Clerk/Administrator positions, there should be three distinct levels of Municipal Court Clerk/Administrator. The minimum qualifications recommended for each position and corresponding salaries are as follows:

Municipal Court Clerk/Administrator I $28,638.84 to $38,665.08

REQUIREMENTS

Education/Experience

A baccalaureate degree from an accredited college and two years of municipal court or comparable office management and administrative experience. Experience may be substituted for academic credits on a year-for-year basis.

Municipal Court Clerk/Administrator II $23,559.17 to $31,809.72

REQUIREMENTS

Education/Experience

Either: (i) a baccalaureate degree from an accredited college, or (ii) the equivalent of two years of credit from an accredited college and two years of municipal court experience, or (iii) a high school diploma or its equivalent and four years municipal-court experience.

Municipal Court Clerk/Administrator III $19,381 .29 to $26,170. 17

REQUIREMENTS

Education/Experience

At least a high school diploma or its equivalent plus a total of two years of either college credit or administrative experience.

It should be noted, however, that the qualifications and salaries as recommended by the Task Force may require further review in order to ensure that the qualifications and concomitant salaries are consistent with recognized personnel standards and evaluation.

Court Clerks currently holding the position would not be required to meet the above education requirements. In part-time courts in which the Municipal Court Clerk/Administrator III title would be used, this salary would represent an annualized and not actual salary, amounting to an hourly rate.

The Municipal Court Clerk/Administrator I title emphasizes duties in a large - size court in which other court employees would be delegated the responsibility of performing all daily court - clerk functions. The Municipal Court Clerk/Administrator I would be the court manager, responsible for budgeting, staff training and evaluation, organization development, short and long-range planning, and liaison with local, county, and state officials.

The Municipal Court Clerk/Administrator II would serve a mid-sized court with several court employees. While some functions would be delegated to these employees, given the limited size of the court staff, many court clerk functions would still be performed by the Municipal Court/Clerk Administrator.

The Municipal Court Clerk/Administrator III would serve, either full or part-time, in a

court with no other court employees. The Municipal Court Clerk/Administrator would perform all required court- administration functions but would not have staff training or personnel supervision and evaluation duties and would have only limited responsibility for planning and organization development.

The setting of eligibility requirements will help to ensure that the most qualified persons are employed in addition to discouraging nepotism and political favoritism. Current Municipal Court Clerks would be "grandfather" into this provision.

The Local Advisory Committees felt that it was appropriate to set forth guidelines for salary ranges, that the court clerks as a whole have been grossly underpaid, and that a salary guide should indeed be adopted based on the size of the court and the length of the employee's service, including the particular municipality's right to negotiate within that frame or guide. A minority of LACs expressed concern that salary guidelines might infringe on the authority of municipalities to determine how their funds are to be spent. To avoid this infringement, one LAC recommended that any salary ranges developed be in the form of suggested guidelines.

Although the Task Force recognized the budgetary constraints in the implementation of this Position, it concluded that the best interests of the system mandates the establishment of a uniform salary structure for Municipal Court Clerk/Administrators. Methods for implementation may be found in the Budgets and Finance section of this Report, infra.

References

"Judicial and Court Employees Salaries", Committee on Budgets, Personnel and Space, Appendix C.

"Court Employees, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Court" Committee on Budget, Personnel and Space, Appendix C.

Exhibit 5.e, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.7:

Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees
Position 3.10	Employment and Termination of Municipal Court Personnel
Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 3.8

Appointment of Municipal Court Clerk/Administrator

The appointing authority for Municipal Court Clerk/Administrators should remain with the municipal governing body; however, consistent with Rule 1:33-4, all appointments should be made with the approbation of the Assignment Judge. Prior to appointment as a Municipal Court Clerk/Administrator, the applicant shall be required to attend and satisfactorily complete a pre-qualifying course, which will be administered by the Administrative Office of the Courts every 90 days throughout the state.

Upon employment, and before being deemed "permanent", Municipal Court Clerks/Administrators shall satisfactorily complete a probationary period of between 6 to 12 months. After being appointed as "permanent" any termination shall be for "just cause" only.

Commentary

As noted in earlier Positions, one of the largest problems pointed out by the 1983 Municipal Court Judges Conference was the inability of the Judiciary to attract and retain highly qualified persons. The Task Force was charged in its original mandate with the review, and

where necessary the setting, of personnel standards. As such, Position 3.7 establishes title and salary structure for a Municipal Court Clerk/Administrator and this Position ensures judicial involvement in the selection procedure. In addition, all newly appointed Municipal Court Clerk/Administrators will be subject to a probationary period to allow the appointing authority to determine, based on the employee's performance, whether he or she merits permanent status. The probationary period shall commence with the first day of work and extend over a period of six to twelve months.

Furthermore, to protect a permanent court employee from arbitrary termination, the standard for firing a Municipal Court Clerk/Administrator should be for "just cause" only. Reasons for termination should be stated in writing and served upon the employee at least two weeks prior to the date of dismissal. The employee will have the right to make a direct appeal to the Assignment Judge, who, with the assistance of the Presiding Judge, will hold a hearing within twenty days to determine whether the dismissal was for a just cause.

In addition, the Task Force recognizes the importance of the function of the appointing authorities of each municipality and is therefore recommending that the governing bodies retain responsibility for appointing Municipal Court Clerk/Administrators. However, the Task Force also recognizes the need for the Judiciary to be actively involved in this personnel process and the concomitant need to ensure that the best qualified persons are appointed and retained. Hence, the recommendation for Assignment Judge review and approbation, the pre-qualifying course, and a probation period.

Reports from the fifteen Local Advisory Committees have uniformly supported this position. Comments expressed concern that court personnel have been subject to varied and inconsistent hiring practices--often being hired, fired, or promoted based on the political climate of the municipality rather than on any standard of merit or ability.

References

"Court Employee's, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Courts," Committee on Budgets, Personnel and Space, Appendix C.

New Jersey Administrative Code, Civil Service Rules 4:1-13.2 and .3.

See also Appendix C for detailed descriptions of the three levels of Municipal Court Clerk/Administrator.

Related Positions

The following Positions may be applicable in implementing Position 3.8:

Position 3.7	Municipal Court Clerk/Administrator- -Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees
Position 3.10	Employment and Terminations of Municipal Court Personnel

Position 3.9

Background Investigation

for Municipal Court Employees

Prior to the appointment and hiring of any municipal- court employee, the County Prosecutor should perform a comprehensive investigation of the background of the applicant. Accordingly, backgrounds of those already employed by the court should be checked and upon completion, the information should be submitted to the Assignment Judge for review and certification.

Commentary

Because of the highly- sensitive and complex nature of court business and the need to assure that those involved in the judicial process are above reproach, all municipal-court employees should be required to undergo a criminal-records background check prior to appointment. At a minimum, the investigation should include a records check of the State Police and Federal Bureau of Investigation, as well as the records of the files of the local police department. Background checks should be conducted by the County Prosecutor and submitted to

the Assignment Judge and/or Presiding Judge for his review and certification. In some cases, the results of the investigation may be released to the appointing authority in order to ensure that only the appropriate candidate is hired.

Comments from the fifteen Local Advisory Committees were supportive of this Position with the stipulation that current Municipal Court Clerk/Administrators be exempt from background checks. Attendees at the Judicial Conference also indicated support for this Position. At the Conference the issue was raised as to whether or not municipal prosecutors should be subject to background investigations. The Members of the Executive Committee recognized that because municipal prosecutors are within the Executive branch of government, they were not subject to regulation by the Judiciary. Notwithstanding this fact, it was concluded that requiring such investigation would be consistent with this Position and Position 3.1 that recommends the institution of background investigations for all municipal court personnel. The Executive Committee concluded that it would be in favor of a procedure by which municipal prosecutors would be screened and cleared by the County Prosecutor's Office.

Reference

"Court Employees, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

Related Positions

The following Positions may be applicable in implementing Position 3.9:

Position 3.7	Municipal Court Clerk/Administrator- -Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.10	Employment and Termination of Municipal Court Personnel

Position 3.10
Employment and Termination of Municipal Court Personnel

To assure the complete independence of the judicial branch of government, no person shall be hired in any part of the municipal-court system if he or she is related by adoption, marriage, or blood to any elected official or other person who has appointive or hiring authority in the municipality, including the municipal-court judge. This prohibition shall not extend to persons currently in the employ of any municipal court.

All municipal-court employees shall serve an initial probationary period of three months, except Municipal Court Clerk/Administrators, who shall serve for six to twelve months. During their performance probationary period their performance will be evaluated prior to being granted permanent status.

Commentary

Past practice in some municipalities has been for elected officials to attempt to repay patronage or political obligations by providing employment to relatives. This process has

encouraged a steady turnover of court clerks and other personnel after each election. Such hiring and firing practices have led to unqualified persons being placed in vital positions in the municipal court system, thereby causing disruption and other problems associated with rapid turnover. Additionally, when a relative of the mayor or other important official in the municipality serves as an employee of the court in that same municipality, it often creates in the mind of the public an appearance of impropriety.

We therefore recommend adoption of a general rule against nepotism as stated below.

> No person employed in any part of a municipal-court system shall be hired if he or she is related by adoption, marriage, or blood to any elected official or other person who has appointive or hiring authority in that municipality. "Relative" means any of the following relations by adoption, marriage, or blood: spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or first cousin. Any persons currently in the employ of any municipal-court system should be exempt from this prohibition. (See Exhibit 2.a)

It will be noted that a similar, although not as broad, prohibition applies also to the court vis-a-vis police departments. By Municipal Court Bulletin Letter 5-6-77, no court clerk or deputy court clerk of a municipal court may be appointed or designated if that person has a spouse, parent, or child who is or becomes a police officer serving on the force in that municipality.

Notwithstanding the foregoing, the Task Force does not wish to eliminate from the court system qualified people who happen to be related to employees of the municipality who would not in any way affect the operation or appearance of the court system. For example, the suggested rule would not apply to a relative of a person employed in the road department, presuming, of course, that the candidate for a municipal court position was otherwise qualified.

To accommodate unforeseen events that may arise, this rule may be waived or relaxed on proper application to the Assignment Judge of the vicinage, who would review all of the facts and circumstances. Both the application and waiver will be filed by the Assignment Judge with the Administrative Office of the Courts, consistent with the existing procedure for county employees.

Both Position 3.8 and Position 3.10 have referred to the important role the Assignment Judge will play in the selection and termination of municipal-court personnel. In order to define this role more fully, the Task Force has made the following recommendations:

1. Whenever possible, comity should be afforded to the governing bodies and Civil Service statutes, and recognition should be made of existing negotiation units and negotiating history. The Task Force recognizes the delicate balance that exists between the separate branches of government and agrees that there should be no confrontation by the judiciary asserting its authority without good cause. The term "employee" should include all employees who are necessary and integral to the operation of the municipal court, regardless of the identity or office of the appointing authority.
2. The Administrative Director of the Courts should establish uniform minimum standards and conditions pursuant to the provisions of Rule 1:33-4(e) that will:
   a. Establish criteria that will constitute a threshold for entry into this area by the Assignment Judge. It would be hoped that these criteria would determine the magnitude of the problem that must exist before the Assignment Judge becomes involved with personnel problems of the court. For example, a vacancy in the post of Court Clerk with no appointment being made by the governing body, or improper acts by court personnel without full appropriate action being taken by the governing body, would be sufficient grounds to justify action by the Assignment Judge. Further, these criteria will also provide statewide uniformity in their application so there will

      not be a distinction between vicinages simply because there are different Assignment Judges.
   b. Once the Assignment Judge becomes involved pursuant to the above criteria, establish qualifications for appointment by using recognized personnel

practices as discussed in the "Qualification and Appointment" section of this report, and provide cause for discharge.

3. This Task Force recommends that whenever the Assignment Judge does choose to intervene in personnel problems, he should be assisted by the Presiding Judge. In the absence of the Presiding Judge, the municipal-court judge should be involved.

The consensus of the LACs was that the municipal-court judge should have the responsibility and be involved in the hiring and firing processes of the court staff but, if a problem arises, the Assignment Judge, with the advice of the Presiding Judge, should have the necessary authority to resolve the situation. In addition, the LACs agreed that there was a need to develop uniform standards for determining the conditions that would justify an Assignment Judges' involvement in personnel problems on the municipal level.

References

"Hiring and Firing of Court Employees," Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Courts", Committee on Budgets, Personnel and Space, Appendix C.

Exhibit 2. a Rule 1:17-5 Nepotism

Exhibit 2.c Rule 1:33-4(e) Assignment Judges

Exhibit 5. e, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.10:

Position 3.7	Municipal Court Clerk/Administrator--Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees

Position 3.11

The Role of the Prosecutor

In order to ensure a complete separation of the judicial branch of government from the prosecution of a case, each municipality shall appoint a municipal prosecutor. The prosecutor will be responsible for the prosecution of all cases filed in that municipality, irrespective of whether the complaint was filed by a police officer or by a private citizen, including cross-complaint situations. In addition, the prosecutor should have complete responsibility for providing discovery to the defendant or to defendant's counsel consistent with Court Rule.

Commentary

A central figure in the municipal-court system is the municipal prosecutor. Currently, his responsibilities differ markedly among municipalities, as they have been determined by

contractual agreement between the individual prosecutor and the governing body. This tendency to develop individualized contracts has led to a situation in which prosecutors are part-time and handle only a selected group of cases. Only a few prosecutors are retained to prosecute all cases filed in the court. This lack of consistency continues through the prosecution and trial of various complaints. In some municipalities the prosecutor handles every case, including complaints issued by police officers and private citizens. In other municipalities the prosecutor handles only those complaints signed by local police officers. In other courts a prosecutor will prosecute only those complaints filed by the local police department, but only if the defendant is represented by an attorney. The general rule in the vast majority of municipal courts is that the prosecutor's involvement is limited to those complaints signed by police officers.

Further complicating the task of defining the role of the prosecutor is the lack of a clear line of responsibility. Unlike the municipal-court judge and his staff, who report through an Assignment Judge to the Administrative Office of the Courts, the prosecutor reports to no one. Presumably he is responsible to the Office of the Attorney General, but that relationship is generally a tenuous one at best.

This lack of a clear and consistent role creates unnecessary problems in the municipal court. Often the municipal - court judge is placed in the untenable position of assuming the role of the prosecutor, at least in a de facto sense. When no municipal prosecutor is present, the municipal-court judge must question both complainant and defendant in an effort to ascertain the facts of the case. After listening to both parties, the judge makes factual determinations and enters judgement. The position of the Task Force is that such a situation should no longer be tolerated. The public should not perceive the municipal-court judge to be a prosecutor, defense attorney, and judge, as well as the one who imposes the sentence. The Task Force, therefore, recommends that every municipal court have a prosecutor, charged with the responsibility of prosecuting every complaint -- whether it is filed by a police officer, a private citizen, or even if it results in a civilian cross-complaint situation. In addition, the prosecutor must also be

responsible for providing discovery, consistent with Court Rule, when requested by defendant or by defense counsel.

Although the proposal for an expanded prosecutorial role was considered absolutely essential by the Task Force, Local Advisory Committees, and others involved in this process, some of the expanded duties were the subjects of considerable debate. Specifically, the recommendation that a municipal prosecutor handle private citizen and cross-complaints was debated at Task Force, Local Advisory Committee, and Executive Committee meetings. Presented below is a brief outline of the opposing views. For a more complete discussion of the position against having the prosecutor handle citizen and cross-complaints, please refer to the minority opinion found in Exhibit 2, which is appended to this Report.

MUNICIPAL PROSECUTORS SHOULD NOT HANDLE CROSS-COMPLAINTS

Those who are against requiring a prosecutor to handle all civilian complaints (including cross-complaint situations) base their position on three arguments. It is argued that if citizens know that a prosecutor will be available, the number of citizens' complaints would increase dramatically. The increased volume of complaints could in itself become a major problem and could result in the development of even more serious backlogs in the municipal courts. It was also argued that a problem could develop if the prosecutor screens a complaint prior to its presentation to the court, determines that it is frivolous, and moves for its dismissal. The prosecutor could find himself subject to the criticism of a disgruntled citizen, who might complain to the local mayor and counsel (as well as to the County Ethics Committee and County Prosecutor's Office) that the prosecutor was unfair when he deemed the complaint to be frivolous and moved for its dismissal.

The final argument against the involvement of the prosecutor in the prosecution of civilian complaints arises in those situations in which two citizens file complaints against each other. Under the Task Force proposal, the prosecutor will review both complaints prior to the court date

in order to prepare for their presentation. Many feel that this would place the prosecutor in direct conflict with the New Jersey Rules of Evidence and the Fifth Amendment of the U . S. Constitution. Further, those objecting to the proposal believe that in this situation as well, if the prosecutor should decide to dismiss one complaint and prosecute the other, the prosecutor would then be faced with a disgruntled litigant who might then complain to the County Prosecutor, Ethics Committee, or members of the local governing body.

Those opposed to this proposal have also argued against requiring the municipal prosecutor to serve as "counsel to the court", i.e., to aid the court by presenting the facts of each case, but without the need to prosecute either complaint.

ADVANTAGES FOR HAVING A MUNICIPAL PROSECUTOR

As noted earlier, one of the primary purposes of having a municipal prosecutor handle every case is to allow the municipal-court judge to divorce himself completely from any prosecutorial role. There can be no more substantive conflict than to have a judge also act as prosecutor in an effort to elicit facts necessary to determine the guilt or innocence of the parties appearing before him.

There are several other factors that support the proposal presented in this Position. Under current procedures, citizens' complaints are "prosecuted" by the complainant. Generally this entails a long recitation of facts or allegations, with minimal - if any - adherence to procedural or evidentiary rules. The result can be a record filled with evidence (such as hearsay) that would not be admissible if counsel attempted to present it. Not being schooled in legal practice, a complainant often has no concept of trial procedure, leading to a presentation of much extraneous or irrelevant information. The presence of a prosecutor in such matters would ensure not only that basic rules of evidence and procedure are followed, but that a case is presented in an efficient and structured manner.

Integrally related to the foregoing is the fact that a private citizen who prosecutes his own

complaint oftentimes is not aware of the proofs required in order to prevail in a court of law. Absent the involvement of a knowledgeable and probing prosecutor, elements may go un-represented due to the citizen's ignorance of the law, thereby creating the danger that defendants may be unjustifiably acquitted. An experienced prosecutor presenting the same matter would not be prone to the same omissions. Finally, it should be recognized that the State has an important interest in ensuring that all complaints are prosecuted fully and fairly so that justice be done. A violation of statute or ordinance should not go un-represented simply due to unskilled presentation.

As to the problems posed in the opposing opinion, these issues have already been both addressed and resolved at the county level. The County Prosecutors have no problem determining what complains are frivolous, nor do they have any difficulty in interviewing witnesses and defendants (albeit with a knowledgeable waiver or with counsel being present) during the preparation of their cases.

In view of the foregoing, it is clear that a continuation of current practices in this area would violate the entire purpose of the Municipal Court Task Force, which is to recommend steps for improvement of the municipal courts, to institute modern procedures, and to upgrade the professionalism of all concerned. It is the conclusion of the Task Force, therefore, that municipal prosecutors are needed in all cases. Inherent in their responsibilities is the duty to review each complaint and to prosecute each case, irrespective of whether the complaint was filed by a police officer or by a private citizen. The Task Force, therefore, recommends the adoption of this position.

References

"Role of the Prosecutor", Committee on Trials, Appendix E.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts, Washington, D. C.: Government Printing Office, 1973, 227-228, 239-240, 247, 249.

Exhibit 1. Minority Opinions. The Role of the Prosecutor.

Exhibit 2.h Rule 7:4-2(g) Proceeding Before Trial.

Exhibit 3. Legislation - Liability of Municipal Court Judge and Staff

Exhibit 5.g, 1985 Judicial Conference

Exhibit 5.h, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.11:

Position 2.1	Community Dispute Resolution Committees
Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.6	Liability of Judges and Staff
Position 3.12	Appointment of Counsel
Position 4.3	Impasse Procedure
Position 5.2	Preparation of Complaints
Position 6.5	Plea Agreements in Municipal Courts

Position 3.12

Appointment of Counsel

1. Each municipality should submit for approval by the Assignment Judge a systematic procedure for assigning counsel that will provide attorneys sufficient time to prepare cases prior to the trial date.
2. When a defendant wishes to waive counsel on a case that may result in a consequence of magnitude being imposed by the court, the waiver should be signed and could be provided by way of a notice stamped on the complaint, i.e.,

   I have been advised by the court that I may have a lawyer appointed to represent me if I have insufficient money for a lawyer. I do not want to have a lawyer represent me, but wish to proceed with my case now.

   _____
   DEFENDANT

Commentary

Appointment of counsel is required when a defendant is charged with an offense that may entail "consequences of magnitude" on conviction, and when a defendant is indigent.

A "consequence of magnitude" may be defined as any sentence with a jail term, or pretrial detention, or one in which a substantial loss of driving privileges occurs or large fines can be imposed. There have been cases in which consequences of magnitude, including a jail term, have been imposed without defense counsel and without a waiver of that counsel. This should no longer be the case.

Counsel is also provided when defendant is indigent. A person is considered indigent if he or she cannot afford the cost of counsel in addition to the other defense costs such as experts or investigation. To assist the judge in the determination of indigency, the Task Force has recommended that the current form 5A (used to establish indigency) be completely revised by the Forms Committee as recommended in Position 2.7.

There are three methods for the provision of counsel: employment of a staff public defender, use of a panel of private attorneys paid on a per-case basis, and reliance on a rotational unpaid appointed counsel system. There are significant reasons that the use of unpaid private attorneys is less desirable than either of the other two systems. While this method for provision of counsel should not be forbidden, it should be discouraged. It is important that a particular organized system should be adopted. The practice currently used in some courts of assigning to defend a person facing a consequence of magnitude whichever lawyer is present in the court that day is unacceptable. Such a system can never be expected to provide adequate counsel. The particular system chosen should be recorded with the assignment judge. This record will assure that some system has been chosen.

Before the first court appearance whenever possible, procedures should be established to identify cases requiring appointment of counsel before the first court appearance whenever possible, to appoint counsel, and to avoid adjournments. Once the case has been identified as possibly entailing a' consequence of magnitude, the defendant should be informed that the case requires a lawyer and that defendant should hire an attorney. In cases in which the defendant is already incarcerated, the defendant should be so notified in person. If the defendant is indigent, a

lawyer should be appointed immediately. If the defendant is not indigent, he or she should be directed to retain counsel.

As in cases in Superior Court, only a defendant who affirmatively desires to appear pro se should do so. The court should never suggest or encourage a defendant to appear pro se. As uncounseled cases should be exceptional, it would be appropriate to require that a form be filed with the Assignment Judge any time that a consequence of magnitude is imposed in a case without defense counsel. The counsel that is provided must be appointed early enough in the process to allow an opportunity to prepare the case. Adequate counsel cannot be provided if a lawyer is given a case and expected to try it on the same evening. Counsel must have an opportunity to sit down and interview his client, to reflect on that interview, and to develop a defense. Counsel must also have the opportunity to review discovery and decide what investigation and preparation is necessary. If a system of paid or unpaid appointed counsel is employed, the lawyer will need to be appointed well in advance of the trial date. Appointed counsel will also need to' be educated as to what is expected in providing adequate representation. If a staff public defender is used, the public defender must also be given the opportunity to prepare the case well in advance of the trial date. In establishing a public-defender system, it will be necessary to provide a sufficient number of public defenders to allow proper preparation and representation in all cases. Finally, courts should remember that in appropriate cases, ancillary defense services such as investigators, experts, etc. will need to be provided. The cost of these services, as well as the cost of a lawyer's time if a paid-lawyer system is chosen, is the responsibility of the municipality. The municipal government should make provision in its budget for these costs.

Comments from Local Advisory Committees were in favor of a systematic procedure for providing counsel. The LACs felt that each municipal court should have its own paid public defender, as the appointment of the public defender would eliminate virtually all of the problems that currently exist as far as the assignment of counsel is concerned. It was felt that the current

system is imposing too great a burden on the bar, as lawyers are being asked to accept these assignments with greater and greater frequency and no attempt is being made to have the defendant contribute to the cost of his defense. However, the question of funding such a position is of great concern, and it remains unresolved. The Task Force sets forth the Position, therefore, that each municipality maintain a systematic procedure for assigning adequate counsel.

When this Position was brought before the Judicial Conference, it was suggested that it would be beneficial to consider the development of new methodologies to aid in the determination of indigency with particular consideration being given to procedures applicable to those defendants who, while initially being provided with assigned counsel, subsequently acquire the means to pay for a lawyer. It was also suggested that mechanisms be developed to address situations wherein defendants are able to pay for part, though not necessarily all, of the costs of defense counsel, i.e., a determination of "partial indigency."

After reviewing these suggestions, the Executive Committee recommends that the Supreme Court establish an Ad Hoc Committee to study the issues involving indigency and assigned counsel. It was suggested that particular attention might be given to establishing criteria and mechanisms for determining indigency, as well as for the use of "to pay" partial payment orders (State v. DeBonis).

References

"Standards and Procedures in the Appointment of Counsel" Committee on Trials, Appendix E.

"Provision of Counsel in Municipal Courts" Committee on Trials, Appendix E.

"Driving While Intoxicated Case Processing" Committee on Accountability, Appendix A. American Bar Association Standing Committee on Association Standards for Criminal Justice. Standards Relating to the Administration of Criminal Justice: Providing Defense Services, 2d Tentative Draft. Washington, D. C. American Bar Association, 1978, C5, pp. 1, 9, 22, 27, 33, 34.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts. Washington, D. C.: Government Printing Office, 1973, pp. 251, 282-283.

Exhibit 5.g, 1985 Judicial Conference

Exhibit 5 .h, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 3.12:

Position 3.11	The Role of the Prosecutor
Position 5.3	Advisement of Rights

Chapter 4

Budgets and Finances

Introduction

Prior to the establishment of this Task Force, most reform efforts focusing on the municipal -court system attempted to resolve isolated and individual problems besetting the courts. The]imitations inherent in such an approach are worth noting. While symptoms might be treated, quite often successfully, the underlying maladies afflicting the system remain untreated. The Task Force has departed from past reform approaches by subjecting every facet of the court system to scrutiny, including the very foundations of the system itself.

One of the most important and fundamental areas examined by the Task Force involves the funding of the individual municipal courts. The significance of this issue is apparent. Unless a court is adequately funded, it simply cannot function properly. A court lacking financial resources cannot hire needed personnel, improve its physical plant, or obtain necessary supplies and equipment. The result is that the efficiency of the court suffers and backlogs develop. Severe fiscal restraints can also hamper or prevent the implementation of any reforms.

The persistent under funding of municipal courts may in some degree result from the unique status of these courts. While they are a vital part of the judiciary, functioning under the administrative control of the Chief Justice, they are also local courts, dependent on the local

governing bodies for financial support. Therein lies the root of much conflict. Municipal courts are often viewed as non-income-producing departments, notwithstanding the fact that their operation results in the channeling of money (in the form of fines and court costs) to the municipality. Despite being the municipality's sole judicial branch, the court often finds itself lodged in a "Department of Public Safety," competing for funds with the police department. While municipalities respond to demands for more police protection by hiring new officers, they sometimes appear to fail to recognize that additional officers writing additional summonses cause additional work for the court. Requests for additional court personnel are rarely enthusiastically received.

Political realities compound these problems. The municipal-court judge is appointed by the local governing body, and his reappointment is similarly dependent on it. The judge is therefore placed in the untenable position of seeking funding from -- and at the same time maintaining a good relationship with -- the members of this body. The inherent conflict in this situation rarely inures to the financial benefit of the court. In addition, in some municipalities the judges have little control over the budgetary process, with budget requests originating elsewhere. Even when judges are involved in the process, they are not always effective due to their unfamiliarity with this area of their responsibility.

The Task Force has undertaken a comprehensive review of the budgetary and funding procedures and policies affecting the municipal-court system. It has recommended a wide range of reforms that are intended to assist the courts in procuring adequate funds with which to operate. The Task Force has been mindful of the many competing elements for municipal financial resources. It has concluded, however, that when a municipality assumes the responsibility of establishing a municipal court, it must maintain it adequately.

In order to aid the courts in the area of budget and finance, the Task Force has recommended that a Uniform Budget Reporting System be introduced. All courts would use the same format for presenting its budget; thereby eliminating the many and varied formats now being used throughout the state. Judges would be assisted in the task of budget preparation by guidelines promulgated by the Administrative Office. In addition, further assistance would be forthcoming from the vicinage administrative officials (i.e., the Case Manager, Presiding Judge, and Assignment Judge) who would identify defects or deficiencies in the budget prior to its submission to the local governing body. The Task Force has also proposed the institution of a budget-impasse mechanism to resolve any conflicts between the recommendations of the Assignment Judge and the municipal governing body concerning the funding of the court.

To assist the municipalities in the task of providing adequate funds to the courts, the Task Force has studied current budgetary restrictions and has recommended that municipal court operations be exempt from the limitations of the New Jersey "CAP" law, which many municipalities cite as the reason for their inability to fund the courts properly. To aid the municipalities further, the Task Force has urged that the current system of disbursing monies collected by the municipal court (i.e., fine, costs) be revised to ensure that the municipality receives a larger and more appropriate share of these funds, part of which might be used to fund municipal-court operations.

Finally, the Task Force addressed one area of specific need. Recognizing that the municipal courts of the 1980s can no longer afford to operate with badly-outdated technology, and cognizant of the fact that computerization of court operations can be a costly undertaking, the Task Force has proposed that part of the funds received by the municipality by virtue of municipal-court adjudications be "earmarked" solely for the purpose of computerizing court procedures. State funding for the initial costs of such computerization has also been recommended.

The proposals of the Task Force in the area of budgets and funding are intended to correct

problems that have long plagued the municipal-court system. The serious under funding that has hampered court operations can no longer be permitted to continue if the municipal courts are to be fully integrated into the judicial system.

Position 4.1

Budget Reporting

The Administrative Office of the Courts should develop and promulgate a uniform budget-reporting system to aid municipal-court personnel and the judiciary in reviewing and comparing municipal -court budgets. Incorporated within the directive will be a requirement for the Administrative Office of the Courts to collect, analyze, and report on the annual budgets of all municipal courts. The report shall include information on the average cost per weighted-case.

Commentary

Systems of budget preparation and reporting vary among municipalities and fail to provide the judiciary, local government, and others interested in the operation of the criminal justice system with a basis for comparison. Examination of budgets from courts of comparable size can assist in the identification of problem areas and the elimination of budgetary deficiencies. It should be the responsibility of the Assignment Judge, Presiding Judge, and Municipal Court Judge to ensure adequate funding to the courts by taking a managerial role in the formulation, supervision, and monitoring of municipal-court budgets.

It is the conclusion of the Task Force that adoption of standard policies and procedures relating to the preparation of court budgets will bring about greater efficiency, uniformity, and problem-recognition. This can be accomplished though promulgation of a Budget Directive that

mandates the use of a Uniform Budget Preparation Manual. The Administrative Office of the Courts can further assist the process through a case-weighting method to determine a cost per-case. This information can then be used by the Assignment Judge to determine whether the budget submission is adequate, as it represents a general guideline to determine whether the budget of a particular court is below the average for courts of similar size. Adoption of a Budget Directive and manual, supported by weighted caseload information, should assist many courts in achieving and maintaining a uniform level of funding.

The implementation of the directive would require that each municipal court develop a series of budget priorities and allocations. The Case Manager and Presiding Judge would then review each court budget and report to the Assignment Judge. Only after this review and approval would the municipal-court judge submit his budget to the municipality's budget committee. In addition, the Administrative Office of the Courts would be available to provide other technical assistance to the municipal courts to assist the Assignment Judge and the Presiding Judge in their review of court budgets.

While some of the Local Advisory Committees agreed that the use of uniform budget forms would be desirable, some viewed uniformity as difficult to achieve due to the varying sizes and needs of the municipalities. It was further suggested that the proposed forms be revised to allow for simplicity, as well as to include costs associated with the court appearance of police officers, service of arrest warrants, salaries of municipal prosecutors and public defenders, and cost and amortization of capital expenditures. The Task Force has taken all of these comments into consideration in setting forth procedures for a uniform budget reporting system, as reflected in the Budget Directive and Budget Preparation Manual found in the Appendix C.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D. Exhibit 5. e, 1985 Judicial Conference.

Related Positions

The following Positions may be applicable in implementing Position 4.1:

Position	1.5	Expanded Municipal Court Services Unit
Position	4.2	Budget Caps
Position	4.3	Impasse Procedure
Position	4.4	Revenue Distribution

Position 4.2

Budget Caps

In order to ensure an adequate level of funding, it is imperative that municipal -court budgets be exempt from the limitations of funding imposed by the "cap" law.

Commentary

The inability of a municipality to provide proper funding for its municipal court is often blamed on the growth restrictions imposed by the New Jersey CAP law. Municipalities are currently subject to imposed ceilings on budget spending. Under this law, budget increases are limited to five percent or to "the index rate, whichever is less, over the previous year's final appropriation." In practice, a municipality that has an 1984 operating budget of $2 million would be restricted in 1985 to an operating budget of $2,100,000. The departments within the municipality must then compete for a percentage or share of the increase - - with the governing body making the decision.

Unfortunately, when the municipal governing body begins to order its priorities in an effort to apportion available monies, the municipal court is frequently assigned a low priority. The resultant under funding is the root cause of many of the problems addressed by this Task

Force. The Task Force therefore recommends the removal of the municipal- court budget from the CAP restrictions.

Removal of the CAP restriction on municipal- court budgets should permit the upgrading and improvement of the court without hampering the growth of other departments within the municipality. Of course, there is still the political and economic problem of an increase of tax rates.

This position received unanimous endorsements by the 15 Local Advisory Committees. Many indicated that adoption of this proposal was absolutely essential to the improvement of the municipal courts.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D.

Exhibit 3, Legislation

Exhibit 5. e, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 4.2:

Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 4.3

Impasse Procedure

The Assignment Judge should have the authority, pursuant to Court Rule, to ensure that each Municipal Court has sufficient funds to operate in an efficient and effective manner. Incorporated in this Rule should be a provision that allows the municipality to initiate an impasse procedure if there is a conflict concerning funding between the recommendation of the Assignment Judge and that of the governing body of the municipality.

Commentary

Assurance of adequate funding is the cornerstone process of improving the municipal courts. Earlier Positions set forth methods to prepare and compare municipal budgets for the purpose of setting minimum requirements for each court. This Position proposes a procedure for Assignment Judge review and effective recommendation of an adequate funding level for each municipal court within the vicinage.

Currently, municipal-court judges submit their budgets to the Assignment Judge for

review, recommendation, and approval. Upon approval, the municipal-court judge then submits the budget to the governing body, which then adopts the budget after making any changes. These changes usually translate into budget cuts. Any discussions over disagreements between the needs of the court and the desires of municipalities are conducted on a haphazard basis. No uniform or formal procedure is followed, and the final budget is often the product of informal coaxing rather than of any objective, methodological approach. Unfortunately, negotiation of budget matters is currently subject to the final discretion of the municipal governing body, which frequently assigns a lower priority to court needs than to other municipal functions. The court has no effective method of compelling expenditures to maintain even barely adequate operation. This problem can be addressed by a fair and uniform impasse procedure similar to that currently operating at the Superior Court level.

Procedurally, the budget process would remain much the way it currently exists except that after the municipality has finished its budget review, the Assignment Judge could make an effective recommendation for change to the governing body no later than 14 days after the municipality has introduced the budget for first reading. The municipality would than have ten days to appeal the recommendation. Failure to appeal would result in the recommendation of the Assignment Judge becoming a final order. The filing of an appeal would trigger the impasse procedure -- exactly the same procedure as is used by the Superior Courts to resolve budget conflicts with county governments. (See Rule 1:33-9 in Exhibit 2. d for complete details).

The procedure developed at the Superior Court level establishes a three-member panel designated by the Chief Justice. Similarly, the panel for the impasse procedure proposed herein would consist of three members, including an Appellate Division Judge (sitting or retired) as chairman, plus two other members, one of whom should be a Certified Municipal Accountant and the other a judge or other qualified person. Upon review of all testimony, whether written or oral, the panel submits its findings to the Supreme Court.

This impasse-resolution procedure was debated by members of some Local Advisory

Committees. While most were strongly in favor of it and pointed to the need to maintain a separation of powers and to insure adequate funding for the court, a minority felt that there might be opposition to the Assignment Judges' exercise of such authority. The position of the Task Force, after due consideration of all LAC arguments, was that a reliable funding method is of paramount importance to the municipal courts, and can be assured only by the adoption of this recommendation.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D.

Exhibit 2.d, Rule 1:33-9, The Assignment Judge's Authority in the Review of Administrative Recommended Dispositions.

Exhibit 5. e, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 4.3:

Position	1.1	Vicinage Presiding Judge - Municipal Courts
Position	3.8	Appointment of Municipal Court Clerk/Administrator
Position	4.1	Budget Reporting
Position	4.2	Budget Caps
Position	4.4	Revenue Distribution

Position 4.4

Revenue Distribution

The current method of dispensing monies collected by the municipal court to the state, county, and municipality should be re-evaluated to provide for a more uniform distribution of revenue among municipalities. It is further recommended that the re-evaluation consider whether a portion of the revenues should be "earmarked" for municipal court operations prior to any other distributions. In addition, court costs should be increased to not more than $25, to reflect more closely the actual costs incurred by the court in processing a case.

Commentary

During 1982 two pieces of legislation were enacted that have dramatically affected the revenues collected by the municipal courts and the distribution thereof to the state, county, and municipal governments. These modifications to Title 39 (New Jersey Motor Vehicle Code) increased the penalties for many motor vehicle offenses (effective September 12, 1983), and affected the distribution of revenues collected providing to the municipality a portion of the revenues formerly distributed to the county.

Traditionally, the revenue-distribution scheme for traffic matters provided revenues to the

municipality through court costs (a maximum of $15.00) and fines that were assessed and collected from violations of municipal ordinances. If the complainant was a state trooper, fines were forwarded to the state. If the complainant was not a state trooper, the fines went to the county.

The 1982 revision to Title 39 attempted to give a greater share of the fine to the municipalities by reducing the amount paid to the county and by increasing motor - vehicle penalties. Upon implementation, it was ascertained that the municipality did not benefit at the same rate as the state. In fact, an analysis of the revised revenue-distribution scheme (see chart below) reveals that although revenues distributed to the municipalities actually increased by 44% in 1983 (compared to 1981), the actual percentage share decreased by 1%, from 62% in 1981 to 61% in 1983.

3 COUNTY TOTALS:

		1981 % Share of Total Collections		1983 % Share of Total Collections	% Revenue Increase Since 1981
STATE	1,074,000	9%	2,488,000	14%	132%
COUNTY	3,551,000	29%	4,598,000	25%	29%
MUNICIPALITY	7,675,000	62%	11,052,000	61%	44%
TOTAL	12,300,000	100%	18,166,000	100%	48%

In addition to the municipality not realizing its percent share of the increased revenue, the amount of court costs has remained static. For instance, prior to September 1982 (the effective date of the increase penalties), the typical penalty for many moving violations such as careless driving, speeding, or disregard of a traffic signal was between $20 and $25, with court costs of $10 being included. Thus, the municipality received between 40% to 50% of the total penalty with the balance being distributed to the state. After the increased penalties in September 1982,

the typical penalty for the same offenses became $60, with the municipality still retaining $10 as court costs and the balance of $50 being distributed to the state or the county. In other words, when penalties were lower, court costs represented about half of the total amount collected; when penalties increased, with court costs remaining frozen at $10, these costs now represent a smaller percentage of the total payment (about 17%). Further, court costs do not accurately reflect the length and difficulty of cases that are brought to trial. A lengthy trial for a serious motor-vehicle offense clearly costs the court more than a short trial on a minor motor-vehicle offense.

The lack of consistency and predictability in the distribution scheme and court costs is troublesome. There needs to be a higher degree of uniformity in the distribution of revenues without regard to the philosophy behind the distribution scheme. Accordingly, it is the recommendation of the Task Force that the revenue distribution scheme for Title 39 revenue should be re-evaluated and amended so as to provide for the more uniform distribution of revenue among the municipalities. During re-evaluation, the Task Force recommends that consideration be given to "earmarking" specific revenues to help fund the municipal court. The Task Force takes note of legislative precedent used to fund other agencies such as:

1. N.J.S.A. 39:4-50 provides for a $100 surcharge on DWI convictions to be used for an enforcement program and for administrative expenses.
2. N.J.S.A. 2C :43-3.1 provides for additional penalties to be imposed for all criminal convictions, to be used by the Violent Crimes Compensation Board in satisfying claims and for administrative costs.
3. N.J.S.A. 39:6B-3 provides for all revenues collected relating to driving without insurance to be deposited to a specific fund administered by DMV, to be used for enforcement of the compulsory motor vehicle insurance law and for administrative expenses.

By earmarking funds for the administration of the municipal court, the court can be assured of a reliable and relatively constant source of funds. In addition, court costs, particularly

for the more serious Title 39 offenses, should be increased to reflect more closely the actual costs incurred. It has been suggested that $25.00 would be an appropriate amount.

The Local Advisory Committees supported increasing court costs, especially for more serious Title 39 offenses. It was indicated that although costs should more accurately reflect the length and difficulty of cases, the amount of time needed to dispose of DWI cases could amount to hundreds of dollars. Therefore, while it is not feasible to attempt to set court costs to reflect the real costs borne by courts in processing cases, an increase is warranted.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix C.

Exhibit 5.f, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 4.4:

Position 4.1	Budget Reporting
Position 4.2	Budget Caps
Position 4.3	Impasse Procedure

Chapter 5

Trials and Case Processing

Introduction

A network of local courts of limited jurisdiction has existed in this state since colonial times. The modern municipal-court system, however, is a product of the 1947 Constitution, which restructured the entire judiciary. Until 1947 the local court system consisted of police courts or magistrate courts, staffed primarily by non-lawyer judges. In the absence of an effective administrative structure, these courts functioned largely autonomously, with procedures and policies concerning all aspects of court operations differing from court to court. In addition, there was an attitude that many of the procedural requirements of the upper courts had no place at the local level. Instead, the magistrates' courts were viewed as places in which minor matters could be handled on a quasi-informal basis. The low public esteem in which these courts were held was perhaps not wholly unjustified.

Since 1947, however, there has been increasing recognition of the vital role that these courts play in the judicial structure. While in 1948/49 these courts handled 559,497 complaints, this number grew to 4,234,533 by 1983/84. In contrast, all of the upper courts combined handled only 749,432 cases in the most recently completed court year. Accordingly, there was a realization that it was the municipal court with which most people had contact, and that a

citizen's experience there often had a profound effect on how he or she viewed the functioning of the entire judicial system. In addition, the stature of the municipal-court system was further enhanced as its jurisdictional limits were increased and as various penalty provisions were made more severe. Whereas, at one time, only minor matters were adjudicated locally, the jurisdiction of the municipal courts now includes many serious matters such as domestic violence cases. Municipal courts also have the authority to impose serious penalty provisions, including substantial fines, lengthy license revocations, and significant jail sentences.

Many of the prior reforms in the municipal-court system have focused on establishing higher qualifications and educational programs for judges and other court personnel. The recommendations of the Task Force in other portions of this report continue and expand these efforts. While the increasingly professional caliber of the municipal-court bench is a major accomplishment, the Task Force also concluded that it is only a part of the necessary solution. Equally important is the upgrading of the policies and procedures used in the municipal courts (especially in the areas of trials and case processing) to a level more consistent with those in the upper courts. Such improvements are mandated by both the nature and the volume of the municipal-court caseload. Procedures that at one time might have been deemed acceptable for handling minor matters are no longer sufficient, particularly given the serious offenses adjudicated at the municipal court level, as well as the potential for the imposition of substantial penalties.

In view of the foregoing, the Task Force has scrutinized the policies governing each step in the municipal-court trial process, from the preparation and filing of the complaint to the appeal from a municipal court decision. The recommendations presented herein are intended to promote uniform and more professional trial practices throughout the municipal-court system. Guidelines have been prepared to assist the municipal courts in areas such as the setting of bail, the advisement of rights, and the provision of foreign language interpreters/translators. Moreover, the independence of the judiciary has been strengthened by the proposal to shift the task of

complaint preparation to the executive branch (i.e., the police), where this responsibility properly belongs. Finally, the Task Force has recommended that the present appeal system (trial de novo) be eliminated in favor of procedures that recognize the enhanced professionalism of the municipal court bench.

Position 5.1

Costs and Service of Bench Warrants

The current method of summoning a defendant into court is satisfactory, practical, and economical, except when the court is forced to serve a warrant for a defendant's arrest. Whenever the court issues a warrant for a defendant who has failed to respond to a summons, the court should have the discretion to impose costs in an amount up to $100.

Commentary

The service of a traffic or criminal complaint upon a defendant is controlled by Court Rule. In cases such as parking offenses, the summons is affixed to the defendant's vehicle, thereby completing service. In moving violations the defendant is considered to have been served in-person when handed a copy of the ticket by the police officer. At other times circumstances require that a defendant be served a copy of the complaint by regular mail.

The system becomes financially inefficient, however, when a defendant is notified to appear in court to answer a complaint and subsequently fails to do so. The court then issues a bench warrant for the defendant's arrest, which requires the warrant to be served personally on the defendant by an appropriate police officer. The defendant is then placed into custody, processed, and brought into court to answer both the original charge, as well as a contempt of

court charge for failure to appear. Whenever this occurs, the recovery of the cost by the municipality for increased work by court staff and the police department simply does not occur. So that the assessment of costs may more accurately reflect the actual cost of service, the Task Force recommends that a cost of up to $100 should be imposed on the defendants requiring this additional service.

The Local Advisory Committees concurred with the need to increase court costs as discussed above. They agreed with the conclusion of the Task Force that while the court is not a profit-making entity, the court should be entitled to recover the cost of its operation by assessing costs more closely related to actual expenditures.

Reference

"Service of Process in Municipal Courts," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.1:

Position 4.4 Revenue Distribution
Position 5.2 Preparation of Complaints

Position 5.2

Preparation of Complaints

In order to ensure the independence of the judiciary, court clerks and deputy court clerks should not prepare criminal complaints. This function is the inherent responsibility of law enforcement and should be performed by its personnel.

Commentary

In the majority of municipal courts, it is common practice for the court clerk to prepare all criminal and quasi-criminal complaints originating within that court's jurisdiction. There is no formal or specific authority placing this responsibility within the job specifications of the court clerk. In fact, this procedure is improper and, at the very least, creates an appearance of impropriety.

To warrant the respect and confidence of the public, our judicial system must operate with integrity and with the highest ethical standards. These common objectives are compromised, however, when court personnel aid police officials in complaint preparation. It leads the public to believe that they are being charged, tried, and possibly convicted by the same agency. This

procedural anomaly places the court in an adversarial role in the eyes of the public.

The need for an absolute separation of authority has been supported historically by the Supreme Court. As noted in the New Jersey Municipal Court Manual,

> It is important that law enforcement and police tasks be completely separate from those of the judiciary. It is, therefore, the policy of the Supreme Court that persons who perform any court duties or functions must not perform any duties or functions for the police and vice versa. The Municipal Court Clerk and Deputy Court Clerk must be a neutral and detached Judicial Officer. State v. Rutolo 52 N.J. 508 (1968). Thus, each Municipal Court Judge is urged to take the precautions necessary to prevent any false conclusions in the public mind that the court clerk is an adjunct of law enforcement agencies rather than a separate and independent official. (N . J. Municipal Court Manual, Sept. 1983, p. 6)

Accordingly, the responsibility of preparing all criminal and quasi-criminal complaints should be transferred from municipal-court personnel to the appropriate law-enforcement agency. In most cases that agency will be the local police department, which should prepare all criminal and quasi-criminal complaints, including those filed by civilians.

Each Local Advisory Committee agreed with this recommendation in theory, although several expressed concern over the actual practice. The police members of the Local Advisory Committees indicated they lacked the resources and staff necessary to perform such duties. The Task Force is cognizant of the impact this change will have on those agencies, but it determined that this procedural revision is absolutely essential to preserve the integrity of the court. In recent years, the municipal courts have become increasingly professional, and it is clear that implementing recommendations such as the foregoing will be necessary if this progress is to continue.

Although the Task Force finds it inappropriate to compromise on this critical issue, it is sympathetic to the needs of the law-enforcement agencies. Therefore, to ensure an orderly transition, preparation time should be provided to allow these agencies to develop, with the assistance of the County and local Prosecutors, sound guidelines and procedures to implement this function. The roles of the municipal and County Prosecutors can be increased so the police are not placed in the position of seeking advice from the municipal- court judge and staff. The

Task Force also suggests ongoing training programs for police personnel to ensure that this important procedure will be implemented properly.

References

"Complaints Preparation," Committee on Administration, Appendix B.

Exhibit 5.c, 1985 Judicial Conference

Exhibit 5. d, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 5.2:

Position 3.11	The Role of the Prosecutor
Position 5.1	Costs and Service of Bench Warrants

Position 5.3

Advisement of Rights

It is the responsibility of the municipal court judge to ensure that each defendant is advised of his rights and completely understands their meaning and implication.

Commentary

While every aspect of a trial is important, one of the most crucial stages is advising each defendant of his rights. This issue raised considerable controversy among Task Force members and the Local Advisory Committees.

The procedure regarding the advisement of rights is governed by Rule 3:4-2, which states in part that the judge shall inform the defendant of the charge made against him, of the right not to make any statements as to the charge against him, and that any statement by him may be used against him; of the right to counsel, or, if indigent, of his right to have counsel furnished without cost. Rule 7:6-7 requires advice to the defendant that a record of conviction will be sent to the Director of the Division of Motor Vehicles of the state where the defendant received his license to drive, to become a part of his driving record.

The Task Force concluded that it was of paramount importance that each defendant be

advised of his rights, as many charges carry serious penalty provisions including incarceration, monetary fines and restitution, and driver's license revocation. Since the rights involved are so basic and fundamental to the concept of justice, any waiver of same must be made intelligently and knowingly, with full appreciation of what is being waived. It is vital, therefore, that defendants be fully and completely advised of what these rights are.

While few disputed the necessity of informing the defendant of his rights, a great deal of controversy arose among Task Force, Local Advisory Committee, and Executive Committee members as to the format to be recommended for such advisement. A position paper written by the Trials Committee proposed that the aforementioned rights should be given to each defendant individually. Supporters of that recommendation expressed the view that it was the only way to ensure that the rights were heard and understood by each defendant. Opponents of the recommendation took the position that although the advisement of rights is important, advising each defendant individually in high volume courts was impractical as it would be too time-consuming.

The Task Force submitted this issue to the Executive Committee to resolve. After careful study, the following language was adopted:

> It is the responsibility of the municipal court judge to inform each defendant individually of his rights prior to the hearing, in cases not involving consequences of magnitude, it shall be sufficient that the defendant has been so advised of his rights by an approved general announcement of those rights t the commencement of the court session and that upon his first indivi~ua1 appearance before the court, the defendant acknowledges orally and individually that be has been so advised of his rights, that he understands them, and that after having been offered the right to have them repeated by the court he waives that right. The court must decide prior to each hearing which cases involve consequences of magnitude.

It will also be incumbent upon the court to continue to abide by the notification requirements of Rule 7:6-7, as noted above.

The above-recommended approach will ensure that all defendants, particularly those

facing possible consequences of magnitude, will be effectively informed of their rights. At the same time, it provides that this advisement can be done in an expeditious manner, so as to avoid unnecessary repetition and delay. Whatever extra time may be necessitated by this procedure is more than justified by the paramount importance of guaranteeing that every defendant be advised of his fundamental rights.

References

"Conduct of Trials", Committee on Trials, Appendix E.

Supreme Court of New Jersey Advisory Committee on Judicial Conduct, Do. No. ACJC 84-20.

Exhibit 5.a, 1985 Judicial Conference

Related Position

The following Position may be applicable in implementing Position 5.3:

Position 5.4 Language Interpreters and Translators

Position 5.4

Language Interpreters and Translators

The Courts must be equally accessible to all persons regardless of their ability to communicate effectively in English. It is the responsibility of the court to provide qualified interpreters where necessary.

Commentary

Not all people who appear in the Municipal Courts are able to speak and understand the English language. Currently N.J.S.A. 2A:ll-28 and -29 provide for the appointment and compensation of spoken-language interpreters in the courts. Unfortunately, however, the current practices regarding language interpreters is less than adequate. The fundamental problem is that translation services are not being provided at a competent level.

In 1980, the census projected that 14.7% of New Jersey's residents five years old or older speak a language other than English at home; at least 6% of all residents speak Spanish at home, 3% speak Italian, 1% speak German, and another 1% speak Polish. There is considerable diversity among the counties in terms of the presence of linguistic minorities. Hudson County, for

example, is 26% Hispanic. These statistics only hint at the number of languages that appear in New Jersey's courts.

Currently, there are no standards for selecting and appointing interpreters, nor are there guidelines regarding policy and procedures to be followed in the rendering of interpretive services. In fact, many courts do not have interpretive services at all. These problems, in conjunction with the case of Alfonso v. Board of Review, 89 N.J. 41 (1982) (which observed that "administrative and humanitarian considerations would warrant the use of bilingual documents," and "although bilingual or multilingual notices may in some instances be desirable, their use is not constitutionally required"), prompted the formation of a Supreme Court Task Force on Interpreter and Translation Services. Headed by Hon. Herbert S. Alterman, J . S . C., this Task Force has recently issued its report to the Supreme Court.

It is the position of the Municipal Court Task Force that equal access to the courts for linguistic minorities is essential to ensure fundamental fairness. Hence, it is the responsibility of the municipal courts to provide qualified interpreters for all trial participants in need of them. Furthermore, the final report of the Interpreter and Translator Services Task Force should be reviewed and the recommendations contained therein made available to all municipal courts.

In post Conference proceedings, the Executive Committee took note of the work of the Supreme Court Task Force on Interpreter and Translation Services. That Task Force was dedicated to a comprehensive review of the subject, and its final recommendations included specific legislative proposals. In view of this fact, the Executive Committee decided that the Municipal Court Task Force should support the legislation proposed by the Task Force on Interpreters, rather than seek consideration of any legislative proposals of its own.

Reference

"Conduct of Trials," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.4:

Position	1.1	Vicinage Presiding Judge - Municipal Courts
Position	2.7	Municipal Court Forms
Position	3.11	The Role of the Prosecutor
Position	3.12	Appointment of Counsel
Position	5.3	Advisement of Rights

Position 5.5

Abolishment of Trial De Novo

When deciding a municipal-court appeal, the Superior Court should be bound by the same standards of appellate review as exist for appeals to the Appellate Division from the Law Division.

Commentary

Simply stated, an appeal that is heard de novo is a new trial on the record. It allows the Superior Court judge to reconsider completely the testimony and/or replace the findings of the municipal -court judge with his own findings of fact. When the Municipal Court system was established following the 1947 Constitutional Convention, there were two reasons for requiring appeals to be heard de novo. First, the municipal court was not a court of record, and therefore the Superior Court could not review earlier proceedings. Second, municipal court judges were often laymen and not viewed as professionals whose findings of fact could be accepted without question. The overwhelming majority of the bench was staffed by either police recorders or by lay (non-attorney) magistrates. It was, therefore, considered essential for the Superior Court to be

able completely to review an appealed case and, if necessary, to call for additional testimony and to be able to substitute findings of fact for those of the municipal-court judge.

During the past twenty years, the quality and professionalism of the municipal -court bench has improved dramatically and today every sitting municipal court judge, with but one exception, is an attorney. In addition, by Supreme Court order, since September 1, 1975, every municipality has had to provide sound - recording equipment, thereby resolving the second problem that the de novo trial was meant to correct. In the vast majority of cases, the decision on an appeal is now made after the Superior Court judge reviews a written transcript and exhibits of the initial trial, and considers arguments presented by the attorneys. For these reasons, it is now appropriate to change an archaic system by changing the procedure for appealing a municipal - court judgment.

With regard to the review of factual determinations, the Task Force recommends that the standards in the Appellate Division governing the review of Law Division matters should be applicable to the review of municipal court decisions on appeal to the Law Division. In essence, such a standard would require determining "whether the findings made [below] could reasonably have been reached on sufficient credible evidence present in the record... considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge on their credibility." Close v. Kordulak, 44 N. J. 589, 599 (1965). In addition, the reviewing court would, of course, be empowered to correct any errors involving questions of law.

The fifteen local advisory committees reviewed and concurred with the recommendation to abolish trial de novo. Not one local advisory committee reported a desire to retain the existing system.

References

"Abolishment of Trial De Novo - Committee on Administration, Appendix B.

Exhibit 2.f, Rule 3:23-8, Hearing on Appeal

Exhibit 5.c, 1985 Judicial Conference

Related Position

The following Position may be applicable in implementing Position 5.5:

Position 1.1 Vicinage Presiding Judge - Municipal Courts

Position 5.6

Bail Procedures

The purpose of bail is to ensure the presence of the defendant at every stage of the judicial hearing. Any other use, except that authorized by law, would be arbitrary and capricious.

Commentary

The Task Force recognizes that the intent of bail and its applications are governed by Court Rule and case law. However, the membership expressed the need for the following issues to be re-enforced:

1. Bail should be used only to ensure the presence of the defendant at each stage of the proceeding; and
2. Court Clerks, Deputy Court Clerks, and police personnel should be permitted to set bail only in the absence of the judge.

Court Rule 3:26-1 sets forth:

> All persons, except those charged with crimes punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction on such terms as, in the judgement of the court, will insure their presence in court when required, having regard for their background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention.

New Jersey courts have long recognized the purpose of bail as a means to ensure the presence of the accused at all proceedings prior to and including trial. The concept of bail is a critical component of the Criminal Justice system, and "is not to be denied merely because of the community's sentiment against the accused nor because an of evil reputation."[1]

Inherent therein is the recognition of the presumption of innocence and that an accused released on bail should be able to develop his case because he is at liberty to contact witnesses, gather supportive evidence, and freely consult with counsel. Finally, as stated in the case U.S. v. Edwards, 420 A.2d 1321, 1330 (D.C. App. 1981), "The traditional right to freedom before conviction permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction."

It is imperative, therefore, that the practice of setting bail be consistent with Court Rule and be uniform statewide. The present policy as set forth in Rule 7:5-3 states in part: "In the absence of the judge, a person arrested and charged with a non-indictable offense which may be tried by the judge, may, before his appearance before him, be admitted to bail by the Clerk of the Court; and in the absence of the judge and the clerk, may be admitted to bail by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purposes by the judge."

Investigations revealed certain abuses and there is non-compliance with the Rules. The Task Force, therefore, urges that each Municipal Court Judge properly admit defendants to ball consistent with the prescribed Rules.

References

1 Carbo v. United States, 82 S.Ct. 662,665, 7 L. Ed. 2d. 769,773 (1962). "Bail Procedures," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.6:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 2.6	Case Processing

Chapter 6

Accountability and Special Issues of Public Interest

Introduction

Throughout the Task Force's report, there are constant reminders that municipal courts are the "people's courts", and that the primary reason for maintaining the present system of permitting municipal- court judges to be appointed and financed by local governing bodies is to keep the court close to the people. If municipal courts are truly people's courts, the municipal courts must be both responsive and accountable to the needs of the people, subject to the strictures imposed by the United States and New Jersey Constitutions, New Jersey statute and Court Rules. In a sense, every recommendation emerging from the Task Force in some matter relates to the public. This chapter deals with six specific problems that currently affect the public in a tangible manner and that influence the public's perception of the courts.

One of the items of public concern is the handling of cases arising from acts of domestic violence. The inability of the police and courts to deal with this problem in a satisfactory manner has subjected the court system to considerable public criticism. A number of recommendations

involving the transfer of jurisdiction to the Superior Courts, the modification of existing procedures, and the establishment programs to aid in the training of police, court staff, and judges should result in an improved system for adjudicating domestic violence cases and accordingly should help maintain public confidence in the judicial system.

Secondly, a number of factors, including campaigns by such organizations as RID and MADD, have resulted in the highlighting of cases involving intoxicated motor-vehicle drivers. The public is concerned not only with the imposition of just sentences, but also with the speedy adjudication of these cases so that those convicted are removed from the road and participate in rehabilitation programs pursuant to mandatory penalty provisions. This chapter contains recommendations that, if adopted, could meet the public's concerns.

The third matter considered in this chapter is the interest of the public in the sentencing process. Frequently, cases that are highly publicized attract the attention of the public, both in the proceedings and in the sentence imposed by the court. Unjustifiably harsh or lenient sentences are unacceptable, because an accused is entitled to equal treatment under the law and each sentence must be imposed in accordance with statutory standards. The sentencing process must maintain the appearance of justice if the public is to retain its confidence in the judicial process. Recommendations to promote justice and public confidence in the judicial process are presented in this section.

The fourth subject discussed in this chapter is the treatment accorded victims and witnesses. Insensitivity to the needs of both victims and witnesses results in alienation of these parties, loss of their cooperation, and at the same time creation of an impression of a lack of concern and fairness on the part of the court. Recommendations for improvement in this area are presented.

The last topic appearing in this chapter involves the problem of public access to municipal-court records. The public and the press are concerned with what the municipal courts are doing. Their respective concerns sometimes result in a conflict between the public's right to

know and the justifiable right to privacy of parties, witnesses, or others involved in the judicial process. This problem is addressed and proposals are offered for its solution in this chapter.

Position 6.1

Domestic Violence

The role of the municipal courts in handling domestic-violence matters should be consistent throughout the state. Consistency requires uniform statewide procedures for the administration and enforcement of the "Prevention of Domestic Violence Act," N.J.S.A. 2C : 25-1 to -16.

Commentary

The prevalence of domestic violence in our society, an extremely serious social problem with criminal overtones, has only recently received any degree of attention. Effective April 9, 1982, the New Jersey "Prevention of Domestic Violence Act" Provides for granting emergency relief in the courts, including municipal courts, for victims of domestic violence. Relief includes court orders barring the abuser from the household, the awarding of temporary custody of minor children, and the mandatory payment by the abuser to the victim of medical, legal, and other expenses.[1]

Although New Jersey is one of the leaders in recognizing the seriousness of domestic violence, there remains room for improvement in handling these matters. Given the extremely

delicate, as well as serious, nature of these cases, it is imperative that all court personnel, including judges and clerks, apply new techniques to improve the courts' accountability for the proper administration and enforcement of the "Prevention of Domestic Violence Act." Implementation of this recent legislation has not been uniform within the court system. Recognizing the special circumstances involved with domestic - violence cases, the Task Force, backed by the Local Advisory Committees, recommends that consistent procedures be adopted on a statewide basis to handle domestic- violence matters more effectively.

The Task Force specifically recommends procedures that require the Family Court, rather than the municipal court, to hear all applications for temporary restraining orders except in emergent situations; make available family- crisis -intervention counselors to speak with victims; develop uniform contempt procedures; train municipal -court judges and police officers in sensitive areas of domestic violence; require the Family Court to hear domestic- violence-related criminal cases; require statistical reporting by the Administrative Office of the Courts to indicate whether counseling was voluntary or mandatory; ensure access by judges to reports on and records of domestic-violence complaints; and develop guidelines for use by police officers to secure compliance with the law.

References

1 "Domestic Violence Relief in Municipal Court," Committee on Accountability, Appendix A.

Exhibit 5. a, 1985 Judicial Conference

Exhibit 5. b, 1985 Judicial Conference

Position 6.2

Processing of Drunk Driving Cases

The Municipal Courts should use special procedures in processing DWI cases to meet the statewide goal of disposition in 60 days and to prevent case backlog.

Commentary

In recent years, public concern about the safety hazard of drivers operating motor vehicles under the influence of alcohol or drugs has been reflected in the passage of stricter laws to deal with offenders (including more severe minimum mandatory penalties), and in increased enforcement efforts. Last year, a total of 41,801 DWI cases were filed in the Municipal Courts.

In order to respond to the thousands of cases and dispose of them as efficiently as possible, a statewide program to reduce delay in DWI case processing has been in effect since last year, by order of the Chief Justice. The program sets a goal of disposition of DWI cases in 60 days, requires monthly statistical monitoring of DWI case age, and makes available to courts backlog reduction grants for extra court sessions. In light of this goal the Task Force makes the

following specific recommendations for procedures in handling DWI cases:

1. The certification of all breathalyzers must occur on a monthly basis. If State Police resources are insufficient for this task, alternative procedures must be adopted.
2. Adjournments should be granted only when unusual circumstances exist. Procedures for resolving scheduling conflicts must be established. (See Position 2.3 and 2.4)
3. Municipal courts should establish stand-by policies for holding special DWI sessions when a backlog appears likely.
4. Court clerks should give special attention to DWI cases at all stages.
5. Warrants issued for DWI matters should be given priority attention to ensure that those charged have their cases adjudicated promptly, and that those found guilty are removed from the roads and, when appropriate, referred to alcohol rehabilitation programs.
6. Municipal prosecutors should be assigned the responsibility of processing and moving of DWI cases, including securing the appearance of witnesses and responding to discovery requests. (See Position 3.11)
7. Arraignments should serve to inform the defendant not only of the specific charges, but also of the seriousness of this particular offense. In addition, arraignments should provide an opportunity to review the issue of need for and availability of counsel.

These procedures will assist the municipal-court system in the processing, hearing, and adjudication of DWI cases in an efficient and professional manner.

The provisions presented in this Position were generally endorsed by the 15 Local Advisory Committees. There were, however, some concerns over the requirement for the prosecutor to be in charge of providing discovery. After due consideration, the Task Force concluded that since Position 3.11 calls for the prosecutor to spend more time in the court, he

would be able, without undo hardship, to assume the duty of providing discovery.

References

"DWI Case Processing," Committee on Accountability, Appendix A.

Exhibit 5. a, 1985 Judicial Conference

Exhibit 5. b, 1985 Judicial Conference

Exhibit 5.h, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 6.2:

Position	2.3	Conflicts in Scheduling
Position	2.4	Postponements
Position	2.11	Evaluation of Calendar Performance
Position	3.11	The Role of the Prosecutor

Position 6.3

Sentencing Issues

A convicted offender is entitled to equal treatment under the law, and uneven sentencing practices can endanger that right. To ensure that each defendant is treated equally in municipal court, where the range of sentencing options is broad, the Administrative Office of the Courts should:

1. establish a committee of Municipal Court Judges and representatives from the Administrative Office of the Courts to study sentence disparity and to develop a monitoring system to ensure compliance with mandatory-sentence provisions,
2. study the feasibility of creating a statewide criminal history sheet for all offenders, and
3. develop a more intensive effort in the area of judicial education.

Commentary

In 1984, there were 386,511 criminal complaints filed in municipal courts statewide. Of those defendants convicted, 17,015 were incarcerated, 8,168 were placed on probation, and 10,563 received suspended sentences. During the 1984 court year jail sentences increased by

18.5% over 1983, while probation and suspended sentences decreased substantially.

For a defendant convicted of a criminal or quasi-criminal offense, sentencing becomes the most crucial aspect of the judicial process. The options available to the municipal-court sentencing judge generally range from suspended sentences to application of the maximum penalty (six months in jail and $1,000 fine) provided by law.

In 1978, the New Jersey Legislature enacted the Code of Criminal Justice, which provides for "degrees" of crimes and "grades" of disorderly persons offenses, resulting in the displacement of previous standards based on decisional law. A goal of the 1978 Code is to ensure greater uniformity in sentencing by limiting the discretion of the court. To accomplish this, the Code established a range of permissible sentences for each degree of crime, and created presumptive terms of imprisonment. The Code's sentencing structure also includes certain mandatory punishments, discretionary "extended terms of imprisonment," and dispositional alternatives.

The Code of Criminal Justice falls short of its goal, however, when addressing issues involving the municipal courts and the offenses cognizable therein. For example, one of the disorderly or petty disorderly-persons offenses that mandates incarceration for a fixed period of time is a third shoplifting offense. Sentences for most of the remaining offenses are left up to the discretion of each judge within the broad parameters of the Code. The resulting sentencing disparity is of major concern to the municipal-court judges.

Undue sentence disparity has also long been a matter of concern at the Superior Court level, and the judiciary has experimented over the years with instituting sentencing guidelines and educational programs. Recently, the Supreme Court appointed a Committee on Sentencing, Chaired by Hon. James Coleman, J . A . D. to review sentence disparity under the new Code of Criminal Justice and make recommendations.

The Task Force recognizes that basic reform is necessary to ensure that sentencing is fair, equitable, and uniform statewide. To achieve this goal two proposals must be adopted:

1. additional training in this area must be provided for municipal judges;
2. sentencing policy should be more rational, so that sentences can be grounded in sound principles of ethics, logic, law, and resource allocation.

While the Local Advisory Committees endorsed the premise of this paper, there were differing views regarding certain recommendations. For instance, the reaction to the proposed statewide criminal history sheet was equally divided among the Committees. Those in favor of it stated that it would provide the judge with critical information on repeat offenders. Some, however, viewed the idea as impractical.

Reference

"Sentencing Issues," Committee on Accountability, Appendix A.

Position 6.4

Victim/Witness Services

Municipal courts should take steps to meet the needs of both victims and witnesses, whose participation is vital to the handling of a criminal and traffic cases.

Commentary

In recent years there has been growing concern on the part of those responsible for the administration f our judicial system that the average citizen has become disenchanted with the criminal- justice process and its officials. In particular, citizens have manifested reluctance to come forward with information and to participate as witnesses in judicial proceedings. While the causes of these negative attitude are many and complex, one cause may be the insensitive and sometimes even shoddy treatment accorded both victims and witnesses.

Facilities for witnesses, as a rule, are either inadequate or nonexistent. Sensitivity to the needs of witnesses who are required to return to court again and again, often at considerable personal sacrifice, is usually lacking. Notwithstanding that the appearance as a witness in a judicial proceeding is a duty of citizenship, repeated court appearances occasioned by

adjournment of trials cannot be justified.

Insensitivity on the part of judges, attorneys, and court attendants affects victims as well. In addition to the immediate physical and emotional trauma associated with the crime itself, many victims are subjected to insensitive treatment at each stage of the proceeding. The end result of this is that the victims of the crime often feel victimized by and hostile toward the criminal-justice system.

New Jersey has been a leader in addressing victim/witness concerns at the Superior Court level by establishing programs for the specific purpose of assisting victims and witnesses. As a particularly noteworthy achievement, the position of victim/witness coordinators has been established in all County Prosecutors' offices. Unfortunately most of the services provided by those offices have not been available to persons appearing in a municipal-court matters.

It is imperative that all victims and witnesses in municipal court proceedings be treated fairly and respectfully by the agencies communicating with them. Clearly the justice system cannot function without private citizens who are willing, if not enthusiastic, participants in the prosecution of criminal violations. Of course, even if every municipal court adopted the recommendations set forth, the problems of citizens' apathy and hostility would not vanish. Our system of justice, however, would function more effectively if citizens emerged from their courtroom experience with a deeper understanding of and appreciation for the problems of the administration of justice.

In view of the foregoing, the Task Force specifically recommends that the following proposals be adopted:

1. extending services of the County Prosecutors' Victim/Witness Assistance Units to municipal - court cases, upon request of municipal police department, municipal prosecutor, or municipal-court judge;
2. providing a general information leaflet designed for crime victims and witnesses to be published at state expense and distributed by municipal police departments,

municipal prosecutors, and municipal-court clerks;

3. placing a greater emphasis on victim/witness concerns in the training program presented by the Administrative Office of the Courts to municipal-court judges and court personnel.
4. encouraging municipal- court judges to solicit and review victim impact information at all appropriate stages of municipal-court matters;
5. When applicable, encouraging municipal-court judges to order restitution to crime victims.

The comments received by the Local Advisory Committees were uniformly favorable. Many reiterated the position taken by the Task Force and expressed a need for greater sensitivity by the court toward victims and witnesses.

Reference

"Victim/Witness Services," Committee on Accountability, Appendix A.

Related Positions

The following Positions may be applicable in implementing Position 6.4:

Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.6	Case Processing

Position 6.5

Plea Agreements in Municipal Courts

The existing Supreme Court prohibition on plea agreements in the municipal courts should be abandoned and the practice permitted under the following conditions.

Plea agreements shall be permitted only in those courts in which there is a municipal prosecutor and only when the defendant is represented by counsel or makes a knowing waiver of counsel. All aspects of the plea agreement, including the reasons and necessity as well as the factual basis for the entry of the guilty plea, shall be disclosed fully on the record. The prosecutor must also indicate to the court that the victim and arresting officer have been advised of the plea agreement.

In those offenses involving a minimum mandatory penalty, when a plea agreement is reached for a lesser and/or amended charge, the prosecutor must represent that insufficient evidence exists to warrant a conviction.

Commentary

Historically, the New Jersey courts have moved conservatively and cautiously in the areas of plea agreements and sentence agreements. Plea negotiations in Superior Court criminal cases

became formalized by Administrative Memorandum dated December 11, 1970. See 94 N.J.L.J. Index page 1. The Memorandum was eventually codified and evolved with amendments into what is now Rule 3:9-3.

In the municipal courts, it has long been the understanding among judges and attorneys that the development of a plea agreement is not permitted. Notwithstanding this fact, the practice is engaged in anyway, and without supervision.

Under the current practice, plea discussions between prosecutors and defense counsel are informal and consequently virtually unreviewable. This invites the use of questionable, if not improper, criteria. Justice demands that a control mechanism be superimposed on the administrative disposition of the prosecutor and defense counsel. In order to establish such a control and preserve the integrity of the court, the use of plea agreements in the municipal courts should be permitted pursuant to strictly-enforced and specific guidelines.

The issue of plea agreements in the municipal courts was raised prior to the formation of the Task Force. In 1982, the Supreme Court's Committee on Municipal Courts recommended that plea bargaining be permitted in the municipal courts. As a result, the Supreme Court approved an experimental program to be undertaken by six municipal courts. The program was to last three months with guidelines that, to some extent proved to be impractical and unmanageable for practice in the municipal courts. In August, 1984 the Supreme Court reviewed the results of the experiment and again refused to permit plea agreements in the municipal court.

The reasons for "no plea agreements" in municipal courts might be directly linked to fear of potential abuses and plea bargaining on drunk - driving summonses. These two areas of concern cannot be taken lightly. However, the guidelines established by the Task Force would place all plea negotiations under close scrutiny and preserve the integrity of the disposition of all offenses. Additionally, extra protection has been adopted for offenses prescribing a minimum mandatory penalty. These procedures are similar to those followed in the Superior Court for Graves Act offenses.

As for the fear of potential abuse, it is clear that the administration of the municipal courts has become much more professional in the judicial and administrative areas, and the municipal court, now a court of record, is required to maintain a sound recording device and log. With the general improvement in municipal- court quality, along with the specific Task Force recommendations for continued municipal- court improvement, there should be no doubt about the competency and integrity of the courts and their personnel.

The Task Force has established a good foundation to monitor and control the plea-agreement process effectively. With those guidelines in place, along with the other Task Force recommendations on municipal - court improvement, the plea agreement can be a workable technique.

References

"Plea Agreements in Municipal Courts," Committee on Trials, Appendix E.

Exhibit 2.i, Rules 7:4-2(j) Proceedings Before Trial.

Exhibit 5. g, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 6.5:

Position 3.11	The Role of the Prosecutor
Position 3.12	Appointment of Counsel
Position 5.3	Advisement of Rights

Position 6.6

Public Access to Court Records

The courts should provide the press and public access to non-confidential records a timely basis. To accomplish this, Rule 1:38 (involving the confidentiality of court records) should be amended to include a list of all publicly-accessible records. This should be augmented by a directive from the Administrative Office of the Courts setting forth a statewide policy on public access, including a simple appeal process when access to court records has been denied by the municipal - court judge. The Administrative Office of the Courts should also establish a public access" training program for municipal- court personnel.

Commentary

Freedom of the press must be preserved if a free society is to acquire and disseminate information to all areas of society, provided such information does not endanger basic rights. In the course of the work of the Task Force a number of important questions were raised on the issue of public access to court records.

The courts, especially the municipal court and its personnel, have in the past received little guidance as to what information should be released to the public and press. The result has been the development of local policies, which in many cases resulted either in the outright denial of

access to clearly public information, or in the release of information that is clearly confidential. There is also a concern about the ability of the courts to respond in a timely manner to legitimate requests for information or access to court records, due to the courts' limited personnel, limited access to copy equipment, and workload conflicts.

To correct existing abuses and balance the informational needs of the press and public with the personnel and time constrictions of the court, the Task Force has recommended a two-tier approach. The proposal would include an expansion of Rule 1:38 to include a list of all publicly - accessible records and the establishment of a directive for response time that the court will adhere to when information is requested. The directive on response time should include: a) immediate access to readily -accessible records (i.e., docket books and court calendars); b) access within normal business hours for records not immediately accessible (i.e., items in general storage); and c) for those requests that require extensive research, the requestor should put his request in writing and schedule an appointment to meet with the court to determine a completion date.

The Local Advisory Committees recognized that the promulgation of these guidelines would reduce the burden currently borne by court staff when making decisions in the area of public access. All recommendations were accepted by the Local Advisory Committees.

At the Judicial Conference a question was raised as to the impact of existing legislation on the public accessibility of court records. The Executive Committee decided that the Task Force proposals on this issue should be accompanied by a memorandum (to be drafted by the AOC) outlining the applicability of the Freedom of Information Act and the Right to Know Law to this area.

It was suggested that the Supreme Court should not act on this position without being aware of the ramifications of that legislation.

References

"Public Access to Court Records," Committee On Accountability, Appendix A.

Exhibit 2.e, Amendment to Rule 1:38, Confidentiality of Court Records.

Exhibit 5.a, 1985 Judicial Conference

Exhibit 5. b, 1985 Judicial Conference

Related Position

The following Position may be applicable in implementing Position 6.6:

Position 1.1 Vicinage Presiding Judge - Municipal Courts

Position 6.7

Installment/Partial Payments

In order to maintain the objective that a fine be punishment for violating a law, the municipal courts must design an effective plan for collecting fines in a fair but timely fashion.

Commentary

When a defendant pleads or is found guilty of a charge involving parking, non-parking, quasi-criminal, or ordinance violation, a fine may be imposed. In many cases the defendant informs the court of his financial inability immediately to satisfy the fine ordered by the court. This then places an enormous burden on the court by reason of the 1971 Supreme Court decision of State v. DeBonis, 58 N.J. 182 (1971). This decision held that "[i}f a defendant is unable to pay a fine at once, he shall, upon showing of inability, be afforded an opportunity to pay in reasonable installments consistent with the objective of achieving punishment the fine is intended to inflict.

DeBonis further holds that a fine is intended to punish; and imprisonment upon non-payment of a fine is substituted punishment and not a device for collection. To implement the mandates of this case, the judge, in open court, must first establish whether a defendant has the

ability to pay the fine. If the defendant is indigent, the court must allow time for satisfaction of defendant's financial obligation. Unfortunately, there are neither written guidelines to aid the judge nor a way the judge can determine the accuracy of the defendant's statements. From a practical perspective this means that in almost every case, the defendant is given time to pay and the court must establish a payment schedule. It then becomes the responsibility of the often poorly-staffed municipal court clerk's office to ensure that the defendant makes regular payments. The end result is that there are millions of dollars that are due the municipal courts by way of assessed but uncollected fines and costs.

The Task Force developed a series of recommendations designed both to reduce the number of instances in which the judge orders partial payments and to aid the court in collecting monies owed. These recommendations are:

1. The municipal- court judge should be given the authority, at time of sentence, to suspend fines in cases in which the defendant clearly does not have the ability to pay.
2. The municipal-court judge should be permitted to substitute community service or "earn it" programs in lieu of the payment of fines and costs.
3. The "earn it" concept would place an unemployed defendant in a job in a local business and a substantial part of his earnings would be paid to the court to cover the outstanding fine, costs, or restitution.
4. The judge should be able to order a defendant to surrender his/her driver's license, in return for which the court would issue a temporary license, printed in red, clearly stamped with an expiration date that coincides with the date the fine must be satisfied. If the defendant does not pay his obligation or return to court to request additional time, the license would expire and the defendant would then be driving without a license.
5. The judge should be allowed to suspend the driving privileges of a defendant who

fails to make his payments as ordered.

6. Legislation should be considered that would allow the following in instances in which funds are due the court:

   a. Withholding of New Jersey Income Tax Rebates.

   b. Withholding of New Jersey Property Tax Rebates.

   c. Simplified or automatic wage garnishments via civil judgments.

7. All municipal courts should be permitted or required to accept credit card payments in lieu of installment payments.

8. An accounting of all outstanding payments in each court should be required on a monthly report form to be sent to the Administrative Office of the Courts in order to keep all informed as to the magnitude of the problem.

9. A uniform accounting and enforcement procedure should be implemented to ensure that each court can follow up on open cases.

10. Municipal-court judges should be trained in techniques to determine who should receive installment payments and what to do when a defendant defaults.

The overall reactions of the 15 Local Advisory Committees to the Task Force recommendations regarding installment payments were favorable. Each committee agreed with the recommendation for creation of a uniform, statewide system to be used in all municipal courts. There were, however, certain recommendations that were greeted with opposition by certain local committees. The proposal requiring an additional monthly report was met with strong resistance. The committees believed this type of auditing was already performed during field visits, thus making the additional paperwork unnecessary.

There were also mixed comments regarding the "Red Driver's License." Certain local advisory committees reacted positively to the concept, while others believed it would be ineffective and would create an additional burden on the court staff. Finally, all the local committees agreed that the municipal- court judge should have the authority to suspend fines,

thus eliminating the futile attempts by the court to collect fines from defendants who truly do not have the ability to pay.

After careful consideration, the Task Force concluded that the magnitude of the problem necessitated that every possible step be taken to ensure that the defendant meet his obligation to the court. The Task Force, while recognizing the concerns of the Local Advisory Committees, reaffirmed the importance of implementing the forgoing recommendations.

References

"Installment Payments," Committee on Traffic and Computerization, Appendix D.

"Partial Payments, Committee on Administration, Appendix B.

Exhibit 5. c, 1985 Judicial Conference

Exhibit 5. d, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 6.7:

Position 2.7	Municipal Court Forms
Position 7.3. b	Existing Computerized Courts
Position 7.3.c	Courts Using Computer Bureaus
Position 7.3. d	Computerization of the Manual Courts

Chapter 7

Court Facilities and Operations

Introduction

In this chapter, the Task Force directs its attention to inadequate court facilities, security, and the need to develop modern computer practices in order to upgrade the courts' capabilities.

The problem of inadequate facilities was recognized as early as 1955 when Chief Justice Arthur T. Vanderbilt, in an address before the Annual Conference of Municipal Magistrates and Attorneys, identified grossly substandard arrangements, with sessions sometimes being conducted in pool halls, garages, and homes. Thirteen years later, the Governor's Commission on Civil Disorders found similar conditions, and commented that municipal courts should occupy "more dignified physical facilities."

In 1984 the Task Force examined physical conditions in municipal courts to determine whether improvements were still needed. A survey revealed that approximately one in every five municipal courts is still operating in unsatisfactory physical facilities. The study found that many court sessions are conducted in cramped or antiquated quarters, in basements, old theatres, firehouses, and school gymnasiums. It further determined that most courts lack handicap-accessible entrances. Many once acceptable courtrooms are now in need of repair and refurbishing. In addition, many courts fail to adhere to fire and safety codes, making the

courtroom a possible fire trap.

Chief Justice Vanderbilt noted that, "In my judgment the municipal court is the most important court in the state."[1] A courtroom is a symbolic extension of the concept of justice and the overall appearance must support this. Justice should be properly housed, and should foster and promote an atmosphere of dignity and respect. The adequacy, quality, and competency of our criminal justice system includes the courts' accommodations for the public, bench, bar, litigants, and court personnel.

Further, the Task Force examined the offices of the Municipal Court Clerk/Administrator and found many cramped, cluttered, unclear work areas. Basic furniture and equipment such as typewriters, adding machines, and cash registers were often lacking. As extensions of the court, the office of Municipal Court Clerk/Administrator must also symbolize the administration of justice. These offices, therefore, should be located in close proximity to the courtroom and should reflect the dignity of the court.

Inadequate court facilities are often accompanied by inattention to the security needs of judges and their courtrooms. Although police officers are present in court for the purpose of giving testimony, the judge is often left without police presence when their testimony is completed. Due to lack of security a municipal judge in at least one instance has had to escort a prisoner personally to a lock-up cell. Lack of security may have played a role in the death of one municipal court judge who was shot by a defendant who stood outside the building and fired through a window in front of which the judge sat as he held court.

Furthermore, an upgrading of the municipal-court system must include modern business equipment. On the average, courts process up to 80 different forms daily. Complex reporting requirements include interaction with the State Police, Division of Motor Vehicles, Administrative Office of the Courts, and local government agencies. One out of every four parking tickets is never adjudicated because of difficulty in processing. The use of out-dated and limited equipment (such as 30-year old typewriters), and the absence of cash registers or adding

machines, necessitates a strictly manual operation. Computerization would permit vast streamlining between the courts and administrative agencies, resulting ill expeditious adjudication of parking tickets.

The recommendations presented in this chapter are intended to improve the physical conditions of the municipal courts and to provide for the equipment that is necessary for them to function effectively.

Reference

1 Arthur T. Vanderbilt, "The Municipal Court--The Most Important Court In New Jersey: Its Remarkable Progress And Its Unsolved Problems," 10 Rut. L. Rev. 647 (1956).

Position 7.1

Minimum Standards for Municipal Court Facilities

Adequate physical facilities should be provided for court processing of criminal and traffic cases. These facilities include the physical structure itself, such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys.

Commentary

As noted in the foregoing introduction, the courtroom is a symbolic extension of the concept of justice, and the overall appearance must support this. Court facilities should be designed to facilitate the adjudication of cases and the functioning of the participants in the process. This includes facilities that aid, not hinder, the conduct of trials as well as the work preformed by court support staff.

The goal of the Task Force in this area is to foster and promote an atmosphere of dignity and respect for the municipal courts. Thus, justice should be properly housed. Unfortunately,

however, research performed by the Task Force revealed that approximately one out of five municipal courts is currently operating in physical facilities that can be defined as unsatisfactory.

The Task Force recommends that the following minimum standards be provided for in every court:

1. Location in a public building, preferably a municipal building or complex.
2. A judge's platform and bench.
3. A court clerk's workstation and witness stand.
4. Two separate counsel tables with chairs in front of the judge's bench.
5. Adequate seating for all participants as well as spectators.
6. Sound -recording system in accordance with Administrative Office of the Courts guidelines.
7. Adequate lighting, heating, and air-conditioning of the courtroom, as well as proper maintenance of same.

The issue of adequate facilities for the municipal courts is an important one. Each of the fifteen Local Advisory Committees concurred with that position. Those Committees did, however, voice concern about the capital outlay for the improvements. The Task Force has recommended several options, including adoption of the budgetary-impasse procedures, for the gradual upgrading of court facilities.

The Task Force urges that any proposed renovation, redesign, or capital development of court facilities be reviewed, evaluated, and approved by the Assignment Judge and the Administrative Office of the Courts. To aid in this procedure and to insure the proper construction of future court facilities, the Administrative Office of the Courts should train a staff member or retain an architect to review all plans for renovation of new construction. The recommendation of the Administrative Office of the Courts shall be binding on the municipalities.

Reference

"Minimum Standards for Municipal Court Facilities," Committee on Budgets, Personnel and Space, Appendix C.

Related Position

The following Position may be applicable in implementing Position 7.1:

Position 7.2 Court Security

Position 7.2

Court Security

Each municipal-court judge should review the security of his court facility, and with the assistance of the local Police Chief or County Sheriff prepare a report to the Presiding Judge. Steps should be taken immediately to rectify or upgrade the security of each court in order to protect the judge and the court personnel.

Commentary

The safety of judicial participants must be assured in order for them to carry out their roles in the administration of justice. Unlike the situation in the Superior Court, this issue of' security in the municipal court has never been studied and thus many questions are left unanswered. In practice, each municipal court depends on the assistance of the local police department to perform the necessary security functions. This assistance, however, is often not a compulsory duty of the police department, but rather a courtesy extended by it to the court.

The security situation in the municipal court differs from that in Superior Court. The latter enjoys a professionally staffed force charged with the responsibility of providing in-court and in-chambers security. Thus, the Superior Court is able to study and plan for the security of its

courts, personnel, and litigants, while the municipal courts cannot.

In most situations, the appropriate way to allocate courtroom security personnel and equipment is by the principle of risk management. By using this technique, the levels of anticipated risk are appraised and resources are allocated to meet the need. Currently, the municipal courts have no professional staff to perform these functions.

The Task Force is aware that cases heard in the Superior Court are of a much more serious nature. Municipal Court matters, however, do have the potential for creating security problems and should not be slighted. It is therefore recommended that a security plan be developed for each municipal court, using the following guidelines:

1. When the court is in session, at least one person should be charged with the responsibility of maintaining security.
2. Routine security devices should be used in all courts, e.g., magnometers, emergency lighting, etc.
3. Contingency plans capable of responding to hostage situations, bomb threats, and other emergency situations should be established.

The topic of security in our municipal courts should not be taken lightly. As noted, a plan should be devised either by the County Sheriff's Department or local police department that provides for the comprehensive security of the municipal courts. There is currently a Judiciary/Sheriffs Liaison Committee to the Supreme Court that recently published a manual dealing with security in the Superior Courts. The recommendations contained therein could be shaped to fit the Municipal Courts as well.

Reference

"Court Security," Committee on Budgets, Personnel and Space, Appendix C.

Related Position

The following Position may be applicable in implementing Position 7.2:

Position 7.1 Minimum Standards for Municipal Court Facilities

Position 7.3

Overview to Computerization

One of the most important issues facing the Task Force was the need to develop a Master Plan for the automation of traffic-ticket processing in New Jersey's 530 Municipal Courts.

Most traffic cases (approximately two-thirds) are currently processed by some form of automation, whether through service contractors or through municipally-operated systems. Yet, courts continue to experience backlogs in processing, and miflions of dollars in revenues remain uncollected. In addition, automation in the courts has developed without overview planning. That is, each municipality has responded to its own automation needs with no requirement that the informational needs of outside agencies (DMV, AOC, and/or other central agencies) be considered.

Collectively, the municipal courts comprise a massive network, with 530 courts processing between 4-5 million tickets per year, yielding almost 100 million dollars in collected revenues. The traffic matters processed in the courts provide the data base on which driving records are maintained and updated and traffic and highway safety is monitored. It is important to note that as a group, the courts are unique in that they are both a branch of local government and a part of the state court system. Operational decisions such as funding and staffing are made at the local level, consistent with municipal resources and priorities, while other decisions that affect court operations are made at the state level, either by Court Rule or AOC Directive,

consistent with the need for uniformity in the administration of justice.

In addition, the municipal courts are unique in that they range in size from large, busy courts, operating in urban settings handling hundreds of thousands of traffic tickets per year, to small courts, handling only a few tickets per month. Consequently, the impact of any particular court upon the statewide system will vary with its volume. Also, the internal processing needs of the courts will differ dependent upon volume, as will the type of matter processed (i.e., parking or moving violation).

Therefore, any development of a Master Plan for computerization of the Municipal Courts must accommodate the following:

1. the current and future needs of the courts as they relate to internal processing, giving consideration to differences in terms of volume and type of matter handled;
2. the reliance upon the courts by other agencies for accurate information; and,
3. the need for management of the courts, using the data they provide.

Therefore, any new system must be balanced -- that is, it must meet local concerns as well as the needs of agencies to collect accurate data, thereby benefiting the entire court system.

CURRENT STATUS

In order to assist the Task Force in determining the current status of traffic ticket processing, a questionnaire was distributed to the 530 municipal courts. Three-hundred and ninety-three (393) courts responded, and the results were computer analyzed by the use of staff and equipment provided by the "SAC" unit of the State Police. Afterward, the remaining courts that did not respond were polled by telephone by members of the Task Force to determine answers to specific questions, and in some cases to assist with completion of the entire questionnaire. Consequently, relatively complete information was gathered.

The results of the questionnaire were revealing. It was discovered that there are 112 municipal courts that already are computerized to some degree. Eighteen operate "in-house" computer systems, using either on-line or batch mode processing, and ninety-four courts have

"access" to computer capability through service contractors (primarily Computil). Although these courts represent only a small percentage of municipal courts, they handle 67% of the statewide volume of traffic matters. Fifteen percent were processed by in-house system users and 52% were by Computil customers. Stated another way, approximately one-third of the municipal courts process two-thirds of the state's parking and moving matters.

As to the nature of the work handled by the courts as a whole (parking vs. moving), the following patterns appear:

1. Generally, of the almost 17-million traffic tickets issued in a four-year period ending in 1983, two-thirds were for parking matters and one- third related to non-parking.
2. The vast majority of all parking tickets issued in the state, approximately 73%, are processed through a small percentage of courts.
3. Conversely, the majority of municipal courts in the state process more moving matters than parking.

However, those courts processing significant volumes of moving matters (over 4,000 per year) are relatively few in number (81 courts, or 15%).

In view of the foregoing, the Task Force has made a series of recommendations that call for a central computer system operated by the Administrative Office of the Courts, and has made additional recommendations to ensure that each municipal court has access thereto.

The proposals of the Task Force concerning computerization received broad support from the local Advisory Committees. All of the LA C's recognized the need for and endorsed the concept of computerization in the municipal courts. There was also unanimous approval for the recommendation that the state provide funding for this purpose. The only area in which disagreement was noted concerned the proposed role of the AOC in traffic case processing. Two LAC'S disagreed with the recommendation that the AOC should become involved in this process by acting as a "clearinghouse" for data being transmitted from the municipal courts to

the Division of Motor Vehicles. It was suggested that such involvement would merely result in the imposition of an extra bureaucratic layer between the courts and the Division of Motor Vehicles.

Reference

Exhibit 5.f, 1985 Judicial Conference

Position 7.3.a

Computerization and the Administrative Office of the Courts

The Administrative Office of the Courts should develop a centralized computer system to serve the municipal courts and to ensure a smooth exchange of information occurs between the municipal courts and the Division of Motor Vehicles.

Commentary

It is evident that traffic case processing and enforcement in New Jersey suffer for many reasons, some of which are attributable to matters within the control of a particular agency. Currently, there is no centralization of information within the court system and no effective electronic mechanism for the exchange of information between the municipal courts and either the Administrative Office of the Courts or the Division of Motor Vehicles. This can lead to confusion and duplication of effort when 530 municipal courts attempt to provide information to or request information from the Administrative Office of the Courts and/or the Division of Motor

Vehicles. In order to correct this, the Task Force recommends that the Administrative Office of the Courts play a stronger role in the area of computerization.

One of the first steps the Administrative Office of the Courts should take is to develop guidelines for the standardization of communication including data codes and record formats. Such standardization is necessary to facilitate the exchange of information between the municipal courts and the Administrative Office of the Courts. The Administrative Office of the Courts in its new role in case processing becomes much more responsive to the courts. It will act as the buffer or clearinghouse between the individual courts and the Division of Motor Vehicles. Division of Motor Vehicles will have to interact with only one agency of similar stature, rather than with 530 separate courts. It is anticipated that this will alleviate many problems experienced by both the courts and the Division of Motor Vehicles. Under the proposed scheme, the courts will no longer interact directly with Division of Motor Vehicles, but rather will be responsible directly to the judiciary. The following advantages are apparent:

1. There will be a uniform processing system within the court structure.
2. The judiciary will have control over and access to its own information for oversight management, administration, forecasting, and planning.
3. Interagency policy decisions between DMV and the courts can be handled at the proper level.
4. Procedural changes that affect traffic-case processing involving both agencies can be more easily implemented.
5. Centralized data can be used to consolidate driver or registration information statewide.
6. The quality of justice will be enhanced. The current system often permits those who ignore tickets to escape punishment, which results in the uneven application of justice.

Without development of the foregoing, it is unlikely that our municipal court system will

be able to meet the increased demands placed on it by burdening caseloads and requests for reports and information.

Reference

"Municipal Court Computerization", Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3. a:

Position	7.3	Overview on Computerization of the Municipal Court
Position	7.3. b	Existing Computerized Courts
Position	7.3. c	Courts Using Computer Bureaus
Position	7.3. d	Computerization of the Manual Court

Position 7.3.b

Existing Computerized Courts

Municipal courts currently using in-house computers should be able to obtain and share their data with the central computer system at the Administrative Office of the Courts. Sharing of information will continue until such time as the Administrative Office of the Courts is equipped to accept those courts into the statewide system.

Commentary

There are currently eighteen (18) Municipal Courts operating "in-house" computers for traffic-case processing using either on-line or batch mode processing. These courts are high-volume processors that have already made an investment in personnel and equipment. This investment is likely to translate into a reluctance to abandon the technology currently used by those courts.

Aside from the courts' anticipated reluctance to change their methods of traffic-case processing, there are independent and compelling reasons for maintaining the status quo in those courts, at least until such time as the Administrative Office of the Courts is in the position to provide an alternative processing method.

From the courts' point of view, there is a real need to perform local processing, such as:

1. the generation of management reports and data analysis peculiar to their municipalities;
2. the provision of financial reports as required by the municipalities; and
3. the efficient exchange of large volumes of information with local police departments.

From the system point of view, this small group of courts processes a significant percentage of the statewide volume. These courts must be included in the statewide system in order to insure that information is transferred from the local courts to the Administrative Office of the Courts for and to the DMV in a timely fashion. It is anticipated that the municipal courts will want to become a part of the state system, as being a part provides them with the ability to transmit data to and receive data from the Division of Motor Vehicles. In addition, becoming a part of the state system will alleviate the necessity of sending hand-completed reports to the AOC.

The Task Force has attempted to balance the informational needs of the Administrative Office of the Courts with the fact that some courts have already made significant investments in computer technology. It has concluded that steps should be taken to enable the Administrative Office of the Courts to collect from these courts certain data for inclusion in the statewide system, so long as the courts continue to use their existing equipment. It is anticipated that ultimately the aforementioned courts will be totally integrated into the statewide system.

Reference

"Municipal Court Computerization," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3. b:

Position 7.3. a	Computerization and the Administrative Office of the Courts
Position 7.3. c	Courts Using Computer Bureaus
Position 7.3. d	Computerization of the Manual Court

Position 7.3.c

Courts Using Computer Bureaus

In those courts serviced by service contractors, access will be required to the Administrative Office of the Courts' mainframe files for data entry and for inquiry purposes. This access will be accomplished through direct electronic access or by tape/disk information exchange. Service contractors will fund their own access to the Administrative Office of the Courts' mainframe, including the expense of any modification to their existing programs.

Commentary

There are currently 94 municipal courts that rely on service bureaus for the processing of their workload. Accordingly, there is a need to ensure that the information handled by these bureaus is incorporated into the Administrative Office of the Courts' central system.

Direct electronic access to the Administrative Office of the Courts' mainframe computer is quicker and more efficient than any other method of exchanging information. It also appears to be more cost efficient and will allow direct access to court data and indirect access to the data base at the Division of Motor Vehicles.

Individual courts would have alternatives as to how they will interact with contractors and within the system:

1. Certain courts will see no need for any computers, terminals, or other forms of automation. They will be content to rely on the contractors to perform all necessary data-entry and other functions, and will be satisfied to "batch" their tickets for data-entry and to communicate with the contractor in a manual mode, as well as perform all remaining court tasks manually.
2. Other courts will be satisfied with using the service contractor to perform the initial data-entry functions only and will require electronic access to the data for inquiry or editing. This could be accomplished by linking the court via terminal to the Administrative Office of the Courts' mainframe.

Of course, some courts will see a need for on-line access to their data for inquiry and editing, and will be amenable to assuming the initial data-entry functions. This would eliminate the necessity of using the service contractor.

Service contractors would fund their own access to the Administrative Office of the Courts' mainframe, including translator programs, if necessary. They are already communicating in a tape/disk mode (with Division of Motor Vehicles) and it appears that any electronic linking would be cost-efficient and advantageous to them. Courts that select the first alternative, providing for no electronic access, have no additional costs. Courts that require linking to the Administrative Office of the Courts' mainframe for inquiry and editing should be provided with the minimum standard available to all courts at state expense.

Reference

"Municipal Court Computerization", Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3. c:

Position 7.3. a	Computerization and the Administrative Office of the Courts
Position 7.3. b	Existing Computerized Courts
Position 7.3. d	Computerization of' the Manual Court

Position 7.3.d

Computerization of the Manual Courts

All manual municipal courts should be required to have a computer terminal so that they may electronically communicate with the central computer system of the Administrative Office of the Courts. When necessary and where appropriate, computer capability can be expanded and upgraded. At a minimum, the cost of the initial terminal should be borne by the State. However, any additional expense required to upgrade its system would be borne by the municipality.

Commentary

The vast majority of municipal courts (418 of the 530 courts) do not use a computer for the routine processing of their work. The reason for this is that in most cases the volume of work is not significant enough to justify the use of computers. Collectively, however, these courts process 36% of all tickets in the state and therefore, as a group, they have a significant impact upon the system. For example, these courts tend to handle more moving than parking matters, which in turn requires that they provide a considerable amount of information to the Division of

Motor Vehicles, which in turn is particularly dependent upon accurate and timely information in order to ensure that the appropriate action is taken against the defendant's driving privileges. This, coupled with the need to ensure that the central data base is accurate and complete (as recommended in Position 7.3a), makes it essential to include these courts in the system.

Concerning the financing of the system, the Task Force recognizes that in many of the smaller courts the cost of a terminal and communication lines will be prohibitive. The Task Force therefore recommends that, where appropriate, the State should bear the cost of providing a terminal. As the court's size and concomitant usage grow, it will then be in the best interest of the court and the municipality to use the services offered by the Administrative Office of the Courts fully. When this point is reached, the added expense of bringing these courts onto the statewide system will be borne by the municipality.

References

"Municipal Court Computerization," Committee on Traffic and Computerization, Appendix D.

Exhibit 5.f, 1985 Judicial Conference

Related Positions

The following Positions may be applicable in implementing Position 7.3.d:

Position 7.3. a	Computerization and The Administrative Office of the Courts
Position 7.3. b	Existing Computerized Courts
Position 7.3. c	Courts Using Computer Bureaus

Chapter 8

Implementation and Funding

The Supreme Court Task Force on the Improvement of Municipal Courts has proposed significant changes for the municipal-court system of this State. The total implementation process is formidable and will require a substantial degree of dedication, planning, and effort.

The first step in the process of implementing the proposed recommendations required the drafting of the Final Report of the Task Force. The drafting of this document was completed during the fall of 1985, after amendment, revision or augmentation of the report in light of the comments and feedback gathered during the Judicial Conference. After formal submission of the revised report to the Supreme Court, the Court will determine which programs and proposals should be addressed directly by the Supreme Court. Other recommendations will be able to be implemented through administrative directives and memoranda as developed by the Administrative Office of the Courts.

Finally, some proposals will presumably require the action of the Legislature. It is anticipated that the Administrative Office of the Courts will endeavor to provide whatever information and assistance may be necessary to ensure that the appropriate legislation is drafted and receives consideration.

The actual plan of implementation has been divided into three distinct areas: (1) administration, (2) personnel, and (3) funding. It is anticipated tht the expanded Municipal Court Services Unit, as recommended in Position 1.5, will be responsible for administering the

implementation of the Task Force recommendations. In addition to acting as the focal point for all policy decisions, the unit will assume responsibility for a wide range of activities. It will conduct extensive training programs for all levels of court personnel to prepare them for changes in court operations. It will also prepare the directives and develop the methodologies necessary to effectuate the recommendations, and will monitor, study, and make any needed modifications to the new programs on a continuing basis. Assisting the Unit in its endeavors will be trial court administrators, case managers, municipal court judges, and court clerk/administrators. Finally, the Executive Committee or the Task Force will continue to function in an advisory capacity, guiding the Municipal Court Services Unit throughout the implementation process.

In view of the foregoing, the Task Force believes that one of the first recommendations that should be implemented is the proposal involving the expansion of the Municipal Court Services Unit. As set forth in position 1.5, this expansion would ensure that the Municipal Court Services has sufficient personnel to undertake and carry out the addition responsibilities created during the implementation phase of the Task Force project.

As indicated throughout this report, certain titles will need to be created or expanded if the recommendations of the task Force are adopted. The positions of Presiding Judge of the Municipal Court, Case Manager for Municipal Courts, and Municipal Court Prosecutor are of paramount importance and are necessary to accomplish the goals established by the Task Force. Accordingly, the selection process for these titles should begin immediately. As recommended in Position 1.6, the Assignment Judge of each vicinage should prepare a list of candidates to be presented to the Chief Justice so that the Presiding Judges can be appointed. Each Trial Court Administrator should take the necessary steps for the selection of a Case Manager for Municipal Courts. While some vicinages already have Municipal Court Liaisons that will be able to fill this position, others will have to recruit a Case Manager as these duties are currently being performed by Assistant Trial Court Administrators. Finally, the duties of the Municipal Court Prosecutor will be significantly expanded, and each appointing authority will need to be notified so that contracts can be modified accordingly.

In addition to these three specific titles, the Task Force has recommended several programs that will necessitate the hiring of additional personnel. It is expected that the expanded Municipal Court Services Unit will be able to assist each agency or department affected as the implementation plan progresses.

The final and most crucial area of this implementation process is funding. Without proper financing much of the work of improving the municipal courts will not be accomplished. The Task Force has identified each program that will require funding and has categorized it pursuant to the funding source 9i.e., state, county, and municipal government). It has recommended that the State assume responsibility for funding the expanded Municipal Court Services Unit (at the annual projected cost of $400,000), the position of Presiding Judge-Municipal Courts ($598,500 per annum), and for the computerization of the municipal courts (costs to be based on the needs of the individual court). The Task Force has further proposed that the county government should provide funds for the position of Case Manager-Municipal Courts ($562,500 per annum statewide), as well as for the development of a Pretrial intervention program at the municipal level ($1,837,500 per annum statewide). It is expected that each municipality will continue to pay the salary of its Municipal Prosecutor and will also make funding of its Municipal Prosecutor and will also make funding available to improve court security if the Presiding Judge notes deficiencies. As can be seen, the cost for funding the work and recommendations of the Task Force is relatively low. The Task Force has attempted to keep costs at a minimum, so that these programs can be implemented without causing a financial hardship on any one level of government.

In order for this process to begin, the expanded Municipal Court Services Unit must promulgate a schedule that will ensure that these programs are implemented on a uniform basis. As already noted, each level of government is responsible of funding specific programs. This will require each governmental unit it include the new programs in its budget. Unfortunately, the state operates under a different budget year form that of the counties, thereby complication the funding/implementation process. To resolve this problem, the Task Force recommends that the programs on the county and municipal levels be implemented during the next budget cycle. This would allow for ht establishment of these programs by no later than July 1986.

With respect to the programs that are to be funded by the State, the Task Force recommends a different approach. The municipal Courts Services Unit should be funded with the available capital already earmarked for the Administrative Office of the Courts so that it can begin operating immediately. The reason for this, as previously mentioned, is that this unit will be the foundation of the new municipal-court system. Additionally, the Administrative Office of the Courts should begin funding as many Presiding Municipal Court Judges as possible during

the current fiscal year. The remaining positions should be included in the 1987 budget cycle. Finally, any costs regarding municipal-court computerization should be allocated in the 1987 budget. If the foregoing funding methodology is adopted, it will allow all of the programs and recommendations made by the Task Force to be full financed and operational by July 1987. Further, improvements will be accomplished on a timely basis, yet at the same time each level of government will be able to anticipate and prepare for the necessary expenditures.

The Task Force has devoted over 20 months to the study of the municipal court system. The recommendations set forth in this report as well as the plans for implementation are significant and far-reaching, but at the same time they are manageable and capable of implementation. The members of the Task Force express the hope that their work will result in a thoroughly reformed municipal-court system, full integrated into the judiciary of this State.

EXHIBIT 2

PROPOSED COURT RULES AND AMENDMENTS

PROPOSED COURT RULES AND AMENDMENTS

Exhibits

2.	Rule	1:2-5/1:2-6.	Conflicts in Scheduling
2.a	Rule	1:17-5.	Nepotism
2.b	Rule	1:33-2.	Court Managerial Structure
2.c	Rule	1:33-4.	Assignment Judges
2.d	Rule	1:33-9.	Review of Administrative Recommended Dispositions
2.e	Rule	1:38.	Confidentiality of Court Records
2.f	Rule	3:23-8.	Hearing on Appeal
2.g	Rule	3:28.	Pre-trial Intervention Programs
2.h	Rule	7:4-2(g).	Proceedings Before Trial
2.i	Rule	7:4-2(j).	Proceedings Before Trial
2.j	Rule	7:10-6.	Educational Requirement

Conflicts In Scheduling

The following proposed Court Rule shall be promulgated as a new Rule, or shall be incorporated into Rule 1:2-5 (Advancement of Cases for Trial or Argument). In either case, reevaluation of Rule: 1:2-5 may be necessary.

Conflicts in Scheduling

1:2-6.

In the scheduling of cases for trial, hearing, or argument, the following courts and classes of action shall be given preference:

(1) Supreme Court, all matters;

(2) Appellate Division, Superior Court, all matters;

(3) Superior Court, jury trials in progress;

(4) Municipal Court, driving-while-intoxicated matters, with the oldest case having priority if a conflict exists between municipal courts;

(5) Superior Court, jury trials not in progress;

(6) Municipal Court cases (other than driving while intoxicated) that are older than sixty days, with the oldest case having priority if a conflict exists between municipal courts; and

(7) Superior Court, non-jury cases.

The above preferences may be altered by the Assignment Judge for good cause shown.

NEPOTISM IN THE MUNICIPAL COURT

It is recommended that the following Rule be adopted:

1:17-5. Nepotism

(a) No person employed in any part of a municipal-court system shall be hired if he or she is related by adoption, marriage, or blood to any elected official, or to any other person who has appointive or hiring authority in that municipality, or to the judge of the municipal court.

(1) "Related" means any of the following relations by adoption, marriage, or blood: spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(2) Any such situation existing on or before the effective date of this Rule may continue.

(b) No court clerk or deputy court clerk of a municipal court may be appointed or designated if that person has a spouse, parent, or child who is or becomes a police officer serving on the police force in that municipality.

(1) Any such situations existing on or before August 1, 1977, may continue provided that court clerks or deputy court clerks of any municipal court should not prepare or complete the jurat on any complaint or sign an arrest warrant or fix bail involving any local, county, or state officer who is his or her spouse, parent, or child.

COURT MANAGERIAL STRUCTURE

It is recommended that Rule 1:33-2 be amended as follows (Note: The bracketed material is to be deleted and the underlined material is to be added):

1:33-2. Court Managerial Structure

(a) . . . . . no change

(b) . . . . . no change

(c) Within each vicinage, the Chief Justice shall organize the trial court system into [four] five functional units to facilitate the management of the trial court system within that vicinage. These units shall be: Civil, Criminal, Family, [and] Chancery[..] and Municipal.

(d) (1) . . . no change

(2) . . . no change

(e) . . . . . no change

HIRING/FIRING OF COURT EMPLOYEES

It is recommended that Rule 1:33-4 be amended as follows (Note: The material to be added is underlined).

1:33-4 Assignment Judges

(a) . . . . . no change

(b) . . . . . no change

(c) . . . . . no change

(d) . . . . . no change

(e) Subject to uniform minimum standards and conditions promulgated by the Administrative Director, the Assignment Judge may appoint and discharge such judicial support personnel, including municipal-court personnel, withinthe vicinage as he shall deem necessary.

(f) . . . . . no change

(g) . . . . . no change

MUNICIPAL COURT BUDGETS

It is recommended that Rule 1:33-9 be amended as follows (Note: the material in brackets is to be deleted and the material underlined is to added.):

1:33-9. Review of Administrative Recommended Dispositions

(a) Annual Budget Recommendation--Review. If there is an impasse between the Board of Freeholders and the Assignment Judge concerning the annual budget for the judiciary, or between a municipal governing body and the Assignment Judge concerning the annual budget for any municipal court, the Assignment Judge shall, Without a formal hearing, make a recommended disposition, no later than 14 days after the Board of Freeholders or municipal governing body has introduced on first reading [has adopted] the annual budget, which disposition shall become a final order unless within 10 days from the date thereof (the Assignment Judge for good cause may fix a shorter period of time) the Board of Freeholders, [or] the County Executive, the municipal governing body, or the Municipal Administrator, as the case may be, seeks review by filing With the Clerk a notice of petition for review by the Supreme Court and serving copies of the notice upon the Assignment Judge and the Administrative Director. The notice shall set forth petitioner's name and address and the name and address of counsel, shall identify the recommended disposition to be reviewed (a copy of which shall be attached), and state concisely the reasons for which review is sought.

(b) . . . . . no change

(c) . . . . . no change

(d) . . . . . no change

(e) . . . . . no change

(f) . . . . . no change

(g) . . . . . no change

PUBLIC ACCESS TO COURT RECORDS

It is recommended that Rule 1:38 be amended as follows (Note: The bracketed material is to be deleted and the underlined material is to be added):

1:38. CONFIDENTIALITY OF COURT RECORDS

All records [which] that are required by statute or Rule to be made, maintained, or kept on file by any court, office, or official within the judicial branch of government shall be deemed a public record and shall be available for public inspection and copying, as provided by law, except:

(a) personnel and pension records;

(b) county probation department records pertaining to investigations and reports made for a court or pertaining to persons on probation;

(c) completed jury questionnaires, which shall be for the exclusive use and information of the jury commissioners and the Assignment Judge, and the preliminary lists of jurors prepared pursuant to N.J.S.A. 2A:70-1 and -2, which shall be confidential unless otherwise ordered by the Assignment Judge; -

(d) records required by statute or rule to be kept confidential or withheld from indiscriminate public inspection;

(e) records in any matter that a court has ordered impounded or kept confidential;

(f) records of programs approved for operation under Rule 3:28 and reports made for a court or prosecuting attorney pertaining to persons enrolled in or under investigation for enrollment in such programs [.] ;

(g) pre-sentence investigation reports;

(h) probation records

(i) police investigation reports (other than routine traffic/accident reports that have been entered into evidence during a trial)

(j) search warrants

(k) computerized criminal histories used for controlled-dangerous-substance discharges

(1) records maintained pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C: 25-3 to -16, including but not limited to complaints and temporary restraining orders

(m) medical/psychiatric reports.

TRIAL DE NOVO

It is recommended that Rule 3:23-8 be amended as follows (NOTE: The material in brackets is to be deleted and the underlined material is to be added).

3:23-8. Hearing on Appeal

(a) Plenary Hearing; Hearing on Record; Correction or Supplementation of Record; Transcript for Indigents. If a verbatim record or sound recording was made pursuant to Rule 7:4-5 in the court from which the appeal is taken, the original transcript thereof duly certified as correct shall be filed by the clerk of the court below with the county clerk, and a certified copy served on the prosecuting attorney by the clerk of the court below within 20 days after the filing of the notice of appeal or within such extension of time as the court permits. (1) In those municipal courts in which there is available a stenographic record or intelligible sound recording, appeals shall be made on the record to the Superior Court, Law Division, in the same manner, and on the same available grounds, as currently provided for in relation to appeals from the Superior Court, Law Division. Right of appeal from the Superior Court, Law Division, to the Appellate Division shall be retained. (2) In those municipal courts in which there is no stenographic record or intelligible sound recording, appeals shall be de novo to the Superior Court, Law Division, with the taking of all necessary testimony and presentation of evidence.

[In such cases the trial of the appeal shall be heard de novo on the record unless it shall appear that the rights of either party may be prejudiced by a substantially unintelligible record or that the rights of defendant were prejudiced below in which event the court to which the appeal has been taken may either reverse and remand for a new trial or conduct a plenary trial de novo without a jury. The court shall provide the municipal court with reasons for the remand. The court may also supplement the record and admit additional testimony whenever (1) the municipal court erred in excluding evidence offered by the defendant, (2) the state offers rebuttal evidence to discredit supplementary evidence admitted hereunder, or (3) the record being reviewed is partially unintelligible or defective.] If the appellant, upon application to the court appealed to, is found to be indigent, the court shall order the transcript of the proceedings below furnished at the county's expense if the appeal involves violation of a statute, and at the municipality's expense if the appeal involves violation of an ordinance. If no such record was made in the court from which the appeal is taken, the appeal shall operate as an application for a plenary trial de novo without a jury in the court to which the appeal is taken.

(b) . . . . . no change

(c) . . . . . no change

(d) . . . . . no change

(e) . . . . . no change

PRE-TRIAL INTERVENTION

It is recommended that Rule 3:28 be amended as follows (Note: the underlined material is to be added):

3:28. PRETRIAL INTERVENTION PROGRAMS

(a) . . . . . no change

(b) Where a defendant charged with a penal, [or] criminal, disorderly persons, or petty disorderly persons offense has been accepted by the program, the designated Judge may, on the recommendation of the person approved by the Supreme Court as program director, and with the consent of the prosecuting attorney and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed 6 months.

(c) . . . . . no change

(d) . . . . . no change

(e) . . . . . no change

(f) . . . . . no change

(g) . . . . . no change no change

ROLE OF THE PROSECUTOR Rule 7:4-2(g)
PLEA AGREEMENT Rule 7:4-2(j)

It is recommended that Rule 7:4-2 be amended as follows, (Note: The material in brackets is to be deleted and the material underlined is to be added):

7:4-2. Proceedings Before Trial

(a) . . . . . no change

(b) . . . . . no change

(c) . . . . . no change

(d) . . . . . no change

(e) . . . . . no change

(f) . . . . . no change

(g) Depositions and Discovery. Depositions and discovery in any case [in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted) shall be permitted as provided by Rule 3:13-2 and Rule 3:13-3. [provided that the municipality in which the case is to be tried has a municipal prosecutors. In all other cases the court may order depositions to be taken and discovery made in criminal actions as provided by Rule 3:13-2 and Rule 3:13-3.] Discovery shall be requested of the State by serving a written request upon the municipal prosecutor with a copy to the records division of the appropriate police agency. In the absence of a municipal prosecutor, a motion may be directed to the municipal court for discovery.

(i) . . . . . no change

(j) Plea Agreements. Plea discussions and plea agreements shall be permitted in the municipal court in accordance with Rule 3:9-3 when there is a municipal prosecutor and the defendant is represented or has made a knowing waiver of counsel on the record. The municipal-court judge shall not participate in any plea discussions or agreements. The plea shall be accepted by the municipal-court judge in accordance with Rule 3:9-2 and Rule 3:9-3(b). The municipal prosecutor shall state, on the record, the reasons and necessity for the plea agreement and that the arresting police officer and the victim have been informed of the plea agreement. In those offenses involving a minimum mandatory penalty, when a plea bargain is reached for a defendant to enter a guilty plea to a lesser and/or amended charge, the municipal prosecutor must represent that insufficient evidence exists to warrant conviction or that the possibility of an acquittal is so great that the interests of justice warrant the plea bargain or dismissal.

7:10-6. Educational Requirement

(a) Requirements. Within 90 days of the appointment and prior to sitting, a municipal-court judge shall be certified as having satisfied the requirements of a prequalification education program as conducted by the Administrative Office of the Courts.

(b) Waiver. The prequalification education program requirement may be waived upon application to the Assignment Judge and the Administrative Office of the Courts.

(c) Sitting Judges. Existing municipal-court judges will not be required to satisfy the prequalification education program.

(d) Attorneys. The above course shall be open to all attorneys upon application to the Administrative Office of the Courts.

EXHIBIT 3

LEGISLATION

Pretrial Intervention

In order to establish a Pretrial Intervention Program in the Municipal Courts, N.J.S.A. 2C:43-12 must be expanded and modified to include disorderly persons and petty disorderly persons offenses.

Domestic Violence Relief in the Municipal Courts

To implement the recommendations of the Task Force the Domestic Violence statute, N.J.S.A. 2C:25-1 et. seq. must be amended to include:

a. A contempt procedure modeled after the one used in Bergen County;

b. Mandatory requirement that a police officer place into custody and bring before a judicial officer any person who violates a domestic violence order;

c. Procedures for after-hour emergency relief; and

d. Require that all County Bureaus of Identification maintain a file on all Domestic Violence Complaints.

Liability of Municipal Court Personnel

The New Jersey Tort Claims Act, N.J.S.A. 59:1-3, should be amended to include all Municipal Court Judges and staff.

Preparation and Approval of Municipal Court Budgets

The Task Force recommends that N.J.S.A. 40A :4-45.3 be amended to exempt municipal court budgets from the "cap".

Eligibility Requirements, Evaluation, and Tenure of Municipal Court Judges

In order to accommodate the recommendations of the Task Force the following statute must be amended as follows:

> N.J.S.A. 2A:8-5 - Each judge of the municipal court shall serve for a term of three years from the date of his appointment and until his successor is appointed and qualified, provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full-time to his duties or to limit his practice of law to non-litigated matters, upon reappointment to a third consecutive full term such municipal court judge shall hold his office during good behavior. Any appointment to fill a vacancy caused other than by expiration of term shall be made for the unexpired term only; provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full time to his duties or to limit his practice of law and on non-litigated matters, the first appointment after such ordinance shall be for a full term of three years.

EXHIBIT 4

RECOMMENDATIONS ALREADY SATISFIED BY COURT RULES OR LEGISLATION

RECOMMENDATIONS ALREADY SATISFIED BY COURT RULE OR LEGISLATION

Appendix C	Tenure for Municipal Court Clerks Resolved by N.J.S.A. 2A:8-13.3.
Appendix D	Scofflaws Resolved by The Parking Offenses Adjudication Act, Chapter 14, Laws of 1985.
Appendix E	Frivolous Complaints Resolved by Court Rule 3:2 and 3:3-1(a).
Appendix E	Uniform Bail Schedule Resolved by Chapter 70, Laws of 1985 (A-701).

EXHIBIT 5

1985 JUDICIAL CONFERENCE

Exhibits

5.	Opening Session Justice Robert L. Clifford, Chairman
5. a	Accountability Workshop Prof. Donald E. Kepner, Chairman
5. b	Accountability Workshop Shirley A. Tolentino, Chairwoman
5. c	Administration Workshop Hon. Samuel D. Lenox, Jr., Chairman
5. d	Administration Workshop Hon. David A. Keyko, Chairman
5. e	Budgets, Personnel, and Space Workshop Hon. Samuel J. Serata, Chairman
5. f	Traffic and Computerization Workshop Hon. Betty J. Lester, Chairwoman
5. g	Trials Workshop Hon. William H. Walls, Chairman John Cannel, Esq.
5. h	Closing Session, Questions and Answers Justice Robert L. Clifford, Chairman

EXHIBIT 5

MUNICIPAL COURT JUDICIAL CONFERENCE

JUNE 28, 1985

Chaired by: Justice Robert L. Clifford

CHIEF JUZTICE WILENTZ: This morning, the Supreme Court Task Force on the Improvement of Municipal Courts will make its first public presentation of its findings and recommendations. This report represents the culmination of about twenty months of work.

It is as I am sure all of you now know, a very impressive end weighty document. You will be hearing from the Chairman of the Task Force, Justice Clifford, as well as from the chairs of the five Task Force committees, who will discuss the recommendations of the report in some depth.

I would like to spend a few minutes to place this report in perspective and to discuss why the Supreme Court considered this undertaking essential. Over the pest several years, the Judicial Conference has been devoted to a full scaled review of major elements of the judicial system, including the Criminal Division. We had a conference on speedy trial. The Civil Division. I guess it was last year that we had our case management study conference. Family Division, several years ago we devoted the conference exclusively to the structure, organization and operation of the new Family Court. And Probation, we spent one conference exclusively on the probation function. As well as an overall review of the trial court support structure, and that was the conference that we had on the committee on efficiency in the courts.

As a result, we have made considerable progress in overhauling the trial courts, revitalizing the administration apparatus and I hope improving the procedures governing civil case processing and other case processing.

We have tried to gain efficiency, but not at the expense of quality. Rather our search has been for ways to maintain and enhance the quality of decision-making, through improvements to the machinery of justice.

The Supreme Court Task Force on the Improvement of Municipal Courts, represents a continuation of these efforts. In many ways, this undertaking may be ever more critical than the others. The Municipal Courts are the courts where our citizens meet justice face to face. They affect more people, by far, than the rest of the judicial system combined.

The citizens' impression of the judiciary the citizens' respect for the judiciary, depend more on these courts end their judges than on anyone, or on anything else. The number of cases and people involved is so great that any improvement in the Municipal Court system, even a small improvement, probably does more good for more people, as well, as for the judiciary, than

the most successful Supreme Court project in any other area.

Despite the importance of these courts, their performance has fallen short of our standards of fair and efficient justice. This is not to say that progress has been totally lacking in this area. The Municipal Courts were upgraded following the basic constitutional reform of 1947. The development of a professional, although part time, Municipal Court Bench, dates from that time, but the Municipal Court has never been able to achieve a satisfactory standard of performance.

From the late 1950', through the early 1970's, as much discussed proposal focused upon the abolition of home rule in favor of regional courts. The debate over regionalization did not yield any progress in the improvement of the courts rather, it had the unintended consequence of stifling reform. Initiatives aimed at achieving long-term improvements were hard to justify, amid debate over replacement of the entire system.

As a result, the level of innovation was low, and those improvements which did occur, were accomplished on a periodic and piecemeal basis. Despite these obstacles, some progress did occur, but the ever increasing demands on the Municipal Courts made more fundamental change essential. Legislation imposed new jurisdiction and new duties. Stiffer penalties increased the demand for trials. Uncollected fines and the inability to hold scofflaws accountable, diminished both revenues and, especially diminished respect for the courts.

Greater public concern with drunken driving matters translated into troublesome backlogs. The initiation of the speedy trial program, at the Superior Court level, required greater expedition in the handling of indictable offenses. But most of all the increase in filings, from over five hundred thousand a year in 1949 to over five million filings a year today, was the clearest signal for reform.

All of these factors made it clear that these courts needed major assistance, and required greater integration with the rest of the court system. For far too long, they had operated at the periphery of the judicial system. Efforts had to be made to increase the level of communication among the Municipal Courts and between the Municipal Courts and the Assignment Judges and others with administrative responsibility.

Only in that manner, could a coordination of intention and action be achieved, so as to maximize the effectiveness of this local court system. Only in that way, could we respond to their needs, overcome their weaknesses and. increase their strengths. Only then, would the

Municipal Courts be able to assume their proper role as an integral part of the judiciary.

A decision was made, therefore, to establish this Task Force, with a mandate to identify and analyze the major problems confronting these courts. To determine the appropriate, feasible solutions to these problems. end to devise practical strategies for the implementation of those solutions.

It was determined right from the start that the local court concept would be preserved. There were plenty of other things to do with these courts, without trying to turn the world upside down. The Task Force was asked not to consider regionalization or changes in the method of appointing judges, but rather to determine steps within the present framework that could be taken to overcome the difficulties which long had plagued these courts.

In other words, we decided that instead of fighting and fighting the battles, over the structure of this court, battles which have been lost year after year, we would see what we could do by way of improvement, by accepting the present system of appointing Municipal Court judges and by accepting the fact that they are going to remain local courts.

Through the work of the Task Force, the Municipal Court system has been subjected to the closest scrutiny and examination in its history. The recommendations of the Task Force touch on every aspect of Municipal. Court operations. The presentation of this report at today's Judicial Conference will allow for a discussion of the issues and the inclusion of your suggestions in the formal submission to the Supreme Court.

Your role today is to scrutinize the report. Discuss and debate its proposals. Ask hard questions. Identify any weaknesses and inconsistencies and determine for yourself whether this program of reform ought to go forward, either as suggested here by the Task Force, or with such modifications as you may suggest. We are counting on you to tell us clearly and frankly whether this program should be encouraged.

From my point of view, one of the best things about New Jersey Supreme Court is the willingness of its members to take over my job. Justice Clifford has done so as Chairman of the Committee on Jury Utilization. Justice Clifford has done so as Chairman of the Committee on Probation. Two mammoth undertakings that will effect our courts for many years. His present work as Chair of this Task Force presents us with an even more fundamental challenge, with even greater opportunity to improve the judiciary and to serve the public.

The thesis of his Task Force is that the most important part of the judiciary, the Municipal Court, can and must strive to be as good as the rest of the judiciary. The judges and support staff of the Municipal Courts are determined to achieve that goal, and I believe that our municipalities not only share that determination, but are willing to take the necessary steps in that direction. Steps believed, in the past, to be out of the question.

This is not the state it was forty years ago. The quality of our Municipal Court judges is high. They have become more and more professional. Our citizens know more, our citizens expect more. Their mayors and other elected officials are ready to support the right formula for quality justice at home, in every village and in every town, and in every city of this State. I believe that Justice Clifford and his Task Force have found that formula.

I am proud to present the Chairmen of the Task Force to you, Justice Robert L. Clifford.

JUSTICE CLIFFORD: Thank you, Chief Justice. The generosity of that introduction puts me in mind of the story of the very wealthy Texan, that may be a little redundant, who has this enormous ranch and was giving a party one evening for hundreds of guests, who were not astonished when they walked out to the swimming pool, because of the level of lavishness that attended this enormously wealthy man's entertainment endeavors, to find the swimming pool filled with crocodiles. As the evening wore on and the wine flowed, he announced that he would make an award to anybody who swam across his swimming pool, could have the choice of his ranch, queen's ranch, or his uranium mines that were spread through the hills or the hand of his fair daughter.

The party wore on, got a little noisy, got very active and lo and behold, late in the evening. everyone turned around to find this little guy racing across the pool with the alligators snapping at his heels all the way across, and jumped out the other side. The alligators jumped up and missed him, and there he was, soaking wet, and the host, good to his word said, "well now young fellow, what can I do for you". You are entitled to have the queen's ranch here, I gave my word. No sir, thank you very much, I don't want that.

Well, then -- he could see the way this was going, you are entitled to have my uranium mines, help yourself. No, I don't think I want that. Well, I gave my word, you can have the hand of my daughter. If that's your wish, I suppose it is. He said no, I don't really want that. Well, what can I do for you, there must be something. He said, all I want is to find that guy that shoved

me in the pool with all these alligators.

Which is not to suggest, Chief Justice, that you shoved me in the pool with all these alligators. but I'll tell you, if I escape the day the way he did the evening, I shall be much satisfied.

The efforts of this Task Force, as the Chief Justice has indicated to you, began with the appointment in September of 1983, of some forty-one members. The members included people experienced in Municipal Court affairs, or in working with the Municipal Courts, and I am most pleased to have been asked to serve as the Chair.

An outline of the subject matter of the Task Force's consideration was presented to the Municipal Court Judges Judicial Conference on October 26th of 1983. At that time, over two hundred and fifty - Municipal Court Judges were asked to flush out those problem areas by listing the most serious problems that they thought affected their courts.

There were not just some, not just dozens, there were scores of problems that were - - that appeared to be common to several jurisdictions and from this material, five major issue areas were identified and the Task Force membership was then divided into committees to cover these areas.

The committees and the subjects that they addressed are found in your agenda and they are the Committee on Accountability, that is headed by Professor Donald E. Kepner, Professor of Law at Rutgers University in Camden, who is second to my left, and your right. Committee on Administration, which was chaired by Assignment Judge Samuel D. Lenox, Jr., at my far left. The Committee on Budgets, Personnel and Space was chaired by Assignment Judge Philip Gruccio, who as many of you know, suffered the loss of his father and hence will be unable to be with us today. But in his place instead, Judge Sam Serata has consented to pick up the load.

You know, I hesitate to single out any member of the Task Force as being more important than the other and indeed, it probably is inaccurate, but at the risk of being inaccurate, and running other risks that you run when you single people out, I have to tell you that Judge Serata has proven to be well, nigh, indispensable to the efforts of this Task Force.

There is the Committee on Traffic and Computerization, which is chaired by Judge Betty Lester now a Superior Court Judge, and at the time of her appointment, Presiding Judge of the Newark Municipal Court. And the Committee on Trials, chaired by Superior Court Judge William Walls.

Judge Lester, as I say, was a Municipal Court Judge when we started this thing and now is a Superior Court Judge, and if any of you people out there have a hankering to be a Superior Court Judge in the time it took us to give birth to this elephant, four of the members of the Task Force ascended to Superior Court status. In addition to Judge Lester, who was then a Municipal Court Judge, as I told you Judge Peter Giovine. who was a Municipal Court Judge and is now a Superior Court Judge: Judge Shirley Tolentino who was a Municipal Court Judge in Jersey City and is now a Superior Court, sitting in Hudson County, and I think Judge Ernie Hawkins has cleared all the hurdles, except that of having taken the oath as a Superior Court Judge.

And in addition to that, Judge Neil Shuster was a Municipal Prosecutor and is now the Municipal Court Judge in Princeton and Bruce Weekes was the Public Defender in Atlantic County and is now the Municipal Court Judge in Atlantic County. Which is all by way of saying, we have spent a lot of time on this project.

We have expended a great deal of effort. The levity of my opening remark does not set the tone for today's effort. This is serious business. The Municipal Courts have serious problems. The people that have shared the burden of putting this report together have given serious effort to their serious endeavor and we are serious about your participation, along with that of the hundreds, literally hundreds of people, who have served on the local advisory committees to make these recommendations a reality.

The people who chaired these committees were selected on the basis of their background, their knowledge and experience in the respective subject areas. Each of them has demonstrated a commitment to the work of the Task Force, as well as a capability of bringing together the diverse views of the members. That is no easy task.

I was apprehensive when the Chief Justice named some forty-one people to a Task Force, large enough to be representative, surely I was not certain that it was small enough to be manageable and my contribution to this, if any, has been not with respect to the substance. Chief, but as a Traffic Manager, and I have learned some exquisite moves.

But without the expertise of the people who chaired these subcommittees, we would have floundered. As to the Task Force's subject matter, let me take just a minute to touch on the subject matters on which five committees have focused.

The Committee on Accountability addressed as you might guess, the problem of accountability. The Municipal Courts are local. The overwhelming majority of our people who

come in contact with the judicial system do so through these courts. It is from them that their impressions of the administration of justice are formed, for better or for worse, and that impression lasts.

It is important, therefore, that their accountability be insured and that they live up to community expectations, and to that end, this Committee's work included the development of a forum at the local level, to study the means by which these courts might be made more responsive to community needs

The Committee on Administration addressed the need to develop a management structure that would insure the efficient operation of the Municipal Courts. No court, of course, however large or small, can function properly without a sound organizational structure arid proper delegation of authority. The Municipal Court judge must play a primary role in the administration of his court.

Furthermore, a management structure has to be developed at both the vicinage and state levels, to insure against administration oversight. You will hear more today about the Presiding Judge and case manager recommendations, which address these needs.

The Committee on Budgets, Personnel and Space examined the resources that are currently allocated to the Municipal Courts. It recommends the adoption of funding standards to guide the courts in the preparation of their budgets. It seems clear, from even a cursory examination of the filings, disposition, case backlog and paper flow backlog, that these courts have not been given the resources needed to provide high quality services to the public.

This Committee's work should go far, if it is accepted, if it is put into effect, to reverse that pattern of neglect that has rendered the Municipal Courts the stepchildren of the judicial system.

Most crucial to the ability of the Municipal Courts to meet the demands of their increasing caseloads arid related paperwork is the development of a statewide Municipal Court computer system, especially in the traffic area.

There are, of course, a lot of questions that have to be answered in this area, and let me tell you, I readily acknowledge, I acknowledge in public, that I am a computer moron. I leave that business of computer microchips and high tech to our computer maven on the court, Justice Pollock.

One thing, however, came through, even to me that computerization is becoming a

necessity. Many high volume courts are struggling with existing staff, with no automation. Others are using one service or another, private or public. The challenge we face is to coordinate the computer usage on a statewide basis, so that it becomes a tool of the court.

The Committee on Traffic Computerization has been formulating a plan in this critical area, and you will hear of that today.

The Committee on Trials, finally, examined the entire case processing system, from the filing of a complaint through trial procedure and available sentencing alternatives and programs. The aim was to develop a system and empower it to move cases efficiently and expeditiously. All the while, safeguarding the defendant's rights.

Now, as you can see from this very brief overview, the Task Force undertaking was, indeed, an ambitious endeavor. It required not only the members of its -- the efforts of its members, but it required significant grassroots participation as well. The structure, therefore, was expanded to include local advisory committees on the vicinage level.

The chairperson, or the co-chair, of each local committee was a Municipal Court judge, designated by the Assignment Judge. To insure continuity and coordination between the State and the local committees, a Municipal Court judge was also a member of our Task Force. The remaining members of the local advisory committees came from the Municipal Courts and from agencies that are affiliated with those courts, within the vicinage.

In the work - - the work of the local advisory committees can't be -- can't receive enough emphasis. Once all the problem areas had been apportioned to our Task Force committees, the issues were developed in position papers. You have got copies of them. Let me tell you one thing, I think what you got were the position papers that covered the workshops that you indicated that you wished to attend. If it worked out right, you got position papers that go with those workshops. If you want others, they will be available. If you want all five of them, they will be available at the front desk.

If they run out of them, as they may, all you have to do is write to - - you can write to me, if you want. You can write to the Administrative Office of the Courts and we will get them to you.

The position papers were then reviewed by the Task Force membership as a whole, and they were forwarded out to the local advisory committees for review and comments. Their comments then went back to the drafters of the papers and, I'll tell you, the local advisory

committees were not bashful. They weren't unimaginative. They came out with different reactions that we -- in some instances, we had maybe thought about. In some instances, maybe we feared. Some, that we hadn't even thought of.

With the result that before the final submission to the Task Force for adoption, the drafters had to modify these papers. The Task Force report, therefore, includes the reaction and advice of over four hundred people who made up these local advisory committees. The Task Force considered these views in their deliberations and adopted many of them in their final decisions, primarily, because it was understood that the local advisory committee comments were based on practical and realistic concerns.

The Chief Justice mentioned that the mission of this Task Force was not to remake the wheel. We were cautioned against it. And we were able, I think, to communicate that message successfully to the local advisory committees, who understood that what they came up with had to be workable. Not onerous to the judges and court clerks who will be asked to implement policy. Not unduly burdensome to the Bar, who will be asked to live with these recommendations, should they be adopted. And equally importantly, the Task Force has endeavored to keep the cost of these recommendations low in order to gain the governing bodies in their search for funding.

Essentially, this is the background of the specific recommendations that are going to be placed before you today by the committee chairpersons. Before I turn the program over to those people. I want to thank everyone who has participated in the production of the report. Not just the members of the Task Force who have labored so mightily and so patiently and so indulgently over the last year and a half or so, but also the members of the local advisory committees and the people in the Administrative Office of the Courts who have performed yeoman service for us.

Jack McCarthy is known to many of you and has been a strong and guiding influence; and in particular, I have to commend the work of John Podeszwa, who is the Assistant Trial Court Administrator in Mercer County, on loan to us; and he deserves special recognition for having taken over the Task Force project at a crucial point in its work, and so ably pulled it all together.

Let me cover a couple of housekeeping items. These are important. Here is a major housekeeping item, there is a car in the parking lot with its lights on ZIJ-534, if that means - - I hope it means something to someone here. ZIJ-534, you are not going to have a battery left.

Another one is that it may be on the agenda, I'm not sure. Yes, it has got room numbers assigned for the workshops that you selected. There is a ship twix the cup and the lip, because we were unaware that the college was running some things, and anyway, the room to which you go, you will find printed on your badge. Look at that one. Don't pay attention to the room it may coincide with what is on the agenda and it may not. Go to the one that is on your badge, please.

To your immense relief, I'm sure, despite the fact that the agenda does not include a break between the end of the presentation of these chairpersons and the start of the workshops, we are going to try and have a break, when we adjourn here, and before you go to the workshop. It is going to be a break that's all, no coffee, nothing, just you know, break.

And then, if you would, travel directly to the workshops. I'm afraid that many of you will have to go outdoors, but that won't hurt. There is no break listed in the afternoon session, but there will be one before the commencement of the closing session at 3 p.m., and Director Lipscher now, has volunteered to spring for some coke and fruit juice and that kind of stuff. So what he saved in the morning, you are going to pick up in the afternoon.

And finally, we have varied the format to which some of you have become accustomed at the closing session. I think, if you recall it before, the chairpersons scurried around and tried to report to the assemblage the reactions, the thoughts that had come out of their workshops. We want to save the time because we concluded, rightly or wrongly, that served to cut off the time available to people who had traveled a long distance or a short distance, but who are interested in the work of the Task Force, and have something to say: or have questions that they wish to ask. This is the day not to be shy. At three o'clock, if you have a question, we will endeavor to answer it.

If you have something that you want to say, we will hear it. We encourage you, and we solicit your attendance at that full session, so that you may unburden yourselves of whatever views, reactions, questions you may have.

Without further ado, let me turn over to the chairpersons of these various committees, the presentation of the work of their committees. I will be able to do it a lot more successfully if I find the agenda, which tell me that Professor Kepner, who headed the Committee on Accountability is first to speak. Professor Don Kepner.

PROFESSOR KEPNER: Chief Justice Wilentz, Justice Clifford, members of the Counsel. You may have noticed that I'm the only non-judicial chairman and initially, this gave me great concern. What do I do with all of these judges. Then I suddenly remembered a story about a drama critique, who had criticized very bitterly a play that appeared on a New York stage, whereupon the playwright was quite taken back by all this, and said what does he know. He said he has never written a play in his life, and the critique's response was, that was true, but he was a better judge of lamp chops than any sheep that ever lived.

The Committee on Accountability was assigned eight different topics. Four of these topics arose because of matters of public interest that have focused on the Municipal Court. Four of the topics are matters of what, I would consider, judicial housecleaning. That is, that procedures that have taken place for the improvement of the Superior Court were to be considered for adoption in the Municipal Court.

One of our primary concerns was the driving while intoxicated problem. When I attended the Municipal Court Judicial Conference, almost two years ago, a considerable part of the entire session was devoted to that problem, and you will remember that we were having the difficulty with the breath testing machines. That the cases were scattered, that were being handled differently throughout the various Municipal Courts and the backlog was rather dreadful.

Our Committee was given two assignments. One to determine what could be done about relieving the backlog. Secondly, what we could do about the preventing the backlog. Fortunately, the Supreme Court relieved us of the first responsibility, when they initiated the program to aim towards cleaning up the DWI backlog.

Now, what about trying to prevent backlogs in the future. What are the problems that arise with respect to DWI cases that distinguish them from other types? Well, in the first instance, we know that they are litigated more vigorously and more frequently than many types of cases that fall within the Municipal Court jurisdiction.

Secondly, we know that the number of experts who may testify with respect to the matter of extrapolating the readings are very limited and so the schedules, of course, have oftentimes -- have been built on availability.

Thirdly, we know that there are a very limited number of experts who can certify the authenticity of the machines.

Fourthly, that the matters of adjournment provided have resulted in the delay in trying these cases.

Now, what is our proposals? Well, in our first instance, we have suggested that the prosecutor the Municipal Prosecutor, play an important role in all DWI cases. Now, he should be responsible for actually prosecuting the case. We think it is inappropriate, for judges to judge and to act as prosecutor. We think that it is his responsibility to see that his police officers are present. We think that he should be responsible for taking care of discovery. Now, this is not to say that he personally should do that. That's not what we mean. What we are saying, though, that the primary responsibility for seeing the suitable process for hand1ing discovery matters are handled by the prosecutor.

We think that the court clerk should specially mark all DWI cases, so that they can constantly be monitored. We think the court clerk, in many instances, actually handle the requests for adjournments, should be slowed in granting adjournments and that the prosecutors, in many instances, should oppose the request for adjournments unless requested on a seemingly valid grounds.

That we think that every Municipal Court should adopt standby procedures where if they find that their cases are not being properly processed, and you do have a delay, that an effort will be made to immediately remove that background. And in the event that we do not have sufficient number of police officers and State Police to certify the machines, that we - - the alternative would be either to - - if they will not provide more, would be to provide either legal officials; or it was one time suggested, but it's not in our report, that maybe this function ought to be handled by Weights and measures anyway. That was not our final recommendation.

Now, the second matter we discussed is the question of domestic violence. I don't know of any legislation that is more positive in its effort to respond to a social problem than Title 2C, Chapter 25, of the Statutes. Just to read one sentence out of the legislative findings, where it is stated, "it is, therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide."

Now, we have the good fortune of having the report of the Task Force of the Supreme Court, the Task Force on Women, and that their findings was, (1) that judges were not living up

to the letter of the law; (2) that the police officers did not understand and enforce the act; (3) that there was not appropriate means for advising the victims of this abuse. And that fifth, that the municipal judges were reluctant enforcers of the statute.

After considerable consideration, after having the advice of the local advisory committee, the Committee has come up with a number of recommendations. Our first one is that we think it is appropriate that the Legislature should review the act, with the view of requiring that all criminal cases arising out of domestic violence situations be handled by the Superior Court.

Secondly, that while the act itself provides that in emergencies, the Municipal Court should hear the request for temporary relief and enforce the various non-criminal means that are designed to prevent further acts of violence, that this is overcome. Instead of being the emergency, in many instances, the courts are the primary - - the Municipal Courts are the primary enforcers, and we don't think this is really the best way to do it.

As a practical matter, should the municipal judges be placed in the position of having to chastise the local police because they don't think they are really living up to the act. So we think that this – that you ought to have only in extreme instances, should the Municipal Courts in any way be involved in the enforcement of this act.

We think that the effort should be made to require -- I'm sorry. That we should amend the statute to provide that whenever an order is issued, a temporary order is issued, that it should specify what acts will require the imposition of contempt or other sanction for its non-enforcement. Currently, the act says it say. Oftentimes, nothing is done and that the act is really not being enforced in the manner it was intended.

That we think that the judges who hear these cases should have access to all prier complaints, criminal or civil. That counseling should be mandatory and that the - - there should be further training for police and judges in the administration of this act.

Now, the third area of our concern, it seems to me, was the product of the first two. That is that we know that the great interest in DWI cases. We know, also, the case of the child abuse, the battered spouse, are also matters that have received a great deal of public attention.

This raises the question of making court records accessible to the public. There is some obvious conflict in this one. On the one hand, the right of privacy, the right of confidentiality. On the other, the right of the public to know. So this means that there must be some kind of an accommodation. We propose that Rule 1.3:8. which deals with the accessed records, should be

amended to specifically identify those documents that should be made available to the public. Those that may not, that should not be made available.

That we should have procedures for making records available within a reasonable time during the normal working days, taking into account the limitations placed upon some Municipal Courts by the fact that they just don't have enough people. We think that it is appropriate that there might be some reasonable fee charged for providing these records, but certainly not a fee that would curtail or prevent the access to these records.

To illustrate seine of the documents that should be made public, this would include docket books, subpoena, traffic tickets, court calendar, general correspondence, such as letters of representations, notice to defendants, witnesses and information from the Division of Motor Vehicle.

Confidential records, that is, those that should not be included are probation records, police investigation reports, other than the routine traffic accident reports which are entered into evidence, search warrant, court personnel records, domestic violence complaints end training programs of court personnel. Well, I'm sorry, that was not in that --that is not a matter of record, that is another matter.

All right, now, our third point that we want to make with respect to this matter is that it is necessary to train court personnel with respect to handling these requests and become familiar with what is available and what is not available; and at this time, we just don't have that kind of training.

Another area in which we spent sometime was this matter of victim witnesses services. That this is the - - the Superior Court has adopted programs which are designed to protect victims, recognize their interests and that it is the recommendation of our Committee that, again, subject to limitations placed upon Municipal Court, due to their limited physical facilities and their limited staff, that, nevertheless, that they can do such -- take such steps as having on-call subpoenas; on notifying victims and witnesses of the process or the progress that the case has been made. Having an opportunity for their input in bail determinations. On adjournments, on plea negotiations; and to provide restitution as one of the means for resolving these matters.

That this would all give the victims and witnesses some assurances they presently do not have and certainly if this is important enough for the Superior Court, the Municipal Courts' participants are entitled to the same consideration.

That we spent some time on the matter of uniformity of sentencing and that our conclusion was that this is a matter that requires some further study, that you ought to have a committee representing the various interests of not only the criminal justice system, but the public. That the rules which provide the standards in the criminal justice code be amended to cover more specifically some of the problems and the rules that are enforced in the Municipal Courts.

We also recommended for further study the matter of sentencing alternatives. That is, the use of restitution, release programs. That community services, a great deal of work is being done with that at the present time. That because of difficulties in our personnel -- in our Committee membership, that this is a matter that we got to rather late, and that we thought was inappropriate, in view of the fine work such as Judge Keyko's Committee and the other organization wording this, that we should co nothing except to recommend this matter be continued and that these various studies be consolidated and be made available.

Finally, the matter of great importance is this matter of calendar performance. That the Municipal Courts pointed out, should give quality justice in timely fashion. That the courts should be interested in backlog reduction; and I don't think I need to labor that item with this particular group. We emphasize the importance of speedy trials. That we noted that at the Municipal Court Judges Judicial Conference held two years ago, that it was the consensus of opinion of the judges at that time, that the indictable should be finished forty-eight hours from the first offense; barking, fourteen days; ordinance violation, twenty-one days; moving violation, thirty days' disorderly persons, petty disorderly persons, forty-five; DWI, sixty days.

That also that we are accumulating, I say was, the AOC, has accumulated a great many statistics concerning the performance of the courts, and from this, that is expected that there will be some standards for determining how many cases courts should have; and taking into account the performance of each court with comparable courts. That we should be studying the costs of these courts and that once it is known that these figures are available, you can see that this is going to require the local Municipal Courts to watch their own figures to say that they are performing in accordance with the standards.

Now, no way, in no way, does the Committee suggest that efficiency is to be at the expense of justice. I have presented this report with some reluctance, not because I disagree with the basic findings, they are all sound. Not because I'm not familiar or unaccustomed to

discussing legal issues and legal institutions, rather because it is an awesome task for me to try to present by these few conclusionary remarks the fact that hundreds of hours of study, of deliberation, of discussion, and reconsideration, has gone into this report; and I am proud to have been a part of this enterprise and I hope that we have your continued support, that these may finally be adopted. Thank you.

JUSTICE CLIFFORD: Thank you very much, indeed, Professor Kepner. Not even a quarter of ten in the morning and I pulled the first draft of the conference. I notice from the agenda that I was to have called upon the Chairman of the Administration Committee first, but if that's the worse we do today, I shall be deliriously happy.

I must tell you that a member of the Administration Committee and one who has consented to participate in the workshop of that Committee is Mrs. Ann O'Connor, who last year, at least, I don't know how long the term runs, but was the President of the Municipal Court clerks Association. A body of people who are intensely interested and have manifested their intense interest in the work of this Task Force. They have been major contributors. They have made available, at their annual meeting, as a forum for all these chairpeople to explain the work of the Committee, not once, but twice.

The first year we told them what we intended to do. The second year we attempted to tell them what we have attempted to accomplish and we are most grateful to Ann O'Connor and the Municipal Court Clerks Association for their major contribution to the work of the Task Force.

Now, the person upon whom, apparently, I enrule have called first, namely, Judge Samuel D. Lenox, Jr., Chairman of the Administration Committee, Judge Lenox.

JUDGE LENOX: Ladies and Gentlemen, good morning. We all recognize that the Municipal Courts have gone under increasing pressure from a more problem world. Caseloads have expanded and the nature of the cases has also changed, reflecting society's demands for additional court involvement.

While in many municipalities, the courts are still staffed by only a judge and a clerk, some courts are now characterized by as many as six judges, daily sessions and staffs of fifty to a hundred employees. Courts in some urban municipalities have more judges and are supported by larger staffs than the judiciaries in six of our smaller counties.

During the long period of expansion, and the number, size and complexity of the Municipal Courts, number, size and complexity of the Municipal Courts, they have developed on a somewhat ad hoc basis, in response to the specific needs at the time, and have become organized in different ways from court to court, with different levels of responsibility and oversight. They have operated successfully, primarily because of the hard work and dedication of the judge and support staff.

The need to bring to Municipal Court administration a measure of uniformity and improved organization, was immediately apparent to the Subcommittee on Administration. As the name suggests, the subcommittee studied primarily the management of the Municipal Courts. as opposed to the manner in which they performed their judicial function.

We studied the present administration of the Municipal Courts, as carried out by those charged with that responsibility at the local vicinage, or county and state levels. The Subcommittee on Administration has proposed to the Task Force, and now proposes to this Conference, a new administrative structure for managing the Municipal Court system, and has made other recommendations to promote more efficient operation of the Municipal Courts by the judges and court staff.

From a historical standpoint, many of the recommendations which we make are the culmination of those of the work of the Committee on Efficiency and the Management Structure Committee, regarding the management of the entire judicial system. Some of the most significant work in New Jersey judicial reform in recent years has been in the organization and management of the trial courts under the leadership of Chief Justice Wilentz.

Through this effort, there has emerged a new administrative structure in the Superior Court. The primary aspects of this system are the organization of the court into divisions, and the management of those divisions under the authority of the Assignment Judge, by Presiding Judges and case managers. Each Presiding Judge is designated by the Chief Justice and is responsible for the performance of the judges and all court support personnel within his division.

The case manager provides a professional administrator with expertise in such areas as budget and personnel management. This new system in the Superior Court is still in its infancy, but it is working well.

The Assignment Judge remains as the top official in the vicinage, but his role has changed

somewhat because of the establishment of the Presiding Judges and the development of the administrative support structure. No longer must the Assignment Judge carry virtually the entire burden of assuring the smooth flow of work. Much of his responsibility has been designated to efficient administrative judges and managers.

It is with that background that the Subcommittee on Administration began its work. What we now propose is to bring the Municipal Courts into the court system. For many years, the Municipal Courts have been the stepchildren of the judiciary, acting almost as independent contractors under the indirect oversight of the Assignment Judge.

We seek to establish a Municipal Division, patterned after the system now in place in the Superior Court. The Municipal Division will be organized, as are the other courts on a vicinage basis. In each vicinage, there will be a Presiding Judge of the Municipal Courts, charged with most of the management responsibilities now vested in the Assignment Judge.

He will be designated by the Chief Justice on recommendation of the Assignment Judge and will be chosen from among the sitting judges, Municipal Court judges in the vicinage. The Presiding Judge will serve on the state payroll, with a performance of his administrative duties, but will, remain on the municipal payroll for the performance of his judicial function in the Municipal Court or Courts in which he sits.

This judge in each vicinage will bring to the Municipal Courts an administrator with direct oversight control on a daily, rather than a sporadic basis, and will be a judge with intimate knowledge of Municipal Court problems. He will be one with a keen and dominant interest in Municipal Court matters, who will have an essential role in implementing and carrying out all of the recommendations of the Task Force.

The Presiding Judges in the Trial Divisions of the Superior Court are each supported by a case manager. Similarly, we recommend the appointment in each vicinage of a case manager in whom will be vested the administrative responsibility over all the Municipal Courts. That person will serve on the county payroll and be accountable to the Presiding Judge. He will have the sole function of providing assistance and support service to the vicinage Municipal Court.

Some of the vicinages already have an assistant court administrator devoting full time to the Municipal Courts. The structure we propose will make Municipal Court management through the Presiding Judge, case manager, executive team, uniform in every vicinage to support this new administrative structure, we have proposed an expanded Municipal Court Services Unit

in the Administrative Office of the Courts.

At the present time, the Administrative Office is divided into a number of divisions, each headed by an Assistant Director. The Municipal Court are now served by a small subdivision working within the Division of Criminal Practice. I believe there only three people assigned to that unit. We recommend the establishment of a Division of Municipal Court Practice, with its own Assistant Director and additional personnel and resources.

This will bring the Municipal Courts to the same level of support services that is provided the Superior Court judges and their staffs. We believe that this new division in the AOC will be necessary to implement the many recommendations of the Task Force in the years to come.

After it was first organized, our subcommittee expanded to add to the membership additional Municipal Court Clerks, and with them we addressed a number of specific problems confronted by the Court Clerks' offices. They told us of the problems which arise when a court is faced with a workload crisis, caused by a sudden increase in complaints received, or by a loss of staff resulting from illness or death or resignations or vacations. We established a procedure to be followed, and developed priorities for the performance of work in the Clerk's office, during a time of temporary crisis.

We further recommend that the Administrative Office develop formal guidelines and procedures to be follows: and a method for providing short-term clericial assistance to the courts in crisis, until the problem is resolved.

The Subcommittee also addressed the problem of Municipal Courts which have long-term problems, rather than simply a temporary crisis. This is the court which is backlogged because of poorly trained personnel, insufficient staffing, inadequate resources or funding, or other problems within the office itself. That situation cannot be resolves by a temporary band aid type solution, it requires major surgery.

We are recommending the establishment in each vicinage of an Emergency Management Visitation Team, a group of experts in each area of speciality in the Clerk's office, chose from among the personnel within the vicinage. The team will act as a trained unit, prepared to move into a problem court and provide technical assistance as long as is necessary to correct the deficiencies in the system, train the office personnel and return the court to one which can, again, function efficiently.

Another recommended change by the Subcommittee has already been implemented. We

recommended the preparation and publication of a procedures manual for court clerks. This recommendation has been implemented through a grant received and the project was conducted by the National Center for State Courts. This reference and training document defines the responsibilities of the personnel in the Clerk's office and contains an appendix of all of the standard forms used. It incorporates all existing directives, the Municipal Court Manual, statutes, court rules and policies and procedures regarding bookkeeping and financial control over the one hundred million dollars annually handled by the Municipal Courts.

We also studied the forms used in the Clerk's Office and have recommended that no new forms or reports be imposed on the Municipal Courts, until after they have been reviewed and approved. We request the Supreme Court to establish a committee to perform this function and also to review all existing report forms to determine whether the importance of the data collected justifies the work required to obtain it.

In another area we are recommending that the law enforcement authorities, rather than the court clerks be charged with the responsibility of preparing non-traffic complaints filed in the Municipal Courts. We believe that law enforcement authorities should prosecute and the judiciary should judge, and that from both a functional standpoint and from an appearance standpoint, the present practice is improper. In order not to impair access to the courts, the clerks will continue to prepare civilian complaints. We recognize the impact on the police, resulting from this shifting of responsibility and we, therefore, provide for lead time before implementation and for the establishment of standards and procedures to make this change possible.

The Subcommittee has also addressed two problems universal in all courts, scheduling conflicts and postponements. Scheduling conflicts result primarily from conflicting commitments which attorney have in other courts. Our recommendation contains a specific schedule of courts and types of cases and establishes an order of priority in th4e event of conflict to which judges, clerks and lawyers may refer to as a guide to resolving them.

We also propose a procedure to be followed when the conflicts cannot be resolved at the local level. With regard to a policy on granting or denying a request to postpone a scheduled trial, we have not recommended the specific policy, we have recommended that there be developed and promulgated a statewide policy with firm and uniform guidelines upon which everyone may rely.

We have also made a number of suggestions on how to reduce the need for postponements.

Perhaps the most difficult and significant subject we addressed is that of the payment of fines, of delinquent fines, penalties and costs, which the court has ordered to be paid in installments. This is a staggering problem involving millions of dollars in lost revenues. Obviously, we found no magic solution, but we have made fifteen interesting proposals for the improvement of collections. Time won't permit an in-depth discussion of this, but one innovative suggestion warrants mention.

We propose that when a judge enters an installment payment order, he be empowered to order the surrender of the defendant's driver's license and to issue to him a temporary license, printed on red paper, with an expiration date coinciding with the date on which the defendant must make full payment of his obligation. This is a very popular recommendation with the court clerks, who applauded at vigorously when at was presented to them at their conference recently in Cherry Hill.

This procedure will compel the defendant. who is in default on his payments, to return to court without the necessity of notices. Without the necessity of a warrant being issued. If he does not do so, he will automatically be driving on the revoked list. This procedure we suggest, be implemented an cooperation with the Division of Motor Vehicles to prevent the defendant form obtaining a duplicate or a new driver's license.

Next, working through different authors, the Subcommittee also produced two papers calling for the establishment of permanent vicinage committees. One called the Vicinage Advisory Management Team; and the other committee was one to coordinate the activities of the court and the many agencies end departments at the local, county and state levels, with which the court interacts.

The Subcommittee later consolidated these concepts into a single committee to perform both functions, with a broad membership to be composed of many of those who served on the local advisory committees, for the Task Force. Each vicinage committee will meet regularly to identify and resolve problems which inhibit a smooth working relationship with interacting agencies and the efficient functioning of the Municipal Courts.

In addition, we recommend the establishment of contact personnel in each agency and a directory of such persons to be available in each court, in order that individual difficulties may

be quickly overcome. We have also recommended a modification of the present trial de novo procedure for appealing Municipal Court judgments to the Superior Court.

For many years. the Municipal Court judges have objected to the existing procedure. Instead of the present automatic right to a new trial on the record of the court below, whereby the Superior Court judge may substitute his judgment of the facts of the case for that of the Municipal Court judge, we recommend a procedure for an appeal to the Law Division, under the same standard of review as now exists in an appeal from the Law Division to the Appellate Division. Thus, the question before the Superior Court Law Division judge will be whether the Municipal Court judge has committed legal error, and will not involve a new determination of the facts already decided by the Municipal Court.

The Superior Court judge will also be required to give written reasons for his reversal of the judgment of the lower court, so that the judges will know what it was that -- the manner in which they have erred.

We believe the trial de novo procedure developed at a time when the Municipal Courts were lay magistrates, and that with the present well-educated Municipal Court Bench, the appellate procedures should conform to that in other courts.

Another somewhat controversial recommendation is that for the establishment in the Municipal Courts of a statewide pretrial intervention program by the incorporation of such a system into the program now functioning in the Superior Court. There are many ramifications of this proposal which can be discussed in our workshops today.

We have also proposed on en optional basis a program for expanded use of community dispute resolution committees, utilizing volunteer citizens and diversion to these committees of citizen complaints for amicable resolution outside the normal judicial process.

And finally, the Subcommittee considered the substantial concern, which has been expressed by the judges and court clerks, regarding their potential liability from lawsuits, which may be instituted against them for their actions or inactions in the performance of their duties.

The question is how they may be provided with protection against liability, the payment of judgments and the cost of legal representation. We found that the court clerks and their staff enjoy no immunity and that the judges have only a qualified immunity and may be subject to these adverse consequences. We found no way to provide protection against all possible liability,

while we considered various alternatives, we ultimately focused upon a legislative remedy.

This however, will provide no protection against Federal civil rights actions or for violations of constitutional rights or acts of bad faith. Municipal Court judges and their staff are included in the immunities under the Tort Claims Act, but they do not have the same rights as state employees to representation by the Attorney General and indemnification by the state for judgments entered against them.

We recommend that the Tort Claims Act be amended to correct this inequity. We also recommend that until this legislation is enacted, the municipalities be encouraged to enact a form of ordinance, which we have prepared, providing for insurance coverage and legal representation.

And finally, we suggest that the AOC establish continuing education programs, which will assist the judges and their staff in avoiding the pitfalls, which may subject them to such liability.

In the short time allotted for this presentation, I've been permitted only brief mention of the sixteen position papers which were submitted to the Task Force by the Subcommittee on Administration. They represent a year and a half of work by many dedicated people. Some of the recommendations are controversial and there will be much to be discussed in our workshops today.

In conclusion, let me say this, the call to abolish the Municipal Courts or merge them into a regional network of full-time courts, has abated. The present system will be retained under a new framework, with which we can confront our present and future demands. While our Subcommittee began its work with the realization that we might, ultimately, recommend revolutionary changes in the structure and administration of the Municipal Court system, we have not done so. We believe we have recommended substantial improvements in the existing system.

The Municipal Courts have long been neglected, provided with inadequate facilities, resources and personnel. As a result, filings now exceed dispositions by more than eighty thousand cases a year, yet these courts dispose of all - - of over four and a half million matters annually. The number of cases is so great that the need for improvement cannot be realistically disputed.

It has been the tradition of the New Jersey judiciary and the goal of the Task Force to have the finest system of justice in the country. That goal is most important in the Municipal Courts. It seems almost trite to say that these courts have the greatest volume of cases and the most frequent contact by citizens with the judicial system, but it has been said so often because it is so true.

We, on this Subcommittee, as do all of those on the Task Force, hope that what we present to you today will be a format for a new and efficient system for Municipal Court operations that will serve as a model for years to come. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Lenox. Not even ten o'clock and the Chief Justice reminds me that I blew it the first time around when I said that I had the wrong order of the speakers. I was looking at an agenda you see with that cover, which is a draft, and you are looking at this one, and you are wondering why is he saying it's the wrong order. It was the right order and I knew it all along, don't worry about it. We're going to get it and we'll get there.

The Committee on Budgets, Personnel and Space is headed by Judge Phil Gruccio, who I told you cannot be with us today and Judge Sam J. Serata, who is the Municipal Court Judge of Vineland and has been an extraordinary - - played an extraordinarily major role in the contribution that he made to the work of the Task Force, has consented to take over for Judge Gruccio.

I noticed that one of the participant in the workshop on Budgets, Personnel and Space is Mayor Catherine Frank. Mayor Frank was the - - I think I'm correct. The President of Chairman of the conference of Mayors and she, too, made available as a forum that conference, so that we could explain to those who have a stake, a big stake, in the work of this Task Force, what it was we were up to.

Judge Gruccio, during that course of the year, at the meeting of the Conference of Mayors, attempted, I understand most successfully, to explain the work that this body has been engaged in for a year and a half. Judge Serata on the committee on Budgets, Personnel and Space.

JUDGE SERATA: Thank you, Mr. Justice, Good morning, Ladies and Gentlemen.

I'm about to start across the pool of crocodiles and I would indicate to you that this particular subject of budget, personnel and space involves a pool of crocodiles in itself.

When the first meeting was held by Judge Gruccio, with a group of judges at the Municipal Court Conference in October of 1983, I believe it was, the first large crocodile loomed, and that was the identification of the basic problem in this area, and it is two fold.

Number one, this particular area, oddly enough, despite its name, deals with money, control and quality and when you get dealing with those things in municipalities and with Municipal Court success, you find out it becomes very sensitive. The large crocodile that soon emerged, which is the biggest problem of all, are the pressure that exist on Municipal Courts, and are focused in this particular area.

You find that en the question of money, control and quality of courts and court personnel and the facilities, that you have an intersection of the two counteracting forces. Number one, basically the municipal force that is able to provide and under the statutory scheme of things, provides the money and the personnel for the operation of the court and the constitutional mandate that the Chief Justice and Supreme Court be responsible for the administration of the court system.

You find stuck somewhere in the middle of that is the Municipal Court judge who is responsible for the operation of his court, and yet he is dependent upon the municipal governing body in one form or another for his appointment and he really doesn't often have control over the personnel who operate the court for him.

You also examine the Municipal Court structure in the State of New Jersey and you find that there are very few full-time Municipal Court judges. There are even less -- I think there is one judge who is a prime time judge, that's me. That's a judge who is limited and cannot engage in contested litigation, and the vast majority of Municipal Court judges, probably about two hundred and eighty, or two hundred and seventy-five of the Municipal Court judges in the state, are part-time Municipal Court judges.

So that when you find that they are interested in their practice and they are also interested in and responsible for the proper management of the court, and they have to do that with personnel that they don't always have something to say about with regard to selection, employment, firing or salary, you find that there is a large crocodile lurking in the swimming pool, when you become

involved in budgets, personnel and space in the Municipal Court.

Essentially, if you have had the opportunity to read the report and if you have read any of the position papers, you will find that threading through all, of these position papers, you find basically three themes.

Number one, that the Supreme Court is responsible for the administration of all of the courts of the State of New Jersey, which includes the Municipal Courts.

Number two, you will find that there is increasing imposition of the power of the Chief Justice exercised through the Assignment Judge into the internal workings of the Municipal Court, which sort of gives the Municipal Court judge or the court clerks who are dependent upon municipal officials for their appointment, a buffer or someone else who will be responsible for taking up the ball, so to speak, or carrying the ball, and being responsible to see that the court has basically what it needs in order to operate properly.

The third thing that the Committee concerned itself with was basically the quality of personnel who work in court, and that, of course, gets itself involved in the question of practice limitations, of duties, qualifications and eligibility and evaluation of court personnel, as well as termination of court personnel, including judges. Although termination of judges was not dealt with by the subcommittee, but other employees termination was.

The other aspect was to provide a proper house for the Court, or a proper physical facility. Now, when we look at the ten position papers that were prepared by the subcommittee or the Committee on Budgets, Personnel and Space, you will find, and it is to be commended on these members, that I reviewed them all, last night again and they are nicely written and reflect a great deal of thought and effort on the members of the Committee.

Some of the information and some parts of the position papers were produced and the information supplied through the efforts of the Administration Office of the Courts and various members of that Committee. When we analyze those position paper, which I am going to proceed to do, we find that they line up in a certain order. At least, I think that they line up in an order.

The first paper dealt with the problem of budget preparation and approval. That particular paper provides for various aspects that involve themselves in other areas of the subcommittee's work. Essentially, what that provides for is a uniform method of budget preparation on uniform

forms to be exercised throughout the state. Some vicinages are now doing it and I believe that what we found out was, that there are varying degrees among the vicinages, as to how this is being done.

Essentially, what the paper calls for is the preparation and submission of a proposed budget by the Municipal Court to the Assignment Judge and the trial court administrator's office, and if it comes into being, the Presiding Municipal Court Judge, of course, will have a large part to play in all of these things, as the first assistant of the Assignment Judge. As I understand that position to be.

But the concept is that the budget paper preparation or submission would then be reviewed and must be approved by the Assignment Judge, and there is provision, also, for the creation of a Budget Committee, within the municipality, that is sort of a meet and discuss committee. In smaller municipalities, that may very well constitute the entire governing body. In larger municipalities, that meet and discuss committee would constitute the chief financial officer, one member of the governing body and the Municipal Court judge, who would be accompanied by either the assignment Judge or Presiding Municipal Court Judge or a member of the trial court administrator's office, who would be knowledgeable about these things, so that there would be an opportunity to present the budget to the municipal governing body end explain the needs of the court.

Than there is a budget impasse. Assuming that the municipality does not go along with the needs of the Municipal Court, there is a budget impasse procedure, very similar to the budget impasse procedure that is now in effect as far as Assignment Judges are concerned and their respective counties, whereby the Assignment Judge would indicate to the governing body that the budget approval. that they have given is not satisfactory. Give them an opportunity to revise that, and if not revised, there would be an appeal taken to the Chief Justice and it would then be referred to sort of a blue ribbon panel, that exercises at the properties of an Appellate Court, who would then review end ultimately there would be an order indicating what the budget would be.

At the time of the appeal, the municipality would have an opportunity to be heard and present its position with regard to the Municipal Court budget. That, in effect, would relieve the Municipal Court judge of being in the middle in that sandwich or the Municipal Court Clerk of being in the middle of that problem, where the court needs and the desires of the municipality to

provide funding, would intersect. The things that come out of this particular position paper would be a uniform reporting system on what municipalities do to both the Assignment Judge and the Administrative Office of the Courts.

That would permit the establishment of several interesting things. Number one, and most importantly, it would provide a data base, Which would give a lot of information concerning workloads of courts, what salaries there are and what court expenses are, which leads to the second papers, which is the budget ratio paper that was produced.

Now, budget ratio talks about the workload or caseload of a court in connection with the amount of money that is required in order to operate the court. An initial survey of these figures, based upon really imperfect data supplied to the Administrative Office, of the Courts, would indicate, I think, that it costs a little over $5 on the average to process each case. It costs more in smaller courts, smaller volume courts, than it does in larger volume courts, so that there is something of the Ford theory that if you can make more of them or do more of them, you can do it more cheaply.

If you are going to handle cases, I assume that that theory applies also in the general economy of manufacturing, but it certainly appears to be evident when you analyze the returns of the Municipal Courts. So that the budget ratio paper deals -- is sort of an offshoot of the budget preparation and approval paper, because it provides data that will allow information to be supplied, which is very important when you go to a budget hearing.

The concept is that if you are going to go and make application for increased salaries, that what you should be in a position to do is to show what comparable court clerks or comparable judges are being paid in terms of salary. What the facilities are in comparable courts and be able to convince the municipal governing body that this is what they should do.

I would indicate that in the course of this particular -- some research that I did, it is very interesting to see that the concept of comedy threads itself through the relationship of the judiciary and the legislature and the executive body. It seems that no one really wants to have a confrontation, yet the judiciary wishes to remain independent. Independence of the Municipal Courts from the travels of the police, of the governing body and of the governing body, either in its legislative function or the administration of municipalities in their executive function, is a very, very important thing, no matter how you want to study Municipal Courts. Those things

interweave themselves, so that the Municipal Courts are not isolated and can't act insulated from the entire world.

The Municipal Court, while it should be independent, has to be able to live with the other parts of government. That is particularly evident when one looks at the papers that are prepared on security and the question of a minimum standard for facilities. There are two papers. There is sort of a meander from the general thread of the Budget, Personnel and Space Subcommittee goals, but these two papers deal with minimum requirements of security, and it is very interesting, security in the Municipal Court, according to the position paper, is delegated to the Chief of Police of the municipality if there is a police force in the municipality. So that the problem of security becomes a police function, even though it is the court.

Also, if there is no police department in the municipality, which is true in many of the smaller municipalities, the problem is then delegated to the County Sheriff's Office. The feeling in this regard is that the County Sheriff is already familiar with the security responsibilities for the Superior Court and the information that he has, the experience he has for the security of the Municipal Courts, can be taken from his experience with the Superior Courts.

There are recommendations in these papers for minimum courtroom facilities, minimum sanitary facilities. I sew en article in the paper, I think, within the last two weeks, about a courtroom that had sanitary problems with it. There are many problems involving facilities. The minimum standards of facilities for courts deals with this kind of problem, recommends that where the municipality is going to construct a new physical facility, that review of the plans for the court be submitted to the Assignment Judge and perhaps there should be an architectural review section provided by the Administrative Office of the Courts, that would have an opportunity to look at the proposed plans and that they would have to have some kind of approval.

So that there would be, at least minimum standards guaranteed. Minimum standards for facilities also would contemplate certain safety and security problems. For example, the recommendation is that the Bench have some type of bullet-proof facility. That there be an ability to control access to the courtroom by people and that there should be screening of the people when they come into the courtroom.

Many Municipal Courts have virtually no security and some of the

facilities are rudimentary, as you are all familiar. Also, many of the Clerks' offices have inadequate space. People are crowded into one large room and they work on top of each other, with no ability to divide desks or prevent people from having privacy when they are working; and all of that is contemplated and presented very nicely in the paper and the position on the minimum standards for facilities.

The Committee also dealt with the problem of personnel, which is probably going to be the balance. You will find that the question of salaries of personnel is covered in a separate paper. Much of the information that is derived from data which was acquired by the Administrative Office of the Courts. There are some recommendations in connection with that, that deal with also the concept of classification of personnel.

This Subcommittee felt, after reviewing the volume of courts, and the sizes of courts, and the number of employees, that basically, there are three divisions of Municipal Courts, according to size. They are one, two and three, depending upon their volume. I believe that the largest number of courts probably fall into Division 3, which is a one or two person staff. The middle division is a staff that is - - has a part time judge, has a full-time clerk and probably five or six employees, either part-time or full-time. And the first category, or course, are the larger Municipal Courts in the state. Many of them with full-time judges or judges who spend a good deal of their time on the Bench.

The classification of salaries is also broken down according to the sizes of the courts. As far as clerks and other personnel are concerned. The qualifications of the Clerk/Administrator, which is a new concept. The concept being that the Clerk/Administrator would be a joint employee. He would - - that would be selected by the cooperative effort of the governing body, who by statute, has the right to appoint court clerks and other Municipal Court employees, but also with the concurrence of the Assignment Judge, so that there would be input from employment of these personnel.

The problem now is that many times the Municipal Court Judge is not consulted at all and certainly, the Assignment Judge is not consulted with regard to the employment, particularly of the clerk or Clerk/Administrator, who is such a vital part of the administration of the courts. When one considers that the Municipal Court judge is part-time, many of us Municipal court judges simply sit on the Bench and feel that our responsibility, or that is primarily our

responsibility and the administrative problems of the court are left to that all essential person, the court clerk. Who bears the brunt of all of the problems that come up on a day to day basis, while the judge comes in and puts on his robe and sits. In many instances, this is so.

One of the concepts and one of the important functions of this particular Committee, was to draw the Municipal Court judge more into the problems of administration of the courts and the judges and of the court system through the Assignment Judge, into the problems of administration of the Municipal Courts. Which has sort of been left out there in limbo somewhere, with the court clerk having to obey the mandates of the Administrative Office of the Courts, and the Supreme Court, and subject to limitations pieced upon her by the governing body, who supplies the funding. These problems have to be resolved, and we hope that we have offered solutions to the problems.

The other area of personnel that was considered were the problem of duties, quality and appointment of personnel in the court, as well as both judicial and clerical with the court. These are enumerated in the position papers, and I'm not going to go into the detail, the requirements for a court clerk.

In a Class One municipality, just basically it provides that that individual has to have a Bachelor's degree, plus, I believe, it's four years of experience, or two years of experience that is involved, and that the Bachelor Degree requirement can be waived, I believe, through an experience requirement and there are other requirements. One of the fundamental things that the Subcommittee, or this Committee on Budget, Personnel and Space recommends, is continuing education of Municipal Court personnel, whether it be judges, clerks or whoever it is, out these things are very important.

As far as the judicial end of the situation, the recommendation is, essentially, that a Municipal Court judge, one statutory - - or a legislative change is recommended and that is, there was a distinct feeling that has been approved by the Task Force in general, that no person should serve as a Municipal Court judge unless he has five years admission and practice of law. That there is something wrong with a brand new lawyer coming in and sitting on the Municipal Court Bench. That there ought to be some experience level, and the feeling was that five years would be important.

Also, there was consideration given to the pay of Municipal Court judges and studies

were made for them, as well as for the clerks, that based upon the volume of the court and the experience. One controversial position that was adopted has been the limitation of the pay of the Municipal Court judge. Some Municipal Court judges, because they are willing to work hard, make a lot of money, and if they are lucky, they may work for municipalities that pay well. In that kind of situation, it is entirely possible that a Municipal Court judge can earn more than a Superior court judge, or perhaps even more than a Supreme Court Justice. There is some feeling that a Municipal Court Judge, regardless of the time that he puts in or what his position is, should not be able to do this.

There is also the feeling that if you wish to work hard, or if you are fortunate in life, that in our way of looking at things, you should be able to make as much money as you can, that's part of our free economy. That particular problem is addressed by the Committee, and the feeling was that the Assignment Judge should be permitted to review.

I am advised that my time is up. There are two other areas that I want to cover very briefly with you, despite the admonition given to me and that is, that there is a paper that is prepared on nepotism in the Municipal Courts, that involves the problem of employment of the major's daughter by the governing body and that type of thing, which is to barred and can be done by court rule.

The hiring and firing of employees, or the employment or termination, again, involves the input of the Assignment Judge into that area. Particularly, on termination of employees, that there should be a hearing permitted.

The last subject is probably the most controversial. It was one paper that was prepared on limitations of practice of Municipal Court judges. That did not get through the Task Force, but there was a -- I think it was the only position paper that was turned down and that was done by a close vote of the Task Force.

The problem there was that after much review by the local advisory committees, the position of the Committee was that judges should be - - that there should be an evolution of the judges toward becoming, at least, prime time. That is, that they should not become involved in contested litigation, because of the many problems involving appearance of impropriety that are involved. That was a minimal approach, some of us felt. Some of us felt that there should be an evolution over a period of ten years, probably to full-time Municipal Court judges, who would

not be allowed to engage in private practice.

Fortunately, or unfortunately. I guess depending upon your position, the Task Force decided that it would take no position with regard to that particular subject, and with that, my talk is concluded. Thank you.

JUSTICE CLIFFORD: Thank you. Judge Sereta. So much for the heavy hand and iron fist of the Chairman who succeeds in intimidating all of the members. That's characterized the work of this Task Force all along. It explains why we took eighteen months, for one thing. Thank you, Judge Serata.

The Committee on Traffic and Computerization was chaired by Superior Court Judge Betty Lester, who will give you the overview of the work of that Committee Judge Lester.

JUDGE LESTER: Good morning. Ladies and Gentlemen. This has to be the third time that I have been asked to summarize the year and a half work of my Committee, and each time I am given less time. So I'll get to the point, and I promise not to overstay my welcome.

The primary mandate of the Committee Traffic and Computerization was to document and analyze current traffic case processing methods employed in the Municipal Courts in the State to evaluate the extent to which these methods were meeting the present needs of the court, or the extent to which the methods presently employed represented impediments to efficient processing and effective revenue collection in the future and to recommend, if justified, a system of automated communication, which would accommodate the reliance of other agencies upon the courts for accurate information and the need for oversight management of the courts, utilizing the data that they provide.

We began our work with many assumptions. Most of which were destroyed along the way, and not too many facts. Consequently, this Committee spent well over a third of its time attempting to, first of all, determine what was out there. Secondly, to determine wherein it was broken and thirdly, to hopefully propose intelligent ways to fix that which was broken.

We discovered, to our amazement, that most traffic cases in this State presently, approximately two-thirds, were already being processed by some form of automation. Despite the fact that the majority of the 530 courts themselves are not computerized. Only eighteen courts in the State had either on-line computers and ninety-four courts had access to computers

through Service Bureau contractors.

We further found that the majority of problems in terms of processing backlogs and uncollected revenues were reported in the very courts who were presently utilizing computers. We further discovered that many of the problems experienced by the courts, whether utilizing computers or not, were as a result of factors over which the courts have little present control.

Factors ranging from on inability to provide resources of personnel and equipment, as has been mentioned by some of the other speakers the resources needed to get the job done to an inability to cope with forms and administrative procedures which no longer accommodate the needs of the courts individually, nor the needs of a massive network processing in excess of four million traffic tickets annually.

Now, you have heard other speakers mention that the total processing of the court is somewhere close to five million. You can see that, to a large extent, many of the cases handled by the court are traffic cases.

Those courts presently utilizing computers were further found laboring under the additional burden of attempting to survive in a procedural and administrative atmosphere, which never contemplated their existence as processors in an automated atmosphere.

The cumulative effect of all of these problems is that all Municipal Courts presently experience, to varying degrees, an inability to either process, adjudicate or collect every traffic ticket issued in their jurisdiction. The result of these difficulties translates into processing backlog and lost revenues. Hence, prior to and in preparation for, conversion to any mechanical system, enhancements in the processing and enforcement must occur. Procedures must be streamlined and uniformly applied and a general housekeeping must occur.

The issues that concern themselves with general processing enhancements and collection enhancements are contained in the position papers of this Committee, which are contained in the appendix to your materials. And unfortunately, are too numerous to summarize here. I have been asked to direct my comments to the major position paper of this Committee, which was the master plan.

Towards the - - having confronted those issues, toward the issue of whether an automated system was feasible or necessary, the Committee found some other disturbing facts. The Department of Motor Vehicles, which is absolutely and totally reliant upon the Municipal Courts for the maintenance of driver histories and abstracts, which is one of its chief functions, was

communicating, and is communicating with the court in a totally manual fashion. With very few exceptions, and those exceptions are in several of the larger courts.

> The myriad of complicated paperwork transactions necessary for the court to report that which it has done is mind boggling. Further, the Committee found that the Administrative Office of the Courts, the agency which is reliant upon the court for information with regard -- with which it needs to make intelligent decisions concerning the management of the communications. Communications to which a large degree overlapped the reports necessary to provide the information required by the Department of Motor Vehicles.

The conclusion became inescapable that automation was necessary if the court was not to fold under not only its burden of doing its work, but the additional burden of reporting that which it had done to the agencies which relied upon it for information. Hence, toward the ultimate goal. of a central bank of information, relating to traffic case processing, with the ability to transmit and receive data electronically between and among the courts, the Department of Motor Vehicles and the Administrative Office of the Courts, the Committee has made the following recommendations.

Number one, that of the courts who are presently processing traffic tickets manually, and that represents 418 of the 500 courts, that those courts be required to prepare for electronic communications with the Central Data Bank, proposed to be resident with the Administrative Office of the Courts and that communication be through computer terminal.

The Committee reasoned that while the volume of cases handled in any individual court, processing manually, does not necessarily warrant the use of computers for local processing, collectively manual courts process approximately thirty-six percent of all tickets in the State. These manual courts also tend to handle more moving violations than others, which renders the Department of Motor Vehicles particularly dependent upon them for information. Hence, any statewide system could not function well without the benefit of the information from these courts. Keeping in mind, however, that the benefit is primarily to the system rather than to the courts individually, the Committee has recommended that the expense and the expertise associated with electronically hooking up the courts through terminal be funded at the sole expense of the State.

The Committee has recommended further that of those courts presently using in—house

computers and at the time of the study there were eighteen and these courts tend to be the high volume processors that the status quo be maintained in those courts for the present and possibly indefinitely. The Committee recognized in reaching this decision that the courts who have computerized, have done so primarily out of self-defense over the years and without a great deal of guidance.

That, at this point in their development they have devoted large resources, in terms of personnel and funds, to the systems that they presently have. And for that reason, would tend to be extremely reluctant to scrap the effort that they have invested in, in years and time.

The Committee also recognized that the current in-house computers, the high volume processors, had a very real need to perform local processing, which some of the smaller volume courts did not. And that their present equipment permitted local processing - - them to meet their local processing needs. Specifically as it related to personnel, work flow, reports to local agencies, such as the governing body, and communications, large volumes of communications between the court and the police department. Particularly, in the areas of warrants, in the urban areas.

With regard to the hookup of the in-house computer, the present in-house computer users, with the proposed statewide system, the Committee has recommended that the Administrative Office of the Courts undertake the study of the feasibility of translator programs, which would permit them to maintain their present equipment and still communicate with the central system.

The Committee has recommended that the expense of the design and implementation of translator programs for the large users be borne by the State, and that the equipment expense necessary for this type of communication be borne by the municipality.

The last class of users falls into the category of those presently being serviced by service contractors. Private organizations that undertake for a fee, to primarily data input traffic ticket information into a computer system, resident with the service contractor, rather than with the court. The Committee took no philosophical position with regard to the relative worth of the existence of service contractors, but rather, recognized the fact that they do exist. That they currently service 94 of the courts, some of whom are larger volume courts and that in the service to their 94 customers, the service contractors process fifty-three percent of all traffic tickets in the State presently.

We, therefore, attempted to accommodate the existence of service contractors, as well as the

fact that many courts were more than satisfied with the services being provided by them. The Committee, therefore, recommended that service contractors be required to standardize the services that they provide to the courts, which is not presently the case, so that there would be uniform service and that the AOC should overtake the setting of standards for service contractors. That the feasibility of direct computer linkage between service contractor computers and the proposed Administrative Office of the Courts' Central Data Bank, would also have to be made accessible.

Of course, the alternative is always left to those courts presently utilizing service contractors to adopt any of the other modes proposed by the Committee. Namely, either direct terminal linkage and assuming responsibility for date entry, and/or at some point, upgrading to even mainline systems for local processing.

As the day progresses and the issues are presented, which are contained in some of the other papers of the court -- of the Committee rather, you may feel that the proposals that this Committee has made are ambitious, to say the least. And they are. The effort thus far expanded may pall in comparison to that which remains to be done, and at the risk of telling another crocodile joke, the year and a half --at the beginning of the year and a half when we started our study, we didn't know very much about what was out there and what the problems were.

We can, at least, at this point, take heart from the fact that at least we know where the crocodiles are at this point. Thank you very much.

JUSTICE CLIFFORD: Thank you, Judge Lester. The Chairman of the Committee on Trials is Judge William Walls of the Superior Court, and he sits in Essex County. Judge Walls knows this system like the back of his hand. I have referred to him here before as our all - purpose, all - state, utility infielder. He can do it all.. So confident am I that he can do it all, that I know he's not even going to skip a beat when I tell him he is going to have to cut his presentation in about half, so that we can proceed to the workshops and he will do so with extraordinary aplomb. Judge Walls.

JUDGE WALLS: Well, if I threw this away, I wouldn't know what to say, but let me say this, the last is not necessarily the best, but this time it is the bottom line, because we are dealing with the reason for the whole system. We are dealing with the arena and the place for the

conduct of trials. The resolution of conflicts between government and citizens and between citizens and citizens and citizens.

I am going to make my presentation, unlike a Municipal Court judge, in deference to the Supreme Court, because the Supreme Court controls me. I'm not necessarily a Municipal Court judge. But let me say this I am going to make the presentation also using two assumptions, and those two are, that some of you have read these papers and some of you have not; and consequently, I'm just going to give highlights, which will hopefully not bore those of you who have done your homework, but also enlighten those of you who possibly might need to.

I have no - - I make no guarantee that what I'm saying will provide banter for cocktail parties nor data for trivial pursuit, but it should be worthwhile, because as I said, that's what we're all about. We have ten position papers, and they were more or less functional in approach, in the sense that we took a person from his being summoned, his or her being summoned, into court, through the process of arraignment, to the process of bail setting, to the process of obtaining counsel and to the actual trial.

With regard to the service of summons, we have -- we, the Committee, have no recommendations to make with regard to any substantive changes in the regular procedure, because the regular procedure, we think is very good. That is to say that great use is made of the alternate system of service of a summons and complaint by regular mail, instead of the police having to personally serve or the use of Rule 4:4-4.

That is very good, and do you know why, because proof of the pudding is not in the eating but in the fact that defendants show up after they have been mailed notices. A great majority of defendants show up and so that's what -- that's the purpose of the rule. Form follows function.

But in any event, the Committee has, therefore, only on suggestion. That with regard to those who do not show up, and there is need then for the institution of contempt proceedings, the need for a police officer to personally search out and serve the person with the contempt notice, and in the event of adjudication of contempt, then that person should pay for such expense and should pay a sum of up to $100.

Now, after that person is in court, and there is a need for bail, we ought -- we, throughout the year, have constantly reminded ourselves, in order that we should remind you, and everyone involved in this criminal procedure, because practically all of Municipal Court is what we call

quasi-criminal, that is bail serves only one purpose. To insure that the defendant is present in court at all times required. It serves no other purpose. It is not for preventive detention. It is not to provide a kitty to take your fines out when you have assessed them against an absent defendant. I underline an absent defendant.

That's not the purpose of bail. We also recommend that every Assignment Judge in the State consider the employment and the adoption of uniform bail guidelines. Not that we expect to have bails set in Gloucester the same as the bail set in Hudson or Warren, but that within each particular county, there be uniformity of bail, and that it be -- it recognize the basic elements which should go into determination of bail. That is, residence, lack of record, presence of record, nature of crime, roots to the community, non-roots to the community and so forth.

We further recommend that there be a further and more universal use of the ten percent cash alternative to bail, and by that we mean what we say. That is to say ten percent cash alternative. It is not ten percent deposit, it is ten percent cash alternative to the normal bail.

And lastly, with regard to this paper, bail should be set by the judge. Only in abnormal. circumstances should be delegate that responsibility to his court clerk, and only in the most extreme of emergent matters, should be delegate that responsibility to the police.

Now bail has been set and there is need for counsel and as we all know, because we are dealing with matters which may involve consequences of magnitude, that is a jail imprisonment or imposition of fines of $200 or more or imposition of loss of driving privileges or suspension of driving privileges of more than ten days.

Am I going fast enough for you, Justice.

JUSTICE CLIFFORD: I'll tell you when you get to the end.

JUDGE WALLS: All right. Then we should be aware that in such a circumstance, a person who cannot afford a lawyer but who is subjected to that risk, is entitled to a lawyer, and therefore, we, in our papers, recommend that the various municipalities establish some definite system for the providing of counsel. Whether it be by a Public Defender's Office, whether it be by the establishment of a system where pool attorneys, on a per case basis, or even a rotation -- a rotational list of unpaid attorneys, something definite and regular be established.

Also, we further recommend hardly that there be some sort of investigatory circumstance or

procedure to determine whether or not a person is, in fact, indigent. And that can possibly be done through your Public Defender's Office, if you have one, or through some other bureaucratic establishment.

Now, that he has, or she has, a lawyer, and subject to this type of a case, then we further suggest and recommend strongly that every Municipal Court have a prosecutor on a regular basis. And regular basis means simply that every case that comes to trial shall be prosecuted by that person. Whether it be arising out of police complaint or by civilian.

Now, obviously, the main reason for that is to maintain the integrity of the court. Too often, it has been stereotypical, but at times, most stereotypes have some element of truth at one time or another, that is that the judge became the prosecutor. And that is for want of any other more eloquent legal expression that is unfair. That is unfair to our system and unfair to justice.

So consequently, I find that through our Committee that most municipalities do have that set up, but nevertheless, we find that, unfortunately, that not every municipality has a regular prosecutor.

Now, with prosecutors and defense attorneys, there comes time to discuss reality of life, and that at times is revealed by a plea arrangement, and we urge the Supreme Court to permit Municipal Courts, when and only if there is a prosecutor, to entertain a plea arrangement, arrived at between defense counsel and prosecutor, or between a defendant who knowingly has waived his right to counsel.

Just for an aside, just as a tip to Municipal Court judges who possibly may not be as conversant with taking pleas as Superior Court judges are, I would suggest this, because it is the law. That is, in order to take a plea arrangement, there has to be a factual basis for the crime. There has to be evidence of guilt. You cannot, because a person says well, all right, I'm innocent, but I don't feel like wasting another time from the job, I'm going to plead guilty to this. You cannot take that plea.

The judge, also may not take direct part in the negotiation of the plea. That is between the prosecutor and the defense, but the judge has one final role, though. He has the right to accept or reject. He is not bound, just because the prosecutor comes and says that is the plea arrangement.

As we rocket along, we deal with new frivolous complaints. Those are a necessity, those are like flu and acne, they are with us forever. Because any person may file a complaint and that's the way it should be, but there does not have to be any issuance of a summons in the absence of

probable cause, and so consequently, the Committee dealt with this problem and we will deal with it further probably, at our workshops.

But really, there is really no -- I don't believe any answer to it, because with the exception of possibly having a hearing to establish probable cause, and then in that event, you may as well, as I look at it, you may as well have the trial.

But speaking about the trial, trial should be open to the public. There should be regular sessions and this caused the greatest controversy of all and I have to slow down, because I wrote this paper.

That is, the courts should advise all defendants of all rights, regardless of how much time it takes and particularly, obviously, with regard to consequences of magnitude, you must orally take time out to advise that defendant of his right. You cannot rely upon the fact that he or she may have heard it at six o'clock when court was to begin, and he may have read it on e bulletin board outside.

And I think that is it. I hope that that has provided you with some insight with what we have done. And if not, I'm sorry.

JUSTICE CLIFFORD: Thank you. Judge Walls. I told you nobody makes a double-play without a hitch, better than he.

Now, then I assured you at the beginning that we would have a break between now and the commencement of the workshops. I don't always tell the truth. No break. We have to go directly to the workshops.

Please do whatever it is - - whatever is necessary for you to remain comfortable while you are at the workshops.

EXHIBIT 5.a

MINUTES

THE NEW JERSEY JUDICIAL CONFERENCE

MIDDLESEX COUNTY COLLEGE

June 28, 1985

Committee on:

A. Accountability

Panelist: Professor Donald E. Kepner, Chairman
Ms. Carol J. Brennan
Honorable Anthony H. Guerino
Nancy Lotstein, Esq.

1. Calendar Performance Evaluation

Ms. Brennan reviewed the above paper involving calendar performance. One commenter expressed doubt that this proposal could be implemented due to the reluctance on the part of municipalities to give their courts greater financing. Judge Guerino noted that the Task Force was attempting to better the system with full awareness that there are real limitations on the courts. Professor Kepner noted that other position papers such as the papers concerning budget impasse procedures and the presiding judges concept are an integral part of this issue and that proposal to compare like courts — i.e., courts will be evaluated on the quantitative jobs they are doing. He further noted that if a court did not meet minimum standards, it must be closed. This prompted comment by an unidentified person that he had never seen a court closed in his 20 years as a judge, and that although he had threatened to close courts on several occasions, he never had to do so because the municipality came through with adequate financing.

2. Processing of Drunk Driving Cases

Ms. Lotstein reviewed this paper, indicating that these are the problem areas causing delays beyond the 60 day guidelines:

(1) difficulty in scheduling of expert witnesses,

(2) certification of breathalyzers,

(3) playing of videotapes,

(4) scheduling of police appearance

(5) requirements for discovery.

Concerning the issue of the scheduling of expert witnesses, it was suggested that the parties stipulate to such testimony. Judge Guarino noted that while this would appear to be a practical solution, prosecutors object to it and do not want to so stipulate. He noted that he had ruled in his court that testimony of expert witnesses be taken by videotape where scheduling is a problem, but that a Superior Court Judge had set his ruling aside and determined that same must be done in person. It was further noted that in a marijuana case, the expert must be brought in.

It was noted that pursuant to the Romano decision breathalyzer certification must occur every 60 days and that this causes delays in the disposition of these cases. Ms. Lotstein had earlier noted that the State Police have advised that they have added six new experts to the seven they had. The State Police indicate that they will now be able to certify every breathalyzer within 30 days.

Professor Kepner noted for the record that there was tremendous objection to the 60 day program. It was suggested that the 60 days were unreasonable and that the 1983 Judicial Conference did not mandate such a program, but that the Chief Justice it was a goal inquiry was made as to where was the order of the Chief Justice referred to on page 165 of the Report of the Task Force. Professor Kepner emphasized that at the 983 Judicial Conference, five of the Committee Chairmen (of which he was one) were asked what the processing time should be for a particular case.

Further, it was suggested that the program is unreasonable because Rules 7:4—2(g) and 3:13 allow 40 days for discovery and further, the program is an intrusion on an individual's constitutional rights. The overriding consideration should be the quality of justice. It gives an attorney little time to review the case to determine whether to try it. Judge Guerino responded that indeed justice by numbers is not justice, but hat it is well known that defense counsel may be

benefited by such delays. The defendant has an interest in beginning his rehabilitation; therefore, the case should be stated at arraignment.

It was further suggested that words like "accountability," "calendar control" and "comparison of like counts" are bureaucratic pressures to dispose of numbers at the expense of quality of justice. In contrast, it was also noted that the 60 day program was a good one which as working well in Union County where by cooperating with other municipal courts, they are able to meet the 60 day program with, of course, certain exceptions for illness, etc.

It was suggested that while it was right for the Committee to lace the areas for providing discovery on the prosecutor, at the municipal level the prosecutor will not have the luxury of assistant prosecutors and full time investigators as does the county prosecutor. Since the discovery process, from the State Police, the Marine Police, etc., and in order to avoid clays inherent in the discovery process, the rule should be revised to turn the responsibility for providing discovery over to the State Police, the Marine Police, etc. Ms. Lotstein responded that discovery was a legal determination and that it would be inappropriate for a police officer to make that determination. Judge Guerino further noted that the remedy for delay in providing discovery is dismissal of the case.

There was some discussion regarding early administrative revocation. It was suggested that a case should be closed out pursuant to a rule and a defendant's license suspended. Ms. Lotstein indicated that this was not a recommendation of the Committee because it was thought that if we can accomplish the goals we have set for ourselves, we may not need an administration close out penalty. It was also suggested that any administrative suspension process to adjudication would be a presumption of guilt rather than innocence, which is clearly unconstitutional.

3. Domestic Violence

Judge Guerino reviewed the Committee's paper regarding domestic violence. There was considerable discussion concerning the Committee's recommendations that the Family Court should have sole jurisdiction with respect to criminal cases involving domestic violence and that the Family Court should be contacted first when issuing temporary restraining orders and the municipal courts be used only as a last resort. It was suggested that there was often difficulty in determining whether the parties were cohabitants since the temporary restraining order is

effective for one year. Judge Guerino responded that since the county is in a better position to know whether the parties are living apart or have left the jurisdiction, the Family Court should hear the matter. It was pointed out that in the victim—witness area, we are asking for more sensitivity; but in the domestic violence area, we want to give jurisdiction to the Family Court who is not as familiar as the municipal court with the local police and the local situation, etc. Judge Guerino responded that the county becomes involved anyway since the papers are executed by the sheriff. He asked, however, that there was a problem with requiring filing at a distant court and recommended that perhaps intake could be accomplished by local police and could be utilized for this purpose. Ms. Lotstein noted that juvenile intake maintains a cadre of experts who could arrange for the transportation. Judge Guerino further voted that it is the county Family Crisis Resource Center, which has the resources, which are required in the domestic violence context. A subsequent workshop attendee recommended that domestic violence matters be removed from the municipal court entirely and that all criminal complaints arising out of same be transferred to Family Court.

Another issue provoking considerable discussion concerned the requirement that the Family Court hear all applications for temporary restraining orders except in emergent situations. It was suggested that a Superior Court judge has too many municipalities within his jurisdiction to accommodate this requirement.

In a subsequent workshop a Family Court judge from Camden County indicated that the only way an emergent duty Superior Court judge could handle all domestic violence cases would be for him to stay up all night on the weekend. Judge Guerino responded that since municipal court judges are part—time judgeships on part—time pay, with a private practice, they do not have the commitment. Professor Kepner indicated that while the recommendation was not in the Committee's initial position paper, several local advisory committees had suggested that these matters should be taken out of municipal courts. The Committee thereafter adopted this recommendation. It was suggested, however, that it made no sense to take this matter out of the municipal court, since the defendant is in the custody of the municipal police and the municipal judge can come down and investigate the condition of the defendant. One municipal judge advised that he had instructed his court clerk that if the application occurred after hours, the municipal court would take it. Another comment indicated that in Camden County, applications occurring during the day are forwarded to Family Court and those arising on weekends and

holidays remain in municipal court.

The Committee's recommendation that the Family Court have sole jurisdiction with respect to criminal cases involving domestic evidence also generated considerable discussion. A Family Court judge from Camden County indicated that while he was in favor of this recommendation, even for murder (although that would require a waiver of the right to a jury trial), he noted that currently he had six complaints, including a DWI matter, and he questioned whether it was appropriate for him to be trying all of them.

Inquiry was made as to whether it was the police who were the problem regarding sensitivity to the domestic violence victim's situation and whether this could be corrected. Judge Guerino noted that often the police as well as court personnel talk the victim out of filing a complaint and that this can be corrected and must be because often the result is serious injury or death to the victim. It was suggested that temporary restraining orders are difficult to enforce and that uniform guidelines should be made. It was also noted that where police and municipal prosecutors do not comply, they are subject to civil judgments. Professor Kepner indicated that pursuant to Title 42 the police must act reasonably. It was noted that a number or cases nave been brought by women's civil rights groups. It was emphasized that use of the Family Crisis Intervention Center resource should help to alleviate the problem of insensitivity to the needs of domestic violence victims. A probation officer from Gloucester County indicated that he had seen several domestic violence matters referred to neighborhood dispute resolution panels for mediation and he questioned whether the Committee had considered this as an alternative. Judge Guerino advised that the Committee had not considered this alternative because mediation was not appropriate in these types of cases since you are dealing with parties who are not equal.

4. Uniform Sentencing

5. Public Access to Court Records

Professor Kepner indicated that although these issues were important ones, the panel was not able to review them during the workshops due to lack of time. No comment was received on either of these issues.

EXHIBIT 5.b

PROPOSED MINUTES

COMMITTEE ON ACCOUNTABILITY
WORKSHOPS

1985 JUDICIAL CONFERENCE

JUNE 28, 1985

Panelists: Hon. Shirley A. Tolentino, Chair
Hon. Frederick C. Schneider, III
Hon. Thomas P. Kelly

These minutes cover three of the six workshops presented by the Committee on Accountability. In attendance was representation from the judiciary, bar, governmental authorities, and the public, including Supreme Court Justices, Assignment Judges, legislators, county and municipal prosecutors, defense lawyers, private bar, mayors, and court clerks.

The theme of accountability was kept at the forefront as each panelist presented a brief commentary on a particular area of interest. Workshop discussions were dominated by comments about (1) Public Access to Court Records; (2) Community Advisory Committee; (3) Domestic Violence Relief; and (4) DWI Case Processing.

TOPICS UNDER DISCUSSION

(1) Public Access to Court Records, Position 6.6

Attendees expressed general agreement with this recommendation to provide the press and public access to non-confidential records, which would be enumerated in the court rules. Attendees questioned two areas, however, (1) whether the listing of publicly accessible records fall under the requirements of releasing information and/or documents under the Right to Know

Law, and (2) whether Motor Vehicle abstracts should be made available to the press and public by the court. Attendees felt that although the public and press should have a right to such information, the courts releasing a defendant's prior offenses gives the appearance of impropriety. Additional comments indicated that an entire file on a case should not be public information, and, specifically, the addresses of victims and witnesses be kept confidential. [This is contrary to existing policy.]

(2) Community Advisory Committee, Position 1.3

One of the workshop attendees suggested that "persons from health and human services" be among the listing of nonpartisan local community advisory committees that would be created to enhance citizen involvement in the municipal courts. Position 1.3 of the Task Force Report addresses this topic and does indeed include such persons and agencies (pages 14-15).

(3) Domestic Violence Relief, Position 6.1

Attendees generally expressed concern over two of the recommendations of the Domestic Violence Relief Position. Namely, "the Family Court should have sole jurisdiction with respect to criminal cases involving domestic violence." Some discussion favored giving municipal courts sole jurisdiction except with indictable criminal matters, which should be handled in the Superior Court. Some attendees felt that the local judge could more adequately handle such cases if the courts' hours, staffing, funding, responsibilities, and in some cases logistical jurisdiction, were expanded. [Municipal courts currently do not have the jurisdiction some comments suggested.] Other discussion encouraged Superior Court jurisdiction "because they have all the experts such as probation and counseling." Further comments, which are provided for in the Task Force Report, suggested that authority be given to professionals in the probation area to handle domestic violence problems.

The other recommendation under Domestic Violence that generated discussion was "the Family Court should be contacted first when issuing of Temporary Restraining Orders and the Municipal Courts be used only as a last resort."

This recommendation, which seeks uniformity in contempt procedures, generated discussion as to its effectiveness. "Temporary Restraining Orders (TRO) should be issued by both the local courts and the Superior Court," voiced one workshop attendee, expressing

disagreement with this recommendation that Municipal Courts be used only as a last resort. It was further felt that the local police should serve papers. One of the general problems viewed under this recommendation it was mentioned, would be the provision of transportation to courts supplying TROs, especially in rural areas.

(4) DWI Case Processing

One objection was raised over a suggestion in Appendix A to the Report that limited licenses be issued to DWI offenders requiring the use of automobiles for employment, or to provide transportation for the elderly and handicapped. The chair noted, however, that that suggestion was rejected by the Task Force.

Concern was expressed over the disparate time frames at voluntary surrender of license. Attendees questioned: does the time run at arrest or at adjudication?

Members of the bar in attendance voiced strong disagree-the sixty day adjudication goal for DWI case processing, suggested 90 to 120 days as more reasonable, stating that to justice" over DWI backlog affected justice. Francis Moore, Esq., in attendance at one of the Accountability Workshops, to present the bar's view at the plenary session.

Additional comments that were made at the workshops are listed below. Time constraints, however, did not permit further discussion.

-- There should be an emphasis on the five-day rule before taking guilty pleas.
-- It's a problem when DWI cases are involved with indictable offenses.
-- No adjournments should be allowed in DWI cases. It was noted, however, that a problem with scheduling arises when experts are sought. A lawyer from Bergen County indicated that in his county no adjournments are granted in DWI cases beyond 60 days old.
-- Provisions should be made to supply basic information to victims in death by auto cases (without indictment or complaint).
-- Attempts should be made to coordinate civil case management and criminal case management.

Attendees at each workshop were encouraged by the chair to participate in the plenary session at the close of the final workshop. Some attorneys indicated they would have

representation at the plenary session to put their concerns on the record.

EXHIBIT 5.c

ADMINISTRATION COMMITTEE

Panelists Hon. Samuel D. Lenox, A.J.S.C.
Hon. R. Kevin McGrory, J.M.C.
Ms. Peggy Laverty, Court Cerk
Harold Sherman, Esquire

The work of the Administration Committee encompassed a wide range of issues as contained in 16 separate position papers. Following a presentation outlining the proposed administrative structure, the floor was opened to questions during each of the three workshop sessions.

One topic attracting some degree of attention was the Presiding judge proposal. Questions were raised as to where the Presiding Judge will physically be situated, and who will be responsible for funding the position and providing for attendant needs. A question was also raised as to the applicability of the Presiding Judge concept to small, rural (i.e., South Jersey) courts/vicinages. In two of the sessions the potential adjudicative role of the Presiding Judge drew comments, particularly as to the Presiding Judge's role in any Central Judicial Processing (CJP) program, which might be in progress or in the planning stages.

The Committee's proposals regarding the establishment of a PTI program in the municipal courts also attracted attention. A Superior Court judge questioned whether such a program might not be unrealistic, and whether giving municipal court defendants a "free shot at the apple" might not weaken the deterrent effect of the law. Comments were also made that a PTI program would be costly, and would involve too much paperwork (thereby increasing the work of court personnel). Another attendee, while agreeing with the concept in theory,

questioned whether there would be a significant loss in revenue (as result of few fines being imposed). The financial impact on VCCB revenue was also raised. A suggestion was made that the current section 27 criteria (Conditional Discharge Drug Offense) could simply be expanded to include simple assaults, thereby providing an alternative means of disposing of those charges without creating an entirely new program. A suggestion was also made that existing facilities (such as TASC, alcohol rehabilitation program, neighborhood dispute resolution groups, or various clinical service establishments) might be able to serve the same monitoring function as a PTI program, thereby eliminating the necessity of establishing a new and separate organization.

The Task Force recommendation that police departments (instead of court clerks) be charged with the responsibility of preparing complaints was another important subject of discussion. Specifically, it was asked what would happen in situations in which a municipality had no local police force (being serviced instead by the State Police). Another attendee indicated his belief that the police departments would be unwilling to assume this duty, and would probably try to "slough it off" on the court clerks. It was suggested that a directive from the Assignment Judges might be helpful in implementing this recommendation. Despite the foregoing comments, nobody expressed any dissatisfaction with the general concept, with the exception of a prosecutor who questioned the potential prosecutorial involvement in the process (i.e., in assisting the police in filing complaints), especially where the prosecutors is not party to any background information or investigation.

The remainder of the questions raised in the workshops were scattered among a variety of topics. Several were directed at various proposals pertaining to the collection of fines, with one attendee seeking specific details concerning the proposed uniform procedures for the collection of partial payments, and a court clerk recounting the difficulties experienced with credit card payments. A question was raised as to the use of the "red license" to compel the payment of fines and costs, and whether this would be available for all fines or just traffic cases. A practicing attorney questioned the legal status of an expired red license when the underlying "genuine license" was still presumably valid.

In addition, an attorney in private practice took the opportunity to criticize municipal courts that severely restrict access by the public by removing telephones from the hook so as to allow court personnel to do paperwork uninterrupted. He noted that this can cause (or exacerbate) numerous problems, especially when an attorney is seeking to resolve a calendar conflict. He also noted that some judges refuse to take court—related phone calls while in their law offices, leaving an attorney without recourse or remedy. The same attorney also asked whether the Committee's calendar conflict resolution recommendation (i.e., the hierarchy of priorities) should not include workman's compensation, Tax Court and other administrative hearings. The question was also asked as to who will ultimately be responsible for resolving conflicts, problems, i.e., the Presiding or Assignment Judge.

Finally, it should be noted that one attendee congratulated the Task Force on its proposal concerning the abolition of the trial de novo appeal process. There was no apparent disagreement with this position.

Exhibit 5.d

PROPOSED MINUTES

FROM

ADMINISTRATION WORKSHOPS

PANELISTS - Hon. David A. Keyko, J.M.C., Chairman
Hon. Evan William Jahos, J.M.C.
Ms. Ann O'Connor, Court Clerk
Hon. Thomas A. Scattergood, J.M.C.

Three areas that attracted particular attention in the Administration Workshops headed by Judge David Keyko were Presiding Judge — Municipal Courts , Pretrial Intervention in the Municipal Courts, and Community Dispute Resolution Committees. I've also noted the more brief discussions with regard to Conflicts In Scheduling, Partial Payments , Preparation of Complaints, and AOC Services.

Of primary concern with regard to the concept of Presiding Judge — Municipal Courts (Position 1.1) was (as stated by one judge), "the continuity of the position based on its tenuousness." The concern was that if a Presiding Judge, after, learning the procedures, is not reappointed to the bench and therefore loses his position as Presiding Judge, it would render the position subject to politics and would therefore be unstable. Some attendees further noted that such a situation could result in difficulty attracting enough qualified applicants.

A suggestion that the Presiding Judge should be a prior Municipal Court Judge with five (5) years experience in administration, who "would serve at the pleasure of the Chief Justice" was offered. Another suggestion was to evaluate the Presiding Judge position more

closely, and change the title to "Presiding Administrator."

The third concept (Position 2.1) debated was the Community Dispute Resolution Committees (CDRC's). A few participants questioned the value of CDRC's given the fact that the product (or agreement) is not legally binding. Another person opposing the idea of allowing citizens to hear other citizens' complaints felt the mediators should be professionals.

One attorney indicated he was very experienced with mediation and knowledgeable of various programs and stated the concept was proven successful in other areas. He further said that the prevailing model or ("Mediation Model") is made up of either citizens, lawyers, business people, etc. He further noted a 70-95% success rate even though the product is not legally binding. A very low recurrence rate was also noted, the cause of which, he said, is that the persons reach their own solutions.

With regard to (position 2.2.) Pretrial Intervention (PTI) in the Municipal Courts, the overall opinion was that basic concept is good; however, the participants felt many problems need to be looked into including giving PTI a different name and keeping it separate from County PTI.

If the responsibility of running Municipal PTI is placed with the county, they felt, it would be a burden on County PTI and the Prosecutor, which could result in the loss of calendar control. Questions such as "Who will do the investigations to determine whether a person has already been on PTI (say, in another county)" and "Would participation in municipal PTI preclude one from applying to Superior Court PTI?" were raised.

One attorney cautioned that the current PTI system should be looked at to avoid the unnecessary bureaucratizing of Municipal PTI.

Programs such as Parsippany—Troy Hills' Committee of 15 mixed—background members that meets once every 5 weeks and Mercer County's Informal Hearing Program, consisting of two full—time professionals — were also mentioned as very successful. In addition, there was overall agreement that mediators — whatever their background should be well — trained. At the conclusion of this topic the attendees were in agreement that the dispute

resolution concept seemed worthwhile and that CDRC's should be considered at least on a pilot basis in the Municipal Court.

(Position 1.5) AOC Services — The general opinion was that the AOC Services concept is a good idea; however, it was noted that a three—person staff could not effectively service all Municipal Courts and that when helping the courts, they should help court staff, not police them.

Other discussions involved the following:

(Position 2.3) Conflicts in Scheduling — It was said that the priority list "should tie into civil court scheduling, not just Municipal and that "there should be a mandatory list that everyone follows."

(Position 5.2) Preparation of Complaints — Questions raised were "Who is best qualified to determine what the proper charge is that should be placed on a complaint or even what warrants the filing of the complaint?" What about persons from whom police do not want to take complaints?"; "Should police also make referrals to dispute resolution committees?" There were divergent views on who should take complaints - some participants thought police should not, but prosecutors should. Others thought that since the police process the complaints, they should prepare the complaints.

It was noted that in one Municipality citizen complaints are referred to the Detective's Office for an interview and questions about witnesses, etc. The overall consensus seemed to be that Municipal Courts Clerks should not prepare complaints.

(Position 6.7) Partial Payments — There was general agreement that the key is with the judge to effectively collect fines. A question was raised as to the use of the "Red License" and whether there would be a problem with other Red Licenses from other Municipal Courts with later dates. Further, a suggestion was made by an attorney in private practice, that the courts should use credit cards in the payment of fines.

EXHIBIT 5.e

MINUTES

WORKSHOP
COMMITTEE ON BUDGETS, PERSONNEL AND SPACE
1985 JUDICIAL CONFERENCE
JUNE 28, 1985

Hon. Philip A. Gruccio, Chairman
Hon. Samuel J. Serata
Mayor Catherine Frank
Hon. Ronald E. Fava
Hon. Burton C. Pariser
Hon. Robert H. Switzer
Mr. Robert S. Helik

Attendees at the Budgets, Personnel and Space Workshop expressed three primary concerns: (1) source of funding; (2) budget procedures; and (3) employment practices. Specifically discussed were:

- Tenure for Municipal Court Judges - Position 3.2
- Municipal Court Clerk/Administrator: Qualifications and Compensation - Position 3.7
- Employment and Termination of Municipal Court Personnel - Position 3.10
- Budget Reporting - Position 4.1
- Budget Caps - Position 4.2 Impasse Procedure - Position 4.3

TENURE - Position 3.2

One judge noted that the issue of tenure does not resolve the problem for 99 percent of the judges. Judge Pariser responded that in effect this recommendation would minimize, not

eliminate, the effects of local political processes.

MUNICIPAL COURT CLERK/ADMINISTRATOR: QUALIFICATIONS AND COMPENSATION - Position 3.7

Attendees wanted to know how the salaries of court clerks would be upgraded, expressing concern over budget caps. The panel noted that the Task Force supports pending legislation that excludes municipal court budgets from cap considerations. Furthermore, the budget impasse procedure (Position 4.3) should provide a mechanism for increasing court clerks' salaries.

Another attendee felt that three classifications of court clerks were insufficient, suggesting a fourth level to create greater disparity to correspond with court size. The panel noted that the suggested salary ranges were recommended minimums, thus, a town could pay more.

One attendee questioned whether the new titles and salaries affected deputy court clerks who would often take over for court clerks. Clarification was given that deputy court clerks could also have a court clerk/administrator title but at a lower level than the court clerk in the town.

EMPLOYMENT AND TERMINATION OF MUNICIPAL COURT PERSONNEL - Position 3.10

The elimination of nepotism was questioned with regard to the grandfather clause, which allows continued employment for those relatives currently in the system. The panel noted that it would be difficult to make a nepotism rule retroactive, possibly denying the rights of others. If the nepotism rule is accepted, problem situations will be weeded out eventually. Furthermore, some employees have civil service tenure, making it, "very difficult to just simply summarily by rule, legislate them out of a position."

BUDGETS AND FINANCES - Positions 4.1 - 4.3

Panel remarks-introduced a discussion of budget related items by noting that the Task Force seeks to mesh together the two areas of supervision for the municipal courts,"

namely, the governing body on one hand and the AOC on the other hand. This meshing would bring about efficient court operations by providing adequate funding.

BUDGET IMPASSE PROCEDURE - Position 4.3

One attendee expressed a problem with budgets, that Assignment Judges are not sensitive enough to the requests on a budget, They don't see the cuts that are already made before submitting the budget and, therefore, are inclined to "cut" what the court has requested. Panel member responded by stating this was precisely what their recommendation aimed to correct. In the past, some Assignment Judges have been very involved in the process, and others have not. It has been largely a situation based on the judge's personality and whether he likes being involved with the municipal courts. What is being recommended, it was explained, is that once the budget goes up for first reading, that it go back to the Assignment Judge, who evaluates it and responds accordingly. This will include him, without regard to personalities, in the budget process.

Another attendee inquired as to the "clout" of the panel who would preside over the impasse dispute, should one occur, between the municipality and the court. In response, it was stated that it was the hope of the committee that the panel would have clout, more specifically that which would equal the panel's on the county level. It was added that that panel's decisions are equal to court orders.

A question was raised with regard to the threat of a judge not being re-appointed if the municipality dislikes his stand on the budget and arguing over what is necessary. In response to this issue, it was noted that judges are responsible to make sure that the court runs properly and to accept the potential hazards of being a judge, one of which is not being re-appointed. It was then pointed out that the recommendation of the Task Force for tenure of municipal court judges should at least in part, address this problem.

BUDGET REPORTING - Position 4.1

One attendee remarked if a municipal court judge did not support an Assignment

Judge in budgeting for his court, it could weaken the Assignment Judge's position. Another municipal court judge stated his experience with seven courts and the difficulties he faced there securing budgetary needs. It was noted by Task Force members that if and when the Assignment Judge, Presiding Judge, and Case Manager for Municipal Courts positions are implemented, they should further insulate the municipal court judge.

BUDGET CAPS - Position 4.2

A workshop attendee expressed interest in municipal court budgets reaching outside the cap. Despite the large collection of fines, elected municipal officials still control. Another attendee suggested that a State of the Court Address be given to municipal bodies in each town by the municipal court judge, indicating the courts' development and needs.

JUDICIAL COMPENSATION - Position 3.5

Judge Weinhofer raised the issue that we should not be setting a minimum salary for municipal court judges per court session as this might give municipal governing officials the idea that they should only pay the minimum amount, which would hinder those judges who are earning more than the minimum. Committee members indicated that there were several municipalities around the State that paid less than $150 per court session, and it was therefore necessary to ensure that those judges be brought up to some minimum standard.

EXHIBIT 5. f

TRAFFIC AND COMPUTERIZATION COMMITTEE

Panelists: Honorable Betty J. Lester, Chairperson
Honorable Anthony J. Frasca
J. Mary Farrell
Marty Lyons
Mary Anne Sorrentino

The workshops of the Traffic and Computerization Committee were presented in three sessions. Each workshop was chaired by Essex County Superior Court Judge Betty J. Lester. The panelists included Newark Municipal Court Judge Anthony J. Frasca, Millburn Township Municipal Court Clerk J. Mary Farrell, Project Manager Marty Lyons, and Dover Township Municipal Court Clerk Mary Anne Sorrentino. The position papers were presented in all three sessions by Judge Frasca, after which the floor was opened for comment.

In the first session, much discussion revolved around the redistribution of funds, which occurred in 1982. Judge Frasca cited several examples of how the distribution of motor vehicle fine monies can vary from case to case depending upon complaint circumstances. He elaborated that the allocation of traffic revenues to the municipality, county or state may differ in each case as per Title 39:5-41 which became effective on January 1, 1983. A number of the participants voiced an opposing opinion to this procedure, thereby agreeing with the recommendations for a change in the revenue distribution system. Many explained that although the municipal court handles a case, it doesn't appear equitable that, in some instances, the municipality receives only a small portion of the total revenue. The group unanimously concurred with the Task Force Position 4.4 to re-evaluate municipal revenue distribution.

The issue of municipal court computerization was also covered. In session one, Mr. James Rebo, Administrative Office of the Courts (AOC) Assistant Director in Information Services, was requested to respond to the specifics of computerization by Judge Lester. Questions included, "What will be the AOC's role in total computerization?" and "When will

statewide municipal court computerization eventuate?" Questions were also raised as to whether municipalities should obtain their own computer locally or wait for the AOC computer implementation. There appeared to be a general concern as to the time frame when municipal courts would be fully automated. The participants agreed that computerization should be implemented as soon as possible to terminate the labor-intense methods currently being performed throughout the state. It was the general consensus that an AOC sponsored system was preferred to municipalities developing individual systems and was essential to statewide uniformity (see Positions 7.3 to 7.3d).

The most vociferous discussion occurred in the third workshop in reference to the state of communication between the municipal court clerks and the AOC. Although fully covered (in the Administration workshops), the grievances pointed to a lack of rapport between the clerks and the AOC. Several participants aired dissatisfaction with the AOC's "edicts" and its attitude toward the implementation of new procedures. One attendee claimed the AOC did not seek input as to the ticket design change. Another clerk, however, praised the Unit's quality of work and its dedication to serve the municipalities as best as possible. Most participants agreed whole-heartedly with the latter's comments.

Finally, the question of insurance card validity (see Position 2.9) was discussed in both sessions two and three. Questions were raised as to what document should be used to verify the proof of insurance. Positions were taken that such papers could be fabricated or falsified especially if an insurance agent is a personal friend of the insured. The general consensus was that authority should be given to the Violations Bureau to accept proof of insurance and that statewide guidelines should be composed and implemented in all municipal courts specifying one document as proof of insurance coverage.

In conclusion, the participants in all three workshops concurred with the findings of the Task Force and its recommendations. Furthermore, the clerks pledged their support to the implementation of any and all of the goals suggested by the Traffic and Computerization Committee.

EXHIBIT 5.g

TRIALS COMMITTEE

Panelists: Honorable William H. Walls
Honorable Peter J. Giovine
Honorable H. Scott Hart
John Cannel, Esq.
Honorable Neil H. Shuster
Edmund J. Tucker, Esq.

The workshops of the Committee on Trials were divided into two concurrent sessions given at three separate times. The first panel consisted of Judge William Walls, Chairperson, Judge Peter Giovine and Judge H. Scott Hart. The second panel was chaired by Mr. John Cannel, and was assisted by Mr. Edmund Tucker and Judge Neil Shuster. The Committee on Trials presented ten position papers as the topic for discussion during the workshops. Of these, four papers raised particular interest and were the subject of debate.

The paper entitled "Role of the Municipal Prosecutor" (Position 3.11) received the most attention specifically with reference to the proposals concerning the handling of citizens' cross complaints. During the discussion of this topic, the majority of the attendees overwhelmingly recommended against the participation of prosecutors in citizens' cross complaints. It was stated that this places prosecutors in a potentially unethical position, thereby making them vulnerable to ethics complaints filed by disgruntled litigants (see Exhibit 1). The issue of the right against self-incrimination was also raised, with attendees pointing out that when the prosecutor interviewed each complainant, their Fifth Amendment rights could be jeopardized by the prosecutor's involvement in both sides of the case.

One recommendation set forth by the attendees was to permit the prosecutor to be a presenter of facts. The prosecutor would not cross-examine the complainants; instead, he would present the facts of the case to the court. Another recommendation made by Judge A. Jerome

Moore was to give the Municipal Judge the authority in cross complaints to involve the prosecutor if he desires. The strongest recommendation, however, was for municipal prosecutors not to be involved in any cross complaints and the court advises the litigants to retain counsel if they desire. Finally, there was a consensus among the workshop participants that if municipal prosecutors handle all cases the process may encourage the filing of frivolous complaints because the court is required to accept every complaint for filing under the rules of court. One final suggestion regarding this issue was to use neighborhood dispute panels (Position 2.1) as an alternative to citizen cross complaints.

Plea agreements in municipal courts (Position 6.5) received considerable support from the workshop attendees. The majority stated that the practice is already being done in most municipal courts and that the time has come to permit its use with the necessary procedural safeguards. One individual, however, voiced concern over the plea bargaining concept, stating that saving the court some time is not really a legitimate concern.

The issue of individual advisement of rights in every case (Position 5.3) was evenly divided throughout the workshops. While some participants considered advising each defendant of his rights individually to be essential, others argued that it was time-consuming and unnecessary. One participant, Judge Schepps, cited the example of a defendant whose summons is payable through the violations bureau but decides to appear in court and plead guilty with a statement. Had the defendant paid the summons through the violations bureau, he would not have been advised of any rights. However, the same defendant who wishes to have his day in court must be advised of his rights pursuant to the recommendation.

This topic was debated at great length without agreement on an acceptable alternative. Certain participants believed a general announcement at the commencement of the court session was sufficient, provided that each defendant facing a consequence of magnitude was advised individually of his rights. Others strongly defended the fundamental constitutional provision of individual advisement of rights, regardless of time constraints.

With regard to Position 3.12, the assignment of counsel in indigency cases, the response

from the participants was that the present system is abused because it is ineffective. There was a consensus that new methods need to be developed with an emphasis on providing for the verification of information provided by the applicant. One suggestion from a representative of the private bar was that the Lawyers Referral Service be utilized in more cases. This system was considered by some of the participants to be an excellent way to determine whether a defendant is capable of affording counsel. There was also some general discussion during the workshops regarding defendants, who have been assigned counsel who subsequently acquire the means to pay for same. Some suggestions from the participants include entering civil judgments against them and perhaps giving the Judge the authority to suspend driving privileges until the matter is settled.

EXHIBT 5.h

MUNICIPAL COURT JUDICIAL CONVERENCE

QUESTION AND ANSWER SESSION

JUNE 28, 1985

CHAIRED BY: JUSTICE ROBERT L. CLIFFORD

QUESTION AND ANSWER SESSION
CONDUCTED BY JUSTICE CLIFFORD

JUSTICE CLIFFORD: Agenda describes this as open floor discussion. While the crowd is spread out a little, and we still have some here, the only one who has received a formal dispensation is Judge Charles Michael Egan, Jr., who made application. It was given powerful consideration and was granted, in view of the fact that tomorrow is the date of marriage of Charles Michael Egan, III and he has some minor function to perform tonight in connection with the groom's dinner or something. So he begged off and he has taken off.

Now, Ladies end Gentlemen, is the time for you to have your say. The lion's claws have been shielded or whatever the proper term is. It seems to me throughout much of this discussion, at least in some of the workshops that I attended, I understand that was not the case in others. This is open season. You are free to make inquiry of anything that is connected with this report or what you think the report -- the work of the Task Force should have been. It can he a general question. It can be a specific question. You can repeat what you had to say in the workshop, if you think that a wider audience's hearing of it is desirable, or whether you think so or not. You have a bigger audience to have your say is the point I seek to make.

If all you wish to do is make comment, react to the work of the Task Force, either positive, which we would be delighted to hear or negative, which we will tolerate graciously, we hope. You are once again free to do so and we encourage you to do so. This, as those of you who nave attended these sessions before, will detect is a departure from our previous format, but it is intentional and designed to give you an opportunity to have your say. We do not want people to leave this conference with the feeling that they were not heard, weren't given an opportunity to be heard, or that they were, in any fashion, restricted. So there you are. The floor is open.

Now, we have microphones -- it is a bit of a nuisance for you, I know, but it will assist us, if you would be kind enough when you are recognized to go to one of the microphones and if you remember to do so, it would help us if you would give us

your name, because all of these proceedings are being recorded. We are going to have minutes of them, and we would wish to be able to identify those who make the comments or ask the questions, in the event that we want to inquire further of you or your position, or simply so that you may have appropriate identification. So with that, who would like to go, Yes, Mr. Moore.

Mr. MOORE: Should I stand over there, Justice?

POSITION 6.2

JUSTICE CLIFFORD: Mr. Moore. I have eighteen months experience, and I know, number one, that we don't need a microphone for you; and number two, we know who you are. Francis Xavier Moore, representing the private Bar and a marvelous contributor to the work of this Task Force. Mr. Moore, please.

MR MOORE: Thank you, Justice. Justice, I am speaking to that position paper dealing with the – in Appendix A, as to the DWI Processing in 6.2. It appears there on frequent occasions that what was alleged to have been a goal of a sixty-day disposition for DWI's is recited I might add ad nauseum. I respectfully submit that it is just unrealistic. I acknowledge the fact that if I were told because of my position as a practicing attorney by the Supreme Court that I must dispose of drunk driving in ten days, you probably could hang me on a rack and I would dispose of them because of my fear of the Supreme Court. That doesn't make the sixty day provision a proper provision.

R. 7:4-2G and 3:13-3, provide for forty days within their own confines. Ten, obviously, for the securing of discovery through the defense, ten for the prosecution and twenty reciprocal. Judge Pressler put a lot of time and creation in that rule. Therefore, if you took the weekends out of sixty days, forty days of discovery that would mean that there would be two or three days that some individual defendant charged with that offense, could secure private counsel.

I don't know of many lawyers that would be capable in that limited period of time of securing the amount of money necessary to secure private defense. I don't think that it should be a rule. Now, I recognize that at various times, the Chief Justice

referred to it as a goal, but the way it appears in here, it appears number one, as though the statewide program will become a rule. Practically speaking in Monmouth County it is a rule and practically speaking in my appearances before many Municipal Court Judges, they live by it as though it were a rule. They live by it as though it were a rule to the extent that the evidence required for a "monitoring disposition of DWI" becomes offensive. Because it does not, at any point, speak of the justice for the defendant. It simply speaks of a time limitation in which you can dispose of them. That is offensive to me as a professional, who set a time limitation on capable Municipal Court judges who can extend it. Although I recognize that probably Judge Lenox had the great comment, which I agree with, and that's that, all of the cases in which I filed an appearance should be considered extraordinary, therefore outside the sixty-day rule.

But I appreciate, and I am delighted with this capacity to be able to rebut whatever statement I make. I only hope that you will take into consideration the possibility of striking out any time provisions with DWI and leave the power or the control of those, to the Municipal Court judges in this State. Thank you very much.

JUSTICE CLIFFORD: To what extent would it meet your objection. Mr. Moore, if, in fact, as I gather you believe it not to be the fact, it were treated as a goal rather than a rule?

POSITION 6.2
Continued

MR. MOORE: As I am saying, the fact that they would consider a goal. Justice, doesn't bother me, but understand that in Monmouth County, at the present time, in order to get an adjournment after the sixty cays. I have to get on the telephone with the Assignment Judge to request an adjournment in any municipality. That is very distasteful to me, although I enjoy speaking with Judge Milburn at the proper times. Adjournment a are not one of the things that I enjoy speaking to him about.

JUSTICE CLIFFORD: Thank you. Would any other member of the conference wish to speak to the same subject, respond or otherwise react? The members of the Task Force, I assure you, are not unfamiliar with Mr. Moore's position in this regard,

and hence, I would seen to have response, perhaps, from outside the Task Force. Yes, ma'm.

MS. LOTTSTEIN: Mr. Justice, I hope I don't need a microphone. Can I be heard? My name is Nancy Lottstein and I am the Subcommittee Chairman on that particular paper. I am Assistant County Prosecutor in Gloucester County. Judge Walls, that's Gloucester.

JUDGE WALLS: So it's not New England, all right.

MS. LOTTSTEIN: We get a little self-conscious, in my case, talking about it, and my position is that that paper was written with the idea in mind that sixty days was the goal and that we treated that sixty day goal like we would a rule in this respect, it was to be looked at as the best way. In the event, it was not the best way, then in those particular circumstances, the Court could always, as the courts in New Jersey do, look to the surrounding circumstances, and if it was appropriate to extend the time, then the time would be extended.

But for the routine case, end I'm sorry to say routine, because right away I'll be told that every case is individual. But I would hope for practical purposes and for the sake of brevity, in a routine case that did not involve extensive discovery, the sixty day goal was appropriate.

POSITION 6.2
Continued

If somebody is in the hospital for six months, we are not talking about that. For that reason, we are looking at that sixty day goal as a good idea. As a goal we should try to attain, and we were the Committee of Accountability. We are looking to the effect on the defendant, certainly. But also we are accountable to the public, and that's the other interest in all of this. Thank you.

JUSTICE CLIFFORD: New, then, having exhausted that subject, I invite your inquiry or comment or question on any other. Yes, ma's. Right behind you. I don't know if you can reach it from there. It may come off the top

know if you can reach it from there. It may come off the top.

MS. SARANTINO: I'm Maryanne Sorrentino. I'm the Court Administrator from the Township of Dover, County of Ocean and President of the Municipal Court Clerks Association of New Jersey. I have been requested to speak on behalf of the Municipal Court Clerks Association of New Jersey with respect to the culmination of two years arduous work, compiling the plans for the improvement of the Municipal Court system. The extent of research, hours spent away from daily worn and families and the opportunity for the court clerks to have input in all phases of the Task Force cannot be measured in words alone.

Those of us who gave of our time did so with no idea of just what it would entail. But speaking for all, clerks who participated, we would do it again. This has not been a job of futility. We are already received some of the benefits. We would like to thank all the chairpersons of the subcommittees, for including the court clerks on their committees and best of all, for listening to what we had to say.

Everyone, from Chief Justice Wilentz to those persons in the Administrative Office, who worked on the booklet, should be commended. They did a fantastic job. Of course, all changes are not being received with open arms, but the overall reaction is very favorable. We are happy to see that the doors of communication, long closed, have finally opened between the Municipal Courts and the judicial system. We hope this attitude will continue and grow in the future. Thank you.

JUSTICE CLIFFORD: Now it's our turn. Thank you very much, indeed, Ms. Sorrentino, and I express the gratitude of the entire Task Force for the magnificent assistance and the cooperation we had from all of the court clerks who served and from your Association in support of our endeavors. Thank you.

Anyone else with a question or comment?

Now is the time. Yea. Judge Sereta.

JUDGE SERATA: Yes. If I may --

JUSTICE CLIFFORD: Are you going to tilt at that same windmill?

POSITION 3.4

JUDGE SERATA: Yes, sir. Should I go down there or can I do it from up here? Ladies and Gentlemen. I'm here, and I speak, I know, on behalf of Judge Gruccio and myself particularly we speak personally. There is a minority position paper that was not adopted in full by the Task Force, concerning limitations of practice of Municipal Court judges, which I feel very strongly about.

Some of us feel strongly and some of us not so strongly, and some are very much opposed. There is a very, very, great problem. I believe, and I know Judge Gruccio believes, concerning the appearance and the propriety of Municipal Court judges who practice law, and particularly Municipal Court judges who engage in trial practice, in addition to being a Municipal Court judge.

We feel, and I am satisfied, that the appearance, as far as the public is concerned, is that when a lawyer appears before that Municipal Court Judge, who is involved on the other side of litigation with him, or perhaps on the same side, that somehow justice is being perverted in the Municipal Court. Now, I think that this is very important when you look at the report of the Task Force in this regard, you will find out that the Municipal Courts come into contact with more people than any other court and the entire rest of the court system, as it exists.

It becomes very, very important in the - -from the standpoint of the person who is the beneficiary, customer, defendant, client, of the Municipal Court system, or the criminal justice system, end what his impression of that system is, when he sees a lawyer who is a judge, and who then is involved in other kinds of ltigation, or in the private practice of' law in opposition to the lawyer who is there to represent hint in that court on that day.

POSITION 3.4 continued

We are very concerned about that appearance and whether or not people have the feeling that they are being delivered justice or that the court is untrammeled from other interests. If you will read the position paper, you will see that there are other considerations. For example, a benign property settlement has certain conflicts of interest ~n it. If the property settlement does not go through, you then get involved in the problem of who is going to get the down payment, and if the judge represents one side and the defense counsel represents the other side, you have that problem compounded, as far as what's being done as far as the delivery of justice in the Municipal Court.

I would urge you to speck up on behalf of some more comprehensive limitation of practice on Municipal Court judges. The problem, we believe, at least (or the time being within the scope of the system, should be that Municipal Court judges. at least within five years of this time, that none of them should be involved in contested litigation, which is really twofold in its aspects.

Number one, it avoids the out and out confrontation in a courtroom between the Municipal Court judge end the defense counsel who appears before him; end also, it avoids the problem of the scheduling conflicts that exist now with the pressures that are being brought upon the trial bar to try cases in both the civil and the criminal areas of the Superior Court. That must interfere with the scheduling of' cases in the Municipal Court, sooner or later. If that's the situation, then that conflict alone should justify removal of the Municipal Court judge that area of' practices

There is nothing more bitter than a contested matrimonial action; and I would indicate that there are Municipal Court judges who are now involved in the practice of' matrimonial law, who are in opposition to the attorneys who appear before them in Municipal Courts. Just put yourself' in the position of the defendant who has a breathalyzer reading of .13 and is represented by a defense counsel, who in another case, didn't get the visitation that he wanted and the Municipal Court judge was on the other side. He is sitting there, and his driving privilege is relied upon and a lot of' money, anymore, because drunken driving is a serious offense, end there sits the

money, anymore, because drunken driving is a serious offense, end there sits the Municipal Court judge passing judgment.

POSITION 3.4
Continued

Perhaps that defendant who is the drunken driving defendant, isn't aware of the relationship between those two lawyers, but what does he think if he finds out five days later that there was that relationship between them; and because of that end many other improprieties that exist in that kind of relationship, I would urge that there are some extension of the limitations of practice. At least to remove the Municipal Court judges from the representation of clients in contested litigations. Thank you.

JUSTICE CLIFFORD: Thank you. Judge Serata. This position, so eloquently put by Judge Serata, occupied a considerable amount of time in the Task Force. I can politely describe the debate as vigorous, spirited. It is a knotty problem that is summarized on Pages, I think about of' the text, and there is the corresponding position paper that will summarize positions also.

The position voiced by Judge 5eratc is shared, I think as he said, by Judge Gruccio. I detect from the show of hands that there may be some who wish likewise to address the same problem. Judge Parressi.

JUDGE PARRESSI: If it please the Task Force, I was a member, I guess I still am, a member of that particular subcommittee, and spirited was a minor word compared to what went on in the discussion. Now, I don't see Judge Fava here. I don't know if he is still here, Ron but, in any event, he has the alternative position and perhaps rightfully so.

What he is concerned with is that you are going to be removing from the Municipal Court Bench people who are very qualified. If you take a man and you say to him, you are only going to make $8,000 a year because you are the judge in a small town and you can't practice law, or you can't go to court, what are you going to do; and in a sense, through the back door, you are making regionalization by saying this man, or the judge in that small town, will really have to be a judge who has five towns,

man, or the judge in that small town, will really have to be a judge who has five towns, so he can make enough money, and he's really a full-time judge, he's just bifurcated in sixteen places.

POSITION 3.4
Continued

I took a middle road; I don't seen to be such a conciliatory person. I'm not by nature. I was a trial attorney for many years and when I came to the Bench, I gave up the criminal practice, and I came to that discussion very much opposed to the limitation of practice. I felt that lawyers have integrity and they are entitled to that position and we shouldn't have to put such restrictions on them. After many months end years of discussion with Sam, I have been brought around. I do think inherently there is something wrong with a Municipal Court judge appearing as a trial attorney against trial attorneys who then have to appear before him would like to say that I have been brought to that position over great opposition, but I do now believe it.

But then we are faced with the problem, if we are not going to be regionalizing through the back door, what is an answer. I think I have one, because what happens is, if you aren't aware, all of you, the limitation on practice of the individual judge also applies to his office associates end partners, that's the rub. Because if you say to me I can't practice in court, then I would say, all right, I will be the solicitor, I need my barrister, but nobody will practice with me, they can't share space with me. They can't be partners with me, and I have become a pariah and I am practicing in a phone booth. It's the only place they let me live.

So, if we would allow the Municipal Court judge a practice, we have to allow him to have his partner or office associate be his barrister, be his trial attorney, and then I think all of the problems disappear. We may not have the problem again. There may be an appearance again of impropriety, but I think if I never am able to go to court, I don't need six towns to be a judge in. I can be a judge in one, and I can make a good living as a lawyer, without going to court, provided I could turn the case over to my associate when it has to be tried. And that's the position I take, which is somewhere in the middle, end I think it is very workable.

JUSTICE CLIFFORD: Thank you, sir. Yes.

POSITION 3.4
Continued

JUDGE VICKNESS: My name is Paul Vickness. I'm judge in Mt. Olive Township, and I do have the other viewpoint. I think that the underlying assumption is that when two attorneys litigate, they litigate against each other, and that's not true. Ours is an adversarial system where en attorney advocates the position of his client and while it may be that my client arid another attorney's client don't agree, I don't allow myself' and ideally, no attorney should allow himself to be put in the position where because the clients can't agree, the attorneys take it personally and get in the middle. They shouldn't.

They are advocating a position for their clients. With regard to the scheduling conflicts, I agree. If an attorney is going to take a Municipal Court judgeship, then he has got to make sure that his Municipal Court judgeship can be done at such time that it doesn't conflict with his ability to practice law. One of the ways of doing it obviously, is running an evening court when the civil courts aren't in session. This topic, among all others, and I served as a co-chairmen of the advisory committee in the Morris and Sussex vicinage, and the only thing that people ever called me about was this proposal end I got a call from probably nine or ten different judges about this proposal. They all were mollified because they were told that the position paper was not accepted, and everybody said, well, if it wasn't accepted, it's nothing to worry about.

Now, I'm beginning to get the feeling that the position paper, wasn't accepted. We have held the conference, we have gone through en entire conference today, and the judges who are under the assumption back in the trenches that they have nothing to worry about, are going to wake up when there is a court rule that says in five years, you are either not going to be a judge, or you are not going to be able to have a trial practice and then there is net going to be anybely left to talk to about it. Because this was something they were told wasn't going to be accepted and it is going to be accepted when nobody can have anything to say.

accepted when nobody can have anything to say.

I was under the impression end I think in almost everything else, this conference has been a free expression of ideas and while I am very happy that you brought it up, so that at least those of us who are here can express our opinions, those who left before this point and those who aren't here, are not going to have an opportunity to be heard, if this, in fact, is going to be accepted as a position that people are under the impression was not going to be the position and I think that's regrettable.

POSITION 3.4
Continued

JUSTICE CLIFFORD: You scared them, Sam. Let me see if I can calm your apprehensions. The Continued position of Judge Serata that Judge Serata spoke to is a minority position. The recommendations of the Task Force are as embodied here. I'll tell you in a minute what we are going to do to refine them. I would be - - I think it is impossible that that recommendation would change, that remains a minority position and the recommendation of the Task Force is not to impose the limitations that the minority position would impose. That's all there is to that.

If, I suppose, there — we were confronted with an enormous groundswell, growing out of this conference, that expressed the sentiment of the conference that nothing would do but to adopt the minority position, then we would have a more difficult problem. But I don't think we have the problem and while I'm not about to suggest that you go back and tell all your brethren they have nothing to worry about, I think you can go beck and tell your brethren that the majority position remains the majority position.

The minority position deserves and has received, and will continue to receive, I'm sure, respectful consideration and continued thought. These recommendations will go to the Supreme Court. I don't -- I do not, at this late date, presume to predict what the Supreme Court will do, but this will, remain the recommendation of the Task Force.

Is there anyone else who would wish to address this subject? Or any other?

Lose your inhibitions. Come forward. Yes, sir.

POSITION 2.2
Continued

MR. DAVIS: I'm a little far from a mike, but I, perhaps, have the opportunity or the expertise of my friend, Mr. Moore, I can be heard. I'm Gilford Davis, I am rehab counselor, the Somerset Sheriff's Department, and I am addressing this subject on pretrial intervention on the municipal level; and my question is, as it stands now, a person who has one bite at the apple on the Superior Court level, as it respects pretrial intervention, what would be his status if he had it once on the municipal level and a little later on, needed it again? Could you address that?

JUSTICE CLIFFORD: Is Judge Keyko still here?

JUDGE KEYKO: I'm hiding.

JUSTICE CLIFFORD: Come out of hiding and share your wisdom, David, please.

JUDGE KEYKO: One of the problems we have with municipal pretrial intervention is its name, first of' all, the Judge probably pointed that out, but when we're getting into that area, that draws too much criticism end much more than was needed or intended. The question of whether if you are getting PTI's supposedly in the Municipal Court, you should be allowed to have one, and the Superior Court. The answer to that question is, I don't know. You know, that's for the Superior Court and the Rules Committee to decide as it progresses and one of the difficulties that we are going to have with municipal intervention, whatever we cell it, is finding out whether or not they ever even had that one bite of the apple, because certain offenses are not filed statewide in SBI or the computer itself.

So it might be more or less like an honor system to be used in limited circumstances, but more just than the present system we have now, where somebody with more serious offense can have that opportunity and somebody with a much less serious offense must face a trial. I think the successful combination of the concept is

serious offense, must face a trial. I think the successful combination of the concept is going to be that we agree that it is a good idea and that we are working towards resolving these minor questions, really.

But I think that it would perfectly all right if the Superior Court took the position that it's irrelevant whether or not you are ever given adjudication in the Municipal Court or they may take the position if you had it once, then you can't have it again, but that remains to be seen. It's something for them to decide. Thank you.

JUSTICE CLIFFORD: Is there any other question or comment directed -- yea, sir.

A SPEAKER: Maybe I didn't understand the question. Was the question, why wasn't there pretrial intervention available on a Municipal Court level?

JUSTICE CLIFFORD: I didn't understand that to be the question.

A SPEAKER: Then I don't have any comment.

JUSTICE CLIFFORD: Any other question or comment? On any point? Judge McGrory.

JUDGE MC GRORY: My name is Kevin McGrory, from Trenton Municipal Court. I mentioned today in one of the workshops that Judge Lenox and I and Mr. Sherman and Miss Lafferty were involved and that it might be a good idea, especially for individuals who were not part of the Task Force, but have been asked to come here today for their input, to give us a little input that you might not be willing to give either at this moment or because you might want to think about your input a little bit more before you do.

I was going to suggest. *as* I aid at one of the panels, that you went to three workshops today and with regard to each one of those workshops, there is an appendix in the back of the materials that we received, that contains the position papers in full and on the front, of course, is the title page. I thought that it would be a good idea if

and on the front, of course, is the title page. I thought that it would be a good idea if you would be kind enough to, at your leisure, but fairly expeditiously, read those papers, give them some thought and then photocopy the front of that particular appendix, with regard to the committee, and either just write a short note or write on the front that you endorse the concept or you don't endorse the concept or that you have some difficulties with it that you would like to address and then if you would be kind enough just to mail those photocopies in.

In case, you don't understand what I'm talking about. These are the appendix cover sheets and as you can see, on each one, the topic is listed with the page number, and there is a little space right next to each one, where you could write some type of comment as to whether you endorse it do not endorse it, have some comment that you would like to make and could simply, with regard to the three workshops or the four papers, if you would like to read all of the four, mail those into the Task Force to Mr. Podeszwa, I assume, for purposes so that the panel continually gets some input.

Also, to give us the authority perhaps to contact you to discuss further with you, any sentiments that you might have. I would like to--the final Task Force to have some input. That's all. That's my point.

JUSTICE CLIFFORD: That's a --it's a very good suggestion and, of course, you realize that I was just about to make it myself. It is so good. 1 invited this morning your written comments or responses or reactions to be sent, if you wish, to me. I'm in the Morris County Courthouse but you can send them either to Jack McCarthy or to Mr. Podeszwa or to the Director, Director Lipscher, or just to the AOC, believe it or not, they will all get to the same place. I encourage you to do that which Judge McGrory has recommended.

I'm not sure I liked the answer anyway that I gave you earlier. The recommendation of the Task Force is going to remain the recommendation of the Task Force and Judge Serata remains in the minority and the recommendation of the Task Force. What I did not articulately communicate was the notion that it may well be that

Force. What I did not articulately communicate was the notion that it may well be that there would be a different thought coming out of this conference. It wouldn't change the recommendation of the Task Force. It would mean that the conference had not met, agreed with, the recommendation of the Task Force, and that would become the recommendation of this conference.

Which would leave the Supreme Court in a bit of a quandary perhaps, but our Task Force recommendation, I can now tell you, would remain the same. To the extent that that brings comfort or discomfort to your colleagues, you are free to communicate that refined, somewhat refined, if less comprehensible answer to your previous question.

Yes, ma'm.'

A SPEAKER: I just would like to know how long you think that all this is going to take, before anything is really done with what, you know, put forward?

JUSTICE CLIFFORD: That goes a little bit to my earlier comment. I wasn't being fresh, I wasn't being disrespectful. I wouldn't undertake to comment in respect to what the Supreme Court would do. By that I mean, I'm not about to suggest a timetable. But you have introduced a subject that I wanted to bring up anyway. What is going to happen with all of this? What is going to happen is that the results of these sessions, which as you may have observed, have been recorded, will be reduced to sort of minutes form.

This is going to take a little time. The staff is going to have to address it very quickly, while this is all, reasonably fresh in their minds and distribute among the members of the Executive Committee of the Task Force. I guess to the entire Task Force, the minutes of this judicial conference. We hope to be able to sift out of those minutes some reactions or some recommendations that will cause us to think through our positions a little further.

Whatever refinements are required to be made in the Ta~.1c Force report will. -- I hesitate to fell back on the expression, but will in due course, be put in written form. Realistically, we axe in the summer. I suspect that over the summer that the staff would be putting together the minutes and the reaction of this conference, getting stuff on paper and send it out to the members of the Task Force. I don't see the Executive Committee meeting before the Fall. I have already discussed this with Jack McCarthy and I would hope that we would be able to have a meeting of the Executive Committee early in September.

If our work has not become more complicated than its inherent nature makes it, I would think that we would be able to have in final form and final recommendation form, the completed Task Force report. for submission to the Supreme Court as the -- I can't know. I guess the fall. Sometime in the fall.

A SPEAKER: Is that to be a goal, Chief?

JUSTICE CLIFFORD: Well, yes, that's a goal. Our goal and I think we can meet that goal to get our report to the Supreme Court in the Fall. Where it goes from there, depends upon the agenda of the Chief Justice and other items that are on the Court's platter.

Are there other comments or inquiries? Yes,

POSITION 3.11

JUDGE GIOVINE: Justice Clifford, Peter Giovine from Ocean County. I hesitate to speak, but first off, I would like to indicate, I'm not speaking as a member of the Task Force, I'm speaking as a member of someone who sat on one of the panels this morning as one of the speakers. I'm very surprised there were at least eight or nine speakers who spoke against municipal prosecutors being furnished in every case to every litigant. I haven't heard anybody speak against that proposal and quite frankly. I did want to put, at least, that on the record. That there was a good deal of opinion against that particular proposal.

I respectfully submit that we are getting an opportunity go by. I hesitated to speak and yet I am speaking. I feel that there are others here who would, but just aren't; and I think that, at least, a straw vote should be taken, perhaps, with regard -- there is over fifty position papers that are there, you've got a couple hundred people still here in this auditorium. I think some ideas should be gotten, as to the consensus of these people that are here. I think it is a tremendous opportunity.

JUSTICE CLIFFORD: Judge, I think it is an opportunity that, unless there is strong sentiments to the contrary, I may be tempted to let go by. If the suggestion is that we take up fifty papers and have a straw vote on each of them. That is the suggestion, I think by far the better exercise of discretion would be to follow Judge McGrory's route and impose on the members of the conference, the burden of indicating to us by -- in some fashion. He suggested photocopying the cover and just sticking a comment on it or writing a paper, if you wish, and mailing the comment, which will not impose on the members of this conference the inhibitions that they may otherwise suffer by speaking in this audience.

I'm frank to confess to you that I have noticed a certain inhibition in this session, that assuredly was not present in the workshops that I attended, where people were crawling all over each other to get to address contentious subjects. The one that you mentioned, as well you know, is one that sparked long, and once again, spirited discussion within the Task Force, and I suspect that it did in the workshops.

Maybe I ought to take a straw vote on whether we ought to have a straw vote. Mind you, the straw vote on the straw vote – we are going to go through fifty papers, all in favor of going through fifty papers with a straw vote. I don't think it carried. Which is not however, to speak disrespectfully of your suggestion, but the members of this conference, I hope, we made the point almost ad nauseum, that we solicit most earnestly, your response. Give it to us. I know it's going to take a twenty-cent stamp, in writing, if you will, in some fashion, send it down to the AOC.

That important paper, in particular, if you don't address the others. There are others such as the presiding judge concept. There are others, the PTI concept. The position that Judge Serata raised. Dozens of others. It seemed to me drew all kinds of commentary this morning, but the late afternoon and perhaps the exhaustion of the occasion has stilled your voices somewhat.

Any other comments? Yes, ma'm.

POSITION 3.12

MS. NOBLEY: Justice, and Members of the Conference, perhaps your kind encouragement has dropped some of the inhibitions. Kathleen Mobley member of the Morris County Bar and certified counsel. One of the issues I have not found addressed in the multiple works that you have and the multiple issues that you have addressed is the question of pro bono counsel.

I would strongly recommend that that issue be looked at. We are talking about the rights of the public and the rights of the defendant. When the defendant is indigent, arid some counsel is assigned. I think it would be quite appropriate that the Supreme Court look into the quality of that representation and some fair method of remuneration. Thank you.

JUSTICE CLIFFORD: Yes, thank you, Ms. Mobley. I'm fumbling because I labor under the impression that -- I know we discussed it. I'm laboring under the impression that we reduced it to writing. Now, Judge Walls, you may, of course, respond. Yes, sir. Please. Come on up here.

JUDGE WALLS: What the last speaker said is a repetition, a good repetition, of what she brought to our attention in the last workshop we had and that caused some spirited and interesting discussion, as did other subjects, but I don't think I can answer that definitively, other than to suggest to all of you what was revealed to us in that last session by Judge McConnell from Gloucester County; and that is that when a person comes in and is handed a 5A Form and answers the question of whether that person can afford a lawyer and answers it no. According to Judge McConnell, in that county,

can afford a lawyer and answers it no. According to Judge McConnell, in that county, that person is then, in effect, challenged and asked, well, did you see --what lawyers have you interviewed and if that person has not interviewed any, or in any event, that person is then sent to a lawyer's referral committee, which, I believe, established by that county bar, and as a result of that interview process, that person obtains counsel from the private bar. Or possibly, has his matter resolved in the context that he realizes that possibly going to the trouble of not having counsel might be disadvantageous and since that, the game is not worth the candle.

POSITION 3.12 Continued

So I think what Judge McConnell pointed out was something, which, unfortunately, the Committee, the subcommittee, had not really challenged, and that is, we did not challenge that question can you afford a lawyer, and that's one of the difficulties that I think plagues the Municipal Court as well as the Superior Court. The determination of indigency and how sincere is that determination made and how effective is that determination made.

So I would suggest that possibly we might look to our southern county for advice with regard to expediting and processing these 5A Forms, especially if we all realize that the 5A Form is not -- did not come down from Mt. Sinai and that it is subject to change and innovation and just as Judge McConnell has adopted that form, possibly other counties should do the same thing. The thrust of what I'm saying is that each county should really investigate the establishment of a procedure to determine the basic question of indigency and how it relates to obtaining pro bono, or other members of the private bar, as counsel. Thank you.

JUSTICE CLIFFORD: Thank you, Judge Walls. Ms. Mobley, my recollection, I'm happy to report, was indeed correct. The Task Force addressed the problem. As I examine - - you might want to look at Appendix E, position papers of the Committee on Trials, at Page 42. 43. As I look at it, it doesn't sound an awful lot like coming to grips with the problem, but I -- we did recognize it and your nod of the head indicates that you are familiar with the recommendation of the Task Force, that the use -- that the method of using unpaid private attorneys is less desirable than either

the use -- that the method of using unpaid private attorneys is less desirable than either of two other systems. Namely, employment of a staff public defender, use of a panel of private attorneys, paid on a per case basis.

POSITION 3.12
Continued

The position paper says that while this method namely, that of rotational appointment of unpaid counsel, while this method of counsel should continued not be forbidden, it should be discouraged. It is important that a specific organized system should be adopted, as Judge Walls just emphasized. The practice currently in use in some courts of assigning whichever lawyer is present in the court that day to defend a person facing a consequence of magnitude is unacceptable.

Such a system can never be expected to provide adequate counsel. The system chosen eventually, should be approved by the Assignment Judge and this recommendation will insure that some system has, in fact, been chosen.

But I repeat, it doesn't sound like we went ahead on into that, does it?

Is there anyone else that would wish to address either that or any other subject or raise any other question? With that, I would simply reiterate the -- I would reiterate my -- as Chairman of the Task Force, my own gratitude for the extraordinary cooperation that the members and the staff, all the organizations and associations who have participated in this effort, have brought to it. To express to the members of this conference, our appreciation of your indulgence, your interest, your study and your response.

The Chief Justice has graciously consented to say just a few closing remarks and so Chief Justice Wilentz

JUSTICE WILENTZ: Thank you. Justice Clifford. First of all, I want to thank you, Justice Clifford, the people who are at the head table here for their leading of the various workshops. You all, apparently, escaped relatively unscathed and all of the people who served on the Task Force and put in so much time, gave so much of

themselves and all of the people on the advisory committees and the people who cooperated with the work of all of the people involved in this. It was really a Herculean effort.

In addition to the other sources of information about what happened today, it would be helpful if these who participated in the panels, especially those who led the panels, would give us a summary of the kinds of points that seemed to be bothering the participants, as best you can remember them.

Certainly, the minority positions expressed in the Task Force report will be considered by the court. As to how long it will take before all of this gets done, have patience. It has been forty years in coming, so a little bit longer, if you can wait. It has been just about that long and during all, of that time, the Supreme Court bee had the extensive power over the administration of the Municipal Courts and extensive power over the practice and procedure of the Municipal Courts.

The Supreme Court has exercised that power very, very sparingly and very, very cautiously. In other words, there has been in place since 1947, an enormous reservoir of power that the Supreme Court might have used in the past, which we have not yet used. There are many reasons for that. One reason, I suppose, is that the court has had quite a few other things to do, especially I imagine, in trying to do its best to exercise its power over administrating the regular Superior Courts, county courts and other courts.

The other main reason I think, why we have not yet fully exercised the powers that we have over the Municipal Courts is because of this same old wondering and worrying when we are really going to reform the Municipal Courts. When are we going to make it a regional court? When will the judges be appointed by the Governor? When will it become the same as the rest of the courts? From waiting and waiting, I suspect that less has been done to improve the Municipal Courts than could have been done.

There has been progress without any question, but it has been relatively slow. One of the results of that is that there are some very, very fine judges and excellent support staff who don't have the kind of resources that they are really entitled to. They don't have the kind of quarters that they are entitled to. Another result, perhaps, is that in some cases, some of the judges are perhaps not quite as good as we would like them to be. As all of you would line them to be.

Anyway, in view of all of those things, we have decided to have this Task Force to see just how far we can go an improving the Municipal Courts without having some kind of radical reformation of the entire structure, and it was really an exciting thing today to participate in these panels and to listen to this wide open discussion about subjects that have really not been discussed before. Sort of sky's the limit kind of questions and answers. A kind of hope and feeling about a court system that can be much better and that so many people obviously want to see become much better.

When I spoke here this morning, I asked that you be direct and frank. As Justice Clifford indicated, some of you certainly were very direct and very frank and that was helpful. We have a clear and sort of simple goal here. We want to improve the quality of the judges of the Municipal Courts. We think there ought be certain kinds of minimum qualifications in terms of experience and education.

We want to improve the quality of the quarters of the Municipal Court. We want to improve the efficiency of the Municipal Courts, and we know that all of that is going to take the dedication of more time and more resources and more money than have been given to the Municipal Courts in the past.

It is clear that the recommendations of this Task Force, if they are approved by the Supreme Court and some perhaps by the legislature, will go a long distance in achieving those goals. As someone indicated, they may not be perfect, but they are quite clearly aimed in the right direction.

We, I think, are ready for that day, that we have all hoped for and dreamed

about, when the Municipal Courts will become part of the court system. We have waited long enough and I think our citizens are entitled to have their court perform just as well as any other court in the State. I believe that this Task Force has pointed the way and I think it is now up to us to do our part.

I think we owe it to the people of this State to get the job done. Thank you.

JUSTICE CLIFFORD: Thank you, Chief Justice, and the conference, Ladies and Gentlemen, is adjourned.

Appendix H

Sunday Star-Ledger

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Hughes urges scrapping of the municipal courts

By HERB JAFFE

Chief Justice Richard J. Hughes yesterday called on the Legislature to abolish the scandal-ridden system of municipal courts and replace it with a structure of regionalized courts and full-time judges appointed by the state.

Hughes referred to the local "politically influenced" courts as "a serious legislative problem" and said in an interview with The Star-Ledger.

"The Legislature has to abolish the present municipal court system, which it created, before there can be any reform."

Citing the seven-part series which concludes in today's Star-Ledger, Hughes attacked the municipal court system as a breeding ground for "intolerable forms of influence by some mayors, police chiefs and other local officials."

Hughes also disclosed that he prepared a detailed legal brief for Gov. Brendan Byrne and Attorney General John J. Degnan last month, at Byrne's request, explaining his reasons for desiring to change the municipal court system.

He added that the State Supreme Court could take on the question of reforming the system, "as a last resort," should the Legislature refuse to take the initiative.

"I hope it doesn't have to come to that. I would hate to see the Supreme Court become embroiled in a dragged-out political battle," Hughes said, referring to the resistance to municipal court reform from some local officials who use municipal judicial appointments as a form of patronage from which influence can be exerted.

"If I had my way, I would reform the local courts by linking them together," the chief justice said.

"It's ridiculous and overly expensive to have 40 or 50 courts in one county," Hughes added, alluding to the 527 separate municipal courts in New Jersey.

Bergen County, for example, has 71 municipal courts, while Monmouth County has 53. Municipal judges in all but Union and Essex counties frequently sit in more than one court. One judge, who also maintains a part-time law practice, sits in 11 courts in Burlington and Ocean counties.

"There are so many seeds of conflict that are inevitable in this system," Hughes said.

Commenting on the loose manner in which the municipal courts are administered by the state's Administrative Office of the Courts, Hughes explained:

"We can do only so much by administrative and rule-making powers under the Constitution. Besides, whatever

(Please turn to Page 12)

A-plant dominates rural community

Photos by Frank DiGiacomo

David Hinchman and his wife, Judy, discuss the possibility of leaving their farm in Lower Alloways Creek Township because of the nearby nuclear plant

By DAN WEISSMAN

David Hinchman raises soybeans, corn, peppers, hay and "any-

to the Salem Nuclear Generating Station.

The atomic-powered electricity

Byrne narrows chief justice pick

Hughes urges state scrap municipal court

(Continued from Page One)

administrative reforms we might impose would still be several years away from producing actual changes."

Under the reforms of the judiciary brought about by the 1948 State Constitution, the establishment of courts of local jurisdiction was left to the legislature.

"The Legislature created the municipal courts, and it is for them to abolish the system and create something better," Hughes said.

"I believe The Star-Ledger series is very timely because I know that Gov. Byrne is interested in municipal court reform. He requested Attorney General Degnan to discuss the matter with me, and I prepared a careful judicial brief, with directives used by the Administrative Office of the Courts and other data, relative to the municipal courts.

"I sent a copy of the brief to Gov. Byrne just last month, and another copy to John Degnan," Hughes said.

Degnan explained that some time last year Byrne asked him to take a look at the municipal courts and report back to him.

"I talked to the chief justice about two or three months ago on the subject, and he said that the Administrative Office was in the process of evaluating some of the municipal courts," Degnan said.

"The chief also told me the Administrative Office was asserting more central control over the municipal courts," Degnan said. Hughes acknowledged that the Administrative Office was asserting as much control as it is empowered to, but that this was insufficient.

* * *

Degnan said the brief is almost 200 pages, with accompanying references. "We're studying it, and I have delegated people in my office to thoroughly refine it before I discusss the matter with the Governor," Degnan said. "I hope to make some recommendations to Gov. Byrne soon on what course to take."

Degnan added that while he is not yet free to divulge the contents of Hughes' brief, "I can say that it is candid in the chief justice's concessions of deficiencies in the present system of municipal courts."

Hughes was outspoken in citing some of the deficiencies.

"For one thing, a municipal judge, in order to be reappointed, must not get in the way of his appointing authority. And that's a very bad system in itself," Hughes commented.

Municipal judges, by state law, are appointed for three-year terms. Their appointment is strictly by local officials — mayors and municipal councils — and commonly changes with the shifts in political power at the local level.

Hughes compared that to the appointment of state judges, for seven-year terms with reappointment automatically bringing tenure. At the state level, judges are appointed by the Governor with the advice and consent of the Senate, under the Constitution.

"We're very sensitive to the municipal courts. All of my predecessors were concerned about them," Hughes said.

"Chief Justice Vanderbilt had mixed feelings about the system. Chief Justice Weintraub was outright opposed to the system and called for regional full-time courts, and Chief Justice Garvin, in the only major address before his death, warned of the problems in the municipal courts," Hughes said.

"Administratively, we're doing all we can to keep the municipal courts in line. The Francis committee is doing fine work in keeping an eye on complaints filed against municipal judges," he added. The "Francis committee" is the Advisory Committee on Judicial Conduct, headed by retired Supreme Court Justice John Francis, established by the Supreme Court in 1974 to weigh public complaints against judges.

"When you deal with short-term political appointees, there's hardly any administrative rule that can help," Hughes said, referring to the fact that the Administrative Office's "hands are tied" under the statute which permits three-year judicial terms in the municipal courts.

* * *

"Municipal judges can be coerced by mayors, chiefs of police and political influences in a town. I'm not saying this is always the case, but the possibilities are very real and ever-present," Hughes said.

"I think the prime defect in the system is the political accountability of sitting judges in the local courts.

"I believe the majority of judges can and do resist the pressures — but the very fact that such pressures can be induced is of serious concern to me," the chief justice asserted.

Hughes said he has felt for some that "the only answer is a system of regional courts with full-time judges, appointed at the state level, absolved from politics and away from the political stream.

"Regional courts should take into consideration the ability of the public to get to them. The courtrooms should be proper and well facilitated, including professional staffs — away from any potential spheres of influence," he added, referring to courts presently in fire houses, old school buildings, first aid squads, and notably too near to police headquarters under the existing system.

Hughes noted that it is "offensive" to justice for a public image that commonly equates a partnership between the municipal courts and the police, due in large measure to the location of most municipal courts in close proximity to police stations.

"There have been many studies of our municipal courts, and they all point in the same direction of reform. I think the rest is up to the Legislature," Hughes observed.

Municipal court abuses persist in state

Despite many critical studies, system has undergone few changes

By HERB JAFFE

For approximately 50 years prior to the State Constitution of 1948, New Jersey's local courts had been commonly criticized as "incompetent," often "corrupt," rank with "political and police influence," and generally a bastion of "injustice."

In some towns they were known as "police court," in other towns they were "recorder's court," and the elected judges were known as justices of the peace.

The general conditions in these local courts were so chaotic and intolerable that Arthur Vanderbilt, who subsequently became the state's first chief justice under the 1948 Constitution, pleaded at the constitutional convention a year earlier for an overhaul of the system where better than 90 per cent of all litigants in the state appeared then and now.

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But only 10 years after the "reformed" municipal court system was implemented, the second chief justice, Joseph Weintraub, conceded that the new structure was not much better than its predecessor.

In an address before the New Jersey League of Municipalities — which drew expected unfavorable reaction — Weintraub told of "mismanagement" and "inefficiency" and "conflicts of interest" in the municipal courts, in addition to "inadequate or incompetent clerical assistance."

And only 14 years after the "panacea" of 1948, Weintraub characterized the municipal court system as a "jungle," where political favoritism, incompetence, ticket-fixing and pilfering were "rife."

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From that point to the present, criticism of the municipal courts has continued to grow in New Jersey, beginning with a study launched by then Gov. Richard J. Hughes in November 1962, after a series of articles in The Star-Ledger detailed abuses in the local courts.

Hughes at that time appointed the presidents of Rutgers University and Princeton University to investigate the system and recommend reforms of the municipal courts.

Then, as now, the findings of one study after another recommended that the system be taken out of the hands of local officials and politicians, and that full-time, district-type courts be established, with judges appointed at the state level.

And then, just as now, the heavy undercurrent of opposition came from the local officials and politicians.

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In fact, it was these same elements who were ready to torpedo the 1947 constitutional convention if it meant they would lose their patronage and influence over the "new" local courts.

Thus the "reform" municipal court system, which the new Constitution enabled the Legislature to create, was accomplished by lawmakers who kept their ears tuned to the wishes of their political supporters at the grass roots level.

The new municipal court structure was sold to the public as a "streamlined" answer to a popular verse which castigated the many hundreds of justices of the peace who were on New Jersey's municipal ballots in every election. The humorous verse was:

"I'm important in the township,
"I'm a justice of the peace.
"And I disbelieve defendants.
"When they contradict the police."

STAR-LEDGER SPECIAL REPORT

Last of a series

A 1956 Rutgers Law Review article detailed the extent of political interest in the local courts prior to the 1948 Constitution. It quoted an address by Vanderbilt in which he explained that New Jersey's revolutionary Constitution of 1776 called for the election of justices of the peace by the Legislature.

But under the state's second constitution, in 1844, the election of justices of the peace was made by popular ballot, "by townships and in the cities by wards." According to Vanderbilt's address:

"Such elections, here and elsewhere throughout the country generally, reflected the popular demand of the period for the direct election of judges who would be 'close to the people,' and no thought was given to imposing any standards or qualifications for the office.

"Thus the New Jersey Constitution of 1844 put the justice of the peace in local politics with the undesirable results that inevitably flow from mixing judicial work and politics.

"The election of a justice of the peace as a prank of his neighbors was not unknown, and the office shrank in dignity and usefulness."

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Chief Justice Hughes, in a lengthy opinion two years ago that ordered the removal of a judge from the Jersey City Municipal Court, told of Vanderbilt's concern about reforming the local courts in 1947:

"He recalled that in the cities the police judges had taken over the bulk of the criminal jurisdiction of the justices of the peace under a mass of statutes varying in application from municipality to municipality. Thus there was created a jurisdictional chaos.

"The low estate of the police courts, the 'justly maligned' justices of the peace, as well as the confusing, inefficient and frequently condemned system by which the compensation of those judges depended in part on the penalties they assessed against defendants they found guilty of some offense (a practice that had been responsible for bringing many a local court into disrepute), were conditions noted with disapproval by Chief Justice Vanderbilt as well as the public at large."

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A research publication prepared by the American Bar Foundation, which is an arm of the American Bar Association, explained the "disarray" of the New Jersey court system, and notably the local courts, prior to 1948. According to the publication, "Who Judges the Judges?" the structure was defined as "a system with a hundred years' accretion of antique habits and legislative patches, characterized by a labyrinthine court structure and an utter absence of administrative direction and authority."

While Vanderbilt was never completely satisfied with the manner of municipal court "reform" which the Legislature enacted, almost from the day he succeeded Vanderbilt as chief justice in 1957, Weintraub referred to the new system as "structurally cumbersome, unwieldy and archaic."

Shortly after he became chief justice, Weintraub told The Star-Ledger of the municipal courts: "There are just too many courts for effective supervision. The magistrates (judges) are politically appointed and subject to local pressures.

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"The personnel is extremely incompetent. We operate a school for clerks, but the turnover is tremendous. They have other jobs. You can't run a court system that way.

"The feeling is still prevalent in many places that a defendant does not stand a chance in the municipal courts; that the magistrate feels compelled to accept the testimony of the local police officer or of the local witness.

"It is easy to see why this impression exists. The magistrate is in weekly if not daily contact with the police and knows many of them personally.

"The court is usually grouped with the police for local government purposes. The courtroom is frequently in the same building."

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Edward B. McConnell, who served as administrative director of the state courts under Vanderbilt and Weintraub and is now executive director of the National Center for State Courts — which issued a report four years ago that was highly critical of the New Jersey municipal courts — has been a critic of the system almost from the beginning.

McConnell cited embezzlements of municipal court funds, ticket-fixing and other forms of corruption that were routinely found by his office.

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"In a small municipal court, the temptation is very great. A single part-time clerk collects the fines, makes the deposits, keeps the records and reports on their accuracy," McConnell charged almost 20 years ago in a report to the Supreme Court.

The local courts have always been loosely administered by the Supreme Court, under the laws which established the system.

With the exception of a law enacted by the Legislature in 1970 that permits the Supreme Court to remove municipal judges for unethical acts, there have been few changes in the system — despite the multitude of critical studies of the municipal courts.

Appendix I

SPEECH BY CHIEF JUSTICE ROBERT N. WILENTZ: ORIENTATION SEMINAR FOR NEW MUNICIPAL COURT JUDGES

Spring, 1997

Reporter
49 Rutgers L. Rev. 1095 *

Length: 2973 words

Text

[*1095]

March 12, 1992

Jamesburg, New Jersey

Welcome to the Municipal Court Seminar for new municipal court judges. I looked through the program and, as usual, it is excellent. It covers many, many things, and you will have the benefit of the experience and perception of some very, very fine municipal court judges and some very fine superior court judges.

The program just doesn't pop out of a box--it's the result of hard work on the part of the Supreme Court's Committee on Municipal Court Education, and the Municipal Court Services Division of the A.O.C. [Administrative Office of the Courts], and, in particular, hard work on the part of Judge McFeeley, Dennis Bliss, and Ira Schef of the A.O.C. I hope you enjoy it, and I'm sure it's going to be helpful.

I've been asked to address you on my two areas of expertise. One is censoring movies, and the other is fomenting controversy. The lesson that I would like to convey on the first, censoring movies, is that you stick with what you believe is right even if some people disagree. I mean, even if everyone disagrees. As for creating controversy, I can't teach you anything. It's just a talent that I have. I don't know where it comes from, but thank God I don't know how to teach it.

New Jersey is schizophrenic about the Judiciary. We want the best Judiciary, but even back in 1947 when we started to make the best Judiciary, we weren't quite ready, and still today we're not quite ready.

In 1947, it was clear that what the state wanted was a Judiciary that was state-wide, one court covering everything. It didn't quite make it. It retained the County Court, it retained the Juvenile Domestic Relations Court, it retained a District Court, but it put in place what it ultimately wanted, which **[*1096]** was the Superior Court, and it took almost forty years to get one court, but we got it. There were other things that they wanted, but that they didn't quite do in 1947, including having the court be in charge of all the personnel that service the court. So, they kept the system whereby the courts are financed partly by the state, partly by the counties, so the personnel that service the court are paid some by the state, almost all by the counties. Controlled by the court, controlled by the counties. We still have quite a way to go in that area.

During all of this time, the municipal courts were part of this discussion. And it was only that part of the state-wide Judiciary that was left, to some extent, potentially enmeshed with politics. The few efforts that have occurred since then to try to change the basic structure of the municipal courts have been unsuccessful. Chief Justice Weintraub, I recall--I'm not sure how accurately I recall it--but I recall that he attempted to make a major change by having regional municipal courts. It was, as I say, dead in the water the minute it was announced.

Our task force on the improvement of the municipal courts has a recommendation that is aimed in that direction, to some extent, which would grant tenure to municipal court judges after they're reappointed, I think, two times. It has not been shown to have a substantial possibility of success right now, anyway.

There are a lot of reasons for the lack of success in this area, but two of them stand out in my mind, anyway, as responsible for keeping the basic structure, the basic method of appointment of municipal court judges as it has been for quite some time. One is a strong tradition of local self-government --feeling that you want to keep government close to the people. Translated into political English, that means the people who have the power to make the appointment want to keep the power to make the appointment.

The other reason is fundamental and important. People have been basically satisfied with the municipal courts. There has never been, at least that I recall, any real groundswell on the part of the public for a change. I'm not sure what the best answer would be if someone asked you how you would like to see the structure of municipal courts change, how you would like to see the method of appointment change. I don't find it a **[*1097]** practical question, because it seems to me it's not going to--at least not in the near future.

My position has been to accept the municipal courts as they were, as they are, and simply to try to make them better, to recognize the professionalism that exists and to try to strengthen it. That's how I have proceeded. And I hope we've done that to some extent. I think we have. And I think the professionalism, the increasing professionalism of the municipal courts and the municipal court judges, has been recognized by the Supreme Court, by the Legislature, and I hope by everyone.

Of the things that we've done, I guess the most prominent is the creation of the Supreme Court Task Force on the Improvement of the Municipal Courts. They did very fine work, a fair number of their recommendations have been implemented, and it's sort of a blueprint of where we'd like the municipal courts to go, and to some extent, where the municipal courts are. And it shows the concern that the Supreme Court has for the municipal courts. The education and training efforts have been really quite intensive, and that's not just education and training of municipal court judges, but of municipal court administrators and municipal court support personnel.

Recently, I guess the most intensive changes have been in the area of alcohol and substance abuse, but they cover the whole field. [These changes] announce that this isn't just a place where someone goes in, sits on a bench and makes decisions (which, of course, is the most important thing, but it is a professional Judiciary that wants to be educated, wants to be trained, needs to be trained; the Judiciary that we intend to have get better and better, and an administration that we hope to have get better and better. In recent years, by rule of court, municipal courts have been given the power to determine motions to suppress. That says something. It doesn't say something only about the crush in the superior courts. It says that we have confidence in municipal court judges to handle what are sometimes very complex and very important motions. Municipal courts now have the power to permit plea bargaining in the municipal courts--another very important sign of confidence in municipal court judges and in the municipal courts themselves.

We've put in place, still on a pilot project basis, because **[*1098]** anything that isn't state-wide is a pilot project, presiding judges for the vicinage: presiding judges of municipal courts, very, very fine presiding judges, intended to help municipal court judges, intended to make municipal courts more professional, intended to make them even more a part of the state-wide system--recognition of how important they are.

In the Administrative Office of the Courts, we created the Municipal Court Services Division, [which has] been under Dennis Bliss. It has been an extremely constructive help to the municipal courts. It shows the extent to which I deem the municipal courts important. And they're top notch people who are in that division.

The attention that has been paid to the administration of the municipal courts is another indication. Even the change of designation of municipal court clerk to municipal court administrator shows a change in the status and importance of that function. And the encouragement to have municipal court prosecutors--almost every municipal court in the state has them. And the accompanying encouragement, which I wish could be stronger, to have public

defenders for every municipal court. I mean, this is a professional court. This is a court that is not a thing of the past where it was called "Police Court" with all that implied.

And the Legislature has indicated its growing confidence in municipal courts. Think of the fact that one of the most important and serious offenses in terms of society's evaluation of offenses is driving while intoxicated, or driving while under the influence, and that offense is handled by municipal court judges. And no one is suggesting that [these offenses] shouldn't be [handled by municipal courts], and different kinds of help are attempted to be given [as a result]. This says something about society's and the Legislature's and the court system's confidence in the professionalism of municipal court judges.

The fact that our Court was willing to impose on municipal courts time-limit standards and backlog standards said something about your ability to control your calendar and your ability to administer your courts. And the fact that the Legislature would pass a law- I forget exactly whether it's a dollar, or two dollars per ticket, I don't remember now, but in effect, an appropriations bill giving millions and millions of dollars for the automated traffic system . . . [in order] to automate not **[*1099]** just the traffic ticket system (although that's been its primary thrust so far but really to automate all of the operations of the municipal courts- the fact that the Legislature would do that tells you something about confidence in your ability. There have been some very, very good developments even though it's the same municipal court that it has always been.

So, it's clear, there's more professionalism, better training, less politic[s in] municipal courts, and more respect. I think there's another factor that has led to the improvement of municipal courts that's even more important than all of those that I've mentioned. And it's a factor that is a product of many forces. And that factor is the public's insistence in better and better judges, on a better and better Judiciary, and that [insistence] extends to the municipal courts. Insistence in political terms means that if those in power don't respond to it, they're going to get hurt. The factors are complex. Our efforts have led to more professionalism and, to some extent, have shaped that greater expectation. But, throughout the country, people are more aware of the judicial process, the Judiciary, what the highest standards are, and their expectations are higher. They're better educated. People are better educated than they used to be.

The bar is perhaps more concerned about the quality of municipal courts than it used to be. And municipal court judges themselves, in their communities, have made the case, whether they've wanted to intentionally or not, have made the case for the need for good quality in the municipal courts.

Ultimately, the mayor and council, or the governing body, or when the governor makes the appointments, all of them have responded.

Those who have the power to appoint municipal court judges know that it is no longer acceptable to name as a judge someone who is not well qualified. They know that the people will not accept it. They know that they will get hurt in the eyes of the people and at election time. So, there is, I believe, a growing change in the culture that is to me one of the most hopeful signs and recognitions of improvement in municipal court professionalism.

The result is that municipal court judges have become better and better judges, more capable, less political, almost apolitical. I say almost, because if I believed municipal courts were **[*1100]** totally apolitical, I would doubt my sanity. I just want to say a word about politics. You have the toughest job in the Judiciary. You are expected to be and you will be held to the standard of [full-time] judges. Very, very few exceptions to the Code of Judicial Conduct. Very, very few exceptions. In fact, there is essentially no difference between the standards that apply to you and the judges of the Superior Court, the appellate division, and the Supreme Court.

Well, how does it work? What do we expect of you? Well, we expect the same thing of you that we expect of Superior Court judges. There's no difference. A superior court judge is appointed. He gets $ 100,000 a year, he's going to be there for life, and we hold him to very, very high standards. Very high, indeed. There's no difference. You work very, very hard for months, for years, supporting a candidate, supporting a political party, and you get recognized, and you get appointed, and you get paid five thousand, three thousand, two thousand, maybe ten-- maybe it depends where you are. You serve for three years.

If you want to get reappointed, you say to yourself, now, how did I get appointed, and how do I get reappointed? But they're the same. And that's what has been absolutely remarkable--the extent to which the independence of the municipal courts from politics has been maintained, has survived, has been strengthened. It's remarkable, because if you know human nature, it's almost impossible. That day, that first day when you're on the bench, and the telephone rings, and the person who made you a municipal court judge calls up and tells you who [the person] coming before you is and how close a friend it is of his, and how great a political supporter, that's the day you've got to say no.

We want you to do what human nature says you won't do. But you've got to do it. We hold you to the same standards. You've got to do it for your self-respect, you've got to do it because you're a judge. There's just no exception to it. And if you add to that, the fact that you're a practicing lawyer, and you've got your practice, and you've got your family, and you're told you've got to pay enough attention to the municipal court so that it's run right, so you do your job right, we expect you to do that, too. We expect the impossible out of you, and that's why I respect you so much. Because by and large, municipal court **[*1101]** judges have performed the impossible.

I have an idea of what it's like. I practiced a fair amount in municipal courts, and I admire you for what you've done, and I recognize the difficulty of the problem. So, keep it up, please. It's the most important part of your job. It is also important to make sure that your court is administered properly. Judges tend to assume that the clerk is going to take care of everything, and the support staff is going to take care of everything, and they do, gentlemen. But it's your responsibility, so find out what works, what's happening, who does what. You're ultimately not only in charge, you're responsible. Take a hand in it. Don't try to be the municipal court administrator, but try to understand the job backward and forward. Try to improve the operation of your court.

There are a lot of other things I'd like to talk to you about, but Dennis just kicked me in the foot. I just want to say one other thing about how you run your court. The pressures on you are such that I'm sure at times it's difficult to be the kind of judge that you would like to be. But I would like courtrooms in the municipal court, as I would in every court in this state, to be a place where no one is afraid of the judge. They may be afraid that they're going to get sentenced to something. They may be afraid they're going to get fined, because they committed an offense, and that's what the law says, but I don't want anyone to walk into a New Jersey courtroom and be afraid of the judge. I would like you to try to run your courtroom with the civility, the decency, and the patience that you try to show to other people in your ordinary dealings with them, with the dignity that you have within you. I want people who come into your courtroom to say, you're not going to get away with anything with this judge, but the judge is fair, the judge is kind, the judge is patient, the judge will listen, and the judge will do what he or she believes the law says the judge is required to do.

I don't want any judge to get a reputation for being arbitrary and look out, because that judge, boy, he can be tough when no one knows he or she is going to be tough. You've got to control the court, that I understand. You can't let anyone make a circus out of your court. You've got to do whatever is needed to make it a well-run court. It ought to be a civil court, a courteous court. **[*1102]**

And when it comes to people, and the municipal court judge has more people in his category than others, disadvantaged people, uneducated people, minorities, who are distrustful of the court system, or who are afraid of the court system, they don't get a special break in your decisions, but you have to have some understanding of the problems that they bring with them. And you have to have an understanding of the fact that some people in your courtroom may not treat them right. Your support staff may not. Prejudice in this country, in this state, runs deep, and we as judges are here to see to it that it doesn't exist--at least in one place in society, and that's in the court system, and that's in your courtroom. So, you have to be alert to that.

I have tried, and the Supreme Court has tried, to recognize professionalism in municipal courts, to improve it. The A.O.C. has tried to do so; an awful lot of people have tried to do their best with some success, but the judges are the ones who have made it happen. The judges are the ones who will make it happen. Not just by the disposition of the eight million cases which the municipal courts disposed of in the last court year, but what the judges have made happen is the maintenance and the strengthening of the professionalism: their professionalism, the municipal

court's professionalism under impossible circumstances. They are real judges, they are good judges, and they are honest judges. They are a first-rate part of the state-wide, first-rate Judiciary, and I'm proud of it. Thank you.

Appendix J

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 023
TRENTON, NEW JERSEY 08625-0023

To: **Assignment Judges**

From: **Chief Justice Stuart Rabner**

Subj: **Municipal Court Consolidation Plan**

Date: **September 21, 2010**

As you know, a number of municipalities have already consolidated their municipal court operations, and many other towns are actively considering that step. I believe that municipal court consolidation, when properly planned and implemented, can result in increased efficiency and at the same time maintain or even improve on the excellent service that is a hallmark of our municipal court system. I recently sent a report entitled "Municipal Court Consolidation Plan" to the Governor and to legislative leaders in the Senate and the Assembly. That document provides a blueprint that can be followed by municipalities considering the establishment of either a joint court or a shared court.

I have enclosed a copy of the Municipal Court Consolidation Plan along with a statewide status report listing the municipalities that have taken advantage of the opportunity to merge and consolidate services. The Consolidation Plan describes the two approaches that are currently available to municipalities considering consolidation – joint municipal courts and shared services arrangements – and it identifies some of the prominent issues surrounding each option. It also stresses the importance of involving the Assignment Judge as early as possible in any discussions regarding possible consolidation.

As referenced in the report, more than one in four New Jersey municipal courts are already part of either a shared services arrangement or a joint municipal court. Additionally, eighteen of our twenty-one counties have at least one merged municipal court; this includes two examples where the merger involves courts from different counties. In fact, these numbers are significantly higher than they were just two years ago.

More and more municipalities are considering court consolidation as a way to streamline costs and increase efficiencies. I believe the attached Consolidation Plan contains important information regarding the merits of court consolidation that municipal leaders can use in their deliberations. Toward that end, I ask that you please share this report with municipal leaders in your respective vicinages. Further, I cannot stress enough the importance of your office providing feedback to municipal leaders regarding the impact that a potential merger would have on court operations and efficiency. For a merger to truly be successful, it has to properly serve the needs of our courts and citizens.

Finally, as you become aware of municipal courts that may be actively contemplating consolidation, I ask that you continue to advise Judge Grant. Judge Grant and his staff stand ready to provide information, guidance, and technical assistance and support to municipalities that are considering consolidation of municipal court operations. Judge Grant should also be advised of any consolidated courts that wish to terminate their current agreement.

Thank you for your assistance in this matter.

Attachments

cc: Hon. Glenn A. Grant, Acting Administrative Director
Mark Neary, Supreme Court Clerk
AOC Directors and Assistant Directors
Trial Court Administrators
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Municipal Court Consolidation Plan

September 2010

Table of Contents

I. Introduction

Reductions in state aid and increased operating expenses are leading many New Jersey municipalities to consider shared services. One growing area of shared services involves the consolidation of municipal courts.

According to experts, consolidation of municipal court operations has the potential to save costs by:

- reducing the number of court facilities;
- reducing staff size;
- sharing court security measures;
- expanding management's scope of control; and
- consolidating administrative oversight.

As referenced in this report, about one in five New Jersey municipal courts is currently part of a joint or shared services arrangement. Additionally, 18 of the state's 21 counties have at least one merged municipal court; this includes two examples where the merger involves courts from different counties. Each and every day, municipal leaders are considering whether court consolidation makes sense for their towns.

The purpose of this report is to define the two different types of consolidated courts – joint and shared – and to identify some of the prominent issues surrounding each. This report also provides a blueprint for municipalities considering the establishment of a joint or shared court. Further, Appendix D provides a checklist that should be followed to effectuate a consolidation.

Finally, the report stresses the importance of involving all relevant parties in consolidation discussions as early as possible, particularly the Assignment Judge, who has general authority over all court operations in a county. Input by the Municipal Presiding Judge, municipal division manager, municipal court judge and the court administrator will also be invaluable to municipal leaders, who need to assess whether a consolidated court best serves the needs of the public.

II. Options for Consolidating Municipal Court Operations

There are several options municipalities can consider when forming a consolidated municipal court. The options are outlined in the following sections.

Shared Municipal Courts

Shared municipal courts are individual courts that share space, staff and supplies. The courts keep their unique identity and court name. Each court, for example, is required to retain its own set of bank accounts and ticket books, as well as manage its own caseload. Although cases are heard in a central location, they remain within the jurisdiction of the originating court. Further, each municipal court maintains its own unique court code and each employee must maintain individual computer access codes for each municipal court, thus preserving each court's unique identity.

Judges who sit in a shared municipal court are appointed by the local governing body. The municipalities participating in a shared court arrangement have the flexibility either to appoint the same judge or their own judge. The municipalities have the same flexibility when appointing administrators (see Appendix A for additional information on N.J.S.A. 2B:12-1).

Joint Municipal Courts

In contrast to a shared court, municipal courts that consolidate to form a joint court lose their individual identity. They become one court encompassing a larger geographic area, the size of which is determined by the number of participating municipalities. Joint courts use only one court code and one set of bank accounts. In most instances, the joint court takes on a new, unique court name. Complaints issued by participating police departments are not separated, but rather combined when filed in a joint court.

Another important distinction between joint and shared courts involves the judicial appointment process. Judges in shared courts are appointed by the governing body. In joint courts, they are appointed by the Governor, with the advice and consent of the Senate (N.J.S.A. 2B:12-4b). Assignment Judges, in consultation with each of the participating towns, have historically made temporary appointments of municipal court judges to serve joint courts, pending a Governor's appointment.

Municipal Court Consolidation Across Counties

N.J.S.A. 2B:12-1b and 2B:12-1c provide the statutory authority for two or more municipalities to establish a joint or shared municipal court. Neither statute places limits on territorial locations of the newly formed court; nor do they preclude non-contiguous municipalities, or municipalities from different counties or vicinages, from forming a joint or shared municipal court. N.J.S.A. 2B:12-1b reads as follows:

> Two or more municipalities, by ordinance, may enter into an agreement establishing a single joint municipal court and providing for its administration. A copy of the agreement shall be filed with the Administrative Director of the Courts.

Note: N.J.S.A. 2B:12-1c provides the authority to establish shared municipal courts and contains similar language.

Under these statutes, the decision to form a joint or shared municipal court rests with the municipalities involved. This pertains to courts within the same vicinage, as well as those from different vicinages.

III. The Role and Authority of the Assignment Judge

The Rules of Court, however, place direct oversight responsibility for the efficient administration of all municipal courts with the Judiciary. Pursuant to Rule 1:33-4(a), the Assignment Judge "shall be the chief judicial officer within the vicinage and shall have plenary responsibility for the administration of all courts therein, subject to the direction of the Chief Justice and the rules of the Supreme Court." The same rule further states that:

> The Assignment Judge shall be the authorized representative of the Chief Justice for the efficient and economic management of all courts within the vicinage. The responsibilities of the Assignment Judge also shall include all such matters affecting county and municipal governments, including but not limited to budgets, personnel and facilities. R. 1:33-4(b).

Thus, while municipalities clearly have the authority to enter into an agreement to form a joint or shared municipal court, the decision to allow that newly formed court to hear cases rests with the judiciary; most notably, the Assignment Judge, subject to the direction of the Chief Justice. Therefore, an Assignment Judge can exercise his or her authority in this area if, for example, a plan to form a court lacks sufficient facilities or adequate staff, or if the municipalities are not within a reasonable proximity to each other.

IV. Practical Limitations of Joint and Shared Courts

There are some very practical realities municipal leaders should consider when deciding on a joint or shared court, because those realities will have a direct bearing on the administrative challenges a consolidated court will face.

From a day-to-day court operations perspective, joint courts are easier to manage. They have only one set of bank accounts and court reports, and cases are maintained in a single file system. Court staff do not need to maintain separate access codes, and there is no need to worry about entering ticket information into the wrong court, depositing money into the wrong account, or using another court's forms. In shared courts, staff must always be conscious of those considerations.

The major operational advantage shared courts have over joint courts involves the ease with which they are able to terminate the shared relationship. History has shown that

court mergers oftentimes are of limited duration. While some agreements have been in place for decades, others end after only a year or so. In fact, several such relationships have terminated during the past year. The separation of shared courts is a much simpler process because monies and cases are not combined. Each court can simply take its cases and files and move to a new location. Conversely, the natural combining of cases in joint courts makes the separation problematic. Direct assistance by the office of the Assignment Judge is required, as is oftentimes assistance from the Administrative Office of the Courts.

Shared courts make the most sense when the agreement is likely of limited duration (less than 5 years) and/or when only a limited number of courts are involved (i.e. preferably two or three). In instances where more than three courts are merging and where the agreement is believed to be for an extended duration, a joint court should be established.

V. Financial Issues and Considerations

The Administrative Office of the Courts (AOC) has promulgated standardized financial procedures to process and track all monies received in the state's municipal courts. All monies are received and distributed electronically by the Judiciary's computer system – the Automated Traffic System/Automated Complaint System (ATS/ACS). These financial procedures are designed to accommodate all courts, including joint and shared courts.

The financial procedures for shared courts are identical to the procedures approved for stand-alone courts. Money collected on cases filed in court A gets deposited into court A's account; money on cases filed in court B gets deposited into court B's account. When disbursed by the court at the end of the month, the appropriate monies are forwarded to the Chief Financial Officer (CFO) in the appropriate town.

The handling of monies in joint municipal courts is somewhat different, since there is only one set of financial accounts (bail and regular) and all cases and collected monies are combined. To account for this, the ATS/ACS system has been enhanced to subtotal fine monies based on the municipality where the offense occurred. Thus, at the end of each month, the court administrator is able to identify what monies are to be turned over to which municipality. Municipalities can use this information to satisfy the financial requirements set forth in the shared services agreement.

VI. Steps for Establishing a Shared or Joint Municipal Court

The specifics on how to accomplish consolidation must be worked out locally. In reality, there is no "one way" or "best way" to accomplish this. The only certainty is that establishing a joint or shared court requires commitment, solid information and strong communication on the part of all involved parties; namely, municipalities, vicinage

management, the judge(s), and court staff.

The Four Stages for Establishing a Joint or Shared Court

There are generally four stages involved in establishing a joint or shared municipal court – the *exploratory stage*, the *detail stage*, the *agreement stage* and the *implementation stage*. Specifics of each stage are discussed below.

1. Exploratory Stage

The exploratory stage begins when each of the governing bodies begins to consider the pros and cons associated with a merger. Towns should begin to formulate ideas regarding the structure and location of the newly formed court.

Below are some of the primary issues that each municipality should consider:

- Is forming a joint or shared court the direction in which the municipality wants to go?
- Would a joint or shared court better serve the municipality's needs? This includes consideration of the importance of choosing one's own judge.
- General staffing issues – i.e., who would be the judge(s) and administrator(s); would there be possible demotions and/or the termination of staff; are there union and civil service issues to consider; tenure rights issues; etc.
- Identify the court facility best suited to house the merged court. This involves assessing the strengths and weaknesses of each location and identifying whether any existing facilities can properly house the new expanded court.
- The amount of cost savings (or other reasons) needed to justify the decision. Please refer to Appendix B for additional information.

It is suggested that during this stage, each municipality direct its municipal attorney to begin reviewing the legal issues surrounding shared services. Municipalities should also consider reaching out to neighboring towns that have formed joint and/or shared courts to solicit their input. Reviewing existing shared services agreements is helpful.

The Assignment Judge (or designee) should be contacted regarding a possible merger. The Assignment Judge's office can assist by providing caseload trend analysis, input for staffing levels, feedback regarding the ability of a particular facility to handle the combined operations, as well as direction regarding the number of court sessions needed to handle the combined volume. This input can be extremely valuable to municipal leaders at this early stage, particularly if the Assignment Judge suggests something contrary to the general direction being considered by the municipalities.

It is also recommended that each municipality consider, at this time, starting a dialogue regarding a possible consolidation with its judge and court administrator. Better than anyone, they understand the intricacies of the court and the relative impact the merger

can have on court operations. Specifically, they can provide information relative to the proposed merger's impact on staffing and facilities, and can begin to consider implementation issues should a formal agreement be signed. Finally, at this stage, the municipality should consider consulting with the chief of police, who can provide information about how the merger will impact court security, as well as police overtime and travel costs.

2. Detail Stage

During the detail stage, municipalities should begin negotiations about issues identified during stage 1. Formal discussions are needed to discuss court revenues and payments. The most significant issues the municipalities will need to decide during the detail stage are as follows:

- Should the merged court be a joint or shared court?
- What will be the location of the court facility, and are renovations required?
- If a shared court, who will be the judge(s)?
- Who will be the court administrator(s) and staff?
- Will the merger lead to staff terminations, demotions or even promotions?
- Will there be any salary level changes because of modifications of title, the assumption of additional responsibilities, or the reduction/increase in work hours?
- Who pays for what, and how will operating costs be paid?
- How will any required facility renovations be funded?
- Have the concerns or issues raised by the Assignment Judge been satisfied?
- Who will be appointed as prosecutor(s) and public defender(s)?
- What will the direct impact of the merger be on the public?

As part of this process, it is strongly recommended that each municipality conduct a cost-benefit analysis to determine whether the proposed financial agreement(s) makes sense. Municipalities should be sure to include both direct and indirect costs in this analysis, including information on possible revenue and caseload fluctuations. Please refer to Appendix B for additional information.

Finally, during this process, municipalities should continue to solicit input about significant issues raised by the Assignment Judge, as well as the municipal court judge and administrator. Failure to identify and address these concerns could have a long-term, detrimental impact on the court's operations.

3. Agreement Stage

The agreement stage is when shared service agreements are drafted, including the ordinance or resolution to establish the joint or shared court. This is generally done by the municipal attorneys.

This stage is straightforward. Municipalities should coordinate with the Assignment

Judge, the municipal court judges, and especially the court administrators to decide on a realistic implementation date. This is important given the significant logistical issues involved. Too short a time frame can jeopardize the ability of the court to effectuate the merger and could result in reduced services to the public. It is also strongly recommended that the municipalities provide the Assignment Judge with a copy of the draft agreement for review **prior** to it being acted on by the governing bodies.

4. Implementation Stage

The final stage in the process is the Implementation Stage. Most of the responsibility for implementing the agreement rests with the judge(s), court administrator(s) and office staff who will actually consolidate the various offices. This process should begin as soon as the agreements have been signed (if not before), with enough lead time to ensure there is no disruption in service to the public. A minimum of 6-8 weeks of lead time for simple mergers is essential for a smooth implementation. More time may be needed for complex mergers, particularly those requiring facility modifications. Finally, significant hands-on and technical assistance are available to the involved courts through both the Assignment Judge's office and the Administrative Office of the Courts.

The primary role of each municipality is to implement all facility and personnel issues necessitated by the agreement and to assist the court in moving files and equipment to the centralized facility. Changes to the municipality's phone system, building signage, the municipality's Internet site, and other items may also be needed. Moreover, sufficient start-up monies will be needed to enable the court to purchase new forms and stationery and to pay for any overtime costs necessary to help with the transition.

Finally, for joint courts, a formal request must be sent to the Governor's office regarding the appointment of the judge. In the absence of a Governor's appointment, the municipalities can consult with the Assignment Judge about the appointment of a temporary judge.

VII. Conclusion

The steps for establishing a joint court or shared court require strong input from all involved parties, including municipal leaders, the vicinage Assignment Judge, the municipal court judge, and court administrator. The consolidation process requires that a detailed analysis be done to help determine whether the consolidation makes sense for each of the involved municipalities. The Judiciary is prepared to provide input and support to municipal leaders to ensure that any planned court consolidation best serves the needs of our citizens.

Appendix A

Authority to Establish a Municipal Court

N.J.S.A. 2B:12-1c allows for the establishment of shared municipal courts. It provides that,

> [t]wo or more municipalities, by ordinance or resolution, may agree to provide jointly for courtrooms, chambers, equipment, supplies and employees for their municipal courts, and agree to appoint judges and administrators without establishing a joint municipal court. Where municipal courts share facilities in this manner, the identities of the individual courts shall continue to be expressed in the captions of orders and process.

Legislation passed in spring 2008 modified the appointment process. Specifically, P.L. 2008, c.2, signed into law on March 26, 2008, allows municipalities, in shared municipal courts, to appoint different judges and administrators to oversee court operations. Prior to this legislative change, municipalities in a shared court arrangement were required to appoint the same judge and administrator.

N.J.S.A. 2B:12-1b provides for the establishment of a joint municipal court, which differs significantly from a shared court. The legislation permits "[t]wo or more municipalities, by ordinance [to] . . . enter into an agreement establishing a single joint municipal court and providing for its administration."

Appendix B

Cost Savings Considerations

The following is a list of direct and indirect costs associated with the operation of a municipal court. To determine whether a consolidated municipal court will save costs, an analysis needs to be done comparing the cumulative costs of operating the present, separate courts versus the anticipated expenses of a merged court.

Although every merger is unique, the primary costs associated with operating a municipal court include:

- Judge(s) salary (plus benefits)
- Total staff salaries (plus benefits)
- Equipment costs (including future equipment replacement costs)
- Other regularly budgeted court items, including supplies and costs for interpreters, training, emergency support staff, and acting judges, among other items
- Police travel and overtime costs (involving court sessions and related court operations)
- Court security costs
- Administrative oversight of the court's budget, staffing and physical plant needs
- General physical plant issues – i.e. costs to build, upgrade or maintain the facility(s)
- Additional physical plant issues tied to the court's use of a facility (i.e., electric, heat, phone/fax, general wear and tear, etc.)
- Postage and printing costs
- Payments to the prosecutor and public defender

Note: the amount of money any one municipality will save is tied directly to the financial stipulations written into the shared services agreement.

Appendix C

Status Report - Shared and Joint Municipal Courts

There are 530 municipal courts in New Jersey. Of these, 104 have formally entered into a joint or shared services agreement, consistent with the provisions of Title 2B. Thus, about one in five municipalities is part of a shared or joint court arrangement. Specific detail about New Jersey's shared and joint municipal courts follows.

Shared Municipal Courts

As of July 2010, there were 83 shared municipal courts in New Jersey, representing about 16 percent of all courts. With some exceptions, these courts are low volume courts, with typical annual caseloads of less than a few thousand. Most shared agreements involve only two courts. In fact, of the 39 different shared court arrangements, only nine involve more than two courts. Additionally, two-thirds (14) of New Jersey's 21 counties have at least one shared court. Most of the State's shared courts (60%), however, are located in only four counties (Monmouth, Burlington, Hunterdon and Warren). The attached table provides a detailed breakdown of the location of each shared court.

Joint Municipal Courts

There are currently 21 joint municipal courts in the state, comprising 59 different municipalities. Approximately four percent of all municipal courts are joint courts, while about ten percent of the State's 566 municipalities are part of a joint court arrangement. Nine different counties have at least one joint court, while no county has more than four. Thirteen of the state's 21 joint courts have only two involved municipalities, while three have five or more (North Hunterdon Joint, Joint Municipal Court of Dover, and Frankford Joint). As with shared municipal courts, joint courts generally have lighter caseloads (a few thousand cases or less). The attached table provides a detailed breakdown of all joint courts.

Note: This information is based on July 2010 data.

Appendix D

Joint / Shared Court Checklist

A checklist of items to be considered during the formation of either a joint or shared court is outlined below. The purpose of this appendix is to outline many of the steps involved in forming either a joint or shared court, particularly from the perspective of court staff, vicinage staff and staff from the Administrative Office of the Courts. For convenience and ease of reference, the joint and shared court sections are separated.

Stages Involved in Establishing a Joint Municipal Court

THE EXPLORATORY STAGE – Joint Court

- The Assignment Judge, Presiding Judge, and Division Manager should meet with municipal stakeholders.
- Municipal leaders should be advised regarding the role of the Assignment Judge, the Municipal Division, the Municipal Court Services Division, and the respective municipal court judge and staff regarding the establishment of a joint court.
- Highlight the requirements for the detail, agreement and implementation stages relative to the formation of a joint municipal court.

THE DETAILS STAGE – Joint Court

Facilities: The municipality must provide suitable courtrooms, chambers, offices, equipment, and supplies for the court, its administrator's office and violation's bureau. N.J.S.A. 2B:12-15.

- Identify whether renovations will be needed to the host facility:
    - Court office – adequate space for additional staff, files, etc.
    - Courtroom – space and availability to accommodate more/larger court calendars
    - Municipal facilities – Is there adequate:
        - storage

        - wait areas
        - parking
        - access

    - Does the facility comply with ADA requirements?

- Courtrooms, chambers and court office must be in a public building. Only the Administrative Director can approve another appropriate location. R. 1:31-1.

- Court sessions/hours/office hours are to be set by the judge or Presiding Judge, subject to the approval of the Administrative Director. R. 1:30-4.

- Mass transit

Personnel:

- Gubernatorial appointment of the judge(s) is made with the advice and consent of Senate. N.J.S.A. 2B:12-4b.

- The court administrator, prosecutor and public defender appointments are to be determined jointly by the respective municipalities.

- As municipalities consider the selection of the court administrator, the appointing authorities should be advised to review any pertinent civil service regulations.

- Municipal leaders must consider who will fill the position of the court administrator, as well as other positions in the new court.

- Appropriate staffing level for new court:

    - Will there be appropriate staff to handle the increased caseload and any additional court sessions?

    - Division may use weighted caseload analysis for advisory purposes

Security:

- What is the status of the host site relative to the Judiciary's Schedule of Protection? See AOC Directive #15-06.

- Will additional security measures be necessary due to the increased number of court sessions and court users?

- How will prisoners appear in court (e.g., transported, videoconferencing)?

THE AGREEMENT STAGE – Joint Court

Legal Issues:

- Assignment Judge(s) may review and approve agreements.
- Ordinances establishing the new court must be passed by the respective governing bodies. The name of the joint court must be specified in the ordinances.
- During this stage, the formal agreement is drafted and signed by the municipalities.
- A copy of the formal agreement is to be filed with the Administrative Director. N.J.S.A. 2B:12-1b.

THE IMPLEMENTATION STAGE – Joint Court

Responsibilities of Vicinage Municipal Division: The Municipal Division is to facilitate the exchange of information between Municipal Court Services, AOC and the respective courts. As a result, the Division should ensure that the respective municipal courts perform the following duties:

- Forward a copy of the joint court agreement to Municipal Court Services after it is reviewed and approved by the Assignment Judge.
- Email the following information to JUATS (at least 1 month before change to be completed):
    - Start date for joint court
    - Name of court of record
    - Municipality name and court code(s) joining court of record
    - Updates to court record, including:
        - Name of court (if applicable)
        - Address and phone number(s)
        - Office hours
        - Judge, prosecutor and court administrator names

- Journal/time payment printer remote numbers

- Updates to receipt and warrant printers

- Additions and changes for user ID's

- Address and phone number change for police (if applicable)

- Complete ACH authorization form for bank account changes (if applicable, this should be done approximately 1 month prior to the merger's effective date).

    - A copy of a voided check for any new accounts and the ACH authorization form are to be faxed or mailed to Municipal Court Services.

- Email JUATS to request new/relocation and/or removal of equipment (Note: this should occur approximately 7 weeks before the merger's effective date).

- Notify law enforcement of court code changes for eCDR and eTRO.

Responsibilities of Municipal Court Services:

- Court record updates for ATS/ACS:

    - Court name (if applicable)

    - Names -- i.e., judge, court administrator, prosecutor

    - Court address, phone number, court hours

    - Court screen name

    - Change joint court indicator to "Y" for court of record

    - Update all municipalities joining court of record

    - Police address and phone

- Printer updates:

    - ATS -- update remote on ATS court screen for journals and time payment orders

    - ACS -- update remote on ACS court screen for journals and time payment orders

- Update receipt printer -- if additional receipt printers are added, create a new profile for the new receipt printers

- Update warrant printer information

- User ID's:

  - Create newly requested ID's and update security on existing ID's

  - Create additional ID's for new receipt printers

  - Update required police department ID's for court of record

- Notifications:

  - All in-house AOC staff

  - State Police

  - Motor Vehicle Commission (MVC)

- Bank account updates:

  - Notify AOC Fiscal Unit of bank account changes and dates to be completed

  - Notify Elavon of general account changes for NJMCdirect.com

- Technical Assistance:

  - Send TP51 to Technical Assistance Unit for new/relocation and/or removal of equipment.

Operational Issues for Municipal Court Administrator:

- Provide notice to internal and external customers. This includes:

  - Updating respective municipality websites, contacting the media (if appropriate), modifying municipal signs, advising the N.J. Lawyers Diary, etc., regarding the closure of existing facility(s) and the establishment of the new court

- Providing customers with the location, court hours, directions, telephone/fax numbers, etc. of the new court

- Placing a message on the former court phone line(s) advertising the new location and contact information

- Contacting external agencies with correct contact information (e.g., local and State Police, Weights and Measures, N.J. Transit, County Prosecutor's Office, etc.)

- Protect the integrity of all court records. This includes:

    - Relocating all tickets, complaints, financial records, docket books and manual receipts to host facility

    - Relocating archived materials to secure storage facility (preferably at the host site)

    - Reviewing retention schedules

- Review with staff and law enforcement, as appropriate, the procedures for collecting bail, issuing citizen complaints, and filing tickets and complaints

- Execute, as appropriate, new authorizations for court administrator and deputies.

- Coordinate with the Municipal Division to offer training for new team members in areas such as management/leadership, team building, communication skills, emotional intelligence, and management of financial accounts.

- Review and modify, as needed, all Judiciary forms and stationery. This includes all in-house forms, as well as:

    - The Special Form of Complaint and Summons, receipt books, etc.

    - The ordering of new ticket books and/or the purchase of stickers for existing books.

- Bank related issues, including:

    - Opening new accounts (bail and general)

    - Maintaining old accounts until directed otherwise by Municipal Court Services and/or Municipal Division

- Adding or deleting signatures for writing checks
- Updating the credit card machine

- Financial Issues:
  - Municipal Division should confirm all accounts are reconciled
  - Host municipality may conduct an independent audit of the merging court(s) prior to the merger effective date
  - The judge, court administrator and all others who handle money must be bonded
  - Run one journal and complete one deposit within 48 hours
  - One monthly cash book and disbursement
  - Operate one change fund (for each person handling money)

Note: The establishment of a joint court necessitates ongoing review and communication between the Division Manager's office and the new court. Each Assignment Judge should determine what level of review is appropriate in his/her vicinage. For example, in one vicinage, the Assignment Judge has directed the Division Manager's office to complete quarterly visitation reports for a limited duration, to ensure the ongoing integrity and efficiency of the court.

Stages Involved in Establishing a Shared Court

THE EXPLORATORY STAGE – Shared Court

- The Assignment Judge, Presiding Judge, and Division Manager should meet with municipal stakeholders.
  - In the event of a cross-county shared court (involving different vicinages), stakeholders from both locales (Assignment Judges, Presiding Judges, Division Managers and respective municipal stakeholders) must be involved.

- Municipal leaders should be advised regarding the role of the Assignment Judge, the Municipal Division, the Municipal Court Services Division and respective municipal court judges and staff regarding the establishment of a shared court.

- Highlight the requirements for the detail, agreement and implementation stages relative to the formation of a shared court.

THE DETAILS STAGE – Shared Courts

Facilities: The municipality must provide suitable courtrooms, chambers, offices, equipment, and supplies for the court, its administrator's office and violation's bureau. N.J.S.A. 2B:12-15.

- Identify whether renovations will be needed to the host facility:
    - Court office – is there space for additional staff, files, etc., if courts share space?
    - Courtroom – space and availability to accommodate more/larger court calendars
    - Municipal facilities – is there adequate:
        - storage (if courts share space)
        - wait areas
        - parking
        - access
    - Does the facility comply with ADA requirements?
- Courtrooms, chambers and court office must be in a public building. Only the Administrative Director may approve another appropriate place. R. 1:31-1.
- Court sessions/hours/office hours are to be set by the judge or Presiding Judge, subject to the approval of the Administrative Director. R. 1:30-4.
- Mass transit

Personnel: In a shared court, municipalities may agree to appoint the same judge or may appoint separate judges. N.J.S.A. 2B:12-1c.

- In mayor-council form of government, the judge(s) shall be appointed by the mayor with the advice and consent of the governing body. N.J.S.A. 2B:12-4b. In all other types of municipalities, the judge shall be appointed by the governing body of the municipality. N.J.S.A. 2B:12-4b.

- Municipal leaders should review the impact on current judicial appointment(s) in the event they seek to jointly appoint only one judge.

- Appointment of the court administrator, prosecutor and public defender are to be determined by the respective municipalities. Because the courts are separate legal entities, they may choose to employ the same personnel or select different individuals to fill these roles.

    - If municipalities are considering the selection of one court administrator, they should be advised to review all pertinent civil service regulations.

- Appropriate staffing level for new court:

    - Will there be appropriate staff to handle the increased caseload and any additional court sessions?

    - Division may use weighted caseload analysis for advisory purposes.

Security:

- What is the status of the host site relative to the Judiciary's Schedule of Protection? See AOC Directive #15-06.

- Will additional security measures be necessary due to the increased number of court sessions and court users?

- How will prisoners appear in court (e.g., transported, videoconferencing)?

THE AGREEMENT STAGE – Shared Courts

Legal Issues:

- Either an ordinance or a resolution is necessary to establish a shared court.

    - An agreement is reached and drafted by the involved municipalities

    - Assignment Judges may review and approve the agreement. (Note: If a cross vicinage shared court is being established, both Assignment Judges should review the agreement.)

THE IMPLEMENTATION STAGE – Shared Courts

Coordination with the Administrative Office of the Courts (Municipal Court Services

Division). The Municipal Division should facilitate the exchange of information between Municipal Court Services and the respective courts. As a result, the Division should ensure that the respective municipal courts perform the following duties:

- Email the following information to JUATS (at least 1 month before the merger's effective date):
    - Start date for shared court
    - Updates to court record:
        - Name of court (if applicable)
        - Address and phone
        - Office hours
        - Judge, prosecutor and court administrator names
        - Journal/time payment printer remote numbers
    - Updates to receipt and warrant printers
    - Additions and changes for user ID's
    - Address and phone number change for police (if applicable)
- Complete ACH authorization form for bank account changes (if applicable, this should be done approximately 1 month prior to the merger's effective date)
    - A copy of a voided check for new accounts and the ACH authorization form are to be faxed or mailed to Municipal Court Services.
- Email JUATS to request new/relocation and/or removal of equipment (Note: this should occur approximately 7 weeks before the merger's effective date).

Responsibilities of Municipal Court Services:

- Court record updates for ATS/ACS:
    - Court name (if applicable)
    - Names – i.e. judge, court administrator, prosecutor
    - Court address, phone number, court hours
    - Court screen name

- Police address and phone

- Printer updates:
  - ATS -- update remote on ATS court screen for journals and time payment orders
  - ACS -- update remote on ACS court screen for journals and time payment orders
  - Update receipt printer -- if additional receipt printers are added, create a new profile for new receipt printers
  - Update warrant printer
- User ID's:
  - Create additional ID's and update security on existing ID's
  - Create additional ID's for new receipt printers
- Notifications:
  - All in-house AOC staff
  - State Police
  - MVC
- Bank account Updates:
  - Notify AOC Fiscal Unit of bank account changes and dates to be completed
  - Notify Elavon of general account changes for NJMCdirect.com
- Technical Assistance:
  - Send TP51 to Technical Assistance Unit for new/relocation and/or removal of equipment

Operational Issues for Municipal Court Administrator:

- Provide notice to internal and external customers. This includes:

- Updating respective municipality websites, contacting the media (if appropriate), modifying municipal signs, advising the N.J. Lawyers Diary, etc., regarding the closure of existing facility(s) and the relocation of the shared courts

- Providing customers with the location, court hours, directions, telephone/fax numbers, etc. of all involved courts

- Placing a recorded message on court former phone lines providing customers with the new court location and contact information

- Contacting external agencies with updated contact information (e.g. local and State Police, Weights and Measures, N.J. Transit, County Prosecutor's Office, etc.)

- Protect the integrity of all court records. If sharing court office, this includes:

    - Relocating all tickets, complaints, financial records, docket books, and manual receipts to host facility

    - Relocating archived materials to secure storage facility (preferably at the host site)

    - Reviewing retention schedules.

- Review with staff and law enforcement, as appropriate, the procedures for collecting bail, issuing citizen complaints, and filing tickets and complaints

- Execute, as appropriate, new authorizations for court administrator and deputies

- Coordinate with the Municipal Division to offer training for team members in areas such as management/leadership, team building, communication skills, emotional intelligence, and management of financial accounts.

- Forms/Stationary -- shared courts are separate entities. Therefore, each court should maintain, as necessary, separate forms and stationery.

- Bank related issues, including adding or deleting signatures for writing checks

- Financial Issues:

    - Municipal Division should confirm all accounts reconciled

- Each municipality is to continue to conduct independent audits of financial accounts.

- The judge, court administrator and others who handle money must be bonded.

- Run separate journals and complete separate deposits for all involved courts (within 48 hours)

- All courts must maintain separate monthly cash books and disburse monies consistent with approved Judiciary financial procedures.

- Two change funds (minimum)

JOINT MUNICIPAL COURTS
AS OF JULY 2010

Court Code	County	Name of Joint Municipal Court	Involved Municipalities
0105	Atlantic	Buena Vista Regional	Buena Vista and Weymouth Townships.
0416	Camden	Haddon Twp/Audubon Park	Haddon Twp. and Audubon Park Boro.
0411	Camden	Collingswood Municipal Court	Collingswood and Woodlynne Boroughs
0426	Camden	Oaklyn/Mt Ephraim Joint	Oaklyn and Mt. Ephraim Boroughs
0605	Cumberland	Fairfield/Downe Joint	Fairfield and Downe Townships
0612	Cumberland	Stow Creek Municipal Court	Stow Creek and Shiloh Townships
0821	Gloucester	Westville National Park	Westville and National Park Boroughs
0824	Gloucester	Woolwich Joint	Woolwich Twp. and Swedesboro Boro.
1002	Hunterdon	Bethlehem/Bloomsbury Joint	Bethlehem Twp. and Boomsbury Boro.
1020	Hunterdon	Joint Court of Delaware Valley	Alexandria Twp., Holland Twp. and Frenchtown Boro
1006	Hunterdon	North Hunterdon Joint	Glen Gardner Boro., High Bridge Boro., Lebanon Twp., Clinton Twp. and Franklin Twp.
1008	Hunterdon	Joint Court of East Amwell/Delaware	East Amwell and Delaware Townships
1409	Morris	Joint Municipal Court of Dover	Dover Town, Mine Hill Twp., Wharton Boro, Mount Arlington Boro and Rockaway Boro.
1715	Salem	Mid-Salem County Joint	Woodstown Borough, Mannington Township, Elmer Borough and Quinton Township
1709	Salem	Pilesgrove Joint	Pilesgrove, Upper Pittsgrove and Alloway Townships
1713	Salem	Carneys Pt Joint	Carneys Point and Oldmans Townships
1704	Salem	Lower Alloways Creek/Elsinboro Joint	Lower Alloways Creek and Elsinboro Townships
1905	Sussex	Frankford Joint	Frankford Twp., Lafayette Twp., Branchville Boro., Sandyston Twp., Walpack Twp. and Montague Twp.
1908	Sussex	Green Joint	Green Twp., Fredon Twp., Andover Boro. and Hampton Twp.
1924	Sussex	Wantage Twp. & Sussex Boro.	Wantage Twp. and Sussex Boro.
2111	Warren	North Warren at Hope	Hope, Liberty and Blairstown Townships

SHARED MUNICIPAL COURTS
JULY 2010

Shared Code	Court Code	County	Municipal Court
0201	0201	Bergen	Allendale Borough
0201	0228	Bergen	Ho-Ho-Kus Borough
0240	0240	Bergen	Northvale Borough
0240	0255	Bergen	Rockleigh Borough
0301	0301	Burlington	Bass River Township
0301	0337	Burlington	Washington Township
0303	0303	Burlington	Bordentown City
0303	0304	Burlington	Bordentown Township
0308	0308	Burlington	Cinnaminson Township
0308	0332	Burlington	Riverton Borough
0327	0307	Burlington	Chesterfield Township
0327	0327	Burlington	North Hanover Township
0327	0340	Burlington	Wrightstown Township
0338	0311	Burlington	Eastampton Township
0338	0316	Burlington	Hainesport Township
0338	0338	Burlington	Westampton Township
0502	0502	Cape May	Cape May City
0502	0503	Cape May	Cape May Point Borough
0511	0504	Cape May	Dennis Township
0511	0511	Cape May	Upper Township
0511	0106	Atlantic	Corbin City
0513	0514	Cape May	Wildwood City
0513	0513	Cape May	West Wildwood Borough
0607	0607	Cumberland	Hopewell Township (note: shared arrangement with Stow Creek joint court)
0607	0606	Cumberland	Greenwich Township (note: shared arrangement with Stow Creek joint court)
0707	0707	Essex	Essex Fells Borough
0707	0715	Essex	North Caldwell Township

Shared Code	Court Code	County	Municipality
0804	0804	Gloucester	Elk Township
0804	0813	Gloucester	Newfield Borough
0808	0808	Gloucester	Harrison Township
0808	0816	Gloucester	South Harrison Township
1002	1018	Hunterdon	Lebanon Borough (note: shared arrangement with Bethlehem/Bloomsbury Joint Court)
1008	1023	Hunterdon	Stockton Borough (note: shared arrangement with Joint Court of East Amwell/Delaware)
1016	1016	Hunterdon	Kingwood Township
1016	1030	Hunterdon	Borough of Milford
1021	1013	Hunterdon	Hampton Borough
1021	1021	Hunterdon	Raritan Township
1027	1025	Hunterdon	Union Township
1027	1027	Hunterdon	Clinton Township
1202	1218	Middlesex	Plainsboro Township
1202	1202	Middlesex	Cranbury Township
1307	1307	Monmouth	Belmar Borough
1307	1347	Monmouth	Lake Como Borough
1309	1309	Monmouth	Brielle Borough
1309	1327	Monmouth	Manasquan Borough
1332	1332	Monmouth	Millstone Township
1332	1341	Monmouth	Roosevelt Borough
1337	1324	Monmouth	Loch Arbour Village
1337	1337	Monmouth	Ocean Township
1337	1353	Monmouth	West Long Branch Borough
1338	1338	Monmouth	Oceanport Borough
1338	1343	Monmouth	Sea Bright Borough
1340	1340	Monmouth	Red Bank Borough
1340	1346	Monmouth	Shrewsbury Township

Shared Code	Court Code	County	Municipality
1348	1348	Monmouth	Spring Lake Borough
1348	1349	Monmouth	Spring Lake Heights Borough
1352	1344	Monmouth	Sea Girt Borough
1352	1352	Monmouth	Wall Township
1408	1408	Morris	Denville Township
1408	1425	Morris	Mountain Lakes Borough
1418	1418	Morris	Mendham Borough
1418	1419	Morris	Mendham Township
1438	1438	Morris	Washington Township
1438	1004	Hunterdon	Califon Borough
1516	1516	Ocean	Little Egg Harbor Township
1516	1508	Ocean	Eagleswood Township
1524	1524	Ocean	Point Pleasant Borough
1524	1525	Ocean	Point Pleasant Beach Borough
1808	1808	Somerset	Franklin Township
1808	1812	Somerset	Millstone Borough
2011	2011	Union	New Providence Borough
2011	2001	Union	Berkeley Heights Township
2101	2101	Warren	Allamuchy Township
2101	2112	Warren	Independence Township
2113	2106	Warren	Frelinghuysen Township
2113	2109	Warren	Hardwick Township
2113	2113	Warren	Knowlton Township
2115	2105	Warren	Franklin Township (formerly Central Warren)
2115	2110	Warren	Harmony Township
2115	2115	Warren	Lopatcong Township
2116	2116	Warren	Mansfield Township
2116	2122	Warren	Washington Township
2116	2117	Warren	Oxford Township

Appendix K

NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES

PRINCIPLES ON FINES, FEES, AND BAIL PRACTICES

Introduction

State courts occupy a unique place in a democracy. Public trust in them is essential, as is the need for their independence, accountability, and a service-oriented approach in all they do.

Important questions have arisen over the last several years concerning the manner in which courts handle the imposition and enforcement of legal financial obligations and about the ways court systems manage the release of individuals awaiting trial. Local, state, and national studies and reports have generated reliable, thorough, and news-worthy examples of the unfairness, inefficiency, and individual harm that can result from unconstitutional practices relating to legal financial obligations and pretrial detention.

As a way of drawing attention to these issues and promoting ongoing improvements in the state courts, in 2016 the Conference of Chief Justices and the Conference of State Court Administrators established the National Task Force on Fines, Fees, and Bail Practices (the "National Task Force").

The goals of the National Task Force are to develop recommendations that promote the fair and efficient enforcement of the law; to develop resources for courts to use to ensure that no person is denied their liberty or access to the justice system based on race, culture, or lack of economic resources; and to develop policies relating to the handling of legal financial obligations that promote access, fairness, and transparency.

The National Task Force's deliverables can be found on its web-based Resource Center. At this site are bench cards, policy papers from state and national groups and National Task Force partner organizations; interactive maps; and links to important fines, fees, bail-related policy, planning, and practice materials, including links to information about pilot programs dealing with fines, fees, and bail practices.

The National Task Force is now pleased to offer its **Principles on Fines, Fees, and Bail Practices**. Developed with input from a variety of stakeholders, these principles are designed to be a point of reference for state and local court systems in their assessment of current court system structure and state and local court practice. The principles can also be used as a basis for developing more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of legal financial obligations.

The National Task Force's 34 principles each fall into one of the following seven categories:

- Structural and Policy-Related Principles
- Governance Principles
- Transparency Principles
- Fundamental Fairness Principles
- Pretrial Release and Bail Reform Principles
- Fines, Fees and Alternative Sanctions Principles
- Accountability Principles

The National Task Force expects these principles to be refined over time as jurisdictions put them into practice and the court community gains insight into the strategies associated with their implementation.

Structural and Policy-Related Principles

Principle 1.1. Purpose of Courts. The purpose of courts is to be a forum for the fair and just resolution of disputes, and in doing so to preserve the rule of law and protect individual rights and liberties. States and political subdivisions should establish courts as part of the judiciary and the judicial branch shall be an impartial, independent, and coequal branch of government. It should be made explicit in authority providing for courts at all levels that, while they have authority to impose legal financial obligations and collect the revenues derived from them, they are not established to be a revenue-generating arm of either the executive or legislative branch of government.

Principle 1.2. Establishment of Courts. The authority for establishing any court or its jurisdiction should be clearly established in the constitution or laws of the state or, if such authority is delegated to a political subdivision, in ordinances duly adopted by it. The authority to create courts should reside exclusively with the legislative branch of government or with the people through a constitutional amendment, except as otherwise provided by law.

Principle 1.3. Oversight of Courts. Each state's court of last resort or its administrative office of the courts should have knowledge of every court operating within the state and supervisory authority over its judicial officers.

Principle 1.4. Access to Courts. All court proceedings should be open to the public, subject to clearly articulated legal exceptions. Access to court proceedings should be open, as permissible, and administered in a way that maximizes access to the courts, promotes timely resolution, and enhances public trust and confidence in judicial officers and the judicial process. Judicial branch leaders should increase access to the courts in whatever manner possible, such as by providing flexibility in hours of service and through the use of technology innovations, e.g., online dispute resolution where appropriate, electronic payment of fines and costs, online case scheduling and rescheduling, and email or other electronic reminder notices of court hearings.

Principle 1.5. Court Funding and Legal Financial Obligations. Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges. Under no circumstances should judicial performance be measured by, or judicial compensation be related to, a judge's or a court's performance in generating revenue. A judge's decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from the imposition of a legal financial obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, or court staff, nor should such funds be used to evaluate the performance of judges or other court officials.

Principle 1.6. Fee and Surcharge: Nexus to the "Administration of Justice." While situations occur where user fees and surcharges are necessary, such fees and surcharges should always be minimized and should never fund activities outside the justice system. Fees and surcharges should be established only for "administration of justice" purposes. "Administration of justice" should be narrowly defined and in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service. The core functions of courts, such as personnel and salaries, should be primarily funded by general tax revenues.

Principle 1.7. Court Facilities. Court facilities should be provided for and operated in a manner that ensures an impartial and independent judiciary.

Principle 1.8. Court Management and Staffing. Courts should be operated in a manner that ensures an impartial and independent judiciary. Court staff should not be managed or directed by officials in either the executive or legislative branch.

Principle 1.9. Judicial Officers Exclusively Within Judicial Branch. All judges, judicial officers, and other individuals exercising a judicial or administrative function in support of judicial proceedings should be members of the judicial branch of government. Such individuals should also be independent of management by or direction from officials in the executive or legislative branch. All judges and judicial officers, including those serving in a court established by a political subdivision, should be subject to the authority of the court of last resort or the administrative office of the courts, bound by the state's code of judicial conduct, and subject to discipline by the state's judicial conduct commission or similar body.

Principle 1.10. Accessible Proceedings, Assistance for Court Users, and Payment Options. Court proceedings, services provided by the clerk's office, other assistance provided to court users, and methods for paying legal financial obligations should be easily accessible during normal business hours and during extended hours whenever possible. Judicial branch leaders should consider providing 24/7 access to online services, without any additional fees other than those reasonable and necessary to support such services.

Governance Principles

Principle 2.1. Policy Formulation and Administration**.** All states should have a well-defined structure for policy formulation for, and administration of, the state's entire court system. All such guidance and authority shall extend to local courts of limited or specialized jurisdiction.

Principle 2.2. Judicial Selection and Retention. Judicial officers should be selected using methods that are consistent with an impartial and independent judiciary and that ensure inclusion, fairness, and impartiality, both in appearance and in reality. In courts to which judges are appointed and re-appointed, selection and retention should be based on merit and public input where it is authorized. Under no circumstances should judicial retention decisions be made on the basis of a judge's or a court's performance relative to generating revenue from the imposition of legal financial obligations.

Principle 2.3. Statewide Ability to Pay Policies. States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.

Transparency Principles

Principle 3.1. Proceedings. All judicial proceedings should be recorded, regardless of whether a court is recognized in law as a "court of record."

Principle 3.2. Financial Data. All courts should demonstrate transparency and accountability in their collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state's court of last resort or administrative office of the courts. This reporting of financial information should be in addition to any reporting required by state or local authority.

Principle 3.3. Schedule for Legal Financial Obligations. The amounts, source of authority, and authorized and actual use of legal financial obligations should be compiled and maintained in such a way as to promote transparency and ease of comprehension. Such a listing should also include instructions about how an individual can be heard if they are unable to pay.

Principle 3.4. Public Access to Information. Except as otherwise required by state law or court rule, all courts should make information about their rules, procedures, dockets, calendars, schedules, hours of operation, contact information, grievance procedures, methods of dispute resolution, and availability of off-site payment methods accessible, easy to understand, and publicly available. All "Advice of Rights" forms used by a court should be accessible.

Principle 3.5. Caseload Data. Court caseload data should reflect core court functions and be provided by each court or jurisdiction to the court of last resort or administrative office of the courts on a regular basis, at least annually. Such data should be subject to quality assurance reviews. Case data, including data on race and ethnicity of defendants, should be made available to the public.

Fundamental Fairness Principles

Principle 4.1. Disparate Impact and Collateral Consequences of Current Practices. Courts should adopt policies and follow practices that promote fairness and equal treatment. Courts should acknowledge that their fines, fees, and bail practices may have a disparate impact on the poor and on racial and ethnic minorities and their communities.

Principle 4.2. Right to Counsel. Courts should be diligent in complying with federal and state laws concerning guaranteeing the right to counsel as required by applicable law and rule. Courts should ensure that defendants understand that they can request court-appointed

counsel at any point in the case process, starting at the initiation of adversarial judicial proceedings. Courts should also ensure that procedures for making such a request are clearly and timely communicated.

Principle 4.3. Driver's License Suspension. Courts should not initiate license suspension procedures until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. Judges should have discretion in reporting nonpayment of legal financial obligations so that a driver's license suspension is not automatic upon a missed payment. Judges should have discretion to modify the amount of fines and fees imposed based on an offender's income and ability to pay.

Principle 4.4. Cost of Counsel for Indigent People. Representation by court-appointed counsel should be free of charge to indigent defendants, and the fact that such representation will be free should be clearly and timely communicated in order to prevent eligible individuals from missing an opportunity to obtain counsel. No effort should be made to recoup the costs of court-appointed counsel from indigent defendants unless there is a finding that the defendant committed fraud in obtaining a determination of indigency.

Pretrial Release and Bail Reform Principles

Principle 5.1. Pretrial Release. Money-based pretrial release practices should be replaced with those based on a presumption of pretrial release by least restrictive means necessary to ensure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance, and such statutes should require the use of validated risk assessment protocols that are transparent, do not result in differential treatment by race or gender, and are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other legal financial obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options and only use preventative detention for individuals who are at a high risk of committing another offense or of fleeing the jurisdiction.

Principle 5.2. Bail Schedules. Fixed monetary bail schedules should be eliminated and their use prohibited.

Principle 5.3. Pre-Payment or Non-Payment. Courts should not impose monetary bail as prepayment of anticipated legal financial obligations or as a method for collecting past-due legal financial obligations.

Fines, Fees, and Alternative Sanctions Principles

Principle 6.1. Legal Financial Obligations. Legal financial obligations should be established by the state legislature in consultation with judicial branch officials. Such obligations should also be uniform and consistently assessed throughout the state, and periodically reviewed and

modified as necessary to ensure that revenue generated as a result of their imposition is being used for its stated purpose and not generating an amount in excess of what is needed to satisfy the stated purpose.

Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations. State law and court rule should provide for judicial discretion in the imposition of legal financial obligations. States should avoid adopting mandatory fines, fees, costs, and other legal financial obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to modify the amount of fines, fees and costs imposed based on an individual's income and ability to pay. Judges should also have authority and discretion to modify sanctions after sentencing if an individual's circumstances change and their ability to comply with a legal financial obligation becomes a hardship.

Principle 6.3. Enforcement of Legal Financial Obligations. As a general proposition, in cases where the court finds that the failure to pay was due not to the fault of the defendant/respondent but to lack of financial resources, the court must consider measures of punishment other than incarceration. Courts cannot incarcerate or revoke the probation of a defendant/respondent for nonpayment of a legal financial obligation unless the court holds a hearing and makes one of the following findings: 1) that the defendant's/respondent's failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or 2) that even if the failure to pay was not willful or was due to inability to pay, no adequate alternatives to imprisonment exist to meet the State's interest in punishment and deterrence in the defendant's/respondent's particular situation.

Principle 6.4. Judicial Training with Respect to Ability to Pay. Judges should receive training on how to conduct an inquiry regarding a party's ability to pay. Judges also should have discretion to impose modified sanctions (e.g., affordable payment plans, reduced or eliminated interest charges, reduced or eliminated fees, reduced fines) or alternative sanctions (e.g., community service, successful completion of an online or in-person driving class for moving violations and other non-parking, ticket-related offenses) for individuals whose financial circumstances warrant it.

Principle 6.5. Alternative Sanctions. Courts should not charge fees or impose any penalty for an individual's participation in community service programs or other alternative sanctions. Courts should consider an individual's financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

Principle 6.6. Probation. Courts should not order or extend probation or other court-ordered supervision exclusively for the purpose of collecting fines, fees, or costs.

Principle 6.7. Third Party Collections. All agreements for services with third party collectors should contain provisions binding such vendors to applicable laws and policies relating to notice to defendant, sanctions for defendant's nonpayment, avoidance of penalties, and the

availability of non-monetary alternatives to satisfying defendant's legal financial obligation.

Principle 6.8. Interest. Courts should not charge interest on payment plans entered into by a defendant, respondent, or probationer.

Accountability Principles

Principle 7.1. Education and Codes of Conduct. Continuing education requirements for judges and court personnel on issues relating to all relevant constitutional, legal, and procedural principles relating to legal financial obligations and pretrial release should be enacted. Codes of conduct for judges and court personnel should be implemented or amended, as applicable, to codify these principles.

December 2017

Justice for All

Report and Recommendations of the Task Force on Fair Justice for All:
Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

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TASK FORCE ON FAIR JUSTICE FOR ALL:
Court-Ordered Fines, Fees, and Pretrial Release Policies

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Vice-Chair – **Mr. Tom O'Connell**, Pretrial Manager, AOC

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Justice for All

Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

This report describes the work and recommendations of the members of the Task Force on Fair Justice for All and does not necessarily reflect the views or opinions of the members of the Arizona Supreme Court.

Executive Summary

Task Force Purpose

On March 3, 2016, Chief Justice Scott Bales issued Administrative Order No. 2016-16, which established the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies. The administrative order outlined the purpose of the task force as to study and make recommendations as follows:

a) Recommend statutory changes, if needed, court rules, written policies, and processes and procedures for setting, collecting, and reducing or waiving court-imposed payments.

b) Recommend options for people who cannot pay the full amount of a sanction at the time of sentencing to make reasonable time payments or perform community service in lieu of some or all of the fine or sanction.

c) Recommend best practices for making release decisions that protect the public but do not keep people in jail solely for the inability to pay bail.

d) Review the practice of suspending driver's licenses[1] and consider alternatives to license suspension.

[1] Throughout this report, the terminology for a driver's license is used to reflect driving privileges or a driver license as defined in the Arizona Revised Statutes.

e) Recommend educational programs for judicial officers, including pro tem judges and court staff who are part of the pretrial decision-making process.

f) Identify technological solutions and other best practices that provide defendant notifications of court dates and other court-ordered deadlines using mobile applications to reduce the number of defendants who fail to appear for court and to encourage people who receive citations to come to court.

The Chief Justice asked the task force to file a report and make recommendations to the Arizona Judicial Council (AJC) by October 31, 2016. The report that follows consists of 53 recommendations, *plus* additional educational and training recommendations for the AJC's review and consideration.

Task Force Abbreviated Recommendations

The annotated recommendations are set forth in more detail in the body of the report. Below is an abbreviated list with links to the full recommendations.

1. Authorize judges to mitigate mandatory minimum fines, fees, surcharges, and penalties if the amount otherwise imposes an unfair economic hardship.
2. Use automated tools to determine a defendant's ability to pay.
3. Create a Simplified Payment Ability Form when evaluating a defendant's ability to pay.
4. Use means-tested assistance program qualification as evidence of a defendant's limited ability to pay.
5. Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses.
6. Implement the Phoenix Municipal Court's Compliance Assistance Program statewide.
7. Conduct a pilot program that combines the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program and reinstatement of defendants' drivers' licenses.
8. Test techniques to make it easier for defendants to make time payments on court-imposed financial sanctions.
9. Seek legislation that would grant courts discretion to close cases and write off fines and fees for traffic and misdemeanor after a 20-year period if reasonable collection efforts have not been effective.

10. Allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims.
11. Eliminate or reduce the imposition of the 10 percent annual interest rate on any Criminal Restitution Order.
12. Modify court website information, bond cards, reminder letters, FARE (Fines/Fees and Restitution Enforcement) letters, and instructions for online citation payment to explain that if the defendant intends to plead guilty or responsible but cannot afford to pay the full amount of the court sanctions at the time of the hearing, the defendant may request a time payment plan.
13. Authorize judges to impose a direct sentence that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.
14. Expand community restitution (service) to be applied to surcharges, as well as fines and fees, and expand this option to sentences imposed by superior courts.
15. Implement English and Spanish Interactive Voice Response (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear.
16. Modify forms to collect cell phone numbers, secondary phone numbers, and email addresses.
17. Train staff to verify and update contact information for defendants at every opportunity.
18. Provide information to law enforcement agencies regarding the importance of gathering current contact information on the citation form.
19. After a defendant fails to appear, notify the defendant that a warrant will be issued unless the defendant comes to court within five days.
20. For courts operating pretrial service programs, allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.
21. Authorize the court to quash a warrant for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued.

22. Consider increasing access to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances).
23. Develop and pilot a system that communicates in English and Spanish (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.
24. Clarify on court informational websites and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule the hearing for those defendants who cannot appear on the scheduled dates.
25. Implement the ability to email proof of compliance with a law—such as proof of insurance—to the court to avoid having to appear in person.
26. Suspend a driver's license as a last resort, not a first step.
27. Make a first offense of driving on a suspended license a civil violation rather than a criminal offense.
28. Provide courts with the ability to collect and use updated contact information, such as a database service, before issuing a warrant or a reminder in aging cases.
29. Authorize courts to impose restrictions on driving—such as "to and from work only"—as an alternative to suspending a driver's license altogether.
30. Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance.
31. Support renewing efforts to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards, with an exception for those who are eligible for the earned income tax credit.
32. Promote the use of restitution courts, status conferences, and probation review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.
33. Coordinate where possible with the local regional behavioral health authority to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill.

34. Revise mental health competency statutes for expediting mental competency proceedings for misdemeanor cases.

35. Bring together criminal justice and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.

36. Consider the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.

37. Modify Form 6–*Release Order* and Form 7–*Appearance Bond* to simplify language and clarify defendants' rights in an easy-to-understand format.

38. Eliminate the use of non-traffic criminal bond schedules.

39. Amend Rule 7.4, Rules of Criminal Procedure, to require the appointment of counsel if a person remains in jail after the initial appearance.

40. Clarify by rule that small bonds ($5-100) are not required to ensure that the defendant gets credit for time served when defendant is also being held in another case.

41. Authorize the court to temporarily release a "hold" from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.

42. Expedite the bond process to facilitate timely release to treatment programs.

43. Request amendment of A.R.S. § 13-3961(D) and (E) *(Offenses not bailable; purpose; preconviction; exceptions)* to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail.

44. Encourage the presence of court-appointed counsel and prosecutors at initial appearance hearings to assist the court in determining appropriate release conditions and to resolve misdemeanor cases.

45. Request the legislature to refer to the people an amendment to the Arizona Constitution to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community.

46. Eliminate the requirement for cash surety to the greatest extent possible and instead impose reasonable conditions based on the individual's risk.

47. Eliminate the use of a cash bond to secure a defendant's appearance.
48. Expand the use of the public safety risk assessment to limited jurisdiction courts.
49. Encourage collaboration between limited jurisdiction courts and pretrial service agencies in superior courts in preparing or providing pretrial risk assessments for limited jurisdiction cases.
50. Establish information sharing between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.
51. Request the Arnold Foundation to conduct research on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.
52. Encourage the Arnold Foundation to conduct periodic reviews to revalidate the Public Safety Assessment [PSA] tool as to its effect on minority populations.
53. Provide data to judicial officers to show the effectiveness of the risk assessment tool in actual operation.
54. Develop an educational plan and conduct mandatory training for all judicial officers.
55. Create multi-layer training (court personnel and judicial staff) to include a practical operational curriculum.
56. Develop online training modules for future judicial officers.
57. Host a one-day kick-off summit inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, and presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate the shift to a risk-based system rather than a cash-based release system.
58. Train judicial officers on the risk principle and the methodology behind the risk assessment tool.
59. Educate judges about the continuum of sentencing options.
60. Educate judges about available community restitution (service) programs and the types of services each offers so that courts may order services that "fit the crime."
61. Launch a public education campaign to support the adopted recommendations of the task force.

62. Provide a comprehensive and targeted educational program for all stakeholders (funding authorities, legislators, criminal justice agencies, media, and members of the public) that addresses the shift to a risk-based system rather than a cash-based release system.

63. Request that the Chief Justice issue an administrative order directing the education of all full- and part-time judicial officers about alternatives to financial release conditions. Training and educational components should:

    a. Inform judges that cash bonds are not favored. Judges should consider the least onerous terms of release of pretrial detainees that will ensure public safety and the defendant's return to court for hearings.

    b. Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. § 13-810.

64. Provide focused judicial education on A.R.S. § 11-584(D) and Arizona Rules of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant and making specific findings on the record about the defendant's ability to pay.

65. Update bench books and other judicial aides to be consistent with court-adopted recommendations.

Innovations Already Under Way

Arizona courts have a history of innovation. As pretrial release issues have arisen, local courts have already begun experimenting with initiatives that support fair justice to all in Arizona. Following are a few projects that highlight promising practices that can be considered for expansion to other jurisdictions.[2]

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their driver's licenses suspended that they can come in to court, arrange a new and affordable time

[2] See Appendix B for detailed project descriptions of Innovations Already Under Way.

payment program, and make a down payment on their outstanding fine. More than 5,000 people have taken advantage of the program in the first six months.

Interactive Voice Response System

The Pima County Consolidated Justice Courts and the Glendale and Mesa Municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of warrants. Each jurisdiction has experienced a reduction in the number of people failing to appear—up to 24 percent.[3]

Limited Jurisdiction Mental Competency Proceedings Pilot

A pilot project coordinated through the Superior Court in Maricopa County authorized Mesa and Glendale municipal courts to conduct Rule 11 mental health competency proceedings originating in their courts on behalf of the Superior Court in Maricopa County. The program has reduced the time to process these matters from six months to 60 days.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center represents the first phase of an initiative to significantly reduce the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was selected as one of 11 jurisdictions awarded $150,000 from the John D. and Catherine T. MacArthur Foundation for Phase I of an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. Pima County was later awarded an additional $1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change.

[3] See Appendix C for summary of statistics for Pima County Justice Courts using an IVR system.

Introduction

Every year in Arizona, thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail. While people arrested are protected by a presumption of innocence, if they lack the access to money, they often remain in jail. The Arizona Constitution makes it clear that except in limited situations, a person must be bailable. That is, defendants are generally entitled to be released (bailable) from jail on their own recognizance or other conditions, while awaiting the disposition of their offenses. Defendants should not have to remain in custody simply because they are poor. Research has now shown that imposing money bail does not improve the chances that a defendant will return to court, nor does it protect the public because many high-risk defendants have access to money and can post bond. Instead, it serves only to treat differently those who can and cannot get money.

> **There shall be no imprisonment for debt.**
> *Arizona Constitution, Article 2, Section 18*

Arizona has the fourth highest poverty rate in the United States; more than 21 percent fall below the federal poverty line. That means that more than 1.2 million Arizonans struggle economically every day. Most of Arizona's poor are not the panhandlers on the highway off-ramps, but the "working poor"—that is, people whose household incomes are less than 150 percent of the federal poverty level.[4] Arizona's unemployment rates exceed the national average as well. People of all income levels on occasion may commit an infraction of the law. If justice in Arizona is to be administered fairly, the justice system must take account of the challenges that court-ordered sanctions pose for those living in poverty or otherwise struggling economically.

Recently national attention, following the shooting of an 18-year-old black man, exposed criminal justice system deficiencies in the city of Ferguson, Missouri. Ferguson has sparked a national dialogue causing jurisdictions to examine their practices of imposing and enforcing financial sanctions and the severe impact they can have on the poor and minority groups.

The Department of Justice investigated the Ferguson Police Department and reported that Ferguson's municipal court allowed its focus on revenue generation to fundamentally compromise the role of the court. The court used its judicial authority as the means to compel payment of fines and fees that advanced the city's financial interests. These

[4] For example, the gross monthly income for a household of four living at 150 percent of the federal poverty level is $3,037.50.

practices imposed unnecessary harm, overwhelmingly on African-American individuals.[5] Courts are not revenue-generating centers. While courts do collect monies in the form of restitution, fines, and fees, the purpose of courts is to administer justice—not produce revenue for governmental use.

Those examining the "Ferguson"-type issues note that often they occur in local limited jurisdiction courts not under the supervision of a state supreme court. But in Arizona, the Supreme Court has administrative oversight over all state courts—appellate, superior, justice, and municipal courts. Oversight includes ensuring that courts perform their appropriate functions, which include educating, training, and setting standards for when and on what conditions pretrial detainees are released from court. Furthermore, the Administrative Office of the Courts (AOC) sets forth specifications for minimum accounting standards, operational reviews, and training, and it provides the structure for a proper relationship between municipal courts, municipal city councils, and city managers.

Interference that impedes the court from carrying out the impartial administration of justice violates the distribution-of-powers provision of the Arizona Constitution and the fundamental principles of our constitutional form of government. The limited jurisdiction courts must continue to maintain independence from the executive and legislative branches so they can fairly act as a neutral when hearing cases. While the vast majority of Arizona's limited jurisdiction courts operate in a high-quality manner, if a court severely fails to operate properly, administrative control of the court can be removed from the local judge and placed under the control of the county presiding judge until the problems are remedied. Such administrative authority has been exercised periodically in Arizona history. For example, in 2014 a combined justice and municipal court was placed under the control of the local county presiding judge.[6] In this case, the judge was eventually removed from office.[7]

Arizona already has in place many statutes, rules, and practices that provide flexibility for judges, in making pretrial release determinations, to take into account economic hardship. Unfortunately, this flexibility is not available in all types of cases, particularly with some of the more common offenses such as driving without insurance. As such, there is still work to do to achieve justice for all in Arizona.

[5] Department of Justice Investigation of Ferguson Police Department Report, March 4, 2015, page 3.
[6] Administrative Order No. 2014-10
[7] http://www.azcourts.gov/portals/137/reports/2014/14-114.pdf

For years now, Arizona's legislative bodies, like in many other states, have added on to the amount of a fine a variety of surcharges and fees in order to fund numerous meritorious programs (e.g., DNA testing, domestic violence shelters, and head injury fund). These programs depend on the stream of funding coming from those paying the costs of their citations. However, for a variety of reasons, the number of citations are plummeting. For example, civil traffic citations have dropped from 1.816 million at their peak in FY 2008 (34%) to 1.2 million in FY 2015. There are future expectations that new safety-equipped cars and eventually driverless cars, plus new law enforcement methods that use techniques to control traffic other than writing citations, will combine to continue this downward trend. Seeing the drop in citations, the Arizona Criminal Justice Commission in July agreed to establish a task force to explore this issue further and to make recommendations for alternative funding sources. It is likely that the legislature and city councils will need to re-examine the current dependency on revenue from citations to keep current programs funded. While the adoption of the recommendations in this report may result in some decreases in revenue, it is just as likely that there will be an increase in revenue. If people who are now not paying their sanctions at all are given sanctions based on ability to pay and more reasonable time payment plans, they may begin to pay. This exact result is being seen in the Phoenix Municipal Court pilot program, explained in the "Innovations Under Way" section of this report.

In order to support the study and recommendations of the Fair Justice for All Task Force, the AOC built a database of 800,000 cases to analyze what is occurring with misdemeanor, criminal traffic, and civil traffic defendants in Arizona. A summary analysis of that data can be found on the task force's website.[8]

Arizona's courts are now bringing evidence-based practices to pretrial services. The Arizona Judicial Branch's strategic agenda, Advancing Justice Together, calls for examining pretrial release policies and procedures; release conditions for eligible defendants; and research-based practices to promote defendant accountability, crime reduction, and community protection.

To promote these goals, Arizona's courts should reflect these principles in practice:[9]

1. People should not be jailed pending the disposition of charges merely because they are poor. Release decisions and conditions should protect public safety and ensure the defendant's appearance at future proceedings.

[8] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*
[9] Administrative Order No. 2016-16.

2. Consistent with the Arizona Constitution, people should not be jailed for failing to pay fines or other court-assessed financial sanctions for reasons beyond their control.

3. Court practices should help people comply with their court-imposed obligations.

4. Sanctions such as fees and fines should be imposed in a manner that promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

Since Ferguson, many people talk about restoring faith in our criminal justice system. Many minorities and many of those who are poor have never had the degree of faith in the system that the majority does. For those, it cannot be restored but must be created. The recommendations of this task force, if fully enacted and implemented, will move Arizona closer to fair justice for all because justice for all is not just aspirational—it is an essential mandate of the Arizona justice system. The task force believes these recommendations are necessary to effectuate statewide changes and requests that the Arizona Judicial Council support and adopt its recommendations.

PART 1

JUSTICE FOR ALL.

Our ideal of "justice for all" embraces the notion that all people should be treated fairly in the justice system. Those without means should not be disparately punished because they are poor. While everyone should face consequences for violating the law, criminal fines and civil penalties should not themselves contribute to or further an individual's impoverishment by imposing excessive amounts or unduly restricting a person's ability to be gainfully employed. The task force also concludes that "justice for all" means just that—regardless of race, income, gender, culture, ethnicity, or other factors, fair justice should apply to everyone. In an effort to address this issue, the task force heard from advocacy groups representing diverse communities who shared concerns and recommendations regarding racial and income disparities.

Fines (or civil penalties) are the most common sanction imposed by courts for violations of law. However, the impact of fines varies greatly among people because of their different income levels. A typical speeding fine of $270 has many times more significant an impact on a person making $2,000 per month than on a person making $10,000 per month. In some cases, such as driving without insurance, the legislature has required a mandatory minimum fine and with surcharges, the sanction totals $1,040. For low-income individuals, a sanction that high can have catastrophic consequences. If one assumes that a typical sanction for an offense is meant to deter the average-income person from breaking the law, then judges should be able to adjust the amount for low-income people to achieve a similar deterrent effect.

The purpose of a sanction is to hold a person accountable and encourage future compliance with the law. Imposing a financial sanction on a low-income individual that is so high that it would be almost impossible for the person to pay may promote frustration, despair, and disrespect for the justice system. Suspending the person's driving privilege as a result of an inability to pay the sanction further exacerbates the problem, fosters a cycle of poverty, and fills costly jail cells. Sanctions such as fees and fines should be imposed in a manner that is sustainable and promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

Principle One: Judges need discretion to set reasonable penalties.

The legislature is charged with setting public policy for defining unlawful activity—for example, "driving without insurance is against the law." The legislature also determines whether a fine will be mandatory. Furthermore, the legislature determines whether a certain activity is a criminal offense or a civil violation and at what level an unlawful activity is charged—as a misdemeanor or a felony.

When a fine is mandatory, a judge should be required to impose a fine, but authorized to mitigate the amount due based on a person's inability to pay or financial hardship. Without such authority, mandatory minimum fines affect the poor more severely than they do those with higher incomes, creating a cycle that can send a poor person (and perhaps his or her family as well) into a downward spiral, leading to additional fines and costs and even resulting in arrest and jail.

To assist judges in determining a person's ability to pay, private vendors indicate that they can offer software programs that can quickly provide a predictive score to assist the court in determining whether a person qualifies for indigent status or otherwise has the ability to pay all or a reduced amount of a fine. Making such a tool available—if the tool is able to provide accurate enough information—could assist judges in determining, in a fair manner, the appropriate amount of fine to impose by taking into account the individual's financial circumstances. These programs use public database information and aggregating tools to evaluate the individual and do not constitute a formal credit inquiry. While not perfect, combining this information with other documentation, such as proof of participation in a means-tested assistance program like the Supplemental Nutritional Assistance Program (SNAP), can help judges and court personnel determine more accurately a person's ability to pay. Using this type of software in Arizona courts would promote fairness. Further, this type of software could be used:

- By probation officers:
  - When making recommendations for financial assessments in presentence reports.
  - When reevaluating a probationer's ability to pay if the probationer's circumstances change.
- By courts:
  - When determining whether a modification of monthly payments is warranted.
  - When establishing reasonable time payment plans.

Additionally, reclassifying first-time offenses of some misdemeanors, such as littering, speeding, and expired out-of-state vehicle registrations, to civil charges will make it easier

to process certain minor crimes. It could also reduce the stigma associated with a criminal record and eliminates the potential for incarceration for these minor offenses.

Recommendations:

1. *Request legislative changes to authorize judges to mitigate mandatory minimum fines, fees, surcharges, and penalties for those defendants for whom imposing mandatory fines and full fees and surcharges would cause unfair economic hardship.*
2. *Provide courts with automated tools to assist with determining a defendant's ability to pay assessments.*
3. *Create a Simplified Payment Ability Form to be used statewide by judges, probation officers, pretrial officers, or other court staff when evaluating a defendant's ability to pay.*
4. *Use a person's qualification in a means-tested assistance program (such as SNAP) as evidence of limited ability to pay sanctions, much like the fee waiver and deferral guidelines now in place.*
5. *Seek legislation to reclassify certain criminal charges to civil violations for first-time offenses such as:*
   - *Driving on a suspended license*
   - *Driver license restriction violations (for example, corrective lens)*
   - *Littering*
   - *Expired out-of-state registration*

Principle Two: Convenient payment options and reasonable time payment plans should be provided and based on a defendant's ability to pay.

Arizona law already gives judges the discretion to mitigate fines in many types of cases when the fine amount would impose economic hardship. Although the majority (59 percent) of people who are issued citations pay their fines in full, many are unable to pay the full amount at sentencing and for that reason enter into a time payment plan contract.[10] The higher the fine and surcharge amount, the greater the number of people who choose to pay over time. It is important for courts to have reasonable time payment plans that realistically allow low-income individuals to make affordable payments. Setting a time payment plan amount that is beyond the low-income person's ability to pay may result in setting up the person to fail.

[10] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

People increasingly use means other than checks to pay their bills. Many want to use a debit or credit card for payment. Courts need to provide online payment systems that allow customers to use these common bill-paying mechanisms.

Not all people who are ordered to pay a fine have a debit or credit card or even a bank account. Some operate on a cash basis, which can make it more difficult to make monthly payments to the court. Courts need to allow for other creative methods to pay, including providing defendants who do not have credit cards or debit cards with "postage-will-be-paid," pre-addressed envelopes for mailing money order payments. Courts can also explore allowing people to pay at nontraditional locations—such as a grocery store service desk—as is now offered for paying utility and other bills.

A.R.S. § 28-1601 *(Failure to pay civil penalty; suspension of privilege to drive; collection procedure)* provides for a fine reduction program to encourage offenders who are delinquent to return to court and resolve their cases. Suspending driver's licenses, like imposing too-steep fines, can adversely affect defendants. In some cases, it may cause them not to be able to take children to school or go to work. To avoid such harsh results, A.R.S. § 28-1601 permits some defendants, for whom payment would cause an economic hardship, to extend the time for payment or make installments. Combining the elements of the Phoenix Compliance Assistance Program (see Appendix B for details) with an incentive reduction authorized in statute may provide a pragmatic approach to resolving a large number of civil traffic cases in which driver's licenses have been suspended and then allowed to be reinstated. The presiding judge in Yuma County has agreed to conduct a pilot, working with the AOC. Depending on the results, such a program could be extended to other jurisdictions.

Defendants who are placed on felony probation are routinely ordered to pay monthly financial assessments as a condition of probation. The legislature implemented A.R.S. § 13-924 *(Probation; earned time credit; applicability),* which authorizes "earned time credit" (ETC). ETC allows the probationer to earn a reduction in the length of the probation term if certain criteria are met, including being current on payments for court-ordered restitution and other obligations, exhibiting positive progress toward the goals and treatment of the probationer's case plan, and completing community restitution (service). Many defendants who are exhibiting progress and have completed community restitution (service) may fall delinquent on financial payments because of high monthly payment amounts and an inability to pay. This makes them ineligible for ETC, even though the primary goals of probation have been accomplished. Defendants with financial means are able to earn the time credit by paying the financial assessments in full; those who lack the ability to pay become ineligible for this benefit. Removing the requirement for the probationer to be current on financial obligations will create fairness and will act as an incentive to complete probation.

Modification of this statute should not diminish the importance of restitution payments to victims.[11] Currently in Arizona, more than $686 million is owed in restitution from felony cases. Reasonable adjustments to fines and fees will enable defendants with limited financial means to devote more of their resources to victim restitution. Therefore, revising the requirement to read "has paid at least the minimum ordered restitution payment for the month" would help maintain the requirement to make restitution payments.

Unpaid balances on financial obligations to the state are converted to criminal restitution orders pursuant to A.R.S. § 13-805 (Jurisdiction), which sets an annual interest rate of ten percent. This high interest rate is unrealistic in today's economy and should be reduced to a more appropriate amount, perhaps tied to market rates or eliminated altogether.

Currently, most court informational websites do not indicate that time payments are an option. Courts should modify online citation information to indicate clearly that if a person is unable to pay the full amount due at that time, the person can come to court to arrange for a time payment or community restitution (service) plan.

Recommendations:

6. *Implement the Phoenix Municipal Court's Compliance Assistance Program or similar program statewide to help ensure compliance with defendants' court-imposed financial obligations.*
7. *Conduct a pilot program that combines the features of the Phoenix Municipal Court's Compliance Assistance Program with a fine reduction program, coupled with reinstatement of defendants' driver's licenses.*
8. *To make it easier for defendants to make time payments on court-imposed financial sanctions, test techniques that may include:*
    a. *Providing "postage-will-be-paid," pre-addressed envelopes to defendants who do not have credit cards or checking accounts for use in making time payments.*
    b. *Discussing with employers the possibility of allowing, at an employee's request, payroll deductions to pay court-imposed fines.*
    c. *Discussing with businesses, like grocery stores, the logistics and cost to allow individuals to make court payments on court-imposed fines in their places of business.*
    d. *Creating a statewide web portal on which defendants can provide updated financial information and view outstanding balances.*
    e. *Offering a statewide online payment system.*
9. *Request legislation similar to A.R.S. § 12-288 (Removal of debts from accounting system) that would grant courts discretion to close cases and write off fines and fees after a 20-year period if reasonable collection efforts have not been effective.*

[11] A.R.S. § 13-805 requires a judgment for restitution to be paid in full.

10. *Request amendments to A.R.S. § 13-924 (Probation; earned time credit; applicability) to allow probationers to receive earned time credit without consideration of financial assessments, other than restitution to victims.*
11. *Request amendments to A.R.S. § 13-805(E) (Jurisdiction) to eliminate or reduce the 10 percent annual interest rate on any Criminal Restitution Order.*
12. *Modify court website information, bond cards, reminder letters, FARE letters, and instructions for online citation payment to explain in language appropriate to the defendant that if the defendant intends to plead guilty or responsible but cannot afford to pay the full amount of the court sanctions at the time of the hearing, the defendant may request a time payment plan.*

Principle Three: There should be alternatives to paying a fine.

The United States Supreme Court has held that states may not impose incarceration as an alternative sanction or as punishment for nonpayment of a financial obligation imposed in a criminal case solely because an offender is unable to pay the obligation. In *Williams v. Illinois,* 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) the court overturned a sentence that required additional incarceration beyond the maximum imprisonment for the committing offense for nonpayment of a $505 criminal fine at the rate of $5.00 per day as "…impermissible discrimination that rests on the ability to pay…" 399 U.S. at 241. In *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971) the court overturned a sentence of incarceration for nonpayment of a $425 traffic fine for an offense for which only a fine could be imposed. In doing so the court held "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." 401 U.S. at 398, 91 S.Ct. at 671. In *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983) the court overturned a probation revocation for failure to pay restitution and held: "Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay." 461 U.S. 672, 103 S.Ct. 2072. *Tate* and *Bearden* have been cited in many Arizona appellate opinions for the proposition that the trial court cannot incarcerate a defendant because he cannot pay a fine immediately after sentencing or revoke probation because the defendant is too poor to pay a court-ordered monetary obligation. *See*, *e.g., State v. Davis*, 159, Ariz. 562, 769 P.2d 1008 (Sup.Ct. 1989); *In re Application of Collins*, 108 Ariz. 310, 497 P.2d 523 (Sup.Ct. 1972); *State v. Wilson*, 150 Ariz. 602, 724 P.2d 1271 (Ct. App. Div. 1, 1986).

Judges now have the authority to allow defendants to "work off" fines by doing community service. *See* A.R.S. § 13-824 (*Community restitution in lieu of fines, fees, assessments, or incarceration costs*) (allowing defendants to pay off fines through community restitution

(service) at a rate of $10 per hour). Unfortunately, however, A.R.S. § 13-824 does not currently allow for surcharges, which, once combined with other court fees and mandatory assessments, often exceed the amount of the fine itself, to be worked off through community restitution (service). Further, the beneficial effects of this statute are limited to sanctions from municipal or justice courts and should be expanded to also include superior court sanctions. We should seek to expand the reach of the statute, both in terms of the types of sanctions and fees it covers and the courts to which it applies.

While community restitution (service) is appropriate in many cases, in many instances it would be more productive to require participation in a treatment program and give credit against the monetary obligation for successful completion. For example, a person addicted to alcohol or drugs would benefit—as would the community—if the person successfully completed a treatment program that might lead to a reduction in future offenses and potential gainful employment. Such a sentence would produce better results than simply picking up trash or performing some other community service that does not address the defendant's underlying treatment needs. Judges should also be provided additional sentencing options that address the defendant's underlying behavior. Currently, judges may impose only incarceration, fines, probation, and, in limited circumstances, community service.

Those charged with certain traffic offenses may have the option to attend defensive driving school as a way to resolve their cases. Recent changes in law now allow a person to attend defensive driving online or in-person classes, once per year. Twenty–two percent of individuals charged with eligible traffic offenses resolved their cases by completing defensive driving courses in FY2014.[12] Although the legislature has added additional fees that raise the cost of attending defensive driving school, the benefit of lowered auto insurance premiums remains for those attending a class.

Recommendations:

13. *Request amendment of A.R.S. § 13-603 (Authorized disposition of offenders) to authorize judges to impose a direct sentence that may include community restitution (service) and education and treatment programs as available sentencing options for misdemeanor offenses.*
14. *Request amendment of A.R.S. § 13-824 (Community restitution in lieu of fines, fees, assessments, or incarceration costs) to expand community restitution (service) to be applied to surcharges, as well as fines and fees imposed, and to include sentences imposed by superior courts.*

[12] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

Principle Four: Courts should employ practices that promote a defendant's voluntary appearance in court

Regardless of how many options and reminders the court may provide, a person must take personal responsibility to avoid consequences that could escalate and include incarceration. Those who appear in court when first cited might have the case dismissed (15 percent) if there is a defense, have the fine reduced, be allowed to make time payments, or perform community service as an alternative to paying fines. Failure to appear, on the other hand, puts into motion consequences that can be devastating to an individual.

Defendants who fail to appear in court pose a significant challenge. In FY2014, 11 percent of those charged or ticketed—103,000 people—failed to appear in court or attend defensive driving school after receiving a civil traffic citation.[13] Arizona data shows that people who fail to appear in court live in all income zip codes. When people willfully fail to appear in court, serious consequences follow, including additional costs, loss of driving privileges and charges for driving on a suspended license, a criminal offense. What started as a civil traffic matter quickly escalates into a criminal matter.

Fifty-three percent (54,400) of the defendants who were initially cited for civil traffic violations and lost their licenses because they failed to appear for the court hearing were subsequently cited for the criminal offense of driving on a suspended license. Notably, 28 percent (15,200) of the 54,400 cited for driving on a suspended license also failed to appear for the court hearing on the second criminal citation, too. In FY2014, 41 percent of all criminal traffic offenses were for driving on a suspended license.

Compounded sanctions can devastate lives. In most cases, people—including those with suspended driver's licenses—need to drive to work. A person stopped by law enforcement while driving on a suspended license faces arrest, detention in jail, and vehicle impoundment. Defendants who are sentenced to jail may lose their jobs because they cannot show up to work. In turn, this can lead to additional consequences, such as eviction because of the inability to make rent or home payments.

Some Arizona courts have instituted automated phone call systems to remind people of upcoming court dates. Pima County Consolidated Justice Courts achieved a 23 percent reduction in failures to appear after installing a phone reminder system.[14] Mesa Municipal Court reports similar results. Court practices should encourage people to comply with their court-imposed obligations. Alerting people to appearance dates, sending reminders to make a payment, or sending notifications when a time payment is missed promotes and encourages compliance.

[13] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

[14] See Appendix C: Pima County Consolidated Justice Court's IVR Summary.

Nearly 27 percent of Arizona's population speak a language other than English at home—predominately Spanish. Providing forms, instructions, webpage avatars, notifications, and critical court procedures and processes in Spanish will help remove barriers to understanding the judicial system for many Arizonans.

Failure to have current proof of insurance in the vehicle is a frequent citation. Requiring a defendant to come to court to show proof of insurance in order to dismiss the citation causes a person to take time from work or other responsibilities to travel to the courthouse. Today's technology allows for scanning or photographing the "proof of insurance" document and emailing it to the court. Pima County Consolidated Justice Court now allows persons to do just that, avoiding the inconvenience and potential loss of income for time away from work.

Recommendations:

15. *Implement English and Spanish Interactive Voice Response (IVR), email, or a text messaging system to remind defendants of court dates, missed payments, and other actions to reduce failures to appear and encourage compliance with obligations.*
16. *Modify forms to collect cell phone numbers, secondary phone numbers, and email addresses. Forms should include a reminder to the defendant to keep contact information current with the court.*
17. *Train staff to verify and update contact information for the defendant at every opportunity.*
18. *Provide information to law enforcement agencies regarding the importance of gathering current contact information on the citation form.*
19. *After a defendant fails to appear, notify the defendant that a warrant will be issued unless the defendant comes to court within five days.*
20. *For courts operating pretrial service programs, allow pretrial services five days to re-engage defendants who have missed scheduled court dates and delay the issuance of a failure to appear warrant for those defendants who appear on the rescheduled dates.*
21. *Authorize the court to quash a warrant for failure to appear and reschedule a new court date for a defendant who voluntarily appears in court after a warrant has been issued, allowing the defendant to remain out of custody upon a promise to appear for the new court date.*
22. *Consider increasing access to the court (e.g., offering hours at night, on weekends, or extending regular hours, taking the court to people in remote areas, and allowing remote video and telephonic appearances through applications such as FaceTime or Skype).*
23. *Develop and pilot a system that communicates in English and Spanish (such as video avatars) to provide explanations of options available to defendants who receive tickets or citations.*

24. *Clarify on court informational websites and bond cards that defendants may come to court before the designated court date to resolve a civil traffic case and explain how to reschedule hearings for those defendants who cannot appear on the scheduled dates.*
25. *Implement the ability to email proof of compliance with a law—such as proof of insurance—to the court to avoid having to appear in person.*

Principle Five: Suspension of a driver's license should be a last resort.

In both the urban and rural areas of Arizona, it is difficult to work or manage a family without driving. Yet courts must issue a complaint and notify the Motor Vehicle Department (MVD) to suspend a person's driver's license if a civil penalty is not paid or an installment payment is not made when due. *See* A.R.S. § 28-1601 (*Failure to pay civil penalty; suspension of privilege to drive; collection procedure*). Courts therefore must notify those defendants that their licenses will be suspended unless they come to court to resolve the matter. Because suspension of a driver's license can so greatly impact a person's life, it should be a sanction of last resort imposed only after other enforcement options have been considered.

People move often, and it is not uncommon for court notices to be returned because they are sent to an old address. Although people are required to update their addresses with the courts and the MVD, many do not. Those who have moved without alerting the MVD or court may fail to appear for court appearances because they are unaware of them. Because driving on a suspended license is a criminal offense, the courts should use search tools and other readily available methods to locate better addresses to effect notice, such as subscribing to a database service that can provide updated phone numbers and addresses to the court. The court would then use the updated contact information to populate email systems (IVR) for notifying the defendant. Court staff should interact with court customers at every opportunity to update and verify addresses, similar to queries when one has a dental or medical appointment. Law enforcement can also partner by requesting current addresses and phone numbers at the time of arrest or citation.

It would also be desirable to change the current classification of driving on a suspended license for the first time from a criminal offense to a civil violation. A.R.S.§ 28-3316 *(Operation of vehicle under a foreign license prohibited during suspension or revocation*).

Recommendations:

26. *Suspend a driver's license as a last resort, not a first step.*
27. *Request amendment of A.R.S. § 28-3316 to make a first offense of driving on a suspended license a civil violation rather than a criminal offense.*

28. *Provide courts with the ability to collect and use updated contact information, such as a database service, to find current location information before issuing a warrant or a reminder in aging cases.*
29. *Authorize courts to impose restrictions on driving—such as "to and from work only"—as an alternative to suspending a driver's license altogether.*

Principle Six: Non-jail enforcement alternatives should be available.

Some jurisdictions have benefitted by establishing restitution courts. Like other problem-solving courts, restitution courts require defendants to return to court often to monitor restitution payments, and they assist in eliminating barriers to making those payments.

The Administrative Office of the Courts also operates a non-jail-based court order enforcement program called FARE [Fines/Fees and Restitution Enforcement], which uses a variety of techniques to locate offenders, send reminder notices, encourage people to establish time payment plans, place "holds" on license plate renewals, and intercept state income tax refunds and lottery winnings. As a final resort, FARE uses private collections companies to enforce court orders. FARE is self-sustaining and so imposes fees for those who continue further into the system. However, FARE fees are much lower than booking and jail fees or car impound costs. Only 29 percent of defendants whose cases are not dismissed proceed into FARE. A person making time payments is not referred to FARE. Persons participating in a compliance assistance-type program have their cases removed from collections. Only after failing to appear or failing to make payments and not returning to court to request modification of a time payment plan is a person referred to FARE. FARE serves as a better enforcement alternative than arrest and jail. While some might argue that additional fees should not be required for those who fail to appear or participate in a reasonable time payment plan, they are cheaper than jail and provide an incentive to pay.[15]

Recommendations:

30. *Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an Order to Show Cause hearing, or sentence review.*
31. *Support renewing efforts to encourage the Conference of Chief Justices and the Conference of State Court Administrators to approach Congress about extending the federal tax intercept program to include intercepting federal tax refunds to pay victim restitution awards, with an exception for those who are eligible for the earned income tax credit.*

[15] While FARE used to report failure to pay court-ordered fines to the credit bureaus, a determination was made to no longer do so and 1.027 million cases have been withdrawn.

32. *Promote the use of restitution courts, status conferences, and probation review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.*

Principle Seven: Special needs offenders should be addressed appropriately.

Statewide estimates show that 272,250 defendants were charged with criminal traffic or non-criminal traffic misdemeanor complaints as a primary charge in FY2014.[16] The largest number of these complaints included offenses such as liquor violations, failure to comply with a court order, shoplifting and trespassing (related to shoplifting), drug offenses, and driving under the influence (DUI). For defendants charged with a criminal traffic misdemeanor, 68 percent received a sentence of a fine, community service, or diversion. Nineteen percent were sentenced to jail; 80 percent of those sentenced to jail were defendants with a DUI.

Within criminal misdemeanors, those charged with shoplifting (56 percent), property (58 percent), or drug offenses (52 percent) have a high rate of committing a subsequent offense or offenses. For example, a person convicted of shoplifting has a 47 percent chance of being convicted of additional shoplifting crimes (up to 10 or more) within 12 months. The same is true for drug offenders. These are the repeat offenders who are frequently in and out of jail. Those experienced in dealing with these offenders note that many are addicts suffering from substance abuse issues. These offenders are unlikely to pay their fines, and having them perform community restitution (service) is not always practical or in the interest of public safety.

A second specialized group that is brought to court are those individuals exhibiting mental health issues. A number of individuals appearing in limited jurisdiction courts have been arrested for "quality of life" issues (i.e., shoplifting, urinating in public, trespassing, and loitering) and appear to have mental health concerns. Under the current law, the process to determine the competency of a person charged with a misdemeanor or a felony is the same. *See* A.R.S. §§ 13-4501 *et seq.* The process is cumbersome and expensive. Mesa and Glendale municipal courts have been piloting a streamlined process to handle these cases that shows promise; however, the process will not work for handling all municipal cases, as it requires the superior court to appoint the limited jurisdiction court judges as superior court pro tempore judges as well as designating the city courthouses as satellite facilities of the

[16] Cisneros, Humberto and Huff, Carrin, Administrative Office of the Courts, (April 7, 2016) *Violation Review Data Driven Results*

superior court.[17] While this process is an improvement, a better solution is to modify the current mental health competency proceeding statutes for handling misdemeanor cases.

The handling of cases involving individuals with mental health issues is a challenge for all parts of the criminal justice system. Protocols for best handling those brought to court with mental health issues need to be adopted locally since resources will vary from jurisdiction to jurisdiction. The presiding judge of each county and of each large municipal court should bring the criminal justice and mental health stakeholders in their jurisdictions together to develop protocols that will be used to better handle these cases. Such an effort is currently under way in Yavapai County.

Many of the defendants brought to jail who exhibit mental health issues have previously received services from the local regional behavioral health authority (RBHA). In Maricopa County, the RBHA works with the Pretrial Services Division of the Adult Probation Department to inform them of defendants who have previously received mental health services. This assists in identifying those defendants diagnosed as seriously mentally ill and allows for the coordination of necessary services while the defendant is in custody or upon release. Implementation of procedures like this in jurisdictions throughout Arizona is recommended.

Recommendations:

33. *Coordinate where possible with the local regional behavioral health authority to assist the court or pretrial services in identifying defendants who have previously been diagnosed as mentally ill to allow for the coordination of necessary services.*
34. *Revise mental health competency statutes for expediting mental competency proceedings for misdemeanor cases.*
35. *Bring together criminal justice and mental health stakeholders in larger jurisdictions to adopt protocols for addressing people with mental health issues who have been brought to court.*
36. *Consider the use of specialty courts and other available resources to address a defendant's treatment and service needs, as well as risk to the community, when processing cases involving persons with mental health needs or other specialized groups.*

[17] Maricopa Superior Court Administrative Order No 2015-125.

PART 2

ELIMINATE MONEY FOR FREEDOM.

The task force was charged with making best practices recommendations for making release decisions that protect the public but do not keep people in jail solely for the inability to pay a cash surety (bail).

Courts, the Department of Justice[18], and many criminal justice stakeholder groups and foundations throughout the United States are joining in pretrial justice reform efforts with the goal of eliminating a "money for freedom" system, often based on the individual charge — not on the risk the defendant poses—and replacing it with a risk-based release decision system. The goal is to keep the high-risk people in jail and release low- and medium-risk individuals, regardless of their access to money.

Even short pretrial stays of 72 hours in jail have been shown in national and a local Arizona study to increase the likelihood of recidivism.[19] Pretrial incarceration can cause real harm, such as loss of employment, economic hardship, interruption of education or training, and impairment of health or injury because of neglected medical issues.

Requiring a defendant to post money to get out of jail does not ensure that the person will be more likely to return to court, nor does it protect public safety. Indeed, in analyzing more than 750,000 cases, a study financed by the Laura and John Arnold Foundation found that in two large jurisdictions, "nearly half of the highest-risk defendants were released pending trial." Some of the highest-risk individuals are likely to have access to money to post a cash surety. Communities are better served by assessing the risk defendants pose and their likelihood of appearing for their future court hearings.

Arizona courts already use a risk-based release system for juveniles. A juvenile may be held in detention if "the juvenile will not be present at any hearing, or the juvenile is likely to commit an offense injurious to self or others…"[20] There is no money for freedom system in the juvenile court.

[18] Department of Justice, *"Dear Colleague Letter."* (March 14, 2016)
[19] Cotter, Ryan and Justice System Planning and Information (May 2016). *The Hidden Cost of Pretrial Detention*
[20] Rule 23, Rules of Procedure for the Juvenile Court

Principle Eight: Detaining low- and moderate-risk defendants causes harm and higher rates of new criminal activity.

Many of these defendants remain in custody only because they cannot afford the bond, and so they are held in jail until their cases are heard.

> *"Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but lack the financial means to be released."*[21] *"Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community."*[22]

The American Bar Association Criminal Justice Standards Committee published a pamphlet entitled "ABA Standards for Criminal Justice - Pretrial Release" that defines the purpose of the pretrial release decision as follows:

> "The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. ... The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support."

> "In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception."
>
> *—Chief Justice William Rehnquist*

Detaining low-risk defendants pretrial causes harm and correlates to higher rates of new criminal activity. Research shows that "detaining low-risk and moderate-risk defendants, even for a few days strongly correlates with higher rates of

[21]VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: US Department of Justice, National Institute of Corrections.
[22]Pepin, Arthur W., *2012-2013 Policy Paper Evidence-Based Pretrial Release.* Conference of State Court Administrators

new criminal activity both during the pretrial period and years after case disposition; as length of pretrial detention increases up to 30 days, recidivism rates for low-risk and moderate-risk defendants also increases significantly."[23]

Moreover, for low-risk and moderate-risk pretrial detainees—all of whom are presumed to be innocent—the collateral consequences of even short periods of incarceration can be severe. Incarceration can disrupt the positive factors in the defendant's life and lead to negative collateral consequences, including job loss, loss of place of residence, inability to care for children, and disintegration of other positive social relationships.

In misdemeanor matters, a prosecutor may charge a person and specify that jail time will not be requested as part of the sentence. Such a declaration makes the defendant ineligible for a court-appointed lawyer. If such a person is required to post a financial bond but cannot pay it, the unconvicted defendant likely will remain incarcerated for a longer period than if he or she were found guilty of the offense. This certainly constitutes incarceration and should make the person eligible for the appointment of an attorney.

There are times when a defendant who has been placed on supervised probation for a felony case remains in custody while awaiting release to a treatment program. While the release to the treatment program is being facilitated, it may be discovered that the defendant is the subject of an unresolved misdemeanor complaint. In such a case, the defendant may be required to post a bond in a limited jurisdiction case before the release on the felony matter can be resolved. Because of the processing time to transport the defendant to the limited jurisdiction court or post a secured bond, the treatment opportunity may be lost. A revision to the Arizona Rules of Criminal Procedure is recommended to authorize the superior court judge or the probation officer to work with the limited jurisdiction court to remove the "hold" or modify the release conditions, allow for an unsecured bond, or set the court date following the defendant's release from treatment or otherwise expedite the processing of the limited jurisdiction case so it does not impede the defendant's release to a treatment program.

Current practices in Arizona and in many jurisdictions throughout the United States rely on the use of a secured financial bond to secure the release of defendants arrested for crime. National data indicate that approximately 60 percent of jail inmates are pretrial offenders who have not been convicted of any crime. Some remain in jail awaiting trial for periods longer than the period for which they could have been sentenced had they been convicted.

Numerous justice system improvement organizations have called for this reform, including the Bureau of Justice Assistance, the National Institute of Corrections Association of

[23]Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation

Prosecuting Attorneys, the National Center for State Courts, the Conference of State Court Administrators, the Conference of Chief Justices, and the National Association of Counties.

Recommendations:

37. *Modify Form 6–Release Order and Form 7–Appearance Bond in the following ways: Change the order of headings in Form 6:*
    a. *First: "Other Conditions of Release"*
    b. *Second: "Financial Conditions of Release"*
    c. *Third: Include "Unsecured Bond" header and narrative.*

    Add "Unsecured Appearance Bond" as a heading in Form 7. (See examples in Appendices D and E.)
38. *Eliminate the use of non-traffic criminal bond schedules.*
39. *Amend Rule 7.4, Rules of Criminal Procedure, which currently provides for a 10-day bail review hearing to require the appointment of counsel if a person remains in jail after the initial appearance hearing.*
40. *Clarify by rule or statute that small bonds ($5 - $100) are not required to ensure that the defendant gets credit for time served when defendant is also being held in another case.*
41. *Authorize the court to release a "hold" from a limited jurisdiction court and order placement directly into a substance abuse treatment program upon recommendation of the probation department.*
42. *Expedite the bond process to facilitate timely release to treatment programs.*
43. *Request amendment of A.R.S. § 13-3961(D) and (E) (Offenses not bailable; purpose; preconviction; exceptions) to authorize the court, on its own motion, to set a hearing to determine whether a defendant should be held without bail.*
44. *Encourage the presence of court-appointed counsel and prosecutors at initial appearance hearings to assist the court in determining appropriate release conditions and to resolve misdemeanor cases.*

Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.

Although most defendants pose risks that are manageable at reasonable levels outside of the jail,[24] some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance.

There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release

[24] Schnacke, T.R., *Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections (2014).

would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See* A.R.S. § 13-3961 *(Offenses not bailable; purpose; preconviction; exceptions).*

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person or the community. *See* A.R.S. § 13-3961 *(Offenses not bailable; purpose; preconviction; exceptions).* Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

For those defendants who present a high risk to public safety, and for whom there is "clear and convincing evidence that no condition or combination of conditions of release . . . will ensure the defendant's appearance in court or to protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial."[25] The use of a pretrial risk assessment at the initial appearance can assist the court in making this determination.

Currently, the Arizona Constitution does not permit a defendant to be held in custody for repeated failures to appear or for serious misdemeanor cases when a defendant is a danger to the community or any member of the community. The task force concludes that a constitutional change should be referred by the legislature to the people to determine whether money surety can be eliminated from our system altogether and high-risk individuals can be kept in jail without the use of high-money bonds. Such a proposal will come before the voters in New Mexico in November 2016.

The task force believes that Arizona should strive to eliminate money for freedom and shift to a risk-based system. Fully achieving this goal will require a constitutional amendment, rule changes, and a change in the current culture to substitute preventive detention for the current practice of imposing high-dollar bonds. A high-dollar bond may keep some individuals in jail. In two of the large jurisdictions the Arnold Foundation researched nearly 50 percent of high-risk individuals with high-dollar bonds had the ability to post the bond and be released. The task force recognizes these changes will take some time to fully

[25] American Bar Association *Standards for Criminal Justice: Pretrial Release* Standard 10-5.8 (3d ed. 2007).

implement. In the meantime Arizona should move ahead to implement a risk-based release decision system and eliminate money for freedom to the greatest extent possible, including expanded use of the provisions of Article 2; Section 22(3) of the Arizona Constitution, instead of the more common practice of setting a high-dollar bond as a substitute for trying to keep a high-risk individual in jail.

The taskforce also noted that a recent Court of Appeals case, *Simpson v. Miller*, __ P.3d __, 2016 W.L. 3264151 (Ct. App. Div. 1 June 14, 2016) now under appeal at the Supreme Court, may have some impact on this subject.

Recommendation:

> *45. Request the legislature to refer to the people an amendment to the Arizona Constitution to expand preventive detention to allow courts to detain defendants when the court determines that the release will not reasonably assure the appearance of the person as required, in addition to when the defendant's release will not reasonably assure the safety of other persons or the community.*

Principle Ten: Money[26] bond is not required to secure appearance of defendants.

The use of secured bonds or surety bonds requires that the defendant pay a fee, usually 10 percent of the face value of the bond, and provide collateral if required, to a commercial bail agent who assumes responsibility for the full bail amount should the defendant fail to appear in court. If the defendant does appear in court, the 10 percent fee is retained by the commercial bail agent, even if the defendant is later found not guilty or the charges are dismissed. Further, the bail agent will decide to whom bail will be extended without consideration of the defendant's assessed risk level. "The traditional money bail system has little to do with actual risk, and expecting money to effectively mitigate risk, especially risk to public safety, is historically unfounded."[27] "From a public policy perspective, this flies in the face of good government, because the result is that public officials have little control over the use of one of the most expensive and limited resources in any community—a jail bed."[28]

The ABA Standards for Pretrial Release (Standard 10-5.3) recommend the use of "unsecured" bonds or release on conditions that will help assure court appearance. *See* Standard 10-5.3.

[26] Money bond means either cash or commercial surety.
[27] Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.
[28] John Clark, *Solving the Riddle of the Indigent Defendant in the Bail System,* Trial Briefs (Oct. 2007); Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

Standard 10-5.3 states in part:

"(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay. (b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person. (c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion."

Recommendation:

> *46. Eliminate the requirement for cash surety to the greatest extent possible and instead impose reasonable conditions based on the individual's risk. When it must be used, the preference should be for the bond to be in actual cash deposited with the clerk of the court with the amount paid returned to the defendant if charges are not filed, the person is found innocent, or if no violations of the release conditions occur.*

Principle Eleven: Release decisions must be individualized and based on a defendant's level of risk.

The judicial officer establishing a defendant's release terms and conditions should order the least restrictive conditions that will still reasonably assure the defendant's appearance at court and protect public safety. Therefore, the bail process must be individualized, "taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to 'the nature of the charge.'"[29] The Supreme Court agrees:[30]

> "Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. The traditional standards, as expressed in the Federal Rules of Criminal Procedure [at the time, the nature and circumstances of the offense, the weight of the evidence against the defendant, and the defendant's financial situation and character] are to be applied in each case to each defendant. … To the extent that states do not use these factors, such as when over-relying on monetary bail bond schedules that merely assign amounts of money to charges for all or average

[29] American Bar Association *Standards for Criminal Justice: Pretrial Release,* Standard 10-5.3 (3d ed. 2007).
[30] *Stack v. Boyle,* 342 U.S. 1,5 (1951)

> defendants, the non-individualized bail settings are vulnerable to constitutional challenge."[31]

The Public Safety Assessment (PSA), a validated pretrial risk assessment tool, helps provide such an individualized assessment. Pretrial service programs in all superior courts in Arizona use the PSA as the approved pretrial risk assessment tool. The Arizona Code of Judicial Administration requires the use of the PSA in initial appearance courts for most felony arrests in order to provide courts with a separate risk score for risk of failure to appear for future pretrial hearings and a risk score for risk of engaging in new criminal activity during the pretrial period. It also provides a "violence flag" in cases where the defendant poses a high risk of engaging in new violent criminal activity during the pretrial period.

This evidence-based assessment, combined with additional information, can be used by the judicial officer to assist in making individualized release and detention decisions. Thus, by using the PSA, judicial officers are able to individually assess which defendants are appropriate for a release on their own recognizance and which should be released only with certain conditions, which may include monitoring by a court pretrial services agency.

When using the risk assessment to make pretrial release decisions, generally judges should release low-risk defendants with minimal or no conditions, release moderate-risk defendants with interventions and services targeted to mitigate the risk, and should detain the highest-risk defendants in custody. In jurisdictions where evidence-based risk assessments are employed, such as Washington, D.C., three primary release types are used:

- Low-risk defendants are released on their own recognizance or with unsecured appearance bonds,
- Moderate-risk defendants are released to Pretrial Services with specific release conditions imposed to mitigate the risks presented,
- High-risk defendants are held in custody as preventive detention when no condition or combination of conditions of release can reasonably assure the appearance of the person or will endanger the safety of any person or the community.

Pretrial supervision consists of various levels of monitoring based on the defendant's assessed risk level. This may consist solely of court date reminders by phone, text messages, or email for low-risk offenders; the preceding plus check-ins with the pretrial office by phone or face-to-face for moderate-risk offenders; and all of the foregoing coupled with home visits and electronic monitoring for those defendants determined to be high-

[31] Schnacke, T.R., (2014*) Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. U.S. Department of Justice, National Institute of Corrections.

risk. The task force recommends expanding the use of the PSA to limited jurisdiction courts (municipal and justice courts) for appropriate defendants.

Recognizing that expansion of pretrial risk assessments to limited jurisdiction courts may require additional resources, courts may explore the feasibility of collaborating with the pretrial services agency in the superior court. This concept is currently being explored by the Mesa Municipal Court in collaboration with Pretrial Services Division of the Maricopa County Adult Probation Department.

It is not uncommon for a defendant to have charges pending in both a limited jurisdiction court and a general jurisdiction court that are being addressed at the same initial appearance. On many occasions, the judicial officer may grant release on a felony case; however, the defendant remains in custody on a bond imposed by a limited jurisdiction court. The initial appearance court judge cannot modify the release conditions in that matter, and the defendant then remains in custody on the limited jurisdiction court matter even though he or she is entitled to release on the more serious matter. In these situations, superior courts may consider sharing with the limited jurisdiction court the results of a pretrial risk assessment that was conducted for the general jurisdiction case that provided the basis for the defendant's release without bail.

One condition that is often ordered is pretrial supervision. A study conducted by the Arnold Foundation in 2013 found that moderate- and high-risk defendants who received pretrial supervision were more likely to appear in court, and all defendants who were supervised pretrial for 180 days or more were less likely to be arrested for new criminal activity.[32]

> *"Therefore, judges should be guided by recent research demonstrating that a decision to release that is immediately effectuated (and not delayed through the use of secured financial conditions) can increase release rates while not increasing the risk of failure to appear or the danger to the community to intolerable levels. Second, the use of pretrial risk assessment instruments can help judges determine which defendants should be kept in or let out of jail. Those instruments, coupled with research illustrating that using unsecured rather than secured bonds can facilitate the release of bailable defendants without increasing either the risk of failure to appear or the danger to the public, can be crucial in giving judges who still insist on using money at bail the comfort of knowing that their in-or-out decisions will cause the least possible harm."*[33]

[32] Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes* (Laura and John Arnold Foundation 2013).
[33] Schnacke, T.R., (2014*) Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial*. U.S. Department of Justice, National Institute of Corrections.

The American Bar Association's (2007:4) Standards for Pretrial Release state that an agency should "monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis." The National Association of Pretrial Services Agencies (2004:4) has adopted a similar standard, indicating that "every jurisdiction should have the services of a pretrial services agency or program…" and the agency or program should "provide monitoring and supervisory services in cases involving released defendants… ."

The task force discussed concerns of potential bias with the PSA tool when addressing minority populations. This same matter was addressed by the Arnold Foundation when the risk assessment was developed, however, and "researchers found that defendants in each category failed at similar rates, regardless of their race or gender. The results confirmed that the assessment does not over-classify non-whites' risk levels, which has been a concern in some other areas of risk assessment.[34] While no issues have been found with the PSA instrument to date, some other assessments have been found to be problematic, indicating that this is an area that requires careful and constant examination.

To ensure these concerns are addressed over time, the task force considered requesting that PSA data be periodically reviewed by the Arnold Foundation and, if appropriate, incorporate adjustments to the tool as necessary to remediate any bias found. Additionally, the task force discussed concerns that the PSA does not take into consideration the immigration status of defendants and recommend that additional research be conducted for this population. Finally the task force understands that no instrument can eliminate all bias that may creep into the justice system and therefore recommends that judges continue to receive training regarding ways to recognize and avoid implicit bias.

Recommendations:

47. *Eliminate the use of a cash bond to secure a defendant's appearance.*
48. *Expand the use of the public safety risk assessment to limited jurisdiction courts for use in felony and high-level or select misdemeanor cases, i.e., those involving defendants entitled to counsel or those with a potential for a jail sentence.*
49. *Encourage collaboration between limited jurisdiction courts and pretrial service agencies in superior courts in preparing or providing pretrial risk assessments for use in limited jurisdiction cases.*
50. *Establish information sharing between a superior court that has conducted a pretrial risk assessment and a limited jurisdiction court when the defendant is arrested for charges in multiple courts and a release decision must be made in multiple jurisdictions.*

[34] Laura and John Arnold Foundation, (2013), *Research Summary: Developing a National Model for Pretrial Risk Assessment*

51. *Request the Arnold Foundation to conduct research on the impact of immigration status on the likelihood of not returning to court if released to ascertain whether it is good public policy to hold these defendants on cash bond.*
52. *Encourage the Arnold Foundation to conduct periodic reviews to revalidate the Public Safety Assessment (PSA) tool as to its effect on minority populations.*
53. *Provide data to judicial officers to show the effectiveness of the PSA risk assessment tool in actual operation. The outcome measurements should include information regarding failure to appear data and the impact that release has on public safety.*

Educational Recommendations:

In late 2015, the AOC conducted an informal survey of Arizona courts regarding initial appearance and bond review hearing processes. The results indicated:

- Judges use a variety of methods to conduct these hearings.
- Most courts do not have additional release options.
- These type of hearings are heard by full- and part-time judges, judges pro tempore, and commissioners.
- To determine bond amounts, judges use presumptive sanction charts, bond schedules, face-to-face interaction with the defendant, or the judges' inherent discretion.
- Initial appearance hearings are conducted in person at the court or in a specialized initial appearance court by video-conferencing, over the telephone and through first class mail.

The need for educational efforts and engaging leadership within the judiciary were constant themes throughout the task force discussions. The AOC's Education Services Division should develop a comprehensive educational plan and proposed timeline based on the recommendations proposed by the task force.

54. *Develop an educational plan and conduct mandatory training for all judicial officers.*
55. *Create multi-layer training (court personnel and judicial staff) to include a practical operational curriculum.*
56. *Develop online training modules for future judicial officers.*
57. *Host a one-day kick-off summit inviting all stakeholders (law enforcement, prosecutors, county attorneys, public defenders, city council and county board members, the League of Towns and Cities, criminal justice commissions, legislature, and presiding judges) to educate and inform about recommendations of the task force and provide direction for leadership to initiate culture change.*
58. *Train judicial officers on the risk principle and the methodology behind risk assessment tools.*
59. *Educate judges about the continuum of sentencing options.*

60. *Educate judges about available community restitution (service) programs and the types of services each offers so that courts may order services that "fit the crime."*
61. *Launch a public education campaign to support the adopted recommendations of the task force.*
62. *Provide a comprehensive and targeted educational program for all stakeholders (funding authorities, legislators, criminal justice agencies, media, and members of the public) that addresses the shift to a risk-based system rather than a cash-based release system.*
63. *Request that the Chief Justice issue an administrative order directing the education of all full- and part-time judicial officers about alternatives to financial release conditions. Training and educational components should:*
    a. *Inform judges that cash bonds are not favored. Judges should consider the least onerous terms of release of pretrial detainees that will ensure public safety and the defendant's return to court for hearings.*
    b. *Train limited jurisdiction court judges to more aggressively allow payment of fines through community service, as permitted by A.R.S. § 13-810.*
64. *Provide focused judicial education on A.R.S. § 11-584(D) and Arizona Rules of Criminal Procedure 6.7(D) about how to determine the amount and method of payment, specifically taking into account the financial resources and the nature of the burden that the payment will impose on the defendant, and making specific findings on the record about the defendant's ability to pay.*
65. *Update bench books and other judicial aids to be consistent with court-adopted recommendations.*

APPENDIX A

Key Findings from the Violation Review Data Driven Results
Misdemeanor, Criminal Traffic and Civil Traffic by Defendant
FY2014 Filings

CRIMINAL

- 63% conviction rate, while DUI conviction rate is 76%.
- 19% of criminal traffic and 28% of defendants convicted of misdemeanors are sentenced to jail.
- Average assessment in misdemeanor cases (excluding DUI) is $766; average DUI assessment is $2,015.
- Overall, 44% of criminal defendants return with subsequent violations, 35% from criminal traffic and 51% of misdemeanors.

CIVIL TRAFFIC

- 83% conviction rate; 22% attended defensive driving.
- Average assessment is $342; average "no insurance" assessment is $1,040.
- Estimated 11% or 103,000 defendants statewide fail to appear or fail to pay and driver license is suspended.
- 28% of civil traffic defendants are cited for a subsequent violation.

APPENDIX B

Innovations Already Under Way

Detailed Project Descriptions

Compliance Assistance Program

The Phoenix Municipal Court has recently implemented a Compliance Assistance Program (CAP) that notifies defendants who have had their driver's licenses suspended that they can come in to court, arrange a new and affordable time payment program, and make down payments on their outstanding fines. In exchange, the court will provide a clearance letter for the Motor Vehicle Department so the individual's driver's license may be reinstated. In the first four months of this new operation, more than 5,200 citizens have taken advantage of this program. The program has also resulted in the payment of $2.3 million to the City of Phoenix for outstanding fines, with a low non-compliance rate.

Interactive Voice Response System

The Pima County Consolidated Justice Courts and the Glendale and Mesa Municipal courts have each implemented an Interactive Voice Response (IVR) system to notify defendants of upcoming court dates, missed payments, or the issuance of a warrant. Each has experienced a reduction in the number of people failing to appear—up to 24 percent.[35]

Limited Jurisdiction Mental Competency Proceedings Pilot

Through a pilot project, the Mesa and Glendale municipal courts have been conducting Supreme Court Criminal Rule 11 (mental health competency) proceedings originating in their courts on behalf of the Superior Court in Maricopa County. This pilot authorizes these limited jurisdiction courts to act as satellites of the superior court. To date, 44 cases have proceeded through this pilot program, reducing warrants for non-appearances at doctor appointments and at superior court hearings. Conducting the Rule 11 proceedings at the Mesa Municipal Court has reduced the "no show" rate to less than five percent. Previously, these proceedings were taking between nine to twelve months; Mesa Municipal Court reports resolving these cases in less than 60 days. Additional cost savings have been realized by resolving the proceedings with one doctor appointment instead of requiring and paying for two appointments.

[35] See Appendix C. Summary of statistics for Pima County Justice Courts using an IVR system.

Justice Court Video Appearance Center

The Maricopa County Justice Court Video Appearance Center (Center) represents the first phase of an initiative to reduce significantly the amount of time defendants are held in custody on misdemeanor charges pending appearance in the justice courts. The Center is expected to reduce pretrial confinement time in such cases by 50 percent, with an additional 30 percent to be realized in Phase Two when the Intake and Release Facility becomes operational. The Center will also virtually eliminate the need to transport any prisoners to and from the 26 justice courts geographically distributed across the county. Development and operation of the Center is a collaborative effort of multiple Maricopa County agencies, including the justice courts, the County Attorney's Office, the Office of the Public Defender, the Maricopa County Sheriff's Office, and the superior court. The Center complements the Arizona Supreme Court's Fair Justice initiative as well as the county's Smart Justice program.

Pima County – MacArthur Safety & Justice Challenge

In May 2015, Pima County was awarded $150,000 from the John D. and Catherine T. MacArthur Foundation for an initiative to reduce over-incarceration by changing how America thinks about and uses jails. The initiative is a competition to help jurisdictions create fairer, more effective local justice systems through bold innovation. During Phase 1, Pima County developed a plan for system change to reduce the jail population by fifteen to nineteen percent (15-19 percent) and to reduce racial and ethnic disparities. Pima County was awarded an additional $1.5 million to move forward with Phase 2, which involves creating an implementation plan for broad system change. Some of the innovations developed by planning and policy teams included decision-makers from the county administration, jail, superior court, limited jurisdiction courts, law enforcement, prosecution, defense, and community organizations.

Proposed court system innovations and treatment alternatives include extending evidence-based risk screening to all defendants; adding a behavioral health screen prior to initial appearance and expanding pretrial supervision capacity; training criminal justice system partners (including the judiciary) on implicit bias and the use of money bail; reducing the incidence of failure to appear by implementing reminder systems and offering more accessibility to courts through periodic weekend warrant resolution courts; and expanding the use of home detention and electronic monitoring, including for those sentenced to jail on felonies but who are on work release. If successful, the innovations are expected to reduce the jail population by twenty percent (20%), which would potentially allow the closure of six 64-person pods at the jail, resulting in an estimated cost savings of $2.7 million per year and improvement of pretrial justice in Arizona.

APPENDIX C

Pima County Consolidated Justice Court's IVR Summary

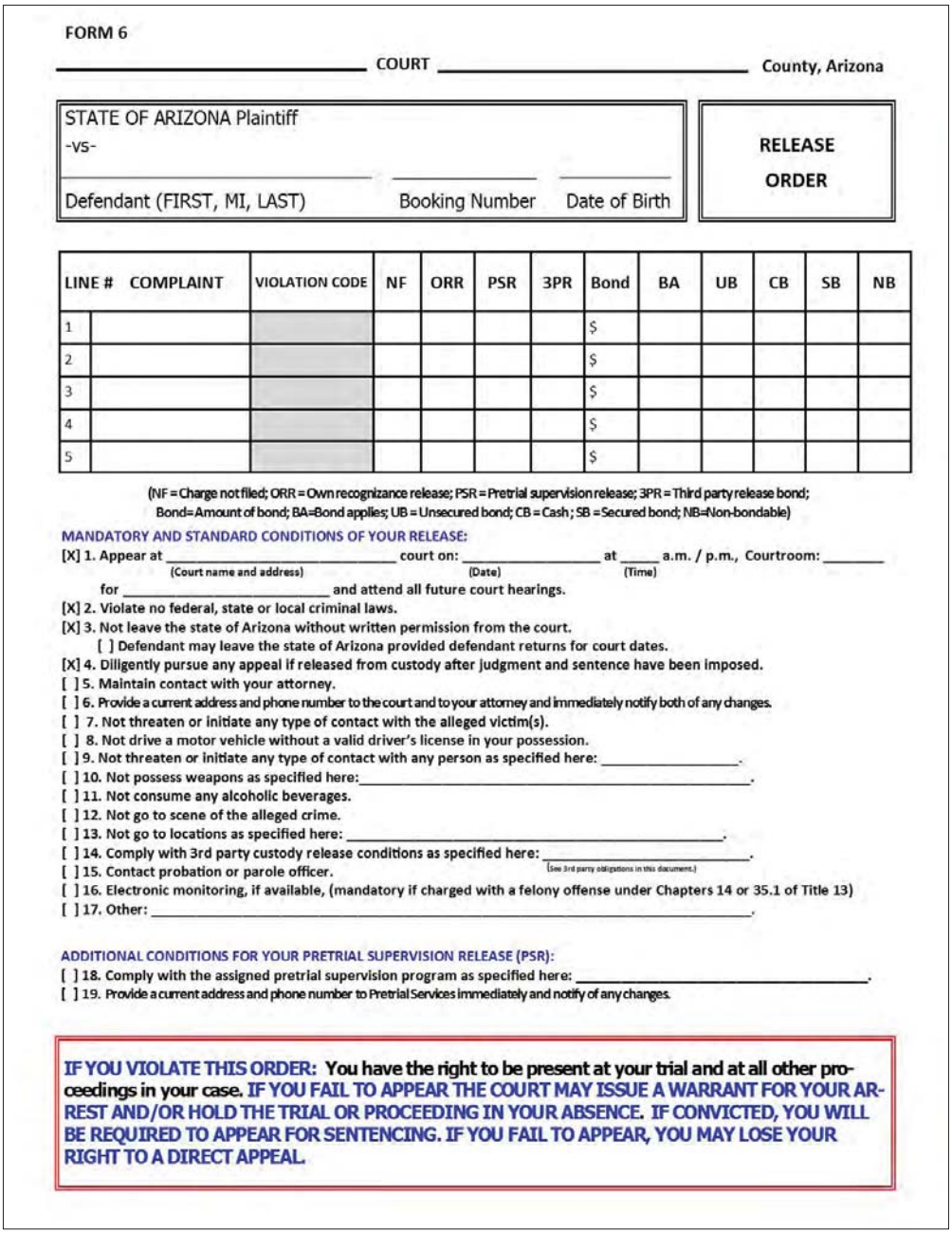
Phase	Description	Time period	IVR calls	Successful IVR Calls	Percentage Successful	Criminal hearings	FTA warrants issued	FTA rate	Reduction
1	No IVR Reminders	02/2014 - 08/2014	0	-	-	29,983	4,216	14.06%	--
2	IVR Reminders Enabled	09/2014-11/2015	46,980	36,671	78%	70,650	8,113	11.78	16.20%
3	IVR Reminders with Sanction warning	12/2015-03/2016	17,705	12,700	72%	17,930	1,926	10.74%	23.6%*
4	IVR Warrant Notifications	01/01/2016 - 6/21/2016	4,739*	2,564*	54%*	Call is placed after the warrant is issued, no significant effect on the FTA rate; however, this step encourages defendants to appear after the warrant is issued and may decrease total number of active warrants.			
5	Warrant Resolution Court Reminders	12/2015-03/2016	3,808**	2,342**	62%**	Calls were placed from Monday, June 6, to Friday, June 7, at a rate of 762 calls per day for Warrant Resolution Court, held Saturday, June 11, 2016. 75 of 2,342 who received a call appeared (3%), and 75 of 75 who appeared had their warrant quashed (100%).			

**Includes Warrant Notification calls only; does not include regular IVR court date reminder calls*

***Includes Warrant Resolution Court reminder calls only; does not include regular IVR court date reminder calls*

APPENDIX D

Proposed Form 6—Release Order



FORM 6

_____ COURT _____ County, Arizona

STATE OF ARIZONA Plaintiff -VS- Defendant (FIRST, MI, LAST)	Booking Number	Date of Birth	RELEASE ORDER

LINE #	COMPLAINT	VIOLATION CODE	NF	ORR	PSR	3PR	Bond	BA	UB	CB	SB	NB
1							$					
2							$					
3							$					
4							$					
5							$					

(NF = Charge not filed; ORR = Own recognizance release; PSR = Pretrial supervision release; 3PR = Third party release bond; Bond = Amount of bond; BA=Bond applies; UB = Unsecured bond; CB = Cash; SB = Secured bond; NB=Non-bondable)

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

[X] 1. Appear at _____ (Court name and address) court on: _____ (Date) at _____ (Time) a.m. / p.m., Courtroom: _____
for _____ and attend all future court hearings.
[X] 2. Violate no federal, state or local criminal laws.
[X] 3. Not leave the state of Arizona without written permission from the court.
[ ] Defendant may leave the state of Arizona provided defendant returns for court dates.
[X] 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
[ ] 5. Maintain contact with your attorney.
[ ] 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
[ ] 7. Not threaten or initiate any type of contact with the alleged victim(s).
[ ] 8. Not drive a motor vehicle without a valid driver's license in your possession.
[ ] 9. Not threaten or initiate any type of contact with any person as specified here: _____.
[ ] 10. Not possess weapons as specified here: _____.
[ ] 11. Not consume any alcoholic beverages.
[ ] 12. Not go to scene of the alleged crime.
[ ] 13. Not go to locations as specified here: _____.
[ ] 14. Comply with 3rd party custody release conditions as specified here: _____ (See 3rd party obligations in this document.).
[ ] 15. Contact probation or parole officer.
[ ] 16. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
[ ] 17. Other: _____.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

[ ] 18. Comply with the assigned pretrial supervision program as specified here: _____.
[ ] 19. Provide a current address and phone number to Pretrial Services immediately and notify of any changes.

IF YOU VIOLATE THIS ORDER: You have the right to be present at your trial and at all other proceedings in your case. IF YOU FAIL TO APPEAR THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST AND/OR HOLD THE TRIAL OR PROCEEDING IN YOUR ABSENCE. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

If you violate any condition of an appearance bond, the court may order the bond and any related security deposit forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of any violation of the conditions of release. After a hearing, if the court finds that you have not complied with the release conditions, the court may modify the conditions or revoke the release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprison-

ACKNOWLEDGEMENT: I fully understand and will comply with all release conditions indicated above and further understand the consequences should I violate any part of this order.

Current address where you live Apt. No. Address where you receive mail if different from current address

( ) Phone No. ( ) Phone No.

X Defendant Signature Date X Judicial Officer Date

DISTRIBUTION: WHITE – COURT YELLOW – SIMS OPERATOR PINK – DEFENDANT

APPENDIX E

Proposed Form 7—Appearance Bond Form

FORM 7

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA Plaintiff -vs- Defendant (FIRST, MI, LAST)	Booking Number	Date of Birth	**APPEARANCE BOND**

TYPE OF APPEARANCE BOND YOU HAVE

[ ] **UNSECURED APPEARANCE BOND:** In accordance with the terms of a release order or warrant issued on _____, 20____, by Judicial Officer of the _____court, of _____, State of Arizona, the defendant _____and the defendant's surety _____(If none, so state) hereby promise to pay the State of Arizona the sum of $_____in the event the defendant fails to appear at _____at _____ a.m./p.m. on _____, 20___and at any other hearing during the pendency of the case, unless excused by the judicial officer.

[ ] **DEPOSIT BOND:** [ ] The defendant will deposit with the Clerk of the Court [ ] ___% of the total sum of $_____, with the remainder of $_____ as an unsecured appearance bond. The deposited amount of the case appearance bond will be returned to the defendant, if defendant appears at _____ at ____ a.m./p.m. on _____, 20___ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash appearance bond to the State of Arizona.

[ ] **CASH APPEARANCE BOND:** [ ] The defendant will deposit with the Clerk of the Court the total sum of $_____. The total amount of the cash appearance bond will be returned to defendant if defendant appears at _____at ___ a.m./p.m. on _____, 20___ and at any other hearing during the pendency of the case to appear and answer the charges or submit to the orders and process of the court having jurisdiction of the case. In the event the defendant fails to appear at the hearing or during the pendency of the case, defendant will forfeit the cash appearance bond to the State of Arizona.

[ ] **SECURED APPEARANCE BOND—without a surety:** The defendant hereby deposits with the court cash or property of value in the full amount of this bond, the same to be forfeited in the event the defendant fails to comply with its conditions.

Depositor: _____ **Email address:** _____

Address: _____ **Phone number:** _____

[ ] **SECURED APPEARANCE BOND—with a surety:** _____. Surety for the defendant, hereby swears (or affirms) that the surety is not an attorney or person authorized to take bail, and that the surety owns property in this state (or is a resident of this state owning property) worth the amount of this bond, exclusive of property exempt from execution and above and over all liabilities, as detailed in Attachment A.

WARNING: IF YOU DO NOT APPEAR AS REQUIRED, THIS BOND MAY BE FORFEITED AND THE PROCEEDINGS BEGIN WITHOUT YOU. IF CONVICTED, YOU WILL BE REQUIRED TO APPEAR FOR SENTENCING. IF YOU FAIL TO APPEAR, YOU MAY LOSE YOUR RIGHT TO A DIRECT APPEAL.

ACKNOWLEDGEMENTS

_____ Date

_____ Defendant

State of Arizona)
)ss.
County of _____)

Subscribed and sworn to before me on

_____

_____ Notary Public

My Commission Expires _____

Approved:

_____ Date

_____ Surety or Authorized Agent

Form 7 Attachment A

[No changes]

Justice for All

Report and Recommendations of the Task Force on Fair Justice for All:
Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies

August 12, 2016

This publication can be provided in an alternate format or other assistance may be provided upon request by a qualified individual with a disability under the provisions of The Americans with Disabilities Act.

2015-2016 Policy Paper

The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations

Conference of State Court Administrators

Author

Arthur W. Pepin, *Chair*
Director, New Mexico Administrative Office of the Courts

A special thanks to Steve Canterbury, Administrative Director of the Courts, West Virginia, for editing the paper.

COSCA Policy and Liaison Committee

Table of Contents

I. Introduction

The law of unintended consequences states that unwanted outcomes result from actions that logically aim to achieve desired results.[1] This law is at work in the unwanted results of collection of court costs, fines, and fees. State legislatures and county or city governments have enacted fines as punishment and imposed an expansive array of fees intended to defray the costs of operating courts, jails, public defender and prosecutor offices, police agencies, probation services, as well as a variety of government programs unrelated to criminal justice. While courts do not enact the fines and fees, courts are required to order defendants to pay them. The imposition of these legal financial obligations (LFOs)[2] too often results in defendants accumulating court debt they cannot pay, landing them in jail at costs to the taxpayers much greater than the money sought to be collected. Late or missed payment penalties, daily fees for the cost of time in jail, and monthly fees for contract probation supervision are just a few of the add-on costs and fees that escalate the cycle of debt. The consequence is incarceration at public expense for LFOs that can never be paid, trapping many in a modern-day version of debtors' prison.

This paper examines the growth of debt imposed by legislative bodies through courts and the incarceration that results from failure to pay as well as significant collateral consequences incarceration brings to those unable to pay. The paper discusses the issues created by reliance on funding courts through fine and fee revenue and the impact of using private for-profit entities to collect court-related LFOs.

The focus of this paper is a set of recommendations from COSCA regarding specific policies and practices that courts can adopt to minimize the negative impact of LFOs while ensuring accountability for individuals who violate the law.

[1] *See* Robert K. Merton, "The Unanticipated Consequences of Purposive Social Action," *American Sociological Review*, Volume 1, Issue 6 (December 1936), pp. 894-904.

[2] The term "Legal Financial Obligation," or LFO, is generally used to include fines, court costs and fees as well as the many add-on fees that are common such as monthly probation/supervision fees, payment for drug and alcohol testing, interest on the LFO, a fee to implement a payment plan, charges for daily jail costs, a charge for a public defender, fees for missing court, warrant fees, charges for mandatory classes, and many others. The terms "LFOs," "court LFOs," and "court debt" are used in this sense throughout this paper.

II. How Court Legal Financial Obligations Lead to Imprisonment of Defendants

Punishment for wrongdoing that includes some financial penalty is a consequence within the authority of state legislators as well as county commissions, municipal councils, and other elected officials.[3] When fees proliferate and fines are disproportionately high relative to the offense, courts can be placed in the position of becoming a revenue source to fund government operations. This can burden defendants charged with low-level offenses with high-level court debt. Court practices to enforce appropriately scaled fines and fees are an important part of enforcing the consequences of misconduct and may include incarceration after an effective assessment of willful refusal to pay.

In policy papers endorsed by the Conference of Chief Justices, the Conference of State Court Administrators (COSCA) has for a long time advocated reducing or eliminating court funding through fees. In 2003, COSCA warned that "The judiciary must guard against sending the message that courts are somehow responsible for funding themselves and generating revenue to support their own operations."[4] In 2011, COSCA adopted a policy paper entitled "Courts are not Revenue Centers" which advocated as Principle 1 that "Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges."[5] More specifically, COSCA found that "The proliferation of these fees and costs as chargeable fees and costs included in the judgment and sentence issued as part of the legal financial obligation of the defendant has recast the role of the court as a collection agency for executive branch services."[6] In 2014, COSCA adopted the policy that a necessary component of judicial independence for courts of limited jurisdiction is segregation of court funding from fee generation, to avoid the perception of conflict of interest and provide for judicial independence.[7]

This paper reiterates, relies upon, and extends those prior statements of policy in addressing persistent issues resulting from LFOs. Beyond the dangers inherent in funding courts through fees is the practice of using courts to generate revenue for other elements of the justice system and also for activities unrelated to courts. Often judges are given little discretion to modify or waive fees they are required by law to impose. Courts can work toward legislative reform of fines and fees in cooperation with legislative bodies. However, given the reality that legislative bodies have and will continue to require that courts impose fees, COSCA and the courts we serve must adopt appropriate practices in the assessment and collection of fees.

In July 2015, COSCA directed its Policy Committee to develop this policy paper to build on principles long advocated by COSCA and endorsed by the Conference of Chief Justices. On November 23, 2015, the Conference of Chief Justices and COSCA announced the formation of a joint Task Force on Court Fines, Fees and

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[3] Ann Cammett and William S. Boyd, "Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt," 117 *Penn State Law Review* 349, 378-79 (2012).

[4] COSCA Policy Paper, "State Judicial Branch Budgets in Times of Fiscal Crisis," (December 2003), p. 14.

[5] COSCA Policy Paper, "Courts Are Not Revenue Centers," (2011), p. 7, accessed at http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx

[6] "Courts Are Not Revenue Centers," *supra,* note 5, p. 9.

[7] COSCA Policy Paper, "Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century" (2014), p. 12, note 28, accessed at http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/2013-2014-Policy-Paper-Limited-Jurisdiction-Courts-in-the-21st-Century.ashx

Bail Practices. Since then, the voices of many state and national leaders have joined the growing chorus advocating for best practices in the imposition and collection of LFOs. Contemporaneous with a meeting at the White House in December 2015 on "A Cycle of Incarceration: Prison, Debt, and Bail Practices," the Council of Economic Advisers Issue Brief on Fines, Fees, and Bail surveyed these issues with particular emphasis on the disparate impact on the economically disadvantaged.[8] The United States Department of Justice followed the December 2015 working session convened by DOJ on "Poverty and the Criminal Justice System: The Effect and Fairness of Fees and Fines" with a March 14, 2016, letter to state chief justices and state court administrators further illuminating this area. COSCA seeks to advance this national conversation and highlight practices that will enhance LFO compliance.

In addition to the disparate impact LFOs appear to have on the economically disadvantaged, they also appear to be inefficient as a means of producing revenue. Research in Alabama resulted in advocating for reform of "ever-rising charges, fees and fines" that attempt to shift the cost burden of court funding and "threaten the independence and effective functioning of courts," with the unintended effect of impairing collections; the highest collection rates for court LFOs in Alabama counties is less than 50% and collection rates in the largest counties are about 25%.[9] In Florida, clerk performance standards rely on the assumption that just 9% of fees imposed in felony cases can be expected to be collected.[10] Reports in Virginia show an annual collection rate on LFOs between 2008 and 2015 of between 47% and 58%.[11] Collection data published by the Pennsylvania Supreme Court show that of all LFOs assessed by general jurisdiction courts in 2007, the collections rate to date is 47%.[12]

The low collection rates on LFOs bring into question the viability of fees and cost assessments as a cost recoupment tool. "A true cost-benefit analysis of user fees would reveal that costs imposed on sheriffs' offices, local jails and prisons, prosecutors and defense attorneys, and the courts themselves surpass what the state takes in as revenue."[13] The poor LFO collection rate may be attributable to ineffective collection mechanisms or to courts not accurately determining the ability of defendants to satisfy the LFOs with the frequent consequence that defendants serve jail time for failure to comply with a court order requiring payment. However, incarceration tends to aggravate criminal behavior. A study of more than 2.6 million criminal court records for 1.1 million defendants in Harris County, Texas, that investigated jail data, unemployment insurance claims, wage records, public assistance benefits, and

[8] Council of Economic Advisers Issue Brief, "Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor" (December 2015).

[9] Public Affairs Research Council of Alabama, "Unified But Not Uniform: Judicial Funding Issues In Alabama," PARCA Court Cost Study (August 2014), pp. 2, 4, accessed at https://www.alabar.org/assets/uploads/2015/03/PARCA-Court-Cost-Study-FINAL-3-5-15.pdf

[10] Rebekah Diller, "The Hidden Costs of Florida's Criminal Justice Fees," Brennan Center for Justice (March 23, 2010) at p. 8, available at https://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf?nocdn=1

[11] "Commonwealth Court Collections Review," Virginia Auditor of Public Accounts (April 2013), available at https://www.justice4all.org/wp-content/uploads/2014/12/APA-Report-CourtsAccountsReceivableSR2012.pdf; "FY15 Fines and Fees Report," Virginia Compensation Board (December 1, 2015), accessed at http://www.scb.virginia.gov/docs/fy15finesandfeesreport.pdf

[12] Administrative Office of Pennsylvania Courts, *Collection Rate of Payments Ordered by Common Pleas Courts* (2012) available at http://www.pacourts.us/news-and-statistics/research-and-statistics/collection-rate-of-payments-ordered-by-common-pleas-courts

[13] "Shadow Citizens," *supra,* note 3, p. 383.

recidivism after release found, "The empirical results indicate that incarceration generates net increases in the frequency and severity of recidivism, worsens labor market outcomes, and strengthens dependence on public assistance."[14]

The United States Supreme Court has twice addressed jailing individuals for failure to pay LFOs. In 1971, the Supreme Court held in *Tate v. Short* that converting an individual's fine to a jail term solely because the individual is indigent violates the Equal Protection Clause of the United States Constitution.[15] The Court in *Tate* stated that courts may jail an individual when an individual with means to pay refuses to do so.[16] The Supreme Court in *Bearden v. Georgia* ruled in 1983 that courts cannot revoke probation for failure to pay a fine without first making an inquiry into facts that demonstrate the defendant had the ability to pay, willfully refused to pay, and had access to adequate alternatives to jail for non-payment.[17]

Bearden received a suspended sentence of three years' probation as a first offender, as well as a fine of $500 and restitution of $250 for burglary and receiving stolen property. After this illiterate and unemployed defendant notified the court he could not keep up with payments on his court debt, he went to prison in 1981 for the remainder of his sentence, a period of more than two years, due to the $550 he still owed. His incarceration was illegal because the Georgia court had no evidence the failure to pay was willful or that Bearden had failed to make good faith efforts to pay, a practice that "would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment."[18]

In addition to the direct consequences of imposing high fees, there are collateral consequences. Penalties for failure to pay LFOs may include suspensions of drivers' licenses that make it much more difficult for defendants to work, issuance of arrest warrants, extensions of supervision/probation solely to collect debt, and garnishments that can be as high as 65% of wages.[19]

A probation or parole violation resulting from missed or late payments on LFOs disqualifies an individual under federal law from receiving Temporary Assistance to Needy Families (TANF), Food Stamps, low income housing and housing assistance, and Supplemental Security Income (SSI) for the elderly and disabled.[20] State laws may further add to the list of collateral consequences. In Pennsylvania, courts may deny parole to offenders who are unable to pay a $60 fee in anticipation of release, while numerous federal court decisions have upheld the constitutionality of state statutes that payment of LFOs is a prerequisite to restoration of voting rights.[21]

As with other actions that may aid in enforcement of court orders to pay LFOs, suspension of a driver's license may encourage payment by those with an ability to pay.

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[14] Michael Mueller Smith, "The Criminal and Labor Market Impacts of Incarceration," Columbia University Job Market Paper abstract (November 14, 2014), p. 1 accessed at http://www.columbia.edu/~mgm2146/incar.pdf

[15] *Tate v. Short*, 401 U.S. 395, 398 (1971).

[16] *Tate*, 401 U.S. at 400.

[17] *Bearden v. Georgia,* 461 U.S. 660, 662-63 (1983).

[18] *Bearden,* 461 U.S. at 672-73.

[19] Mitali Nagrecha and Mary Fainsod Katzenstein with Estelle Davis, *When All Else Fails, Fining the Family: First Person Accounts of Criminal Justice Debt*, Center for Community Alternatives (2013), p. 6.

[20] Alicia Bannon, Mitali Nagrecha and Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, Brennan Center for Justice (2010), p. 28, citing: 42 U.S.C. section 608(a)(9)(A); 7 U.S.C. section 2015(k)(1); 42 U.S.C. section 1437d(l)(9); and 42 U.S.C. section 1382E(4)(A)(ii).

[21] "Shadow Citizens," *supra,* note 3 at p. 390, n. 235.

However, automatic license suspension for failure to pay LFOs without the option of a license to permit a defendant to work greatly reduces an offender's ability to work or creates the risk of further criminal involvement if the offender continues to drive in an effort to satisfy court LFOs. Virginia is among the many jurisdictions that suspend an offender's driver's license until all court debt is satisfied. As a result, a 2015 snapshot showed more than 2.6 million orders suspending the drivers' licenses of 914,450 individual Virginians due to unpaid court LFOs.[22] According to the Legal Aid Society report, "Approximately 1 in 6 Virginia drivers has had their license suspended for non-payment of court costs or fines and, therefore, cannot drive to work, medical appointments, the grocery store, church, of their children's schools."[23] [24]

A study of New Jersey drivers found that 42% of suspended drivers lost their jobs and 45% remained unemployed throughout the period of suspension even though less than 6% of the suspensions were tied directly to driving offenses.[25] In 2004 in New Jersey, 105,971 drivers had their licenses suspended for failure to appear in court, comprising 41% of all active suspensions.[26] As the Brennan Center for Justice found,

> 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. 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.[27]

In August 2016 the Arizona Task Force on Fair Justice for All issued a comprehensive report with 65 recommendations to improve court practices on court-ordered fines, penalties, fees, and pretrial release that included the recommendations that a driver's license suspension be "a last resort, not a first step" and that a first offense for driving on a suspended

[22] Angela Ciolfi, Pat Levy-Lavelle, and Mario Salas, "Driven Deeper Into Debt: Unrealistic Repayment Options Hurt Low-Income Court Debtors," Legal Aid Justice Center (5/4/2016), p. 7.

[23] *Id.* It should be noted that Virginians with licenses suspended for these reasons can petition for and receive a restricted license allowing them to drive to work, school, church, etc., legally.

[24] The Legal Aid Justice Center recently filed a class action challenging the constitutionality of automatic suspension of a driver's license for failure to pay court LFOs. *Stinnie v. Holcomb,* No. 3:2016cv00044 (W.D.Va. July 6, 2016).

[25] *N.J. Motor Vehicles Affordability and Fairness Task Force, Final Report* (2006), pp.12, 38, accessed at http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.

[26] *Id.* at p.32.

[27] *Criminal Justice Debt*, *supra,* n.20 at 19, citing Rebekah Diller, Brennan Cntr. For Justice, *The Hidden Costs of Florida's Criminal Justice Fees* (2010), pp. 20-21, accessed at http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1

license be a civil violation rather than a criminal offense.[28]

Recognition of the collateral consequences of LFOs, such as automatic suspension of a driver's license, along with isolated but spectacular examples of abusive courts motivated to maximize revenue, as well as abuses by for-profit private probation services, have generated significant attention in the press.[29]

The increased public attention to incarceration as a consequence of inability to pay court LFOs amplifies what the United States Supreme Court found several decades ago in *Bearden*: jail should be for those able but unwilling to pay and not for those unable to pay.

Today an estimated 10 million people owe more than $50 billion in LFOs.[30] COSCA urges its members and other state court system leaders to work to ensure that incarceration for that debt follows only upon a finding of willful failure to pay and after reasonable alternatives are offered to satisfy court obligations imposed by the law. A discussion of how we arrived at this point is followed by recommendations for how COSCA members can work to move court practices even closer to the letter and spirit of *Bearden*.

A. State and Local Legislative Bodies Have Multiplied Fees as a Substitute for Adequately Funding Courts, Other Justice Entities, and Non-Judicial Government Activities

In almost all cases, court fines and fees are set by state and local legislative bodies and not by the courts. Many jurisdictions now have an array of fees that courts are required to impose and collect for criminal justice activities as well as government programs unrelated to courts.

- A Texas Office of Court Administration study listing the various criminal court costs and fees, excluding fines, found 143 separate costs and fees that can be assessed against defendants and found that "1) some fees and costs have no stated statutory purpose; 2) court fees and costs collected from users of the court system are oftentimes used to fund programs outside of and unrelated to the judiciary; and 3) many court fees and

[28] Report and Recommendations of the Task Force on *Fair Justice for All: Court-Ordered Fines, Penalties, and Pretrial Release Policies*, Supreme Court of Arizona (August 12, 2016), recommendations 26 and 27, p. 22.

[29] See, *e.g.*, "The Town that Turned Poverty into a Prison Sentence" (how the Harpersville, Alabama, court became a "judicially sanctioned extortion racket" ensnaring the poor), Hannah Rappleye and Lisa Riordan Sevelle, *The Nation*, March 14, 2014; "Get Out of Jail, Inc.: Does the Alternatives-to-Incarceration Industry Profit from Injustice?" (describes judicially-approved abuses of those unable to pay court debt by private probation corporations, including Judicial Correction Services and Sentinel, among others); "For Offenders Who Can't Pay, It's a Pint of Blood or Jail Time" (reports of an Alabama judge threatening jail for those unable to pay fines and fees, but offering $100 credit and no jail for those who donate blood), Campbell Robertson, *New York Times* (10/19/2015); "Jail Fail: How Not Paying Your Fines Could Land You Behind Bars," (surveying a litany of practices and examples of court debt leading to "debtors' prisons") Olivia C. Jerjian, *American Criminal Law Review Online* (4/27/2015), accessed at http://www.americancriminallawreview.com/aclr-online/jail-fail-how-not-paying-your-fines-could-land-you-behind-bars/; "Municipal Violations," *Last Week Tonight with John Oliver*, HBO (18-minute broadcast story of excessive fines, fees, and incarceration for municipal violations broadcast March 22, 2015), accessed on YouTube at https://www.youtube.com/watch?v=0UjpmT5noto

[30] Douglas N. Evans, "The Debt Penalty, Exposing the Financial Barriers to Offender Reintegration," John Jay College of Criminal Justice (August 2014), p. 7, accessed at http://justicefellowship.org/sites/default/files/The%20Debt%20Penalty_John%20Jay_August%202014.pdf, citing Alexes Harris, Heather Evans, and Katherine Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary Untied States," *American Journal of Sociology*, Volume 115, number 6 (2010), pp. 1753-1799.

costs are collected for a purpose but not dedicated or restricted to be used exclusively for that intended purpose." [31]

- A Brennan Center report on fees assessed in Florida courts includes a seven-page appendix listing more than 60 statutory fees that apply in different types of cases and circumstances.[32]

- A Brennan Center study of 15 states that together account for more than 60% of all criminal filings found fees that range from the pre-adjudication phase, such as an application fee for a public defender and a jail fee for pretrial incarceration, to sentencing fees for court costs, fees to fund court and non-court programs, and reimbursement fees to the public defender and prosecution. Post-adjudication-added fees included jail costs, probation supervision, drug testing, and mandatory classes, followed by the imposition of interest, late fees, payment plan fees, and collection fees on the accumulated court debt.[33]

- A Pennsylvania docket sheet that illustrates the impact of legislatively-required LFOs shows that a woman convicted of a drug crime received, in addition to a sentence of between 3 and 23 months imprisonment, a $500 fine and $325 restitution, plus 26 different fees totaling $2,464.[34]

- An Alabama study found that for a defendant arrested for possession of one ounce of marijuana in Shelby County "[a] conservative estimate of the court costs, fees and fines on this single charge would be $2,611" followed by post-adjudication probation fees at $40 per month plus drug testing and counseling fees as well as a six-month suspension of the driver's license with a $300 reinstatement fee.[35] The same study found that "59% of responding attorneys in Alabama reported they had a client who was jailed for non-payment of heavy court costs, fees and fines. In most cases it was failure to pay a monthly probation supervision fee ($40) that led to the jailing."[36]

- In Washington 28 separate fines and fees can be assessed and the State imposes a 12% interest penalty on unpaid LFOs from the date they are assessed.[37]

- Florida law allows private debt collection agencies to add a 40% surcharge to collection of court debt.[38]

- North Carolina charges a $25 late payment fee and a $20 charge for making installment payments on court debt.[39]

A series aired by National Public Radio reported that an NPR survey of states found that laws permit charges in at least 43 states and the District of Columbia for a public defender; at least 41 states allow charges to inmates for room

[31] *Study of the Necessity of Certain Court Costs and Fees in Texas,* Office of Court Administration (September 2014), accessed at http://www.txcourts.gov/media/495634/SB1908-Report-FINAL.pdf.

[32] Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees*, Brennan Center for Justice (2010), pp. 27-33.

[33] *Criminal Justice Debt, supra*, note 20, pp. 7-10 and notes 18-20 (listing statutes and fee amounts).

[34] *Criminal Justice Debt, supra,* note 20, p.9.

[35] PARCA *Court Cost Study, supra ,* note 9, pp. 17-18.

[36] PARCA Court Cost Study, *supra,* note 9, p. 19.

[37] "In for a Penny, The Rise of America's New Debtors' Prisons," *American Civil Liberties Union* (October 2010), p. 65.

[38] *Criminal Justice Debt, supra,* note 20, p. 17.

[39] "The Debt Penalty," *supra,* note 30, p.3.

and board for jail and prison stays; at least 44 states allow charges to offenders for their own probation and parole supervision; in all states except Hawaii and the District of Columbia a fee can be imposed for electronic monitoring devices courts order defendants to wear, and it is common for laws to provide for defendants to "pay for their own arrest warrants, their court-ordered drug and alcohol-abuse treatment and to have their DNA samples collected."[40] A study published by the University of Washington in May 2010 found

> [M]onetary sanctions are now imposed by the courts on a substantial majority of the millions of U.S. residents convicted of felony and misdemeanor crimes each year. We also present evidence that legal debt is substantial relative to expected earnings and usually long term. Interviews with legal debtors suggest that this indebtedness contributes to the accumulation of disadvantage in three ways: by reducing family income; by limiting access to opportunities and resources such as housing, credit, transportation, and employment; and by increasing the likelihood of ongoing criminal justice involvement. . . Our findings indicate that penal institutions are increasingly imposing a particularly burdensome and consequential form of debt on a significant and growing share of the poor.[41]

In addition to statutory and ordinance requirements to impose fees, the extent to which judges may consider a defendant's ability to pay and exercise discretion in determining whether to impose LFOs varies from jurisdiction to jurisdiction. Whether a judge has this discretion often depends on the type of LFO and whether the ability to pay is considered at the time of sentencing or at a post-sentencing hearing.

B. Limited Jurisdiction Courts Are Especially Vulnerable to *Bearden* Violations in the Assessment and Collection of LFOs

A few appalling examples illustrate the worst outcome when the collection of fees becomes the focus of court operations, resulting in improper zealotry to collect at the cost of basic fairness. These examples have arisen most recently in limited jurisdiction courts that are largely funded by fees created by the municipality or county.

A disheartening example is found in the town court of Harpersville, Alabama. Before being sanctioned and eventually closed after a superior court found it was a "judicially sanctioned extortion racket," the town court generated revenue from fines and fees three times greater than the town received from sales taxes.[42] The court worked in partnership with Judicial Correction Services, a private, for-profit probation services company. JCS charged those owing LFOs a monthly fee between $35 and $45, with additional charges for court-mandated classes and electronic monitoring. When a probationer failed to pay, JCS would send a letter demanding immediate payment under the threat of jail time, which the court would order following issuance of an arrest warrant. Those arrested were charged $31 per day to offset jail costs, adding to a spiraling cycle of mounting court LFOs and incarceration in jail.[43] There

[40] Joseph Shapiro, "As Court Fees Rise, The Poor Are Paying The Price," *All Things Considered* , National Public Radio (May 19, 2014), print version at http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor

[41] Alexes Harris, Heather Evans and Katherine Beckett, "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary Untied States," *American Journal of Sociology*, Volume 115, Number 6 (2010), p. 1756.

[42] Hannah Rappleye and Lisa Riordan Sevelle, "The Town That Turned Poverty Into A Prison Sentence," *The Nation*, March 14, 2014.

[43] "The Town that Turned Poverty into a Prison Sentence," *supra,* note 42, p. 4.

was no record showing the court ever considered a defendant's ability to pay court LFOs.

In Ferguson, Missouri, the United States Department of Justice found unlawful enforcement practices by the police that disproportionately harmed minority community members and eroded the trust in the police and courts. At the center of these practices, DOJ found a municipal court exploiting unlawful police conduct to maximize court revenue: "The municipal court does not act as a neutral arbiter of law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City's financial interests."[44]

The actions of the Harpersville and Ferguson courts are extreme examples. However, as COSCA recognized in 2014, "funding courts through fines and fees that flow to the local town or county that pays court staff and judges creates at least the perception that judicial independence is diminished."[45] The persistence of such challenges is exemplified by a class action complaint filed by the Southern Poverty Law Center in June 2016 alleging that Judge Robert J. Black and the Bogulasa, Louisiana, City Court "operate a modern-day debtor's prison, jailing the poor for their failure to pay" motivated at least in part by a "conflict of interest" funding structure that "creates an incentive for Defendant Black to find individuals guilty and to coerce payment through the threat of jail" because "[w]ithout this money, the City Court could not function."[46]

A similar class action lawsuit charges that municipalities in Arkansas "have turned to creating a system of debtors' prisons to fuel the demand for increased public revenue from the pockets of their poorest and most vulnerable citizens" by having local and municipal courts use "the threat and reality of incarceration to trap their poorest citizens in a never-ending spiral of repetitive court proceedings and ever-increasing debt."[47] The validity of these allegations remains to be determined but the claims and their causes echo proven misconduct in the limited jurisdiction courts in Harpersville and Ferguson.

COSCA condemns the isolated instances in Harpersville and Ferguson as gross distortions that result from the combination of fee funding and willful misconduct by those who fail in their duty to seek justice. It would be unfair and unsupported to view such instances as representative of the great majority of local and municipal courts. However, as discussed in the 2014 COSCA policy paper, fee funding is among the several practices that require reform to foster judicial independence in limited jurisdiction courts.

C. Contracts with Private For-Profit Corporations to Manage Probation to Collect Court LFOs Can Be Susceptible to Abuse of Those Unable to Pay

Courts may have little ability to influence the fines and fees they must impose through statutes and ordinances passed by legislative bodies, but often courts can directly affect the way fines and fees are collected. One practice that requires careful consideration is collection of LFOs

[44] "Investigation of the Ferguson Police Department," United States Department of Justice Civil Rights Division, March 4, 2015, p. 7.

[45] "Courts are not Revenue Centers," *supra,* note 5, p. 12.

[46] *Roberts v. Black,* No. 2:16-cv-11024, filed June 21, 2016, US District Court for the Eastern district of Louisiana, accessed at https://www.splcenter.org/sites/default/files/bogalusa-splc-filing-debtorsprison.pdf

[47] *Dade et al. v City of Sherwood*, Arkansas, *et al*., No. 4.16cv602-JM (E.D.Arkansas), filed August 23, 2016, paragraph 2, p. 1.

through contracts with for-profit private collection agencies monthly charges of which aggravate the financial burdens on those already struggling to pay.

In March 2015 in Alabama, the Southern Poverty Law Center (SPLC) sued Judicial Corrections Services (JCS), which charged those who were too poor to pay their initial court LFOs a start-up fee of $10 and a $35 monthly fee that is paid first from any payment made by the debtors. SPLC alleged racketeering, extortion, and abuse of process due to excessive incarceration of indigent defendants for failure to pay private probation costs.[48] According to the SPLC lawsuit, this practice left thousands of marginally employed defendants to accumulate greater and greater court debt even when they made regular payments, because payments that might only satisfy the JCS monthly fee did nothing to satisfy the LFOs and resulted in a slow decline into mounting LFO debt fueled by late fees and missed payment penalties.

In June 2015, SPLC settled with the city of Clanton, Alabama, which terminated its JCS contract and directed the city court to supervise those on probation for payment of fines and fees.[49] As reported by SPLC, 72 of 100 Alabama cities with a JCS contract have cancelled the contracts as have eight cities with contracts with other private probation corporations.[50] The litigation continues against JCS, which SPLC says it seeks to prohibit from operating "a racketeering enterprise that is extorting money from impoverished individuals under threat of jail and from using the criminal justice system and probation process for profit."[51]

The real-life impact of outsourcing to a for-profit corporation the collection of LFOs is well illustrated by a simple example. "An offender who requires 24 months on probation to pay off a $1,200 fine, with a $35 monthly supervision fee, would be financially better off taking out a $1,200, 24-month loan with an APR of 50 percent. She would also not have to face the direct threat of incarceration over missed payments, as she would while on probation." The authors note that the two-year interest at 50% would be $721 instead of the two-year probation costs of $840.[52]

A for-profit corporation may use the threat of incarceration that is cost-free to the corporation as pressure to coerce payment of the corporation's $40 monthly supervision fee upon threat of going to jail for non-payment. This amounts, in the assessment of Human Rights Watch, to "a discriminatory tax that many offenders are required to pay precisely because they cannot afford to pay their court-ordered fines, with all of the revenues going directly to private companies instead of public treasuries ."[53]

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[48] *Roxanne Reynolds, et al. v. Judicial Corrections Services, Inc., et al.*, USDC Middle District of Alabama No. 2:15-cv-00161-MHT-CSC (March 12, 2015).

[49] *Reynolds v. JCS*, *supra*, note 48, Settlement Agreement filed June 16, 2015.

[50] "Private Probation Company's Decision to Leave Alabama is Welcome News for Indigent," *SPLC News*, (10/19/2015) accessed at https://www.splcenter.org/news/2015/10/19/splc-private-probation-company%E2%80%99s-decision-leave-alabama-welcome-news-indigent

[51] *Reynolds v. JCS, supra,* note 48.

[52] "Profiting from Probation: America's 'Offender-Funded' Probation Industry," *Human Rights Watch Report* (2/5/2015), p. 23.

[53] "Profiting from Probation," p. 22.

III. COSCA Recommends Practices that Make *Bearden* Effective and Minimize Imprisonment for Court Debt

As the earlier review of policy papers from 2003 through 2014 demonstrates, COSCA and the Conference of Chief Justices have long advocated for reducing or eliminating court funding through fees. Examples of the impact of excessive LFOs on vulnerable populations also argue for reform and reduction of fees that use courts in an effort to raise revenue for a variety of government activities. These reforms can be accomplished only through legislation. COSCA recognizes there are significant challenges to statutory reform of fee-generating legislation. Given the reality that courts are required to impose LFOs, COSCA advocates for state court systems to emphasize practices that maximize LFO compliance while reserving jail for those who willfully refuse to pay despite alternative non-monetary methods for satisfying court obligations.

A. Streamline and Strengthen the Ability of Courts to Assess Ability to Pay

COSCA fully supports the *Bearden* requirement for all courts to assess ability to pay before imposing incarceration for failure to pay. However, many courts face a blank canvass when making such an assessment. Lacking information about a defendant's financial circumstances, courts may be tempted to determine that failure to pay is willful because the defendant smokes cigarettes, is wearing an expensive-looking pair of shoes, or drove a car to court. It is incumbent on court administrators to establish ways for courts to assess the ability to pay accurately rather than leaving judges to such haphazard indications of means.

Some states have tried to codify the assessment of ability to pay LFOs. The 2014 session of the Colorado Assembly passed a bill that permits jail for willful failure to pay but requires procedural protections, including the requirement of findings on the record after notice and a hearing, and specifically prohibiting an arrest warrant for failure to pay as well as revocation of probation and incarceration if the offender made a good faith effort to pay.[54]

Rhode Island by statute requires ability to pay be considered by a court in remitting fines and fees and also requires that ability to pay be determined by use "of standardized procedures including a financial assessment instrument" completed under oath in person with the offender and "based upon sound and generally accepted accounting principles."[55] In addition, "the following conditions shall be prima facie evidence of the defendant's indigency and limited ability to pay," including receipt of TANF, SSI or state supplemental income payments, public assistance, disability insurance, or food stamps.[56]

In June 2014, the Michigan Supreme Court convened the Michigan Ability to Pay Workgroup through the State Court Administrative Office to develop guidelines for judges addressing how to determine ability to pay. On April 20, 2015, the Workgroup published its results recommending use of payment plan calculators, suggesting language to inform litigants of their entitlement to an ability-to-pay assessment, and recommending reference to federal poverty guidelines when

[54] HB14-1061, Colorado General Assembly, signed into law June 10, 2014.

[55] R.I.G.L., Section 12-21-20 (2013).

[56] R.I.G.L., Sections 12-20-10 (2012).

determining ability to pay.[57] The Guidelines and appendices provide practical, step-by-step examples of forms and procedures that any court can adopt to inform ability-to-pay determinations and what type of payment plan should result.

In many courts the majority of criminal defendants will apply and qualify for indigent public defense services, providing some disclosure of income and assets in order to qualify. California has an "Information Sheet on Waiver of Superior Court Fees and Costs" as well as forms to request waiver of court fees based in part on receipt of food stamps, SSI, TANF, and various other means-tested state public benefits programs.[58] The Arizona Supreme Court's recent "Fair Justice for All" report recommends adoption of automated tools to assist in determination of ability to pay; creation of a statewide, simplified payment ability form; and reference to qualification for means-tested public assistance as evidence of limited ability to pay.[59]

Non-court entities may also provide assistance, such as the *Interest Waiver Guide* published by the ACLU of Washington to provide information and forms for obtaining a court order to waive or reduce the 12% interest required by statute for court LFOs in Washington.[60]

B. Adopt Evidence-Based Practices that Reduce Failure to Appear and that Improve Compliance with Court Orders, Including Orders Imposing Fines and Fees

The fact that courts usually do not control the amount or kinds of LFOs creates a challenge when courts assess whether LFOs are reasonable or excessive and whether a court debtor can afford to pay. If courts do not have statutory authority to reduce or eliminate fees, courts should advocate for judicial discretion to mitigate fines and fees based on a defendant's ability to pay. (This issue is discussed further in section D.) In addition, courts should adopt evidence-based practices that improve opportunities for compliance by those whose ability to pay is limited.

Courts recognize and embrace the need to collect fees both to ensure compliance with court orders and to execute their responsibility to enforce fees the law imposes. The Conference of Chief Justices in January 2003 adopted a resolution "that allowing court-ordered penalties, fees and restitution surcharges to be willfully ignored diminishes public respect for the rule of law, and recognizes that it is in the interest of the courts that their orders be honored."[61] Updating an original guide published in 1994, a second edition guide published by the National Center for State Courts in 2009 provides detailed examples of best practices in collecting court debt that

[57] Chief Judge John A Hallacy, Chair, Ability to Pay Workgroup, *Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay* (April 20, 2015), appendices A, E, F and G, accessed at http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/AbilityToPay.pdf

[58] "Information Sheet on Wavier of Superior Court Fees and Costs," Judicial Council of California, FW-001-INFO (revised July 1, 2015), accessed at http://www.ventura.courts.ca.gov/form_packets/fee_waiver.pdf

[59] *Fair Justice for All*, *supra,* note 28, recommendations 2, 3, and 4, pp. 14-15.

[60] *Interest Wavier Guide: A Guide on How to Obtain a Court Order Waiving or Reducing Interest on Legal Financial Obligations*, ACLU of Washington (January 2012), accessed at

https://www.acluwa.org/sites/default/files/attachments/LFO%20Interest%20Waiver%20Guide%20%28January%202012%29.pdf

[61] *Tax Refund Intercept Proposal to Further Compliance with Court Orders,* Proposal of the Public Trust and Confidence Committee, Conference of Chief Justices, Resolution 15 (January 30, 2003).

include the requirement of alternatives for those unable to pay such as community service as a way for "defendants to accept and pay for their mistakes in a manner appropriate to their means" that "goes to the heart of maintaining the credibility of the justice system and ensuring that justice is fairly and evenly administered."[62]

State courts have established guides and handbooks for courts to maximize collection of court debt within a context that accounts for ability to pay and provides alternatives such as community service and payment over time. Examples can be found in Michigan,[63] Texas,[64] California,[65] and Virginia.[66]

In assessing and collecting fines and fees, courts can adopt the following practices that strengthen compliance with *Bearden*, improve compliance with court orders, and reserve jail for those able but unwilling to satisfy LFOs.

1. Simplify and clarify court LFOs and their application

Courts can clarify and simplify court debt and its consequences. The National Center for State Courts included among its recommendations made after studying the Missouri courts in 2015, "Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension."[67]

Confusion about what fees apply is not a recent phenomenon. A 2006 report found, "California now has dedicated funding streams for over 269 separate court fines, fees, forfeitures, surcharges, and penalty assessments that may be levied on offenders and violators. These fines, fees, forfeitures (bail defaults or judgments and damages), surcharges, and penalties appear in statutes in 16 different government codes and are in addition to the many fees, fines, and special penalties that local governments may impose on most offenses."[68]

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[62] Editor Charles F. Campbell, *et al, Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions, Second Edition*, National Center for State Courts (2009), p. 20.

[63] Michigan Supreme Court State Court Administrative Office Collections Work Group, *Trial Court Collections Standards & Guidelines* (July 2007), p. 6 ("Financial penalties should be assessed based on the litigant's financial situation and ability to pay").

[64] Carl Reynolds, Mary Cowherd, Andy Barbee, Tony Fabelo, Ted Wood, and Jamie Yoon, *A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes*, Council of State Governments Justice Center, Texas Office of Court Administration (2009), pp. 9-12) ("Court officials should consider the defendant's financial situation when assessing court costs, fines, fees, probation supervision fees, and restitution" and urging automation of forms to assess ability to pay uniformly).

[65] Jessica Sonora, *California's Enhanced Collections Unit, Judicial Council of California, Administrative Office of the Courts* (2008), p.125 (listing among best practices, "Include financial screening to assess the ability to pay prior to processing installment payment plans and receivables").

[66] *Commonwealth Court Collections Review*, Auditor of Public Accounts, Commonwealth of Virginia (April 2013) pp. 8, 11 ("A financial evaluation should be a mandatory process throughout the court system and a payment plan established if fines and costs are not paid upon disposition" and establishing best practices for community service programs and their accountability within the court system).

[67] Gordon Griller, Yolande E. Williams, and Russell R. Brown, *Missouri Municipal Courts: Best Practice Recommendations,* National Center for State Courts (November 2015), p.27.

[68] Marcus Nieto, *Who Pays for Penalty Assessment Programs in California?,* California Research Bureau (February 2006), at p. 1, citing California State Controllers' Office, Manual of Accounting and Audit Guidelines for Trial Courts-Revision 16, Appendix C, California Codes. The State Controller's January 2004.

The Ohio Supreme Court brought clarity to the confusion over LFOs and their consequences in February 2014, when it issued an annotated, two-page bench card summarizing a defendant's obligations and rights regarding LFOs, including the right not to be jailed except for willful failure to pay, limiting use of contempt to failure to appear but not to collect LFOs, and defining credit for community service and limits on hours per month.[69] The bench card includes the admonition that among the methods of collection that are not permitted is to find a violation of parole or extend parole for non-payment. The Alabama Supreme Court adopted a similar bench card in November 2015.[70]

The Municipal Court of Biloxi, Mississippi, also adopted a bench card setting forth the procedures for collecting LFOs and community service options as part of a settlement of federal litigation.[71] In another case settlement, the City of Montgomery, Alabama, agreed to provide each defendant with "Form One" that explains court processes, including

> If you indicate that you are unable to pay your fines and costs, the Court will order you to complete an Affidavit of Substantial Hardship and other forms as deemed necessary, and may inquire about your finances, to include but not be limited to: income, expenses (i.e. rent, childcare, utilities, food, clothing, medical condition/bills, transportation, etc.), bank accounts, and other assets. In some circumstances, the Court may also inquire about your efforts to obtain the money to pay, including your job skills and efforts to apply for jobs. You should present any documents that you have to the Court during this inquiry. If you cannot afford an attorney, the Court will provide a Public Defender to represent you.[72]

Rather than awaiting the outcome of litigation based at least in part on confusion engendered by multiple statutes and ordinances imposing court fees, courts should actively "clarify and consolidate the spreading variety of state and local fees and costs into a comprehensible package."[73]

When the Washington Supreme Court ruled in 2015 in *State v. Blazina* that state courts must consider a defendant's ability to pay when imposing LFOs, the court also described ways to determine a defendant's inability to pay:

> [T]he court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry,

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[69] Supreme Court of Ohio, Office of Judicial Services, *Collection of Fines and Court Costs* (February 2014).

[70] Bench card issued by the Supreme Court of Alabama, "Collections of Fines and Court Costs, Developed for Alabama Judges by the Alabama Access to Justice Commission," accessed at http://nacmconference.org/wp-content/uploads/2014/01/Bench-Card-11-10-15.pdf

[71] Bench card, "Biloxi Municipal Court Procedures for Legal Financial Obligations & Community Service, "provided by the ACLU as Exhibit B in settlement of Kennedy, *et al.* v. City of Biloxi, CIV 1:15-cv-00348-HSO-JCG, on March 15, 2016, resolving allegations challenging the jailing of poor people in Biloxi without a hearing or representation by counsel, accessed at https://www.aclu.org/sites/default/files/field_document/exhibit_b_biloxi_municipal_court_bench_card_03152016.pdf

[72] Settlement Agreement, *Cleveland v. Montgomery*, Case 2:13-cv-00732-MHT-TFM, Document 56-1 (filed 9/12/2014), p. 8, accessed at https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/case/exhibit_a_to_joint_settlement_agreement_-_judicial_procedures-_140912.pdf

[73] Carl Reynolds, *et al*., *A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes,* Council of State Governments Justice Center, Texas Office of Court Administration (March 2, 2009) p. 25.

> the court must also consider important factors, as amici suggest, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay.
>
> Courts should also look to the comment in court rule GR 34 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists ways that a person may prove indigent status. For example, under the rule, courts must find a person indigent if the person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps. Id. (comment listing facts that prove indigent status). In addition, courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline. Id. Although the ways to establish indigent status remain nonexhaustive, see id., if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs.[74]

Following *Blazina*, the Washington Supreme Court Minority and Justice Commission published updated reference guides for all levels of trial courts to use in determining indigence, and, thus, grounds for finding inability to pay.[75] The guides identify mandatory and discretionary LFOs, and re-state the *Blazina* finding that a court should seriously question ability to pay if an offender is indigent, as indicated by receipt of means-tested public benefits; an income below 125% of the federal poverty level (FPL) (identifying the FPL income for 2015 for an individual and for a family of 2, 3, 4, 5 or 6); an income above the FPL but basic living expenses that render the defendant unable to pay, including shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court imposed obligations; or other compelling circumstances that include incarceration or other LFOs such as restitution.[76] "The court may presume indigence if a person has been screened and found eligible for court-appointed counsel."[77]

The Texas Judicial Council recently adopted a series of proposed amendments to the Collection Improvement Program (CIP), where "[t]he primary goal of the proposed amendments is to provide procedures that will help defendants comply with court ordered costs, fines and fees without imposing undue hardship on defendants and defendants' dependents."[78] The CIP requires each court to have a local collection improvement program with at least one staff person to monitor defendants' compliance with court LFOs and payment plans.[79] The amendments add requirements for staff to obtain a statement with information about a defendant's ability to pay, report to a judge when it appears that compliance may impose undue hardship on the defendant or the defendant's dependents, and require that before referring a non-compliant defendant to a judge staff must make efforts to contact a defendant and explain steps to take if

[74] *State v. Blazina*, 182 Wn.2d 827, 839 (2015) (*en banc*).

[75] Washington State Minority and Justice Commission, *Updated Reference Guides* (2015), accessed at https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf for superior court, https://www.courts.wa.gov/content/manuals/Juvenile%20LFOs.pdf for juvenile court, and https://www.courts.wa.gov/content/manuals/CLJ%20LFOs.pdf for courts of limited jurisdiction.

[76] *Id.*

[77] *Id.*

[78] Memorandum from Texas Administrative Director David Slayton, "Analysis of Proposed Amendments to Texas Administrative Code, Chapter 175, Collections Improvement Program" (May 27, 2016), p. 1.

[79] Texas Administrative Code, Title 1, Part 8, Chapter 175.3.

the defendant is unable to pay.[80] A proposed amendment to the compliance review standards makes it clear that the purpose of the CIP is not to measure performance based on how much money a court collects, but instead to "confirm that the county or municipality is conforming with requirements relating to the CIP" including the amendments' emphases on assessment and consideration of ability to pay.[81]

The Washington reference guides, as well as the bench cards in Ohio and Alabama, efforts in Texas, and other court initiatives provide templates to consolidate and explain mandatory and discretionary court LFOs while giving to courts the tools and resources needed to guide decisions about scaling court LFOs to a defendant's ability to pay.

2. Adopt practices that minimize failure to appear and failure to pay

For low-level offenders, there are two paths to almost certain imprisonment related to court debt. The first is to fail to appear in court, resulting in an arrest warrant and added fees. The second is to fail to pay immediately upon conviction, resulting in a payment plan that may include added fees and a greater risk of non-compliance that can also lead to an arrest warrant. The most direct step to mitigate the impact of court LFOs that is within the ability of courts may be to minimize the incidence of failure to appear or failure to pay. Evidence-based practices can significantly mitigate both. There is an abundance of useful information about the successful reduction of failure-to-appear rates through reminders. In 2004, 33% of the Jefferson County, Colorado, jail inmate population consisted of defendants who failed to comply with court orders such as failure to appear, failure to pay, or failure to comply with a condition of release, an increase from 8% in 1995. Of this population, 75% were arrested on failure to appear warrants for misdemeanor, traffic, or municipal offenses.[82]

The County's Criminal Justice Coordinating Committee implemented a pilot project to call offenders seven days before a scheduled court appearance. The success of the pilot program resulted in a funded permanent program including two permanent staff at the Jefferson County Sheriff's Office, with "exceptional" results:

> The successful-contact rate has risen from an initial rate of 60% in the Pilot Project to 74% in 2010 for the Duty Division, and from 78% in 2009 to 80% in 2010 for Division T. In 2007, the court-appearance rate for defendants who were successfully contacted was 91%, compared to an appearance rate of 71% for those who were not. In 2010, combining all statistics from both Duty Division and Division T, the court-appearance rate for defendants who were successfully contacted was 92%, compared to an appearance rate of 73% for those who were not. These increases have significantly reduced the costs of FTAs, including the somewhat intangible costs to victims and society in general. Moreover, although not empirically tested, these numbers indicate that the use of a live caller appears to have permitted experimentation and "tweaking" of the process, which has, in turn, fostered steady improvement.[83]

[80] Memorandum, *supra,* note 78, pp. 2-4.

[81] *Id.* at 4; proposed amendment to Chapter 175.5(d).

[82] Timothy R. Schake, Michael R. Jones, and Dorian M. Wilderman, "Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Reminder: The Jefferson County, Colorado, FTA pilot Project and Resulting Court Date Notification Program," Court Review Volume 48 Issue 3 (2012), at p. 86.

[83] "Increasing Court-Appearance Rates," *supra,* note 82, at p. 92.

When Coconino County, Arizona, officials discovered that 22.9% of the jail population consisted of those arrested for failure to appear, including 33.6% of the misdemeanor population, the Flagstaff Justice Court instituted a pilot project to make phone calls to remind defendants of upcoming court dates. The result was a failure to appear rate for the control group (not called) of 25.4% but just 12.9% for the called group, including just 5.9% for those personally contacted.[84] A study of the Flagstaff project found

> The problem of non-compliance with court orders, including failing to appear for court hearings, is endemic across the country. Failure to appear for court causes increased workloads for court staff, issuance of misdemeanor arrest warrants, incarceration on minor offenses for the non-compliant defendant, and longer jail stays for those defendants in connection with the present offense or future offenses. One of the factors considered by the courts in determining conditions of release is a defendant's past history of failing to appear. Failure to appear on misdemeanor cases also results in the loss of revenues from unpaid fines and fees.[85]

When the Los Angeles Superior Court instituted the Court Appearance Reminder System (CARS) to make automated calls for the 9,000 monthly scheduled court appearances for traffic cases, the court realized a 22% decrease in traffic failures to appear, an increase in revenue, and avoided costs associated with reduced clerk time required for these cases.[86] One-time start-up costs for the program were between $29,000 and $30,000 in each court, with an average monthly cost of approximately $1,200, while the annual cost saving from reduced failures to appear alone was more than $30,000, resulting after payment of start-up costs in cost-neutral enhancement of public service and better outcomes for offenders.[87]

Similarly, a pilot program costing $40,000 in 2005 for automated phone reminders to defendants in Multnomah County Circuit Court in Portland, Oregon, reduced failures to appear by almost one-half, leading to full funding of phone reminders for all 72,000 people charged with a crime in the county and an expected savings in staff time and resources of up to $6.4 million annually.[88]

An effective alternative to phone reminders can be written postcard reminders. A study of more than 7,000 misdemeanor defendants in 14 Nebraska counties for cases from March 2009 to May 2010 demonstrated that the risk of failure to appear is reduced with a postcard reminder system and that including written information about possible sanctions for FTA makes the reminders more effective than just a reminder.[89]

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[84] Wendy F. White, Criminal Justice Coordinating Council, and Flagstaff Justice Court, Coconino County, "Court Hearing Call Notification Project" (May 17, 2006), p. 1.

[85] *Id.*, p.4.

[86] Judicial Council of California Report, *Court Appearance Reminder System (CARS), Los Angeles Superior Court* (2010), p.2 accessed at http://www.courts.ca.gov/27771.htm

[87] *Id.*, pp. 3-4.

[88] Aimee Green, "Your Court Date Is Nearing, Automated Reminder Warns," Newhouse News Service (October 1, 2007), accessed at http://www.chron.com/news/nation-world/article/Your-court-date-is-nearing-automated-reminder-1612333.php

[89] Brian H. Bornstein, Alan J. Tomkins, Elizabeth M. Neely, Mitchel N. Heian, and Joseph A. Hamm, "Reducing Courts' Failure-to-Appear Rate by Written Reminders," *Psychology, Public Policy, and Law* 19:1 (2013), pp. 70-80, at p. 2 78-79, accessed at http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1601&context=psychfacpub

In addition, the study demonstrated that defendants who appeared in court had more confidence in the courts and a greater sense of procedural justice than those who did not appear.

In an effort to reduce FTA rates, New York City worked with ideas42, a non-profit behavioral design lab, to redesign the city's summons to make the information regarding the court date easier to understand. In 2016 New York City began testing a reminder system that uses automated telephone calls and text messages to remind defendants about court dates and improve appearance rates.[90]

Failures to appear might also be caused by a lack of knowledge by individuals charged with offenses who believe that the only option is to pay the fines or fees for the offense or go to jail. Courts can explain the available options for defendants to encourage their appearance. This information could be provided in written citations or summonses, on the court's website, and in personal communication with defendants in court.

A sense of personal responsibility should encourage those accused of an offense to mind their court dates and appear to resolve the charges. The high rates of failure to appear indicate that this idea is not acted upon by many offenders. Courts can adopt cost-effective reminder practices and information-sharing practices that substantially increase attendance in court, save staff time, reduce added fees for non-appearance, and increase revenue collected. Achieving these goals should not be inhibited by the reasonable, but unsupported, notion that people should be responsible enough to get themselves to court.

3. Eliminate additional fees for collections-related supervision/probation and cease extensions of supervision/probation solely to achieve payment of fines and fees or the equivalent in community service

The for-profit supervision industry has become embedded in a number of court systems as a way to achieve payment of LFOs that is "free" to taxpayers. However, touting this process as "free" is misleading because the arrangement masks costs to the taxpayer. When the private contractor's fees are unpaid, the defendant can be incarcerated at taxpayer expense. When supervision fees are added to the LFOs of those who need time to pay court-imposed debt, the risk of jail becomes greater. It can be dangerous to create a profit motive for lengthening the period and cost of supervision. Even without abuses, it is contradictory to impose supervision fees of $40 per month on defendants who are unable immediately to pay as little as a few hundred dollars in LFOs.

An in-depth examination of data on LFOs concludes, "If the policy goal is to improve the lives of victims, recoup state expenditures, and reduce crime, our findings suggest that the imposition of monetary sanctions is very likely a policy failure" in large part due to the increasing imposition of the costs of incarceration and supervision on offenders.[91] Whether from a private company or to reimburse the state, imposition of incarceration and supervision costs on those already struggling to satisfy court debt increases the likelihood of continued failure by offenders at unnecessary cost to the courts and jails.

The risks of abuse when a court delegates to a private corporation the supervision of an offender for a monthly fee collected by the company are discussed at Section 2C above. This practice provides a financial incentive for

[90] Mayor's Office of Criminal Justice, *Streamlining the Summons Process*, accessed at http://www1.nyc.gov/site/criminaljustice/work/summons_reform.page

[91] "Drawing Blood from Stones," *supra,* note 41, p.1792.

the company to keep those with LFOs under the company's supervision. Combined with the dedication of the debtor's very scarce resources not to pay the court, but to pay the supervising company, the cycle of never-ending LFOs traps those least able to pay, often leading to intermittent jail terms. At the very least, close monitoring of private companies tasked with supervision and collection of LFOs for profit is needed. At best, courts can scale court LFOs to levels that allow payment with minimal court supervision, provide alternatives to payment such as community service, and take the profit motive out of supervision for court debt.

In some jurisdictions, courts do not directly supervise collections and these contracts are entered into by the county or municipality. It is important for courts to be aware of such contracts and their consequences to ensure enforcement of court-ordered LFOs is lawful. Judges may be subject to judicial sanctions for abusive enforcement practices by contract LFO collectors because the judge is ultimately responsible for the practices adopted by these companies, even when the judge is a part-time municipal judge with limited administrative authority.[92]

Faced with concerns about reports of abuses, courts have taken steps to manage practices relating to collecting LFOs. After the New Jersey Assembly passed a statute authorizing municipalities and counties to enter into contracts with private collection firms for municipal LFOs, the New Jersey Supreme Court adopted procedures requiring all payment amounts to be remitted to courts which would then pay the contractor's fees as limited by statute, with documentation and oversight by the Administrative Director of the Courts.[93] In 2015 the Virginia Supreme Court re-issued Master Guidelines for agreements with entities, including private collections agencies, for collection of unpaid fines, court costs, forfeitures, penalties, statutory interest, restitution, and restitution interest, with explicit guidance on the maximum amount payable to such contractors and describing the processes for oversight by the Commonwealth's Attorney and courts.[94] As provided by statute, low risk offenders in Colorado may be supervised by use of contract probation services within restrictions established by Chief Justice Directive 16-01.[95]

At least 13 states have a statute that permits extending probation for failure to pay court debt, which "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 actually reduces public safety."[96] Both Ohio (by rule) and Virginia (by statute) prohibit keeping offenders on extended supervision for failure to pay court debt.[97] The Brennan Center suggests model language to require an end to supervision based

[92] Alabama Judicial Inquiry Commission, Advisory Opinion 14-926 (March 4, 2014) (Part-time judge with no ability to hire or fire city clerk and with no involvement in the selection of a private probation company has "ethical accountability" for the actions of the company if the judge should have known "company employees were failing to perform their duties in a manner consistent with the high standards required of judges and the court").

[93] New Jersey Supreme Court Procedures Governing the Private Collection of Municipal Court Debt Under L. 2009, C. 233 (March 31, 2011), p. 3.

[94] Virginia Supreme Court, *Master Guidelines Governing Collection of Unpaid Delinquent Court-Ordered Fines and Costs Pursuant to Virginia Code §19.2-349* (July 1, 2015).

[95] Colorado Supreme Court Chief Justice Directive 16-01, effective January 1, 2016, accessed at https://www.courts.state.co.us/Courts/Supreme_Court/Directives/16-01%20Initial%20Web.pdf

[96] *Criminal Justice Debt*, *supra*, note 20, p. 20, citing *Barrier to Reentry supra,* note 7 at p.7.

[97] Ohio Admin. Code, section 5120:1-1-02(K); Va. Code Annot., section 19.2-305 (2012).

solely on failure to pay court debt.[98] Along with a creative approach to alternatives to payment, an end to supervision when the only remaining debt a defendant has is court LFOs would be an important step toward divorcing court LFOs from unnecessary and counterproductive incarceration.

C. Expand and Improve Access to Alternatives to Satisfy Court LFOs

The drumbeat of studies and reports about debtors' prisons for those too poor to pay court LFOs makes it unnecessary to linger over the need for alternatives to a post-adjudication "pay or go to jail" approach. Recent examples include a 2015 report by the ACLU on "Debtors' Prisons in New Hampshire" and a 2016 report by the Legal Aid Justice Center, "Driven Deeper into Debt: Unrealistic Repayment Options Hurt Low-Income Court Debtors."[99] When considering court LFOs, it is important to focus on the goal of offender compliance, especially when the offense is minor and the offender has limited financial means. To this end, courts should establish an alternative to the cycle of offender-funded supervision and its threat of continuing and growing debt by providing community service and other options through which the offender can earn credit at a reasonable rate against LFOs.

1. Community Service

As long ago as 1991, the National Center for State Courts endorsed community service after verification of indigence as a necessary alternative to criminal fines.[100] Community service options seem to be mandated by the requirement in *Bearden* to consider reasonable alternatives to payment for those unable to pay court LFOs. For this reason many states have statutes such as that in New Mexico:

> The person may also be required to serve time in labor to be known as "community service" in lieu of all or part of the fine. If unable to pay the fees or costs, he may be granted permission to perform community service in lieu of them as well. The labor shall be meaningful, shall not be suspended or deferred, and shall be of a type that benefits the public at large or any public, charitable or educational entity or institution and is consistent with Article 9, Section 14 of the constitution of New Mexico [anti-donation clause]. . . [A] person who performs community service shall receive credit toward the fine, fees or costs at the rate of the prevailing federal hourly minimum wage.[101]

There is an administrative burden to the verification and tabulation of community service credits against LFOs. However, many communities have non-profit organizations eager to provide work opportunities in return for tracking the hours provided by community

[98] *Criminal Justice Debt*, *supra*, note 20, p. 21.

[99] American Civil Liberties Union of New Hampshire, *Debtors' Prisons in New Hampshire* (9/23/2015), accessed at http://aclu-nh.org/wp-content/uploads/2015/09/Final-ACLU-Debtors-Prisons-Report-9.23.15.pdf; Angela Ciolfi, Pat Levy-Lavelle, and Mario Salas, "Driven Deeper into Debt: Unrealistic Repayment Options Hurt Low-Income Court Debtors," Legal Aid and Justice Center (5/4/2016), accessed at https://www.justice4all.org/wp-content/uploads/2016/05/Driven-Deeper-Into-Debt-Payment-Plan-Analysis-Final.pdf

[100] Brian Lynch, William H. Rousseau, George F. Cole, and Thomas A Henderson, "Compliance with Judicial Orders: Methods of Collecting and Enforcing Monetary Sanctions," Project Monograph (December 31, 1991), p.8.

[101] NMSA 1978, Section 31-12-3 (1993).

service workers at no cost to the organization. Instead of tracking jail time served for non-payment of LFOs, clerks can enter data reported by service organizations that benefit from community service. An example is found in the ReFinement Program in Penobscot County, Maine, where the non-profit Volunteers for America tracks, monitors, and supervises offenders in community projects with credit against LFOs at a rate of $10 per hour.[102] In a number of states the rate of credit toward LFOs for community service is specified by statute. Georgia, New Mexico, and Washington specify minimum wage credit.[103] Some states provide, as does Iowa, instead of a flat rate of credit, the court has discretion to establish a number of community service hours required to satisfy LFOs.[104] There is support for the view that courts should be authorized to take into account an offender's employment status and other factors in setting a requirement for community service that will satisfy LFOs:

> The design of community service programs also matters. For example, defenders in Illinois observed that when community service is imposed on individuals who are otherwise employed, it can be difficult for them to complete the necessary hours. For this reason, community service should only be imposed at the defendant's request, or when an unemployed defendant has been unable to make payments. Similarly, judges should have discretion as to how many hours of community service should be required to pay off criminal justice debt, rather than mandating by statute a fixed dollar value per hour. If a person faces thousands of dollars of debt, a fixed dollar equivalent of service hours may not be realistic.[105]

When NCSC recommended that Missouri municipal courts expand and coordinate community service opportunities in lieu of LFOs, it also recognized that many courts lack resources to track community service and so recommended that the Office of the State Court Administrator "pinpoint close geographic clusters of municipal courts regardless of their jurisdictions that could benefit from working together to access local diversion and community service programs, and provide such information to the affected presiding judges of the circuit courts and municipal judges for further action."[106] Such a creative approach may be necessary and may require dedication of state and local resources to implement community service effectively as a means to satisfy LFOs that is more productive than jail for non-payment.

Where permitted by statutes and ordinances that otherwise mandate LFOs, a Community Court may provide an alternative to incarceration designed to intervene in a defendant's cycle of criminal conduct.[107] Community Courts are an effort to substitute restorative justice alternatives, such as removal of graffiti, cleaning neighborhood parks, and helping maintain public spaces while also linking offenders to drug treatment, mental health services, job training, and other services.[108] One example can

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[102] Volunteers for America, *ReFinement Program Model* Requirements, accessed at http://www.mainecounties.org/uploads/1/8/8/6/18869398/penobscot_refinement_program_model.pdf

[103] Ga. Code Annot., Section 17-10-1(d); NMSA 1978, Section 31-12-3 (1993); Wash. Rev. Code Section 10.01.160 (2015).

[104] Iowa Stat. Section 910.2.

[105] *Criminal Justice Debt, supra,* note 20, p. 15.

[106] *Missouri Municipal Courts: Best Practice Recommendations, supra,* note 67, pp.28-29.

[107] *Id.*

[108] Center for Court Innovation, (2016), accessed at http://www.courtinnovation.org/mentor-community-courts

be found in the Atlanta Municipal Court.[109] Another is San Francisco's Community Justice Center[110] Where permitted as an alternative to LFOs, a Community Court may provide a cost-effective alternative to incarceration for low-level offenders who otherwise might not be able to satisfy LFOs.

2. Day Fine

One alternative approach that could reduce incarceration for LFOs, but is not now widely used in United States courts, is the day fine. A "day fine" sets the fine based on an offender's daily income and the gravity of the offense. "Once these two factors have been determined, the officer calculates the amount of fine imposed by multiplying the fine units an offender receives by his or her daily income (adjusted for family and housing obligations)."[111] In advocating for consideration of day fines as an alternative to high LFOs, the Council of Economic Advisers in December 2015 stated, "Evaluation research has shown that 'day' fine systems without statutory maximums have the additional potential to increase collection rates, as all defendants should be capable of paying proportional fines, to increase total fine revenue collected, and to reduce arrest warrants for outstanding debt."[112]

Pilot efforts to use day fines in the late 1980s in cities in New York, Iowa, and Connecticut reported promise but did not develop ongoing momentum. Analysis of these efforts by the Bureau of Justice Assistance in 1996 found that, for successful day fine programs, "a great deal of up-front policy formulation and program planning is necessary. Time must be spent on education and training, both before implementation and on a continuing basis." A court willing to undertake these challenges might find day fines a useful tool in enforcement of LFOs.

3. Non-Financial Compliance to Satisfy LFOs

Another option would be to focus non-monetary compliance options on efforts that would improve the defendant's financial situation. A court could provide credit for GED preparation classes, work-skills training, or other non-traditional types of options to ensure compliance with LFOs while providing defendants with viable options to improve their future prospects.

The Michigan Workgroup report discussed with regard to assessing ability to pay also provides examples of approaches to reduce court LFOs when they are overly burdensome given an individual's circumstances. The report provides examples of payment alternatives, including community service that targets having offenders provide services tied to an ability or interest of the offender, attendance in school, or completion of classes or education requirements, with program materials and data on cost savings from saved jail use totaling $749,160 in the 61st district court in fiscal year 2013-2014.[113] There are documents from the Third Circuit Court Family Division program for negotiating reduction and waiver of non-mandatory fees after a good faith effort to pay as well as model policy on debt inactivation for court LFOs.[114]

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[109] Atlanta Municipal Court Community Court Office of Court Programs, accessed at http://restorativejusticecenter.org/RTF1.cfm?pagename=Leadership

[110] Beau Kilmer and Jesse Russell, *Does San Francisco's Community Justice Center Reduce Criminal Recidivism?* Rand Corporation (2014), p. 7.

[111] Edwin W. Zedlewski, "Alternatives to Custodial Supervision: the Day Fine," National Institute of Justice Discussion Paper (April 2010), p. 2, accessed at https://www.ncjrs.gov/pdffiles1/nij/grants/230401.pdf

[112] Issue Brief, *supra,* note 8, p. 5.

[113] *Michigan Ability to Pay Workgroup, supr,* note 57, Appendix I.

[114] *Id.*, Appendices J and K.

In addition to other provisions in the Biloxi, Mississippi, Municipal Court Bench Card, judges are required to consider "completion of approved educational programs, job skills training, counseling and mental health services, and drug treatment programs as an alternative to, or in addition to, community service."[115] The San Diego, California, Homeless Court Program provides credit in place of fines for the completion of various activities including life skills training, chemical dependency/AA meetings, computer and literacy classes, employment training, and counseling.[116]

When courts assess an offender's ability to pay and determine that something less than payment of 100% of otherwise applicable LFOs is appropriate, judges need to have the authority to provide at least limited relief from the consequences that actually impair the goals of the criminal justice system, including a meaningful opportunity to avoid future criminal sanctions. The Uniform Collateral Consequences of Conviction Act provides an "order of limited relief" when the individual establishes that granting the relief will assist the individual in obtaining or keeping employment, education, housing, public benefits, or occupational licensing; the individual has a substantial need for the relief in order to live a law-abiding life; and granting the relief will not pose an unreasonable risk to the safety of the public or any individual.[117]

Leadership is required to shift from a collections focus to permit satisfaction of court LFOs through alternative opportunities for those with limited ability to pay. An editorial by Collee Station, Texas, Municipal Judge Ed Spillane described the difficulties of assessing an individual's economic hardship, but also the ways community service and alternative sanctions benefit the individual and community much more than jail for non-payment. His alternatives include payment plans with regular, very small payments, attendance at parenting and child safety classes in return for debt waiver, assignment to DWI impact panels, anger management training, and warrant amnesty programs for those who agree to resolve outstanding LFOs without arrest.[118] Especially for low-level offenders, an approach that emphasizes a consequence related to the offense and that is within the offender's means adheres to the requirement to assess willfulness and ability to pay and more probably deters criminal behavior than hundreds or thousands of dollars in court LFOs.

Some recent legislative activity recognizes the need for courts to have the authority to mitigate LFOs and their consequences. For example, in Oklahoma where court LFOs can require $3,000 to reinstate a driver's license, a statute adopted in 2013 allows those with suspended or revoked licenses to get a provisional license for $25 per month that allows the person to drive to a place of employment, religious service, court-ordered treatment, or other limited locations while the $25 monthly fee is applied toward outstanding costs owed by the offender.[119]

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[115] Biloxi Municipal Court Bench Card, *supra*, note 71, p. 3.

[116] Homeless Court 2016 program description, accessed at http://www.homelesscourtprogram.com/

[117] See American Bar Association resolution, February 9, 2010, adopting Uniform Collateral Consequences of Conviction Act, accessed at http://www.uniformlaws.org/Shared/Docs/ABA%20Approval%205-11-2010.pdf

[118] Ed Spillane, "Why I Refuse to Send People to Jail for Failure to Pay," *Washington Post* (April 8, 2016).

[119] Clifton Adcock, *Ex-Offenders Face Steep Price to Reinstate Driver's License* (2/24/2015), Oklahoma Cure accessed at http://nationinside.org/campaign/oklahoma-cure/posts/ex-offenders-face-steep-price-to-reinstate-drivers-licenses/

The Washington Supreme Court held that due process is violated by an automatic suspension of a driver's license without providing an opportunity to be heard at an administrative hearing.[120] In Maryland, an administrative hearing at which a driver can establish inability to pay in order to avoid suspension is required by statute.[121] An option provided in Indiana permits a restricted license for work, church, or participation in court-ordered activities.[122]

D. Ensure Judges Have the Authority to Modify, Mitigate, or Waive Fees for Those Unable to Pay Despite Good Faith Efforts

Many states have mandatory LFOs that a judge is required to impose on the defendant, regardless of ability to pay. [123] For example, in New York, judges are required by statute to impose a sex offender registration fee, DNA databank fee, and crime victim assistance fee on defendants who are convicted of particular types of offenses.[124] Judges are not permitted to waive or mitigate these fees, at sentencing or any other time, because of the defendant's inability to pay.[125] Similarly, in California, judges are only permitted to consider a defendant's ability to pay when determining whether certain fines should be imposed in excess of a statutory minimum: "The court must impose the minimum fine even when the defendant is unable to pay it."[126] Judges may waive fines only if there are compelling and extraordinary reasons, and "inability to pay is not an adequate reason for waiving the fine."[127] Mississippi is another state that prohibits judges from reducing or suspending mandatory fines.[128]

Other states require mandatory LFOs to be imposed, but allow them to be reduced or waived at a post-sentencing hearing upon a showing of inability to pay. In Washington State, judges are required to impose crime-specific mandatory LFOs such as victim penalty assessments, DNA collection fees, felony restitution, and others.[129] Although these crime-specific LFOs are mandatory at the time of sentencing, judges have discretion to waive, in whole or in part, many of these LFOs at a post-sentencing hearing.[130]

In *Bearden* the United States Supreme Court held that it is unconstitutional to put a person in jail who, despite good faith efforts, is unable to

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[120] *City of Redmond v. Moore*, 151 Wash.2d 664, 667 (Wash. 2004).

[121] Md. Code Annot., section 12-202.

[122] Ind. Code, section 9-24-15-6.7 (2012).

[123] A study of fifteen states by the Brennan Center for Justice concluded that at least one mandatory LFO existed in fourteen of the fifteen states. Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010). Many, if not most, states allow judges to waive or reduce discretionary LFOs, although judges may decline to exercise their authority to waive discretionary LFOs. *Id* at 13-14. *See also* Shalia Dewan, "Driver's License Suspensions Create a Cycle of Debt," *NewYork Times* (April 14, 2015), accessed at http://www.nytimes.com/2015/04/15/us/with-drivers-license-suspensions-a-cycle-of-debt.html?_r=0 ("In Tennessee, judges have the discretion to waive court fees and fines for indigent defendants, but they do not have to, and some routinely refuse.")

[124] N.Y. Crim. Proc. Law § 420.35(2). The court may waive the crime victim assistance fee, but not the other fees, only if the defendant is an eligible youth and the fee would constitute an unreasonable hardship.

[125] *Id*.

[126] California Administrative Office of the Courts, Benchguide 83 § 83.16 (2014), available at http://victimsofcrime.org/docs/default-source/restitution-toolkit/benchguide2014.pdf?sfvrsn=2 (citing Cal. Penal Code § 1202.4(c)).

[127] *Id*. at § 83.21.

[128] See Biloxi Municipal Court, LFO, and Community Service Benchcard (2016), available at http://www.biloxi.ms.us/wp-content/uploads/2016/03/BenchCard.pdf ("The Court may not reduce or suspend any mandatory state assessments, including those imposed under Miss. Code Ann. § 99-19-73").

[129] See Wash. Rev. Code § 7.68.035; WASH REV. CODE § 43.43.7541; Wash. Rev. Code § 9.94A.753(5).

[130] Wash. Rev. Code § 9.94A.6333.

pay LFOs. As discussed in section C.3 above, there are ways for judges to create alternatives to financial payment that can satisfy LFOs. Where legislation or local ordinances disavow the authority of judges to exercise such discretion, it is important to reform the law. Not only is it important in order for the statute or ordinance to be consistent with *Bearden*; judges are in the best position to determine if an alternative to payment or waver of part of the LFOs following a good faith effort to pay is appropriate when the goal is compliance and not fundraising upon threat of incarceration. Legislation has created this myriad of fees, and legislation will be required to reduce or properly scale them to an offender's misconduct. In 2016, Maine passed Senate Paper 666, which authorizes judges to suspend or reduce LFOs, including mandatory LFOs, and in doing so to consider various factors including "reliable evidence of financial hardship."[131]

COSCA members and other state court leaders should work with legislative bodies to recognize and encourage judicial discretion to allow judges to tailor LFOs to an offense and mitigate or waive LFOs when there has been a good faith effort to pay or otherwise comply, and the defendant is unable to pay.

E. Impose Jail Time for Willful Refusal to Pay, and Provide Credit at a Rate that Results in Reasonable Satisfaction of Court Obligations

Despite the best efforts of courts to assess ability to pay fairly and provide alternatives to court debt that accommodate an individual's circumstances, there will remain those who willfully refuse to pay. A court may reasonably conclude that these individuals have earned the consequence of incarceration. Even at this stage, however, the result of an offender's loss of liberty should be satisfaction of the offender's obligations to the court and not additional punishment through the accumulation of additional LFOs. A range of offenses result in unpaid LFOs, but the focus in obtaining satisfaction of LFOs in each case is compliance with the law and not justice-for-profit.

One of the ironies of court LFOs is observed when a court debtor "volunteers" to serve jail time as the best option to satisfy court debts. When faced with court LFOs totaling thousands of dollars compounded by late fees, Homer Stephens asked a judge in the Oklahoma City Municipal Court to send him to the jail where he eliminated the debt after 17 days.[132] In many jurisdictions, offenders who spend time in jail earn credit against court LFOs, such as $50 per day in Montgomery, Alabama, that increases to $75 per day if the offender works while in jail or $50 to $100 per day in Texas counties.[133] The status of such "volunteers" may merit closer scrutiny if a statute could be interpreted to give judges the authority to apply jail time as credit toward LFOs without a *Bearden* hearing.[134]

Confronted by an offender who has the ability to pay but has not done so, courts may consider a process of graduated sanctions short of jail since incarceration will likely frustrate the offender's ability to pay while adding to the cost to taxpayer-funded jails. The range of sanctions can include mandatory budget classes; mandatory service in the community or at a restitution center; special appearances before a

[131] S.P. 666, section 13, 127th Leg., Reg. Sess. (Me. 2016), amending 17-A MRSA section 1300(3), accessed at http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0666&item=1&snum=127.

[132] Clifton Adcock, "*Offender's Story: Untying the Bonds of Court Debt,"* Prisoners of Debt Series, *Oklahoma Watch* (February 26, 2015), accessed at http://oklahomawatch.org/series/prisoners-of-debt/

[133] Andrea Marsh and Emily Gerrick, "Why Motive Matters: Designing Effective Policy Responses to Modern Debtors' Prisons," 34 *Yale Law and Policy Review* 93, p. 103 (Fall 2015).

[134] *S*ee Missouri Code: Mo. Rev. Stat. § 543.270.1.

judge; revocation of driving, hunting, and fishing licenses with exceptions to maintain employment; and restricted liberty without full incarceration, such as curfews or electronic monitoring.[135] The Adult Probation Department in Maricopa County, Arizona, has a Financial Compliance Program with a graduated list of responses to nonpayment of Court LFOs depending on the number of days delinquent, including a written reminder at 15 days, a 7-page Payment Ability Evaluation at 30 days, mandatory 5-week budgeting class at 60 days, referral to a collection agency at 90 days, and probation revocation at 180 days.[136] Probation officers report "that the use of incentives and sanctions of personal importance to the individual has been a particularly effective enforcement strategy."[137]

When jail, where the loss of freedom is aggravated by the risks of lost employment and housing, is the best option for satisfying court LFOs, it is time to reexamine the fees, late penalties, and add-on costs that make other options unattractive. Nonetheless, when a court finds an individual has the means to pay and refuses to do so, and the court has exhausted reasonable alternatives that include community service, incarceration remains the court's consequence of last resort. With reasonable credit against court debt for time served, incarceration is the ultimate tool available to judges for satisfaction of LFOs.

[135] Rachel L. McLean and Michael D. Thompson, *Repaying Debts,* Council of State Governments (2007), pp. 2 35-36.

[136] *Id.* at p. 36.

[137] *Id.*

IV. Conclusion

Three decades ago, the United States Supreme Court in *Bearden* held it is unlawful to incarcerate an offender for court debt absent proof of willful failure to pay. Today the members of COSCA dedicate our efforts to assisting the judges and court staff we support to achieve routinely what is stated in *Bearden.* This paper cites many examples of state and local court efforts to assess ability to pay, scale consequences to the offender and the offense, and break the cycle of court LFOs leading to a debtors' prison. Consistent with the practices advocated in this paper, the members of COSCA will work to achieve the promise of *Bearden* more closely and reserve jail for those who willfully fail to pay court LFOs.

In summary those practices are

A. Streamline and Strengthen the Ability of Courts to Assess Ability to Pay

B. Adopt Evidence-Based Practices that Reduce Failure to Appear and that Improve Compliance with Court Orders, Including Orders Imposing Fines and Fees
    1. Simplify and clarify court LFOs and their application
    2. Adopt practices that minimize failure to appear and failure to pay.
    3. Eliminate additional fees for collections-related supervision/probation and cease extensions of supervision/probation solely to achieve payment of fines and fees or the equivalent in community service.

C. Expand and Improve Alternatives to Satisfy Court LFOs
    1. Community Service
    2. Day Fine
    3. Non-Financial Compliance to Satisfy LFOs

D. Ensure Judges Have the Authority to Modify, Mitigate, or Waive Fees for Those Unable to Pay Despite Good Faith Efforts

E. Impose Jail Time for Willful Refusal to Pay, and Provide Credit at a Rate that Results in Reasonable Satisfaction of Court Obligations

CONFRONTING CRIMINAL JUSTICE DEBT

A GUIDE FOR POLICY REFORM

September 2016

CRIMINAL JUSTICE POLICY PROGRAM
HARVARD LAW SCHOOL

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ABOUT THIS PROJECT

This report is part of *Confronting Criminal Justice Debt: A Comprehensive Project for Reform*, a collaborative project by Criminal Justice Policy Program (CJPP) at Harvard Law School and the National Consumer Law Center (NCLC).

This project includes three parts designed to assist attorneys and advocates working on reform of criminal justice debt:

- *Confronting Criminal Justice Debt: The Urgent Need for Comprehensive Reform* (CJPP and NCLC),
- *Confronting Criminal Justice Debt: A Guide for Litigation* (NCLC), and
- *Confronting Criminal Justice Debt: A Guide for Policy Reform* (CJPP).

For more information, please visit:

Criminal Justice Policy Program at Harvard Law School at: http://cjpp.law.harvard.edu
National Consumer Law Center at: http://www.nclc.org/issues/criminal-justice.html

CRIMINAL JUSTICE POLICY PROGRAM
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ABOUT THE CRIMINAL JUSTICE POLICY PROGRAM

The Criminal Justice Policy Program (CJPP) at Harvard Law School conducts research and advocacy to support criminal justice reform. It generates legal and policy analysis designed to serve advocates and policymakers throughout the country, convenes diverse stakeholders to diagnose problems and chart concrete reforms, and collaborates with government agencies to pilot and implement policy initiatives.

CONFRONTING CRIMINAL JUSTICE DEBT

A GUIDE FOR POLICY REFORM

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1. INTRODUCTION

A Two-Tiered Criminal Justice System

Across the country, onerous fines and fees pose a fundamental challenge to a fair and effective criminal justice system. By disproportionately burdening poor people with financial sanctions, and by jailing people who lack the means to pay, many jurisdictions have created a two-tiered system of criminal justice. Unchecked, these policies drive mass incarceration. Excessive fees and fines needlessly enmesh poor people in the criminal justice system by spawning arrests, court proceedings, periods of incarceration, and other modes of supervision for those who lack the ability to pay. Criminal justice debt also contributes to mass incarceration by destabilizing people living at the economic margins and by impeding reentry of formerly incarcerated people who face impossible economic burdens, leading to cycles of poverty and imprisonment.[1]

Monetary sanctions often serve purposes that have nothing to do with advancing the values typically associated with criminal justice. Although *fines* are designed to act as punishment or a deterrent, *fees* do not advance the traditional purposes of the criminal justice system. Rather, fees are often authorized by state legislatures as a means to generate revenue to fund courts or other government functions without raising taxes. In many jurisdictions, court costs and surcharges fund the agencies responsible for imposing fees and fines on individuals.[2]

Though court debt is often justified as a means of shifting the costs of the criminal justice system to those who "use" that system, that justification is flawed: the legal system is a public good that benefits *all* members of the community and thus should be funded from general revenue. Moreover, funding the court system through monetary sanctions can create pressure to raise increasing revenue through the courts. When states and localities use courts to fill gaps in their budgets, this leads to perverse incentives and erodes public trust in the judicial system.[3]

The financial and social costs associated with criminal justice debt have had a disparate impact on the poor and people of color.[4] Several factors drive these disparities. Among other things, when minor violations, such as driving with an expired registration or having an open container of alcohol, are disproportionately enforced in Black or Latino communities, these concentrated encounters with law enforcement lead to racial disparities in the imposition of fees and fines. More broadly, structural factors that lead to racial disparities throughout the criminal justice system[5] will generate uneven enforcement of fees and fines. And because race intersects with class,[6] with Black and Latino families disproportionately facing poverty, fees and fines that impose special hardships on impoverished individuals and communities will reinforce racially unequal outcomes.

When protests erupted in Ferguson, Missouri, after a police officer shot and killed Michael Brown, the Department of Justice's investigation revealed troubling practices by local authorities. The Ferguson Report vividly described how the municipality used its court system to generate revenue in a way that disproportionately burdened African Americans. The imperative to raise revenue was pervasive: one local official asked the chief of police to increase ticketing for traffic and minor ordinance violations in response to "a substantial sales tax shortfall."[7] At the same time, policing and court practices in that jurisdiction had a disparate impact on African Americans residents – not only were African Americans stopped and searched by police at a higher rate than other residents, but they were also more likely to be issued multiple citations, have their cases persist for longer, face more mandatory court appearances, and have warrants issued for failing to meet court-ordered obligations.[8] African Americans were also more likely to be issued citations that involved a high degree of discretion by local law enforcement. Although 67% of Ferguson residents are Black, African Americans received 95% of the Manner of Walking in Roadway charges and 94% of Failure to Comply charges.[9]

The Ferguson Report highlighted the way that policing practices and routine courtroom procedures led African Americans to face higher fines, more warrants for failing to pay criminal justice debt, and greater exposure to the criminal justice system, but these problems are not unique to Ferguson. A recent California study found "statistically significant racial and socioeconomic disparities," in traffic stops, license suspensions for failure to pay criminal justice debt, and arrests for driving with a suspended license.[10] These disparities are reflected in practices around the country.[11]

In addition to these profound consequences for the fairness of the legal system, policies for imposing and enforcing criminal justice debt often do not make financial sense. One of the reasons for the proliferation of criminal justice debt is the perception by many policymakers at all levels of government that financial sanctions are necessary to fund the criminal justice system.[12] For reasons described in greater detail below, the dependence of courts and other government actors on criminal justice debt is itself part of the problem. It can distort governmental decision-making in individual cases by creating conflicts of interests when judges, police officers, or other criminal justice actors make decisions driven by revenue-raising considerations. This can also create a vicious cycle, where courts, jails, probation agencies, and others whose budgets draw from these revenue streams worry about the consequences of reducing the flow of court-generated revenue. Faced with these pressures, legislatures may resist policy changes that remove a major funding mechanism.

But the perceived benefits of relying on revenue generated from criminal defendants are often illusory. Most states do not collect data on criminal justice debt at all. If they

do, they only look at the amount of revenue collected without measuring the cost of collection or the burdens on the justice system that follow from aggressive enforcement of criminal justice debt.[13] As a result, even from a purely fiscal perspective, criminal justice debt may not provide jurisdictions with net economic benefits. Moreover, as a method of funding government, fines and fees act as a regressive tax, with those who can least afford to pay facing the greatest liabilities. And jailing people for non-payment of debt that they are too poor to afford violates the Constitution, a consideration that has inherent weight and that also imposes yet another layer of financial costs: jurisdictions across the country have faced expensive lawsuits for jailing people who are unable to pay criminal justice debt.[14]

Because a well-functioning justice system generates broad-based social benefits, funding that system should be prioritized through ordinary budgetary processes rather than reliance on financial obligations enforced by courts or police. Yet the perceived necessity of deriving revenue through criminal justice debt raises a cautionary note for reformers: solutions that eliminate real or perceived funding streams for important governmental functions will have to include viable fiscal alternatives.

Growing Attention to Criminal Justice Debt

Criminal justice debt—and the unjust and inefficient outcomes it can spawn—has gained increasing attention in recent years. Advocacy groups have done important work to reveal how criminal justice debt leads to people being jailed based on their poverty, impedes the reentry of people released from incarceration, ensnares indigent defendants in deeper cycles of poverty, and perpetuates costly and inefficient practices throughout the justice system.[15] Legal scholars and social scientists have conducted empirical research on the scale of the problem and the structural consequences of improper use of criminal justice debt.[16] A string of civil rights lawsuits throughout the country has highlighted the problem, telling vivid stories of individual injustice, exposing unconstitutional practices, and spurring local reforms.[17] The federal government has also pressed for systemic policy changes at the state and local level.[18]

This expanding coalition of advocates, researchers, and government actors has created an environment ripe for reform. Monetary sanctions are ubiquitous in the criminal justice system, and the harms they impose can be deeply entrenched. But recent efforts by a broad range of actors have shined a spotlight on these problems. This guide is intended to support advocates and policymakers seeking to translate this new momentum into meaningful policy reforms.

Purpose of the Guide

This guide is intended for advocates and policymakers working at the state level to cure the harms associated with criminal justice debt. It outlines approaches that may be directed at numerous statewide actors: legislatures, chief judicial officers or judicial administrators, and executive agencies. Not every approach outlined here is designed to be used in every context—rather this guide identifies the kinds of harmful practices that should be targets of reform and outlines proposed policies that might be implemented. It should be seen as a toolkit: Policymakers and advocates should select specific reforms based on the existing practices in their state and the different opportunities afforded by particular institutional actors.

In setting out potential avenues of reform, this guide focuses on changes that can be implemented on a statewide basis. It is crucial to recognize, however, that the problems associated with criminal justice debt are often intensely local:[19] conflicts of interest may arise when municipalities depend on fees and fines for local revenue; local actors may develop their own approaches to imposing financial sanctions, through a combination of formal policy and unwritten practice; local police departments may structure their enforcement priorities with a view toward revenue-raising, often resulting in racial disparities; and laws applying procedural safeguards may be inconsistently implemented in different courtrooms across a state or even within a particular jurisdiction. Advocates or policymakers in any particular state must be alert to these local dynamics.

This guide focuses on statewide mechanisms of reform, rather than changes geared toward counties, municipalities, or individual courthouses, for three related reasons. First, even where local practices vary, in most cases the underlying legal authorities for imposing and enforcing debt will be rooted in state law. Second, working locality-by-locality to address problems on a hyper-local basis may prove Sisyphean—the process of investigating each local entity, devising reforms, and having them enacted is far too time-intensive to realistically allow for reform in every locality that warrants it. (For example, St. Louis County—which has become a national focal point with respect to criminal justice debt—consists of 90 individual municipalities.[20]) Third, the existence of such local variation suggests that exclusively local reform may not prove durable—the same dynamics that have caused localities to undertake their own practices in the past may lead to drift in the future unless there are strong mechanisms to ensure uniform best practices. For these reasons, this guide focuses not only on how to put in place appropriate statewide legal norms, but also on how to create mechanisms for institutionalizing consistent application of those norms across a state.

This guide is organized around four overarching areas of potential reform. For each area, it provides an overview of the issue as well as several reform strategies that might be implemented through legislation, court rules, or executive action. The four areas are:

- Conflicts of interest: One of the most unsettling revelations in the Justice Department's Ferguson investigation was the deep and pervasive conflicts of interest facing actors throughout that city's criminal justice system. Simply put, municipalities and courts used fees and fines, enforced by the coercive power to of the criminal justice system, to secure government revenue. These financial incentives drove the system's approach to law enforcement. Such conflicts of interest are not unique to Ferguson. Throughout the country, courts and other government actors face pressure to bring revenue into their own operating budgets through the imposition and enforcement of criminal justice debt. These incentives distort outcomes and undermine the public's faith in the system. This guide outlines several approaches for eliminating those conflicts of interest.
- Poverty penalties and poverty traps: Criminal justice debt, and the elaborate enforcement machinery often used to collect it, can have spiraling consequences for the most economically marginalized individuals. In some instances, enforcement of these obligations has the paradoxical effect of constraining an individual's ability to earn a living, thus undercutting the person's ability to pay court costs while ensnaring her and her family in a cycle of poverty and indebtedness. Other policies attach cascading costs and penalties to the collection practices geared toward indigent defendants, creating a situation where the poor systematically pay more. This guide discusses how to identify policies that operate as poverty traps or penalties and proposes reforms that would reverse those effects.
- The ability-to-pay determination: Too often, courts impose financial obligations that are simply beyond a defendant's capacity to ever meet. Constitutional law prohibits jailing defendants for non-payment of debts they cannot afford, which means courts must make an inquiry into a person's ability to pay *before depriving them of liberty for non-payment*. Sound policy considerations counsel in favor of robust procedures for conducting such determinations not only at the enforcement stage but also when financial obligations are imposed. This guide outlines the baseline constitutional requirements and describes several best practices for ensuring such determinations are efficient and fair.
- Transparency and accountability: All of the reform strategies outlined in this guide will benefit from robust transparency measures that allow policymakers, advocates, researchers, journalists, and individual criminal defendants to understand exactly how court debt operates. Transparency in this context means laws designed to ensure data collection by government actors about the functioning of court debt (including its racial impact), analysis and disclosure of system-wide practices, and opportunities for individuals to request and receive documents reflecting policies and practices relating to criminal justice debt.

A Note on Terminology

For purposes of clarity and simplicity, the array of financial obligations that accompany encounters with the criminal justice system are referred to collectively as "criminal justice debt."[21] Scholars and advocates have also referred to these obligations as "legal financial obligations (LFOs),"[22] "monetary sanctions,"[23] or just "fines and fees."[24] Some advocates refer to the impact of these fine and fees as "debtors' prisons" or "modern-day debtors' prisons."[25]

Additionally, at various points, this toolkit will discuss specific types of criminal justice debt in greater detail. Relevant terms are set out below:

- *Fines* are financial obligations imposed as a penalty after a criminal conviction or admission of guilt to a civil infraction.
- *Fees* (or *user fees*) are financial obligations imposed as a way for jurisdictions to recoup costs of the "use" of the criminal justice system, including costs associated with public defenders, incarceration, probation supervision, GPS monitoring, and court proceedings.
- *Surcharges* are financial obligations, either a flat fee or a percentage added to a fine, imposed to fund a particular government function or a general fund.
- *Interest and penalties* are financial obligations and additional costs that accrue based on staggered payment plans, late payment, or non-payment of criminal justice debt.
- *Restitution* refers to financial obligations intended to compensate victims of a crime for their actual losses. Restitution is typically understood to consist of money actually transmitted to individual victims of crime, but in some instances it is in fact paid to government-run victims' funds or to reimburse government agencies or insurance companies.

2. CONFLICTS OF INTEREST

The dependence of courts and other government agencies on revenue derived from criminal defendants can generate profound conflicts of interest. Individual decision-makers throughout the criminal justice system operate according to incentives that may encourage unnecessarily harsh outcomes for criminal defendants. This dynamic is especially pronounced where there is a direct link between a criminal justice agency—a court system, police department, prosecutors' office, or probation department—and the flow of revenue derived from fees or fines. In such instances, individual case outcomes may be driven by the desire to raise revenue, with the most severe consequences for defendants who are least able to afford those financial sanctions. The effects of these conflicts

of interest extend beyond individual cases. They can undermine the legitimacy of the justice system by supporting the perception that the legal system privileges budgetary imperatives over the needs of justice. Such diminished legitimacy will be compounded when these conflicts of interest are perceived as driving racially disparate outcomes.

Conflicts of interest surrounding criminal justice debt also distort governmental decision-making more broadly. Where courts and other justice system actors fund their operations through revenue extracted from a subset of the population, broader decisions about the size and scope of the criminal justice system will evade the normal budget-making process and the checks and balances that process imposes.

CASE STUDY

LOUISIANA JUDICIAL EXPENSE FUNDS[26]

In Louisiana, municipal,[27] civil,[28] criminal,[29] traffic[30] and juvenile[31] courts operate judicial expense funds. Judges may impose costs payable to the judicial expense fund in a range of circumstances, including when a defendant is convicted after a trial,[32] pleads guilty, forfeits bond, or posts bond with a commercial surety.[33]

Judicial expense funds are controlled by judges of the court en banc.[34] Judges have wide discretion over how the funds are spent. Municipal and traffic court judges have discretion to use the funds for "any expense of the court," including any operating expenses.[35] Criminal district courts have even wider latitude, with the ability to use the funds for "any purpose connected with" or "incidental to" the court.[36] The only restriction on spending is that judges may not pay their own salaries from the funds.[37]

On a number of occasions, money from judicial expense funds has been used to pay for luxury goods or items, including supplemental health insurance for judges, two Ford Expeditions, a leather vehicle seat upgrade for a take-home vehicle, and a full time private chef.[38]

In 1991, a federal district court held that surcharges on bail bonds that were paid into the Judicial Expense Fund were unconstitutional.[39] The court held that the complete control exercised by the judges "plainly creates a temptation for the judges to forego due process and assess high bail amounts in order to maintain the level of funding necessary to run their respective criminal justice systems."[40]

Despite this ruling, the practice of raising revenue for judicial expense funds through imposing fees and surcharges on criminal defendants continues. In 2015, a civil rights organization filed litigation to challenge the constitutionality of this scheme.[41]

Most starkly, unconstitutional conflicts of interest exist when a decision-maker with the power to arrest, charge, convict, or sentence a defendant would personally benefit as a result of exercising that power.[42] Conflicts of interest can also arise in the absence of such a direct personal conflict where judicial and executive powers are intermingled.[43]

Conflicts of interest also emerge when raising revenue becomes a dominant aim of the criminal justice system and when actors in the system are forced to rely on fines, fees, and surcharges for funding. Political pressure to raise more revenue may be transmitted within a branch of government (such as when a mayor's office places pressure on a police chief to issue more tickets) or between branches of government.[44] In Ferguson, Missouri, police and court officials were found to have "worked in concert to maximize revenue at every stage of the enforcement process,"[45] in disregard of the rights or wellbeing of the people of Ferguson—particularly those who were poor and Black.

CASE STUDY

SUPREME COURT OF MISSOURI, MUNICIPAL DIVISION WORK GROUP

In the aftermath of Michael Brown's death and the attention that was paid to Ferguson, the Missouri Supreme Court in 2015 convened a Municipal Division Work Group to identify reforms that the court could make to address conflicts of interest, as well as broader issues related to criminal justice debt. The group conducted three public hearings across Missouri and relied on a number of reports from advocacy organizations and governmental agencies.[46] The Work Group released its findings and recommendations in March 2016, which included the following:

- To address personal conflicts of interest, the majority of the Work Group recommended that the Supreme Court of Missouri adopt a rule prohibiting part-time municipal judges from serving as prosecutors or defense attorneys in the same county,[47] and prohibiting attorneys from serving as both prosecutors and defense attorneys in the same county.[48]
- To address structural conflicts of interest, the Work Group recommended that the revenue received from fines and penalties for municipal ordinance violations should be directed to the state's school funds.[49]
- The Work Group also emphasized that court costs, fees, and surcharges could be used to recoup reasonable court expenses, but should not be directed to law enforcement or other core government functions. Rather, the state legislature should give municipalities sufficient taxing power to fund law enforcement through general taxes.[50]

There has been a trend towards placing the burden upon the judiciary to generate enough revenue to cover their operating costs, through retained revenue from fines, fees, or other assessments.[51] As the majority of the budget in most court pays for salary and personnel costs, many courts have perceived an imperative to raise more funds through fines and fees.[52] Indeed, a survey of fifteen states found that most had increased the types of fees and the dollar amounts of each fee during the first decade of the 2000s.[53]

Along with requiring courts to generate revenue for their own operations, in some states there are expectations that the courts will be a "collection agency [funding] executive branch services."[54] In some instances, these surcharges are earmarked for a specific purpose which bears a relationship to the offense committed—for example, where the offense of driving under the influence carries a fee that is earmarked for a head and spinal cord injuries family-support program.[55] In other instances, the money is distributed for a range of purposes only loosely connected with the justice system. For example, in 2012 Tennessee legislators passed a measure imposing a $450 criminal record expungement fee, which was widely understood as a revenue-raising mechanism to serve the state's general budget.[56] Although the measure was intended to generate $7 million per year, it has only raised an average of $130,000 annually due to the high fee.[57] Surcharges are, in effect, a regressive tax imposed on criminal defendants.

> **Criminal justice debt can undermine the legitimacy of the justice system by supporting the perception that it privileges budgetary imperatives over the needs of justice. Such diminished legitimacy will be compounded when these conflicts of interest are perceived as driving racially disparate outcomes.**

CASE STUDY
TENNESSEE "PRIVILEGE" TAX

Tennessee law imposes a "privilege tax" upon conviction for many crimes.[58] The disbursement of the privilege tax demonstrates the manner in which this surcharge acts as a revenue source for many areas of government. The privilege tax is disbursed as follows:[59]

- 0.0320%—fund established for the operation of the Tennessee corrections institute
- 4.4430%—departments of education (75%) and department of safety (25%), to promote and expand driver education through the public schools of the state, and to promote safety on the highways
- 32.1502%—general fund
- 0.6553%—state court clerks' conference
- 0.8406%—victims of crime assistance fund
- 24.0020%—criminal injuries compensation fund
- 1.3755%—victims of drunk drivers compensation fund
- 3.7653%—compensation/salaries of attorneys other than public defenders and post-conviction defenders
- 0.5529%—administrative director of the court, to be used to defray the expenses of serving the general sessions courts and the Tennessee general sessions judges' conference
- 19.2902%—public defender program
- 7.4701%—civil legal representation of indigents fund
- 2.3506%—earmarked for grants to local governments for the purchase and maintenance of and line charges for electronic fingerprint imaging systems
- 0.3426%—sex offender treatment fund
- 2.7747%—department of education to promote and expand driver education

While the conflicts of interest described above predominately involve governmental actors, the privatization of criminal justice functions may also lead to conflicts of interest. The role of private companies in two areas merits special attention: probation and debt-collection.

In many jurisdictions that have privatized probation supervision, probation companies derive income solely from the fees that they charge probationers. This "offender-funded" model creates perverse financial incentives for private probation companies to keep individuals on probation for as long as possible. Companies are incentivized to

urge judges to impose additional conditions that carry financial costs and to request that courts sentence defendants to consecutive, rather than concurrent, terms of probation.[60] Advocates and journalists have documented these dynamics in jurisdictions across the country.[61] For example, in Mississippi, a woman was charged a $377 fine for driving without a valid license, but her probation supervision fees, including a fee for electronic monitoring, totaled almost $300 per month. When she fell behind on payments, the probation officer threatened to have her arrested—potentially resulting in the loss of child custody—even though she had already paid the fine to the court and her only outstanding debt was owed to the probation company.[62]

Similarly, many states permit the assignment of criminal justice debt to private debt-collectors.[63] Those agencies often derive income directly from the fees that they charge to defendants.[64] Florida and Tennessee, for example, allow private debt collection firms to add up to a 40 percent surcharge on unpaid criminal justice debt.[65] These incentives may encourage abusive practices by debt collectors. The consequences of these perverse incentives are exacerbated when private debt collectors are delegated decision-making powers with little government oversight. In Iowa, for example, the private debt collector may be the final arbiter as to when an individual is in default and what is a reasonable payment to remove a license or registration hold on a delinquent debt.[66]

This section outlines a range of reforms intended to untangle the conflicts of interest affecting a state's criminal justice system.

Legislative Reforms

Cap the Contribution of Court Revenue to Local Operating Costs

States should cap, and over time lower, the percentage of revenue that municipalities or other localities can derive from the courts. A cap insulates courts and law enforcement bodies from local political pressures to continue increasing revenue to supplement the activities of the legislative and executive branches. The reform may need to be accompanied by legislation granting municipalities or localities sufficient taxation authority to provide a more appropriate and stable revenue base for local governments.[67]

This reform was enacted recently in Missouri.[68] Every county, city, town, and village is required annually to calculate "the percentage of its annual general operating revenue received from fines, bond forfeitures, and court costs for minor traffic violations."[69] If the percentage exceeds 20% (or 12.5% in St. Louis County), then the excess amount is sent to the Missouri Director of the Department of Revenue, which distributes money to the schools of the county. Passing the revenue to a different level of government reduces the intensity of local political pressures. The law was subject to criticism for being under-inclusive. Specifically, it didn't cap revenue raised from housing code

violations or other non-traffic violations, which in some municipalities are more than half the charges imposed.[70] In January 2016, Missouri passed a new bill limiting revenue from non-traffic ordinance violations.[71]

In Oklahoma, if a municipal law enforcement agency is determined to be conducting law enforcement practices for the purpose of generating more than 50% of the revenue needed for the operation of the municipality, the State Commissioner of Public Safety can issue a notice preventing that agency from regulating traffic and enforcing traffic-related statutes or ordinances on state highways.[72] Revenue caps have also been imposed in Virginia[73] and Florida.[74]

Fully Fund Courts from State Budgets

To avoid creating incentives for courts and localities to fund themselves based on criminal justice debt, the judicial system should be fully funded by the state. [75] Funding courts out of general revenue reflects the important principle that courts are an equal branch of government and essential to the common welfare, not a user-pays service provider. As the Conference of State Court Administrators has explained: "The benefit derived from the efficient administration of justice is not limited to those who utilize the system for litigation, but is enjoyed by all those who would suffer is there was no such system—the entire body politic."[76] This means funding court operations from a state's general budget. However, the feasibility of this model may depend on the organization of courts—particularly whether the state has a unified judicial system[77]—and on constitutional restraints on funding models.[78]

Eliminate Surcharges Imposed on Criminal Defendants

As discussed above, surcharges improperly use the courts as a substitute taxation system. By tacking additional financial obligations onto criminal sentences that fund the general functioning of government, but do not serve any traditional criminal justice function, surcharges will typically operate as regressive taxes. Yet surcharges are a poor form of budgetary management. Earmarked funds escape the priority-setting processes of legislative budgets.[79] Surcharges should be eliminated and government spending should be determined through the ordinary budgetary processes.[80]

Remove Perverse Incentives of Private Probation Companies

The criminal justice system should not engage private probation companies on terms that tie a company's profits to the financial obligations shouldered by probationers or the length of time individuals remain under supervision. To the extent private probation companies operate under "offender-funded" business models, the potential for conflicts of interests are too significant to tolerate and state law should ensure that such conflicts of interest are eliminated. If private companies are hired to supervise

probation, legislatures should realign the companies' incentives to ensure that they are compensated based on positive outcomes, such as ensuring that probationers avoid re-incarceration. Where private probation is authorized, states should also abolish supervision fees.[81]

Eliminate Fines and Fees That Are Specifically Earmarked for Law Enforcement Agencies

In many states, funds collected from criminal defendants are earmarked for law enforcement.[82] For example, a statute in Tennessee that establishes mandatory minimum fines for certain drug offenses, ranging from $250 to $5000, provides that 50% of the amount collected "shall be paid to the general fund of the governing body of the law enforcement agency responsible for the investigation and arrest which resulted in the drug conviction."[83] This direct link between policing and revenue generation may lead police agencies to prioritize enforcement in ways that may do little or nothing to advance public safety but that drive up policing budgets.[84] State law should eliminate these conflicts.

Eliminate Fines and Fees Imposed Prior to Adjudication of Guilt

A number of states have legislation that provides for the imposition of fines or fees prior to an adjudication of guilt. Examples include:

- Pre-trial diversion fees, where prosecutors are able to collect fees from defendants for probation-like supervision in exchange for the suspension of criminal proceedings;[85]
- Pre-trial abatement schemes, where defendants can pay an amount to the police or courts to have charges dismissed or adjudication stayed;[86]
- Booking fees;[87] and
- Civil forfeiture actions.[88]

Prior to trial, the discretion of a police officer or a prosecutor is not supervised in any way by the courts, nor challenged by a defense attorney.[89] Yet pressure to raise revenue through such obligations may be especially acute. Accordingly, fees imposed at these early stages of the criminal process should be eliminated.

Judicial Reforms

Exercise Supervisory Control Over Local Courts

It is common for a chief justice or presiding judge to be vested with administrative oversight authority over lower courts in their state or region.[90] Higher courts are more removed from the conflicts of interest affecting local or municipal courts. These courts should audit the performance of inferior courts, including municipal courts, to

determine whether they are complying with existing law, recommend best practices, and assist or even temporarily manage failing or dysfunctional courts.[91]

Closer supervision of municipal courts has been a reform goal in Missouri, with the Missouri Supreme Court Municipal Division Work Group recommending the creation of full-time professional staff positions in the Circuit Court of St. Louis County to assist the Presiding Judge with supervision duties. The proposed role of those staff members is "to make frequent scheduled and unannounced visits to the municipal courts, to review their records and practices with the municipal judges and clerks, to observe the courts in session, to evaluate whether the municipal courts are complying with Missouri statutes and supreme court rules, and to report any observed deficiencies to the Presiding Circuit Judge for individualized attention as required."[92]

Monitor and Eliminate Racial Disparities

One of the lessons of the Justice Department's Ferguson investigation is that deeply entrenched conflicts of interest can interact with overt and implicit bias, resulting in discriminatory practices designed to raise revenue. Acting in their supervisory capacities, chief justices and chief judges should take active steps to eliminate these disparities. This should include, at a minimum, data collection and analysis designed to spot unwarranted racial disparities and training on implicit bias for judges and prosecutors involved in the imposition and collection of criminal justice debt.

Executive Reforms

Realign Incentives of Private Probation Companies and Private Debt-Collectors

When private companies perform functions related to the imposition or enforcement of criminal justice debt, agencies contracting with them should actively structure contracts to establish proper incentives. Some states have begun to move towards a "performance incentive" funding model in other criminal justice contexts. In Pennsylvania, for example, the Department of Corrections initiated performance-based incentive programs for halfway houses contracted by the state.[93] Private operators who lowered recidivism rates were rewarded, while those who failed to do so had their contracts revoked. In Illinois and California, probation agencies were rewarded with a share of prison cost savings when they revoked fewer probationers to prison for violations.[94] In California, as of 2011, the state saved $278 million in prison costs and reduced probation revocations by nearly one-third.[95] In Illinois, the program cut participant recidivism by as much as one-fifth.[96] Applied to private probation companies and debt-collectors, performance incentive models would require robust oversight mechanisms to monitor the performance of private companies and provide the data to which incentives can be tied.[97] It is crucial to ensure that these companies are not incentivized to use inappropriately

coercive collection tactics. This will likely mean eschewing contracts that tie a company's profits to the amount of debt it extracts and instead linking compensation to more fundamental goals of the criminal justice system, such as successful completion of probation and reduction of recidivism.

Disseminate Consumer Protection Information

In many states, the attorney general will maintain responsibility for enforcing consumer protection laws. These laws will typically reflect the principle that debt-collection should not be unduly coercive, especially where vulnerable individuals are involved. State attorneys general should publish know-your-rights information via the Internet and other accessible media outlets to inform individuals subject to criminal justice debts of their rights against unfair or unlawful debt-collection practices.

3. POVERTY PENALTIES AND POVERTY TRAPS

As states and municipalities have looked for revenue sources without resorting to raising taxes,[98] the burden of criminal justice debt has become significantly more onerous for poor Americans than for those with means.[99] The poor pay more not simply because they are more often targeted for enforcement,[100] or because many infractions—such as sleeping in public places[101] or failing to maintain auto insurance[102] or selling loose cigarettes[103]—criminalize poverty. Poor people pay more than those with means simply because of the fact of their poverty.[104]

A "poverty penalty" exists when a poor person is punished more severely than a wealthier person for the same infraction as a direct consequence of her poverty. It may take a variety of forms: late fees, which can vary from a fixed amount[105] to a percentage of the debt owed;[106] costs of collection;[107] interest charges;[108] fees to enter installment plans;[109] the issuance of arrest warrants (with associated fees);[110] fines for contempt of court;[111] jailing for contempt of court; and the imposition or extension of probation (with associated fees)[112] until the debt is paid in full. These penalties amount to additional punishment due to a defendant's poverty.

A "poverty trap" is a policy that not only punishes the poor more severely, but keeps a person in poverty by inhibiting his or her ability to make a living or meet basic needs and obligations. For example, making payment of criminal justice debt a condition of probation or parole acts as a poverty trap when it results in the denial or termination of public benefits, such as food stamps, social security, and housing assistance.[113] The suspension of a driver's or professional license is one of the most pervasive poverty traps for poor people assessed a fine that they cannot afford to pay.[114] The practice is widespread.[115] Nearly 40% of license suspensions nationwide stem from unpaid fines,

missed child support payments, and drug offenses—not from unsafe or intoxicated driving or failing to obtain automotive insurance.[116] Suspension of a driver's or professional licenses is hugely counterproductive; it punishes non-payment by taking away a person's means for making a living.[117] License suspension programs are also expensive for states to run[118] and they distract law enforcement efforts from priorities related to public safety.[119] License suspensions may also be unconstitutional if the license was suspended before the judge determined the defendant had the ability to pay the criminal justice debt.[120]

Poverty penalties and traps are bad public policy. Poverty penalties are often simply uncollectable and lead to cycles of debt and poverty.[121] These practices often lead to incarceration and give rise to new exposure to the criminal justice system due to probation violations or driving with a suspended license.[122] Poverty penalties and traps cost the state money in unnecessary enforcement costs and result in large amounts of debt going uncollected.[123] Given the often draconian consequences of non-payment of criminal justice debt, in some cases family members or friends may pay a defendant's debt, extending punishment from the defendant to others in a way that undermines deterrence and exacerbates a community's poverty.[124] Criminal justice debt can also act as a barrier to reentry for those leaving jail or prison.[125]

This section outlines reforms designed to reduce the disproportionately harsh impacts that criminal justice debt can have on the poor simply by virtue of their poverty, and to increase the fairness of criminal justice debt collection practices more broadly.

Legislative Reforms

Abandon Reliance on Poverty Penalties

States should abandon reliance on poverty penalties. Specifically, state legislatures should enact policies:

- Requiring courts to conduct an ability to pay assessment before levying penalties for non-payment, as discussed in greater detail in Part IV;
- Prohibiting the imposition of additional interest or other costs for payment plans for those with the inability to pay the full amount;
- Eliminating interest fees, late fees, collection agency referral fees, and other penalties incurred during a period of incarceration;
- Allowing individuals to obtain hardship deferments—such as freezing interest and penalties or permitting deferral of payments—during a period of financial hardship.[126]
- Ensuring that ability to pay determinations consider all court ordered obligations that defendants are required to pay.[127]

End the Use of Collection Mechanisms That Act as Poverty Traps

This guide does not take a position on whether collection methods such as wage garnishment, bank account freezes, barriers to vehicle registration, and diversion of tax refunds are appropriate sanctions for those who are able, but unwilling, to pay criminal justice debt. For those unable to pay, however, such aggressive collection tactics can lead to broader financial crises, including job loss, inability to pay other bills, and eviction—destabilizing events that push people deeper into poverty.[128] These mechanisms should be used minimally, and only when subject to strict ability-to-pay determinations to ensure that they are not directed at individuals who are unable to afford court-imposed financial obligations. Additional poverty traps, such as linking probation terms to payment of criminal justice debt or suspending driver's and professional licenses are discussed in greater detail below:

> **Poor people pay more than those with means simply because of the fact of their poverty.**

- Linking Probation Terms to Payment of Criminal Justice Debt

Probation should never be imposed or extended solely as a way to collect debts. States should conserve resources—allowing probation officers to spend their time with probationers who need their attention and reducing the number of persons arrested and hauled into court for technical violations arising out of an inability to pay criminal justice debt.[129] For example, Virginia commissioned a task force comprised of stakeholders from across the criminal justice system to study alternatives to incarceration; among other things, the task force recommended making it easier for defendants to leave supervised probation where the only reason the defendant remained on supervised probation was non-payment of fines and fees.[130] Similar policies can ensure that probation does not become a poverty trap.

- Suspending Driver's and Professional Licenses

Lawmakers should discontinue the use of driver's license suspensions as a penalty for failing to pay criminal justice debt, at least where a defendant is unable to pay.[131] If such licensing is premised on keeping the public safe, suspensions should be tailored to promote public safety not to facilitate debt-collection.[132] Similarly, states should not authorize suspension of professional licenses on the basis of non-payment of criminal justice debt.[133]

Encourage Fair Collection Practices

Aside from abolishing poverty penalties and poverty traps, state statutes should be amended to encourage smart and fair collection practices. These practices may include:

- Caps on the percentage of income that can be collected. Lawmakers should cap the amount of a defendant's take home pay that can be collected. Policy advocates have

suggested that there is a "tipping point" where the amount of debt collection becomes counterproductive to a defendant's stability and leads to reoffending; some studies on child support cite 20 percent of take-home pay as this "tipping point."[134] Another well-established method for determining "discretionary income" comes from the student loan repayment context. "Discretionary income" in that context is defined as income in excess of 150% of the federal poverty line and reasonable and fair monthly payments are 10% of this discretionary income.[135] For these caps to be effective, it is crucial that jurisdictions conduct robust ability-to-pay determinations. As discussed in more detail in Section 4, courts should define the relevant financial information courts take into account. These determinations are necessary to ensure that courts and other decision-makers have a full picture of a person's financial obligations so that court debt does not exceed a reasonable tipping point.

- Reasonable and fair payment plans. State legislatures can incentivize people who owe criminal justice debt to satisfy their obligations over time. For example, for debtors who enroll in reasonable and affordable payment plans tied to their income, courts could incentivize consistent compliance. Incentives could range from a waiver of interest charges or waiver of the principal owed after a certain length of compliance[136] to certificates of good conduct,[137] which might make a person eligible for privileges that would have been withdrawn upon a conviction for certain offenses. Payment plans should have no minimum payment amount.
- Ensure that government plays by the same rules as private debt-collection agencies. If it would be illegal for a private debt collector to engage in a certain practice—such as charging punitive fees or using unduly coercive means—so too it should be impermissible for the government to do the same.[138] This reform may require states to impose caps on the amount of interest and collections fees government could charge.[139] States should also enact policies that prohibit aggressive wage garnishment of indigent persons with criminal justice debt.[140]
- Create statutes of limitation for debt collection. When the amount owed by a debtor becomes difficult to determine and verify due to poor recordkeeping or the passage of time, debts should be terminated. For example, the city of Philadelphia decided to end a campaign to collect court debt issued prior to 2010 after advocates showed that the records were unreliable and that indigent defendants would be unable to pay much of the outstanding debt.[141] In the federal criminal justice system, outstanding fines are waived 20 years after imposition, or 20 years after someone is released from prison,[142] and special assessment fees expire if they are unpaid after 5 years.[143] Statutes of limitation should be properly circumscribed to avoid enforcement of unadministrable fines and to avoid creating an endless impediment to reentry.

Scale Debts Based on Ability to Pay

Legislatures should provide statutory authorization and incentives for jurisdictions to experiment with "day fines"—also known as structured fines[144]—which are widely used in Europe and Latin America and have been tested in several American jurisdictions.[145] Day fines are sanctions that are calibrated to an individual's ability to pay. Legislatures and courts determine how many "units" of punishment are merited for a specific offense and then those units are set against a person's income to determine an appropriate fine. One common unit would be one day's worth of wages, or a "day fine."[146] Experiments with day fines in the United States have been conducted at the municipal, county, and statewide level, both with and without statutory authority.[147]

BURDENS TO SIXTH AMENDMENT RIGHTS

Defendants in nearly every state and the District of Columbia are statutorily required to pay costs associated with the exercise of their rights under the Sixth Amendment,[148] including the right to a defense attorney,[149] to a trial by jury[150] (including juror per diem charges[151]or general jury fees[152]), or to call witnesses for their defense.[153] They may also be charged witness fees, including the costs of subpoenas;[154] fees for essential investigation or evidence, including fees to process DNA or drug samples;[155] fees covering the costs of the prosecutor or law enforcement agents to prosecute the case;[156] and fees covering the costs of the court to hear and try the case, including stenographer fees or court personnel salaries.[157] These "Sixth Amendment Taxes" may burden a defendant's ability to exercise her constitutional rights and undermine the legitimacy and fairness of the criminal justice system.

By adding an economic cost to the exercise of constitutional rights, Sixth Amendment Taxes may operate as poverty penalties. Such costs may deter impoverished defendants from fully utilizing constitutional rights afforded to them in criminal cases. Ultimately, chilling the exercise of constitutional rights by poor defendants increases the chances that they will face worse criminal justice outcomes as a result of their poverty. There does not appear to be any systematic empirical evidence demonstrating the extent to which Sixth Amendment Taxes affect case outcomes for people who are too poor to afford these costs. There is, however, significant anecdotal evidence that these fees have real effects on decision-making by defendants. In a study of indigent counsel fees, NPR found that "poor people sometimes skip using an attorney," even though that attorney might be better equipped to help the defendant avoid high penalties resulting in even greater financial debt.[158] And a judge in Michigan estimated that 95% of defendants in his county waive their right to counsel after being informed that they might be required to pay for court-appointed

counsel and approximately half of defendants plead guilty at arraignment.[159] The increased economic costs attached to more severe sentences, including higher statutory fees[160] and higher incarceration rates,[161] may compound the already significant leverage that prosecutors enjoy in obtaining guilty pleas. The following reforms will help ensure that defendants are able to exercise their Sixth Amendment rights, regardless of their ability to pay:

- Legislatures must fully fund the criminal justice system through means other than Sixth Amendment Taxes. Simply removing Sixth Amendment Taxes without replacing the funding streams for courts and public defender officers will only result in more constitutionally deficient conditions for defendants.
- State judiciaries should enact court rules directing trial courts to conduct ability-to-pay determinations before Sixth Amendment Taxes begin to accrue; those rules should also direct trial courts to waive non-mandatory Sixth Amendment Taxes that would impose a significant financial hardship.
- Plea bargaining should not short-circuit ability-to-pay procedures. It is estimated that 90 to 95 percent of state and federal criminal cases are adjudicated through plea bargaining.[162] In exchange for more lenient sentences or diversion, some prosecutors may require defendants to agree to pay restitution or fines, even if the prospect of full payment is unrealistic.[163] Courts have reached different conclusions about whether a negotiated agreement to pay restitution as part of a plea bargain can substitute for an ability to pay determination.[164] But as a matter of policy, the ability to plead guilty or participate in a diversion program should not be predicated on the waiver of the right to an ability-to-pay hearing.[165]

Authorize Alternatives to Monetary Sanctions

Courts should be authorized to consider alternatives to monetary sanctions, including creating community or specialty courts, converting criminal justice debts to community service, or imposing other non-monetary penalties. Some jurisdictions have created community courts, where judges use trauma-informed and evidence-based approaches to ensure that defendants receive services in addition to appropriate sanctions, while increasing procedural justice.[166] Many, but not all, states currently authorize judges to impose community service as an alternative to incarceration, but the process could be further incentivized and streamlined.

The imposition of excessive or unreasonable community service may, of course, become a significant or insurmountable obstacle for indigent persons, especially those whose work schedules, family obligations, or disabilities make community service unrealistic. In

some cases, it may not be feasible for defendants to complete community service. In these situations, judges must have discretion to waive fines and fees, give defendants credit for engaging in drug or mental health treatment, or find an alternative sanction that does not involve jail.[167] Courts must guard against replacing one vise with another.[168] But in many instances, a well-designed community service program would present a viable and productive alternative.

CONSIDERATIONS REGARDING COMMUNITY SERVICE

Substituting community service for monetary obligations is not a panacea. There are risks that might make community service unduly punitive. The following are important considerations for lawmakers, agencies, judges, placement sites and others who are interested in instituting community service programs:

- **Work should be rehabilitative rather than punitive.** Sentencing indigent debtors to clean government bathrooms or pick up trash from the highway may evoke chain gangs and stigmatize indigent defendants. Effective programs serve the needs of communities without demeaning people for being too poor to afford a monetary sanction.
- **Community service should not unduly interfere with other obligations.** For people with work, school, and family obligations, community service obligations should be carefully calibrated to avoid putting people in situations where they must choose between complying with court obligations and meeting basic needs.
- **Community service hours should be valued at minimum wage or higher.** Community service obligations will often assign a monetary value to each hour of service, so that the overall community service obligation will be satisfied when the individual accumulates a number of hours equivalent to the court-ordered financial obligation. It is important that the dollar value assigned to each hour of community service should be set at minimum wage or higher. This ensures that community service obligations remain reasonable and it reduces the risk that court-mandated community service will displace paid employees who might otherwise perform the assigned duties.[169]
- **Courts and host organizations should address liability concerns, including worker's compensation claims.**[170] Organizations that host those completing court-ordered community service may be liable both for any injuries that occur during the community service, as well as torts caused by the person performing community service. Non-profit organizations should consult with legal counsel and ensure they have adequate insurance before becoming host sites for court-ordered community service.
- **Community service programs should consider safety.** Some defendants, such as victims of violence or people who are involved with gangs, may not be able to engage in community

service programs in particular locations or in the public view. Courts and probation departments should consider a defendant's safety when tailoring a community service program to a particular person.

- Defendants should not be required to pay fees or purchase insurance to participate in community service.[171]
- Transportation should be provided, especially for those with suspended licenses due to criminal justice debt.[172]

Before implementing community service programs, states should also create statewide or jurisdiction-specific standards, governed by applicable law. In New York State, for example, the Division of Criminal Justice Services drafted *Community Service Standards*,[173] which outlines relevant law, such as New York labor and human rights law, as well as administrative considerations. Some characteristics of well-designed community service programs include elements of restorative justice, some degree of choice and agency for defendants, and meaningful integration of volunteers with court-ordered defendants in the service of real work.[174] As an overarching consideration, community service should aim to set up individuals for success, not failure, which means that community service obligations should be realistically discharged within a reasonable amount of time. Crafting community service obligations with a rehabilitative purpose can also help to offset some of the administrative costs by avoiding the costs of future criminal conduct. With proper implementation, the benefits of such programs may include reduced rates of recidivism, the completion of important civic projects, and community building.[175]

De-link Debt and Reentry

Legislatures should reduce the collateral consequences that indigent defendants face as a result of criminal justice debt when they leave prison. Parole supervision fees[176] and requirements that prisoners repay the costs incurred from their incarceration[177] are unlikely to provide states with substantial revenue but may undermine efforts to minimize recidivism. The following policies de-link debt from reentry:

- De-link Payment from Expungement. Expungement of a criminal record should not be conditioned on a person's financial status. In some states the full payment of court debt is a requirement for expungement;[178] in others, mandatory expungement fees may act as a barrier to reentry.[179] Both of these practices constitute poverty traps. Conditioning expungement on payment of criminal justice debt should only occur, if ever, when a robust ability to pay determination demonstrates that non-payment is willful. Expungement has hugely significant consequences for, among other things, employment and housing opportunities; it is unfair and counterproductive to link

those outcomes to wealth. Indeed, for many individuals released from prison, conditioning expungement on repayment will create a vicious cycle: those individuals may have accumulated extremely high court debt, yet they will have earned no significant income during their period of incarceration and their ability to obtain employment upon release may be significantly impeded by court records.

- De-link Payment from Voting Rights. States should eliminate the payment of criminal justice debt as a requirement to restore voting rights. One recent report found that 30 states have laws that disenfranchise people who owe criminal justice debt.[180] Voting is simply too fundamental a right to condition on whether a person has made a monetary payment, and the consequences are especially stark for people who cannot afford to pay criminal justice debt and therefore face a potential lifetime of disenfranchisement. [181]

Create Amnesty Programs

In some cases, a defendant may be able to pay part of a debt but fears coming forward to do so. State legislatures should authorize programs designed to incentivize debtors to come out of the shadows and make what payments they can by enrolling in feasible payment plans and payment forgiveness programs. These "amnesty programs" have been implemented to collect revenue that would have otherwise likely gone unclaimed while also allowing people to clear warrants and reestablish licenses.[182]

SPECIAL CONSIDERATIONS FOR JUVENILES

Juveniles and their families who may be burdened with fines, fees, and restitution as a result of juvenile justice system involvement face unique harms due to criminal justice debt.[183] The imposition of this debt may be widespread—one study in Pennsylvania found that 80% of juvenile defendants were burdened with criminal justice debt.[184]

For young people and their families, the imposition and collection of criminal justice debt may undermine the rehabilitative goals of the juvenile justice system—pushing young people deeper into the criminal justice system and negatively impacting their family relationships. When juveniles are responsible for paying this debt, they may have terms of probation extended and can become enmeshed in the criminal justice system as adults based on their failure or inability to pay criminal justice debt.[185] Many young people have no way of accessing money to pay for criminal justice debt because of limits on their ability to work, or because working excessive hours could negatively impact their education.[186] Additionally, expungement and record sealing may not be available to young people until fines and fees are paid, or probation terms are over.[187] Finally, civil judgments can negatively impact a young person's credit, limiting their ability to access jobs, housing, and educational loans.[188]

In light of these concerns, some jurisdictions across the country have reduced or eliminated criminal justice debt for juveniles. Alameda County, California recently repealed administrative fees that are charged to the families of juveniles in the criminal justice system.[189] California is considering statewide legislation that would prevent counties from charging these fees altogether.[190] Washington State passed the Year Act, which eliminated some juvenile justice system fees and fines, and allowed young people to have their records sealed if they had made good faith efforts towards paying off restitution.[191]

For a comprehensive discussion of the ways in which criminal justice debt impacts juveniles and their families, see Jessica Feierman et al., Juvenile Law Center, *Debtors' Prison for Kids?: The High Cost of Fines and Fees in the Juvenile Justice System* (2016).

Judicial Reforms

Amend Court Rules

State supreme courts should enact court rules to encourage the use of alternative conditions—such as payment plans, conversion to community service, and fine waivers—when payment of an amount owed would pose a significant hardship, as discussed above. Recently, the Supreme Court of Michigan enacted new court rules that guide Michigan courts in the exercise of this discretion, including rules allowing for a court

to modify a debt: "If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed."[192] Courts around the country may seize the initiative to eliminate poverty traps and penalties. The space available for court-led change will often depend on the underlying legal requirements. Where not precluded by statutes affirmatively mandating practices that constitute poverty traps or penalties, many of the legislative reforms outlined above—including those that involve waiving or capping unnecessary fees or de-linking access to important resources from payment of court debt—could be accomplished through court rules that constrain discretion by individual judges.

Create Diversion Courts

Another potentially useful intervention is the establishment of diversion courts where judges may waive certain fines and fees for participation in activities like educational or drug treatment programs.[193] One example is Houston's Homeless Court, where homeless defendants can resolve outstanding misdemeanor warrants. The program is voluntary, it does not require defendants to give up any due process protections if they later choose to go to trial, and defendants play an active role in working with local agencies to propose how they can fulfill their sentence's requirements by participating in community service, counseling, computer or literacy classes, or job-search programs.[194] Where governed by appropriate safeguards and limited in scope, these alternative courts can ensure appropriate criminal justice interventions that do not punish or perpetuate poverty. Finally, when creating diversion courts, chief justices or chief judges should ensure adequate training—including training on implicit bias to ensure that individuals are not disproportionately excluded from diversion courts based on their race.

Executive Reforms

Exercise Authority Over Collection Agencies

In many states, the attorney general is responsible for collecting debts owed to the state, either by collecting debts directly or by contracting with third-parties to collect debts.[195] Sometimes the line between action taken by a state attorney general's office and a private debt collection company or private contractor is blurry. For example, in Ohio, private debt collectors used letterhead from the attorney general's office when they sent demand letters arising from debt owed to the state.[196] When attorneys general contract with third parties to collect criminal justice debt, they should structure contracts to require debt-collectors to use reasonable payment plans (as discussed above) and prohibit the use of abusive or unfair debt collection practices and excessive fees.

Monitor Civil Rights Consequences

In many instances, the practices that constitute poverty penalties or traps may not be applied equally. When imposed in a racially disparate manner, practices like license suspension or extended terms of court supervision may deepen existing racial disparities in access to opportunity.[197] In most states, the attorney general's office will have a civil rights division with broad authority to monitor, and shine a spotlight on, practices resulting in unwarranted racial disparities.[198] Attorneys general should exercise that authority to identify and help eliminate discriminatory practices by local actors, whether they grow out of overt or implicit bias.

4. ABILITY-TO-PAY DETERMINATION

Judges across the country routinely incarcerate people for failure to pay criminal justice debt without regard to the financial circumstances that may make payment impossible.[199] This practice violates well-established constitutional principles. Moreover, incarcerating individuals because of their inability to pay imposes a particular hardship on some of the most vulnerable members of society,[200] and exacerbates racial and socioeconomic inequalities in the criminal justice system.[201] Additionally, the practice leads to wasted resources, as efforts to secure payment from individuals who may be unemployed, homeless, or simply too poor to pay are often fruitless.[202] Accordingly, a crucial reform is to ensure that no one is ever jailed because they cannot afford to pay a fine or fee.

The Supreme Court has made clear that the Constitution prohibits courts from jailing people for not paying debt that they are too poor to afford. In *Bearden v. Georgia*, a case involving the automatic revocation of probation where a probationer did not make required payments, the Court held that "depriv[ing] a probationer of his conditional freedom simply because, through no fault of his own he cannot pay a fine...would be contrary to the fundamental fairness required by the Fourteenth Amendment."[203] Similarly, in *Tate v. Short*, the Court held that the Equal Protection Clause of the Fourteenth Amendment "prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."[204] The Court emphasized that a *willful* failure to pay a fine was distinguishable from a defendant's inability to do so.[205] It is because of this distinction—between a defendant who refuses to pay criminal justice debt and a defendant who lacks the means to pay—that an ability to pay determination must take place before someone is jailed for nonpayment of criminal justice debt.

The Supreme Court has recently provided guidance on what an ability-to-pay determination should consist of. In *Turner v. Rogers*, the Court held that finding a man in contempt of court and jailing him for unpaid child support payments without inquiring into his financial status "violated the Due Process Clause."[206] In reaching its holding, the Court also noted certain procedures which, taken together, create "safeguards" that can "significantly reduce the risk of an erroneous deprivation of liberty" in the nonpayment context.[207] These safeguards include:

> *(1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.*[208]

The Court left open the possibility that even more stringent protections, including the right to counsel, may be appropriate where the government is affirmatively seeking to have an individual jailed based on non-payment of criminal fines or fees.[209]

This section outlines reforms designed to put in place robust ability-to-pay procedures.

Legislative Reforms

Codify Critical Elements of Ability-to-Pay Proceedings in State Law

Ability-to-pay determinations have several critical elements which should be mandated by statute for situations where courts need to determine a defendant's ability to pay criminal justice debt:

- Robust notice provisions. Defendants should receive comprehensive notice outlining the financial obligations they face, the standards that will be applied, the information that will be considered, and their right to counsel. It is especially important for defendants to have notice about what types of documents they should bring to the hearing (e.g., tax returns, pay stubs, bank account information, proof of receipt of public benefits).
- Clearly articulated and well-defined operative terms. Statutes should define operative terms such as "indigent," "ability to pay," and "financial hardship."[210] It is also imperative that statutes clearly define what follows from the application of these terms. For example, a jurisdiction may impose a standard of "indigency" that, where applicable, triggers a requirement or a presumption that all financial obligations be waived or modified. On the other hand, certain standards (e.g., "undue hardship") may require courts to scale or adjust monetary obligations—either by reducing their absolute magnitude or requiring reasonable payment plans—to make them consistent with an individual's financial circumstances.

- **Clear burden of proof.** Ability-to-pay determination procedures should make clear both the burden that must be met and which party must meet it.
- **Presumptions of inability to pay based on indigency.** To make determinations more efficient, statutes may include rebuttable presumptions that people who are indigent, either because their income is below a certain threshold or because they receive public benefits, are unable to pay criminal justice debt.[211]
- **Clear description of the sources of financial information considered.** A court may consider, for example, tax forms, public benefit eligibility, affidavits, or other documents that can give a realistic picture of a person's financial status. The standards for demonstrating inability to pay criminal justice debt should not be overly onerous or unnecessarily stringent. Excessively burdensome documentation requirements run the risk that courts will reach erroneous determinations of a defendant's ability to pay due to the defendant's inability to produce required documents. It is also important that courts consider, among other things, the full array of legal fees and fines a defendant faces. While a relatively low-level fine in one jurisdiction may not prove catastrophic on its own, an impoverished defendant may face truly severe burdens when shouldering the cumulative weight of financial obligations imposed in numerous proceedings or by multiple jurisdictions.[212]
- **Ability-to-pay findings on the record.** Requiring courts to make express findings of ability to pay on the record serves the functions of ensuring that requisite procedures are followed, effectively informing the defendant of the outcome of a determination, and aiding in any subsequent review.[213]

A final crucial consideration is when ability-to-pay determinations should occur. The elements of an ability-to-pay proceeding listed above should be considered critical ingredients of such proceedings whenever they take place. As discussed above, well-established constitutional principles require ability-to-pay determinations prior to incarcerating a person for non-payment. Though not mandated by established Supreme Court case law, policy considerations counsel in favor of conducting such determinations when financial obligations are imposed, not simply when a court is deciding whether to incarcerate someone for non-payment. Although there are costs associated with conducting ability-to-pay determinations when financial obligations are imposed, assessing a defendant's ability to pay at that earlier stage may ultimately be far more efficient than waiting until a defendant has defaulted. Efforts to collect criminal justice debt that a defendant cannot pay are costly, so the net financial impact on a jurisdiction should reflect the benefit of avoiding measures to recoup uncollectable debt.[214] Beyond the increased efficiencies that flow from avoiding futile collection efforts, assessing

The Supreme Court has made clear that the Constitution prohibits courts from jailing people for not paying debt that they are too poor to afford.

financial circumstances at the imposition stage will avoid unnecessarily enmeshing impoverished defendants in the criminal justice system through arrests or court proceedings connected to enforcement of unpaid debt.[215] When financial circumstances are assessed at the imposition stage, defendants should generally also have an opportunity to raise changes in their financial circumstance that render them unable to pay whatever financial obligations were imposed.[216]

CASE STUDY
BILOXI SETTLEMENT

A settlement agreement in a federal lawsuit challenging practices in the municipal court of Biloxi, Mississippi provides a potential model for defining the mechanics of ability-to-pay determinations.[217]

- Timing of ability-to-pay determination. Under the agreement, the court shall conduct an ability-to-pay determination when "determining the amount of LFOs, establishing an LFO Payment Plan, or addressing the nonpayment of LFOs in a hearing."[218]
- Considerations in determining ability to pay. In determining ability to pay, a court must consider "the defendant's efforts to earn money, secure employment, and borrow money, as well as any limitations on the defendant's ability to engage in such efforts due to homelessness, health and mental health issues, temporary and permanent disabilities, limited access to public transportation, limitations on driving privileges, and other relevant factors."[219]
- Standard form. Defendants complete an "LFO Inability to Pay Form" to document their income and assets, any outstanding debts, and their efforts to borrow money as well as any attempts to find work.[220]
- Alternatives to incarceration. If a judge determines that the defendant is unable to pay, the judge must consider alternatives to incarceration, including waiver or reduction in fines, community service, completion of job training or other educational programming, or an extension of time to pay.[221]

Amend or Repeal Facially Unconstitutional Statutes

Many states maintain laws that, on their face, contradict the constitutional protection against being jailed based on inability to pay a financial obligation. For example, some states have statutes permitting incarceration of individuals whose failure to pay is based on inability to afford financial obligations[222] or mandating automatic incarceration for failure to pay criminal justice debt without providing an ability-to-pay

determination.[223] Such statutes should be repealed or amended to conform to minimal constitutional requirements.

Eliminate Presumptions of Ability to Pay Criminal Justice Debt

Presumptions that all defendants are able to pay criminal justice debt are bad public policy. Examples of these practices include not only blanket presumptions that all defendants are able to pay criminal justice debt,[224] but also presumptions of an ability to pay based on circumstances that are not necessarily tethered to a defendant's financial situation (such as paying a bail bond)[225] and consideration of a defendant's imputed future income. [226] An inaccurate ability-to-pay determination or no ability-to-pay determination, coupled with the threat of imprisonment for failure to pay criminal justice debt, can cause defendants to take desperate measures, including handing over money from the disability and welfare checks that they need to survive.[227] Statutes governing criminal justice debt should not impose presumptions that may cause individuals to be erroneously deemed to have engaged in willful non-payment when in fact they lack the ability to pay.

Judicial Reforms

State supreme courts should also enact court rules or administrative orders to ensure robust ability-to-pay proceedings. The same critical elements of ability-to-pay determinations outlined above should guide those rules or orders.

Provide Judicial Education

Chief justices or a state's administrative office of the court can educate trial court judges to ensure compliance with constitutional principles. This can be done in a variety of ways, including:

- Judicial training. Judges who are tasked with imposing fines and fees or adjudicating a defendant's default on criminal justice debt should be trained on the holdings of *Bearden* and *Turner* and relevant procedures, obligations, standards, and considerations.[228] When new judges take the bench, they should undergo training prior to presiding over any matters that involve the imposition or collection of criminal justice debt.[229]
- Bench cards. Circulating a user-friendly and information-rich document to judges can help ensure that defendants who come before them are not erroneously deprived of their liberty on the basis of their inability to pay criminal justice debt. Bench cards relating to criminal justice debt issues are currently in use in multiple states.[230]
- Guidance regarding warrants for nonpayment. The statewide administrative office of the courts should analyze failure-to-pay arrests and issue guidance providing that no warrants will issue for the nonpayment of criminal justice debt.[231] For example, an

analysis was undertaken in Denver and resulted in the cancellation of 12,500 active warrants and a projected revenue gain based on reduced costs for serving warrants and incarcerating people for nonpayment.[232]

Create Standard Forms

Creating standard forms for ability-to-pay determinations and court orders can help eliminate inconsistent ability-to-pay determinations. For example, the recent Montgomery settlement requires that an "Affidavit of Substantial Hardship Form" be used to elicit relevant and consistent financial information from defendants in the nonpayment context.[233] Such forms reduce the risk that an important component of a defendant's financial situation will be overlooked.

Conduct Periodic Audits

Reviewing court collections practices through periodic audits can aid in monitoring individual judges' adherence to *Bearden*'s mandate. For example, the Michigan State Court Administrative Office outlines model collections practices and requires audits to verify that courts are in compliance.[234]

Take Enforcement Actions

Judges should be disciplined if they fail to follow *Bearden*'s mandate. The Ohio State Bar Association did just that in the case of a judge who failed to follow required procedures to determine a defendant's ability to pay criminal justice debt prior to ordering incarceration for nonpayment.[235]

Executive Reforms

There are a number of executive branch actions that can be undertaken to prevent the incarceration of individuals on the basis of their inability to pay criminal justice debt. These include:

Disseminate Information to the Public

The state attorney general should publish know-your-rights information via the Internet and other accessible media outlets to inform indigent defendants of their basic constitutional and statutory protections with respect to any inability to pay criminal justice debt, their right to counsel, and other procedural protections.

Issue Clarifying Legal Opinions

The state attorney general should issue legal opinions explaining the scope of constitutional protections, minimal requirements for ability-to-pay determinations, instances in which criminal justice debt can and should be waived, and the consequences under state anti-discrimination law of systematic racial disparities in rates of jailing for

non-payment.[236] The ability to request a state attorney general's opinion is dictated by state law and is restricted to certain entities.[237] South Carolina is one state that broadly authorizes officials, including to the Deputy Director and General Counsel of the South Carolina Commission on Indigent Defense, to request attorney general opinions.[238] In other states, public defenders could be best suited to request state attorney general guidance about criminal justice debt issues where private citizens do not have standing to do so.

Conduct Audits and Monitor Compliance

To the extent that police practices and the imposition or collection of criminal justice debt violate state or federal civil rights law, state attorneys general may have the ability to investigate these practices through their office's civil rights division.[239]

5. TRANSPARENCY AND ACCOUNTABILITY

Ensuring meaningful transparency in the operation of criminal justice debt is crucial. Prioritizing transparency enables reform in many ways. Access to information about the mechanics of criminal justice debt—including rich quantitative data—equips advocates to identify abusive practices, racial disparities, and inefficiencies. It provides lawmakers with the tools to evaluate the financial and social impacts of criminal justice debt when proposing or voting on legislation. And it provides citizens with the information required to hold their elected officials accountable.

The transparency frameworks of many states, however, impede these goals. Empirical data on the imposition and collection of criminal justice debt is often not collected or made publicly available. Even when it is, the data is often compiled by an array of agencies and bodies—clerks of courts, probation agencies, corrections officials, and private debt collection companies—which makes the information piecemeal and inaccessible. The statutory provisions imposing and regulating criminal justice debt often sprawl across many titles of a state's code, including those related to crimes, criminal procedure, courts, local government, vehicles, corrections, and revenue. The result is often an incomprehensible mess of provisions, as difficult to decipher as a tax code.[240] This opacity increases administrative costs[241] and obscures the responsibility of legislators.

There is also a fundamental fairness principle underpinning the following reforms. A defendant is entitled to know, prospectively, of the financial obligations for which he or she may become liable. Once convicted, a person has a right to know what financial obligations were imposed and the legal basis for that imposition. The absence of this information, in a clear and accessible form, compromises a defendant's ability to challenge the imposition and collection of criminal justice debt. Confusion as to what debts

remain outstanding against a person can lead to non-compliance with payment plans, even when a person has the capacity to pay their debts. In the worst-case scenario, it can lead to a summons or warrant being issued against a person for failure to pay, and needless incarceration.

The following sections propose procedures to enhance transparency and promote accountability.

Legislative Reforms

Collect and Publish Data on Criminal Justice Debt

States should collect data that would illuminate the practices surrounding criminal justice debt. Although court systems can and should do this without statutory authorization, legislation requiring and providing funding for data collection would ensure that courts engage in data collection in a uniform manner. Ideally, the data would be collected and compiled by a centralized body and published in a unified report. Such data should include:

- Imposition of debts: How much criminal justice debt is being imposed by each court, correctional facility, debt-collection company, or other entity? On which statutory bases? Are there race disparities in the imposition of criminal justice debt?
- Revenue collection: How much criminal justice debt is being collected (fines, fees, costs, assessments, etc.)? What methods are being used to collect the debt (e.g. incarceration, suspension of licenses, payment plans)?
- Disposition of collected money: How much criminal justice debt is being paid into state or municipal general revenue funds, specific earmarked funds, or directly to other entities?
- Collection costs: What is the cost of collecting criminal justice debt, by courts, probation agencies, correctional facilities, or private debt collection companies?[242]
- Waivers based on inability to pay: How frequently are waivers based on an inability to pay being granted? Are there race disparities in the granting of waivers? How frequently are payment plans or payment alternatives being used?[243]
- Probation: How often is probation revoked for a failure to pay debts? How often is probation being extended for a failure to pay debt?
- Bases for arrests and incarceration: How many warrants are issued and executed on the basis of a failure to pay or failure to appear at a proceeding related to criminal justice debt? How often are individuals found in contempt for failure to pay or failure to appear at proceedings relating to criminal justice debt? Of these, how many people are incarcerated?

Some states already have legislation imposing reporting obligations. For example, Michigan requires the clerk of each court to report on the total number of cases in which costs or assessments were imposed, the total amount of costs or assessment that were imposed by the court, and the total amount of costs or assessments that were collected by the court.[244] South Dakota, which passed legislation in 2015 establishing an Obligation Recovery Center to consolidate the collection of money owed to state agencies and programs, requires the center to annually report the number of debts referred to it, the annual amount and nature of the debt obligations recovered by the center, the number of debts referred from the center to private collection agencies and the results of those referrals, and the costs and expenditures incurred by the center.[245]

Establish a Commission to Review Existing and Proposed Fines and Fees

A commission tasked with studying proposed fines and fees to assess their financial and social impacts will encourage a more fair and rational criminal justice system. For example, the Illinois Access to Justice Act created a Statutory Court Fee Task Force, made up of representatives from all three branches of government. After spending a year reviewing the fines and fees that are imposed in civil and criminal cases, the Task Force released a report with its findings and recommendations.[246] Periodic review of existing fines and fees, at least every three to five years, would allow states to evaluate the impact of any new or revised fees and fines, as well as to assess the cumulative impact of all fees and fines.[247] A commission made up of a broad range of stakeholders could generate balanced and bipartisan recommendations.

CASE STUDY

THE MASSACHUSETTS SPECIAL COMMISSION TO STUDY THE FEASIBILITY OF ESTABLISHING INMATE FEES

The Massachusetts Special Commission to Study the Feasibility of Establishing Inmate Fees provides an example of a successful model for evaluating the imposition of fees and fines. The commission was tasked with conducting a comprehensive study of the feasibility of establishing inmate fees within the correctional system, including the types and amount of fees to be charged, the revenue that could be generated from the fees, the administrative costs, and the impact on the affected population.[248] The enabling statute provided that the membership of the commission should include sheriffs, representatives from prisoners' legal services, public defenders, and correctional system union representatives.[249] The commission conducted surveys, literature reviews, and phone interviews. The commission concluded that establishing additional inmate fees would lead to "a host of negative and unintended consequences," including acting as a barrier to successful re-entry.[250]

Include Fiscal Impact Statements in New Legislation

A fiscal impact statement provides a projection of the costs and benefits of proposed legislation. A fiscal impact statement may encourage legislators to enact rational, cost-saving reforms and help depoliticize the policymaking process.[251] A number of states have enacted laws requiring fiscal notes for at least some criminal justice bills, often those increasing sentences or creating new crimes.[252] A joint report by the Center on Budget and Policy Priorities and the ACLU is a useful resource for advocates, laying out best practices for creating consistent, properly researched, detailed, and accessible fiscal notes.[253]

Expand Public Records Laws to Include Revenue and Collection of Court Debt

In some states, the judiciary is exempt from open records law.[254] While records may nonetheless be accessible through other channels, accessing information may be unnecessarily complicated. Data on court revenue and expenditures, and on the imposition and collection of court debt, should be covered by statutory open records regimes. Further, where an open records law does extend to the judiciary, courts must establish proper procedures to ensure compliance with their legal obligations.[255]

> The statutes imposing criminal justice debt often sprawl across many titles of a state's code. The result can be an incomprehensible mess of provisions, as difficult to decipher as a tax code. This opacity increases administrative costs and obscures the responsibility of legislators.

Require that Criminal Justice Debt Statements Be Issued to Defendants

A defendant should be entitled to a statement that itemizes all amounts that he or she owes towards fees, fines, restitution and other assessments, the legal basis for each amount, and the date by which it is due. These statements should be tested for readability and should avoid jargon. Statements should also include clear instructions on what to do if a person is unable to pay the debt. Generally, it will be appropriate for a judge to issue such a statement during sentencing, [256] and requiring that such statements be read aloud in open court is a best practice to ensure defendants understand the obligations they face and that the imposition of fees and fines occur in a transparent manner. However, where other bodies, such as a department of corrections or a probation agency, are empowered to impose debt obligations on a defendant, they should also be bound to provide a statement of what the defendant owes.[257] In Texas, a recent law prevents courts from imposing costs on defendants unless a written bill listing the costs is provided to the defendant and signed by the official who is imposing the cost or receiving the revenue.[258]

Collect and Publish Data on Private Probation or Debt-Collection Companies

Many states authorize localities to outsource probation supervision[259] or debt collection.[260] These companies, and the government actors who engage them, should be accountable to the public for their policies and performance. Accordingly, contracts with private probation or debt-collection companies should be required to be disclosed and easily accessible (typically via an online portal). Private contractors should also have to maintain and disclose records relating to their impact on the criminal justice system, such as the number of defendants they are assigned to, the total amount of criminal justice debt collected, the amount of collection fees or supervision fees collected from individuals, the rate at which individuals whose accounts they pursue are jailed, and the recidivism rates of individuals subject to private supervision or collection.

CASE STUDY
REGULATION OF PRIVATE PROBATION IN GEORGIA

In 2015, after ongoing criticism of its private probation industry, Georgia passed House Bill 310 to strengthen oversight of private probation companies.[261] All private companies which enter into a contract to provide probation services need to provide quarterly reports summarizing:

- The number of offenders under supervision;
- The amount of fines, statutory surcharges and restitution collected;
- The amount of fees collected and the nature of such fees (including probation supervision fees, rehabilitation programming fees, etc.);
- The number of community service hours performed by probationers under supervision;
- Any other service for which a probationer was required to pay;
- The number of offenders for whom supervision or rehabilitation has been terminated and the reason for the termination; and
- The number of warrants issued during the quarter.[262]

The reports are subject to public inspection, and local governments are encouraged to post electronic copies on their website.[263]

Judicial Reforms

Issue Rules Requiring that Warrants Indicate the Reason for their Issuance

The procedures for issuing warrants for arrest are ordinarily regulated by court rules. In many states, warrants do not state the reason for their issuance. This impedes the collection of data on incarceration for failure to pay criminal justice debt.

Circumstances in which incarceration relating to criminal justice debt may be masked include:

- When payment of criminal justice debt is a condition of probation or parole, the basis for a warrant arising out of a failure to pay may only be recorded as a violation of probation or parole without explanation of the underlying reason;
- When a person misses a court hearing at which she would be required to pay a debt she cannot afford, and is subsequently arrested as a result, the arrest may be simply recorded as a failure-to-appear without noting that the appearance was entirely for purposes of enforcing court debt.[264]

Court rules should require that warrants clearly indicate the underlying reason for their issuance.

Make Information Accessible Online

Many courts have begun to use their website as a public information tool by uploading schedules of fines and fees.[265] Websites can also include a "Frequently Asked Questions" page that explains how to pay fines or fees, how court procedures work, what somebody should do if they can't pay their debt, and the rights of a criminal defendant against whom criminal justice debt has been or may be imposed.[266]

Use Judicial Directives to Clarify Which Fees Are Discretionary

Many provisions imposing criminal justice debt across the states do not indicate whether a judge has discretion to waive or suspend the fine or fee. Similarly, many provisions are silent as to whether an ability to pay determination is required prior to its imposition, or at least whether a defendant can challenge the imposition of a fine on the basis of an inability to pay.

Courts may clarify these statutory ambiguities through judicial directives. For example, in Colorado, a judicial directive was issued stating:

> *If the statute or rule is silent as to the court's authority for waiver or suspension of the specific fine, fee, surcharge, or cost being considered, this [judicial directive] shall provide authority for the court to waive or suspend the imposition or collection of the amount only in those instances where the court finds the Defendant or Respondent has no ability to pay the assessed amount.*[267]

Executive Reforms

Audit Courts

Auditing agencies (e.g., comptrollers) should conduct regular audits regarding revenue generated by courts, screening for efficiency, fairness, and perverse incentives. Executive agencies with auditing or accounting expertise should be used to analyze the criminal justice debt system. This is already occurring in some states—the Virginia Auditor of Public Accounts, for example, has conducted special reviews of the courts' collection system of unpaid fines and fees.[268]

6. MOVING AHEAD

Advocates and policymakers seeking to reform criminal justice debt face pronounced challenges. The laws and informal practices that have led to widespread abuse are entrenched and complex, guiding the actions of numerous actors and embedding harmful incentives throughout the system. Yet the opportunities for reform are also significant, and should be seized. There is growing awareness that over-reliance on criminal justice debt distorts critical aspects of the legal system. It causes grave individual injustice and erodes the legal system's legitimacy. No single reform outlined in this guide is a silver bullet, and different states will present different needs and opportunities. The aim of this guide is to equip advocates and policymakers to identify promising levers of reform and move forward with concrete, workable solutions.

ENDNOTES

1. *See* Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States,* 155 Am. J. of Sociology 1753, 1777 (2010).
2. *See* Carl Reynolds & Jeff Hall, Conference of Adm'rs, *Courts are Not Revenue Centers* 1 (2012), *available* at https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf.
3. *See* Dep't of Justice, Office of Justice Programs Diagnostic Ctr., *Resource Guide: Reforming the Assessment and Enforcement of Fines and Fees* 3 (2015).
4. *See, e.g.*, Am. Civil Liberties Union, *Written Statement Before the U.S. Commission on Civil Rights, Hearing on Municipal Policing and Courts: A Search for Justice or a Quest for Revenue* 2 (Mar. 18, 2016), *available at* https://www.aclu.org/sites/default/files/field_document/aclu_statement_usccr_03182016_municipal_courts_and_police_choudhury.pdf (describing how practices around criminal justice debt are "racially-skewed due to the dual impact of racial disparities in the criminal justice system and the racial wealth gap").
5. *See generally* Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010); David Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (1999).
6. *See, e.g.*, Pew Research Ctr., *Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics* (July 26, 2011), *available at* http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/ (finding that the median wealth of white households is 20 times that of black households and 18 times that of Hispanic households).
7. U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Ferguson Police Department* 2 (2015), *available at* https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf [hereinafter *Ferguson Report*].
8. *Id.* at 64-69. *See also* Consent Decree, *United States v. City of Ferguson*, 4:16-cv-000180-CDP (E.D. Mo. March 17, 2016), *available at* https://www.justice.gov/crt/file/833701/download [hereinafter Ferguson Consent Decree].
9. Ferguson Consent Decree, *supra* note 8, at 115.
10. Back on the Road California, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* 2 (April 2016), *available at* http://www.lccr.com/wp-content/uploads/Stopped_Fined_Arrested_BOTRCA.pdf.
11. *See generally* Am. Civil Liberties Union, *supra* note 4, at 2 (describing how criminal justice debt practices are "racially-skewed due to the dual impact of racial disparities in the criminal justice system and the racial wealth gap"); Dan Kopf, *The Fining of Black America*, Priceonomics, June 24, 2016 (examining nationwide census data and finding that "best indicator that a government will levy an excessive amount of fines is if its citizens are Black"), *available at* http://priceonomics.com/the-fining-of-black-america.
12. *See, e.g.*, Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* 87 (2016) ("Court officials commonly claimed that [legal financial obligations] were a source of revenue—collection programs across the United States and in Washington State do recoup a relatively large amount of money—and most of them said that obtaining money was in fact a primary goal of assessing LFOs").
13. *See* Alicia Bannon et al., Brennan Ctr. for Justice, *Criminal Justice Debt: A Barrier to Reentry* 10 (2010), *available at* http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf (finding that none of the states surveyed measured the human costs or fiscal costs of criminal justice debt collection efforts).
14. *See, e.g.*, Class Action Complaint, *Foster v. City of Alexander City*, No. 3:15-cv-647-WKW (N.D. Ala. Sept. 8, 2015), *available at* https://www.scribd.com/document/279532267/Alexander-City-Lawsuit [hereinafter Alexander City Complaint]; Class Action Complaint, *Kennedy v. City of Biloxi*,

No. 1:15-cv-00348-HSO-JCG (S.D. Miss. Oct. 21, 2015), *available at* https://www.aclu.org/sites/default/files/field_document/kennedy_v._city_of_biloxi_-_complaint.pdf [hereinafter Biloxi Complaint]; Class Action Complaint, *Bell v. City of Jackson*, No. 3:15-cv-732-TSL-RHW (S.D. Miss. Oct. 13, 2015), *available at* https://docs.google.com/viewerng/viewer?url=http://jacksonfreepress.media.clients.ellingtoncms.com/news/documents/2015/10/13/bell_v_jackson_complaint_100915.pdf [hereinafter City of Jackson Complaint].

15. *See*, *e.g.*, Mitali Nagrecha et al., Ctr. for Cmty. Alternatives, *When All Else Fails, Fining the Family: First Person Accounts of Criminal Justice Debt* (2015), *available at* http://www.communityalternatives.org/pdf/Criminal-Justice-Debt.pdf (describing the impact of criminal justice debt on people returning from prison and their families); Bannon et al., *supra* note 13 (examining how collection practices can lead to cycles of debt and debtors' prison); Am. Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (2010), *available at* https://www.aclu.org/files/assets/InForAPenny_web.pdf [hereinafter *In for a Penny*] (documenting the stories of people jailed based on their inability to pay criminal justice debt); Thomas Harvey et al., ArchCity Defenders, *Municipal Courts White Paper* (2014), *available at* http://03a5010.netsolhost.com/WordPress/wp-content/uploads/2014/08/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf (describing unconstitutional practices in some St. Louis area municipal courts that lead to debtors' prisons and the poorest residents subsidizing the costs of the municipal court system); deVuono-powell, et al., Ella Baker Ctr. for Human Rights, *Who Pays? The True Cost of Incarceration on Families* (2015), *available at* http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf (describing the impact of collateral consequences of incarceration on family members of incarcerated people); Allyson Fredricksen & Linnea Lassiter, *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting* (March 2016), *available at* http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf (showing how outstanding criminal justice debt prevents many formerly incarcerated people from voting); Back on the Road California, *supra* note 11 (examining racial and socio-economic disparities in drivers' license suspension for unpaid fines and fees in California).

16. *See*, *e.g.*, Harris, *supra* note 12; Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277 (2014). Other scholars have received funding to conduct empirical research on the effects of criminal justice debt. *See, e.g.,* Press Release, Laura and John Arnold Foundation Addresses Use of Fines and Fees in the Criminal Justice System (Dec. 10, 2015), *available at* http://www.arnoldfoundation.org/.
laura-and-john-arnold-foundation-addresses-use-of-fines-and-fees-in-the-criminal-justice-system.

17. To date, lawsuits challenging practices that unconstitutionally jail poor people for non-payment of criminal justice debt have been filed in Alabama, Mississippi, Georgia, Missouri, Louisiana, and Washington, *See*, *e.g.*, Alexander City Complaint, *supra* note 14 (alleging that the Alexander City, Alabama jailed people for failure to pay criminal justice debt that they could not afford); Biloxi Complaint, *supra* note 14 (challenging debtors' prisons in Mississippi); Class Action Complaint, *Cain v. City of New Orleans*, No. 2:15-cv-04479-SSV-JCW (E.D. La. Sept. 21, 2015), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/First-Amended-Complaint-9-22-15.pdf (alleging that practices in New Orleans created unconstitutional debtors' prisons and conflicts of interest) [hereinafter City of New Orleans Complaint]; Class Action Complaint, *Fant v. City of Ferguson*, No. 4:15-cv-00253 (E.D. Mo. Feb. 18, 2015), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/02/Complaint-Ferguson-Debtors-Prison-FILE-STAMPED.pdf (alleging that Ferguson, Missouri residents were jailed based on their inability to pay criminal justice debt); Class Action Complaint, Edwards v. Red Hills Community Probation, LLC et al., No. 1:15-cv-67-LJA (M.D. Ga. April 10, 2015), *available at* https://www.schr.org/files/post/files/Doc%20%201%20-%20Complaint.pdf (alleging that probationers were subject to jail based on their inability to pay fines and probation supervision fees to a private probation company);

Complaint, *Fuentes et al., v. Benton County*, No. 15-2-02976-1 (Wash. Super. Ct. Oct. 6, 2015), *available at* https://www.aclu.org/sites/default/files/field_document/fuentes_v._benton_county_-_complaint.pdf.

18. *See* White House Council of Econ. Advisers, *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor* (December 2015), *available at* https://www.whitehouse.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf; Vanita Gupta & Lisa Foster, U.S. Dep't of Justice, Civil Rights Div., *Dear Colleague Letter* (March 14, 2016), *available at* https://www.justice.gov/crt/file/832461/download; Joint Mot. For Entry of Settlement Agreement ¶¶ 85-91, *United States v. Hinds County*, No. 3:16-cv-00489 (S.D. Miss. June 23, 2016).
19. *See*, *e.g.*, Harris, *supra* note 12, at 123 (analyzing five counties in Washington State and finding that "the distinctive punishment culture of each county is reflected in how its officials structure and implement monetary sanctions" and that "[t]he nature and severity of punishment practices depend on local culture and that both the interpretation and enforcement of state law depend on where it is being applied, and to whom").
20. Harvey et al., *supra* note 15, at 4.
21. This is in keeping with the work of other advocacy organizations, including the Brennan Center for Justice and the Texas Fair Defense Project, and scholars. *See*, *e.g.,* Bannon et al., *supra* note 13; Texas Fair Defense Project, *Criminal Justice Debt* (2016), *available at* http://www.fairdefense.org/criminal-justice-debt; Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons* 75 Md. L. Rev. 186 (2016).
22. *See*, *e.g.*, Katherine Beckett, et al., Wash. State Minority and Justice Comm'n, *The Assessment and Consequences of Legal Financial Obligations in Washington State* (Aug. 2008), *available at* http://seattletimes.nwsource.com/ABPub/2009/02/24/2008780289.pdf; Council of State Gov'ts Justice Ctr., *Legal Financial Obligations* (2016), *available at* https://csgjusticecenter.org/courts/legal-financial-obligations/.
23. *See*, *e.g.,*, Alexes Harris, *The Cruel Poverty of Monetary Sanctions*, The Society Pages, Mar. 4, 2014, *available at* https://thesocietypages.org/papers/monetary-sanctions.
24. *See*, *e.g.,* Am. Civil Liberties Union, *supra* note 4, at 1.
25. *See*, *e.g.,* Am. Civil Liberties Union, *Ending Modern-Day Debtors' Prisons* (2016), *available at* https://www.aclu.org/feature/ending-modern-day-debtors-prisons.
26. *See* Micah W*est, Financial Conflicts of Interest and the Funding of New Orleans's Criminal Courts,* 101 Cal. L. Rev. 521 (2013).
27. La. Rev. Stat. Ann. § 13:2496.4.
28. *Id*. § 13:1312.
29. *Id*. § 13:1381.4.
30. *Id.* § 13:2507.1, repealed by Acts 2014, No. 845, § 2, and re-codified at §13:2496.4, eff. Jan. 1, 2017 (joining the municipal and traffic courts in New Orleans and their respective judicial expense funds into a single consolidated court).
31. *Id*. §13:1595.2.
32. *Id.* §§ 13:1381.4A.(1)-(2), 32:393, 13:2501.1, amended and reenacted by Acts 2014, No. 845, § 2, eff. Jan. 1, 2017.
33. *Id*. § 22:822.
34. *See* §§ 13:2507.1, 13:2496.4, *supra* note 30.
35. *Id*.
36. *Id*. § 13:1381.4.
37. *Id*. §§ 13:2507.1, 13:2496.4, *supra* note 30.
38. *Id*. at 533-34.
39. *Augustus v. Roemer*, 771 F. Supp. 1458, 1473 (E.D. La. 1991).
40. *Id*. at 1473.

41. City of New Orleans Complaint, *supra* note 17.
42. *See*, *e.g.*, *Connally v. Georgia*, 429 U.S. 245, 251 (1977) (holding that the issuance of a warrant violated the Fourth and Fourteenth Amendments where justices of the peace received $5 compensation for each application for a search warrant only if the warrant was issued); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927) (holding that a village mayor serving as judge may not be paid from fees based on a defendant's conviction because "[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law"); *Brown v. Vance*, 637 F.2d 272, 286 (5th Cir. 1981) (finding that a statute in which judges were paid based on the number of cases filed in their court violated due process because it encouraged judges to curry favor with law enforcement); *West Virginia ex rel. Osborne v. Chinn*, 121 S.E.2d 610, 615-16 (W.V. 1961) (holding that a statute which authorized judges to be paid out of a fund made up of fines from cases that they tried violated the Due Process Clause).
43. *See Tumey v. Ohio*, 273 U.S. 510, 532-33 (1927) ("With his interest, as mayor, in the financial condition of the village, and his responsibility therefor, might not a defendant with reason say that he feared he could not get a fair trial or a fair sentence from one who would have so strong a motive to help his village by conviction and a heavy fine?"); *Dugan v. Ohio*, 277 U.S. 61, 65 (1928) (analyzing the possibility, though not present in the case at hand, where a mayor with judicial powers has competing duties within his roles); *Ward v. Village of Monroeville*, 409 U.S. 57, 2 (1972) (finding that a "mayor's executive responsibilities for village finances may make him partisan" and compromise his dual role as judge); *Rose v. Village of Peninsula*, 875 F.Supp. 442, 452 (1995) (clarifying that "the amount of mayor's court fee revenues is just one measure of whether the mayor may reasonably be questioned as being impartial" where judicial and executive functions overlap); *Village of Covington v. Lyle*, 433 N.E. 2d 597 (1982).
44. Gordon M. Griller et al., National Ctr. for State Courts, *Missouri Municipal Courts: Best Practice Recommendations*, 26-27 (November 2015), *available at* https://www.courts.mo.gov/file.jsp?id=95287.
45. *Ferguson Report*, *supra* note 7, at 10.
46. Supreme Court of Missouri, Municipal Division Work Group, *Report to the Supreme Court of Missouri* 18 (March 1, 2016), *available at* https://www.courts.mo.gov/file.jsp?id=98093 [hereinafter Missouri Municipal Division Work Group].
47. *Id.* at 24.
48. *Id.* at 26.
49. *Id.* at 79.
50. *Id.* at 81.
51. Conference of State Court Adm'rs, *Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practice* 4-5 (June 1986), *available at* http://cdm16501.contentdm.oclc.org/cdm/ref/collection/financial/id/81 [hereinafter *Standards Relating to Court Costs*]; West, *supra* note 26, at 529.
52. Conference of State Court Adm'rs, *Position Paper on State Judicial Branch Budgets in Times of Fiscal Crisis* 15 (December 2003).
53. Bannon et al., *supra* note 13, at 7.
54. Reynolds & Hall, *supra* note 2, at 9.
55. S.C. Code Ann. §§ 56-5-2995, 14-1-201. *See also* Tex. Code Crim. Proc. Ann. Art. 102.014 ($2-$20 cost imposed on offense on violations in school crossing zones to be used in the school crossing guard program); Tenn. Code Ann. § 39-17-439 ($100 alcohol and drug addiction treatment fee paid to the alcohol and drug addiction treatment fund); Wash. Rev. Code § 10.99.080 ($100 domestic violence penalty to fund domestic violence advocacy, prevention and prosecution programs).

56. Maura Ewing, *Want to Clear Your Record? It Will Cost You $450*, Marshall Project (June 1, 2016), *available at* https://www.themarshallproject.org/2016/05/31/want-to-clear-your-record-it-ll-cost-you-450?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20160601-499#.LJenWiIJd.
57. *Id.*
58. *See, e.g.*, Tenn. Code Ann. §§ 40-24-107; 16-18-305.
59. *Id.* § 67-4-606.
60. *In for a Penny*, *supra* note 15, at 60-61.
61. *See, e.g.*, *Developments in the Law: Policing and Profit*, 128 Harv. L. Rev. 1723 (2015) [hereinafter *Policing and Profit*]; Sarah Stillman, *Get Out of Jail, Inc.*, The New Yorker, June 23, 2014, *available at* http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc; Terry Carter, *Privatized Probation Becomes A Spiral of Added Fees and Jail Time*, A.B.A. J., Oct. 1, 2014, *available at* http://www.abajournal.com/magazine/article/probationers_prison_privatized_supervision_becomes_a_spiral_of_added_fees_j; Human Rights Watch, *Profiting From Probation: America's "Offender-Funded" Probation Industry* 29 (2014), *available at* https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf [hereinafter Human Rights Watch]. In Montana, the offender-funded model is statutorily required. *See* Mont. Code Ann. § 46-23-1005(3).
62. Human Rights Watch, *supra* note 61, at 44-45.
63. *See, e.g.*, Cal. Penal Code §§ 1204 (West 2016), 1463.007, 1463.010; Fla. Stat. Ann. § 938.35; Tenn. Code Ann. §§ 40-24-105, 40-28-205; Wash. Rev. Code §§ 3.02.045, 9.94A.760, 36.18.190; Nev. Rev. Stat. § 176.064; Tex. Code Crim. Proc. Ann. Art 103.0031; Ga. Code Ann. § 15-21-12; Ala. Code § 12-17-225.7; Miss. Code Ann. § 19-3-41(2); Mont. Code Ann. § 46-17-402.
64. *See, e.g.*, Cal. Penal Code § 1205(e) (imposition of a fee not exceeding $30 paid to collecting agency); Fla. Stat. §§ 28.246(6), 938.35 (collection fee of up to 40%); Nev. Rev. Stat. § 176.064(2)(c) (the collection agency's compensation is capped at the amount of the collection fee); Tenn. Code Ann. § 40-24-105(d)-(e) (collection agency fee of up to 40%); Tex. Code Crim. Proc. Ann. art. 103.0031(b) (collection fee of up to 30% may be authorized); Wash. Rev. Code §§ 3.02.045 (agreements with collection agencies may authorize the retention of any portion of the interest collected on debts), 9.94a.760(12) (the cost of collection services during a period of community supervision to be paid by the offender), 36.18.190 (agreements with collection agencies may authorize the retention of any portion of the interest collected on debts).
65. Fla. Stat. Ann. §§ 28.246(6) (West 2016), 938.35 (West 2016); Tenn. Code Ann. § 40-24-105(d)-(e) (West 2016); *see* Rebekah Diller, Brennan Ctr. for Justice, *The Hidden Costs of Florida's Criminal Justice Fees* 21 (2010), *available at* http://www.brennancenter.org/sites/default/files/legacy/Justice/FloridaF&F.pdf.
66. Iowa Code §§ 321.40(9), 321.210B (empowering private debt collection designees to enter and create installment payment agreements with debtors in default and ordering that holds on licensing and vehicle registration be lifted if private designee notifies the county treasurer that a satisfactory agreement has been made).
67. Missouri Municipal Division Work Group, *supra* note 47, at 80-81 (recommending that the Missouri General Assembly give municipalities authority to raise revenue through taxes, rather than court costs, fees, and surcharges, in order to pay for law enforcement).
68. S. B. 5, 98th Gen. Assemb., Reg. Sess. (Mo. 2015) (enacted), inserting § 479.359.
69. *Id.*
70. Jennifer S. Mann, *Muni Court Reform Law Takes Effect Friday; Many Warrants, Fines Are Being Cancelled Early*, St. Louis Post-Dispatch, Aug. 23, 2015, *available at* http://www.stltoday.com/news/local/crime-and-courts/muni-court-reform-law-takes-effect-friday-many-warrants-fines/article_a790197b-b58b-548a-9616-934a36649358.html.
71. Alex Stuckey, *Cap on Non-Traffic Violation Revenue Passed by Missouri Senate*, St. Louis Post-Dispatch,

Jan. 28, 2016, *available at* http://www.stltoday.com/news/local/govt-and-politics/cap-on-non-traffic-violation-revenue-passed-by-missouri-senate/article_093cffb2-67a6-54f6-97b8-7bc6f4e3a986.html.

72. Okla. Stat. Ann. tit. 47, § 2-117, D-E.
73. H.B.1400, § 3-6.05, 2015 Leg., (Va. 2015) (funds in excess of revenue caps are directed to the state's Literary Fund).
74. Fla. Stat. § 316.660. In Florida, however, the consequence of exceeding the revenue cap from traffic citations is that the municipality or county is required to submit a report to the Legislative Auditing Committee. It is questionable whether this reporting requirement is sufficient to alter incentives.
75. A.B.A. Comm. on State Court Funding, *Black Letter Recommendations* (2004); Reynolds & Hall, *supra* note 2, at 7. *See also* David Bresnick, *Revenue Generation By the Courts*, *in* Handbook of Court Administration and Management, 355, 359 (Steven W. Hays & Cole Blease Graham, Jr. eds., 1993); Griller et al., *supra* note 44, at 26; Nat'l Ctr. for State Courts, State of Oregon, *Report to the Joint Interim Committee on State Justice System Revenues* 63 (October 2010), *available at* http://library.state.or.us/repository/2010/201011300919042/index.pdf; Wisconsin Supreme Court Planning and Policy Comm., *Final Report to the Planning and Policy Advisory Committee of the Wisconsin Supreme Court* (February 2005); Missouri Municipal Division Work Group, *supra* note 46, at 78.
76. Reynolds & Hall, *supra* note 2, at 8-9.
77. States with unified judicial systems include Alabama, Alaska, Arizona, Connecticut, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia and Wisconsin, *see* Nat'l Ctr. for State Courts, *Court Unifi ation: State Links*, *available at* http://www.ncsc.org/Topics/Court-Management/Court-Unification/State-Links.aspx?cat=States%20Legally%20Described%20as%20Unified.
78. For example, Florida's Constitution provides that all funding for the offices of the clerks of the circuit and county courts shall be provided by filing fees for judicial proceedings and service charges and costs for performing court-related functions. F.S.A. Const. art. 5 § 14.
79. Reynolds & Hall, *supra* note 2, at 8.
80. *Standards Relating to Court Costs*, *supra* note 51, at 7-8.
81. This was done by Virginia in 1994. *See* Rebekah Diller, et al., Brennan Ctr. for Justice, *Maryland's Parole Supervision Fee: A Barrier to Reentry* 22-23 (2009), *available at* https://www.brennancenter.org/sites/default/files/legacy/publications/MD.Fees.Fines.pdf.
82. Fla. Stat. Ann. §§ 775.083 (court costs of $50 or $20 for county crime prevention), 938.055 ($100 fine to the Operating Trust Fund of the Department of Law Enforcement to be used by the state wide criminal analysis laboratory system), 938.01 ($3 court cost deposited into the Additional Court Cost Clearing Trust Fund, 92% allocated to the Department of Law Enforcement Criminal Justice Standards and Training Trust Fund,); Ga. Code Ann. §§ 15-21-73, 15-21-74 (West 2016) (additional assessment to be appropriated to fund law enforcement); La. Stat. Ann. § 15.571.11, *amended by* 2016 La. Sess. Law Serv. Act 233 (H.B. 79) (12% of criminal justice debt amount distributed to the sheriff's general fund); Ky. Rev. Stat. Ann. § 24A.176 (distribution of costs for criminal cases for payment of expenses for operation of the local government's police department or contracted police services); Iowa Code § 911.3 (law enforcement initiative surcharge of $125); Mo. Rev. Stat. § 488.5336 (surcharges for police officer training); N.H. Rev. Stat. Ann. § 504-A:13 (West 2016) ($5 of the probation supervision fee allocated to the police training fund); Tenn. Code § 39-17-428 (50% of mandatory minimum fines for drug offences to the agency responsible for the investigation and arrest).
83. Tenn. Code § 39-17-428 (c)(1).
84. *See Ferguson Report*, *supra* note 7, at 10.
85. *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 102.012(a) (West 2015); Okla. Stat. Ann. tit. 22, §§ 305.1,

991d(A)(2)(West 2016).

86. Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. Ill. L. Rev. 1175, 1188. *See, e.g.*, D.C. Code § 5-335.01 (2016) (describing a "post-and-forfeiture" system); Pam Louwagie, *Some Drivers Find that Cash Can Make the Ticket Go Away*, Star Tribune, April 16, 2012, *available at* http://www.startribune.com/some-drivers-find-that-cash-can-make-the-ticket-go-away/144099386/.
87. Cal. Gov't Code § 29550.1; Colo. Rev. Stat. § 30-1-104; Mich. Comp. Laws. § 801.4b; Minn. Stat. ann. § 641.12; Ohio Rev. Code Ann. § 341.12; Wash. Rev. Code Ann § 70.48.390. *See Markadonatos v. Village of Woodridge*, 760 F.3d 545 (7th Cir. 2014) (divided opinion as to whether local booking fees only apply on conviction).
88. *See Policing and Profit, supra* note 61; *see also* Katherine Baicker & Mireille Jacobson, *Finders Keepers: Forfeiture Laws, Policing Incentives, and Local Budgets*, 91 J. of Pub. Econ. 2113 (2007).
89. *See* Logan & Wright, *supra* note 86, at 1187-88.
90. Griller, *supra* note 44, at 6.
91. *Id*. at 7.
92. Missouri Municipal Division Work Group, *supra* note 46, at 81-82.
93. Pa. Dep't of Corrs., *Budget Request FY 15-16, Testimony before House Appropriations Committee* (March 2015), *available at* http://www.pabudget.com/Display/SiteFiles/154/Documents/FY%202015-16%20GF%20Budget/Hearings/Written%20Submitted%20Testimony/Corrections%20Testimony.pdf.
94. Inimai Chettiar et al., Brennan Ctr. for Justice, *Reforming Funding to Reduce Mass Incarceration* 15 (2013), *available at* https://www.brennancenter.org/sites/default/files/publications/REFORM_FUND_MASS_INCARC_web_0.pdf.
95. Criminal Justice Court Servs. Office (CA), *SB 678 Year 2 Report: Implementation of the California Community Corrections Performance Incentives Act of 2009* (2012), *available at* http://www.courts.ca.gov/documents/SB678-Year-2-report.pdf.
96. Chettiar et al., *supra* note 94, at 16.
97. Human Rights Watch, *supra* note 62, at 62 (discussing the need for government oversight of private probation companies, and examining GA's County and Municipal Probation Advisory Council); H.B. 310, 153rd Gen. Assemb. Reg. Sess. (Ga. 2015).
98. *See, e.g.*, Walter Johnson, *Ferguson's Fortune 500 Company*, Atlantic, Apr. 26, 2015, *available at* http://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492/ (drawing a connection between the town's failure to tax a Fortune 500 company and the town's pattern of policing for revenue). *See also Ferguson Report*, *supra* note 7 at 10.
99. *See, e.g.*, *Ferguson Report*, *supra* note 7, at 4 (noting a "particular hardship" for the "most vulnerable residents, especially upon those living in or near poverty").
100. *See generally,* Jessica Eaglin & Danyelle Solomon, Brennan Ctr. for Justice, *Reducing Racial and Ethnic Disparities In Jails: Recommendations For Local Practice*, 9–27 (2015), *available at* https://www.brennancenter.org/sites/default/files/publications/Racial%20Disparities%20Report%20062515.pdf.
101. *See, e.g.*, Cal. Penal Code § 370 (prohibiting people from "obstruct[ing] the free passage of any . . . public park, square, street, or highway").
102. *See, e.g.*, Ga. Code Ann. § 40-5-70 (providing for a fine of at least $200 and mandatory driver's license suspension).
103. Chris Francescani, *Loose Cigarette Arrests in NYC Drop in Year After Eric Garner's Death*, Wall St. J. (July 15, 2015), *available at* http://www.wsj.com/articles/loose-cigarette-arrests-in-nyc-drop-in-year-after-eric-garners-death-1436992014.
104. *See, e.g.*, Karen Dolan & Jodi L. Carr, Inst. for Policy Studies, *The Poor Get Prison: The Alarming Spread of the Criminalization of Poverty* 23–26 (2015), *available at* http://www.ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf (chronicling the increasing

criminalization of poverty); Douglas N. Evans, John Jay College of Criminal Justice, *The Debt Penalty: Exposing The Financial Barriers to Offender Reintegration* (2014), *available at* https://jjrec.files.wordpress.com/2014/08/debtpenalty.pdf.

105. *See, e.g.*, N.H. Rev. Stat. Ann. § 490:26-a(II-a) ("The supreme court may establish by rule an equitable fee of not less than $25 to be added to a fine whenever a court extends the time for the payment of the fine." Such a fee "shall be paid prior to or simultaneously with the payment of the fine.").
106. For example, defendants in Iowa can, with the court's permission, enter into an installment payment plan. *See* Iowa Code § 909.3. If, however, a defendant fails to pay a monthly installment payment within 30 days, the total court debt is considered delinquent and up to 25% of the debt may be added to the delinquent amount. *See* Iowa Ct. R. 26.6 (2016).
107. *See, e.g.*, N.J. Stat. Ann. § 40:23-6.53 (providing that up to 22% of any amount collected can be imposed as a collection fee). Collection costs function as a poverty penalty when they are only imposed on individuals who are unable to pay their financial obligations when imposed and are therefore subject to collection procedures.
108. *See, e.g.*, La. Code Crim. Proc. Ann. art. 886(a) (providing unspecified "judicial interest" for unpaid fines "plus all costs of the criminal proceeding and subsequent proceedings necessary to enforce the judgment in either civil or criminal court, or both").
109. *See, e.g.*, N.H. Rev. Stat. Ann. § 490:26-a(II-a) (authorizing a $25 fee for late payments or payment plans).
110. *See, e.g.*, Cal. Penal Code § 1205(b) ("If time has been given for payment or it has been made payable in installments, the court *shall*, upon any default in payment, immediately order the arrest of the defendant and order him or her to show cause why he or she should not be imprisoned. If the fine, restitution order, or installment, is payable forthwith and it is not so paid, the court *shall without further proceedings*, immediately commit the defendant to the custody of the proper office to be held in custody until the fine or the installment thereof, as the case may be, is satisfied in full.") (emphasis added).
111. *See, e.g.*, Minn. Stat. § 588.02 (providing courts with significant latitude to "punish a contempt by fine or imprisonment, or both").
112. *See, e.g.*, Ga. Code Ann. § 42-8-103 (providing for "pay-only probation" which "means a defendant has been placed under probation supervision solely because such defendant is unable to pay the court imposed fines and statutory surcharges when such defendant's sentence is imposed").
113. *See* Sobol, *supra* note 21, at 75.
114. *See* Lawyers Comm. for Civil Rights of the San Francisco Bay Area, *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* 9 (2016), *available at* http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf [hereinafter *Not Just a Ferguson Problem*]; *see also* Joseph Shapiro, *How Driver's License Suspensions Unfairly Target The Poor*, NPR, Feb. 6, 2015, *available at* http://www.npr.org/2015/01/05/372691918/how-drivers-license-suspensions-unfairly-target-the-poor.
115. California alone suspended four million licenses in 2014. Lawyers Comm. For Civil Rights, *supra* note 114 at 4.
116. *See* Jessica Eaglin, *Driver's License Suspensions Perpetuate the Challenges of Criminal Justice Debt*, Brennan Ctr. for Justice (Apr. 30, 2015); Shapiro, *supra* note 123.
117. *See* Am. Ass'n of Motor Vehicle Adm'rs, *Best Practices Guide to Reducing Suspended Drivers* 2 (2013), *available at* http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/ (finding that "suspending driving privileges for non-highway safety related reasons is not effective" and that "the costs of arresting, processing, administering, and enforcing social nonconformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities").

118. *Id.* at 17–18.
119. These suspensions inhibit the ability of government to collect amounts due from indigent persons while imposing a significant "burden on departments of motor vehicles, law enforcement, the courts and society. DMVs for example, incur exorbitant costs to create, program, and process these newly legislated suspension types." *See id.* at 2.
120. *Bell v. Burson*, 402 U.S. 535, 539 (1971) (holding that driver's licenses "may become essential in the pursuit of a livelihood" and "are not to be taken away without that procedural due process required by the Fourteenth Amendment"); *cf. Dixon v. Love*, 431 U.S. 105 (1977) (holding that Illinois driver's license suspension statute, which allowed for summary revocation of licenses where someone was repeatedly convicted of traffic offenses, comported with due process); *Mackey v. Montrym*, 443 U.S. 1 (1979) (upholding Massachusetts summary driver's license suspension procedure because there is an immediate postsuspension hearing); *see also* Gupta & Foster, *supra* note 18, at 6 ("If a defendant's driver's license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay. . . . Accordingly, automatic license suspensions premised on determinations that fail to comport with Bearden and its progeny may violate due process.") (citations omitted).
121. *See* Bannon et. al., *supra* note 13, at 13-17.
122. 124. *Id.* at 20–25.
123. *See* Gupta & Foster, *supra* note 18; *Not Just a Ferguson Problem*, *supra* note 114.
124. *See* Nagrecha, et. al., *supra* note 15; deVuono-powell, et al., *supra* note 15, at 9; Diller, *supra* note 65, at 16 (finding that where amounts are not linked to an ability to pay, courts functionally require family, friends, or employers to put up the required money).
125. deVuono-powell, et al., *supra* note 15, at 27–28.
126. As an example, in the student loan repayment context, debtors are entitled to deferments in certain situations and may not be liable for interest payments during the deferment. *See generally* Nat'l Consumer Law Ctr., *Student Loan Law, 4.3 Deferments* (5th ed. 2015).
127. A similar safeguard is used in the student loan context, where borrowers are entitled to economic hardship deferments (with no interest accrual on subsidized government loans) for up to 3 years over the life of their repayment based on being unemployed, receiving public assistance benefits or working full-time but making less than 150% of poverty guidelines. *See* 34 C.F.R. §§ 682.210(s)(6) (2016) (FFEL), 685.204(g) (2016) (Direct Loan). Debtors can apply for a deferment by completing a simple form or speaking with their servicer over the phone.
128. *See* Michael D. Thompson & Rachel L. McLean, Council of State Gov'ts, Justice Ctr., Bureau of Justice Assistance, *Repaying Debts*, 22–23 (2007).
129. In New Jersey, the Motor Vehicles Affordability and Fairness Task Force Report recommended against using drivers' license suspension as collection tool for indigent people and contained a number of policy recommendations. *See* Motor Vehicle Affordability Fairness and Taskforce, *Final Report* (2006), *available at* http://www.state.nj.us/mvc/pdf/About/AFTF_final_02.pdf.
130. *See* Am. Ass'n of Motor Vehicle Adm'rs, *supra* note 117, at 2–3.
131. *See* Jobs with Justice, *State Laws and Statutes That Suspend Professional Licenses and Certificates* (2014), *available at* http://www.jwj.org/wp-content/uploads/2015/02/State-Laws-and-Statutes-That-Suspend-Professional-Licenses-and-Certificates.pdf (compiled by the National Consumer Law Center).
132. 134. *Id.* at 18–19.
133. Alternatives for Non-Violent Offenders Task Force, *Report and Recommendations* 2 (2009), *available at* http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD4302009/$file/RD430.pdf (describing a group convened by the Secretary of Public Safety which included "a diverse group of stakeholders from across the criminal justice system, including judges, Commonwealth's Attorneys, sheriffs, police chiefs, regional jail administrators, the DOC, the Attorney General's Office, and the Vir-

ginia Criminal Sentencing Commission, among others").

134. Carl Reynolds, et al., Council of State Gov'ts Justice Ctr & Tex. Office of Court. Admin., *A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes Interim Report* 26 (March 2, 2009) (citing Carl Fomoso, *Determining the Collectability of Child Support Arrears* (2003); Vicky Turetsky, Ctr. for Law and Social Policy, *Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work* (March 2007), *available at* http://www.clasp.org/resources-and-publications/files/0349.pdf), *available at* https://csgjusticecenter.org/wp-content/uploads/2013/07/2009-CSG-TXOCA-report.pdf. For an example of a state statute reflective of such a policy, see Or. Admin. R. 255-065-0005(5) (capping collections at 20% of take home salary, unless the defendant has significant liquid assets).
135. *See* Nat'l Consumer Law Ctr., Student Loan Law, 3.3.3.3 *Calculating the IBR, PAY or REPAYE Repayment Amount* (5th ed. 2015).
136. In the student loan repayment context, the balance of a student loan that is repaid through an income-based repayment plan is waived after a certain number of payments have been made. *See* Nat'l Consumer Law Ctr, Student Loan Law, 3.3.3.8 *IBR/PAYE/REPAYE Forgiveness* (5th ed. 2015).
137. *See, e.g.*, Joy Radice, *Administering Justice: Removing Statutory Barriers To Reentry*, 83 U. Colo. L. Rev. 715 (2012) (describing New York state's system of issuing certificates to offenders in order to restore certain rights and privileges).
138. *See* Wash. Rev. Code § 9.94A.760 *et seq.* (providing that the state shall have the same rights in enforcing a civil judgment as any other judgment creditor).
139. Roopal Patel & Meghna Philip, Brennan Ctr. for Justice, *Criminal Justice Debt, a Toolkit for Action* 17–18 (2012), *available at* https://www.brennancenter.org/sites/default/files/legacy/publications/Criminal%20Justice%20Debt%20Background%20for%20web.pdf (comparing fines and fees charged by state and local governments to credit card entities).
140. *See, e.g.*, 15 U.S.C. § 1673. Currently, the federal garnishment limits prohibit garnishment below the lower amount of either 30 times the federal minimum wage or 25% of disposable earnings, meaning roughly post-tax earnings. This means that if someone makes only 30 times minimum wage post-tax, 0% of his or her earnings would be available for garnishment.
141. *See* Daniel Denvir, *Philly Courts Rein In Debt Collection Campaign*, Philadelphia City Paper, Oct. 9, 2014, *available at* http://www.theinvestigativefund.org/blog/2052/philly_courts_rein_in_debt-collection_campaign/.
142. 18 U.S.C. § 3613(b) ("The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.").
143. 146. 18 U.S.C. § 3013(c).
144. Vera Inst. of Justice, *How To Use Structured Fines (Day Fines) as an Intermediate Sanction* (1996), *available at* https://www.ncjrs.gov/pdffiles/156242.pdf.
145. Douglas C. McDonald et al., Nat'l Inst. of Justice, *Day Fines in American Courts: The Staten Island and Milwaukee Experiments,* 2–3 (1992), *available at* https://www.ncjrs.gov/pdffiles1/Digitization/136611NCJRS.pdf.
146. *Id.* at 2.
147. Edwin W. Zedlewski, Nat'l Inst. of Justice, *Alternatives to Custodial Supervision: The Day Fine*, 5–6 (2010), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/230401.pdf.
148. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.").
149. A study conducted by NPR and the Brennan Center in 2014 revealed that 43 states and the District

of Columbia charge fees for public defenders. *See* Emma Anderson et al., *State by State Court Fees*, NPR, May 19, 2014, *available at* http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees. Hawaii, Mississippi, Nebraska, New York, Pennsylvania, Rhode Island, and Utah, do not charge public defender fees, but Hawaii, Mississippi, Nebraska, Rhode Island, and Utah charge other fees for the exercise of Sixth Amendment rights. *See infra* notes 153-160.

150. Some states, including Nebraska, charge defendants a fee for convening a jury. *See, e.g.*, *Shaw v. State*, 22 N.W. 772, 773 (Neb. 1885). Other states, including Rhode Island and Mississippi, charge defendants the "costs of the prosecution," essentially taxing the costs of the trial to the defendant. *See* 12 R.I. Gen. Laws Ann. § 12-21-20(a) ("If, upon any complaint or prosecution before any court, the defendant shall be ordered to pay a fine, enter into a recognizance or suffer any penalty or forfeiture, he or she shall also be ordered to pay all costs of prosecution, unless directed otherwise by law."); Miss. Code. Ann. § 99-19-77.
151. In Washington, defendants must pay a per diem and mileage for their jurors. *See* Wash. Rev. Code §§ 3.50.135, 10.46.190, 35.20.090.
152. *See, e.g.*, Tex. Gov't Code Ann. § 102.021 (charging convicted defendants a mandatory $5 fee for summoning a jury).
153. Hawaii and Utah impose witness fees on defendants who are able to pay. *See* Haw. Rev. Stat. Ann. § 802–7; Utah Code Ann. § 78B-1-150.
154. *See, e.g.*, Tex. Gov't Code Ann. § 102.021 (requiring convicted defendants to pay a mandatory $5 fee for summoning a witness).
155. *See, e.g.*, Mich. Comp. Laws § 769.1f (allowing the court to order the defendant to reimburse "[t]he salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine"); Mo. Rev. Stat. § 488.029 (charging $150 to convicted defendants where a "crime laboratory makes analysis of a controlled substance").
156. *See, e.g.*, Tenn. Code Ann. § 40-25-123 ("A defendant convicted of a criminal offense shall pay all the costs that have accrued in the cause."); Wash. Rev. Code Ann. § 10.01.160 (allowing courts to charge defendants for "expenses specially incurred by the state in prosecuting the defendant").
157. *See, e.g.*, Mich. Comp. Laws § 769.1k(b)(A)-(C) ("If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, . . . The court may impose any or all of the following: . . . any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following: Salaries and benefits for relevant court personnel. Goods and services necessary for the operation of the court. Necessary expenses for the operation and maintenance of court buildings and facilities.").
158. Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying the Price*, NPR, May 23, 2014, *available at* http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor.
159. Nat'l Legal Aid and Defender Ass'n, *Race to the Bottom: Trial Level Indigent Defense Systems in Michigan* 32 (June 2008), *available at* http://www.nlada.net/sites/default/files/mi_racetothebottomjseri06-2008_report.pdf.
160. Many states allow courts to impose statutorily-defined fines as a punishment for the commission of a crime, which increase with the seriousness of the conviction. *See, e.g.*, N.H. Rev. Stat. Ann. § 651:2 ("A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. . . . The amount of any fine imposed on: (a) Any individual may not exceed $4,000 for a felony, $2,000 for a class A misdemeanor, $1,200 for a class B misdemeanor, and $1,000 for a violation."). *See also* Ga. Code Ann. §§ 17-10-3, 17-10-4 (2016); Ind. Code Ann. §§ 35-50-3-1,

35-50-3-2; Iowa Code Ann. §§,902.9, 903.1; Kan. Stat. § 21-6611; Ky. Rev. Stat. Ann. § 534.040; Mich. Comp. Laws Ann. §§ 750.503, 750.504, 750.505; Neb. Rev. Stat. § 28-106; Nev. Rev. Stat. §§ 193.130, 564.150; S.D. Codified Laws §§ 22-6-1, 22-6-2; Tenn. Code Ann. § 40-35-111; Tex. Penal Code Ann., §§ 12.21–12.23=, 12.32–12.35; Wash. Rev. Code §§ 9.92.010, 9.92.020, 9.92.030. This system of tiered fines creates an incentive for defendants to plead guilty to lesser included offenses and forgo trial, rather than risk the higher financial penalty of conviction of a more serious offense.

161. Many states charge defendants and convicted persons a fee for, or the actual costs of, their incarceration, including heath care costs. *See, e.g.*, S.D. Codified Laws § 24-2-28 (charging incarcerated persons "the cost of the inmate's confinement which includes room and board charges; medical, dental, optometric, and psychiatric services charges; vocational education training; and alcoholism treatment charges"). *See also* Cal. Penal Code §§ 1203.1m(a), 1209, 1209.5; Fla. Stat. § 951.033; Ga. Code Ann. §§ 42-1-4, 42-4-51, 42-4-71, 42-5-55; Ky. Rev. Stat. Ann. § 534.040; La. Code Crim. Proc. Ann. art. 890.2; Mich. Comp. Laws Ann. § 774.22c; Minn. Stat. § 244.18; Tex. Code Crim. Proc. Ann. § art. 42.038; Wash. Rev. Code § 9.94A.760. Thus, defendants who go to trial are risking substantially more expensive sentences due to longer periods of incarceration.
162. Lindsay Devers, Bureau of Justice Assistance, *Plea and Charge Bargaining: Research Summary* (2011), *available at* https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf.
163. *See* Ann K. Wagner, *The Conflict over Bearden v. Georgia in State Courts: Plea-Bargained Probation Terms and the Specter of Debtors' Prison*, 2010 U. Chi. Legal F. 383, 387-88 (2010).
164. *Compare U.S. v. Zink,* 107 F.3d 716, 719-20 (9th Cir. 1997) ("Although it is questionable whether the record suggests that Zink may be able to pay the [$5.8 million] of restitution ordered, Zink's clear acquiescence in the restitution order relieved the district court of any independent obligation to further determine Zink's ability to pay restitution. Under these circumstances, we cannot say that the restitution order seriously affects the fairness, integrity, or public reputation of Zink's proceedings, such that the order amounts to 'plain error.'"); *State v. Nordahl,* 680 N.W.2d 247, 251-52 (N.D. 2004) (holding that "[i]f a defendant agrees to restitution as part of a plea agreement, he is not entitled to a hearing to determine whether he has the ability to pay restitution" at the time of revocation, because ability to pay is considered at sentencing); *and Dickey v. State,* 570 SE2d 634, 636 (Ga. Ct. App. 2002)(holding that probation could be revoked for failure to pay restitution, where the restitution payments were negotiated as part of a plea agreement.), *with Jordan v. State,* 939 S.W.2d 255 (Ark. 1997) (holding that in the context of plea bargained restitution, "[w] here there is no determination that the failure to pay restitution is willful, it is clear that a probationer cannot be punished by imprisonment solely because of a failure to pay.") *and Cain v. City of New Orleans*, 2016 WL 2962912 *7 (E.D. La. May 23, 2016) (order denying defendants' motion to dismiss) (finding that *Nordahl* can be distinguished from cases involving a change in circumstances in ability to pay and cases involving "mandatory financial obligations," which "a criminal defendant cannot voluntarily offer to pay").
165. *See* Amer. Bar Ass'n, A.B.A. Standards for Criminal Justice, *Standard 14-4.1 Diversion and Other Alternative Resolutions, available at* http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blkold.html ("An offender's eligibility to participate in diversion should not depend on his or her ability to pay restitution or other costs."). *See also Dirico v State,* 728 So.2d 763, 767 (Fla. Dist. Ct. App 1999) (finding plea bargain provision stating"Defendant specifically waives ability to argue inability to pay and acknowledges that failure to meet this restitution schedule will result in the imposition of the suspended sentence" violated the Fourteenth Amendment).
166. *See* Ctr. for Court Innovation, Red Hook Community Justice Ctr., *available at* http://www.courtinnovation.org/project/red-hook-community-justice-center (last visited Aug. 14, 2016). Critics have expressed concern about the potential net-widening effect of drug courts, in

particular. *See* Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 Oh. St. L. J. 1479 (2004). *See also,* Allegra McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law,* 100 Geo. L. J. 1587 (2012).

167. *See* Ed Spillane, *Why I Refuse to Send People to Jail for Failure to Pay Fines*, Wash. Post, April 8, 2016, *available at* https://www.washingtonpost.com/posteverything/wp/2016/04/08/why-i-refuse-to-send-people-to-jail-for-failure-to-pay-fines/?utm_term=.03c81ae5de2. Judge Spillane, the presiding judge of the College Station Municipal Court and president of the Texas Municipal Courts Association, described the kind of situation in which he uses discretion to avoid an unjust imposition of criminal justice debt: "Melissa J. not only couldn't pay her fines, but she also couldn't be away from her children at night or on weekends, since she couldn't afford child care. So we set her up on a small payment plan, an arrangement that sometimes works for poor defendants. When it later became apparent that she could not afford that, we waived the fine—but only after she took a free class on the use of child safety seats, addressing what was arguably the most concerning charge against her." *Id.*
168. At least one scholar has raised concerns about the constitutionality under the Thirteenth Amendment of using community service as an alternative to certain types of criminal justice debt. *See* Noah Zatz, *A New Peonage?: Pay, Work, or Go to Jail*, 39 Seattle U. L. Rev. 927, 931 (2016). The Thirteenth Amendment provides that "[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII, § 1. Zatz has suggested that community service imposed as a means to satisfy certain fees may not qualify for the "punishment for crime" exemption to that constitutional mandate, and thus constitutes involuntary servitude. Zatz, *supra* at 932-33. No judicial decisions, however, have considered that proposition.
169. *See, e.g.*, Ga Code Ann. § 42-8-102(d) (authorizing judges to assign a dollar value equivalent to the current federal minimum wage or higher to each hour of community service).
170. For an early report discussing these concerns, see Rolando V. del Carmen & Eve Trook-White, Nat'l Inst. of Corrs., *Liability Issues in Community Service Sanctions* (1986), *available at* https://s3.amazonaws.com/static.nicic.gov/Library/004534.pdf.
171. Adam Liptak, *Debt to Society is Least of Costs for Ex-Convicts,* N.Y. Times, Feb. 23, 2006, *available at* http://www.nytimes.com/2006/02/23/us/debt-to-society-is-least-of-costs-for-exconvicts.html (documenting policies that require probationers to purchase insurance at the rate of $15 per week in order to participate in court-ordered community service).
172. *See* John B. Mitchell & Kelly Kunsch, *Of Driver's Licenses and Debtor's Prison*, 4 Seattle J. Soc. Just. 439, 465 (2005).
173. New York State, Div. of Criminal Justice Servs., *Community Service Standards, available at* http://www.criminaljustice.ny.gov/opca/communityservicestandards.htm. (last visited Aug. 14, 2016).
174. *See generally* William R. Wood, *Correcting Community Service: From Work Crews to Community Work in a Juvenile Court*, 29 Justice Quarterly 684 (2012).
175. *Id.*
176. Editorial Board, *A Counter-Productive Fee*, Baltimore Sun, Apr. 18, 2011, *available at* http://articles.baltimoresun.com/2011-04-18/news/bs-ed-parole-20110418_1_fee-parole-and-probation-prisoner.
177. *See, e.g.*, Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration*, Brennan Ctr. for Justice (2015), *available at* https://www.brennancenter.org/sites/default/files/blog/Charging_Inmates_Mass_Incarceration.pdf; Am. Civil Liberties Union of Ohio, *In Jail & In Debt: Ohio's Pay-to-Stay Fees* (2015), *available at* http://www.acluohio.org/wp-content/uploads/2015/11/InJailInDebt.pdf.
178. Lisa Riordan Seville & Hannah Rappleye, *Sentenced to Debt: Some Tossed in Prison Over Unpaid Fines*, NBC News (May 27, 2013, 12 :43 AM), *available at* http://inplainsight.nbcnews.

com/_news/2013/05/27/18380470-sentenced-to-debt-some-tossed-in-prison-over-unpaid-fines?lite (describing examples of individuals in Washington and Pennsylvania could not obtain the expungement necessary to continue in their chosen line of work solely because of their inability to pay debts owed to a court).

179. *See, e.g.*, Maura Ewing, *Want to Clear Your Record? It'll Cost You $450*, The Marshall Project (May 31, 2016), *available at* https://www.themarshallproject.org/2016/05/31/want-to-clear-your-record-it-ll-cost-you-450#.kEple42d4.
180. Frederickson & Lassiter, *supra* note 15, at 5.
181. *See* Erika Wood, Brennan Ctr. For Justice, *Restoring the Right to Vote*, 9-11 (2009), *available at* http://www.brennancenter.org/sites/default/files/legacy/Democracy/Restoring%20the%20Right%20to%20Vote.pdf.
182. *See, e.g.*, California Courts, *Traffic Tickets / Infractions Amnesty Program*, (Feb. 21, 2016), *available at* http://www.courts.ca.gov/trafficamnesty.htm; *see also* Iowa Legislative Servs. Agency, *Court Debt Collection Programs and Outstanding Court Debt* 2 (Mar. 17, 2014), *available at* https://www.legis.iowa.gov/docs/publications/IR/25246.pdf.
183. *See* Stacey Hoskins Haynes, et al., *Juvenile Economic Sanctions*, 13 Criminology & Pub. Pol'y 31 (2014).
184. *Id.* at 43.
185. The Pennsylvania study found that approaches to collection varied based on county. In one county, collection attempts ended when the juvenile turned 18. In another county, juveniles were referred to adult probation after they turned 18 and in the third county, collection efforts only occurred if the juvenile re-entered the criminal justice system as an adult. *Id.* at 55.
186. *See* Jessica Feierman et al., Juvenile Law Ctr., *Debtors' Prison for Kids?: The High Cost of Fines and Fees in the Juvenile Justice System* (2016), available at http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf
187. *Id.*
188. *Id.*
189. *See* Jeffrey Selbin & Stephanie Campos, Berkeley Law Policy Advocacy Clinic, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* (Mar. 2016).
190. 193. S. Res. 941 (Cal. 2016).
191. 194. H.R. Res. 1481, Reg. Sess. (Wash.2015).
192. *See* Michigan Supreme Court, *Order No. 2015-12* (May 25, 2016), *available at* http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2015-12_2016-05-25_formatted%20order_various%20MCRs-ability%20to%20pay.pdf.
193. As an example, the Superior Court in San Diego County, California has implemented a Homeless Court Program, where the court is empowered to forgive fines/fees if defendants participate in programing. Thompson & McLean, *supra* note 128, at 37.
194. Coal. for the Homeless, *Homeless Court* (2016), *available at* http://www.homelesshouston.org/homeless-court/homeless-court-details.
195. 198. *See, e.g.*, Ohio Rev. Code § 131.02 (2012).
196. 199. *See Sheriff v. Gillie*, 136 S. Ct. 1594, 194 L.Ed.2d 625 (2016).
197. *See* Pew Research Ctr. *supra*, note 6.
198. States' attorneys general often have broad authority to take civil rights enforcement action, including investigating and shining a spotlight on unconstitutional practices by municipalities. For example, the New York Office of Attorney General investigated the New York City Police Department's use of stop and frisk under their authority to enforce state and federal civil rights law. *See* New York State Office of Attorney General, *Stop and Frisk Report* (1999), *available at* http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil_rights/stp_frsk.pdf [hereinafter *Stop and Frisk Report*].
199. *See, e.g.*, *In for a Penny*, *supra* note 15, at 5.

200. *Ferguson Report*, *supra* note 7, at 3.
201. *See, e.g.*, Note, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 Harv. L. Rev. 1024, 1025 (2016); Alec Karakatsanis, *Policing, Mass Imprisonment, and the Failure of American Lawyers*, 128 Harv. L. Rev. 253, 254 (2015).
202. *See, e.g.*, *In for a Penny*, *supra* note 15, at 5.
203. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). Prior to *Bearden*, the Court had held that in probation revocation hearings, judges are required to inform defendants that they have the right to request counsel and fundamental fairness may require that counsel be appointed in certain cases. *Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973) (holding that a probation revocation hearing is required under the Due Process Clause and that courts must determine on a case-by-case basis whether the appointment of counsel is necessary to satisfy due process).
204. *Tate v. Short*, 401 U.S. 395, 398 (1971).
205. *See id.* at 400.
206. *Turner v. Rogers*, 564 U.S. 431, 449 (2011).
207. *Id*. at 447.
208. *Id*. at 447-48.
209. *Id*. at 449 ("We do not address civil contempt proceedings where the underlying child support payment is owed to the State, for example, for reimbursement of welfare funds paid to the parent with custody. Those proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative.") (internal citations omitted).
210. For example, Colorado recently enacted a statute that defines "undue hardship" as follows:
a defendant or a defendant's dependents are considered to suffer undue hardship if he, she, or they would be deprived of money needed for basic living necessities, such as food, shelter, clothing, necessary medical expenses, or child support. In determining whether a defendant is able to comply with an order to pay a monetary amount without undue hardship to the defendant or the defendant's dependents, the court shall consider:
(I) Whether the defendant is experiencing homelessness;
(II) The defendant's present employment, income, and expenses;
(III) The defendant's outstanding debts and liabilities, both secured and unsecured;
(IV) Whether the defendant has qualified for and is receiving any form of public assistance, including food stamps, temporary assistance for needy families, medicaid, or supplemental security income benefits;
(V) The availability and convertibility, without undue hardship to the defendant or the defendant's dependents, of any real or personal property owned by the defendant;
(VI) Whether the defendant resides in public housing;
(VII) Whether the defendant's family income is less than two hundred percent of the federal poverty line, adjusted for family size; and
(VIII) Any other circumstances that would impair the defendant's ability to pay. Colo. Rev. Stat. § 18-1.3-702(4).
211. For example, under Rhode Island law the following conditions constitute *prima facie* evidence of the defendant's limited ability to pay criminal justice debt: "(1) Qualification for and/or receipt of any of the following benefits or services by the defendant: (i) temporary assistance to needy families; (ii) social security including supplemental security income and state supplemental payments program; (iii) public assistance; (iv) disability insurance; or (v) food stamps." R. I. Gen. Laws § 12-20-10(b). Similarly, for misdemeanor probationers, Georgia law includes a presumption in favor of modifying fines for an "indigent" person, defined as "an individual who earns less than 100 percent of the federal poverty guidelines" unless the person has assets that could be used without undue hardship. Ga. Code Ann. § 42-8-102(c)-(e). Illinois's Statutory Court Fee Task Force released a report in June 2016 proposing major changes to the state's criminal justice debt statutes,

including a recommendation that when court-appointed criminal defense attorneys certify that their clients are indigent, certain fees are waived. *See* Statutory Court Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings,* App. E –Proposed Criminal Assessment Waiver Statute, Sec. 3-9(f) (June 2016), *available at* http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf.

212. For example, a woman described in the Ferguson Report owed over $2,500 in fines and fees to three different municipalities and had already paid over $1,000 in order to resolve other criminal cases. *Ferguson Report*, *supra* note 7, at 52.
213. *See, e.g.*, Stipulated Settlement Agreement and Retention of Jurisdiction at 4-5, *Kennedy v. City of Biloxi,* No. 1:15-cv-00348-HSO-JCG (S.D. Miss. Mar. 15, 2016), *available at* https://www.aclu.org/sites/default/files/field_document/final_stipulated_settlement_agreement_exhibit_a_exhibit_b_03152016_0.pdf [hereinafter Stipulated Settlement Agreement] (agreeing to default procedure of audio recording compliance hearings that include ability-to-pay determinations; in the event audio recording is not possible, court must document in writing the ability-to-pay determination, including the finding, evidence to support said finding, and the colloquy concerning ability to pay and efforts to secure resources among other items).
214. *See, e.g.*, Diller, *supra* note 65, at 8 (finding that "[a]s a result of the lack of waivers for the indigent, communities invest significant resources pursuing debts that will never be collected"); *Ferguson Report*, *supra* note 7, at 99; Am. Law Inst., *Model Penal Code: Sentencing Tentative Draft No. 3*, 55 (Apr. 24, 2014), *available at* https://www.ali.org/projects/show/sentencing/ (prohibiting criminal justice debt of a magnitude beyond an individual's means from being imposed at all).
215. Some state courts have held that an ability-to-pay determination is required by the state constitution at the imposition stage when a state seeks to recoup the cost of court-appointed counsel. *See, e.g.*, *State v. Morgan*, 173 Vt. 533 (2001) (finding that the Sixth Amendment requires an ability to pay determination before a defendant can be charged for the cost of counsel); *People v. Love*, 687 N.E.2d 32 (Ill. 1997) (vacating a reimbursement order because the court failed to conduct a hearing and inquire into ability to pay). Similar protections have also been implemented to resolve constitutional litigation. The March 2016 settlement reached by the American Civil Liberties Union with the city of Biloxi, Mississippi regarding the city's criminal justice debt practices mandates that the Biloxi Municipal Court consider a defendant's ability to pay when determining the amount of criminal justice debt to impose. *See, e.g.*, Stipulated Settlement Agreement, *supra* note 213, at 6.
216. *See, e.g.*, Agreement to Settle Injunctive and Declaratory Relief Claims, *Mitchell v. City of Montgomery*, No. 2:14-cv-186-MHT-CSC at 11 (M.D. Ala. Nov. 17, 2014), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2014/07/Final-Settlement-Agreement.pdf (listing subsequent hearings based on a defendant's changed financial circumstances as a "basic premise" of the settlement). Similarly, Rhode Island Senate Bill 2234/House Bill H8093 (2008) provides that a defendant's ability to pay and a payment schedule should be determined through "standardized procedures including a financial assessment instrument" and that court determinations should be updated in light of new financial information.
217. Stipulated Settlement Agreement, *supra* note 216, at 37.
218. *Id.* at 6.
219. *Id.* at 37.
220. *Id.*
221. *Id.* at 6.
222. *See, e.g.*, Tex Code Crim. Proc. art. 43.09 (a) ("When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, *if he is unable to pay the fine and costs adjudged against him*,... if there be no such county jail industries program, workhouse, farm, or improvements and maintenance

projects, *he shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him*")(emphasis added).

223. *See, e.g.*, Cal. Penal Code § 1205(b) ("If time has been given for payment or it has been made payable in installments, the court shall, upon any default in payment, *immediately order the arrest of the defendant* and order him or her to show cause why he or she should not be imprisoned. If the fine, restitution order, or installment, is payable forthwith and it is not so paid, the court *shall without further proceedings*, i*mmediately commit the defendant to the custody of the proper office to be held in custody until the fine or the installment thereof, as the case may be, is satisfied in full*") (emphasis added); La. Code Crim. Proc. Ann. art. 884 (1968) ("If a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof the defendant shall be imprisoned for a specified period not to exceed one year; provided that where the maximum prison sentence which may be imposed as a penalty for a misdemeanor is six months or less, the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months for that offense").
224. *See* Iowa Code § 909.7 ("A defendant is presumed to be able to pay a fine. However, if the defendant proves to the satisfaction of the court that the defendant cannot pay the fine, the defendant shall not be sentenced to confinement for the failure to pay the fine.").
225. *See, e.g.*, *People v. Cook*, 407 N.E.2d 56, 61 (Ill. 1980) (finding that presumption that posting of bail demonstrated an ability to pay could not substitute for a due process hearing to determine if a defendant was indigent).
226. *See, e.g.*, *State v. Taylor*, 166 P.3d 118, 126 (Ariz. Ct. App. 2007) (rejecting a determination of a defendant's ability to pay based upon a defendant's imputed income, namely their "apparent ability to work in the future," and indicating that only present resources should be considered).
227. *See, e.g.,* Note, *State Bans on Debtors' Prisons and Criminal Justice Debt* 129 Harv. L. Rev. 1024, 1025 (2016); deVuono-powell, et al., *supra* note 15.
228. *See, e.g.*, Stipulated Settlement Agreement, *supra* note 213, at 15.
229. *See id*.
230. *See, e.g.*, Supreme Court of Ohio, *Collection of Fines and Court Costs in Adult Trial Courts* (Sept. 2015), *available at* https://www.supremecourt.ohio.gov/Publications/JCS/finesCourtCosts.pdf.
231. *See Ferguson Report , supra* note 7, at 55.
232. *See* ACLU of Colorado, Letter to Chief Justice Michael Bender, *Re: Incarceration of Indigent Defendants for Failure to Pay Legal Debts* 5 (Oct. 10, 2012), *available at* http://static.aclu-co.org/wp-content/uploads/2013/12/2012-10-10-Bender-Dailey-Wallace.pdf.
233. *See* Agreement to Settle Injunctive and Declaratory Relief Claims at 14, *Mitchell v. City of Montgomery*, No. 2:14-cv-186-MHT-CSC (M.D. Ala. Nov. 17, 2014), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2014/07/Final-Settlement-Agreement.pdf.
234. Michigan State Planning Body, *Implementing Crossroads: A Proposal for Evaluating Ability to Pay Fines, Fees and Costs* (Reissued May 2015), Attachment B.
235. *See Ohio State Bar Assn. v. Goldie*, 119 Ohio St.3d 428, 431 (2008) ("Respondent concedes that she followed none of the procedures required to determine Webb's ability to pay assessed fines before sending him to jail. She also concedes that she 'knowingly failed to follow the law' and that her failure violated Canon 3(B)(2). We therefore find this judicial misconduct."). The Southern Poverty Law Center took similar action against an Alabama judge who forced defendants who were unable to pay court debt to donate blood or face jail time. *See* Southern Poverty Law Ctr., *Judge Who Forced Defendants to Give Blood or Go to Jail Censured After SPLC Complaint* (Jan. 21, 2016), *available at* https://www.splcenter.org/news/2016/01/21/judge-who-forced-defendants-give-blood-or-go-jail-censured-after-splc-complaint.
236. *See, e.g.*, Daniel Morales, Texas Attorney General, *Opinion DM-407*, 2237 (1996), *available at* https://www.texasattorneygeneral.gov/opinions/opinions/48morales/op/1996/pdf/dm0407.pdf

(emphasizing that the imposition of certain criminal justice debt is discretionary).

237. *See, e.g.*, Arizona Attorney General, *AG Opinions* (last visited March 8, 2016), *available at* https://www.azag.gov/ag-opinions (Arizona Attorney General opinions issued only to the legislature, any public officer of Arizona, or a county attorney. Private citizens may not seek an opinion or other legal advices.); Cal. Gov. Code § 12519 (California Attorney General opinions restricted to member of legislature, governor, lieutenant governor, secretary of state, controller, treasurer, state lands commission, superintendent of public instruction, insurance commissioner, any state agency, and any county counsel, district attorney, or sheriff upon any question of law relating to their respective offices. Private citizens do not have standing.); Tex Gov't Code § 402.042 (state attorney general opinion may be requested only by: (1) the governor; (2) the head of a department of state government; (3) a head or board of a penal institution; (4) a head or board of an eleemosynary institution; (5) the head of a state board; (6) a regent or trustee of a state educational institution; (7) a committee of a house of the legislature; (8) a county auditor authorized by law; or (9) the chairman of the governing board of a river authority. Private citizens do not have standing).
238. *See, e.g.*, Alan Wilson, Attorney General of South Carolina, *Letter re: Indigent Defense*, (Nov. 12, 2015), *available at* http://www.scag.gov/wp-content/uploads/2015/11/Ryan-H.-OS-9925-FINAL-Opinion-11-12-2015-00797179xD2C78.pdf (South Carolina Attorney General opinion issued to Deputy Director and General Counsel of South Carolina Commission on Indigent Defense).
239. *See, e.g., supra* note 198 (citing *Stop and Frisk Report*).
240. Carl Reynolds, et al., Council of State Govts. Justice Ctr. & Tex. Office of Court Admin., *Interim Report A Framework to Improve How Fines, Fees, Restitution, and Child Support Are Assessed and Collected from People Convicted of Crimes,* 21 (March 2, 2009) (describing the system of user fees and surcharges in Texas as a "nearly incomprehensible package that is difficult for court systems to administer").
241. *Standards Relating to Court Costs supra* note 51, at 7 (June 1986) ("Administrative costs rise with a proliferation of court fee statutes spread over many volumes of law. Revenue for governmental entities is lost as a result of oversights or failure to keep abreast of legislative enactments").
242. *See* ACLU of Washington, *Modern Day-Debtors' Prison: How Court-Imposed Debts Punish Poor People in Washington*, 20 (2014).
243. *See* Michigan State Planning Body, *Implementing Crossroads: A Proposal for Evaluating Ability to Pay Fines, Fees and Costs*, 24 (reissued May 2015).
244. Mich. Comp. Laws Ann. § 769.1k(8) ; § 780.905(7)(b) (2016).
245. S.D. Codified Laws § 1-55-16.
246. Statutory Court Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings* (June 2016), *available at* http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf.
247. *Standards Relating to Court Costs*, *supra* note 52, at Standard 2.5 (June 1986).
248. Special Comm'n to Study the Feasibility of Establishing Inmate Fees, Inmate Fees as a Source *of Revenue: Review of Challenges,* 3 (July 1, 2011), *available at* http://www.mass.gov/eopss/docs/eops/inmate-fee-final-7-1-11.pdf.
249. *Id*. at 5.
250. *Id*. at 4.
251. Michael Leachman, et al., *Improving Budgetary Analysis of State Criminal Justice Reform: A Strategy for Better Outcomes and Saving Money* 8 (2012); Thompson & McLean, *supra* note 128, at 34.
252. Leachman et al., *supra* note 251, at 7.
253. *Id*.
254. *See, e.g.,* 5 Ill. Comp. Stat. 140/2 (2010); *Copley Press, Inc. v. Administrative Office of Courts*, 648 N.E.2d 324 (Ill. App. Ct. 1995); Mich. Comp. Laws Ann. § 15.232(d)(v) (2015); Tex. Gov't Code Ann. §§ 552.003(1)(B), 552.0035 (2009). *See generally* Nat'l Ass'n of Counties, *Open Records Laws: A State by*

State Report (December 2010), *available at* http://www.naco.org/sites/default/files/documents/Open%20Records%20Laws%20A%20State%20by%20State%20Report.pdf.

255. *See, e.g.*, Missouri Municipal Division Work Group, *supra* note 46, at 10.
256. *See, e.g.*, Wash. Rev. Code. § 9.94A.760.
257. 260. *See, e.g.*, Ga. Code Ann. § 15-13-31.
258. S. 287, 84th leg. (Tex. 2015) (codified at Tex. Code Crim. Proc. Art. 103.001).
259. *See* Human Rights Watch, *supra* note 61.
260. 263. *See, e.g.*, Cal. Penal Code § 1205, § 1463.007, § 1463.010 (1998) (California); Fla. Stat. Ann. § 938.35; Tenn. Code Ann. § 40-24-105, § 40-28-205; Wash. Rev. Code § 3.02.045, § 9.94A.760; § 36.18.190; Nev. Rev. Stat. § 176.064 ; Tex. Code Crim. Proc. Ann. Art 103.0031; Ga. Code Ann. § 15-21-12 (2014); Ala. Code § 12-17-225.7; Miss. Code Ann. § 19-3-41(2) (2013); Mont. Code Ann. § 46-17-402 (2005).
261. *See, e.g.,* M.S.L.J., *Paying for Poverty*, The Economist, April 25, 2015, *available at* http://www.economist.com/blogs/democracyinamerica/2015/04/private-probation-firms.
262. H.R. 310, Reg. Sess. (Ga. 2015) (codified at Ga. Code Ann § 42-8-108). The Board of Community Supervision is made up of the commissioner of corrections, the commissioner of juvenile justice, the chairperson and vice chairperson of the State Board of Pardons and Paroles, director of the Division of Family and Children Services of the Department of Human Services, and commissioner of behavioral health and developmental disabilities, a sheriff, a mayor or city manager, a county commissioner or county manager, and "[a]n individual who owns or is employed by a private corporation, private enterprise, private agency, or other private entity that is providing probation supervision services." S. 367, Reg. Sess. (Ga. 2016).
263. 266. Ga. Code Ann. § 42-8-108 (2010).
264. Rhode Island Family Life Ctr., *Court Debt and Related Incarceration in Rhode Island*, 29 (May 2007), *available at* https://csgjusticecenter.org/wp-content/uploads/2013/07/2007-RI-Family-Life-Center.pdf. (citing inconsistent record keeping across jurisdictions).
265. *See, e.g.,* North Carolina Admin. Office of the Courts, *Court Costs and Fees Chart* (Oct. 2015), http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-Oct2015-criminal.pdf; Wisconsin Court System, *Wisconsin Circuit Court Fee, Forfeiture, Fine and Surcharge Tables* (Jul. 14, 2015), *available at* https://www.wicourts.gov/courts/circuit/docs/fees.pdf; Mass. Trial Court Dist. Court Dep't, *Potential Money Assessments in Criminal Cases* (revised Dec. 2015), *available at* http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/potential-moneyassessment-criminalcases.pdf.
266. *See, e.g.*, City of Tucson, *Tucson City Court: Frequently Asked Questions* (2016), *available at* https://www.tucsonaz.gov/courts/frequently-asked-questions; Maine Judicial Branch, Admin. Office of the Courts, *Court Fines & Fees: Frequently Asked Questions* (last visited 2016), *available at* https://www10.informe.org/courts/fines/faq/; Stipulated Settlement Agreement, *supra* note 216 (mandating language for the website of the Biloxi Municipal Court).
267. Supreme Court of Colorado, *Directive Concerning the Assessment and Collection of Statutory Fines, Fees, Surcharges and Costs in Criminal, Juvenile, Traffic and Misdemeanor Cases*, Directive 85-31 (August 2011), *available at* https://www.courts.state.co.us/Courts/Supreme_Court/Directives/85-31%20Amended%208-19-11.pdf.
268. *See* Commonwealth of Virginia, Auditor of Public Accounts, *Review of Virginia Courts Management of Unpaid Fines and Costs, Special Report* (November 20, 2000), *available at* http://www.apa.state.va.us/reports/fines00.pdf.

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The New York Times

OP-ED CONTRIBUTOR

Justice Shouldn't Come With a $250 Fine

By Alexes Harris

Jan. 3, 2018

For those who hope to see the criminal justice system operate more fairly, this is an exciting time in the United States. Cities and counties across the country have recently elected a new wave of reform-minded prosecutors. But the fines and debt that many of them want to use instead of incarceration can be just as unfair and ineffective as the long sentences they say they reject.

In November, Nueces County, Tex., elected a progressive district attorney, Mark Gonzalez. His platform included a promise that he wouldn't prosecute misdemeanor marijuana offenses but would instead mandate a $250 fine and a drug class. That same month, Larry Krasner, who ran on expanding the use of drug courts and diversion programs as alternatives to incarceration, was elected district attorney in Philadelphia.

While it's understandable that the election of prosecutors like these who are committed to finding options other than locking people up — a key part of criminal justice reform — has inspired excitement, real change to the system will require that they go a step further to ensure that alternative punishments aren't an unreasonable financial burden.

Too often, this is the case. The fine for a misdemeanor is typically about $1,000, which can be unmanageable for a low-income person. This comes on top of many other costs. The application fee a defendant must pay to hire a public defender (appointed because a person charged with a crime cannot afford to pay for an attorney) can be as high as $400. Jail booking fees range from $10 to $100. In some states, defendants can be made to pay fees upward of $200 for the juries who hear their cases. After conviction, victim's panel classes, where some defendants are mandated to hear about victims' experiences and loss, can cost up to $75. Drug courts can and often do make people pay for their own assessment, treatment and frequent drug testing.

This system shifts the costs of our criminal justice system to the people processed by the system. Juvenile, traffic, misdemeanor and felony courts all rely on monetary sanctions. Fines, court-user fees, surcharges, assessments, interest, collection and per-payment fees fund everything from local law enforcement

departments to county jails. Even some municipal services not connected to law enforcement, like campaign elections, are paid for by fines and fees imposed on citizens convicted of — or simply accused of — breaking the law.

These people are paying for the system of justice from which we all benefit, but they cannot afford to do so. They are often poor, unemployed and of color. In research on monetary sanctions in nine states, my research team and I found that many people have trouble navigating the legal process associated with fines and fees, like finding out how much money they owe and meeting minimum payment requirements. Of the 380 people we interviewed, over half received public assistance and a vast majority had problems paying their legal debt. Many people with court debt suffered added consequences related to their indigence — like difficulty meeting other financial obligations, and mental and physical ailments. They also had to answer to the court for their nonpayment.

Fines for drug offenses, in particular, can have long-term consequences for people who are unable to pay. In many jurisdictions, if a person cannot pay a court-imposed fine,

probation is lengthened, warrants are issued and he or she can even be jailed for nonpayment. The burden is piled on, as interest, surcharges and collection fees are added to unpaid court costs.

It doesn't have to be this way. While prosecutors do not directly fine defendants, they have discretion when it comes to which fines and fees they recommend to judges. New prosecutors who are serious about making progressive changes should be aware that alternatives to incarceration like diversion programs and classes and treatment come at a cost — literally.

They can reform the justice system without adding the financial burden of fees and classes that defendants must pay for. They should instead search for ways to reduce criminal justice budgets by prioritizing preventive measures proved to decrease recidivism and improve public safety such as free drug and alcohol treatment programs, low-cost housing, restorative justice and job training. To start, lower courts should rely on day fines, where monetary sanctions are determined based on a person's daily wage and the seriousness of the offense. The sanction is proportionate to a person's ability to pay and the degree of harm inflicted. Jurisdictions could reduce justice-related budgets by restructuring drug-sentencing laws to match public opinion and revise the use of mandatory minimum, long-term and life sentences.

New prosecutors have the power to stop coloring within the lines of our unjust, unfair and unrealistic systems of justice. By not using punishments that impose financial costs on people, they can create a system that is not reliant on user fees and that improves the way we process, punish and support people charged with and convicted of crimes. Of course, poor defendants who are convicted of crimes should be punished. But let's hold them accountable without building huge debts they cannot pay.

Alexes Harris is a professor of sociology at the University of Washington, the author of "A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor" and a member of the Scholars Strategy Network.

INVESTIGATIONS

As Court Fees Rise, The Poor Are Paying The Price

May 19, 2014 · 4:02 PM ET
Heard on All Things Considered

JOSEPH SHAPIRO

The proliferation of court fees has prompted some states, like New Jersey, to use amnesty programs to encourage the thousands of people who owe fines to surrender in exchange for fee reductions. At the Fugitive Safe Surrender program, makeshift courtrooms allow judges to individually handle each case.
Nicole Beemsterboer/NPR

In Augusta, Ga., a judge sentenced Tom Barrett to 12 months after he stole a can of beer worth less than $2.

In Ionia, Mich., 19-year-old Kyle Dewitt caught a fish out of season; then a judge sentenced him to three days in jail.

In Grand Rapids, Mich., Stephen Papa, a homeless Iraq War veteran, spent 22 days in jail, not for what he calls his "embarrassing behavior" after he got drunk with friends and climbed into an abandoned building, but because he had only $25 the day he went to court.

GUILTY AND CHARGED: KEY FINDINGS

NPR's yearlong investigation included more than 150 interviews with lawyers, judges, offenders in and out of jail, government

The common thread in these cases, and scores more like them, is the jail

officials, advocates and other experts. It also included a nationwide survey — with help from NYU's Brennan Center for Justice and the National Center for State Courts — of which states are charging defendants and offenders fees. Findings of this investigation include:

- Defendants are charged for a long list of government services that were once free — including ones that are constitutionally required.
- Impoverished people sometimes go to jail when they fall behind paying these fees.
- Since 2010, 48 states have increased criminal and civil court fees.
- Many courts are struggling to interpret a 1983 Supreme Court ruling protecting defendants from going to jail because they are too poor to pay their fines.
- Technology, such as electronic monitors, aimed at helping defendants avoid jail time is available only to those who can afford to pay for it.

Listen to *Morning Edition* and *All Things Considered* all this week for additional stories from this investigation.

NPR NEWS INVESTIGATIONS
Chart: State-By-State Court Fees

NPR NEWS INVESTIGATIONS
Profiles Of Those Forced To 'Pay Or Stay'

time wasn't punishment for the crime, but for the failure to pay the increasing fines and fees associated with the criminal justice system.

A yearlong NPR investigation found that the costs of the criminal justice system in the United States are paid increasingly by the defendants and offenders. It's a practice that causes the poor to face harsher treatment than others who commit identical crimes and can afford to pay. Some judges and politicians fear the trend has gone too far.

A state-by-state survey conducted by NPR found that defendants are charged for many government services that were once free, including those that are constitutionally required. For example:

- In at least 43 states and the District of Columbia, defendants can be billed for a public defender.
- In at least 41 states, inmates can be charged room and board for jail and prison stays.
- In at least 44 states, offenders can get billed for their own probation and parole supervision.
- And in all states except Hawaii, and the District of Columbia, there's a fee for the electronic monitoring devices defendants and offenders are ordered to wear.

These fees — which can add up to hundreds or even thousands of dollars — get charged at every step of the system, from the courtroom, to jail, to probation. Defendants and offenders pay for their own arrest warrants, their court-ordered drug and alcohol-abuse treatment and to have their DNA samples collected. They are billed when courts need to modernize their computers. In Washington state, for example, they even get charged a fee for a jury trial — with a 12-person jury costing $250, twice the fee for a six-person jury.

In Allegan County, Mich., Frederick Cunningham pleaded guilty to forging a prescription for pain medication and was told to pay $1,000 in "court costs." Testimony from a court official in a case where Cunningham challenged his fees shows that $500 reimbursed the program that paid for the impoverished man's court-appointed attorney and $500 helped pay for the costs of running the county courthouse. Those costs include the salaries of court employees, for heat, telephones, copy machines and even to underwrite the cost of the county employees' fitness gym.

The funds from the rising costs of court fees in places like Allegan County, Mich., are used to help pay for all sorts of court-related items, including this fitness center for county employees.

Joseph Shapiro/NPR

"The only reason that the court is in operation and doing business at that point in time is because that defendant has come in and is a user of those services," says Michael Day, the administrator for the Allegan County Circuit Court. "They don't necessarily see themselves as a customer because, obviously, they're not choosing to be there. But in reality they are."

Courts usually offer alternatives to paying fees, like doing community service. But sometimes there's a cost with that, too. Jayne Fuentes, in Benton County, Wash., went on the county work crew to pay off her fines — only there was a $5-a-day charge, which she had to borrow from her daughter.

Alternatives For The Poor?

The people most likely to face arrest and go through the courts are poor, says sociologist Alexes Harris, at the University of Washington. She's writing a book on these fees and the people who struggle to pay them.

"They tend to be people of color, African-Americans and Latinos," Harris says. "They tend to be high school dropouts, they tend to be people with mental illness, with substance abuse. So these are already very poor and marginalized people in our society, and then we impose these fiscal penalties to them and expect that they make regular payments, when in fact the vast majority are unable to do so."

Many fees can be waived for indigent defendants, but judges are more likely to put the poor on a more manageable payment plan.

Courts, however, will then sometimes tack on extra fees, penalties for missed payments and may even charge interest.

In Washington state, for example, there's 12 percent interest on costs in felony cases that accrues from the moment of judgment until all fines, fees, restitution and interest are paid off in full. As a result, it can be hard for someone who's poor to make that debt ever go away. One state commission found that the average amount in felony cases adds up to $2,500. If someone paid a typical amount — $10 a month — and never missed a payment, his debt would keep growing. After four years of faithful payments, the person would now owe $3,000.

Virginia Dickerson, of Richland, Wash., has been drug-free for more than three years and out of jail for over a year. She's living in a treatment house and working as a waitress and cook. On the day last fall when NPR reporters met her, Dickerson was at the courthouse trying to get a summary of how much she owed in fines, fees and interest. The total: almost $10,000.

"I don't want to have to worry about going to jail. And that is my biggest fear," she says. "Relapses aren't even a thought to me. This is the only thing that is hindering me."

Stephen Papa was sentenced to 22 days in jail, not because of his original offense — destruction of property and resisting arrest after he got drunk with friends one day — but because he couldn't pay the fines and court fees. At his hearing, the judge asked for a $50 first installment on his $2,600 in court debt, but Papa, who was homeless and on the verge of starting a new job, had only $25.

Grant Hindsley for NPR

When an impoverished person fails to keep up with these payments, he has violated probation. There may be more fees and penalties. In some states, people who don't pay

can lose their driver's license or benefits like food stamps. Sometimes felons have to pay before they get back their right to vote.

NPR's reporting came across many of these situations, including a woman in her 60s who lost her subsidized housing for seniors and became homeless. It was discovered she still owed $500 on a conviction decades before for forging a prescription. Other examples included people who didn't pay court costs and lost their driver's license, but they kept driving — to get to work, to get kids to school — until they were caught, went to jail and were assessed thousands of dollars in more fines and fees.

The result is that people face arrest and go underground to avoid police. But this means they cut themselves off from job opportunities, welfare benefits or other programs that could get them on their feet.

"There are a lot of things you can't do. A lot of jobs you can't apply for," says Todd Clear, who studies crime policy and is provost of Rutgers University, Newark. "Lots of benefits you can't apply for. If you have a license, a driver's license that needs to be renewed, you can't renew it. So what it means is you live your entire life under a cloud. In a very real sense, they drop out of the real society."

Eddie Restrepo was one of those dropouts. Three years ago, the Iraq Army veteran came home to New Jersey but couldn't find work. He was homeless and all he had was his car. He didn't have the money to renew his license — or to pay the fines when he got caught by police. He says he was caught twice: driving with a suspended license, with no registration or insurance, and for many unpaid parking tickets. There was also interest that went unpaid.

"I was always hiding from the cops," he says. "If I was driving, I had to turn left when they were coming right. I was always trying to hide."

1 OF 6

Nicole Beemsterboer/NPR

During a four-day period last November, nearly 4,500 people turned themselves in to Fugitive Safe Surrender, a New Jersey program for people with unpaid fines and fees to get significant reductions. A judge reset Restrepo's court debt — from $10,000 to what Restrepo called "a measly" $199. And that has helped him get back on track. Last year, he took a job with the parking enforcement agency. He now gives out the kinds of citations and fines that got him into trouble.

But across the country, NPR found cases of hundreds of Americans who are jailed for failure to pay off those court debts.

This month, the governor of Colorado signed a law that tells judges they can't send people to jail simply because they're too poor to pay fines and fees.

The action came after the American Civil Liberties Union of Colorado challenged the practice of courts in three Colorado cities.

One example was a case in Westminster. Jared Thornburg was ticketed for making an illegal left turn. He went to court and the offense was dropped to driving a "defective vehicle," a ticket with $165 worth of fines and fees. At the time, he was homeless and unemployed. He had recently lost a job at an oil field after a serious workplace injury. So he couldn't pay the ticket.

The day before he was to start a job at Taco Bell, he says, he was arrested for not paying the fines, which had increased to $306. He was sentenced to 10 days in jail.

"I cried a lot being in jail because I was scared," Thornburg says.

It cost the city of Westminster about $70 a day to jail Thornburg, according to the ACLU of Colorado.

"How is that humanely right?" he asks. "It cost the taxpayers more than what my fine was for and it just wasted 10 days of my life."

The Threat Of Pay Or Stay

But some communities argue they make needed money from fines and fees.

NPR obtained a year of jail records from Benton County and sampled data over a four-month period in 2013. On a typical day, about a quarter of the people who were in jail for misdemeanor offenses were there because they had failed to pay their court fines and fees.

Benton County District Court Judge Robert Ingvalson defends the county's heavy use of fines and fees — and jail time for those who don't pay. He says it's needed to hold people accountable when they break laws.

"If they won't pay the money, the only thing we can take from them at that point is their time," Ingvalson says.

But Vanessa Torres Hernandez, an attorney with the ACLU of Washington who recently wrote a report criticizing the practice, disagrees.

"If you have resources, a court fine and fee isn't a big deal. You can pay that money. You can walk free. But for people who are already poor, the court fine and fee is in essence an additional sentence," she says.

One result, she says, is that poor people are faced with difficult choices, sometimes using money they need for food or rent to pay court costs to stay out of jail.

Benton County collects just a fraction of all the fines and fees it's owed. But the county still collected $13 million in 2012 — making it one of the state's top revenue producers.

There is some debate in Benton County about whether that's a good thing. Court officials note with pride how much money they raise. But local police chiefs say money goes out, too. It costs the police departments about $65 a day to keep someone in jail for not paying their fines.

The county prosecutor worries that the practice is unfair to poor defendants, and he has asked local judges to put a cap on how many days they will put people in jail.

"I actually have some question about the fairness of some of the fines that are imposed," says Benton County Prosecuting Attorney Andy Miller. "But a lot of these fines are mandatory, set by the legislature."

Common Court Fees

Pre-conviction

Application fee to obtain public defender —

Jail fee for pretrial incarceration —

Jury fees —

Rental fee for electronic monitoring devices —

Sentencing

Fines, with accompanying surcharges —

Restitution —

Fees for court administrative costs —

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

Public defender reimbursement fees —

Prosecution reimbursement fees —

Incarceration

Fees for room and board in jail and prison —

Health care and medication fees —

Probation, parole or other supervision

Probation and parole supervision fees —

Drug testing fees —

Vehicle interlock device fees (DUIs) —

Rental fee for electronic monitoring devices —

Mandatory treatment (includes drug and alcohol,) therapy and class fees —

Poverty penalties

Who's Too Poor To Pay?

In 1983, the U.S. Supreme Court ruled in *Bearden v. Georgia* that people can't be sent to jail simply for being too poor to pay fines and fees. The court said someone could be sentenced only if he or she had the money and had "willfully" refused to pay. But the justices did not define what that meant. The result is that it's often left to judges to make the difficult calculation: Who's too poor to pay. And who can, but didn't.

NPR found sweeping discrepancies across the country over how courts make those decisions. Some judges will tell an offender to give up their phone service, or quit smoking cigarettes and use the money instead to pay court debt.

Some judges and politicians — even ones with reputations for being hard on crime — are starting to question whether the use of fines and fees has gone too far. The new law in Colorado was passed on a near-unanimous vote of Republicans and Democrats.

Courts, too, have taken action to limit the use of fees. Last month, a U.S. district judge stopped the city of Montgomery, Ala., from collecting traffic fines from three defendants who went to jail for failure to pay fines and fees. And over the last two years, judges in Alabama and Georgia have ruled in other cases to limit fines and fees. Earlier this year, the Ohio State Supreme Court warned judges to stop putting people in jail simply because they're too poor to pay a fine.

A History Of Rising Fees

The roots of the growing practice to add more fines and fees can be dated back to the start of America's tough-on-crime policies, beginning with the War on Crime in the 1970s and then the War on Drugs in the 1980s. In 40 years, the number of people behind bars in the U.S. jumped 700 percent. Jails, prisons and courtrooms became overcrowded. And the costs of running them, according to the federal Bureau of Justice Statistics, rose from $6 billion for states in 1980 to more than $67 billion a year in 2010.

At the same time, states struggled with budget deficits. Politicians faced new pressure not to raise taxes. So states started charging user fees to defendants. Fines have long been a tool for judges; for decades they've been another form of punishment. The focus on fees, that are used to pay court, jail and probation costs, is newer.

One of the first instances NPR found of fees charged to criminal defendants was in 1965 when California required payments to reimburse crime victims. By the 1980s, states started billing criminal defendants to reimburse taxpayers. Michigan, in 1984, passed the first law to charge inmates for some of the costs of their incarceration. By 1990, Texas reported that fees from offenders made up more than half the budget of the state's probation agencies.

In Benton County, Washington, on a typical day, about a quarter of the people sentenced to jail through the misdemeanor court were there because they had failed to pay their court fines and fees.
Joseph Shapiro/NPR

Today, fees are more common than ever, as states are under increased pressure to find funding. NPR, with help from the National Center for State Courts, surveyed state laws since the recent recession and found 48 states have increased criminal and civil court fees, added new ones or both.

The number of Americans with unpaid fines and fees is massive. In 2011, in Philadelphia alone, courts sent bills on unpaid debts dating back to the 1970s to more than 320,000 people — roughly 1 in 5 city residents. The median debt was around $4,500. And in New York City, there are 1.2 million outstanding warrants, many for unpaid court fines and fees.

The growth in the number of people who owe court-imposed monetary sanctions shows up in surveys by the U.S. Department of Justice, too: In 1991, 25 percent of prison inmates said they owed court-imposed costs, restitution, fines and fees. By 2004, the

last time the Justice Department did the survey, that number climbed to about 66 percent.

But Harris of the University of Washington estimates that 80 to 85 percent of inmates now leave prison owing these costs.

Public Defender Fees

The growth of the fees charged for a public defender is typical of the way these charges have grown.

In 1963, the Supreme Court — in the landmark case, *Gideon v. Wainwright* — ruled that indigent criminal defendants have a right to a lawyer. But the high court didn't say how states were to pay for those lawyers. So states turned to user fees.

The NPR survey found, with help from the Brennan Center for Justice at New York University School of Law, that in at least 43 states and D.C., defendants can be billed for a public defender. We found two typical charges: an upfront application fee to hire a lawyer, which can range from $10 to $400; and reimbursement fees, which can cost thousands of dollars.

"After the fact you can be asked to reimburse up to the full cost of your representation," says Alicia Bannon, an attorney with the Brennan Center.

The courts — including the Supreme Court — have justified this by saying even a poor person can often pay something — even if it's just that small application fee. Or maybe that person is poor today, but tomorrow will find a good-paying job and have money.

In reality, NPR found that poor people sometimes skip using an attorney. Or they carry the debt for their court-appointed lawyer for years.

Tom Barrett, who stole that can of beer in Augusta, Ga., was offered a court-appointed attorney, but turned the service down because he didn't want to pay the $50 administration fee. Now he says that was a mistake.

A lawyer might have helped him stay away from a deal he couldn't afford. His costs added up to more than $400 a month, which included daily rental of the electronic monitoring device and fees to a private firm that managed his probation. But Barrett was homeless. His only income, other than food stamps, came from the $35 he got selling his plasma to the blood bank. So when he quickly fell behind on his payments, he was sent to jail.

The NPR survey found, all states — except for Hawaii and also the District of Columbia — now allow or even require the cost of those devices to be passed along to those ordered by a court to wear one. Usually that includes a daily rental fee: Typically around $5 for a tracking device and often twice as much to rent the alcohol monitoring device. It also includes the cost of a land-line phone for the systems to work, and an installation fee.

Last fall, Augusta Superior Court Judge Daniel Craig put a temporary stop to forcing poor people to pay fees for the devices and other costs.

NPR's Emma Anderson, Nicole Beemsterboer, Robert Benincasa and Barbara Van Woerkom contributed reporting and research to this investigation.

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

CRIMINAL JUSTICE DEBT

A TOOLKIT FOR ACTION

By Roopal Patel and Meghna Philip

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protection in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S JUSTICE PROGRAM

The Brennan Center's Justice Program pursues justice system reforms designed to reduce the "justice gap," the distance between the nation's promise of equal justice and the reality that people of color and low-income litigants face in our courts. We work to achieve a justice system in which the ability of people to rely on courts and other agencies to secure the rule of law and prevent harms is not controlled by wealth, ethnicity, immigration status or the community from which they come.

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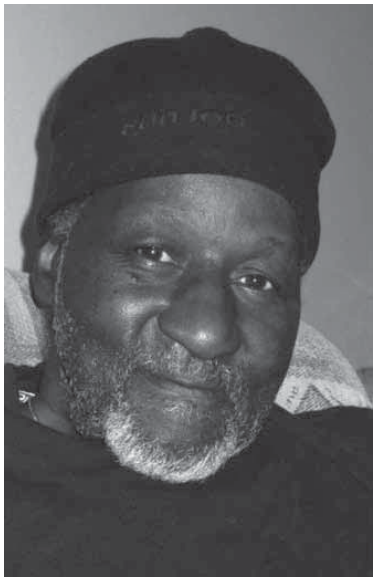
INTRODUCTION

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 rentry 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]

> 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."

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.

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 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.

> 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 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 Alexander**[26]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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 Ohio[32] 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 law[33]).

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 support[69] 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 counties[77] (in comparison, the maximum late fee for a green American Express card is $35[78]). 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 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.

> "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**

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

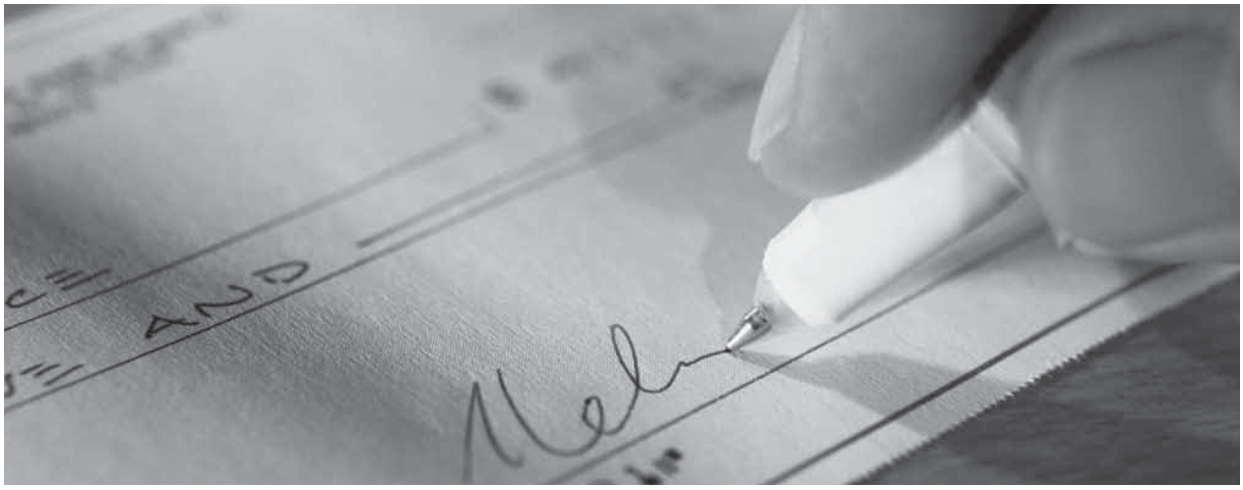
zip codes (which, unlike many other states, tend to be densely urban with access to adequate public transportation), these zip codes accounted for 43 percent of all suspended licenses.[90]

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

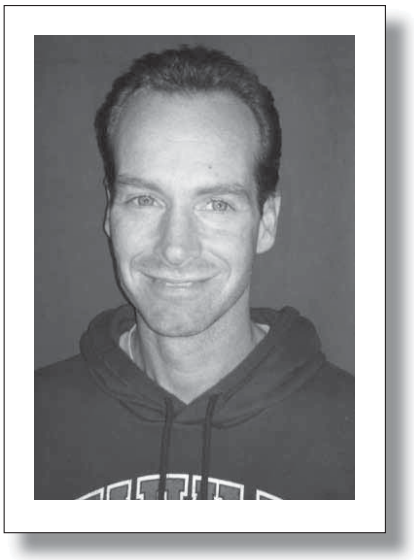
The process of collecting criminal justice debt is difficult to decipher for those at its mercy.[127] Courts have generally treated the concept of "willful failure to pay" as ill-defined and amorphous, exacerbating existing confusions. This lack of structure makes it easier for judges to act on a whim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

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CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY

Alicia Bannon
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EXECUTIVE SUMMARY

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

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

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

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

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

Source: National Prisoner Statistics, Bureau of Justice Statistics

Key Findings

- **Fees, while often small in isolation, regularly total hundreds and even thousands of dollars of debt.** All fifteen of the examined states charge a broad array of fees, which are often imposed without taking into account ability to pay. One person in Pennsylvania faced $2,464 in fees alone, approximately three times the amount imposed for fines and restitution. In some states, local government fees, on top of state-wide fees, add to fee burdens. Thirteen of the fifteen states also charge poor people public defender fees simply for exercising their constitutional right to counsel. This practice can push defendants to waive counsel, raising constitutional questions and leading to wrongful convictions, over-incarceration, and significant burdens on the operation of the courts.

- **Inability to pay leads to more fees and an endless cycle of debt.** Fourteen of the fifteen states also utilize "poverty penalties" – piling on additional late fees, payment plan fees, and interest when individuals are unable to pay their debts all at once, often enriching private debt collectors in the process. Some of the collection fees are exorbitant and exceed ordinary standards of fairness. For example, Alabama charges a 30 percent collection fee, while Florida permits private debt collectors to tack on a 40 percent surcharge to underlying debt.

- **Although "debtors' prison" is illegal in all states, reincarcerating individuals for failure to pay debt is, in fact, common in some – and in all states new paths back to prison are emerging for those who owe criminal justice debt.** All fifteen of the states examined in this report have jurisdictions that arrest people for failing to pay debt or appear at debt-related hearings. Many states also use the threat of probation or parole revocation or incarceration for contempt as a debt-collection tool, and in some jurisdictions, individuals may also "choose" to go to jail as a way to reduce their debt burdens. Some of these practices violate the Constitution or state law. All of them undercut former offenders' efforts to reintegrate into their communities. Yet even though over-incarceration harms individuals and communities and pushes state budgets to the brink, states continue to send people back to prison or jail for debt-related reasons.

- **As states increasingly structure their budgets around fee revenue, they only look at one side of the ledger.** Strikingly, there is scant information about what aggressive collection efforts cost the state. Debt collection involves myriad untabulated expenses, including salaried time from court staff, correctional authorities, and state and local government employees. Arresting and incarcerating people for debt-related reasons are particularly costly, especially for sheriffs' offices, local jails, and for the courts themselves. For example, Brennan Center analysis of one North Carolina county's collection efforts found that in 2009 the government arrested 564 individuals and jailed 246 of them for failing to pay debt and update address information, but that the amount it ultimately collected from this group was less than what it spent on their incarceration.

- **Criminal justice debt significantly hobbles a person's chances to reenter society successfully after a conviction.** In all fifteen of the examined states, criminal justice debt and related collection practices create a significant barrier for individuals seeking to rebuild their lives after a criminal conviction. For example, eight of the fifteen states suspend driving privileges for missed debt payments, a practice that can make it impossible for people to work and that can lead to new convictions for driving with a suspended license. Seven states require individuals to pay off criminal justice debt before they can regain their eligibility to vote. And in all fifteen states, criminal justice debt and associated collection practices can damage credit and interfere with other commitments, such as child support obligations.

Top Penny-Wise, Pound-Foolish Practices

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

- **Overdependence on fee revenue compromises the traditional functions of courts and correctional agencies.** When courts are pressured to act, in essence, as collection arms of the state, their traditional independence suffers. When probation and parole officers must devote time to fee collection instead of public safety and rehabilitation, they too compromise their roles.

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

Core Recommendations

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

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

INTRODUCTION

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

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

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

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

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

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

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

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

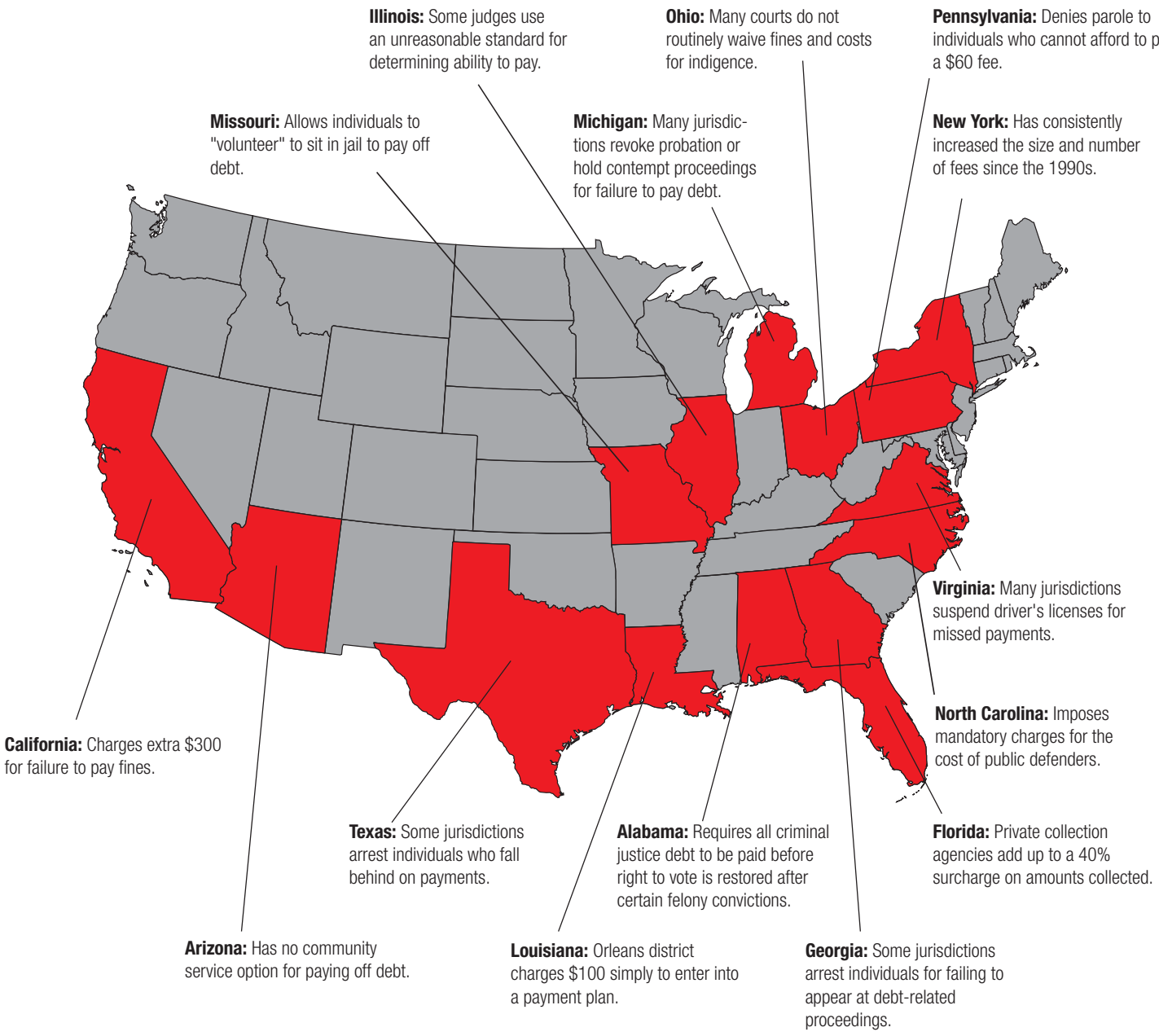
Against this backdrop, criminal justice debt adds yet one more barrier to getting on one's feet. What at first glance appears to be easy money for the state can carry significant hidden costs – both human and financial – for individuals, for the government, and for the community at large. When persons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

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

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

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

Criminal Justice Debt Across the Country



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

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

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

- **Florida** has added more than 20 new categories of financial obligations to the criminal justice process since 1996 and has increased existing fees in both of the last two years. It recently increased court costs for felonies by $25, required costs of prosecution to be imposed on convicted persons regardless of their ability to pay (minimum $50 for misdemeanors and $100 for felonies), and set minimum mandatory recoupment fees for persons who use public defenders at $50 for misdemeanors and $100 for felonies.[13]

- **New York** has been increasing the size and number of fees since the 1990s.[14] In 2008, the legislature introduced new surcharges for various driving offenses, ranging from $20 to $170 dollars.[15] It also increased existing surcharges, some by as much as $50.[16]

- **North Carolina** in 2009 instituted a $25 late fee for failure to pay a fine or other court cost on time and a $20 surcharge to set up an installment payment plan. It also doubled the fee for a failure to appear in court (to $200), and the fee imposing lab costs on defendants (to $600).[17]

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

By the Numbers

15 of 15 states impose fees that attach upon conviction[18]

15 of 15 states impose parole, probation or other supervision fees[19]

15 of 15 states have laws authorizing the imposition of jail or prison fees[20]

A. Debt Adds Up Quickly

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

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

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

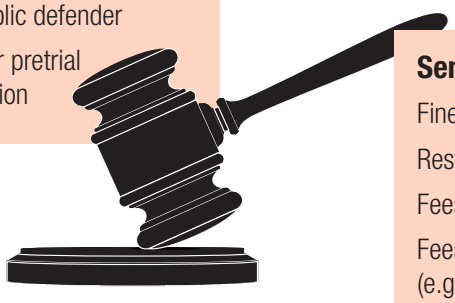
In the fifteen surveyed states, individual fees, small and large, add up quickly, leaving many poor individuals with heavy debt burdens that they often cannot hope to pay.

Criminal Justice Debt Accrues at Every Stage of a Criminal Proceeding[21]

Pre-conviction

Application fee to obtain public defender

Jail fee for pretrial incarceration



Sentencing

Fines, with accompanying surcharges

Restitution

Fees for court administrative costs

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

Public defender reimbursement fees

Prosecution reimbursement fees

Incarceration

Prison fees

Jail fees

Probation, Parole, or Other Supervision

Probation and parole supervision fees

Drug testing fees

Vehicle interlock device fees (DUIs)

Mandatory treatment, therapy, and class fees

Poverty Penalties

Interest

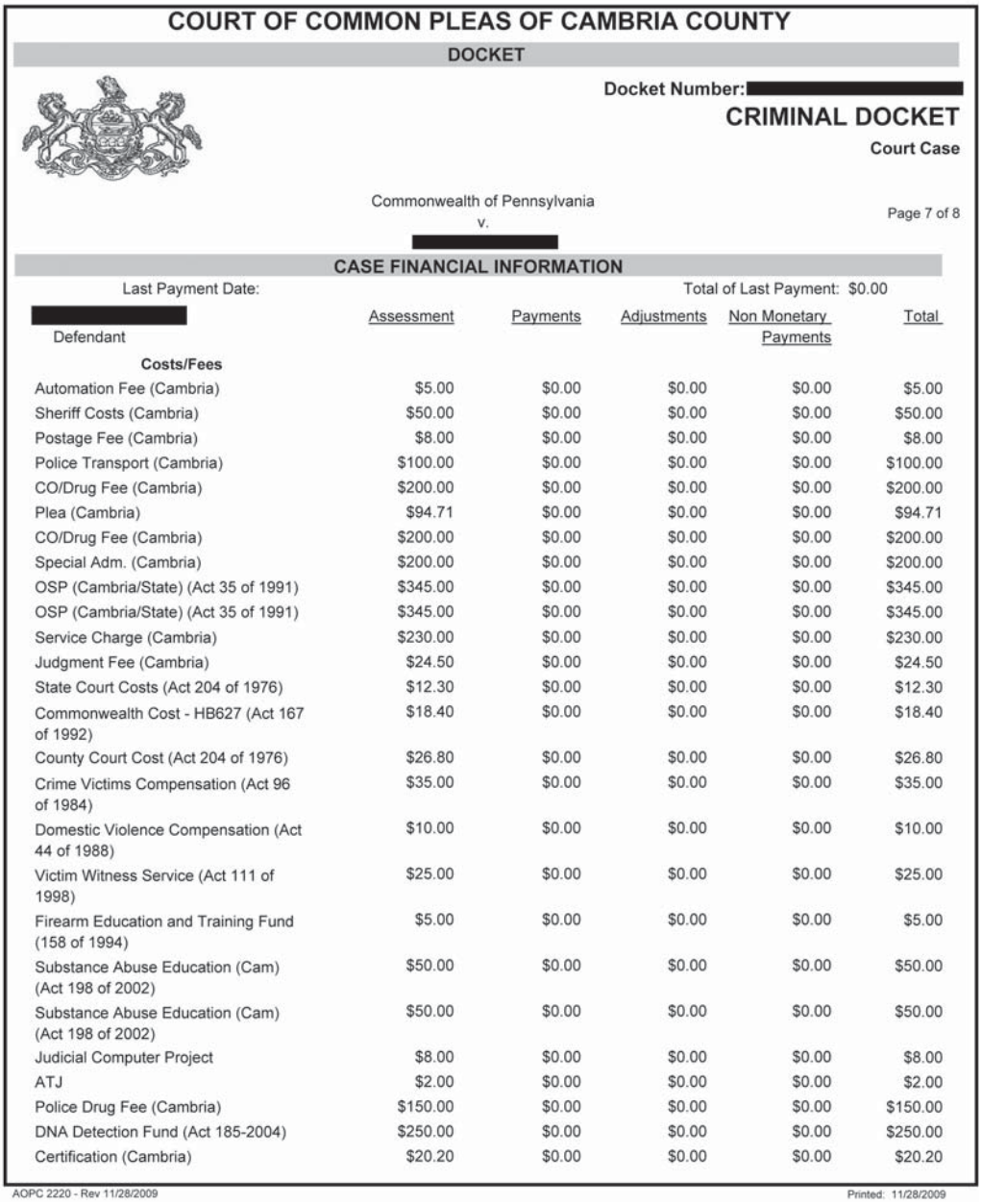
Late fees

Payment plan fees

Collection fees

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

Docket Sheet Snapshot, Pennsylvania



COURT OF COMMON PLEAS OF CAMBRIA COUNTY

DOCKET

Docket Number: [redacted]

CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania
v.
[redacted]

Page 7 of 8

CASE FINANCIAL INFORMATION

Last Payment Date:

Total of Last Payment: $0.00

[redacted] Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
Costs/Fees					
Automation Fee (Cambria)	$5.00	$0.00	$0.00	$0.00	$5.00
Sheriff Costs (Cambria)	$50.00	$0.00	$0.00	$0.00	$50.00
Postage Fee (Cambria)	$8.00	$0.00	$0.00	$0.00	$8.00
Police Transport (Cambria)	$100.00	$0.00	$0.00	$0.00	$100.00
CO/Drug Fee (Cambria)	$200.00	$0.00	$0.00	$0.00	$200.00
Plea (Cambria)	$94.71	$0.00	$0.00	$0.00	$94.71
CO/Drug Fee (Cambria)	$200.00	$0.00	$0.00	$0.00	$200.00
Special Adm. (Cambria)	$200.00	$0.00	$0.00	$0.00	$200.00
OSP (Cambria/State) (Act 35 of 1991)	$345.00	$0.00	$0.00	$0.00	$345.00
OSP (Cambria/State) (Act 35 of 1991)	$345.00	$0.00	$0.00	$0.00	$345.00
Service Charge (Cambria)	$230.00	$0.00	$0.00	$0.00	$230.00
Judgment Fee (Cambria)	$24.50	$0.00	$0.00	$0.00	$24.50
State Court Costs (Act 204 of 1976)	$12.30	$0.00	$0.00	$0.00	$12.30
Commonwealth Cost - HB627 (Act 167 of 1992)	$18.40	$0.00	$0.00	$0.00	$18.40
County Court Cost (Act 204 of 1976)	$26.80	$0.00	$0.00	$0.00	$26.80
Crime Victims Compensation (Act 96 of 1984)	$35.00	$0.00	$0.00	$0.00	$35.00
Domestic Violence Compensation (Act 44 of 1988)	$10.00	$0.00	$0.00	$0.00	$10.00
Victim Witness Service (Act 111 of 1998)	$25.00	$0.00	$0.00	$0.00	$25.00
Firearm Education and Training Fund (158 of 1994)	$5.00	$0.00	$0.00	$0.00	$5.00
Substance Abuse Education (Cam) (Act 198 of 2002)	$50.00	$0.00	$0.00	$0.00	$50.00
Substance Abuse Education (Cam) (Act 198 of 2002)	$50.00	$0.00	$0.00	$0.00	$50.00
Judicial Computer Project	$8.00	$0.00	$0.00	$0.00	$8.00
ATJ	$2.00	$0.00	$0.00	$0.00	$2.00
Police Drug Fee (Cambria)	$150.00	$0.00	$0.00	$0.00	$150.00
DNA Detection Fund (Act 185-2004)	$250.00	$0.00	$0.00	$0.00	$250.00
Certification (Cambria)	$20.20	$0.00	$0.00	$0.00	$20.20

AOPC 2220 - Rev 11/28/2009

Printed: 11/28/2009

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

This is not an unusual case. In Texas**,** a preliminary study by the Texas Office of Court Administration showed that people released to parole owe anywhere from $500 to $2,000 in offense-related debt (not including restitution).[21] A chart used by court clerks in Texas inventories at least 39 different categories of court costs in misdemeanor cases and 35 types of costs in felony cases.[22] In Arizona, individuals face a series of surcharges that add 84 percent to their underlying fines and penalties.[23] Individuals are also liable for additional "set amount" surcharges, including a $20 probation surcharge[24] and a $20 surcharge for using a payment plan to pay off debts.[25]

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

In addition to user fees that apply to all offenses, individuals convicted of certain types of crimes frequently face substantial additional debt. For instance, in many states, individuals convicted of drug crimes, driving under the influence ("DUI"), or sex offenses face mandatory fees that dramatically increase their overall debt. In Arizona, for example, a person convicted of DUI must pay special fees totaling $1,000, on top of all other fees and a fine of $250.[29]

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

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

B. States Fail to Track the Real Costs

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

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

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

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

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

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

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

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

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

Broad reliance on defender fees in the examined states

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

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

Mandatory fees

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

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

Discouraging the right to counsel

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

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

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

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

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

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

The result is a system effectively designed to turn individuals with criminal convictions into permanent debtors.

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

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

A. Lack of Fee Waivers

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

At least fourteen of the fifteen states – every state but Ohio[52] – has at least one mandatory fee that courts are required to impose upon certain convicted defendants, regardless of their financial resources.[53] Moreover, even when sentencing courts have the discretion to waive or modify debt levels, in practice, many courts routinely fail to consider a defendant's ability to pay. In Ohio, for example, despite courts' broad authority to waive debt, interviews with clerks and public defenders suggest that courts do not routinely waive debts for indigence in practice.[54]

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

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

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

B. Unworkable Payment Plans

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

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

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

The Need for Clear Standards

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

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

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

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

C. No Meaningful Community Service Alternatives

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

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

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

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

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

California Woman Faces Spiraling Debt[72]

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

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

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

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

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

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

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

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

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

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

D. Poverty Penalties Compound Debt and Enrich Private Companies

In addition to failing to offer adequate waivers for the indigent and meaningful payment plan and community service options, the Brennan Center found that many states also charge *additional* fees when individuals fail to pay off their debts immediately – without looking at whether the debtor has the resources to pay. These charges effectively penalize people solely for being poor.

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

- In **thirteen states**, individuals can be charged interest or late fees if they fall behind on payments[89] – even if they lack any resources to make the payments or have conflicting obligations such as child support. The added debt can be significant – such as a flat charge of $300 in California,[90] late charges of $10[91] or $20[92] every time a defendant makes a late payment in some Florida counties, and a 20 percent late fee after 56 days in Michigan.[93]

- **Nine of the states studied** authorize exorbitant "collection fees," frequently payable to private debt collection firms.[94] For example, in Alabama, individuals must pay a collection fee of 30 percent of the amount due if their payments are 90 days overdue.[95] Similarly, Florida law authorizes private collection agencies to charge individuals up to a 40 percent surcharge on amounts collected,[96] and Illinois law authorizes charging individuals who fall behind on payments with a fee of 30 percent of the delinquent amount.[97] Only one of the states studied, Texas, exempts defendants who are unable to pay their underlying debt from an added collection fee.[98]

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

By pushing poor people further into debt, poverty penalties make it harder for them to meet their daily needs and to fulfill important commitments such as child support. For example, California's $300 civil assessment for defendants who fall behind in paying a fine or related surcharge[103] is close to the average monthly food budget for a household making less than $70,000 per year.[104] Collection fees in Florida – which can reach 40 percent of the amount collected – likewise regularly add hundreds of dollars to individuals' debt burdens and can bring their total debt into four figures.[105] Often these charges far exceed ordinary standards of fairness. For example, Alabama's 30 percent "collection fee"[106] is in striking contrast to its general usury law, which limits interest rates on private loans to a maximum of 8 percent.[107]

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

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

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

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

The Supreme Court Rejects Debtors' Prison

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

Bearden v. Georgia[108]

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

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

A. History and Constitutional Limitations

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

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

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

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

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

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

B. Four Paths to Debtors' Prison

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

- **Path 1: Probation or parole revoked or not granted**
  All fifteen states make criminal justice debt a condition of probation, parole, or other correctional supervision. In some states, when individuals fail to pay, they may face re-arrest and may ultimately be sent to prison. In Pennsylvania, persons in prison are ineligible for parole unless they pay a $60 fee that makes no exception for the indigent.

- **Path 2: Incarceration through civil or criminal enforcement proceedings**
  At least eleven states have statutes or practices that authorize incarceration as a penalty for a willful failure to pay criminal justice debt, often under the guise of civil contempt.

- **Path 3: "Choosing" jail**
  Interviewees in **two states** reported programs where defendents can request to spend time in jail as a way of paying down court-imposed debt. These programs are often voluntary in name only and reflect the untenable choices that poor defendants must make.

- **Path 4: Arrest and pre-hearing incarceration**
  All fifteen states have jurisdictions that arrest people for failing to pay criminal justice debt or appear at debt-related hearings, leading in many cases to multi-day jail terms pending an ability to pay hearing.

Key Terms[117]

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

1. Probation or Parole Revoked or Not Granted

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

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

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

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

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

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

— Public defender in Jackson County, Illinois[128]

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

According to the Pennsylvania Institutional Law Project, many inmates who were otherwise eligible for release on parole have been kept in prison – sometimes for a period of months – because they lacked the resources to pay $60.[129] Ironically, it costs almost $100 to hold a person in prison for a *single day* in Pennsylvania.[130]

2. *Incarceration Through Civil or Criminal Enforcement Proceedings*

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

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

Denying individuals counsel at proceedings where their liberty is at stake raises serious constitutional questions[137] – and creates a significant risk that individuals will end up incarcerated simply for being poor. Attorneys play a crucial role in ability to pay proceedings: they can collect and present evidence regarding ability to pay criminal justice debt, navigate often-confusing rules for altering payment commitments or debt loads, and ensure that individuals' rights are protected and that they understand the implications of any payment commitments that they make. Putting individuals' liberty at risk without access to an attorney draws the fairness and accuracy of civil contempt proceedings into serious question.

3. "Choosing" Jail

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

In California[138] and Missouri,[139] for example, some jurisdictions allow people to "volunteer" to sit in jail as a way of fulfilling debt obligations. In many cases, volunteering for jail is a choice in name only.

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

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

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

4. Arrest and Pre-Hearing Incarceration

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

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

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

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

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

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

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

States That Suspend Driver's Licenses To Punish Missed Payments

California[153]
Florida[154]
Louisiana[155]
Michigan[156]
North Carolina[157]
Pennsylvania[158]
Texas[159]
Virginia[160]

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

C. Aggressive Collection Tactics Push Debtors Toward New Offenses

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

1. Suspension of Driver's Licenses

One common collection practice that leads to a cycle of reincarceration is the suspension of driver's licenses. **At least eight states** suspend driver's licenses based on missed payments, in many cases without considering whether a person had the resources to make payments in the first place. In still other states, individuals can have their licenses revoked for a failure to appear at a hearing or for an arrest warrant, the underlying cause of which is often criminal justice debt.[161] If these individuals continue driving – as they often must to work – they face new and often severe criminal penalties for driving with a suspended license.

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

2. *Extending Probation Terms*

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

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

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

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

States That Extend Probation For Debt

Alabama[165]
Arizona[166]
California[167]
Florida[168]
Georgia[169]
Louisiana[170]
Michigan[171]
Missouri[172]
North Carolina[173]
Ohio[174]
Pennsylvania[175]
Texas[176]
Virginia[177]

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

D. Debtors' Prison Wastes Public Funds

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

Any time an individual is arrested or imprisoned, taxpayers face a hefty bill. California, for example, spends more than $130 per day to incarcerate a single prisoner.[178] And over-incarceration requires states to divert resources from other critical areas, including everything from education to law enforcement. Indeed, with the recent economic crisis putting unprecedented strain on state budgets, many states have been rethinking their high rates of incarceration. Most notably, California recently announced a plan to reduce the number of inmates in the state's 33 prisons next year by 6,500.[179]

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

North Carolina County's Collection Practices Do Not Add Up

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

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

Department records indicate that in 2009, 564 individuals were arrested because they fell behind on debt and failed to provide the Fine Collection Department with updated address information.[182] In order to be eligible for release from jail prior to a hearing before the court, they were required to pay the full amount of their debt. Of the 564 individuals arrested, 246 people did not pay and were held in jail for an average of about 4 days pending a compliance hearing – at which point their debts were often cancelled.[183] This jail term alone cost more than $40,000[184] – while the county collected only $33,476 from the individuals who had been arrested.[185] Additional arrests also took place when individuals did not appear at debt-related hearings, costing the county even more money.[186]

IV. CRIMINAL JUSTICE DEBT IMPEDES REENTRY AND REHABILITATION

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

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

A. Hurdles to Finding Housing and Employment

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

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

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

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

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

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

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

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

B. Public Benefits at Risk

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

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

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

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

C. Barriers to Paying Child Support

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

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

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

D. Debt Functions as a Poll Tax

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

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

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

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

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

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

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

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

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

A. Courts Face Conflicts of Interest and Financial Uncertainty

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

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

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

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

New Orleans, for example, faced an extreme version of this phenomenon in the wake of Hurricane Katrina when the traffic court fines that it had relied upon to fund the public defender system dried up.[224] Already underfunded before Katrina, the city's public defender office faced devastating cuts after the depopulation of New Orleans depleted traffic fine revenue. By October of 2005, the office's staff shrunk to 10 attorneys from 35.[225]

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

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

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

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

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

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

VI. RECOMMENDATIONS

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

1. **Lawmakers should evaluate the total debt burden of existing fees before adding new fees or increasing fee amounts.** Massachusetts provides a good model: on the verge of instituting a local jail fee in 2010, the legislature instead established a commission to perform an initial investigation of the revenue that could be generated from the fee, the cost of administering and collecting the fee, and the impact of the fee on affected populations.

2. **Indigent defendants should be exempt from user fees, and payment plans and other debt collection efforts should be tailored to an individual's ability to pay.** States should have clear written standards for determining a person's ability to pay, and screening should evaluate genuine financial ability, taking into account other obligations should as child support commitments. Individuals who receive public benefits, reside in correctional or mental health facilities, or have incomes below a fixed multiple of the federal poverty guidelines should be presumed eligible for criminal justice debt waivers.

3. **States should immediately cease incarcerating and jailing individuals for failure to pay criminal justice debt, particularly before a court has made an ability-to-pay determination.** Many people land in jail for debt-related reasons pending a court hearing, even though no one has ever determined that they have the ability to pay in the first place. This blatantly unfair practice punishes people for being poor and raises significant constitutional questions.

4. **Public defender fees should be eliminated, to reduce pressures that can lead to conviction of the innocent, over-incarceration, and violations of the Constitution.** At the very least, states should follow the ABA recommendation that individuals should not be ordered to pay defender fees they are unable to afford and that states should abolish reimbursement fees that require defendants to reimburse the state for all or part of the defender's services at the end of a proceeding.

5. **States should eliminate "poverty penalties" that impose additional costs on individuals who are unable to pay criminal justice debt all at once, such as payment plan fees, late fees, collection fees, and interest.** These fees unfairly burden the poor and contribute to spiraling debt for many individuals. Collection fees that benefit private collection agencies are particularly troubling, because these agencies generally lack oversight and charge high fees.

6. **Policymakers should evaluate the costs of popular debt collection methods such as arrests, incarceration, and driver's license suspensions – including the salary and time spent by employees involved in collection and the effect of the methods on reentry and recidivism.** States are in the best position to evaluate the costs of collection, because they have better access to information about the salaries of court officials, supervision officers, and other collection officials and data on the operating costs of courts, jails, and prisons.

7. **Agencies involved in debt collection should extend probation terms or suspend driver's licenses only in those cases where an individual can afford to repay criminal justice debt but refuses to do so.** These practices undermine individuals' reentry into their communities by increasing the likelihood of new offenses and undermining employment and housing opportunities.

8. **Legislatures should eliminate poll taxes that deny individuals the right to vote when they are unable to pay criminal justice debt.** Denying individuals the right to vote based on a failure to pay criminal justice debt raises serious constitutional concerns and counters efforts to encourage former offenders to accept the rights and responsibilities of citizenship. It also contravenes a core principle of our democracy – that rich and poor alike have a right to participate in our political system.

9. **Courts should offer community service programs that build job skills for individuals unable to afford criminal justice debt.** Well-designed community service programs promote reentry and help individuals avoid long-term debts that keep them entangled with the justice system. Community service options for debt should be widely available, but should only be imposed at the defendant's request, or when an unemployed defendant has been unable to make payments.

ENDNOTES

1 For data on the number of state prisoners, see Bureau of Justice Statistics, National Prisoner Statistics, Prisoners at Yearend 2009 - Advance Counts, *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2272. For data on state criminal filings, see National Center for State Courts, Court Statistics Project, Interactive Statistics Query, http://www.ncsconline.org/d_research/csp/CSP_Main_Page.html.

2 Access and Fairness InfoCenter, National Center for State Courts, Indigent Defense FAQs 1 (2009), *available at* http://www.ncsconline.org/wc/CourTopics/FAQs.asp?topic=IndDef.

3 Caroline Wolf Harlow, Bureau of Justice Statistics, U.S. Dep't of Justice, Education and Correctional Populations 1 (2003), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/ecp.pdf.

4 42 U.S.C. § 17501(b)(14) (Congressional Findings supporting the Second Chance Act, the most comprehensive federal legislative response to date to the needs of those re-entering society after incarceration).

5 Christopher Hartney & Linh Vuong, National Council on Crime and Delinquency, Created Equal: Racial and Ethnic Disparities in the U.S. Criminal Justice System 2 (2009), *available at* http://www.nccd-crc.org/nccd/pdf/CreatedEqualReport2009.pdf.

6 *Id.* at 14.

7 42 U.S.C. § 17501(b)(9) (Second Chance Act findings).

8 42 U.S.C. § 17501(b)(10) (Second Chance Act findings).

9 42 U.S.C. § 17501(b)(18) (Second Chance Act findings).

10 Bureau of Labor Statistics, U.S. Dep't of Labor, The Employment Situation – August 2010 at 1, 24 (2010), *available at* http://www.bls.gov/news.release/pdf/empsit.pdf (last visited Sept. 17, 2010).

11 Bureau of Justice Statistics, U.S. Dep't of Justice, Profile of Nonviolent Offenders Exiting State Prisons 2 (2004), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/pnoesp.pdf (last visited Aug. 19, 2010).

12 42 U.S.C. § 17501(b)(3) (Second Chance Act Findings).

13 Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 5-6 (2010).

14 Alan Rosenthal & Marsha Weissman, Center for Community Alternatives, Sentencing for Dollars: The Financial Consequences of a Criminal Conviction 13-16 (Feb. 2007), *available at* http://www.brennancenter.org/content/resource/sentencing_for_dollars_the_financial_consequences_of_a_criminal_conviction/.

15 Ctr. for Cmty. Alternatives, Increased Mandatory Surcharges and Crime Victims Assistance Fees (2008), *available at* http://www.communityalternatives.org/pdf/fees%20chart.pdf; *see also* N.Y. Veh. & Traf. Law § 1809-e.

16 Ctr. for Cmty. Alternatives, Increased Mandatory Surcharges and Crime Victims Assistance Fees (2008), *available at* http://www.communityalternatives.org/pdf/fees%20chart.pdf; *see also* N.Y. Veh. & Traf. Law § 1809(1)(b)(i) (surcharge for felony conviction increased from $250 to $300); § 1809(1)(b)(ii) (surcharge for misdemeanor conviction increased from $140 to $175); N.Y. Penal Law § 60.35(1)(a)(iii) (surcharge for conviction of a violation increased from $75 to $95).

17 *See* N.C. Admin. Office of the Courts, Court Costs and Fees Chart (2009), *available at* http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-2009-criminal.pdf.

18 *See, e.g.*, Ala. Code § 36-21-67 (imposing $1 costs for a traffic infraction, $5 for a misdemeanor or violation of a municipal ordinance, and $10 for a felony to be allocated to the Peace Officers' Annuity and Benefit Fund), § 12-19-181 (assessing additional fees for drug-related convictions); Ariz. Rev. Stat. §§ 12-116.01(A) – (C) (imposing additional surcharges on every fine penalty and forfeiture imposed); § 16-954(C) (assessing an additional 10 percent surcharge on criminal fines to be deposited into a clean elections fund); Cal. Penal Code § 1202.4(b) (imposing restitution fine upon conviction); Fla. Stat. § 938.03(1), (4) ($50 fee for all criminal convictions, $49 of which is deposited in the Crimes Compensation Trust Fund); § 142.01(1); Ga. Code Ann. § 15-21-73(a)-(b) (imposing additional surcharges on top of original fines to be paid into the Peace Officers' Annuity and Benefit Fund); § 17-11-1 (the costs of a prosecution may be entered against a defendant after conviction); 625 Ill. Comp. Stat. 5/16-104d (imposing an additional $20 fee for those convicted of serious traffic violations, to be dispersed into various funds); 725 Ill. Comp. Stat. 5/124A-5 (convicted defendants must pay for costs of prosecution and other reasonable costs, such as those incurred by the Sheriff for serving arrest warrants); La. Code Crim. Proc. Ann. art. 887(A) (cost of prosecution);; Mich. Comp. Laws § 780.905 (outlining mandatory surcharges); § 769.1f(1) (authorizing courts to order convicted defendants to reimburse the costs of prosecution); Mo. Rev. Stat. § 595.045(8) (assessing fees, the amount of which determined by the severity of the crime, to be paid to the crime victims' compensation fund); N.Y. Penal Law § 60.35(1)(a) (imposing ,mandatory surcharges ranging from $95 to $300, depending on severity of offense); N.C. Gen. Stat. § 7A-304 (listing costs upon conviction); Ohio Rev. Code Ann. § 2949.091(A) (imposing fees of up to $30 for felonies to go toward the indigent defense support fund); § 2947.23(A)(1)-(2) (imposing costs of prosecution and juror fees in criminal cases); 18 Pa. Cons. Stat. Ann. § 11.1101(b)(1)-(2) (imposing costs of at least $60 upon conviction); 16 Pa. Cons. Stat. Ann. § 1403 ("In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant."); Tex. Code Crim. Proc. Ann. art. 102.004(a) (requiring defendants convicted by a jury to pay a jury fee of up to $20); 102.005(a) ($ 40 court clerk fee at conviction."); Va. Code Ann. § 17.1-275.1 to -275.4 (depositing portions of various conviction fees into funds such as the Criminal Injuries Compensation Fund and the Virginia Crime Victim-Witness Fund); § 17.1-275.5(A)(2), (7), (13) (authorizing the court clerk to assess fees for trial transcripts, jury costs, and courthouse security to convicted defendants).

19 *See, e.g.*, Ala. Code § 15-22-2(a) ($30 fee for probation or parole); Ariz. Rev. Stat. Ann. § 31-466(A) (assessing supervision fees $65 - $75); Cal. Penal Code §§ 1203.1b(a), 1203.1e(a)-(b) (defendant must pay all or a portion of probation costs or parole supervision costs, based on ability to pay); Fla. Stat. § 948.09(requiring persons on probation, parole and other supervision to pay costs of supervision); Ga. Code Ann. § 42-8-34(d)(1) ($23 a month probation fee); 730 Ill. Comp. Stat. 5/5-6-3(i) ($50 monthly probation fee); La. Code Crim. Proc. Ann. art. 895(A) (imposing probation supervision fee); Mich. Comp. Laws § 771.3c(1) (probation supervision fee based on projected monthly income, up to $135 per month); Mo. Rev. Stat. § 217.690(3) (authorizing fee of up to $60 per month for supervision); N.Y. Exec. Law § 259-a(9)(a) (monthly $30 supervision fee for those on presumptive release, parole, conditional release or post-release supervision); N.C. Gen. Stat. § 15A-1343(c1)$30 monthly fee for supervised probation); § 15A-1374(c) ($30 monthly supervision fee for persons on parole); Ohio Rev. Code Ann. § 2951.021(A)(1) ($50 monthly probation fee can be required); 18 Pa. Cons. Stat. Ann. § 11.1102(c) (minimum $25 monthly supervision fee for parole and probation); Tex. Gov't Code Ann. § 508.182(a)(1)-(2), 508.182(f) (imposing a monthly parole supervision fee of $10 and administrative fee of $8); Va. Code Ann. § 19.2-303.3(D) (imposing costs of supervision for community-based probation).

20 *See, e.g.*, Ala. Code § 14-6-22(a)(1)-(3) (imposing jail fee of up to $20 per day in misdemeanor cases, which may be remitted upon a showing of hardship); Ariz. Rev. Stat. Ann. § 13-804.01 (imposing a fee, based on the costs of incarceration and the person's ability to pay, for those convicted of a misdemeanor); § 31-239(A) (assessing a monthly utility fee of up to $2 for a prisoner's consumption of electricity); Cal. Penal Code § 1203.1c(a) (authorizing courts to assess a fee local jail stays as a condition of probation or conditional sentence after determining defendant's ability to pay); § 1203.1m(a) (authorizing courts to impose a fee on those in state prison after making a determination of ability to pay); Fla. Stat. § 951.033(2)-(3) (authorizing detention facilities to determine the financial status of prisoners and require prisoners to pay all or a portion of daily subsistence costs); Ga. Code Ann. § 42-1-4(d) (deducting "an amount determined to be the cost of the inmate's keep and confinement" from the earnings of inmates participating in a work-release program); 730 Ill. Comp. Stat. 125/20(a) (allowing county boards to require prisoners in their jails to reimburse the county for incarceration costs based on ability to pay); 5/3-7-6(a) ("Committed persons shall be responsible to reimburse the Department [of Corrections] for the expenses incurred by their incarceration at a rate to be determined by the Department . . . ."); La. Code Crim. Proc. Ann.

art 890.2(A)-(B) (the court may impose on persons convicted of a felony the expected costs of imprisonment after a determination of ability to pay); Mich. Comp. Laws § 801.83(1)(a), (3) (authorizing counties to seek reimbursement of up to $60 per day of imprisonment after determining individual's financial status); Mo. Rev. Stat. § 221.070 (persons committed to county jails shall bear the expense of being carried to the jail and being supported while in jail); N.Y. Correct. Law § 189(2) (authorizing incarceration fee of up to $1 per week to be collected from compensation paid to a prisoner for work performed; expires Sept. 1, 2011); N.C. Gen. Stat. § 7A-313 (imposing a fee of $5 for every twenty-four hours of confinement in jail while awaiting trial; the fee is not collected if the defendant is not convicted); Ohio Rev. Code Ann. §§ 2929.18(A)(5)(a)(ii), 2929.28(A)(3)(a)(ii) (imposing the costs of confinement on prisoners staying in both local jails and state prisons); 61 Pa. Cons. Stat. Ann. § 3303(a) (requiring inmates to pay a fee to cover a portion of costs of medical services provided while imprisoned); Tex. Code Crim. Proc. Ann. art 42.038(a), (c) (authorizing courts that sentence a defendant convicted of a misdemeanor to serve time in a county jail to assess a fee of $25 per day, which can be waived if the defendant is found to be indigent); art 104.002(d) (requiring prisoners to pay for medical, dental, or health-related services received while in a county jail); VA. CODE ANN. § 53.1-131.3 (authorizing inmate fee, not to exceed $3 per day, to defray the costs associated with confinement).

21 Carl Reynolds et al., Tex. Office of Court Admin., A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes, Interim Report 8 (2009), *available at* http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf.

22 County Clerk's Misdemeanor Court Cost Chart – 1/01/2010, *available at* http://www.courts.state.tx.us/oca/pdf/CC-CRFeeChartOriginalJurisdiction2010.pdf; District Clerk's Felony Court Cost Chart – 1/01/2010, *available at* http://www.courts.state.tx.us/oca/pdf/DC-CRFeeChart2010.pdf.

23 Arizona state law specifies three surcharges to be imposed on all fines, penalties, and forfeitures imposed for criminal offenses. These surcharges are 47 percent, 7 percent, and 7 percent. Ariz. Rev. Stat. Ann. § 12-116.01(A)-(C). The surcharges may be waived by the court to avoid working a hardship on the defendant or the defendant's family and they must be waived to the extent that underlying fine or penalty is waived. § 12-116.01(F). However, surcharges imposed on fines and certain assessments for driving under the influence may not be waived. § 28-1389. Also, section 12-116.02(A) imposes an additional 13 percent surcharge under the same conditions and pursuant to the same waiver rules as section 12-116.01. An additional surcharge of 10 percent is imposed on all civil and criminal fines and penalties collected under section 12-116.01 and deposited into the clean elections fund. § 16-954(C).

24 Ariz. Rev. Stat. Ann. § 12-114.01(A).

25 Ariz. Rev. Stat. Ann. § 12-116(A).

26 At least 7 states have fees that vary by locality. Alabama: While Alabama law provides that court fees for criminal cases in the circuit and district courts should generally be uniform, Ala. Code § 12-19-20, courts do charge additional local costs. For example, Macon County has a $30 jail fee and a $2 juvenile fee. Telephone Interview with Veronica Harris, Macon County Circuit Court (Nov. 2, 2009). Pike County has a $21 district attorney fee, a $1 law library fee, a $2 fee for the juvenile fund. Telephone Interview with Peggy McVay, Court Clerk, Pike County Dist. Court (Nov. 5, 2009). Also, municipal governing bodies may assess additional costs and fees in municipal court, up to the amount assessed in the district court of the county. Ala. Code § 11-47-7.1(a). California: Some state statutes permit counties to authorize additional charges. *See, e.g.*, Cal. Penal Code § 1465.5 (authorizing counties to adopt a resolution imposing an additional 20 percent assessment on fines levied against certain vehicular violations). Georgia: Some state laws allow counties to impose additional fees if they meet the statute's criteria. *See, e.g.*, Ga. Code Ann. §§ 15-21-92 to -93 (authorizing counties to charge an additional fee constituting 10 percent of the fine imposed as long as the county meets certain criteria); Ga. Code Ann. § 36-15-9(a) (authorizing a local fee of not more than $5 for establishing and maintaining a county law library if a need for one exists). Illinois: Under state law, many court costs differ based upon county population size. *See* 705 Ill. Comp. Stat. 105/27.1a(w)(1), 105/27.2(w)(1), 105/27.2a(w)(1). When state law provides for a fee range, counties can choose the amount to impose. *See* 705 Ill. Comp. Stat. 105/27.1a, 105/27.2, 105/27.2a. In Louisiana: State law provides for many fees that vary by district. *See, e.g.*, La. Rev. Stat. Ann. § 13:965 (authorizing a fee of up to $10 towards an indigent transcript fund in the Nineteenth Judicial District). Ohio: Court costs are generally uniform, but some statutes allow counties to impose additional costs for specific purposes. *See, e.g.*, Ohio Rev. Code Ann. § 2949.093(C)

(allowing counties that elect to participate in a "criminal justice regional information system" to collect additional court costs of up to $5); *see also* Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009) (noting that most court costs are standard across counties). Texas: Fees are generally uniform and must be authorized by state statute, but some statutes provide that counties may collect additional local fees under certain circumstances. *See, e.g.*, Tex. Code Crim. Proc. Ann. art. 102.009 (authorizing counties with a population of 3.3 million or more to collect court costs of up to $7 for each conviction of a Class C misdemeanor).

27 La. Code Crim. Proc. Ann. art. 887(F)(2).

28 Alan Rosenthal & Marsha Weissman, Center for Community Alternatives, Sentencing for Dollars: The Financial Consequences of a Criminal Conviction 16 (Feb. 2007), *available at* http://www.brennancenter.org/content/resource/sentencing_for_dollars_the_financial_consequences_of_a_criminal_conviction/.

29 Ariz. Rev. Stat. Ann. § 28-1381(I)(4)-(5) (requiring defendants to pay $500 to a prison construction and operation fund and $500 to a public safety equipment fund, in addition to all other fees).

30 N.C. Gen. Stat. § 20-179(h1).

31 California: those that are convicted under or violate California's driving under the influence statute may apply for a restricted driver's license after a certain period of time. One condition of a restricted driver's license is the maintenance of an ignition interlock device. Cal. Veh. Code § 13352(3)-(9). Illinois: those convicted of driving under the influence of alcohol or other drugs may be granted a monitoring device driving permit, or MDDP. Anyone with an MDDP must, at his or her own expense, drive only vehicles equipped with an ignition interlock device. 625 Ill. Comp. Stat. 5/6-206.1(a)-(a-1). New York: Persons convicted under New York's driving under the influence statutes must, as a condition of probation or a conditional license, install and maintain an ignition interlock device. Those subject to this condition must bear the costs, but as of August 2010, the cost may be waived or imposed pursuant to a payment plan if the person is unable to afford the device. N.Y. Veh. & Traf. Law §§ 1198(2)(a), (3)(a), (4)(a). Virginia: as a condition of a restricted license or license restoration, a court may order for the first offense and must order for the second or any subsequent offense or when the offender's blood alcohol level is above 0.15 percent, a functioning, certified ignition interlock system to be installed for at least six months. Va. Code Ann. § 18.2-270.1(B). In addition, the court clerk shall assess any court costs related to an ignition interlock device. § 17.1-275.5(A)(10).

32 Tex. Code Crim. Proc. Ann. art. 42.12 § 19(i); 730 Ill. Comp. Stat. 5/5-6-3(19)(i-5).

33 Memorandum from Rebecca Bers, Orleans Pub. Defender, Chart of Fines and Fees Authorized (on file with the Brennan Center).

34 Telephone Interview with Donald Johnson, Chief State Defender, Legal Aid and Defender Ass'n, Inc., Detroit, Michigan (Dec. 10, 2009).

35 Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court, Michigan (Dec. 10, 2009).

36 *See* Massachusetts FY 2011 Budget Summary, Outside Section 177, Inmate Fee Schedule, http://www.mass.gov/bb/gaa/fy2011/os_11/h177.htm.

37 Of the surveyed states, every state but Pennsylvania and New York utilizes defender fees. Alabama: *See* Ala. Code § 15-12-25(a) ("A court may require a convicted defendant to pay the fees of court appointed counsel."). Arizona: *See* Ariz. Rev. Stat. § 11-584(C)-(E) (court may order a $25 administrative assessment or require the defendant to pay a reasonable amount to reimburse the county for the cost of the person's legal services). California: *See* Cal. Penal Code § 987.5 ($50 registration fee); Cal. Gov't Code § 27712 (court may require defendant to pay all or part of the costs of legal assistance). Florida: Fla. Stat. § 938.29(1)(a) (attorney's fees and costs shall be set in all cases at no less than $50 per case for misdemeanors or criminal traffic offenses and no less than $100 per case for felonies); Fla. Stat. § 27.52(1)(b)-(c) ($50 application fee). Georgia: Ga. Code Ann. § 15-21A-6(c) ($50 application fee), Ga. Code Ann. § 17-12-51 (court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other defense expenses). Illinois : 725 Ill. Comp. Stat. § 5/113-3.1 (may order

defendant to pay a reasonable sum to reimburse state or county, not to exceed $500 for misdemeanors and $5,000 for felonies). Louisiana: La. Rev. Stat. Ann. § 15:175(A)(1)(f) ($40 application fee); La. Rev. Stat. Ann. §15:176 ("To the extent that a person is financially able to provide for an attorney, other necessary services, and facilities of representation and court costs, the court shall order him to pay for these items."). Michigan: Mich. Comp. Laws § 769.1k (the court may impose the expenses of providing legal assistance to the defendant). Missouri: Mo. Rev. Stat. § 600.090(1) (if defendant is able to provide a limited cash contribution toward the cost of his representation, or if later he or she becomes able, that contribution shall be required). North Carolina: N.C. Gen. Stat. Ann. § 7A-455 (if financially able, required to pay portion of legal services); N.C. Gen. Stat. Ann. § 7A-455.1 ($60 appointment fee). Ohio: Ohio Rev. Code Ann. § 2941.51(D) (defendant shall pay the county an amount that the person reasonably can be expected to pay); Ohio Rev. Code Ann. § 120.36(A)(1) ($25 application fee). Texas: Tex. Code Crim. Proc. art. 26.05 (if financially able, required to pay all or part of legal services). Virginia: Va. Code Ann. § 19.2-163.4:1 (defendant charged the sum that would have been allowed a court-appointed attorney as compensation and as reasonable expenses). Another recent survey indicates that nationally, twenty five states and two counties charge defendants an application fee for exercising the right to counsel. Ronald F. Wright & Wayne A. Logan, *The Political Economy of Application Fees for Indigent Criminal Defense*, 47 Wm. & Mary L. Rev. 2045, 2052 (2006).

38 *See* Fla. Stat. Ann § 27.52(1)(b); Ohio Rev. Code Ann. § 120.36(A)(1).

39 *See* Fla. Stat. §§ 938.29(1)(a), 27.52(1)(b)-(c); N.C. Gen. Stat. Ann. §§ 7A-455, -455.1; Va. Code Ann. § 19.2-163.4:1.

40 *See* N.C. Gen. Stat. Ann. §§ 7A-455, -455.1. Moreover, if the court determines that an indigent defendant is currently capable of paying a portion of the value of the legal services provided, the court must order that payment. N.C. Gen. Stat. Ann.. § 7A-455(a). These fees are mandatory. *See* N.C. Gen. Stat. Ann. §§ 7A-455, -455.1. Despite the mandatory provisions, however, some judges nonetheless waive or remit the reimbursement provision, citing constitutional concerns. Telephone Interview with Danielle Carman, Assistant Dir., N.C. Office of Indigent Def. Servs. (Nov. 20, 2009). Repayment may also be made a condition of probation. *See* N.C. Gen. Stat. Ann. § 15A-1343(10).

41 Telephone Interview with Margaret Gressens, Dir. of Research, N.C. Office of Indigent Def. Servs. (Nov. 10, 2009).

42 *See* Telephone Interview with Terry Rohr, Clerk, Bristol Circuit Court (Dec. 28, 2009) (defendants are charged $1,235 per count for Class 1 and 2 felonies, and $445 per count for Class 3-6 felonies). Other Virginia jurisdictions have different collection regimes. For example, in Norfolk Circuit Court, appointed counsel are contracted for felony defense at a variable rate per hour, while defendants are charged $112 per count for misdemeanor defense. Telephone Interview with Tara Relendia, Deputy Pub. Defender, Norfolk Circuit Court (Jan. 5, 2010).

43 Ariz. Rev. Stat. § 11-584(D); *State v. Taylor*, 166 P.3d 118, 125 (Ariz. Ct. App. 2007).

44 *See, e.g.,* Telephone Interview with Tim Armbruster, Chief Deputy Legal Defender, Pima County (Nov. 16, 2009); Telephone Interview with Dolores Corral, Fin. Specialist, Clerk of the Superior Court, Yuma County (Nov. 17, 2009).

45 For example, Yuma and Coconino counties have set rates that judges use when requiring reimbursement. Telephone Interview with Dolores Corral, Fin. Specialist, Clerk of the Superior Court, Yuma County (Nov. 17, 2009); Telephone Interview with Sue McLean, Office Manager, Coconino County Public Defender (Nov. 16, 2009). Not all jurisdictions use set rates, however. Navajo, Pima, and Mohave counties appear to modify and adjust the amount of reimbursement for the services of a public defender on a case-by-case basis. Telephone Interview with Juanita Mann, Clerk of the Superior Court, Navajo County,(Nov. 19, 2009); Telephone Interview with Tim Armbruster, Chief Deputy Legal Defender, Pima County. (Nov. 16, 2009); Telephone Interview with Virlynn Tinnel, Clerk of the Superior Court, Mohave County (Nov. 17, 2009) (according to Ms. Tinnel, there has been discussion of moving towards a more uniform fee structure for reimbursement).

46 National Legal Aid & Defender Association, A Race to the Bottom 32-33 (2009), *available at* http://www.mynlada.org/michigan/michigan_report.pdf.

47 *Fuller v. Oregon*, 417 U.S. 40, 45-46 (1974).

48 *See State v. Dudley*, 766 N.W.2d 606, 614-15 (Iowa 2009) (finding Iowa's mandatory reimbursement statute violated the right to counsel under the U.S. and Iowa constitutions because it lacked the safeguards in *Fuller*); *State v. Tennin*, 674 N.W.2d 403, 410-11 (Minn. 2004) (same conclusion with respect to Minnesota's mandatory contribution statute); *State v. Morgan*, 789 A.2d 928, 931 (Vt. 2001) (holding "that, under the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount..."); *Hanson v. Passer*, 13 F.3d 275, 279 (8th Cir. 1994) (finding that "it is constitutionally permissible to require the defendant to repay the expense incurred by the state in providing the representation …so long as "[t]hose who remain indigent or for whom repayment would work 'manifest hardship' are forever exempt from any obligation to repay.") (quoting *Fuller*, 417 U.S. at 53); *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) ("[T]he entity deciding whether to require repayment must take cognizance of the individual's resources…and the hardships he or his family will endure if repayment is required" in order to ensure that indigent defendants are not required to pay); *Olson v. James*, 603 F.2d 150, 155 (10th Cir. 1979) (finding a mandatory reimbursement statute unconstitutional because it did not distinguish between indigent and non-indigent defendants). *But see State v. Blank*, 930 P.2d 1213, 1219-20 (Wash. 1997) (en banc) (holding that the Constitution does not require a prior determination of defendant's ability to pay, but that before enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay); *State v. Albert*, 899 P.2d 103, 111 (Alaska 1995) (same); *State v. Kottenbroch*, 319 N.W.2d 465, 473 (N.D.1982) (same).

49 ABA, Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 2, 2 (Aug. 2004), *available at* http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/rec110.pdf.

50 Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 9 (Mar. 2010), *available at* http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1.

51 *See* Cynthia Miller & Virginia Knox, Manpower Demonstration Research Corporation, The Challenge of Helping Low-Income Fathers Support Their Children 23-24 (2001).

52 Although it is possible that mandatory fees exist in Ohio, Brennan Center research did not uncover any mandatory fees.

53 *See* Alabama: Ala. Code § 32-6-18(a) ($50 penalty assessment for unlicensed driving, used to support the Traffic Safety Trust Fund and the Peace Officers Standards and Training Commission Fund); Arizona: Ariz. Rev. Stat. Ann. § 13-3821(Q) ($250 sex offender registration fee); California: Cal. Pen Code § 1464 ($10 penalty assessment per every $10, or part of $10, of fines, penalties, and forfeitures imposed for criminal offenses); Florida: Fla. Stat. § 938.03(1) ($50 fee for all criminal offenses); Georgia: Ga. Code Ann. § 15-21-73(a)(1) (additional penalty assessment in every case where the court imposes a fine, including costs, summing to 10 percent of the original fine plus the lesser of $50 or 10 percent of the original fine); Illinois: 705 Ill. Comp. Stat. 105/27-6(b) ($100 fee for cases involving driving under the influence); Louisiana: La. Rev. Stat. Ann.§ 16.16 ($10 fee imposed in all criminal cases over which the district attorney's office has jurisdiction, except in parish of Orleans); Michigan: Mich. Comp.Laws § 780.905(1)(a)-(b) ($60 fee for felonies; $50 fee for certain misdemeanors); Missouri: Mo. Rev. Stat. § 595.045(8) ($68 fee for class A or B felonies; $46 fee for class C or D felonies; $10 fee for certain misdemeanors); New York: N.Y. Pen Law § 60.35(a)(i)-(ii) ($300 felony fee; $175 misdemeanor fee, subject to exemption where offenders make restitution or reparation); North Carolina: N.C. Gen. Stat. § 7A-455.1(a)-(b) ($50 appointed counsel fee in criminal cases resulting in conviction); Pennsylvania: 18 Pa. Cons. Stat. Ann. § 11.1101(a)(1) ($60 minimum court costs fee in criminal cases resulting in plea or conviction); Texas: Tex. Local Gov't Code Ann. § 133.102(a) (court cost fee of $133 for felonies, $83 for misdemeanors; $40 for nonjailable misdemeanors); Virginia: Va. Code Ann. § 17.1-275.1 ($350 fixed felony fee).

54 *See, e.g.*, E-mail from Miguel Santiago, Defender, Office of the Ohio Public Defender (Oct. 16, 2009, 10:10:00 EST); Telephone Interview with Dan Horrigan, Summit County Clerk of Courts, Ohio (Nov. 3, 2009).

55 Alabama: If the defendant fails to pay a fine and/or restitution, the court may reduce or waive the fees after they are imposed. Specifically the court may "[r]educe the fine to an amount the defendant is able to pay," "[c]ontinue or modify the schedule of payments of the fine and/or restitution," or "[r]elease the defendant from obligation to pay the fine." Ala. R. Crim. P. 26.11(h)(1), (2), (5). However, the same statute authorizes courts to incarcerate defendants until unpaid penalties are paid (after examining the reasons for nonpayment) and order employers to withhold amounts from wages. 26.11(h)(3), (4). Arizona: Courts have the power to modify the way in which restitution, fines, fees or incarceration costs are to be paid, but rarely do so in practice. Ariz. Rev. Stat. Ann. § 13-810(E)(1); Telephone Interview with Gordon Mulleneaux, Assoc. Clerk of Cash & Fins., Maricopa County Superior Court (Nov. 18, 2009). California: *See* Cal. Penal Code § 1464(d) ("In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family."). Georgia: Interviews indicate that some judges will change the terms of probation for defendants that become unable to pay off debt. *See* Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Public Defender's Office (Nov. 6, 2009); Telephone Interview with Claudia Saari, Interim Circuit Public Defender, DeKalb County (Oct. 23, 2009). Illinois: Courts have the statutory authority, upon showing of good cause, to revoke unpaid fines or modify the method of payment. 730 Ill. Comp. Stat. 5/5-9-2. Louisiana: Judges have the authority to suspend court costs. La. Code Crim. Proc. Ann. art. 887(A) ("[A]ny judge of a district court, parish court, city court, traffic court, juvenile court, family court, or magistrate of a mayor's court within the state shall be authorized to suspend court costs."). Michigan: A probationer who is required to pay certain costs can petitition the sentencing judge for remission of such costs. Mich. Comp. Laws § 771.3(6)(b). Similarly, defendants who owe restitution can petition the sentencing judge to modify the method of payment. § 769.1a(12). Missouri: A defendant can petition the sentencing court to revoke a fine or modify a payment method if "it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine no longer exist or that it would otherwise be unjust to require payment of the fine." Mo. Rev. Stat. § 560.036. If a defendant defaults on the payment of a fine and the default is "excusable," the court can offer the defendant additional time to pay, reduce the amount of the fine, or revoke the fine. § 560.031(3). New York: Sentencing courts have the authority to remit certain fines, restitution or reparation. N.Y. Crim. Proc. Law § 420.30. North Carolina: Statutes authorize the sentencing court to remit or revoke debt after sentencing, either based on a petition by the defendant or prosecutor or default on the part of the defendant. *See* N.C. Gen. Stat. §§ 15A-1363, -1364(c). Pennsylvania: Judges in some counties will reduce or waive criminal debt for good behavior or if defendant is making a good-faith effort to repay the debt. Telephone Interview with Art Ettinger, Assistant Public Defender, Office of the Public Defender, Alleghany County (Oct. 29, 2009). Texas: Courts may waive fines imposed on a defendant who defaults if the defendant is indigent. Tex. Code Crim. Proc. Ann. art. 43.091(1). However, fines can only be waived if alternative methods, such as confinement or working "in the county jail industries program, in the workhouse, or on the county farm," would impose an undue hardship on the defendant. Tex. Code Crim. Proc. Ann. art. 43.09(a), 43.091(2).

56 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

57 Va. Code Ann. § 19.2-358(C).

58 *See, e.g.*, Telephone Interview with Gary Williams, Clerk, Sussex Circuit Court, Virginia (Jan. 5, 2010); Telephone interview, Diane Blackburn, Deputy Clerk, Buckingham Circuit Court, Virginia (Dec. 28, 2009).

59 Access to Justice Program, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, Eligible for Justice: Guidelines for Appointing Defense Counsel 5 (2008), *available at* http://www.brennancenter.org/page/-/publications/Eligibility.Report.es.pdf.

60 Alabama: Ala. R. Crim. P. 26.11(d); Telephone Interview with Cindy, Clerk, Circuit Criminal Court of Jefferson County (Nov. 2, 2009); Telephone Interview with Veronica Harris, Clerk, Circuit Court of Macon County (Nov. 2, 2009). Arizona: Ariz. Rev. Stat. § 12-116. California: Cal. Penal Code § 1205(a) (allowing a court to impose a payment plan for misdemeanor convictions). Florida: Fla. Stat. Ann. § 28.246(4). Georgia: Ga. Code Ann. § 42-8-34.1(f). Illinois: Judges set payment plans for restitution payments to victims. 730 Ill. Comp. Stat. 5/5-5-6(f). Judges can also extend payment schedules at compliance review hearings. Otherwise, clerks or probation and parole officers work out a payment plan with defendants. Telephone Interview with Lester Finkle, Assistant Pub. Defender, Cook County Public Defender (Oct. 29, 2009). Louisiana: In Orleans district, defendants are set

up on a monthly payment plan for the fees and fines assessed at sentencing. Telephone Interview with Rebecca Bers, Defender, Orleans Pub. Defender (Aug. 5, 2009); Telephone Interview with Collections Dep't, New Orleans Criminal Court (Aug. 11, 2009). Michigan: Mich. Ct. R. 1.110; Mich. Comp. Laws Ann. § 769.1a(10); 769.1f(4); 771.3(7). Missouri: Mo. Rev. Stat. § 543.270(2). New York: N.Y. Crim. Proc. § 420.10 (governing collection of fines, restitution, or reparation). North Carolina: The court may order a payment plan or delegate a probation officer with the responsibility to set up a payment plan. *See* N.C. Gen. Stat. §§ 7A-304(f); 15A-1340.36(b); 15A-1343(c1)-(c2); 15A-1362(b). Ohio: Payment plans are set up for both misdemeanors and felonies. *See*, e.g., Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009). Dayton Municipal Court permits defendants to pay half the balance and get a 30-day extension for the second half. Telephone Interview with Rita Orlowski, Central Payments Office Supervisor, Dayton Municipal Clerk of Court (Oct. 30, 2009). Franklin County Municipal Court allows defendants to break up the balance owed into 12 monthly payments. Telephone Interview with Matt Davenport, Accounting/Fin. Supervisor, Franklin Municipal Clerk of Court (Nov. 25, 2009). Pennsylvania: Pennsylvania law provides for installment plans to be imposed at sentencing, as well as following default. *See* 42 Pa. Cons. Stat. Ann. § 9758(b); § 9730(b)(3); 18 Pa. Cons. Stat. Ann. § 1106(c)(2)(ii); Pa. R. Crim. P. 414(C)(5); 706. Texas: There are payment plans in many jurisdictions under Texas's Collection Improvement Program. Tex. Code Crim. Proc. Ann. art. 103.0033; 1 Tex. Admin. Code § 175.1 (establishing collection mechanisms in counties and municipalities meeting certain population thresholds). Judges also have authority under Tex. Code Crim. Proc. Ann. art. 42.15 to require the defendant to pay when the fees and fines are imposed, to pay at a later date, or can require payment in installments. Virginia: Va. Code Ann. § 19.2-354(A).

61 Memorandum from the Mich. State Court Admin. Office on Collection Policy for Fines, Costs, and Other Assessments Due to the Court, *available at* http://courts.michigan.gov/scao/services/collections/Policies/SampleCourtPolicies/DistrictCourtCollectionPolicy.pdf.

62 Telephone Interview with Susan Hopkins, Clerk, Louisa Circuit Court (Jan. 4, 2010); Telephone Interview with Brandy Duncan, Supervisor, Clerk's Office, Roanoke Circuit Court (Dec. 21, 2009).

63 Fla. Stat. Ann. § 28.246(4).

64 Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 14 (Mar. 2010), *available at* http://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1.

65 Nine states have either a practice of charging for payment plans or a statute authorizing charges. Arizona: $20 fee for each payment plan imposed. Ariz. Rev. Stat. Ann. § 12-116(a). California: Counties can charge for setting up a payment plan. For example, in San Francisco the charge is $35 to set up a payment plan. Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, S.F. Pub. Defender's Office (Dec. 17, 2009). Florida: Clerks can charge debtors $25 to enroll in a payment plan, or an additional $5 charge per month. Fla. Stat. §§ 28.24(26)(b)-26(c). At least one county exceeds this amount, charging $135 to apply for the payment program. Telephone Interview with Bob Young, Gen. Counsel, 10th Judicial Circuit Office of the Pub. Defender (July 23, 2007). Louisiania: There is a $100 payment plan fee in New Orleans. Telephone Interview with Rebecca Bers, Orleans Pub. Defender (Dec. 2, 2009). North Carolina: $20 fee to set up a payment plan setup. N.C. Gen. Stat. § 7A-304(F). Ohio: Practices vary. The county courts in Franklin, Summit, and Green do not charge for payment plans. *See* Telephone Interview with Sherry Bova, Budget Office Manager, Franklin County Clerk of Courts (Nov. 2, 2009); Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (November 2, 2009). In Franklin County Municipal Court, a defendant utilizing a payment plan must pay $50 up front – a $25 fee for establishing a payment plan, and $25 toward the balance. Telephone Interview with Matt Davenport, Supervisor, Accounting/Fin. Div., Franklin Municipal Clerk of Court (Nov. 25, 2009). Pennsylvania: Practices vary. At least one jurisdiction (Centre County) charges $32 for installment plans. Telephone Interview with David Crowley, Defender, Centre County, Penn. (Oct. 23, 2009). In Philadelphia, there is no charge. Telephone Interview with Daniel Bartoli, Defender, Defender Ass'n of Phila. County (Oct. 27, 2009). Texas: Defendants may be required to pay a one-time $12 fee if restitution is collected in installments. Tex. Code Crim. Proc. Ann. art. 42.037(g)(1). Defendants also can be required to pay a $2 transaction fee for each payment transaction. Tex. Code Crim. Proc. Ann. art. 102.072. Virginia: Defendants may be assessed a fee of up to $10 if they are placed in a payment plan. Va. Code Ann. § 19.2-354(A).

66 Telephone Interview with Rebecca Bers, Defender, Orleans Pub. Defender (Dec. 2, 2009); Phone Interview, Matt Davenport, Accounting/Fin. Supervisor, Franklin Municipal Clerk of Court (Nov. 25, 2009).

67 Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 23 (Mar. 2010), *available at h*ttp://www.brennancenter.org/page/-/Justice/FloridaF%26F.pdf?nocdn=1.

68 *See* Ga. Code Ann., § 17-10-1(d). Interviewees in Georgia indicated that community service did not apply to all financial obligations in their jurisdictions. For example, the Ogeechee Public Defender has never seen community service imposed in lieu of a court fee. Telephone Interview with Robert Persse, Pub. Defender, Ogeechee Circuit Pub. Defender's Office (Oct. 29, 2009). A Gwinnett County probation officer stated that he had seen community service ordered in lieu of a fine, and in lieu of an overdue probation supervision fee, but in no other context. Telephone Interview with Henry Goodman, Probation Officer (Oct. 29, 2009).

69 Brennan Center research did not identify any statute authorizing a community service option in North Carolina, and interviewees indicated that no option is available in practice. *See, e.g.,* Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Emily Harrell, Assistant Pub. Defender, Buncombe County (Nov. 20, 2009).

70 N.C. Gen. Stat. § 15A-1371(i); § 143B-262.4(b). *See also* Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009).

71 Telephone Interview with Margaret Degen, Assistant Pub. Defender, Jackson County (Oct. 28, 2009).

72 Telephone Interview with Michelle (last name withheld on request), Los Alamitos, California (June 16, 2010).

73 Practices vary. For example, in Macon County, the judge can allow the defendant to perform community services in lieu of fees or fines, but only does so in traffic cases. Telephone Interview with Veronica Harris, Macon County Circuit Clerk (Nov. 2, 2009). In Pike County, community service is not utilized in practice. Telephone Interview with Peggy McVay, Pike County Dist. Court Clerk (Nov. 5, 2009). In Tuscaloosa, judges will sometimes allow defendants to do community service in lieu of fines. Telephone Interview with Gerry Hudson, Pub. Defenders of Tuscaloosa (Oct. 29, 2009). Some statutes explicitly give judges the discretion to order community service in lieu of fees. *See, e.g.* Ala. Code § 12-23-18.

74 There is no statutory mechanism for the performance of community service in lieu of fees and fines. Moreover, all interviewees who were asked agreed that there is no option for performing community service in lieu of fees or fines. *See, e.g.,* Telephone Interview with Virlynn Tinnel, Clerk of the Mohave County Superior Court (Nov. 17, 2009); Telephone interview with Tricia Caincimino, Fin. Manager, Clerk of Graham County Superior Court (Nov. 13, 2009).

75 *See* Marcus Nieto, Cal. Research Bureau, Cal. State Library, Who Pays for Penalty Assessment Programs in California? 19-26 (Feb. 2006), *available at* http://www.library.ca.gov/crb/06/03/06-003.pdf (stating that judges can impose community service in place of fines and fees). Practices in California vary. In Los Angeles Criminal Court, clerk and public defender said community service is available as an alternative at sentencing and upon failure to pay *fines*, but not fees. Telephone Interview with Jessica, Court Manager; Los Angeles Criminal Court (Oct. 29, 2009) (last name withheld on request); Telephone Interview with Phil Dube, Assistant Pub. Defender; Los Angeles County Pub. Defender (November 17, 2009). In Marin County, community service is a commonly used alternative used by judges in place of fees and fines. Defendants can work off debt at $10/hour. Telephone Interview with Jose Varela, Assistant Pub. Defender; Law Offices of the Pub. Defender Marin County (Nov. 12, 2009). San Francisco offers community service only under limited circumstances. Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, San Francisco Pub. Defender's Office (Dec. 17, 2009).

76 Fla. Stat. Ann. § 938.30(2) (stating that a "judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay").

77 *See* Ga. Code Ann., § 17-10-1(d) (stating that "in any case involving a misdemeanor or a felony in which the defendant has been punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the defendant to satisfy such fine through community service" and proving that one hour of community service shall offset debt at the minimum wage rate unless otherwise specified by the sentencing judge). The text of this statute applies only to fines, and interviewees in Georgia indicated that community service did not apply to all financial obligations in their jurisdictions. *See, e.g.*, Telephone Interview with Robert Persse, Pub. Defender, Ogeechee Circuit Pub. Defender's Office (Oct. 29, 2009) (stating he had never seen community service imposed in lieu of fees); Telephone Interview with Henry Goodman, Probation Officer (Oct. 29, 2009) (stating he had only seen community service imposed in lieu of fines and overdue probation supervision fees).

78 Generally Illinois law does not provide for community service in lieu of fees and fines, but community service is sometimes part of the sentence or is offered in lieu of non-mandatory drug assessment fines. Telephone Interview with Margaret Degen, Assistant Pub. Defender, Jackson County (Oct. 28, 2009).

79 Louisiana's probation supervision fee statute provides that the court may require "the defendant to perform a specified amount of community service work each month if the court finds the defendant is unable to pay the supervision fee." La. Code Crim. Proc. art. 895(D); *see also* art, 895.1(D). Although Louisiana law does not have a general provision explicitly providing for a community service alternative, judges do sometimes impose community service in practice. According to the Orleans Criminal Court Collections Department, judges may authorize community service in lieu of collecting fees and fines from indigent defendant, but do not do so regularly. Telephone Interview with Collections Dep't, Orleans Criminal Court. (Aug. 11, 2009); Email from Rebecca Bers, Defender, Orleans Public Defender (Aug. 30, 2009, 19:59 EST) (on file with the Brennan Center). In Monroe County, defendants are assigned community service if they are unable to pay fees and fines. Telephone Interview with Bob Noel, Defender, Monroe County (Dec. 11, 2009).

80 Community service was used in the jurisdictions reviewed, although practices varied. For example, in Kent County, community service can be imposed for any financial obligation except mandatory fees and restitution. Community service is valued at $8/hour. Telephone Interview with Paula Taylor, Fin. Director, 17th Circuit Court (Kent County, Mich.) (Dec. 21, 2009). For felonies in Washtenaw county, a defendant can work off attorneys fees with community service, but not regular fines and costs. Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Public Defender's Office (Dec. 15, 2009).

81 Several of the interviewees said that community service was not commonly used. *See, e.g.*, Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Clerk's Office, in Benton, Mo. (Nov. 23, 2009). In one jurisdiction, judges will ordinarily waive fees and fines rather than impose community service. Telephone Interview with Dewayne Perry, Dist. Defender, Dist. 30 (Nov. 23, 2009). Some jurisdictions use community service for limited purposes, however. *See, e.g.,* Email from Cathy Kelly, Deputy Dir., Director's Office, Mo. Public Defender (Jan. 8, 2010, 13:46 CST) (on file with the Brennan Center) (stating that she has seen judges impose community service in lieu of fines when the defendant claims he or she does not have the money to pay a fine); Email from Donna Holden, Dist. Defender, Mo. Dist. 25 (Jan. 15, 2010, 08:30 CST) (on file with the Brennan Center) (stating that some Crawford County judges allow defendants to do community service toward jail board bills at a rate of $7-10/hr).

82 None of our interviewees indicated that community service was an available option in New York.

83 There is no provision for performing community service in lieu of paying fees or fines, and it does not appear that it occurs in practice. *See, e.g.,*Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Cynthia Buchanan, Head Cashier, Durham Clerk of Court (Nov. 19, 2009).

84 *See* Ohio Rev. Code Ann. § 2951.02 (providing for payment of misdemeanor and felony fines through community service "if the offender requests an opportunity to satisfy the payment by this means and if the court determines that the offender is financially unable to pay the fine"); § 2929.28(B) (discussing community service to offset "financial sanction[s] and court costs"); § 2947.23(B) (discussing community services in cases where the defendant has failed to pay a judgment or to make timely payments under a payment plan). Community service is more common for misdemeanors than for felonies, and courts are generally more likely to give community service if the defendant has a reason for being unable to work, such as health problems. Telephone Interview with Miguel Santiago, Assistant State Pub. Defender (Nov. 23, 2009). Practices also vary across the state. For example, Greene County allows the

majority of people who ask to perform community service to do so, and is trying to expand the program. Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009). The community service option is less common in Summit County. Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009).

85 In most jurisdictions, community service is uncommon as an alternative to fees/fines. *See, e.g.,* Telephone Interview with Flo Messier, Pub. Defender of Phila. (Oct. 19, 2009); Telephone Interview, David Crowley, Chief Pub. Defender, Centre County (Oct. 23, 2009). However, Lycoming County allows community service to pay off fees (excluding restitution), if there is a court order to that effect. Defendants are paid at minimum wage. Telephone Interview with Nicole Spring, First Assistant Pub. Defendant, Lycoming County. (Oct. 26, 2009); Telephone Interview with Holly Raymin, Clerk, Lycoming County (Nov. 4, 2009). Similarly, Cambria county allows community service to pay off fees. It has created a "work force" for Cambria at 3-4 work locations run by a county supervisor. They work 5 days a week, from 8am-3pm, for minimum wage. Telephone Interview with Lisa Lazzari, Pub. Defender, Cambria County. (Oct. 29, 2009).

86 *See* Tex. Code Crim. Proc. Ann. art. 43.09(f)-(g) (stating that "[a] court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service," and must provide the number of hours the defendant must work and who will oversee related administrative tasks). In some jurisdictions, this option is offered at the time of sentencing, while in others, community service is offered only when the defendant falls behind in payment. *See* Telephone Interview with Amanda Marzulo and Andrea Marsh, Tex. Fair Defense Project (Oct. 14, 2009); Telephone Interview with Ted Wood, Assistant Gen. Counsel, Office of Court Admin.(Oct. 15, 2009).

87 *See* Va. Code Ann. § 19.2-354(C) (providing that courts may allow a defendant on whom "a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment"). The community service alternative is not used very regularly. When used, defendants' obligations are credited at the minimum wage rate. *See, e.g.,* Telephone Interview with Gary Williams, Clerk, Sussex Circuit Court (Jan. 5, 2010); Telephone Interview with Diane Blackburn, Deputy Clerk, Buckingham Circuit Court (Dec. 28, 2009).

88 Email from Lisa Lazzari,Adm'r, Office of the Pub. Defender, Cambria County (Feb. 23, 2010, 12:41 EST) (on file with the Brennan Center).

89 Arizona: Criminal restitution orders accrue 10 percent interest per year. Ariz. Rev. Stat. Ann. §§ 13-805(C), 44-1201(A). Delinquencies collected through Arizona's Fines, Fees and Restitution Enforcement (FARE) Program are subject to a flat fee of $35 and 19 percent surcharge. Telephone Interview with Tricia Ciancimono, Fin. Manager, Graham County Clerk of the Superior Court's Office (Nov. 13, 2009). California: Civil assessment of up to $300 for late payment of fine or related assessments. Cal. Penal Code § 1214.1(a); *see also* Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request). The Brennan Center confirmed that at least Los Angeles, Santa Clara, and San Francisco counties use this mechanism. *See* http://www.lasuperiorcourt.org/criminal/; http://www.scselfservice.org/crim/payment.htm#fine; Telephone Interview with Sangeeta Sinha, Deputy Pub. Defender, S.F. Pub. Defender's Office (Dec. 17, 2009). Florida: Highlands County charges a $20 late fee for every delinquent payment. Order Establishing a Collections Court Program in Highlands County (2003), http://www.jud10.org/AdministrativeOrders/orders/Section7/7-13.0.htm. Leon and Orange Counties charge a $10 surcharge for every delinquent payment. Leon County Court of Clerks Frequently Asked Questions, http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=collections (last visited Dec. 15, 2009) [hereinafter Payment FAQ]; Amended Administrative Order Governing a Collections Court Program in Orange County (2007), http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf. Georgia: The court can, in its discretion, require defendants to pay interest on restitution. Ga. Code Ann. § 17-14-14(d). However, it appears that in practice defendants are not charged late fees or interest for an outstanding balance. Telephine Interview with Claudia Saari, Defender, DeKalb County, Ga. (Oct. 23, 2009); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Pub. Defender's Office (Oct.29, 2009); Telephone Interview with Peter Wilson, Fiscal Technician, Cobb County Clerk of Superior Court Office (Oct. 28, 2009); Telephone Interview with Henry Goodman, Prob. Officer, Gwinnett County (October 29, 2009). Illinois: A default in payment of a fine, fee, cost, restitution, or judgment of bond forfeiture draws interest at the rate of 9 percent per annum. 730 Ill. Comp. Stat. 5/5-9-3(e). Unless defendant is on a payment plan, the clerk may add to any judgment a "delinquency amount"

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

90 Cal. Penal Code § 1214.1(A). The Brennan Center confirmed that at least Los Angeles, Santa Clara, and San Francisco counties use this mechanism. *See* http://www.lasuperiorcourt.org/criminal/; http://www.scselfservice.org/crim/payment.htm#fine; Telephone Interview with Sangeeta Sinha, Deputy Public Defender, S.F. Pub. Defender's Office (Dec. 17, 2009); Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request)

91 Leon and Orange Counties charge a $10 surcharge. Leon County Court of Clerks Frequently Asked Questions, http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=collections (last visited Dec. 15, 2009) [hereinafter Payment FAQ]; Amended Administrative Order Governing a Collections Court Program in Orange County (2007), http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf.

92 Highlands County charges a $20 late fee. Order Establishing a Collections Court Program in Highlands County (2003), http://www.jud10.org/AdministrativeOrders/orders/Section7/7-13.0.htm.

93 Mich. Comp. Laws Ann. § 600.4803(1).

94 Alabama: 30 percent fee if ninety days past due and transferred to district attorney for collection. Ala. Code § 12-17-225.4; *see also* Telephone Interview with Veronica Harris, Macon County Circuit Court (Nov. 2, 2009). Arizona: Courts may charge defendants for collection costs. Ariz. Rev. Stat. Ann. § 12-116.03. Maricopa County, which contains Phoenix, allows private collection agencies to collect an 18 percent surcharge on defendants. Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep't of Finance Collections Unit (Nov. 19, 2009). Florida: A private attorney or collections agent hired by the court clerk can add up to a 40 percent surcharge to the amounts it collects from delinquent payments. Fla. Stat. § 28.246(6). Illinois: For delinquent payments, an additional collection fee of 30 percent goes to the State's Attorney in the relevant county to compensate for the costs of collection. 730 Ill. Comp. Stat. 5/5-9-3(e). Missouri: If debts are sent to private debt collectors,

an additional 20 percent fee is collected. Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Court Clerk's Office (Nov. 23, 2009). North Carolina: Defendants not sentenced to supervised probation can be charged a "collection assistance fee" if an amount due is not paid for 30 days, which cannot exceed the average cost of collecting the debt or 20 percent, whichever is lower. N.C. Gen. Stat. § 7A-321(b)(1). Ohio: Court clerk can charge defendants for collection fees charged by private debt collectors or public agencies involved in collection. Ohio Rev. Code Ann. § 2335.19(b). Practices vary. For example, Dayton Municipal Court passes along the 30 percent fee charged by private debt collectors. Telephone Interview with Rita Orlowski, Central Payments Office Supervisor, Dayton Municipal Clerk of Court (Oct. 30, 2009). Summit County does not charge defendants collection fees. Telephone Interview with Dan Horrigan, Summit County Clerk of Courts (Nov. 3, 2009). Pennsylvania: Practices vary. Public defenders in several counties noted that private collection agencies are not utilized. *See, e.g.*, Telephone Interview with Nicole Spring, Defender, Lycoming County (Oct. 26, 2009); Telephone Interview with Lisa Lazzari, Defender, Cambria County (Oct. 29, 2009); Telephone Interview with Art Ettinger, Defender, Alleghany County (Oct. 29-30, 2009). A Philadelphia public defender stated that private collection agencies sometimes impose an extra fee on defendants. *See* Telephone Interview with Daniel Bartoli, Defender, Defender Ass'n of Phila. County (Oct. 27, 2009). If such agencies are used, defendants can be charged a fee up to 25 percent of amount collected. 42 Pa. Cons. Stat. Ann. § 9730.1(b)(2). Texas: 30 percent collection fee is authorized for debts more than sixty days past due and referred to a private attorney or vendor, but not if the defendant has been found unable to pay the underlying debt Tex. Code Crim. Proc. Ann. art. 103.0031(b), (d).

95 Ala. Code § 12-17-225.4.

96 Fla. Stat. Ann. § 28.246(6).

97 730 Ill. Comp. Stat. 5/5-9-3(e).

98 Tex. Code Crim. Proc. Ann. art. 103.0031(d).

99 *See supra* note 65.

100 Va. Code Ann. § 19.2-354(A).

101 Telephone Interview with Rebecca Bers, Orleans Pub. Defender (Dec. 2, 2009).

102 Fla. Stat. § 28.24(26)(b)-(c).

103 Cal. Penal Code § 1214.1(a) (court may impose up to $300); *see also* Telephone Interview with Jessica, Court Manager, L.A. Criminal Court (Oct. 29, 2009) (last name withheld on request) ($300 charge issues if defendant fails to make payments).

104 *See* U.S. Census Bureau, Statistical Abstract of the United States: 2010 tbl. 672 (2010), http://www.census.gov/compendia/statab/2010/tables/10s0672.pdf (stating that the average annual expenditures on food for consumer units with income less than $70,000 was $4,625 in 2007). According to this data, one month's expenditures would be $385.42.

105 An informal Brennan Center survey found that Florida defendants faced an average debt of $772.23, such that a 40 percent collection fee would be $308.89, bringing the defendant's the total debt to $1,081.12. Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 8 (2010).

106 Ala. Code § 12-17-225.4.

107 Ala. Code § 8-8-1.

108 *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983).

109 Jayne S. Ressler, *Civil Contempt Confinement and the Bankruptcy Abuse and Consumer Protection Act of 2005*, 37 Rutgers L. J. 355, 359 (2006).

110 In 1869, England enacted the "1869 Act for the Abolition of Imprisonment for Debt." Certain forms of debtors' prison continued even past that point. Under the Act, courts retained the power to imprison people for willful failures to pay and between 1869 and 1914, courts imprisoned over 300,000 people for debt. *See* Sandor E. Schick, *Globalization, Bankruptcy, and the Myth of the Broken Bench*, 80 Am. Bankr. L.J. 219, 258 & n.202 (2006).

111 Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit*, 55 Fla. L. Rev. 807, 846 (2003) (describing Massachusetts, Maryland, New York, and Pennsylvania).

112 Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 Am. Bankr. Inst. L. Rev. 5, 16 (1995).

113 Douglas A. Blackmon, Slavery By Another Name 63-69 (2008).

114 *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970).

115 *Bearden v. Georgia*, 461 U.S. 660 (1983). Another Supreme Court case discussing the rights of the indigent is *Tate v. Short*, 401 U.S. 395, 398 (1971) (finding it unconstitutional to "impos[e] a fine as a sentence and then automatically [convert] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full").

116 *See State v. Hotard*, 17 So. 3d 64 (La. Ct. App. 2009).

117 Some of these terms are adopted from Black's Law Dictionary (8th ed. 2004).

118 Alabama: *See* Ala. Code § 15-22-52 (courts may make fines or costs, or portions thereof, a condition of probation); Ala. Code § 15-18-70 (courts may make restitution a condition of probation). Arizona: *See* Ariz. Rev. Stat. Ann. § 13-808(B) (courts are required to impose the payment of fines, fees, and restitution as a condition of probation). California: *See* Cal. Penal Code § 1202.4(m) (court must make the payment of restitution fines a condition of probation); Cal. Penal Code § 1203.1(j) (court may make fines a condition of probation, as well as "other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done"). Florida: *See* Fla. Stat. Ann. § 27.52(1)(b)(1) (if a defendant does not pay the public defender application fee prior to the disposition of the case, the fee must be made part of the sentence or a condition of probation); Fla. Stat. Ann. § 948.09(6) (offenders under any type of supervision must submit to and pay for urinalysis as a condition of supervision); *see also* Rebekah Diller, Brennan Ctr. for Justice, The Hidden Costs of Florida's Criminal Justice Fees 4 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/ (many individuals convicted of misdemeanors and criminal traffic violations are sentenced to county or court probation on the condition that they pay legal financial obligations). Georgia: *See* Telephone Interview with Claudia Saari, Defender, DeKalb County, Ga. (Oct. 23, 2009) (criminal justice debt imposed as a condition of probation); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Pub. Defender's Office (Nov. 6, 2009) (probation always imposed if there is a fine or other financial obligation imposed on defendant); *see also* Ga. Code Ann. § 17-14-3 (restitution shall be a condition of probation or a suspended, deferred, or withheld sentence); Ga. Code Ann. § 15-21A-6(c) (public defender application fee shall be imposed as a condition of probation if it has not been paid prior to sentencing). Illinois: *See* 730 Ill. Comp. Stat. 5/5-6-3(b) (court may require a person to pay a fine, costs, and restitution as a condition of probation). Louisiana: *See* La. Code Crim. Proc. Ann. art. 895 (supervision fee must be a condition of probation); La. Code Crim. Proc. Ann. art. 895.1 (restitution must be a condition of probation, court may impose court costs and other user fees as a condition of probation). Michigan: *See* Mich. Comp. Laws Ann. § 769.1a(11) (restitution must be condition of probation, parole, or conditional sentence if ordered); Mich. Comp. Laws Ann. § 769.1f(5) (prosecution costs must be condition of probation or parole if ordered); Mich. Comp. Laws Ann. § 769.1j(3) (payment of the "minimum state cost" is a condition of probation); Mich. Comp. Laws Ann. § 771.3(1)(f) (mandatory assessment under Mich. Comp. Laws Ann. § 780.905 must be a condition of probation); Mich. Comp. Laws Ann. § 771.3(2)(b)-(d) (allowing courts to condition probation on payment of fines, legal expenses, and other assessments). In practice many jurisdictions make fees and fines a condition of probation. Missouri: *See* Mo. Rev. Stat. § 600.093 (allowing courts to make repayment of all or part of the value of public defender services a condition of probation); Mo. Rev. Stat. § 559.021(2) ("In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim,

any statutorily created fund for costs incurred as a result of the offender's actions, or society."). New York: *See* N.Y. Crim. Proc. Law § 420.10(1)(c) ("Where the defendant is sentenced to a period of probation as well as a fine, restitution or reparation and such designated surcharge, the court may direct the payment of the fine, restitution or reparation and such designated surcharge be a condition of the sentence."). North Carolina: *See* N.C. Gen. Stat. § 15A-1343(b) (as a regular condition of probation, defendant must pay a supervision fee, court costs, defender costs, any fine imposed, and restitution); N.C. Gen. Stat. 15A-1374(b)(c) (parole commission may require parolee to make restitution, pay a supervision fee, and comply with court orders regarding payment obligations). Ohio: *See* Telephone Interview with Glen Dewar, Defender, Montgomery County (Nov. 25, 2009) (criminal justice debt is normally made a condition of probation); Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts (Nov. 2, 2009) (same). Pennsylvania: *See* Telephone Interview with Flo Messier, Pub. Defender of Phila. (Oct. 19, 2009) (criminal justice debt is normally made a condition of probation); Telephone Interview with Lisa Lazzari, Pub. Defender, Cambria County. (Oct. 29, 2009) (same); *see also* 18 Pa. Cons. Stat. Ann. § 1106(b) ("Whenever restitution has been ordered . . . and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole."). Texas: *See Tex.* Code Crim. Proc. art. 42.12 (payment of fines, court costs and other user fees, and restitution to the victim may be made a condition of community supervision, but must consider ability to pay); Tex. Code Crim. Proc. art. 42.037(h) (restitution must be a condition of community supervision, parole, or mandatory supervision). Virginia: Va. Code Ann. § 19.2-356 (court may make payment of fine and costs a condition of probation or suspension of sentence).

119 *See, e.g.*, Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (discussing frequent use of revocation hearings in jurisdictions in Georgia, New York, North Carolina, Michigan, and Ohio).

120 *See* Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials); *see also* Equal Justice Initiative, Criminal Justice Reform in Alabama: Sentencing, Probation, Prison Conditions, and Parole 69 (2005) ("[J]udges and inmates indicate that probation is often revoked for failure to pay fines, court fees and/or restitution, and sentences sometimes may exceed statutory limits.).

121 *See, e.g.*, Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (saying revocation sometimes happens for failure to pay in jurisdictions in Michigan, Missouri, New York, North Carolina, and Pennsylvania).

122 *See* Rebekah Diller, Brennan Ctr. for Justice, The Hidden Costs of Florida's Criminal Justice Fees 13 (Mar. 2010) (when an offender in Florida is unable to pay a treatment provider, "the treatment provider may eventually terminate the treatment as unsuccessful or the offender may cease showing up because he is unable to pay for sessions. Termination of treatment then can be a basis for a violation of probation or community release") *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/.

123 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials) (discussing instances where courts did not consider ability to pay in Georgia, Illinois, Louisiana, Michigan, and Missouri).

124 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

125 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

126 Telephone Interview with Sangeeta Sinha, Deputy Public Defender, S.F. Pub. Defender's Office (Dec. 17, 2009); Telephone Interview with Gary Gibson, Defender, San Diego Pub. Defender (Dec. 2, 2009).

127 18 Pa. Stat. Ann. § 11.1101(e).

128 E-mail from Margaret Degen, Defender, Jackson County, to Brennan Center for Justice (Dec. 1, 2009, 17:35 EST) (on file with the Brennan Center).

129 Telephone Interview with Angus Love, Pennsylvania Institutional Law Project (Mar. 17, 2010).

130 *See* Pew Ctr. on the States, 1 in 31: The Long Reach of American Corrections, Fact Sheet on Pennsylvania (2009) (finding that Pennsylvania spends $97.72 per inmate per day), *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=49382.

131 Alabama: *See* Ala. Code. § 15-18-62 ("In cases of willful nonpayment of the fines and costs, the defendant shall either be imprisoned in the county jail or, at the discretion of the court, sentenced to hard labor for the county . . . ."); Telephone Interview with Veronica Harris, Macon County Circuit Court (Dec. 8, 2009) (incarceration for failure to pay criminal justice debt is very common in Macon County). Arizona: *See* Ariz. Rev. Stat. Ann. § 13-810 (if a person sentenced to pay a fine, fee, costs, or restitution defaults, the clerk shall notify the prosecutor and sentencing court and the court shall require the defendant to show cause why the defendant's default should not be treated as contempt); Telephone Interview with Tom O'Connell, Division Director, Probation Department, Maricopa County (Nov. 19, 2009) (Maricopa County uses contempt proceedings to enforce debt payments). California*: See* Cal. Penal Code § 1205(b) ("If time has been given for payment or it has been made payable in installments, the court shall, upon any default in payment, immediately order the arrest of the defendant and order him or her to show cause why he or she should not be imprisoned. If the fine, restitution order, or installment, is payable forthwith and it is not so paid, the court shall without further proceedings, immediately commit the defendant to the custody of the proper office to be held in custody until the fine or the installment thereof, as the case may be, is satisfied in full"). Florida: *See e.g.* Fla. Stat. § 938.30(9) ("Any person failing to appear or willfully failing to comply with an order under this section, including an order to comply with a payment schedule established by the clerk of court, may be held in civil contempt.") (emphasis added). Defendants are not provided counsel. *See* Rebekah Diller, Brennan Ctr. for Justice, The Hidden Costs of Florida's Criminal Justice Fees 17 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/. Illinois: 730 Ill. Comp. Stat. § 5/5-9-3(a)("An offender who defaults in the payment of a fine or any installment of that fine may be held in contempt and imprisoned for nonpayment."); Telephone Interview with Margaret Degen, Defender, Jackson County (Oct. 28, 2009) (individuals are regularly held in contempt for failure to pay for 30 days); Telephone Interview with Lester Finkle, Defender, Cook County (Oct. 29, 2009) (same). *But see* Marie Claire Tran-Leung, Sargent Shriver National Center on Poverty Law, Debt Arising From Illinois' Criminal Justice System 39 (Nov. 2009) (finding that "imprisonment is not a typical enforcement tool"), *available at* http://www.theshriverbrief.org/2009/12/articles/criminal-reentry/debt-arising-from-illinois-criminal-justice-system-making-sense-of-the-ad-hoc-accumulation-of-financial-obligations/. Louisiana: La. Rev. Stat. § 13:1381.2(A) ("When any defendant, other than an indigent, fails to pay [certain criminal justice debt], he shall be sentenced to a term of thirty days in the parish prison in default of the payment of same."); La. Code Crim. Proc. arts. 884-85 (a sentence that includes fines or costs shall provide that if individuals default they will be incarcerated for a specified term, but can be released if they pay their debt). *See also* Telephone Interview with Rebecca Bers, Orleans Public Defender (Aug. 5, 2009) (individuals face potential incarceration for failures to pay). Michigan: *See, e.g.*, Telephone Interview with Paula Taylor, Fin. Dir., 17th Circuit Court, Kent County (Dec. 21, 2009) (contempt proceedings used to collect debt; individuals can be incarcerated up to 45 days unless they pay off their debts, but in practice the sentence is usually 3-4 days); Phone Interview, Sheila Blakney, Senior Assistant Public Defender, Washtenaw County Public Defender's Office (December 15, 2009) (contempt proceedings used in Washtenaw County). New York: *See* N.Y. Crim. Proc. Law. § 420.10(3) (sentence may provide that if a defendant fails to pay a fine, restitution, or reparation, he or she must be imprisoned until the debt is satisfied). North Carolina: *See* N.C. Gen. Stat. § 15A-1364(b) (following a show-cause proceeding for non-payment, the court may activate a defendant's suspended sentence or if no suspended sentence was imposed, order imprisonment for not more than 30 days, and may provide that payment will result in release or a reduction in the jail term); Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009) (defendants can be subject to incarceration for willful nonpayment through contempt proceedings); Telephone Interview with Emily Harrell, Defender, Buncombe County (Nov. 20, 2009) (contempt not common in her county, but in other counties contempt proceedings are used as an additional "stick" as part of the probation supervision process, imposing periods of incarceration on top of what a defendant is subject to through probation). Ohio: *See* Ohio Rev. Code § 2947.14(A) ("If a fine is imposed as a sentence or a part of a sentence, the court or magistrate that imposed the fine may order that the offender be committed to the jail or workhouse until the fine is paid or secured to be paid, or the offender is otherwise legally discharged, if the court or magistrate determines at a hearing that the offender is able, at that time, to pay the fine but refuses to do so."); E-mail from Miguel Santiago, Defender (Oct. 16, 2009) (courts frequently incarcerate defendants not only for failures to pay fines but for failure to pay costs, even though there is no statutory authorization to do so). Texas: *See* Tex. Code. Crim. Proc. art. 43.03(a) (if a defendant defaults on paying fines or costs, the court may order the defendant confined in jail until discharged as provided by law).

132 *See* Rebekah Diller, Brennan Ctr. for Justice, The Hidden Costs of Florida's Criminal Justice Fees 15 17 (Mar. 2010), *available at* http://www.brennancenter.org/content/resource/FL_Fees_report/.

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

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

135 *In re Calhoun*, 350 N.E.2d 665 (Ohio 1976). Some appellate courts in Ohio have treated *Calhoun* as overruled by *Lassiter*, while others have continued to follow the case's holding. *See Garfield Hts. v. Stefaniuk*, 712 N.E.2d 808, 809 (Ohio Ct. App. 1998) ("There is a conflict in the appellate decisions concerning whether a contemnor in a civil contempt proceeding is entitled to appointed counsel.").

136 Lower courts in Pennsylvania and Virginia have likewise rejected the right to counsel in civil proceedings involving incarceration, while courts in Alabama, Arizona, and Louisiana appear to have never considered the question. *See Wade v. Daniels*, No. 008610210, 1997 WL 1433799 (Ct. Com. Pl. Phila. County, Nov. 21, 1997), *appeal dismissed* 718 A.2d 869 (Pa. Super. Ct. 1998) (mem.); *Krieger v. Commonwealth*, 567 S.E.2d 557 (Va. Ct. App. 2002). *But see* Another court of common pleas disagreed; however, the decision was quashed. *See Carnes v. Carnes*, No. NS 81 9044, 1990 WL 302942 (Ct. Com. Pl. Erie County, Oct. 23, 1990) (indigent defendant is entitled to court-appointed counsel for civil support contempt proceedings), *quashed* 598 A.2d 1325 (Pa. Super. Ct. 1991) (mem.).

137 *See, e.g.*, *United States v. Anderson*, 553 F.2d 1154, 1155-56 (8th Cir. 1977) (concluding that a person charged with civil or criminal contempt is entitled to appointed counsel and noting that three Circuit Courts of Appeals had previously come to the same conclusion); *McBride v. McBride*, 431 S.E.2d 14, 18 (N.C. 1993) (indigent civil contemnors may not be incarcerated for failure to pay child support arrearages); *Mead v. Batchlor*, 460 N.W.2d 493, 504-05 (Mich. 1990) (holding that a defendant may not be imprisoned for civil contempt if denied counsel during the contempt proceeding).

138 In California, defendants can choose to sit out fines at a daily rate set by the county, pursuant to Cal. Penal Code § 1205(a). *See also* Telephone Interview with Gary Gibson, Defender, San Diego Pub. Defender (Dec. 2, 2009) (jail option used in San Diego County); Telephone Interview with Jose Valera, Defender, Marin County (Nov. 11, 2009) (jail option used in Marin County); Telephone Interview with Phil Dube, Assistant Pub. Defender, L.A. County Pub. Defender (Nov. 17, 2009) (jail option used in Los Angeles County, which has set the rate at the statutory minimum of $30/day). *But see* Telephone Interview with Sangeeta Sinha, Defender, San Francisco Pub. Defender (Dec. 17, 2009) (not used in San Francisco).

139 *See* Mo. Rev. Stat. § 543.270(1) (circuit judge has the power, at the request of a defendant, to commute fine and costs to imprisonment in the county jail, which is credited at $10 per day); *see also* Email from Kari Cornstock, District Defender, District 26 (forwarded by Cathy Kelly on Jan. 14, 2010) (jail option used in Morgan County); Email from Justin Carver, District Defender, District 12 (forwarded by Cathy Kelly on Jan. 14, 2010) (jail option used in Callaway County).

140 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

141 *Tate v. Short*, 401 U.S. 395, 398 (1971).

142 Telephone Interview with Jose Valera, Defender, Marin County (Nov. 11, 2009).

143 *See E*-mail from Richard Scheibe, Defender, Dist. 11 (Jan. 14, 2010) (forwarded by Cathy Kelly on Jan. 14, 2010).

144 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

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

146 *See, e.g.*, E-mail from David Crowley, Defender, Centre County, Pa. (Nov. 30, 2009) (Magisterial District Courts automatically issue arrest warrants for missed payments if a person is 31 days delinquent).

147 *See, e.g.*, Telephone Interview with Jessica Alonso, Collections Officer, Prob. Dep't, Greenlee County, Ariz. (Nov. 11, 2009) (if a person is 60-90 days behind on payments, the probation officer will usually have the person arrested and brought before the court on the threat of probation revocation, although actual revocation is very rare).

148 *See, e.g.*, Telephone Interview with Sheila Blakney, Senior Assistant Pub. Defender, Washtenaw County Pub. Defender's Office, Mich. (Dec. 15, 2009) (individuals are arrested if they fall behind on payments and fail to appear at a show-cause hearing).

149 *See* Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 15-17 (2010).

150 *See, e.g.*, Telephone Interview with Jennifer Harjo, Defender, New Hanover County, North Carolina (Nov. 24, 2009) (in her county, bond amounts are frequently *higher* than what the defendant owes); Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 16 (2010) ("purge" amounts are not linked to ability to pay, requiring family, friends, or employers to often put up the required money).

151 Brennan Center Memorandum (Sept. 15, 2010) (on file with the Brennan Center) (summarizing interviews with public defenders and collection officials).

152 These statistics reflects a review of eight days of dockets (December 1-4 and December 7-10, 2009) for the twelve sections that make up New Orleans' felony courtrooms. The Brennan Center calculated the percentage of cases that involved payment issues, as well as the percentage of payment issue cases that involved arrest warrants. Payment issues included appearances categorized as "Filed Arrest on Cap[ias] Notification" (where the docket reflected the capias warrant was issued for a failure to pay fees and fines or appear at a status on payment hearing), "Status on Payment," "Restitution Hearings," and "Payment of Restitution Hearings." The Brennan Center did not count cases listed as "contempt of court hrg", "probation status" and "hrg and resentencing," even though these may be about fees as well. For further details on methodology, *see* Memorandum, New Orleans Data Methodology (on file with the Brennan Center).

153 In response to a willful failure to pay a fine, the magistrate or clerk of the court may give notice of the fact to the [Department of Motor Vehicles] for a violation." Cal. Veh. Code 40509.5(b). In response, the DMV will sometimes suspend licenses. *See, e.g.,* Telephone Interview with Sally Pina, Clerk, San Francisco Collections Unit (Dec. 20, 2009) (DMV sometimes suspends licenses upon notification);Telephone Interview with Randy Dickow, KCBA Indigent Defense Program, Bakersfield, California (Nov. 12, 2009) (DMV suspends licenses in driving-related cases).

154 This is a very common enforcement mechanism in Florida. Office of Program Policy Analysis and Gov't Accountability, Florida Legislature,,Clerks of Court Generally Are Meeting the System's Collection Performance Standards 4 (2007), *available at* http://www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf (85 percent of county clerks use "Driver's License Sanctions" as a collection tool). *See also* Fla. Stat. Ann. § 322.245(3-5) (authorizing the clerk of courts to notify the Florida Department of Motor Vehicles if "a person licensed to operate a motor vehicle in [Florida] . . . has failed to pay financial obligations for any criminal offense other than [certain traffic misdemeanors and traffic felonies]" and requiring the DMV to suspend the person's driver's license upon receipt of such notification).

155 *See* La. Code Crim. Proc. Ann. art. 885.1 (courts may order defendants with outstanding fines to surrender their driver's licenses, ultimately leading to a suspended license).

156 If the Secretary of State finds that a defendant is in default or has a warrant issued for certain motor vehicle code violations, it can trigger a suspension of the defendant's license. This is not ordered by the court, but is rather through the Secretary of State. The suspension is lifted if the defendant pays plus an additional clearance fee and a reinstatement fee. Mich. Comp. Laws 257.321c.

157 Generally not, but for motor vehicle offenses, after a period of default the court will report a failure to pay to the DMV, which will suspend a defendant's license until he or she pays. Telephone Interview with Matt Osborne, Associate Counsel, North Carolina Admin. Office of the Courts (Nov. 20, 2009); Telephone Interview with Cynthia Buchanan, Head Cashier, Durham Clerk of Court (Nov. 19, 2009).

158 For individuals convicted of driving under the influence of alcohol or drugs, full fees and fines must be paid before a suspended license can be reinstated. Pa. Cons. Stat. Ann. § 1541(d). At least one jurisdiction suspends driver's licenses. Telephone Interview with Holly Raymin, Clerk, Lycoming County, Pennsylvania (Nov. 4, 2009) (collections division has used authority to suspend driver's licenses).

159 Individuals may be denied their driver's license renewals for a failure to pay or satisfy court judgments in any court with criminal jurisdiction. Tex. Transp. Code Ann. § 706.002; Tex. Transp. Code Ann. § 706.004(a); Tex. Op. Att'y Gen. GA-0479 (2006). Generally, courts will only exercise this power in the case of defendants convicted of Class C misdemeanors, rather than more serious crimes. Justice Center, Council of State Governments, A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes at 81. License suspension is one of a number of powers utilized as part of the state's Comprehensive Collections Program. *See* Office of Court Administration, Collection Improvement Program 1 (2010), *available at* http://www.courts.state.tx.us/oca/collections/collections.asp.

160 Under Va. Stat Ann. § 46.2-395(B), if a defendant fails to make payments on any fine, costs, forfeiture, restitution, or penalty, the court must suspend the defendant's driver's license until the amounts due are paid in full or the defendant enters into a new payment plan. A number of Virginia jurisdictions participate in this program. *See, e.g.*, Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court, Virginia (January 5, 2010); Telephone Interview with Diane Blackburn, Deputy Clerk.

161 *See, e.g.* Alabama: Telephone Interview with Veronica Harris, Clerk of Court, Macon County Circuit Court (Nov. 2, 2009) (Macon County suspends driver's licenses for a failure to appear.); California: A comprehensive collection program for recovering delinquent fees and fines payments may include a driver's license revocation element where appropriate. Cal. Penal Code § 1463.007(m); Missouri: Mo. Rev. Stat. § 302.341(1); Ohio: Ohio Rev. Code Ann. § 4507.091 describes the use of warrant blocks. A court, at its discretion, "may order the clerk of the court to send to the registrar of motor vehicles a report containing the name, address, and such other information as the registrar may require by rule, of any person for whom an arrest warrant has been issued by that court and is outstanding." Ohio Rev. Code Ann. § 4507.091(A). The information is entered into the BMV's records. *Id.* The warrant block prevents the person from obtaining a certificate of registration for a vehicle or obtaining or renewing a driver's license. *Id*. When all outstanding arrest warrants have been satisfied, the defendant must pay the BMV $15 to lift the warrant block. Ohio Rev. Code Ann. § 4507.091(B).

162 Cal. Veh. Code § 14601(b)(1).

163 Cal. Veh. Code § 14601.3(d)(1).

164 Telephone Interview with Sangeeta Sinha, Defender, San Francisco Public Defender's Office (Dec. 17, 2009).

165 Probation can be extended for up to five years for nonpayment. At the end of the five years the defendant is rolled off probation even if he has not paid. In split sentence cases there is no automatic roll-off after five years. Telephone Interview with Robert Oakes, Assistant Executive Director, Alabama Board of Pardons and Paroles (Nov. 2, 2009). The practice here is particularly bad because the DA can still bring contempt proceedings after probation or parole has ended. *Id.*

166 Probation can be extended beyond the expiration or termination of probation if the defendant still owes restitution. Ariz. Rev. Stat. Ann. § 13-902(c). This is standard practice. *See, e.g.,* Telephone Interview with Tom O'Connell, Division Director, Probation Department, Maricopa County, Arizona (Nov. 19, 2009); Telephone Interview with Jessica Alonso, Collections Officer, Probation Department, Greenlee County, Arizona (Nov. 13, 2009) (probation is generally extended when restitution is owed; if the probationary period has already ended, financial obligations are more likely to be converted into a civil judgment).. Probation can be extended up to five years for a felony and two years for a misdemeanor. Ariz. Rev. Stat. Ann. § 13-902(c).

167 *People v. Medeiros*, 25 Cal. App. 4th 1260, 1267 (Cal. Ct. App. 1994) (if a defendant cannot pay fees and fines, the court can extend probation to the maximum time permitted by law but not beyond that and must discharge probation); *People v. Sisco*, No. E037254, 2005 WL 3473325, at *9 (Cal. App. 4th Dec. 20, 2005) (a defendant can also consent to extend probation). In Marin County, defendants agree to extensions because otherwise their

record would reflect that probation was unsuccessfully terminated. *See, e.g.,* Telephone Interview with Jose Varela, Defender, Marin County, California (Nov. 12, 2009). This is problematic for defendants because the other terms of probation are extended as well and the extension is usually for five years. Further when a defendant is on probation and has an infraction the punishment is harsher. Telephone Interview with Sangeeta Sinha, Defender, San Francisco Public Defender's Office (Dec. 17, 2009). *But see, e.g.,* Telephone Interview with Randy Dickow, Administrator, KCBA Indigent Defense Program, Bakersfield, California (Nov. 13, 2009) (California mandates a hearing prior to probation term extension; in light of the hearing requirement, which may dissuade the state from pursuing this course of action, defendants often do not give their consent for extensions); Telephone Interview with Sally Pina, Clerk, Superior Court of California, San Francisco County (Dec. 20, 2009) (probation is usually extended only for restitution but the Collections Unit continues to pursue fees and fines from the defendant after the termination of probation).

168 *See* Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 24 (2010) (when monthly payment plan is set by Florida Department of Corrections, a probation violation for failure to pay can only occur at the end of the probation term, at which point the judge can extend the supervision period for a willful failure to pay).

169 Ga. Code Ann. § 17-10-1(a)(2) ("Probation supervision shall terminate in all cases no later than two years from the commencement of probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, in those cases involving the collection of fines, restitution, or other funds, the period of supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs"). The court generally cannot extend a defendant's total sentence, however. Telephone Interview with Claudia Saari, Interim Circuit Public Defender, DeKalb County, Georgia (Oct. 23, 2009); Telephone Interview with Robert Persse, Defender, Ogeechee Circuit Public Defender's Office (Oct. 29, 2009).

170 La. Code Crim. Proc. Ann. art 894.4 ("When a defendant has been sentenced to probation or is on parole and has a monetary obligation, including but not limited to court costs, fines, costs of prosecution, and any other monetary costs associated with probation or parole, the judge may extend the period of probation or parole until the monetary obligation is extinguished").

171 Telephone Interview with Sheila Blakney, Defender, Washtenaw County Public Defender's Office (Dec. 15, 2009) (when probation is coming to an end and the defendant still owes money the judge will often extend probation to the maximum period allowed by law to give the defendant more time to pay); Telephone Interview with Donald Johnson, Chief Defender, State Defender Office (Dec. 10, 2009) (sometimes a defendant will have probation extended if the defendant can't pay by the end of the term, thus has never seen an extension for more than a year).

172 Telephone Interview with Dewayne Perry, Defender, State Public Defender (Nov. 23, 2009) (probation can be extended up to a year beyond the statutory maximum as a result of failure to pay costs but this happens only if the defender has the capacity to pay); Telephone Interview with Jaime Baker, Court Program Specialist, Scott County Circuit Clerk's Office (Nov. 23, 2009); *see also* Mo. Rev. Stat. § 559.105(2) ("No person ordered by the court to pay restitution pursuant to this section shall be released from probation until such restitution is complete. If full restitution is not made within the original term of probation, the court shall order the maximum term of probation allowed for such offense."); Mo. Rev. Stat. § 599.105(3) (applying similar provisions to parole).

173 Telephone Interview with Emily Harrell, Defender, Buncombe County, North Carolina (Nov. 20, 2009) (judges typically extend a defendant's probation term at hearings on probation violations for failure to pay).

174 Under Ohio Rev. Code Ann. § 2929.15(B) and Ohio Rev. Code Ann. § 2929.25(C)(2), if a person violates the conditions of community control, the court can extend the period of community control, impose a more restrictive community control sanction, or impose a prison or jail term, provided, the total duration of community control does not exceed five years. Payment of fees and fines is considered a condition of community control. *See* State v. Carpenter, No. 2008 CA 00238, 2009 WL 2894603 (Ohio Ct. App. Aug. 31, 2009). Therefore, a person's term of community control can be extended if he or she fails to pay. Before the term can be extended, however, the defendant is entitled to notice and a hearing. *State v. Fairbank,* No. WD-06-015, No. WD-06-016, 2006 WL 3378338 at *3 (Ohio Ct. App. Nov. 22, 2006); *State v. Flekel,* No. 80337, No. 80338, 2002 WL 1307430 at *3 (Ohio Ct. App. June 13, 2002).

175 In practice some counties do extend probation, often to correspond with an extended payment plan set based on defendant's ability to pay. Telephone Interview with David Crowley, Defender, Centre County, Pennsylvania (Oct. 23, 2009); Telephone Interview with Nicole Spring, Defender, Lycoming County, Pennsylvania (Oct. 26, 2009). In Allegheny County, courts may extend probation terms for failure to pay restitution. Telephone Interview with Art Ettinger, Defender, Alleghany County, Philadelphia (Oct.29, 2009). Courts often limit the length of probation terms. For a first misdemeanor, for example, courts impose a maximum of 5 years. Telephone Interview with Daniel Bartoli, Defender, Defender Association of Philadelphia County (Oct. 27, 2009).

176 Tex. Code Crim. Proc. Ann. art. 42.12(22)(c) ("The judge may extend a period of community supervision on a showing of *good cause* under this section as often as the judge determines is necessary, but the period of community supervision in a first, second, or third degree felony case may not exceed 10 years and, except as otherwise provided by this subsection, the period of community supervision in a misdemeanor case may not exceed three years. *The judge may extend the period of community supervision in a misdemeanor case for any period the judge determines is necessary, not to exceed an additional two years beyond the three-year limit, if the defendant fails to pay a previously assessed fine, costs, or restitution and the judge determines that extending the period of supervision increases the likelihood that the defendant will fully pay the fine, costs, or restitution.* A court may extend a period of community supervision under this section at any time during the period of supervision or, if a motion for revocation of community supervision is filed before the period of supervision ends, before the first anniversary of the date on which the period of supervision expires") (emphasis added); Justice Ctr., Council of State Gov'ts, A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes70 n.50 (2009), *available at* http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf (Good cause is generally interpreted to include failure to pay fees and fines in felony cases).

177 Pursuant to Va. Code Ann. § 19.2-305(C), "No defendant shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, or costs, provided that, following notice by the probation and parole officer to each court and attorney for the Commonwealth in whose jurisdiction any fines, fees, or costs are owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from supervised probation." However, this statute does not apply to restitution. *Id.* Some clerks interviewed for this report stated that they believed probation is extended even when restitution is not involved. *See* Telephone Interview with Kerry Rohr, Clerk, Bristol Circuit Court, (Dec. 28, 2009); Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court (Jan. 5, 2010).

178 *See* Pew Ctr. on the States, 1 in 31: The Long Reach of American Corrections, Fact Sheet on California (2009) (finding that California spends $134.83 per inmate per day), *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=49382.

179 Randal C. Archibold, *California, in Financial Crisis, Opens Prison Doors*, N.Y. Times, Mar. 23, 2010, at A14..

180 Tony Burbeck, *12 Mecklenburg Libraries to Close in Two Weeks*, WCNC.com, Mar. 18, 2010, http://www.wcnc.com/news/local/County-debates-which-libraries-to-close-88418652.html.

181 Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).

182 *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010). This figure does not include individuals who failed to appear at payment hearings. An additional 63 individuals failed to appear at payment hearings and had warrants automatically issued for their arrest.

183 *See* Telephone Interview with Tony Purcell, Assistant Public Defender, Mecklenburg County (Jan. 19, 2010) (stating that judges often remit the debts of individuals who were held in jail pending a hearing).

184 This calculation is based on a daily jail cost of $40, the current reimbursement rate paid by the North Carolina Department of Corrections to county jails. *See* North Carolina Administrative Office of the Courts, Court Costs and Fee Chart (Sept. 2009), http://www.nccourts.org/Courts/Trial/Documents/court_costs_chart-2009-criminal.pdf. According to Mecklenburg County Fine Collection Department data, arrested individuals were collectively held for a total of 1022 days pending a court appearance.

185 *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).

186 An additional 63 individuals failed to appear at payment hearings and had warrants automatically issued for their arrest. *See* Mecklenburg County Fine Collection Status Report, Dec. 2009 (Jan. 13, 2010) (on file with the Brennan Center); *see also* Telephone Interview with Mohammed Kemokai, Fine Collection Lead Coordinator, 26th Judicial District (Jan. 12, 2010).

187 Arizona: If probation is not ordered, or if probation is ordered but has expired and fees, fines, or restitution remain to be paid, the court may issue a criminal restitution order. Ariz. Rev. Stat. §13-805(A). The criminal restitution order functions as and may be enforced just like any civil judgment, except that it does not expire and it imposes 10 percent interest per year. Ariz. Rev. Stat. §§ 13-805(C) and 44-1201; s*ee also* Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep't of Fin. Collections Unit (Nov. 19, 2009). California: Many fees and fines can be enforced "in the same manner as on a judgment in a civil action." *See* Cal. Gov't Code § 27712 (cost of legal assistance); Cal. Penal Code § 1202.4(a)(3)(B) (restitution). Practices vary. In San Diego, fees and fines are converted to civil judgment if at the end of a probation term, there is a balance due. Telephone Interview with Gary Gibson, Defender, San Diego County Pub. Defender (Dec. 2, 2009). In Los Angeles, some debts are also enforced through civil judgments. Telephone Interview with Phil Dube, Defender, L.A. County Pub. Defender (Nov. 17, 2009). Florida: Fla. Stat. § 938.30(6) ("If judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment thereon and issue any writ necessary to enforce the judgment in the manner allowed in civil cases."); § 960.294(2) ("A civil restitution lien order may be enforced . . . in the same manner as a judgment in a civil action . . . ."). Georgia: Ga. Code Ann. § 17-10-20(a) ("In any case in which a fine or restitution is imposed as part of the sentence, such fine and restitution shall constitute a judgment against the defendant."). Illinois: 725 Ill. Comp. Stat. 5/124A-10 ("The property, real and personal, of a person who is convicted of an offense shall be bound, and a lien is created on the property, both real and personal, of every offender, not exempt from the enforcement of a judgment or attachment, from the time of finding the indictment at least so far as will be sufficient to pay the fine and costs of prosecution."). Louisiana: The court can convert legal fees, fines, and restitution (and interest) into a judgment, which can be enforced in the same manner as a money judgment in a civil case. *See* La. Code Crim. Proc. Ann. art. 886(A), 895.1. Michigan: Penalties, fees, or costs not incurred as a result of a misdemeanor "may be recovered in the same manner as civil judgments . . . ." Mich. Comp. Laws § 600.4805; *see also* § 769.1f(6) ("An order for reimbursement [for prosecution costs] under this section may be enforced . . . in the same manner as a judgment in a civil action."). New York: N.Y. Crim. Proc. Law § 420.10(6)(a) ("A fine, restitution or reparation imposed or directed by the court . . . shall be entered by the county clerk in the same manner as a judgment in a civil action . . . ."); § 420.35(1) (stating that the provisions of § 420.10 are applicable to specified fees, including certain mandatory surcharges, the sex offender registration fee, the DNA databank fee and the crime victim assistance fee); § 420.40(5) ("The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee or DNA databank fee may be collected in the same manner as a civil judgment."). North Carolina: Restitution in excess of $250 is docketed in the same manner as a civil judgment and may be collected in the same manner, with certain exceptions for restitution as a condition of probation. N.C. Gen. Stat. §§ 15A-1340.38(a)-(b). Public defender costs are also entered as judgments and constitute a lien. § 7A-455(b). Upon a defendant's default in paying fines or costs, the court may order the judgment be docketed, becoming a lien on real estate in the same manner as do judgments in civil actions. § 15A-1365. Texas: Restitution may be collected as a civil judgment. *See* Tex. Code Crim. Proc. Ann. art. 42.037(m) ("An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action."). Virginia: Fines imposed and costs taxed in a criminal prosecution are recorded as a judgment against the defendant in favor of the Commonwealth and execution may issue on that judgment in the same manner as on ay other monetary judgment, subject to a 20 year statute of limitations. Va. Code Ann. §§ 19.2-340, -341.

188 *See, e.g.*, Telephone Interview with Lynn Baas, Senior Court Clerk Dep't Head, N.Y. County Clerk's Office (June 7, 2010) (in New York, debt judgment filed in clerk's office and becomes public information that credit agencies have access to); Telephone Interview with Judy Lockhart, Chief of Fiscal Servs., Oakland County Executive Office, Michigan (June 7, 2010) (same in Michigan).

189 Arizona: *See* Telephone Interview with Kristie Weegan, Dir., Admin. Office of the Courts, Ariz. Supreme Court (Nov. 23, 2009) (under Arizona's Fines Fees and Restitution Enforcement Program (FARE), private contractors report individuals with unpaid debt to credit bureaus); Telephone Interview with Kim Knox, Supervisor, Maricopa County Department of Finance, Collections Unit (Nov. 19, 2009) (if a person fails to pay for 120 days, the county clerk directs a private collection agency to begin collection efforts, which includes credit reporting). California: *See* Telephone Interview with Phil Dube, Los Angeles County Defender (Nov. 18, 2009) (Los Angeles County uses private company for collecting debt from traffic-related offenses, and this company can report information to credit reporting agencies. Illinois: *See* Telephone Interview with Suzy Choi, Deputy Gen. Counsel, Clerk of the Circuit Court of Cook County (July 6, 2010) (court clerks refer unpaid criminal justice debt to a private collection company, which reports the debt to credit bureaus after 30 days). Virginia: *See* Telephone Interview with Susan Hopkins, Clerk, Louisa Circuit Court (Jan. 4, 2010) (individuals who fail to pay criminal justice debt may be subject to the efforts of private collection agencies, including credit reporting).

190 *See What Is A Credit Bureau Score And How Do lenders Use Them?*, 100 Questions & Answers About Buying A New Home, (last visited June 20, 2010), http://www.hud.gov/offices/hsg/sfh/buying/buyhm.cfm..

191 Allan Appel, *12 Ex-Offenders Will Get Public Apartments*, New Haven Indep., Mar. 17, 2010, http://newhavenindependent.org/index.php/archives/entry/ex-offenders_gain_access_to_public_housing/.

192 Special Comm. on Collateral Consequences of Criminal Proceedings, N.Y. State Bar Ass'n, *Re-Entry and Reintegration: The Road to Public Safety* 177 (2006) (noting that 35 percent of employers ran credit checks of applicants in 2003, up from 19 percent in 1996) (citing Susan R. Hobbs, *Employee Background Checking Seen as Staple in Today's Job Environment*, Daily Lab. Rep. (BNA, Arlington, Va.), May 3, 2004, No. 84, at S-7).

193 Privacy Rights Clearinghouse, Fact Sheet 16: Employment Background Checks: A Jobseeker's Guide (April 2010), http://www.privacyrights.org/fs/fs16-bck.htm; *see also* Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 6, 2009, at A1, *available at* http://www.nytimes.com/2009/08/07/business/07credit.html?hp=&adxnnl=1&adxnnlx=1249624822-AdNTN6kxyhaWwYGWQhdODQ ("Employers, often winnowing a big pool of job applicants in days of nearly 10 percent unemployment, view the credit check as a valuable tool for assessing someone's judgment."). Some states have passed statutes prohibiting credit checks as part of employment background checks. For example, Oregon has banned the use of credit histories in evaluating an applicant or discriminating against an applicant or employee in any way, with specific exceptions for employers such as banks or credit unions 2010 Or. Laws 102 (to be codified at Or. Rev. Stat. § 659A.885).

194 *See e.g.* N.Y. Correct. Law §§ 752 to 753 (limiting the use of prior convictions in employment decisions and requiring employers to consider "the state's public policy of encouraging employment of previously convicted persons").

195 Rachel L. McLean & Michael D. Thompson, Council of State Gov'ts Justice Ctr., Repaying Debts 8 (2007), *available at*: http://www.reentrypolicy.org/jc_publications/repaying_debts_full_report/RepayingDebts_Guide_v13.pdf.

196 Alabama: *See* Ala. R. Crim. P. 26.11(h)(4) (court may "[o]rder an employer to withhold amounts from wages to pay fines and/or restitution"); *see also* Telephone Interview with Brian Barnett, Restitution Recovery Unit of Tuscaloosa County Dist. Attorney's Office (Nov. 5, 2009) (wage garnishment commonly used in Tuscaloosa County). *But see* Telephone Interview with Brandy (last name withheld upon request), Morgan County Restitution Recovery Officer, Morgan County Dist. Attorney's Office (Nov. 5, 2009) (wage garnishment not used in Morgan County). Arizona: *See* Ariz. Rev. Stat. §13-804(J) ("A restitution lien shall be created in favor of the state for the total amount of the restitution, fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any."); Ariz. Rev. Stat. § 13-806 (if filed with the appropriate agency, a restitution lien creates an interest in favor of the state or victim in the defendant's real and personal property); Telephone Interview with Kim Knox, Supervisor, Maricopa County Dep't of Fin. Collections Unit (Nov. 19, 2009) (Maricopa County refers unpaid

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

197 Alabama: Alabama intercepts tax rebates in order to collect payments. Intercepted returns go to local clerks to pay towards debt. Telephone Interview with Brian Barnett, Restitution Recovery Unit, Dist. Attorney's Office of Tuscaloosa County. (Nov. 5, 2009). Arizona: Arizona utilizes the TIP program, established by state statute, to recover funds that Arizona State taxpayers owe to the state or court by intercepting tax refunds and lottery winnings. Ariz. Rev. Stat. Ann. §§ 42-1122(A) and 5-525(A). California: Counties can participate in the Franchise Tax Board's optional Court-Ordered Debt Collections Program under California Revenue and Taxation Code §§ 19280 and 18670. This collection program has the ability to intercept state tax returns and lottery winnings. *See* Marcus Nieto, Cal. Research Bureau, Cal. State Library, Who Pays for Penalty Assessment Programs in California? 26 (Feb. 2006), *available at* http://www.library.ca.gov/crb/06/03/06-003.pdf. Illinois: Circuit clerks can intercept state income tax returns in order to recover court costs and fees. 705 Ill. Comp. Stat. 105/27.2b. Louisiana: *See* La. Code Crim. Proc. Ann. art. 886(A). Michigan: The treasury has a "debt referral program" through which it can offset tax refunds or other payments due from the state in circumstances where an individual owes fees or fines. *See* Mich. Comp. Laws Ann. §§ 12.133, 12.136. Missouri: Tax intercepts are a common form of collection in Missouri. Telephone Interview with Dewayne Perry, Dist. Defender, Dist. 30 (Nov. 23, 2009). *See also* Telephone Interview with Defender (name withheld upon request), Missouri (Nov. 24, 2009) (adding that wage garnishment is used, as well). North Carolina: The state intercepts tax refund checks for attorneys' fees and restitution. *See* N.C. Gen. Stat. Ann. § 7A-321(b); Telephone Interview with Matt Osborne, Assoc. Counsel, N.C. Admin. Office of the Courts (Nov. 20, 2009). Virginia: Under Va. Code Ann. § 19.2-349(B), the Commonwealth's attorney for a given jurisdiction is responsible for collection, and may use the services of the Department of Taxation to expedite collection. Among other things, the Department runs a tax refund setoff program. *See* Va. Code Ann. § 58.1-523. Virtually all jurisdictions participate in the state income tax refund setoff program. *See, e.g.,* Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court. (Jan. 5, 2010); Telephone Interview with Kerry Rohr, Clerk, Bristol Circuit Court (Dec. 28, 2009).

198 *See* Margy Waller, *High Cost or High Opportunity Cost? Transportation and Family Economic Success*, The Brookings Institution Policy Brief, Center on Children and Families, no. 35, Dec. 2005, *available at* http://www.brookings.edu/~/media/Files/rc/papers/2005/12poverty_waller/pb35.pdf; Sandra Gustitus et al., The Mobility Agenda, Access to Driving and License Suspension Policies for the Twenty-First Century Economy (2008).

199 Florida: *See* Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 6 (2010) (suspension of an individual's driver's license for failure to pay criminal justice debt is very common, and county clerks routinely request driver's license suspensions without any prior determination of ability to pay). Virginia: *See* Va. Code Ann. § 46.2-395(B) ("[W]hen any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth."). In Lee County, Virginia, a defendant's driver's license can be suspended at show cause hearing after 30 days of delinquency. Telephone Interview with Renee Howard, Deputy Clerk, Lee Circuit Court, Virginia (Jan. 5, 2010). In Halifax County, a defendant will not face show cause hearings if he makes any payment towards debt, but paying less than amount due will result in driver's license suspension. Telephone Interview with Laura Rodgers, Deputy Clerk, Halifax Circuit Court, Virginia (Jan. 5, 2010).

200 U.S. Gov't Accountability Office, License Suspensions for Nondriving Offenses 34 (2010), *available at* http://www.gao.gov/new.items/d10217.pdf.

201 *See supra* note 118 and accompanying text.

202 42 U.S.C. § 608(a)(9)(A).

203 7 U.S.C. § 2015(k)(1).

204 42 U.S.C. § 1437d(l)(9) (it shall be cause for immediate termination of the tenancy of a public housing tenant if the tenant is violating a condition of his or her probation or parole); 42 U.S.C. § 1437f(d)(1)(B)(v) (contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide that violating a condition of probation or parole is cause for termination of tenancy).

205 42 U.S.C. § 1382(e)(4)(A)(ii).

206 602 F.3d 140 (2d Cir. 2010).

207 Brief for Empire Justice et al. as Amici Curiae Supporting Plaintiff-Appellant at 17-19, *Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010) (No. 08-5801-cv) (describing how individuals in California and Florida lost benefits due to criminal justice debt warrants).

208 *Clark*, 602 F.3d at 149.

209 Telephone Interview with Jennifer Parish, Dir. Of Crim. Justice Advocacy, Urban Justice Center (June 28, 2010).

210 Carl Reynolds et al., Tex. Office of Court Admin., A Framework to Improve How Fines, Fees, Restitution, and Child Support are Assessed and Collected from People Convicted of Crimes, Interim Report 8 (2009), *available at* http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf.

211 42 U.S.C. § 666(b)(7).

212 Tex. Code Crim. Proc. Ann. art. 42.038(d).

213 *See* Brennan Center for Justice, Felony Disenfranchisement Laws Across the United States (2006), *available at* www.brennancenter.org/dynamic/subpages/download_file_47267.pdf.

214 Erika L. Wood & Neema Trivedi, *Modern-Day Poll Tax: How Economic Sanctions Block Access to the Polls*, Clearinghouse Rev. J. of Poverty L. & Pol'y, May-June 2007, at 32.

215 Alabama: Ala. Code § 15-22-36.1(a)(3) (must fully pay all fines, court costs, fees, and victim restitution). Arizona: Ariz. Rev. Stat. Ann. § 13-912(A)(2) (must pay "any fine or restitution imposed"). Florida: Fla. R. Exec. Clem. 5.E, 9.A.3 (must pay "all restitution"), *available at* https://fpc.state.fl.us/Policies/ExecClemency/ROEC04052007.pdf. Virginia:.Virginia Secretary of the Commonwealth, Restoration of Rights, http://www.commonwealth.virginia.gov/JudicialSystem/Clemency/RORLongApp.pdf (last visited Sept. 23, 2010) (must pay "costs, fines, and/or restitution").

216 Georgia: Ga. Const. art. II, § 1, ¶ III ("No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence."). Texas: Tex. Elec. Code Ann. § 11.002(4)(A) (individuals convicted of a felony are qualified to vote after having "fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court").

217 *See supra* notes 170, 173, 176 (probation can be extended for failing to pay criminal justice debt in Louisiana, North Carolina, and Texas); Brennan Center for Justice, Felony Disenfranchisement Laws Across the United States (2006) (voting rights restored in Louisiana, North Carolina, and Texas after completion of sentence, including prison, parole and probation), *available at* www.brennancenter.org/dynamic/subpages/download_file_47267.pdf.

218 *See supra* note 118.

219 *See, e.g.*, Ala. Code § 12-19-152 (except as provided elsewhere, fines collected in felony and misdemeanor cases are remitted to the State General Fund); § 12-19-154 (90 percent of docket fees collected in district and circuit courts for violation of municipal ordinances go to the State General Fund); Ariz. Rev. Stat § 41-1723 (all money received each year by the public safety equipment fund after the first $1.2 million goes to the state general fund); § 36-2219.01(B)(5) (5.5 percent of money sent to the medical services enhancement fund is deposited in the state general fund); Cal. Penal Code § 1465.7(a)-(c) (a state surcharge of 20 percent levied on a defendant's base fine is transmitted to the General Fund); Rebekah Diller, Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law, The Hidden Costs of Florida's Criminal Justice Fees 6 (2010) ("Some fees [in Florida] go directly to the state's general revenue fund to subsidize the state's overall budget."); Ga. Code Ann. § 42-8-34(d)(1)-(2) (imposing various fees to be deposited into the general fund of the state treasury, such as a monthly probation fee of $23); 705

Ill. Comp. Stat. 105/27.5 (41 percent of all fees, fines, costs and other penalties collected by a circuit court shall be disbursed into that county's general corporate fund); Champaign County Admin. Servs., Champaign County FY2010 Budget 35 (2009), *available at* http://www.co.champaign.il.us/COUNTYBD/2010budget/fullbudget.pdf (13 percent of Champaign County's [Illinois] revenue comes from fees and fines); Mich. Comp. Laws § 780.905 (assessing fees of $60 and $50 for those convicted of felonies or certain misdemeanors, respectively, 90 percent of which is transmitted to the department of treasury); N.C. Const. art. IX, § 7(a) (". . . the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.); About Court Costs, http://www.nccourts.org/County/Moore/Costs/Default.asp (last visited July 21, 2010) ("Except for certain fees that are devoted to specific uses, all superior and district court costs collected by the Judicial Department are paid into the State's General Fund, as are appellate court fees."); 42 Pa. Cons. Stat. § 3571(a) ("Except as otherwise provided by statute, the Commonwealth shall be entitled to receive all fines, forfeited recognizances and other forfeitures imposed, lost or forfeited, fees and costs which by law have heretofore been paid or credited to, or which by statute are payable or creditable to, the Commonwealth."); Tex. Code Crim. Proc. Ann. art. 102.020(h) (35 percent of funds received as costs for DNA testing go to the state highway fund); Va. Code Ann. § 19.2-353 (proceeds from fines collected for offenses against the Commonwealth are to be deposited into the State Literary Fund.)

220 *See* ABA Commission on State Court Funding, Black Letter Recommendations of the ABA Commission on State Court Funding: Report 7 (Aug. 2004) (stating that courts should have "a predictable general funding stream that is not tied to fee generation"); *see also* Conference of State Court Administrators, Position Paper on State Judicial Branch Budgets in Times of Fiscal Crisis 14 (2003), *available at* http://cosca.ncsc.dni.us/WhitePapers/BudgetWhitePaper.pdf (courts must guard against the perception that they are responsible for funding themselves) [hereinafter COSCA Position Paper].

221 *See* Conference of State Court Administrators, Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges, and a National Survey of Practice 6 (1986), *available at* http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/financial&CISOPTR=81] (noting that the complexity of fees and surcharges imposed in confusing to court personnel and requires the maintenance of complex accounting systems); Robert Tobin, National Center for State Courts, *Funding the State Courts: Issues and Approaches* 50 (1996), *available at* http://contentdm.ncsconline.org/cgibin/showfile.exe?CISOROOT=/financial&CISOPTR=5 (stating that "[i]t is beyond dispute that [the concept of self-supporting courts] is not consistent with judicial ethics or the demands of due process")

222 *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038, 1042 (La. 1997) (striking down three dollar filing fee imposed in criminal and civil cases to fund domestic violence programs).

223 *See State v. Lanclos*, 980 So.2d 643 (La. 2008) (striking down five dollar traffic-violation fee that went to police as "a tax to be levied improperly through the judicial system" because connection between law enforcement and court system was too attenuated).

224 *See* Leslie Eaton, *Judge Steps in for Poor Inmates Without Justice Since Hurricane*, N.Y.Times (May 23, 2006), *available at* http://www.nytimes.com/2006/05/23/us/23court.html?scp=1&sq=poor%20inmates%20without%20justice%20since&st=cse..

225 Paul Purpura, *Cupboard Bare for Poor's Legal Aid*, Times Picayune, Nov. 2, 2005, at B-3, *available at* http://www.nola.com/katrina/pages/110205/1102B03.pdf.

226 *See*, *e.g.*, Eaton, *supra* note 224; Peter Whoriskey, *In New Orleans, Justice on Trial: Katrina Strains Public Defender's Office*, Wash. Post (Apr. 15, 2006).

227 *See* Eaton, *supra* note 224.

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

229 *See, e.g.* Telephone Interview with Barbara Cannon, Deputy Clerk, Greene County Clerk of Courts, Ohio (Nov. 2, 2009) (Probation officers warn persons under supervision who have not paid that arrest warrant will be issued if payment is not made within a certain number of days); S. Ctr. for Human Rights, Profiting From the Poor: A Report on Predatory Probation Companies in Georgia 2 (2008) (discussing how private probation companies assigned to supervise misdemeanors threaten imprisonment and use other bullying tactics in order to collect fees), *available at* http://www.schr.org/files/profit_from_poor.pdf.

230 Telephone interview with Walter Pulliam, Chief of Operations, Virginia Department of Corrections, Division of Community Corrections (Jan. 8, 2009).

231 *Id*; Telephone interview with Richard Crossen, Virginia Department of Corrections, Community Corrections Manager (Jan. 12, 2009).

232 Telephone interview with Walter Pulliam, Chief of Operations, Virginia Department of Corrections, Division of Community Corrections (Jan. 8, 2009).

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2011-2012 Policy Paper
Courts Are Not Revenue Centers

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If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general welfare through charges assessed to those who would utilize our courts.

– Supreme Court of Texas

I. INTRODUCTION

A quarter of a century ago the Conference of State Court Administrators adopted a set of standards[1] (hereinafter referenced as the "1986 Standards") related to court filing fees, surcharges and miscellaneous fees in response to a burgeoning reliance upon courts to generate revenue to fund both the courts and other functions of government. The issue of court revenue - and the relationship of that revenue to funding the courts - remains fresh and relevant and warrants a renewed examination and restatement of the previously adopted standards, couched here as "principles."

The intersection of court revenues and court funding is complex and includes constitutional, statutory and case law mandates and restraints governing access to justice, governmental revenues, and appropriate uses of court-generated revenue:

- A variety of vehicles to deliver court revenue that are difficult to define consistently and that present different problems or issues depending upon the type of case (civil, criminal or traffic);
- The tension between the public benefit courts provide to society as a whole and the private benefit which inures to individual litigants; and
- The economic and fiscal pressures and practical realities that face legislative bodies and court leadership.

Court leaders must navigate among the particular historical, political and budgetary realities that face the courts and legislative bodies and serve as the backdrop to every new and increased fee or cost in their individual states. For revenue sources attached to civil cases, court leaders must advocate for the principles of access to justice, the balance of public good and private benefit in establishing court fees, and restricting revenue generation to court purposes only. In criminal cases, court leaders have a responsibility not only to ensure that judicial orders are enforced - *i.e.*, fees and fines are collected[2] - but also to ensure that the system does not impose unreasonable financial obligations assessed to fund other governmental services. In traffic infractions, whether characterized as criminal or civil, court leaders face the greatest challenge in ensuring that fines, fees, and surcharges are not simply an alternate form of taxation.

Court leaders must work toward uniformity across their state and be the experts on the typically complex scheme of fees and costs that currently exists, while seeking a more principled and transparent approach.

II. TERMINOLOGY AND DEFINITIONS

There is wide variation among the states (and sometimes within a state) as to the terms used to describe court revenue vehicles and the particular meaning associated with the term in differing circumstances. This paper re-adopts the definitions from the 1986 Standards as listed below, with an additional definition for "Fines and Penalties." These terms, as they appear in this paper, are therefore consistent with the following definitions, with the exception of the civil and criminal case law discussions where the terms are used within the context of their meaning in the particular state in which the case arose.

> **Fees**: Amounts charged for the performance of a particular court service and that are disbursed to a governmental entity. These fees are specified by an authority at a fixed amount.

[1] Standards Relating to Court Costs: Fees, Miscellaneous Charges and Surcharges and A National Survey of Practice, Conference of State Court Administrators, June, 1986. NCSC KF 8995 C6 1986 C.4

[2] "As State Courts Face Cuts, a New Push to Squeeze Defendants," New York Times, April 6, 2009; available at http://www.nytimes.com/2009/04/07/us/07collection.html ; last visited Dec. 30, 2010.

Miscellaneous Charges: Amounts assessed that ultimately compensate individuals or non-court entities for services relating to the process of litigation. These amounts often vary from case to case based on the services provided.

Surcharges: Amounts added to fines, fees, or court costs that are used for designated purposes or are deposited into the general fund.

Court Costs: Amounts assessed against a party or parties in litigation. Such amounts are determined on a case-by-case basis and vary in relation to the activities involved in the course of litigation. Court costs include fees, miscellaneous charges and surcharges.

Fines and Penalties: Amounts assessed to penalize an individual or organization for violating a provision of law or rule following conviction or other adjudicatory decision by a judicial officer.

III. RELEVANT CASE LAW – FILING FEES

Access to the courts is a fundamental right. In *Boddie v. Connecticut*, the Supreme Court of the United States held unconstitutional a state statute requiring payment of fees before commencing a divorce action. The Court found that barring access of indigent persons through the imposition of a filing fee was inconsistent with the obligations imposed under the due process clause of the Fourteenth Amendment.[3]

Beyond this basic precept, the thrust of the case law concerning civil filing fees is that such fees may be imposed only to fund programs directly involving judicial services. When the connection between fees imposed and judicial services administered is slight, courts generally find that an unreasonable burden is placed upon the litigant, particularly in those states that have a constitutional "open courts" provision.[4]

Thirty-eight states currently have open courts provisions within their constitutions.[5] The general purpose of such provisions is to ensure that citizens are not "arbitrarily deprived of effective remedies designed to protect basic individual rights."[6] In most of these states, the open courts provision is interpreted to prohibit "filing fees that go to fund general welfare programs, and not court-related services."[7]

For example, in a Texas Supreme Court case, *LeCroy v. Hanlon*, the court held that "filing fees that go to state general revenues . . . are unreasonable impositions on the state constitutional right of access to the courts. Regardless of its size, such a filing fee is unconstitutional for filing fees cannot go for non-court-related purposes."[8] The court in *LeCroy* based its analysis on an Illinois Supreme Court case that examined whether a $5 fee charged for divorce proceedings could go to finance a statewide domestic violence shelter program. The Illinois high court had held that such a fee was unconstitutional because it "had no relation to the judicial services rendered and was assessed to provide general revenue."[9] The court explained that

> [c]ourt filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the court . . . Dissolution-of-marriage petitioners should not be required as a condition to filing, to support a general welfare program that relates neither to their litigation nor to the court system. If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general welfare through charges assessed to those who would utilize our courts . . . [I]f domestic violence services are deemed sufficiently court related to validate the funding scheme, countless other social

[3] Boddie v. Connecticut, 401 U.S. 371 (1971)

[4] E.g., Oklahoma Constitution, Article II § 6, states: "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered with sale, denial, or prejudice."

[5] Erin K. Burke, *Note: Utah's Open Courts: Will Hikes in Civil Filing Fees Restrict Access to Justice?*, 2010 UTAH L. REV. 201, 201 n.1; *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 674 (Utah 1985).

[6] *Berry*, 717 P.2d at 675; *State v. Saunders*, 25 A. 588, 589 (N.H. 1889) ("The incidental right to an adequate remedy for the infringement of a right derived from the unwritten law, is coeval with the right of which it is an incident.")

[7] *LeCroy v. Hanlon*, 713 S.W.2d 335, 341 (Tex. 1986) ("Nearly all states with similar open courts provisions have held that filing fees that go to fund general welfare programs, and not court-related services, are unconstitutional.")

[8] Id. at 342.

[9] Id. at 341.

> welfare programs would qualify for monies obtained by taxing litigants.[10]

The Louisiana Supreme Court reached a similar conclusion in *Safety Net for Abused Persons v. Segura,* invalidating a statute that imposed filing fees in all civil suits to fund a family violence program.[11] The court held that fees assessed must be for services that bear a "logical connection to the judicial system."[12] If a program is not "part of the judicial branch, serves no judicial or even quasi-judicial function, and is not a program administered by the judiciary, [then] it is not a link in the chain of the justice system."[13] The court elaborated that "clerks of courts should not be made tax collectors for our state, nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature."[14]

The Supreme Court of Oklahoma has also held that its open courts provision[15] is violated if portions of court costs are deposited into accounts to fund non-judicial programs with "no relation to the services being provided or to the maintenance of the courts."[16] In that case, the challenged fee assessments included costs in adoption cases deposited for the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry, costs in civil cases deposited for the Child Abuse Multidisciplinary Account, and a cost credited to the Office of the Attorney General Victim Services Unit.[17] Because the programs were "not for the maintenance or support of the court system, nor [meant to] defray [the] expenses of the [judiciary]," the court concluded: "they do not serve a judicial or even a quasi-judicial function."[18] The programs were "social welfare programs under the operation of the executive branch of government;" and "the funding of these programs through the use of fees imposed on litigants [is] impermissible."[19]

The Oklahoma court clarified that the imposition of court costs on a litigant does not violate the open courts provision if they are "uniform, reasonable and related to the services provided,"[20] explaining that

> [T]he purpose of the court fees is to reimburse the state for money that otherwise would have to be appropriated for the maintenance of the courts. The legislature may impose court costs and not violate the open access or sale of justice clause when such costs are in the nature of reimbursement to the state for services rendered by the courts. The connection between filing fees and the services rendered by the courts or maintenance of the courts is thus established.[21]

A number of state courts agree that directing civil filing fees into general welfare funds violates the open courts provisions. There are, however, exceptions to this trend. The Alabama Supreme Court[22] declined to invalidate a statute that imposed a $50 civil jury trial fee, a portion of which was directed into a general state fund. The court held that "neither the jury trial fee, nor that portion of it that is paid directly into the general fund, is an unconstitutional tax on the right to litigate or on the right to a jury trial in a civil case."[23] The court reasoned that "[t]he guarantee of a right to trial by jury is not a guarantee of the 'right to litigate without expense'; therefore, requiring the payment of a reasonable jury fee is not an infringement on the right to a trial by jury."[24]

The Florida Supreme Court has also upheld statutes directing portions of civil filing fees to a general revenue fund. There, the court held that "[d]irecting a portion of the filing fees to the general revenue fund for further appropriation is an accounting mechanism reasonably related to the governmental purpose of funding the administration of justice."[25] Specifically, the court found that "the Legislature would be using the filing fees to fund the administration of justice if it funds the justice system

[10] Id. at 1351.
[11] Id. at 1042. The invalidated statute also provided for the imposition of a $3.00 cost on all criminal cases. (See LA R.S. 13:1906 B.)
[12] *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038, 1044 (La. 1997).
[13] Id.
[14] Id. at 1042.
[15] See fn. 9.
[16] *Fent v. State ex. Rel. Dept. of Human Services*, 236 P.3d 61, 70 (Okla. 2010).
[17] Id. at 64.
[18] Fent at 69.
[19] Id.
[20] Id at 66.
[21] Id.
[22] "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay." Alabama Const. Art. I, Sec. 13.
[23] *Fox v. Hunt*, 619 So. 2d 1364, 1367 (Ala. 1993).
[24] *Fox*, 619 So. 2d at 1366.
[25] *Crist v. Ervin*, No. SC10-1317, 2010 Fla. LEXIS 1858, at *4 (Fla. Nov. 4, 2010).

at a level at least equal to the amount of filing fees that is commingled with other state money in the general revenue fund."[26]

Variations are also found in those courts whose state constitutions do not include open courts provisions, such as Arizona. There, a state court of appeals upheld a statute requiring parties in a marriage dissolution action to pay fees that went towards funding a domestic violence shelter and a child abuse prevention and treatment group.[27] When the appellant argued that the statute was unconstitutional, the court responded, "Arizona has no comparable [open courts] provision" that relates to an individual's "right to obtain justice freely,"[28] nor a requirement that such court "fees be used only for court-related programs."[29]

As a policy matter, some commentators have raised concerns related to the impact of mounting filing fees. Such fees, for example, may be seen as thwarting the judicial function as a viable alternative to less civilized dispute resolution:

> the costs to the justice system may be higher if the alternative to resolution of disputes through the courts ... [is] illegal forms of dispute resolution ... [such as] self-help or street justice. Indeed, the Open Courts Provision itself seeks to secure a basic principle of justice that will, in the end, deter persons wronged by others from resorting to self-help and the inevitable violence that ensues when people take the law into their own hands rather than seeking judicial remedies. We ought to remember that access to the courts for the protection of rights and the settlement of disputes is one of the most important factors in the maintenance of a peaceable and well-ordered society.[30]

Critiques of civil filing fees in federal court may also be analogous, as one writer describes a potential consequence of using access fees as a means of caseload diversion:

> It is reasonable to assume that the more money one has, the lower the value, or utility, she will ascribe to each particular dollar; thus, the marginal utility of dollars declines as the amount involved increases. Access fees, therefore, constitute a decidedly inefficient gauge to determine the utility of a suit to the litigant. The use of access fees as entry barriers could very well press litigants with "high utility value" stakes out, while leaving those with lower utility values in.[31]

Policy implications aside, it is clear that a number of state courts carefully scrutinize the use and allocation of filing fees to determine their constitutionality. Many courts, as shown, require that such fees be directed in large part, if not entirely, to court-related purposes. And yet, it is not always clear what exactly "court-related purposes" entail.

The Louisiana Supreme Court offered a broad definition in *Safety Net*, requiring that fees assessed be for services that have a "logical connection to the judicial system," or that bear a "relationship to the nature of the filing against which it is assessed."[32] Similarly, the Texas Supreme Court held that "[c]harging litigants that are able to pay a reasonable fee for judicial support services does not violate the open courts provision. [T]hey are permitted because they go for court-related purposes."[33]

In a more recent decision, the Louisiana high court relied on the state Judicial Council's General Guidelines Regarding the Evaluation of Requests for Court Costs and Fees (promulgated in 2004) to determine what might fall under "court costs" and "court-related operational costs."[34] Under those guidelines (further discussed in Part VI), a fee is

> a charge or cost . . . that is used to defray the operational costs of the courts or the court-related operational costs of the clerks of court or other court-related functions, and that has been authorized by state law to be collected from a person either filing a document in any civil or criminal proceeding with the clerk of court, appearing in a civil matter before a court, failing to fulfill a condition of

[26] *Crist*, 2010 Fla. LEXIS 1858, at *10.
[27] *Browning v. Corbett*, 734 P.2d 1030, 1031-1032 (Ariz. App. 1986).
[28] Id. at 1033.
[29] Id.
[30] Burke, 2010 UTAH L. REV. at 220 (quotations omitted).
[31] Martin D. Beier, *Economics Awry: Using Access Fees for Caseload Diversion*, 138 U. PA. L. REV. 1175, 1193-94 (1990).
[32] *Safety Net*, 692 So. 2d at 1044.
[33] *LeCroy*, 713 S.W.2d 335, 342-43 (citations omitted).
[34] *State v. Lanclos*, 980 So. 2d 643, 653 (La. 2008).

> release, or meeting a condition of probation or other court order.[35]

This definition is consistent with a number of other courts' interpretations of "court-related purposes":

- the Illinois Supreme Court held that "court filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the courts";[36]
- the Supreme Court of Oklahoma explained that the purpose of court costs is "to reimburse the state for the expenses incurred in providing and maintaining all of the officers and other facilities of the court, and is intended as compensation to the state for services rendered, not by the clerk only, but by the entire court";[37] and
- the Florida Supreme Court held that directing portions of filing fees to the law library qualified as a judicial purpose, because "the law library fulfills an important and growing need of practitioners, judges, and litigants. It is essential to the administration of justice today, and it is appropriate that its costs be assessed against those who make use of the court systems of our state."[38]

Fees dedicated for services such as family violence prevention,[39] counseling, marriage preservation, or victim services[40] are suspect, as they are unrelated to the maintenance and operation of the courts. While states like Florida allow for a *portion* of the fees to go to a general revenue fund,[41] other states, like Texas, do not permit even bifurcated allocation of court fees.[42]

IV. RELEVANT CASE LAW – CRIMINAL COURT COSTS

Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution. However, courts vary widely in their determination of whether such costs must defray the expenses of defendants' particular prosecutions, or whether those costs might go into a larger fund, the purpose of which is to remedy the cause of the offenses.

In Michigan, Wyoming, and Louisiana, costs may be assessed only against a defendant if used to defray the expenses of the defendant's particular prosecution. An early case from the Michigan Supreme Court found that a $250 court cost imposed on a defendant for violating the "prohibitory liquor law" was excessive because it bore "no reasonable relation to the expenses actually incurred in the prosecution.[43] The Michigan Court of Appeals upheld this reasoning in reference to a more recent statute in *People v. Brown*.[44] In that case, the court held that "expert witness costs were 'expenses specifically incurred in prosecuting the defendant'" and were thus properly assessed. As summarized in a law review article on Michigan court costs,

> Michigan cases indicate that state courts have consistently adhered to the position that where assessed costs are to be paid to the state for public expenditures, the amount assessed must arise out of the particular case before the court and be directly or indirectly related to that particular case.[45]

[C]lerks of court should not be made tax collectors for our state, nor should the threshold to our justice system be used as a toll booth to collect money for random programs created by the legislature.

– Supreme Court of Louisiana

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[35] "General Guidelines Regarding the Evaluation of Requests for Court Costs and Fees," available at http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCostGuidelines.pdf.
[36] *Crocker*, 459 N.E.2d 1346, 1351.
[37] *In re Lee*, 168 P.53, 56 (Okla. 1917).
[38] *Farabee v. Board of Trustees*, 254 So.2d 1, 5 (Fla. 1971).
[39] *Safety Net*, 692 So.2d at 1044; *Crocker*, 459 N.E.2d at 1351.
[40] *Fent*, 236 P.3d at 70.
[41] *Crist*, 2010 Fla. LEXIS 1858, at *4 (Fla. Nov. 4, 2010).
[42] *LeCroy*, 713 S.W.2d at 342.
[43] *People v. Wallace*, 222 N.W.698, 699 (Mich. 1929).
[44] *People v. Brown*, 755 N.W.2d 664, 681 (Mich. Ct. App. 2008).
[45] Elizabeth Campbell, Tanya Marcum, and Patricia Morris, *Study: The Rationale for Taxing Costs*, 80 U. DET. MERCY L. REV. 205, 209 (2003).

The Wyoming Supreme Court has held that "[c]osts of prosecution do not include the general expense of maintaining a system of courts and administration of justice."[46] The Louisiana Supreme Court, guided by its decision in *Safety Net*, invalidated a statute assessing costs against traffic offenders that went into the Greater New Orleans Expressway Commission.[47] The court held that the statute "bears no relation to an individual's particular offense and does not help defray the costs of prosecuting that particular individual."[48] Similarly, the Texas Court of Criminal Appeals has held that assessments of costs for the establishment and maintenance of a law library were invalid, because "costs in criminal cases are assessed as a part of the punishment for the commission of the offense charged."[49]

In a somewhat less restrictive approach, the Supreme Court of Virginia sustained an assessment of $5 against all traffic offenders used to defray the costs of administration of the Division of Motor Vehicles.[50] The court noted that the Division was statutorily required to maintain records to supply evidence in such cases, and to forward abstracts of these records to the Division Commissioner. As such, the assessment was "directly related to convictions for traffic offenses" and "needed to defray, or to defray partially the expense incurred by the State as a result of a conviction for a traffic offense."[51]

Other states permit directing court costs into more general funds to an even greater extent than that permitted for civil filing fees. As the Arkansas Supreme Court noted, "[t]he decisions elsewhere are not unanimous in deciding to what extent the costs in a criminal case must be directly related to that particular prosecution."[52] For example, the Florida Supreme Court has specifically rejected the argument "that costs must be expenses incident to case prosecution."[53]

This line of cases generally holds that as long as a criminal assessment is *reasonably related to the costs of administering the criminal justice system*, its imposition will not render the courts "tax gatherers" in violation of the separation of powers doctrine,[54] and that costs may be imposed without a precise relationship to the actual cost of the particular prosecution.[55] For example,

- the Arizona Supreme Court upheld a statute requiring defendants convicted of driving while impaired to pay a cost that would go into the Highway Safety Program and the Alcohol and Drug Safety Fund;[56]
- the Oklahoma Court of Criminal Appeals upheld a statute requiring that costs assessed against criminal defendants be paid into a victims' compensation fund, [57] as well as a statute requiring that costs assessed against defendants convicted of drug trafficking be forwarded to the Drug Abuse Education and Treatment Fund;[58] and
- the Florida Supreme Court upheld a $1 cost assessed against all convicted criminal defendants to be deposited in the state general revenue fund, stating "It is not unreasonable that one who stands convicted of such an offense should be made to share in the improvement of the agencies that society has had to employ in defense against the very acts for which he has been convicted."[59]

Other courts have held that costs assessed against criminal defendants may be directed into funds that generally address the problem or offense of which the defendant was convicted "[I]t is only fair that those who help create the problem should bear some of the costs of trying to alleviate it in themselves or others."[60]

In other words, no general principle defines the validity of court costs in criminal cases, and such determinations are instead dependent on state-specific holdings. Despite the existence of decisions requiring more restrictive assessment of costs, those courts that permit the direction of funds into victim compensation and drug treatment seem to allow greater latitude than their civil counterparts, which appear less likely to permit the direction of filing fees into such "non-judicial" uses.

There is a further issue in the criminal context: the differential assessment of costs by locality. Courts

[46] *Arnold v. State*, 306 P.2d 368 , 463 (Wyo. 1957).
[47] *State v. Lanclos*, 980 So. 2d 643, 645 (La. 2008).
[48] *Lanclos*, 980 So. 2d at 653.
[49] *Ex parte Carson*, 159 S.W.2d 126, 129 (Tex. Crim. App. 1942).
[50] *Carter v. Norfolk*, 147 S.E.2d 139, 140-44 (Va. 1966).
[51] *Carter*, 147 S.E.2d at 144.
[52] *Broyles v. State*, 688 S.W.2d 290, 291 (Ark. 1985).
[53] *State v. Champe*, 373 So. 2d 874, 880 (Fla. 1978).
[54] *State v. Claborn*, 870 P.2d 169, 173 (Okla. Crim. App. 1994) (emphasis added).
[55] *Broyles v. State*, 688 S.W.2d at 292.
[56] *Broyles*, 688 S.W.2d 290, 291 (Ark. 1985).
[57] *Claborn*, 870 P.2d at 174.
[58] *State v. Ballard*, 868 P.2d 738, 741 n.1 (Okla. Crim. App. 1994).
[59] *State v. Young*, 238 So. 2d 589, 590 (Fla. 1970).
[60] *Ballard*, 868 P.2d at 741 n.1.

have found that "any law which makes the punishment for an offense in one or more counties greater than the punishment of other counties for the same offense is void"[61] because it violates the equal protection and due process clauses of federal and state constitutions. "A law which should prescribe death as the punishment of murder in one county, and imprisonment as the penalty for the same crime in other parts of the State, would be void, because not operating equally upon all inhabitants of the State."[62] Equal protection requires that "no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

In 1877, a Missouri Court of Appeals found unconstitutional the fact that one county prescribed longer jail time for the crime of abortion than other counties. "The law highly regards the liberty of the citizen, and the organic law of the State forbids the Legislature to enact that the term of imprisonment for the same offense shall vary in different localities."[63]

In *Ex parte Ferguson*, the Texas Court of Criminal Appeals invalidated a statute that assessed a varying fee upon criminal defendants based upon certain county population brackets. The court reasoned that because the statute failed to "give equal protection to all . . . citizens alike," it deprived them of equal protection and due process.[64] In *Ex parte Sizemore,* the same court invalidated a portion of a local road law that provided convicts a work allowance (to be credited against their fines and costs) at a rate of $0.50 per day because it differed from a statewide law providing that such an allowance be $3.00 per day, [65] and in *Ex parte Carson*, the court invalidated a statute that provided for a $1.00 assessment in criminal cases only in counties having eight or more district courts.[66]

More recently, in *State v. Gregori*, the Supreme Court of Missouri rejected a statute that devised varying punishments for the same criminal offense throughout the counties.[67] The statute provided that 17 year-old children in counties with a population of 50,000 or more were subject to the Juvenile Court Act, while 17 year-old children in counties with a population less than 50,000 were subject to criminal penalties.[68] The court explained that the provision denied constitutional protection because it failed to operate "equally upon all inhabitants of the state."[69]

The Supreme Court of North Carolina invalidated a similar statute that subjected criminal defendants from five particular state counties to a fine, while criminals elsewhere, who committed the same offense, were subject to a fine or imprisonment.[70] The court reasoned that criminal punishment schemes should "operate uniformly upon persons and property, giving to all under like circumstances equal protection and security."[71]

V. PRINCIPLES WITH COMMENTARY

In adopting the following principles, the Conference clearly acknowledges the tension, and at times, direct conflict, that exists between the themes embodied in the principles and the realities of government, governance, politics, the economy and fiscal practices and policies in each individual state. The principles are intended to serve as guideposts that will direct reasoned and constructive thinking and conversations leading toward balance among the many competing interests and forces that result in the establishment of various revenue vehicles within the court system.

> *Principle 1: Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. Court users derive a private benefit from the courts and may be charged reasonable fees partially to offset the cost of the courts borne by the public-at-large. Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges.*

It is axiomatic that the core functions of our government are supported from basic and general tax revenues. Government exists and operates for the common good based upon a common will to be

[61] *Ex parte Carson*, 159 S.W.2d 126, 130 (Tex. Crim. App. 1942).
[62] *In re Jilz*, 3 Mo. App. 243, 246 (Mo. Ct. App. 1877).
[63] *Jilz*, 3 Mo. App. at 246.
[64] *Ex parte Ferguson*, 132 S.W.2d 408, 410 (Tex. Crim. App. 1939).
[65] *Ex parte Sizemore*, 8 S.W.2d 134 ,135 (Tex. Crim. App. 1928).
[66] *Ex parte Carson*, 159 S.W.2d 126, 127 (Tex. Crim. App. 1942).
[67] *State v. Gregori*, 2 S.W.2d 748 (Mo. 1928).
[68] *State v. Gregori*, 2 S.W.2d 748 (Mo. 1928).
[69] *State v. Gregori*, 2 S.W.2d 749 (Mo. 1928).
[70] State v. Fowler, 136 S.E. 709, 711 (N.C. 1927).
[71] Id. at 710.

governed, and the expense thereof is borne by general taxation of the governed. Courts, as a core function of government, should be substantially funded by general government revenues. It is as illogical to expect the judiciary to be self-supporting through user fees as it would be to expect the executive or legislative branches of government to be funded through user fees.

However, it is clear that courts also provide a direct private benefit to users of the court system and it is reasonable to expect that they shoulder a portion of the general cost of the litigation, particularly so because certain users are high frequency. Historically, court-related fees have consisted primarily of the fee to initiate a case before the court. These "filing fees" traditionally have been viewed as offsetting the basic cost of case initiation: creating and maintaining the paper file of the court action. Court fees are generally nominal in comparison to the actual cost of providing court services. In an economically efficient system of court fees, the fees would reflect the long-run marginal cost of having a system in place that is capable of processing all cases, and actually litigating at least some small portion.[72]

In more recent times, courts and legislatures have provided or mandated additional "services" that extend beyond the traditional adversarial adjudicatory model. Courts now frequently offer or mandate mediation services, parenting classes in marriage dissolutions, and procedural assistance to *pro se* litigants, for which the litigant is assessed a miscellaneous charge. These ancillary programs and services are often primarily or wholly supported by the miscellaneous charges assessed against the litigants. This is not inappropriate where the services provided are not precedent to the resolution of a case or where simple fee waiver processes are in place for litigants. However, in determining whether to set a fee and the amount of the fee, the cumulative cost of court fees and the total cost of the service must be thoughtfully balanced.

> *Principle 2: Fees and miscellaneous charges cannot preclude access to the courts and should be waived for indigent litigants.*

The need for governmental revenues must be carefully counterbalanced with the public's access to the courts. By increasing the financial burden of using the courts, excessive fees or miscellaneous charges tend to exclude citizens who have neither the monetary resources available to the wealthy nor the governmental subsidies for the poor. Excessive fees and miscellaneous charges can effectively deny this middle economic income group such fundamental rights as the right to a trial by a jury of one's peers and the right of equal access to the court system. The Supreme Court of Washington enacted General Rule 34 in response to the growing number of charges litigants face, clearly providing for "a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer . . ."[73] This clear standard implicitly acknowledges that, while fees may be appropriate, they cannot serve as a bar to judicial relief.

> *Principle 3: Surcharges should only be used to fund justice system purposes and care must be exercised to ensure the cumulative cost of litigation does not impede access to justice and that the fee and cost structure does not become too complex.*[74]

Surcharges are sometimes used for purposes clearly related to the courts, and sometimes are used for purposes that have no relationship to the operation of the courts or justice system. The latter is inappropriate and the former must be instituted sparingly. If taxation is a prerogative of the legislative branch of government, the practice of earmarking funds escapes the priority-setting process existing in most progressive governmental entities. Neither use should escape the appropriations' review process nor should the amount of a public good to be provided by such funds be necessarily limited to the amount of revenue generated by a surcharge for the purpose. If the purpose funded by a surcharge is for the greater public good, it should be worthy of consideration of funding from a broader general revenue source through the normal appropriation process.

[72] Cabrillo, Francisco, and Sean Fitzpatrick, 2008. *The Economics of Courts and Litigation*. Northhampton, Massachusetts: Edward Elgar.

[73] Washington Court Rules, General Rule 34 (http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr34)

[74] See also http://www.courts.state.tx.us/oca/debts/pdf/TexasFinancialObligationsInterimReport.pdf and Justice Center at Council of State Governments, Repaying Debts: http://www.reentrypolicy.org/jc_publications/repaying_debts_full_report

The benefit derived from the efficient administration of justice is not limited to those who utilize the system for litigation, but is enjoyed by all those who would suffer if there were no such system -- the entire body politic. Society as a whole benefits from the very existence of a trusted dispute resolution system with the capability to process all cases timely and bring some fraction of them to trial and continue to develop the common law, or the price of a given crime.

As one commonly adopted surcharge suggests, it can be appropriate to include a surcharge on filing fees to generate revenue that allows the court to provide for the safety and security of litigants in court facilities. In this instance the litigant is a clear direct beneficiary of the service and the tangential public good, while present, is distant.

There is no bright line rule for policymakers to rely upon in determining whether a particular surcharge is appropriate. A balance must be struck, giving consideration to

- The extent to which a surcharge supports a court-related function;
- The cumulative cost of litigation;
- The overall complexity of the cost and fee structure; and
- Where the service being funded falls on the private good/public good spectrum.

In addition to the general discussion above, increasing attention must be given to the impact of criminal fees and charges on the population re-entering society from incarceration. As part of the reentry movement, the Council of State Governments Justice Center points out that "people released from prisons and jails typically have insufficient resources to pay their debts to their children, victims, and the criminal justice system."[75] Other groups have also highlighted this issue:

> States have increasingly turned to user fees to fund their criminal justice systems, as well as to provide general budgetary support. States now charge defendants for a wide range of activities including booking fees, probation supervision, jail stays, and the post-conviction collection of DNA samples. Every stage of the criminal justice process, it seems, is now chargeable to the criminal defendant as a cost. These "user fees" differ from other kinds of court-imposed financial obligations. Unlike fines, whose [*sic*] purpose is to punish, and restitution, whose [sic] purpose is to compensate victims, user fees are explicitly intended to raise revenue. Sometimes deployed as an eleventh hour maneuver to close a state budget gap, the decision to raise or create new user fees is rarely made with much deliberation or thought about the consequences.[76]

The proliferation of these fees and costs as chargeable fees and costs included in the judgment and sentence issued as part of the legal financial obligation of the defendant has recast the role of the court as a collection agency for executive branch services.

> *Principle 4: Fees and costs, however set, should be determined in consultation with the appropriate judicial body, and reviewed periodically to determine if they should be adjusted.*

Policy considerations such as types of fee structures and public access are matters of concern to the judiciary, and legislative review of fees and miscellaneous charges must involve the judicial branch as an integral part of the process. Because legislative bodies may be primarily concerned with public funding policies, the judiciary must assume the responsibility for protecting the public's access to the courts.

Periodic, coordinated review by the legislative and judicial branches should ensure a reasonable level of fees and miscellaneous charges that does not unduly restrict access to the courts but is reflective of the current economy. The review should permit sufficient time to evaluate the impact of previous revisions (if any); to allow the collection and analysis of cost of living and other economic data to

[75] "Repaying Debts," Council of State Governments Justice Center, 2007. report summary at p. 2, available at: http://www.reentrypolicy.org/jc_publications/repaying_debts_summary/RepayingDebts_Summary_v18.pdf

[76] "Criminal Justice Debt: A Barrier to Reentry," Brennan Center for Justice, 2010; available at http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf . See also the ACLU report http://www.aclu.org/files/assets/InForAPenny_web.pdf and the Brennan Center report http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf

determine actual and projected changes in these factors; to prepare a documented report and recommendation regarding the existing fee schedule; and to provide advance notice of rate proposed increases to judicial offices, the practicing bar, and the public. Proposed changes in fees should be subject to public review and commentary.

Attention should be given to the reduction of fees and miscellaneous charges when improved procedures have resulted in certain economies. Annual reviews do not allow sufficient time to complete a thoughtful, deliberate process. However, reviews occurring in a time span of every three to five years would allow collection of data and necessary consideration for the decision-making process.

The importance of regular reviews cannot be overstated as it is this process that prevents the erosion of the basis for the fee and miscellaneous charges structure and insures the durability of the system.[77]

> *Principle 5: Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.*

In many states the only people who fully understand the array of court costs and fees are in the Administrative Office of the Courts, and in some (but possibly not all) clerks' offices. The complexity of statutory drafting tends to exacerbate the complexity of the fees themselves, so that legislators are hard-pressed to grasp either the need for, or cumulative impact of, new proposals for costs and fees. When the system includes surcharges that are event specific, different fees for different case types, local fee options, etc., even the clerk may lack the information or expertise needed to determine accurately and to assess the costs or fees called for by statute in a given case.

A flat or fixed rate is one that consolidates all of the fees itemized for each of the different transactions involving court services into one fee. The flat or fixed fee may vary for different types of cases but should not vary between cases of the same type. There are substantial differences between case processing services provided for a small claims case, a municipal case, a criminal case or a civil case filed in the general trial jurisdiction. In contrast, an appellate fee providing access to the appellate process may not vary in amount by type of case if the court support service is basically the same for each case filed.

In the first half of the 20th century, most courts used a "step" fee system, which provided various fees for each activity undertaken in a case. In 1943, the Director of the Administrative Office of the U.S. Courts noted the importance of "simplicity" and "uniformity" to any schedule of fees.[78] A major problem with a "step" fee system is that as the number of fees for different activities increases, calculation of the correct fees becomes more complex, requiring substantial expenditures of effort from all concerned. For that reason, a fixed or flat rate system is recommended.

All schedules of court fees and miscellaneous charges should be set forth in a single location in the laws or court rules of the body having appropriate authority. While each level of court may have its own applicable costs and fees statutes, these should be consistently and uniformly codified within a chapter or a section of the statutes or rules setting out the entire structure of fees and charges in the courts. Establishing court fees or miscellaneous charges without codifying them into one section is confusing and inefficient. Often, statutory enactments or rule revisions go unnoted by clerks who may be isolated and ill equipped to search for new or revised fees and charges. Administrative costs rise with a proliferation of court fee statutes spread over many volumes of law. Revenue for governmental entities is lost as a result of oversight or failure to keep abreast of new enactments.

> *Principle 6: Optional local fees or miscellaneous charges should not be established.*

If a court is established by state constitution and governed by laws passed by the state legislature, it is appropriate that some state funding be provided to fund the court. Local financing contributes to a fragmented court system where "services vary dramatically according to the locality's ability to pay."[79] Fees and miscellaneous charges should be consistent within a state. Allowing court fees to be

[77] Op cit., Stott and Ross, p. 39

[78] U.S. Congress house Committee on the Judiciary. "Fees and Costs in the United States Courts." Hearings before Subcommittee No. 4 of the Committee on the Judiciary. Public Document No. 20, 78th Congress, First Session, November 1943.

[79] A.B.A., Standards Relating to Court Organization 99 (1974).

established by local governing bodies or by local judges risks the formulation of inconsistent practices among courts of similar jurisdictions. There may be a tendency for locally-funded courts to prioritize local fees over legislative fees, and there is an appearance of conflict when fees fund local programs and the judges order defendants to use those programs. Finally, a judge could use the threat of waiving fees to force local entities to conform to practices or fees schedules that the judge thinks are appropriate.

Courts should have uniform processes and litigants should receive consistent treatment regardless of the court's locality. The amount of fees and miscellaneous charges should be established on a rational basis throughout a state and should not be more or less costly for a litigant simply as a result of venue and jurisdiction.[80]

In criminal cases, differential treatment in different localities by statue is clearly subject to equal protection challenges.

Discretionary charges or local levy charges should be eliminated. If the court is governed by state law, local fees should be prohibited from creating inconsistent costs in different locales. Superfluous charges, which are not easily understood and accepted by the public, erode confidence and should be eliminated.

> *Principle 7: The proceeds from fees, costs and fines should not be earmarked for the direct benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system. All funds collected from fees, costs and fines should be deposited to the account of the governmental source providing the court's funding.*

The due process clause of the Fourteenth Amendment guarantees the right to a trial before a disinterested and impartial judicial officer.[81] Consequently, any judicial officer who has control over the processing of cases may be disqualified for holding a pecuniary interest in fees payable by litigants.

For example, in *Ward v. Monroeville*, 409 U.S. 57, 93 S.Ct. 60 (1972), an ordinance authorized the mayor, who also had wide executive powers, to preside as a judge over certain traffic offenses. A large portion of the Monroeville income was derived from fees, costs, fines, and forfeitures imposed by the mayor in his traffic court. The mayor convicted the petitioner of two offenses and fined him $100. The petitioner appealed his conviction, arguing that because the mayor was interested in securing revenue, the petitioner was denied his right to a fair and impartial trial. The Supreme Court of the United States agreed, setting out a standard for determining whether due process of law has been denied.

> [Every procedure] which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law.[82]

The Court, applying this standard, concluded that a possible temptation "exist[s] when [a judicial officer's] responsibilities for village finances may make him partisan to maintain the high level of contribution from the … court."[83] Similarly, an unconstitutional temptation may be created by the practice of earmarking revenue from costs and fees for the direct or indirect benefit of judicial officers that control the disposition of criminal cases.

There is also tension between this principle and the acceptance that surcharges that support court activities are permissible. Arguably, a judge who denies the waiver of a surcharge that funds court security benefits from that security. Again, policymakers must weigh competing values along a continuum when assessing the propriety of surcharges that support court operations. In particular, consideration must be given to the degree to which it appears that an individual judge or court official would benefit from the assessment of the surcharge.

[80] Ibid., p.10
[81] Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437 (1927)
[82] Ward v. Monroeville, 409 U.S. 57, 93 S. Ct. 60 (1972)
[83] Id.

VI. THE WAY FORWARD

According to a 2010 study by the National Center for State Courts, it is "unlikely that there is any single state that could be held out as a model for a budgeting and revenue structure that provides access, adequacy, stability, equity, transparency, and simplicity."[84] Addressing these issues is a state-by-state matter – this is one problem that does not lend itself to a national summit – and a national paper can only go so far in prescribing a particular approach.

COSCA advocates that its members:

1. *Make the current system visible.*
   Promote accountability and transparency regarding fees and costs within each state by developing and maintaining accurate and understandable information about the current laws, structures and amounts for fees and costs. Once developed, this information should be routinely shared with legislators, the executive branch, and the public. For example, the Texas OCA provides extensive guidance on the state court website, specifically for clerks but available to the public,[85] and the court administrator used a blog post to provide information on the various bills in 2011 that would increase costs on conviction, advising, for example, that if all seven bills passed, the total for most tickets would increase from $98 to $137.[86]

2. *Advocate for a principled approach.*
   The factual information regarding fees and costs must be presented within the context of a principled framework that accounts for fiscal realities. The seven principles provide a solid base from which individual states may craft a set of policy principles to frame their unique fee and cost discussions and dialogues. Development of a set of principles that work within the context of each state can best be undertaken by involvement of a workgroup or task force. That also takes into account all the constituencies that are dependent on the current array of dedicated funding streams, and strive to ensure that those services maintain necessary funding, even if future funding is not through court fees.

Consider the legislative perspective. The dedication of court fees and costs to particular programs raises the same issues that state legislatures confront, on a larger scale, with the practice of earmarking taxes. The National Conference of State Legislature's report, "Evaluation of Earmarking,"[87] suggests that the arguments in favor of earmarking tend to be of limited application to the real world of state taxes and budgets, and that the arguments against earmarking are more powerful. Earmarking hampers legislators' budgetary control, distorts the distribution of funds among programs, and reduces the flexibility of the revenue structure (which increases the difficulty of adapting budgets to changing conditions). These arguments apply with equal force to the practice of dedicating costs and fees to specific programs. Although many legislators may seek new fees and costs for projects, they should be made cognizant of the inherent problems of dedicating court costs and fees.

Louisiana provides one case study of the effort to take a principled approach.[88] In 2003, that state's Judicial Council formed a Court Cost/Fee Committee of its Judicial Council, pursuant to a state statute passed that year requiring consideration by the Council of any proposals for court costs and fees.[89] The evaluation guidelines developed by that committee include determination of the financial need for the new assessment, analysis of the probable yield, and, most important, a determination of the propriety of the cost or fee.

Among the appropriate purposes for which court costs or fees may be requested are

> to support a court or the court system or help defray the court-related operational costs of other agencies;
> to support an activity in which there is a reasonable relationship between the fee or court cost imposed and the costs of the administration of justice.[90]

[84] State of Oregon, Report to the Joint Interim Committee on State Justice System Revenues (National Center for State Courts 2010), on file with author.
[85] See http://www.courts.state.tx.us/pubs/pubs-home.asp.
[86] See http://courtex.blogspot.com/2011/03/costs-on-conviction.html.
[87] Id.
[88] There is legislative activity pending that may affect Louisiana's system.
[89] See press release at: http://www.lasc.org/press_room/press_releases/2003/2003-14.asp; last viewed May 12, 2011.
[90] "General Guidelines Relating to the Evaluation of Requests for Court Costs and Fees." At: http://www.lasc.org/la_judicial_entities/Judicial_Council/CourtCostGuidelines.pdf ; last viewed May 12, 2011.

Each state should strive for a revenue structure that provides access, adequacy, stability, equity, transparency and simplicity. Each state's court leadership must moderate or staunch the legislative impulse (and sometimes its own) to add additional and higher fees. On the civil side, court leaders must advocate for the principles of reasonable access to justice, comprehensible and defensible fees, and restricting revenue generation to court purposes only. On the criminal side, court leaders have a responsibility to ensure that judicial orders are followed, but also to ensure that the system is not overloaded with unreasonable financial obligations to fund other governmental services. For both criminal and civil cases, court leaders must work toward uniformity across the state and be the experts on whatever structure currently exists, while seeking a more principled and transparent approach.

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Appendix L

JUDICIARY

Federal judge blasts township court for jailing man who couldn't pay littering fine

BY DEBRA CASSENS WEISS (HTTP://WWW.ABAJOURNAL.COM/AUTHORS/4/)

POSTED APRIL 3, 2018, 11:01 AM CDT

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A New Jersey township violated the constitutional rights of a college student who had only 11 cents in his pocket when he was jailed for being unable to pay a littering fine, a federal judge has ruled.

U.S. District Judge Noel Hillman ruled for Anthony Knieser on his motion for summary judgment against Burlington Township, but said it was too soon to decide whether the municipal judge who jailed him was also liable. Courthouse News Service (https://www.courthousenews.com/court-skewered-for-jailing-of-indigent-nj-litterbugs/) covered last Friday's decision (https://www.courthousenews.com/wp-content/uploads/2018/04/nj-litter.pdf).

The court had a policy and practice that "effectively extorts payments" from the family and friends of indigent defendants, Hillman said. That policy is contrary to precedent that requires judges to consider indigency and alternatives to payment in full, he said.

Kneisser had appeared in court in May 2014 after he was ticketed for throwing a cigarette butt out his car window. He pleaded guilty and asked Judge Dennis McInerney to approve a payment plan or community service. The fine, with court costs and fees, was $239.

McInerney told Kneisser “there’s no way to avoid the fine,” and he needed to check out at the clerk’s window. The window had a sign stating that fines up to $200 needed to be paid in full, and fines above $200 required a minimum payment of $200.

Kneisser told the clerk he couldn’t pay, and he was given a form to establish indigency. Kneisser filled out the form, requested a payment plan and returned to court.

Appearing again before McInerney, Kneisser said he would be able to make a payment towards the fine in early June. The judge replied that “you need to make a payment today” and directed Kneisser to make a phone call. Kneisser replied there was no one he could call.

McInerney told Kneisser he was sentenced to five days in jail. When Kneisser protested that he has no friends who can help him out, the judge replied, “Well then, you do the time.”

Kneisser’s father was a medical doctor, but he had told his son he would not pay the ticket, Hillman said in a footnote. The doctor said in a deposition that he had lectured his son for smoking and tossing his cigarette butt out the window, and he hoped his son would learn a lesson by doing community service or whatever it took to take care of the infraction.

Kneisser’s father paid the fine after his son was arrested and taken to the township’s jail.

Hillman said that the township’s practice violates the rights of indigent defendants “every step of the way by converting a fine-only penalty into punitive incarceration, by failing to provide indigent defendants with alternatives to full and immediate payment, by ignoring that these defendants have not waived their right to counsel relating to a jail sentence, and by issuing constitutionally infirm process to search and seize these defendants and place them in jail.”

NEW JERSEY 101.5

FEEL LIKE NJ COURTS ARE JUST MONEY-MAKERS? HERE ARE THE IDEAS TO CHANGE THAT

MICHAEL SYMONS | Invalid Date

There's a growing sentiment to do something about tamping down use of municipal courts to generate fines to support a city or town's budget.

Committees of the New Jersey State Bar Association and the state Supreme Court are each looking at the issue now, and a state Assembly committee recently did the same. Lawmakers floated ideas such as regionalization, making municipal courts a division of Superior Court and pooling all revenues from fines.

Paul Catanese, who was a judge for 20 years in South Brunswick, Lawrence and Hamilton, said judges need to be freed up to be independent, not worrying about whether they'll be reappointed if they levy small or no fines in cases when that's appropriate.

"There's always this if not explicit this implicit sense that you need more revenues from the court," said Catanese, who said a few years ago one Middlesex County town switched judges specifically because it wanted more revenue from court fines.

"Judges know what their job is," Catanese said. "It's to do individual justice in individual cases. That's what our role is. It's not our job to raise revenues for the town."

Esther Canty-Barnes, a former municipal judge in Irvington, said the pressure is sometimes direct.

"The backlog cases – pull the backlogs, issue bench warrants, recall the cases again, bring in the payment agreements. Things of that nature, which you really had to ignore from them because that's not the way that justice is supposed to be meted out," she said.

Assemblyman John McKeon, D-Essex, said courts are supposed to be about justice, not judges feeling pressure to produce revenue. In municipal courts, only 2 percent of cases are tried, and of those only 16 percent lead to charges being dismissed, he said.

“If you look at the statistics, you frankly have a better chance of beating a murder rap than you do a parking ticket,” said McKeon.

Assemblyman Michael Patrick Carroll, R-Morris, suggested that municipal courts could become part of the Superior Court, with state-appointed judges moving in a circuit around a county to hear cases.

APP impact: Reforms could end courts as moneymakers

Kala Kachmar, **@NewsQuip** Published 2:24 p.m. ET June 21, 2017 | **Updated 7:58 p.m. ET June 22, 2017**

(Photo: Kala Kachmar)

TRENTON - New Jersey's fragmented and archaic municipal court system, which puts pressure of judges to raise revenue through fines, is on a path to reform, lawmakers say.

Prompted by an Asbury Park Press investigation, state Assembly members have started discussing the problems and potential solutions to fix the flawed system.

Assemblymen, former judges and other experts testified during the General Assembly's Judiciary Committee meeting last week, discussing issues identified in the Press' November 2016 investigation.

"The concern is courts are supposed to be about justice," said Assemblyman John F. McKeon, D-Morris County, chairman of the committee. "It's the beginning of a conversation to figure out what we can do to improve the system."

MORE: Inside the municipal court cash machine (https://www.app.com/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/)

The Press investigation found:

- Municipalities often turn to the law for new revenue. Towns have the power to pass new ordinances or increase fines in old ones, enforce the penalties through its police force and then send defendants to local courts headed by judges appointed by the town leaders.
- Judges are often put under political pressure to raise revenue by local officials, administrators, mayors and police officers. Local leaders appoint them every three years.
- About 75 percent of the nearly 4.6 million cases that move through the municipal court system are resolved through guilty pleas that are usually enticed with offers of reduced fines and lesser penalties.
- Just 2 percent of defendants choose to go to trial, and of those, 16 percent won their cases.
- Municipal courts across Monmouth and Ocean counties raked in $26.2 million in 2015 — up $3.2 million, or 14 percent, from in 2010.
- Municipal courts in 37 Monmouth and Ocean counties towns had a revenue increase between 2010 and 2015. The average hike was 39 percent.
- Lake Como, Englishtown, Belmar, Point Pleasant Beach, Allentown, Bradley Beach and Neptune relied on court revenue to support more than 5 percent of their municipal budgets in 2015.
- The number of traffic and parking tickets issued increased in 27 Monmouth County and 16 Ocean County towns during the 2009/2010 court year through 2015/2016 court year. Tickets doubled in five towns.

MORE: Municipal courts slam poor the hardest (https://www.app.com/longform/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/)

A sign outside Freehold Township's municipal court. *(Photo: Kala Kachmar)*

Solutions mentioned at the hearing include:

- Removing the power of judicial appointment from the governing body of a town.
- Lengthening the term of municipal judgeships and giving them tenure.
- Integrating the municipal court system with the rest of the state's courts, to be more rigidly overseen by the Administrative Office of the Courts.
- Creating a funding formula for municipal court revenue, so judges don't feel the pressure to raise revenue.
- Creating regional, consolidated municipal courts to help remove local politics from the equation.

Reports from the State Bar Association and the Supreme Court Committee — both established to examine the system of fines and fees in municipal courts — are expected to be released this summer.

McKeon said the committee would review the final reports and analysis from experts as it starts to craft new state policy. He expects a legislation package of bills to be proposed within the year.

Consolidating the municipal courts with the rest of the state system seems like a natural progression, especially when looking at the history of courts in New Jersey, McKeon said.

"It makes sense for continuity, oversight, judicial independence — the kinds of things we all strive for in our justice system," he said.

A 'difficult' road

Stephen Williams, a lawyer and former chair of the State Bar Association's Municipal Court Practice Section, said the public generally doesn't experience justice in municipal courts. He said he spends more than half his time on local court cases in Hunterdon, Somerset and Mercer counties.

"You never know what you're walking into," Williams said during the Judiciary Committee meeting. "Every court does things differently. Every town does things differently."

Williams said regionalization is potentially the answer, but getting there is a windy road that will be difficult to navigate, he said.

McKeon also said getting legislation passed won't be easy, especially because of towns in counties such as Monmouth, for example, that rely on the revenue to offset high property taxes. He said suburban and rural communities don't necessarily make enough revenue to fund their courts fully, so they'd likely support reform.

"I think the economic reality behind it is going to drive (the change)," McKeon said. "The towns with high revenues will fall harder — vacation communities

and beach towns. Those will be more difficult."

MORE: Lawmakers: Reform municipal court system (https://www.app.com/longform/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/)

In Hunterdon County, there's only one court that makes surplus revenue — Clinton Township, said Assemblyman Erik Peterson, R-Hunterdon, who sponsored legislation this year that would give county freeholders the option of regionalizing municipal courts and cutting towns out completely.

"Many towns see the municipal courts as something that they have to have but it’s more of a drain on their budget and a headache because there are constant changes and issues they don’t want to deal with," Peterson said.

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NEW JERSEY OPINION

Stop suspending drivers' licenses for unjust, irrelevant reasons | Editorial

Updated on December 20, 2016 at 6:34 AM
Posted on December 20, 2016 at 6:33 AM

Drivers.jpg

Drivers license suspensions should be used to keep bad drivers off the road, not as a drug war or debt collection tool. (Photo by Tony Kurdzuk)

By Star-Ledger Editorial Board, eletters@starledger.com

At the height of our failed drug war, a federal law was passed, sponsored by the late U.S. Sen. Frank Lautenberg (D-N.J.), that required those convicted of even the smallest drug offense - like smoking a joint on a park bench - to automatically lose their drivers' licenses.

The idea was to get "tough on crime," but the law was totally ineffective in preventing drug crimes, and had tons of unintended consequences - like causing thousands of poor people to lose their jobs, and diverting police resources away from traffic safety. So New Jersey was one of the states that partially opted out.

We gave judges the discretion to allow drug offenders to keep their licenses, if they could show a compelling hardship. But now, here's the problem: Too many judges aren't using that discretion.

They are still routinely suspending drivers' licenses for drug crimes that had nothing to do with driving; sometimes for up to two years at a time, says Jennifer Sellitti, a public defender for seven years in Newark.

This disproportionately impacts people of color, who don't use drugs at higher rates than whites, but are more than twice as likely to be arrested for possession. It traps people in a cycle of poverty. And it doesn't actually make us safer on the road.

Sellitti recalls a 21-year-old client from Irvington who was stopped on the street with drugs in his pocket. Even after his boxing trainer, a state trooper, lined him up a job and vouched for him in court, he still couldn't get his license restored.

The judge said, "Why can't he take the 'shoe leather express'?" Sellitti

recounted. But walking wasn't an option. His employer wouldn't give him the job without a license.

That isn't unusual. Employers routinely require proof of a valid drivers' license to be hired, and having a job is a common condition of parole and probation. So what sense does this make?

We should reserve license suspensions for unsafe drivers, as a new report by the non-profit, non-partisan Prison Policy Initiative argues. Using it for crimes unrelated to driving actually makes our roads more dangerous, because it diverts police time away from chasing bad drivers.

That's why the American Association of Motor Vehicle Administrators has come out strongly against this practice. It can take nine hours for an officer to make one roadside stop; waiting for the tow truck, transporting someone to jail, filling out paperwork and making a court appearance - time better spent on those who drive recklessly, or under the influence.

The Prison Policy report also highlights a larger issue here: License suspensions are especially devastating for the working poor. Of those who lose their licenses, more than 40 percent also lose their jobs.

And even if we do away with this as a penalty for unrelated drug crimes, licenses would still be suspended for even pettier offenses, like unpaid traffic tickets or failure to appear in municipal court. Here, license suspensions are being used as a debt collection tool. Much like our bail system, which we just reformed, it disproportionately impacts the poor; if you have the money to pay, you can simply drive away.

People in the throes of poverty or addiction often have accumulated fines from various municipalities that they can never pay, and lose their

licenses as a matter of course. It traps them in a web of poverty, even when offered treatment or job training.

So enough with these needless license suspensions. New Jersey should change the law to do away them completely, so people are employable after they've paid their debt to society, they aren't punished for poverty, and police can focus on keeping dangerous drivers off our roads.

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Appendix M

REPORT OF THE

SUPREME COURT COMMITTEE ON

MUNICIPAL COURT PRACTICE

2015 - 2017 TERM

February 1, 2017

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I. INTRODUCTION

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments and new rules contained in this report. The Committee also reports on other issues reviewed in which it concluded no rule change was appropriate or in which the issue was continued until a later report. Where rule changes are proposed, deleted text is bracketed **[as such],** and added text is underlined **as such**. No change to a paragraph of the rule is indicated by ". . . **no change**."

II. RULE AMENDMENTS RECOMMENDED FOR ADOPTION

A. Limitations on Plea Agreements in Municipal Courts - Proposed Amendments to the Appendix to the Part VII Court Rules

Administrative Director Glenn A. Grant, J.A.D., forwarded a letter from the American Civil Liberties Union (ACLU) to the Municipal Court Practice Committee (the Committee). In its letter, the ACLU requested that the Court reconsider the portions of Guideline 4 of the Appendix to Part VII of the Rules of Court that prohibit municipal courts from accepting plea agreements in possession of marijuana cases (N.J.S.A. 2C:35-10(a)(4) ("Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.")).

Guideline 4, "Limitation," currently provides:

> No plea agreements whatsoever will be allowed in drunken driving or certain drug offenses. Those offenses are:
>
> A. Driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and
>
> B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).
>
> No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).
>
> If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.

If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor.

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any of the above enumerated offenses in Sections A and B of this Guideline.

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

History

Plea bargaining is the process in which the accused and the prosecutor in a case work out a mutually satisfactory disposition of the case subject to court approval, usually involving the defendant pleading guilty to a lesser offense in return for a lighter sentence than that possible for the more serious charge. See, generally, State v. Taylor, 80 N.J. 353, 360-61 (1979) (“Plea bargaining has become firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of criminal justice.").[1]

[1] Cases decided by guilty pleas make up more than 90 percent of those processed through the judicial system. Bureau of Justice Statistics, 2005; Lindsey Devers, U.S. Dep't of Justice, Plea and Charge Bargaining 3 (2011).

In 1974, plea agreements were expressly prohibited in municipal courts in New Jersey via a Bulletin Letter from the Supreme Court.[2] The ban was based on a concern about the lack of professionalism and oversight in certain municipal courts. See, State v. Hessen, 145 N.J. 441, 446-47 (1996); State v. Rastogi, 403 N.J. Super. 581, 583-586 (Law. Div. 2008).

In 1985, the Supreme Court Task Force on Improvement in the Municipal Courts recommended that plea agreements be permitted, subject to certain conditions. Shortly after, similar recommendations were made by the New Jersey State Bar Association, the County Prosecutors Association, the Supreme Court Criminal Practice Committee, and the Supreme Court Committee on Municipal Courts (now the Municipal Court Practice Committee). See, Notice to the Bar, June 15, 2005, "Amendments to Guideline 4 of Guidelines for Operation of Plea Agreements in the Municipal Courts."

In 1988, the Supreme Court found that circumstances had changed and authorized a one-year limited test of regulated plea bargaining in Municipal Courts, noting that the former lack of professionalism that had permeated most aspects of the municipal courts had significantly changed; that the quality and tradition of the judges had improved; that municipal prosecutors were now in place in most municipal courts and public defenders in some; and that verbatim records of proceedings were being

[2] Municipal Court Bulletin Letter #3-74 stated: "No plea agreements are permitted in municipal courts on non-indictable offenses. A judge may not accept a plea of guilty to a lesser charge where it appears that a violation of N.J.S.A. 39:4-50 (a) or (b) may have occurred. In such cases, the judge should hear the matter. Where a judge is not satisfied that the prosecution has proven a case under (a), he may find the defendant guilty of (b) as a result of the hearing." Municipal Court Bulletin Letter #9/10-75 stated: "The Supreme Court has recently reaffirmed its policy prohibiting plea bargaining in the municipal courts. The rules in Part III dealing with plea bargaining (Rule 3:25A) are not applicable to the municipal courts. Refer to the item Plea Bargaining in Municipal Court Bulletin Letter # 3-74, page 2."

made. Ibid. The report preserved the ban on plea bargaining drunk-driving cases. Ibid.

On October 31, 1989, the Supreme Court Committee to Implement Plea Agreements in Municipal Courts issued its Final Report evaluating the one-year experiment. The report recommended that plea agreements be permitted, subject to certain conditions. Ibid.

On June 29, 1990, the Court issued its Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey (Guidelines), which adopted the Committee's recommendation. State v. Hessen, 145 N.J. at 448.

Rule 7:6-2 was adopted on June 29, 1990 and authorized generally plea bargaining in municipal courts subject to specific standards, pursuant to the Guidelines. In turn, Guideline 4 currently states that no plea agreements whatsoever will be allowed in drunken driving or certain drug offenses: possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4); being under the influence of a controlled dangerous substance or its analog, N.J.S.A. 2C:35-10(b); and use possession or intent to use or possess drug paraphernalia, N.J.S.A. 2C:36-2. In 2004, the Court amended Guideline 4 to no longer permit a plea agreement that dismisses a refusal charge, although the Guidelines do permit plea agreements for concurrent sentences on the DWI and the refusal charges. State v. Hessen, 145 N.J. at 448,

Current Proposal

In its request for a reconsideration of the prohibition against plea agreements for violations of N.J.S.A. 2C:35-10(a)(4), the ACLU expressed concern over the numerous consequences faced by those convicted of such a charge, including both

short and long-term ramifications. In its letter, the ACLU emphasized that it was not asking the Judiciary to step into the role of the Legislature but instead asking for a correction of Court Rules in order to stop "exacerbating the problems and collateral consequences" of the marijuana laws by continuing the ban on plea agreements for minor possession cases. The ACLU asserted that marijuana arrests disproportionally impact defendants of color, stating that its studies have indicated white and black people use marijuana at roughly equal rates but African Americans are arrested at a rate 2.8 times higher than white people.

As with other disorderly persons offenses, defendants convicted under N.J.S.A. 2C:35-10(a)(4) are subject to a fine of up to $1,000.00, N.J.S.A. 2C:43-3(c), and a term of incarceration of up to six (6) months, N.J.S.A. 2C:43-8. These defendants are also assessed a $500 Drug Enforcement and Demand Reduction fee, N.J.S.A. 2C:35-15a(l)(c); and a $50 Laboratory fee, N.J.S.A. 2C:35-20a. Defendants convicted under N.J.S.A. 2C:35-10(a)(4) may also be subject to a driver's license suspension of between six months and two years, N.J.S.A. 2C:35-16; a loss of student financial aid; 20 U.S.C. 1091(r); a five-year ban from adoption, N.J.A.C. 10:122C-5.4(a)(8)(iii); deportation, 8 U.S.C. 1227(a)(2)(B)(i)[3]; eviction from public housing, Dep't of Hous. v. Rucker, 535 U.S. 125, 130 (2002); and immigration inadmissibility, 8 U.S.C. 1182(a)(2)(A)(i)(II).

Statistics from the Administrative Office of the Courts indicate that statewide in 2015 there were 26,207 case dispositions for N.J.S.A. 2C:35-10(a)(4) charges.

[3] Note that while there is an exception for 30 grams or less of marijuana possessed for personal use, this limit is lower than the 50 gram threshold under state law and the exception only applies to a first offense. 8 U.S.C. 1227(a)(2)(B)(i).

The Committee engaged in an extensive discussion of whether to recommend amending the appendix to permit plea agreements in minor marijuana possession cases. Several Committee members argued strongly that there is a need for more flexibility in these types of cases. One discussion focused on whether this modification of the appendix could be construed as undercutting the intent of the marijuana possession statute. A longtime Committee member, however, argued that the prohibition against plea bargaining is a procedural matter, not a substantive issue; it was the Supreme Court which originally enacted the ban on plea bargain and the Supreme Court which would reconsider this procedural issue once again.[4]

The Committee members also discussed Guideline 4's additional prohibitions against plea bargaining in other minor matters: being under the influence of a controlled dangerous substance or its analog, N.J.S.A. 2C:35-10(b), and use, possession or intent to use or possess drug paraphernalia, N.J.S.A. 2C:36-2. Both of these are disorderly persons offenses. The Committee considered recommending the removal of the prohibition against plea agreements in regard to these charges as well.

One member suggested that being under the influence of marijuana could perhaps be analogized to driving under the influence of alcohol and questioned whether this could begin a slippery slope toward allowing plea bargaining in DWI matters. However, numerous other members pointed out that the legislature has decriminalized being under the influence of alcohol. See, N.J.S.A. 26:2B-7, *et seq.* They noted that, further, the prohibition against being under the influence of marijuana is different from the prohibition in N.J.S.A. 39:4-50 against operating a vehicle under

[4] Note: The Court in State v. Hessen stated: "This Court has the prerogative and the power to limit plea bargaining in the municipal courts." State v. Hessen, 145 N.J. at 450 (1996). See also, State v. Brimage, 271 N.J. Super. 369, 379 (App. Div. 1994).

the influence, since the latter involves significant potential harm to others on the roadway.

One member noted that the suggestion to remove the ban on plea agreements for defendants charged with violations of N.J.S.A. 2C:35-10(b) and N.J.S.A. 2C:36-2 was broader than the initial request from the ACLU, which only addressed minor marijuana possession charges. In response, other members stated that it would be inconsistent to remove the prohibition against plea agreements for those charged with possession of small amounts of marijuana but to retain such a prohibition in charges involving being under the influence and possession of paraphernalia[5]. They pointed out that, unlike a DWI charge, these other charges did not involve operation of a vehicle and the attendant safety concerns. Several members posited that the ACLU may not have realized how similar these offenses were to possession of 50 grams or less of marijuana.

A judge on the Committee noted that the current plea bargaining restriction means that the court, prosecutor, and defendant are 'beholden' to the original charge, even if it would be more appropriate to prosecute a lower level charge, based on the facts and the law. A prosecutor on the Committee advocated for a lifting of the restriction on plea bargaining on all three charges, stating that fewer such restrictions would enable greater opportunities for justice.

[5] Some of the same consequences exist for convictions for these charges as for minor marijuana possession charges, e.g., convictions for violations of N.J.S.A. 2C:36-2, possessing drug paraphernalia, was found removable under 8 U.S.C.S. § 1227(a)(2)(B)(i). A "disorderly persons offense" under New Jersey law qualified as a "conviction" under the Immigration and Nationality Act, and the crime "related to" a controlled substance, as it was closely linked to the offense of possessing drugs. Hussein v. AG of the United States, 413 Fed. Appx. 431, 2010 U.S. App. LEXIS 25731 (3d Cir. 2010).

After a thorough and thoughtful discussion, the Committee members voted in favor of removing the ban against plea bargaining from Guideline 4 for N.J.S.A. 2C:35-10(a) (4), N.J.S.A. 2C:35-10(b), and N.J.S.A. 2C:36-2.

In a separate issue, one member noted that Guideline 4 had not previously been amended to expressly include the holding of State v. Hessen, in which the Court determined that a ban on plea bargaining on DWI matters in Guideline 4 should also include a ban on plea bargaining for defendants who permit an intoxicated person to drive. State v. Hessen, 145 N.J. at 459. The DWI statute, N.J.S.A. 39:4-50(a), includes permitting within the description of DWI:

> "…a person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood or ***permits*** another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or ***permits*** another to operate a motor vehicle with a blood alcohol concentration of 0.08% …" [emphasis added]

The Court stated in State v. Hessen, 145 N.J. at 459:

> The policies behind our prohibition on plea agreements are as readily applicable to those who allow an intoxicated person to drive as they are to the driver. Both are responsible for the "senseless havoc" of drunk driving. In the eyes of the law there is no distinction in culpability or punishment between drunk drivers and those who allow the drunk to drive. The Guideline that prohibits plea bargaining in all drunk-driving cases recognizes no distinction between the two offenders.

The members voted in favor of amending Guideline 4 to include a ban against plea bargaining in 'permitting DWI' matters. The full text of the approved language is provided below.

APPENDIX TO PART VII

GUIDELINES FOR OPERATION OF PLEA AGREEMENTS IN THE MUNICIPAL COURTS OF NEW JERSEY

GUIDELINE 1. No change.

GUIDELINE 2. No change.

GUIDELINE 3. No change.

GUIDELINE 4. Limitation. No plea agreements whatsoever will be allowed in [drunken driving or certain drug offenses.

Those offenses are:

A. D]driving or permitting another to drive while under the influence of liquor or drugs (N.J.S.A. 39:4-50) offenses. [and

B. Possession of marijuana or hashish (N.J.S.A. 2C:35-10a(4)), being under the influence of a controlled dangerous substance or its analog (N.J.S.A. 2C:35-10b), and use, possession or intent to use or possess drug paraphernalia, etc. (N.J.S.A. 2C:36-2).]

No plea agreements will be allowed in which a defendant charged for a violation of N.J.S.A. 39:4-50 with a blood alcohol concentration of 0.10% or higher seeks to plead guilty and be sentenced under section a(1)(i) of that statute (blood alcohol concentration of .08% or higher, but less than 0.10%).

If a defendant is charged with a second or subsequent offense of driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50) and refusal to provide a breath sample (N.J.S.A. 39:4-50.2) arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50 offense, the judge, on recommendation of the prosecutor, may dismiss the refusal charge. A refusal charge in connection with a first offense N.J.S.A. 39:4-50 charge shall not be dismissed by a plea agreement, although a plea to a concurrent sentence for such charges is permissible.

Except in cases involving an accident or those that occur when school properties are being utilized, if a defendant is charged with driving while under the influence of liquor or drugs (N.J.S.A. 39:4-50(a)) and a school zone or school crossing violation under N.J.S.A. 39:4-50(g), arising out of the same factual transaction, and the defendant pleads guilty to the N.J.S.A. 39:4-50(a) offense, the judge, on the recommendation of the prosecutor, may dismiss the N.J.S.A. 39:4-50(g) charge.

[If a defendant is charged with more than one violation under Chapter 35 or 36 of the Code of Criminal Justice arising from the same factual transaction and pleads guilty to one charge or seeks a conditional discharge under N.J.S.A. 2C:36A-1, all remaining Chapter 35 or 36 charges arising from the same factual transaction may be dismissed by the judge on the recommendation of the prosecutor.]

Nothing contained in these limitations shall prohibit the judge from considering a plea agreement as to the collateral charges arising out of the same factual transaction connected with any [of the above enumerated offenses in Sections A and B of this Guideline] driving or permitting another to drive under the influence of alcohol or drugs offense. (N.J.S.A. 39:4-50).

The judge may, for certain other offenses subject to minimum mandatory penalties, refuse to accept a plea agreement unless the prosecuting attorney represents that the possibility of conviction is so remote that the interests of justice requires the acceptance of a plea to a lesser offense.

Note: Guidelines and Comment adopted June 29, 1990, simultaneously with former Rule 7:4-8 ("Plea Agreements") to be effective immediately; as part of 1997 recodification of Part VII rules, re-adopted without change as Appendix to Part VII and referenced by Rule 7:6-2 ("Pleas, Plea Agreements"), October 6, 1997 to be effective February 1, 1998; Guideline 4 amended July 5, 2000 to be effective September 5, 2000; Guidelines 3 and 4 amended July 28, 2004 to be effective September 1, 2004; Guideline 4 amended June 7, 2005 to be effective July 1, 2005; Guideline 4 amended June 15, 2007 to be effective September 1, 2007; Guideline 3 amended July 16, 2009 to be effective September 1, 2009; Guideline 4 amended _____ to be effective _____.

B. Contempt of Court, Rules 7:8-12; 7:9-5; 1:2-4

The Committee was asked to consider a report ("Contempt Report") drafted by the Contempt of Court Work Group, comprised of members of the Conference of Presiding Judges – Municipal Courts, the Conference of Municipal Division Managers and representatives from the AOC on the issue of contempt of court sanctions in municipal courts. The Contempt Report addressed the practice in many municipal courts of judges imposing monetary sanctions on defendants who fail to appear in court for a hearing or fail to pay penalties imposed after conviction. An evaluation of the practice in municipal courts by the members of the Contempt of Court Working Group indicated that municipal court judges who impose monetary sanctions for failure to appear or pay oftentimes do not follow the procedures outlined in Court Rules 1:10-1 and -2 and therefore, these rules do not provide a legal basis for the practice.

Additionally, the Contempt Report explained that while Rule 1:2-4 permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding, that rule states that the amount should be paid to the "Treasurer, State of New Jersey." However, in practice, amounts collected for 'contempt of court' in the municipal courts are distributed to the municipality. The Contempt Report also noted that Rule 1:2-4 provides inadequate direction to the municipal courts in imposing monetary sanctions on defendants in that it provides no standards by which a judge should determine the amount of the sanction, nor any limit on that sanction.

The Contempt Report acknowledged that municipal courts have an interest in ensuring that defendants appear for their court dates and satisfy their monetary

obligations in a timely manner. The report noted that the majority of defendants attend their court hearings and pay their fines as ordered; however, the municipal courts spend much time and money tracking defendants who fail to appear or fail to pay. It was deemed appropriate that municipal courts impose modest sanctions to encourage defendants to appear when ordered and pay their fines and assessments when due, as part of the orderly administration of the municipal courts. The Contempt Report asserted, however, that excessive and unregulated sanctions disadvantage low-income defendants and can create a cycle of court debt, from which low-income defendants may find it difficult to extricate themselves. Such sanctions can also discourage defendants from appearing in court, fearing the imposition of heavy penalties.

To rectify these concerns, the Contempt Report included recommendations for the adoption of two new Part VII court rules: Rule 7:8-X, 'Sanctions; Failure to Appear;' and Rule 7:8-Y, 'Failure to Pay.' These draft rules authorized sanctions for failure to appear and to pay, but regulated the amount that may be assessed. The maximum sanctions recommended for failure to appear were: $25 for parking matters and $50 for all other matters, except for consequence of magnitude cases, where the aggregate sanction cannot exceed $100. The maximum sanction for failure to pay would be capped at $50. The Contempt Report also included a recommended conforming amendment to Rule 1:2-4, 'Sanctions.'

The Committee members engaged in an extensive discussion of the Contempt Report and the draft rules proposed therein. The members acknowledged that statewide variability in the application of contempt sanctions, conducted without proper procedural protections for defendants, was a matter of significant concern and

should be addressed. However, several members advocated that the draft rule language in the Contempt Report be modified to permit judges to retain discretion to impose higher contempt amounts for failure to appear in serious cases such as DWI, rather than set a monetary limit. In response, others explained that the overuse of contempt sanctions and the variability in the amount of such sanctions imposed on defendants for failure to appear and failure to pay were engendered by the use of unfettered discretion by municipal court judges in this area. Consequently, clear limits were required.

After a thorough analysis, the Committee voted to recommend two new Part VII Court Rules, as well as a conforming Part I Court Rule amendment. These two new rules and amended rule are provided below.

Failure to Appear

Rule 7:8-12 Sanctions; Failure to Appear (new rule)
(a) Failure to Appear--Attorneys. If without just cause or excuse or because of failure to give reasonable attention to the matter, an attorney fails to appear on behalf of a party at a trial, hearing or other scheduled municipal court proceeding, or if the attorney fails to make a timely application for adjournment, the municipal court judge may order any one or more of the following: (a) the attorney to pay a monetary sanction in such an amount as the court shall fix, to the municipal court administrator made payable to the municipality in which the offense occurred; (b) the attorney to pay the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counter-claim or motion or the granting of the motion; or (d) such other action as it deems appropriate.

(b) Failure to Appear --Defendants.
(1) In General. If without just cause or excuse, a defendant, who is required to appear at a trial, hearing or other scheduled municipal court proceeding, fails to appear, the municipal court judge may order defendant to pay a monetary sanction based on the following factors:
a) defendant's history of failure to appear
b) defendant's criminal and offense history
c) the seriousness of the offense

d) the inconvenience to the defendant's adversary and to witnesses called by the parties.
The judge shall state the reasons for the sanction on the record.

(2) Maximum Sanction. For non-consequence of magnitude cases, the aggregate sanction per case shall not exceed $25 for parking offenses and $50 for all other matters. For consequence of magnitude cases, the aggregate sanction per case shall not exceed $100. If, however, the defendant failed to appear and refused to explain or offered a frivolous or clearly inadequate explanation, the judge may impose a greater monetary sanction by holding the defendant in contempt of court under R. 1:10-2, and according the defendant all the protections outlined in that rule.

(3) Calculation of Sanction. When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

(4) Payment of Sanction. The sanction shall be submitted to the municipal court administrator made payable to the municipality where the offense occurred.

Adopted _____to be effective _____.

Failure to Pay

Rule 7:9-5, Failure to Pay (new rule)
Failure to Pay. If without just cause or excuse, a defendant defaults on payment of a municipal court imposed financial obligation, the judge, on the record, may order the defendant to pay an aggregate monetary sanction per time payment order not to exceed $50. The sanction shall be submitted to the municipal court administrator made payable to the municipal court. This sanction shall be in addition to any other penalty imposed by statute or rule for failure to pay.

Adopted _____to be effective _____.

Conforming Rule Amendment

Rule 1:2-4. Sanctions: Failure to Appear; Motions and Briefs

(a) Failure to Appear. Except as provided in R. 7:8-12, [I]if without just excuse or because of failure to give reasonable attention to the

matter, no appearance is made on behalf of a party on the call of a calendar, on the return of a motion, at a pretrial conference, settlement conference, or any other proceeding scheduled by the court, or on the day of trial, or if an application is made for an adjournment, the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, to the Clerk of the Court made payable to "Treasurer, State of New Jersey," or to the adverse party; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

(b) No change

Note: Source - R.R. 1:8-5, 4:5-5(b) (second sentence), 4:5-10(e), 4:6-3(b), 4:29-1(c), 4:41-6. Amended June 20, 1979 to be effective July 1, 1979; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended to be effective .

III. RULE AMENDMENTS CONSIDERED AND REJECTED

A. Motion to suppress, Rule 7:5-2

An attorney who frequently practices in municipal court wrote to the Committee requesting the members consider an amendment to Rule 7:5-2(b) which would require briefs be filed by the attorneys where there is a motion to suppress when a search has been conducted without a warrant.

Currently, Rule 7:5-2(b) provides that if a search was made without a warrant, "written briefs in support of and in opposition to the motion to suppress shall be filed either voluntarily or in the discretion of the judge, who shall determine the briefing schedule." In his request, the attorney noted that the Part VII rule on motions to suppress differs from the Part III Criminal Rule, Rule 3:5-7, in that Rule 3:5-7(b) requires briefs from the State and defense counsel in motions to suppress both in matters where there is a search warrant and matters where there is not.

The Committee recognized that the rule as currently drafted permits judges to request briefs in cases in which they would be deemed helpful. The Committee noted that most municipal prosecutors still serve on a part-time basis and adding a mandatory brief in all motions to suppress would create an undue and unnecessary burden.

Accordingly, the Committee voted unanimously to reject a rule change that would require briefs to be filed in municipal court on all motions to suppress.

B. Personal service, Rule 7:7-8(e)

An attorney who practices in Municipal Court asked the Committee to consider an amendment to the personal service for subpoenas rule, Rule 7:7-8, to allow for alternative methods of service to law enforcement officials. In support of his request, the attorney explained that law enforcement officers and their families may not appreciate personal service to the law enforcement officer's home. He suggested that such service could subject that officer and his/her family to unwanted attention by defendants and others who may have an interest in some particular case the law enforcement officer is handling.

The attorney suggested that Rule 7:7-8(e), "Personal Service" be amended to add the following: "<u>If the person being subpoenaed to testify is a law enforcement or governmental official, said person may be served by delivering a copy of the subpoena to the law enforcement agency or office employing said person</u>."

The Committee members determined that it would not be advisable to abandon direct personal service for a certain category of individuals. The members concluded that there would be significant concerns involved in leaving a subpoena at anyone's place of business, particularly that of a law enforcement officer. State law enforcement officers, for example, move frequently between different barracks.

Accordingly, the Committee unanimously voted to deny the request to amend Rule 7:7-8(e) to permit a subpoena to be served by delivering a copy to the office of the law enforcement officer.

C. Appearance of a defendant, Rule 7:8-7(a)

An attorney wrote to the Committee asking for an amendment to Rule 7:8-7(a), the first appearance rule. He suggested that waiver be permitted upon a showing of good faith made in writing by defense counsel that the matter will not be able to be moved on the day in question and the reason(s) why. He suggested that if the court refuses to grant the requested waiver of the defendant's appearance, that the State should likewise be required to have any and all witnesses present so the matter may be moved on the scheduled court date.

The Committee considered how Rule 7:8-7(a) incorporates a defendant's right to be present, one of the means by which the witness-confrontation guarantees of the United States and New Jersey Constitutions are implemented. See State v. Hudson, 119 N.J. 165, 171 (1990). In general, therefore, the municipal judge may not conduct a trial in the absence of the defendant.

Court Rule 7:8-7(a) provides that a defendant shall appear at a municipal court proceeding through his/her attorney, unless otherwise permitted by the court:

> Except as otherwise provided by Rules 7:6-1(b), 7:6-3, or 7:12-3, the defendant shall be present, either in person, or by means of a video link as approved by the Administrative Office of the Courts, at every stage of the proceeding and at the imposition of sentence.

After discussion of State v. Hudson concerns in light of the attorney's letter, the Committee voted unanimously to not recommend such an amendment.

D. Form of process, Rule 7:2-1(b)

A private citizen requested that the Committee recommend a modification to Rule 7:2-1(b) that would expressly require municipal courts to use a standard form for citizen complaints. The citizen stated that he recently asked a municipal court for a copy of a citizen complaint against a police officer for which no probable cause was found. He said he was told there was no official complaint (a CDR or special form of complaint) on file, but rather a locally produced form with handwritten notations. The citizen asserted that a Court Rule amendment could prevent a situation in which a court official received a citizen complaint but does not fill out an official complaint form if no probable cause was found by the judge and suggested the following addition to Rule 7:2-1(b):

> (b) Acceptance of Complaint. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person[.] upon a CDR-1, CDR-2 or other form prescribed by the Administrative Office of the Courts.

Several Committee members stated that the required procedure in municipal courts, pursuant to guidance issued by the Acting Administrative Director of the Courts, is for the judicial officer to complete a complaint form for every citizen complaint submitted to the court, before the complaint has a probable cause determination made. As such, if this particular municipal court did not follow the required procedure regarding the filling out of that complaint, this is an issue which should be addressed through mentorship and training.

An AOC representative noted that under Rule 1:38, such complaints for which no probable cause are found are retained and open to public access. See, Administrative Determinations by the Supreme Court on the Report and

Recommendations of the Supreme Court Special Committee on Public Access to Court Records 7 (July 22, 2009)[6].

Moreover, the members noted that the lone situation described by the letter-writer has not been reported as a matter of concern in the municipal courts.

Accordingly, the members unanimously voted to not amend Rule 7:2-1(b) as requested.

[6] The Administrative Determinations by the Supreme Court on the Report and Recommendations of the Supreme Court Special Committee on Public Access to Court Records may be found at https://www.judiciary.state.nj.us/pressrel/AlbinCommitteeRule_138AdministrativeDeterminations_by_the_Supreme_Court.pdf

E. Rule to parallel Rule 3:10-3, allowing an expert who did not conduct a test to testify at trial

A Municipal Presiding Judge who is a former member of the Committee asked the members to consider drafting a Part VII Court Rule to parallel Rule 3:10-3, which would provide a procedure to allow an expert witness who did not conduct a test submitted into evidence to testify at trial. Rule 3:10-3 is set forth below:

> Rule 3:10-3. Notice by the State -- Expert Witness Testimony When Testifying Expert Did Not Participate in Underlying Tests
>
> (a) Notice by the State. Whenever the State intends to call an expert witness to testify at trial and that expert witness did not conduct, supervise, or participate in a scientific or other such test about which he or she will testify, the State shall serve written notice upon the defendant and counsel of intent to call that witness, along with a proffer of such testimony, all reports pertaining to such testimony, and any underlying tests, at least 20 days before the pretrial proceeding begins, or at least 20 days before the pretrial conference. If extenuating circumstances exist, the State may file the notice after this deadline. For purposes of this rule the term "test" shall include any test, demonstration, forensic analysis or other type of expert examination.
>
> (b) Objection by the Defendant. If the defendant intends to object to the expert testimony, the defendant shall serve written notice upon the State of any objection within 10 days of receiving the State's notice of intent. In the defendant's notice of objection, he or she must specify the grounds for such objection, including any Confrontation Clause grounds under either the United States or New Jersey State Constitution.
>
> (c) Determination. Whenever a defendant files a notice of objection specifying the grounds for objection, the court shall decide admissibility of the testimony on the grounds alleged no later than seven days before the beginning of trial.
>
> (d) Failure to Comply With Time Limitations. The defendant's failure to file a notice of objection within the timeframe required by this rule shall constitute a waiver of any objection to the admission of the expert testimony. The defendant's failure to specify a particular ground for such objection shall constitute a waiver of any ground not specified. The State's failure to file a notice of intent within the timeframe required by this rule shall for good cause shown extend the time for defendant to object pursuant to paragraph (b) and for the court to decide admissibility of the testimony pursuant to paragraph (c). In any event, the court may take such action as the interest of justice requires.
>
> (e) Time Limitations. The time limitations set forth in this rule shall not be relaxed except upon a showing of good cause.

Several members expressed concern regarding constitutional confrontation issues involved in allowing a witness who did not prepare a report to testify as to the substance of the report. See, U.S. Const. amend. VI; N.J. Const., art. I, para. 10; Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177 (2004) (Court held that cross-examination is required to admit prior testimonial statements of witnesses who have since become unavailable).

Several members questioned whether allowing a witness who did not conduct a test to testify could limit the ability to conduct a meaningful cross-examination. Another member countered with the suggestion that if such a rule were passed, a N.J.R.E. 104(a)[7] hearing conducted on the day of trial could resolve any evidentiary issues regarding the testifying witness. In response, other members suggested that increased use of N.J.R.E. 104(a) hearings could extend and unnecessarily complicate municipal court proceedings, perhaps turning one-day trials into multi-day events.

The members discussed recent case law involving testimonial evidence by experts, including State v. Michaels, 219 N.J. 1 (2014); State v. Roach, 219 N.J. 58 (2014), cert. denied, 135 S. Ct. 2348, 192 L. Ed. 2d 148 (2015); State v. Bass, 224 N.J. 285 (2016); and State v. Kuropchak, 221 N.J. 368 (2015).

The consensus of the members was that in light of the very recent case law involving various aspects of this issue, which may further evolve, it would not be the appropriate time to craft a Municipal Court Rule on the topic. The members therefore voted to not draft or amend a rule addressing this issue.

[7] N.J.R.E. 104(a) provides: "When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, that issue is to be determined by the judge."

IV. MATTERS HELD FOR FURTHER CONSIDERATION

A. Modification of waiver of first appearance and arraignment procedures, Rule 7:6-1

A member of the Committee, an experienced municipal court practitioner, requested that the Committee consider a court rule amendment removing discretion from municipal courts in granting a waiver of first appearance and arraignment. The member explained that in his experience, certain municipal courts would regularly refuse to grant first appearance or arraignment waivers for represented defendants and would instead routinely require defendants to appear in person. The member suggested that Rule 7:6-1(b) be modified to remove the discretion of the court in granting waiver by written statement by deleting the phrase "unless the court otherwise orders," as follows:

> 7:6-1. Arraignment
>
> (a) Conduct of Arraignment. Except as otherwise provided by paragraph (b) of this rule, the arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling upon the defendant, after being given a copy of the complaint, to plead thereto. The defendant may waive the reading of the complaint.
>
> (b) Written Statement. A defendant who is represented by an attorney and desires to plead not guilty may do so[, unless the court otherwise orders,] by the filing, at or before the time fixed for arraignment, of a written statement, signed by the attorney, certifying that the defendant has received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant, that the defendant understands the substance of the charge, and that the defendant pleads not guilty to the charge.

The members discussed whether, if the rule were to be amended, additions should be included to reiterate the rights that should be conveyed to a defendant. The Committee Chair and members also questioned how procedures on waiver of first appearance should be coordinated with other sections of the Part VII Court

Rules which address first appearances, i.e., Rule 7:3-1, 7:3-2, 7:8-10, and whether an amendment of Rule 7:6-1 alone was appropriate.

The Committee agreed to continue discussion of potential amendments to the Part VII Court Rules regarding procedures for waiver of first appearance/arraignment at future meetings, with resolution of the issue carried.

B. Referrals from the Supreme Court – Order of December 6, 2016

By Order dated December 6, 2016, the Court referred the following issues related to Criminal Justice Reform to the Committee[8] for consideration and potential recommendations regarding the Part VII Court Rules:.

1. The Rule 1:38-3 relaxation regarding Pretrial Services Program;
2. The supplemental inclusion of juvenile defendants within the categories of "defendant" and "eligible defendant" when the juvenile defendant's complaint is transferred to adult status and the juvenile defendant is remanded to a juvenile detention facility, jail, or other detention facility;
3. The supplementation and relaxation of the Part VII Court Rules such that no statement or other disclosure, written or otherwise, made or disclosed by the defendant to the Pretrial Services Program may be used at any stage of the matter for any purpose, except (a) for purposes specifically provided for under the Rules of Court, or (b) in the prosecution of fraudulently obtaining pretrial release or the services of the Public Defender.

As it was not possible for the Committee to consider these issues prior to the submission of this report, these matters are carried until a future meeting.

[8] The Court concurrently referred these issues to the Criminal Practice Committee.

V. CONCLUSION

The members of the Municipal Court Practice Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Respectfully submitted:

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SUPPLEMENTAL REPORT OF THE SUPREME COURT COMMITTEE ON MUNICIPAL COURT PRACTICE

2015 - 2017 TERM

August 30, 2017

TABLE OF CONTENTS

I. INTRODUCTION

The Municipal Court Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed new rules contained in this supplemental report.

II. REVISED RULES RECOMMENDED FOR ADOPTION

This report submits for the Court's consideration two proposed Court Rules which provide limits on the monetary sanctions municipal courts may impose on defendants who fail to appear in court or fail to pay their obligations – Rule 7:8-12 (Sanctions: Failure to Appear) and Rule 7:9-5 (Failure to Pay).

These proposed rules were previously presented to the Court by the Committee in its report dated February 1, 2017. At the June 27, 2017 Supreme Court Administrative Conference, the Court took no action on these two rules; it was indicated that the rules may benefit from minor modifications to achieve greater clarity.[1]

A. Background

As set forth in the February 1, 2017 report, these issues were initially brought before the Committee when the members were asked to consider a report (Contempt Report) drafted by the Contempt of Court Working Group. The Contempt of Court Working Group was comprised of members of the Conference of Presiding Judges – Municipal Courts, the Conference of Municipal Division Managers and representatives from the AOC. The Contempt Report addressed the practice in many municipal courts of judges imposing monetary sanctions on defendants who fail to appear in court for a hearing or fail to pay penalties imposed after conviction. An evaluation of the practice in municipal courts by the members of the Contempt of Court Working Group indicated that municipal court judges who impose monetary sanctions for failure to appear or pay oftentimes do not follow

[1] It was determined that the proposed conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs) as set forth in the Committee's February 1, 2017 report will be submitted to the Civil Practice Committee, which considers amendments to the Part I rules.

the procedures outlined in Court Rules 1:10-1 and -2 and therefore, these rules do not provide a legal basis for the practice.

Additionally, the Contempt Report stated that while Rule 1:2-4 permits a court to impose a monetary sanction on an attorney or party who, without just excuse, fails to appear for a court proceeding, that rule provides that the amount should be paid to the "Treasurer, State of New Jersey." However, in practice, amounts collected for 'contempt of court' in the municipal courts are distributed to the municipality. The Contempt Report also noted that Rule 1:2-4 provides inadequate direction to the municipal courts in imposing monetary sanctions on defendants, in that it provides no standards by which a judge should determine the amount of the sanction, nor any limit on that sanction.

The Contempt Report acknowledged that municipal courts have an interest in ensuring that defendants appear for their court dates and satisfy their monetary obligations in a timely manner. The report noted that the majority of defendants attend their court hearings and pay their fines as ordered; however, the municipal courts spend considerable time and money tracking defendants who fail to appear or fail to pay. It was deemed appropriate that municipal courts impose modest sanctions to encourage defendants to appear when ordered and pay their fines and assessments when due, as part of the orderly administration of the municipal courts. The Contempt Report asserted, however, that excessive and unregulated sanctions disadvantage low-income defendants and can create a cycle of court debt, from which low-income defendants may find it difficult to extricate themselves. Such sanctions can also discourage defendants from appearing in court, fearing the imposition of heavy penalties.

To rectify these concerns, the Contempt Report included recommendations for the adoption of two new Part VII Court Rules: Rule 7:8-X (Sanctions; Failure to Appear); and

Rule 7:8-Y (Failure to Pay). These draft rules authorized sanctions for failure to appear and to pay, but regulated the amount that may be assessed. The maximum sanctions recommended for failure to appear were: $25 for parking matters and $50 for all other matters, except for consequence of magnitude cases, where the aggregate sanction cannot exceed $100. The maximum sanction for failure to pay would be capped at $50. The Contempt Report also included a recommended conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs) which cross-referenced the proposed new Part VII rules.

The Committee members engaged in an extensive discussion of the Contempt Report and the draft rules proposed therein. The members acknowledged that statewide variability in the application of contempt sanctions, conducted without proper procedural protections for defendants, was a matter of significant concern and should be addressed. However, several members advocated that the draft rule language in the Contempt Report be modified to permit judges to retain discretion to impose higher contempt amounts for failure to appear in serious cases such as DWI, rather than set a monetary limit. In response, others explained that the overuse of contempt sanctions and the variability in the amount of such sanctions imposed on defendants for failure to appear and failure to pay were engendered by the use of unfettered discretion by municipal court judges in this area. Consequently, clear limits were required.

After a thorough discussion, the Committee proposed two new rules to provide limitations on the monetary sanctions which courts may impose on defendants who fail to appear in court or fail to pay their obligations – Rule 7:8-12 (Sanctions: Failure to Appear) and Rule 7:9-5 (Failure to Pay), and a conforming amendment to Rule 1:2-4 (Sanctions: Failure to Appear; Motions and Briefs). To great degree, these proposed rules tracked

those set forth in the Contempt Report. After the Court reviewed the rules at the June 27, 2017 Supreme Court Administrative Conference and chose to take no action, the Committee was directed to undertake further review with the goal of providing greater clarity.

B. Revisions

Several minor modifications have been included in the revised Rule 7:8-12, Failure to Appear. These include the addition of indented, numbered subsections in Rule 7:8-12(b). These highlight for the reader more clearly the factors a court should consider in evaluating the amount of monetary sanction for failure to appear that a court may impose upon a defendant (within the monetary limits set forth in the proposed rule). Additionally, Rule 7:8-12(b)(3) was slightly revised to further emphasize that a judge may only impose a sanction for contempt in an amount higher than that the limits set forth in the rule if the procedures and legal standards of Rule 1:10 are met. Finally, Rule 7:8-12(a) and (b)(5) were slightly modified to clarify that a payment made to a court for a sanction for failure to appear by an attorney or a defendant "shall be submitted to the municipal court to be disbursed to the municipality where the offense occurred" rather than (as originally drafted) "submitted to the municipal court administrator made payable to the municipality in which the offense occurred." This minor change more accurately reflects the established procedure for payment of all other municipal penalties in that the person paying money conveys it to the court, not directly to the ultimate recipient of the payment.

These two new, proposed rules are provided below.

Rule 7:8-12 Sanctions; Failure to Appear (new rule)

(a) Failure to Appear--Attorneys. If without just cause or excuse or because of failure to give reasonable attention to the matter, an attorney fails to appear on behalf of a party at a trial, hearing or other scheduled municipal court proceeding, or if the attorney fails to make a timely application for adjournment, the municipal court judge may order any one or more of the following:

(1) the attorney to pay a monetary sanction in such an amount as the court shall fix, submitted to the municipal court to be disbursed to the municipality where the offense occurred;

(2) the attorney to pay the reasonable expenses, including attorney's fees, to the aggrieved party;

(3) the dismissal of the complaint, cross-claim, counter-claim or motion or the granting of the motion; or

(4) such other action as it deems appropriate.

(b) Failure to Appear --Defendants.

(1) In General. If without just cause or excuse, a defendant, who is required to appear at a trial, hearing or other scheduled municipal court proceeding, fails to appear, the municipal court judge may order defendant to pay a monetary sanction based on the following factors:

(A) defendant's history of failure to appear

(B) defendant's criminal and offense history

(C) the seriousness of the offense

(D) the inconvenience to the defendant's adversary and to witnesses called by the parties.

The judge shall state the reasons for the sanction on the record.

(2) Maximum Sanction. For non-consequence of magnitude cases, the aggregate sanction per case shall not exceed $25 for parking offenses and $50 for all other matters. For consequence of magnitude cases, the aggregate sanction per case shall not exceed $100.

(3) Contempt of Court. The only means by which a judge may impose a higher sanction on a defendant for failure to appear is by complying with the procedures and legal standards set forth in R. 1:10.

(4) Calculation of Sanction. When a case includes multiple offenses, the maximum sanction shall be calculated solely on the most serious offense charged. Only one sanction may be imposed per case.

(5) Payment of Sanction. The sanction shall be submitted to the municipal court to be disbursed to the municipality where the offense occurred.

Adopted _____to be effective _____.

Rule 7:9-5, Failure to Pay (new rule)

Failure to Pay. If without just cause or excuse, a defendant defaults on payment of a municipal court imposed financial obligation, the judge, on the record, may order the defendant to pay an aggregate monetary sanction per time payment order not to exceed $50. The sanction shall be submitted to the municipal court administrator made payable to the municipal court. This sanction shall be in addition to any other penalty imposed by statute or rule for failure to pay.

Adopted _____to be effective _____.

III. CONCLUSION

The members of the Municipal Court Practice Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Respectfully submitted:

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Appendix N

Contempt of Court Assessments

	2015				2016				2017			
COUNTY	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE	TOTAL FILINGS	CONTEMPT CASES	TOTAL CONTEMPT	PER CASE AVERAGE
ATLANTIC	138,159	5,239	$338,791.07	$64.67	144,534	4,671	$264,112.30	$56.54	149,211	3,966	$217,225.05	$54.77
BERGEN	595,387	13,866	$412,038.00	$29.72	618,076	12,099	$380,714.50	$31.47	631,410	11,947	$402,310.00	$33.67
BURLINGTON	199,375	10,179	$1,127,556.01	$110.77	215,894	9,842	$1,075,836.92	$109.31	200,253	7,974	$880,957.93	$110.48
CAMDEN	345,738	7,297	$1,092,475.30	$149.72	341,480	4,945	$752,056.26	$152.08	338,368	3,933	$525,749.50	$133.68
CAPE MAY	78,719	1,301	$33,251.00	$25.56	74,607	1,242	$29,119.50	$23.45	75,530	860	$21,605.78	$25.12
CUMBERLAND	69,467	1,135	$86,570.70	$76.27	75,199	1,356	$112,632.42	$83.06	74,166	1,314	$105,699.60	$80.44
ESSEX	910,474	10,626	$475,589.88	$44.76	915,506	10,579	$857,000.51	$81.01	989,746	9,674	$449,528.80	$46.47
GLOUCESTER	125,051	4,880	$351,803.14	$72.09	133,283	4,551	$317,849.50	$69.84	130,046	4,132	$297,772.12	$72.06
HUDSON	986,992	11,544	$290,342.04	$25.15	1,067,443	11,609	$288,074.50	$24.81	1,138,304	11,908	$284,032.76	$23.85
HUNTERDON	56,409	533	$40,393.00	$75.78	55,309	396	$38,358.00	$96.86	59,986	382	$49,274.00	$128.99
MERCER	195,093	6,604	$580,642.07	$87.92	202,603	6,123	$583,842.75	$95.35	219,310	4,808	$484,284.45	$100.72
MIDDLESEX	393,685	12,011	$863,022.00	$71.85	417,893	10,222	$754,529.77	$73.81	425,335	8,926	$613,435.99	$68.72
MONMOUTH	330,268	11,894	$1,112,822.07	$93.56	344,023	11,029	$865,798.14	$78.50	351,125	9,574	$662,182.52	$69.16
MORRIS	205,172	5,181	$468,067.61	$90.34	209,561	4,373	$389,822.50	$89.14	207,738	4,004	$345,429.50	$86.27
OCEAN	183,849	2,686	$269,312.60	$100.27	178,259	2,239	$214,134.82	$95.64	175,644	1,253	$106,899.60	$85.31
PASSAIC	315,055	8,124	$251,577.50	$30.97	327,257	8,387	$265,402.50	$31.64	352,778	6,612	$254,813.50	$38.54
SALEM	26,054	574	$31,650.50	$55.14	25,209	607	$37,786.00	$62.25	26,787	417	$23,828.00	$57.14
SOMERSET	117,423	1,346	$72,834.95	$54.11	109,010	874	$64,259.50	$73.52	114,274	821	$62,367.00	$75.96
SUSSEX	32,072	976	$66,642.23	$68.28	30,801	798	$54,254.00	$67.99	31,541	510	$39,560.00	$77.57
UNION	369,910	7,596	$395,242.48	$52.03	379,451	5,855	$341,973.50	$58.41	401,941	5,377	$307,234.00	$57.14
WARREN	45,298	1,513	$72,556.46	$47.96	41,891	875	$40,388.05	$46.16	48,135	781	$26,987.06	$34.55
TOTAL	5,719,650	125,105	$8,433,180.61	$67.41	5,907,289	112,672	$7,727,945.94	$68.59	6,141,628	99,173	$6,161,177.16	$62.13

Appendix O

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE

RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 023
TRENTON, NEW JERSEY 08625-0023

MEMORANDUM

To: All Judges of the Municipal and Superior Courts

From: Stuart Rabner, Chief Justice

Re: Fines and Penalties in Municipal Court

Date: April 17, 2018

Each day, the fairness, independence, and integrity of the Judiciary are on display in courthouses throughout the State. The overwhelming majority of judges at all levels ensure that litigants are treated with respect and that their rights to due process and equal protection under the law are fully protected. A few recent events, though, highlighted some disturbing practices.

More than a year ago, court staff identified a problem in multiple municipal courts presided over by a single judge; he diverted fines against defendants in a way that generated more revenue for municipalities and less for the county. The Assignment Judge referred the matter to the Prosecutor's Office and the Advisory Committee on Judicial Conduct. In February, the former judge pleaded guilty to a fourth-degree crime of falsifying records. Pursuant to a plea agreement, he is barred from ever holding public office.

In another matter, a municipal court judge opened a court session by announcing that any fines imposed were due that day, and that any defendants who refused to pay would be sentenced to county jail. The judge later fined a defendant $239, including court costs. When the defendant said he could not make a payment that day, the judge -- without first conducting a hearing on the defendant's ability to pay -- sentenced him to five days in jail and had him arrested.

These rare incidents call to mind some troubling practices in other jurisdictions. They also remind us of certain basic principles and features of our justice system.

Judges occupy a unique position of authority. Our conduct and professionalism help shape the public's confidence in the court system. Not surprisingly, most

interactions between the public and the Judiciary take place in the municipal court system. As the Supreme Court has observed, millions of people who come into contact with municipal courts each year form their impressions of the justice system based primarily on those interactions. See State v. McCabe, 201 N.J. 34, 42 (2010). For most individuals, municipal court judges "are the face of the Judiciary." Ibid.

It is the court's responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. That means that each defendant is entitled to have his or her case decided on the merits; that any punishment imposed should reflect the defendant's conduct and history; and that incarceration should only be ordered if the circumstances of the case require it.

Certain related principles are equally straightforward. The imposition of punishment should in no way be linked to a town's need for revenue. And defendants may not be jailed because they are too poor to pay court-ordered financial obligations.

Decades ago, the United States Supreme Court held that defendants who fail to pay a fine or make restitution are entitled to a hearing to determine their ability to pay. See Bearden v. Georgia, 461 U.S. 660, 672 (1983). If a defendant "willfully refuse[s] to pay or fail[s] to make sufficient bona fide efforts legally to acquire the resources to pay," a judge may sentence the person to jail. Ibid. But if the defendant cannot pay despite good faith efforts, "the court must consider alternative measures of punishment other than imprisonment." Ibid. (emphasis added); see also N.J.S.A. 2B:12-23.1(a) ("[I]f a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing . . . , the court may order the person to perform community service in lieu of the payment of a penalty; or, order the payment of the penalty in installments for a period of time determined by the court."); State v. De Bonis, 58 N.J. 182, 196 (1971) ("[A] defendant may not be jailed merely because he cannot pay a fine in full at once."). The case law reflects a simple value: in a modern system of justice, people should not be sent to jail because they are too poor to pay a fine and do not have access to other resources.

Last year, I asked a group of judges and staff from the Superior and Municipal Courts, representatives of the Attorney General's Office and the New Jersey State League of Municipalities, practicing attorneys, and others to examine current laws and policies relating to municipal court. The Supreme Court Committee on Municipal Court Operations, Fines and Fees is ably led by Assignment Judges Julio Mendez and Lisa Thornton.

The Committee is finalizing a report that will be made public soon. It will bring to light additional concerns and offer practical suggestions to help start a larger discussion about our municipal court system. All of us can contribute to that conversation. I welcome your thoughts as we continue to work together to enhance the system of justice in our State.

cc: Justices of the Supreme Court
Hon. Glenn A. Grant, Acting Director, AOC
Steven D. Bonville, Chief of Staff
Directors and Assistant Directors
Trial Court Administrators
Municipal Division Managers
Municipal Court Directors and Administrators

Appendix P

MONMOUTH COUNTY

Judge falsified 4K records, steered money to 9 towns where he presided

Updated Feb 3, 2018;
Posted Feb 2, 2018

By Allison Pries, apries@njadvancemedia.com,
NJ Advance Media for NJ.com

A municipal court judge who worked in nine Monmouth County towns admitted to falsifying about 4,000 court records to redirect fines from county to municipal coffers.

Richard Thompson, 62, of Middletown, pleaded guilty Friday before Presiding Criminal Court Judge David F. Bauman to a single fourth-degree count of falsifying records in connection with his public office as a municipal judge, Monmouth County Prosecutor Christopher J. Gramiccioni said.

Thompson could face up to 18 months in prison, but his plea agreement calls for non-custodial probation and entitles him to apply to the Pre-Trial Intervention Program, an alternative for first time offenders that could remove the charge from their record if they meet all the requirements of the program.

Thompson admitted that between January 2010 and October 2015 he suspended fines for motor vehicle tickets and converted the charge to contempt of court so that the money would be paid to the municipalities for which he worked, depriving Monmouth County of more than $500,000 that it would be entitled to under state law.

Motor-vehicle fines are supposed to be split 50/50 between the county and municipality where they occurred. Contempt of court fines, though, go entirely to the town.

The plea deal Thompson took boiled the offenses into one count because "it was not necessary to take a plea to repeated counts of falsifying records when the conduct can legally be charged in one count by accusation," Monmouth County Prosecutor's Office spokesman Christopher Swendeman said.

"Even if we did charge multiple counts for each citation ... they all would have been merged for sentencing," he said.

"Thompson's conduct was likely to curry favor with the municipalities that continued to employ him as a judge, allowing him to retain his seat on the various municipal courts for many years," according to a press statement from the Monmouth County Prosecutor's Office.

The investigation did not find that Thompson was "personally enriched from the scheme," Swendeman said.

Thompson was suspended without pay Oct. 23, 2015 from his duties as judge in Bradley Beach, Colts Neck, Eatontown, Middletown, Neptune City, Oceanport, Rumson, Tinton Falls and Union Beach, by Monmouth County Assignment Judge Lisa P. Thornton.

"It's been a very difficult two years and three months for Mr. Thompson," defense attorney Charles J. Uliano said, "and he would like to thank his many friends in the legal community for their emotional support."

"It is regrettable that such a distinguished career should end in this way," Uliano said.

The Monmouth County Prosecutor's Office's Financial Crimes and Public Corruption Unit investigated Thompson for two years, and found he converted fines from motor vehicle citations to contempt of court sanctions when there was no legal basis to do so.

To conceal what he was doing, Thompson would make the change after the citizens and in some cases the attorneys had left the courtroom, the prosecutor said.

Contempt of court charges can be levied if a person fails to appear in court or disrupts proceedings. But the law requires that before someone may be held in contempt, they are given the opportunity to be heard.

Also per his plea deal, Thompson is forever disqualified from being a municipal court judge or holding any public employment.

Allison Pries may be reached at apries@njadvancemedia.com. Follow her on Twitter @AllisonPries. Find NJ.com on Facebook.

OFFICE OF THE MONMOUTH COUNTY PROSECUTOR

FALSIFYING RECORDS

JUDGE ADMITS SCHEME TO FALSIFY RECORDS

CHRIS SWENDEMAN — FEBRUARY 2, 2018

Scheme Steered Monies to Municipalities at the Expense of County Treasury

A former Monmouth County Municipal Court Judge has pleaded guilty to falsifying records in connection with a scheme of fixing municipal court dispositions to benefit several municipalities where he served as a judge, announced Monmouth County Prosecutor Christopher J. Gramiccioni.

Richard Thompson, 62, of Middletown, a former municipal court judge in nine Monmouth County municipalities, pleaded guilty this afternoon to one count of fourth degree Falsifying Records in connection with his public office as a municipal court judge. Appearing in court today before Presiding Criminal Court Judge David F. Bauman, Thompson admitted that on numerous occasions while presiding as a judge from January 2010 to October 2015, he suspended fines he issued in connection with the disposition of motor vehicle tickets and improperly converted those monies to contempt of court assessments. Thompson further admitted that the purpose of this scheme was to steer monies to the municipalities that employed him as a municipal court judge, and these actions deprived Monmouth County of monies it would otherwise be entitled to under state law.

Thompson was suspended from his judicial duties in Bradley Beach, Colts Neck, Eatontown, Middletown, Neptune City, Oceanport, Rumson, Tinton Falls and Union Beach by Monmouth County Assignment Judge Lisa P. Thornton on October 23, 2015.

A two-year investigation by this Office's Financial Crimes and Public Corruption Unit revealed that Judge Thompson suspended fines and converted monies to contempt of court in approximately 4,000 municipal court matters throughout his nine towns. To effectuate the scheme, Thompson improperly converted fines adjudged on motor vehicle citations to contempt of court sanctions when there was no legal basis to do so. In certain instances, Thompson would inaccurately state that a defendant issued a traffic citation was held in contempt of court, and write such findings on citations when there was no legal basis to do so. In an effort to conceal the scheme and prevent its detection, Thompson committed these acts after citizens and, in some cases, attorneys had already departed the courtroom.

New Jersey law permits a judge to hold an individual in contempt for various reasons including failure to appear before the court and disrupting court proceedings. The law further provides specific requirements that must be followed before a judge may hold someone in contempt of court, including giving the individual an opportunity to be heard.

According to state law, monetary fines levied in municipal court for motor vehicle offenses are split equally ("50-50") between the municipality and county. However, contempt of court fines are fully retained by municipalities. In instances where motor vehicle citations are issued by New Jersey State Police troopers, 100 percent of the monetary fines are given to the state treasury, according to the law.

Thompson's conduct unfairly benefitted the towns where he served at the expense of the county's treasury. As a result, between January 1, 2010 and the date of his suspension on October 23, 2015, Thompson unlawfully diverted more than half a million dollars in fine money from Monmouth County to the municipalities where he sat on the bench. As such, Thompson's conduct was likely to curry favor with the municipalities that continued to employ him as a judge, allowing him to retain his seat on the various municipal courts for many years.

"County residents who appear before judges do so with the rightful expectation that those entrusted with black robes will be honest and forthright, and uphold the highest principles of integrity. Our legal system depends on this public trust and confidence, and we reference judges as 'Your Honor' for this very reason. Thompson's persistent disregard for these principles, and manipulation of the municipal court system, betrayed this sacred trust," Gramiccioni stated.

Judge Thompson could face a sentence of eighteen months in prison, but his plea agreement calls for non-custodial probation and allows him to apply to the Pre-Trial Intervention (PTI) Program. As part of his plea, Thompson is forever disqualified from being a municipal court judge or holding any other public employment.

The case is assigned to Monmouth County Assistant Prosecutors Melanie Falco and Maria Franceschini.

Judge Thompson is represented by Charles Uliano, Esq., of Long Branch.

In November 2012, the Monmouth County Prosecutor's Office, under the leadership of Prosecutor Gramiccioni, launched a Corruption Tip Line designed to solicit the public's assistance in identifying and targeting corruption, fraud and misconduct occurring in local governmental agencies. Citizens may report concerns via the following: Monmouth County Prosecutor's Office Corruption Tip Line – 855-7-UNJUST (855 786-5878); or E-mail at: corruption@co.monmouth.nj.us write "Corruption/Misconduct Tip" in the subject line.

# # #

Appendix Q

NJ chief justice: Stop turning municipal courts into moneymakers

Kala Kachmar, @NewsQuip Published 7:04 p.m. ET April 17, 2018 | **Updated 4:00 p.m. ET April 18, 2018**

More than a year after an Asbury Park Press investigation (/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/) into municipal court fines exposed the pressures judges face to raise revenue, the state's chief justice has acknowledged the problem and says the issues are "disturbing" and "troubling."

Chief Justice Stuart Rabner, in a memo to all judges in the state, said a report from a committee he assembled in 2017 to examine the municipal court system is being finalized.

The memo comes on the heels of the conviction of former municipal court Judge Richard B. Thompson (/story/news/investigations/watchdog/government/2018/03/23/thompson-ticket-fixing-sentencing/450365002/). Thompson served nine Monmouth County towns but was convicted for a ticket-fixing scheme that allowed him to divert more than $500,000 that should have gone to the county instead of the towns he worked in.

MORE: Former Monmouth County municipal judge admits ticket-fixing (/story/news/investigations/watchdog/government/2018/02/02/judge-thompson-ticket-fixing/302010002/)

Details about the scheme, including the towns that were affected and the number of people whose records were changed, weren't made public by the Monmouth County Prosecutor's Office, which conducted the two-year investigation into Thompson's transgressions.

Watch the video above to see former Judge Thompson's sentencing in March.

Former Monmouth County municipal judge Richard B. Thompson is shown at the Superior Court Thursday, March 22, 2018, after he was accepted into the pretrial intervention program. He had pled guilty to charges that he falsified records as part of a five-year ticket-fixing scheme that funneled more than $500,000 to the municipalities that employed him. *(Photo: Thomas P. Costello)*

In February, Thompson pleaded guilty to fourth-degree falsifying records. In March, he was admitted into the state's pre-trial intervention program, meaning the charge will be dismissed and potentially expunged from his record after a year of good behavior.

"The imposition of punishment should in no way be linked to a town's need for revenue," Rabner wrote. "And defendants may not be jailed because they are too poor to pay court-ordered financial obligations."

Pay or be jailed

Rabner in his memo referred to another matter in which a young man, Anthony Kneisser, was jailed for not making a payment the day he was in court — without first conducting a hearing on his ability to pay. Rabner said it's the court's job to ensure justice is carried out "without regard to outside pressures."

READ: Inside the municipal court cash machine (/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/)

In May 2014, the 20-year-old Jackson resident went to municipal court in Burlington Township to ask for community service or a payment plan for a $239 littering ticket. He was issued the ticket for throwing a cigarette butt out his car window, the Press reported in a 2016 investigation into the impact municipal court fines have on the poor (/story/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/).

By the end of the day, he was jailed and had to ask his father to bail him out. It was the court's policy, posted on a sign outside the courtroom, that defendants who are fined must pay at least $200 on the day of the court appearance or be arrested.

Anthony Kneisser *(Photo: Contributed)*

In 2015, Kneisser, who was represented by attorneys with the American Civil Liberties Union (ACLU) of New Jersey, filed suit against the town, the court and the judge in federal court for wrongful imprisonment and for violating his constitutional rights.

On Tuesday, U.S. District Judge Noel L. Hillman issued an opinion that will allow Kneisser's case to proceed to trial. He notes that the practice of jailing individuals for failure to pay "effectively extorts payment from the family or friends of those indigent defendants and violates their rights every step of the way by converting a fine-only penalty into punitive incarceration."

The practice also ignores that defendants haven't waived their right to counsel relating to a jail sentence, he wrote.

INVESTIGATION: Municipal courts slam poor hardest (/story/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/)

“The Burlington Township Municipal Court was acting like a modern-day debtors’ prison, and this ruling validates the constitutional concerns their actions raised,” Alexi Velez, an attorney with the ACLU of New Jersey said in a statement released Tuesday. “This decision is a big victory for civil liberties. Judge Hillman made clear that municipal courts cannot trample on poor people’s constitutional rights by prioritizing collecting money over dispensing justice.”

Municipal courts, which pull in tens of millions of dollars each year for local towns and collect millions more for the state, disproportionally punish low-income defendants with high-cost fines, Valez told the Press in 2016.

The inability to pay even small fines have led to jail time in many local courts, mostly for the indigent and working poor, the Press investigation found.

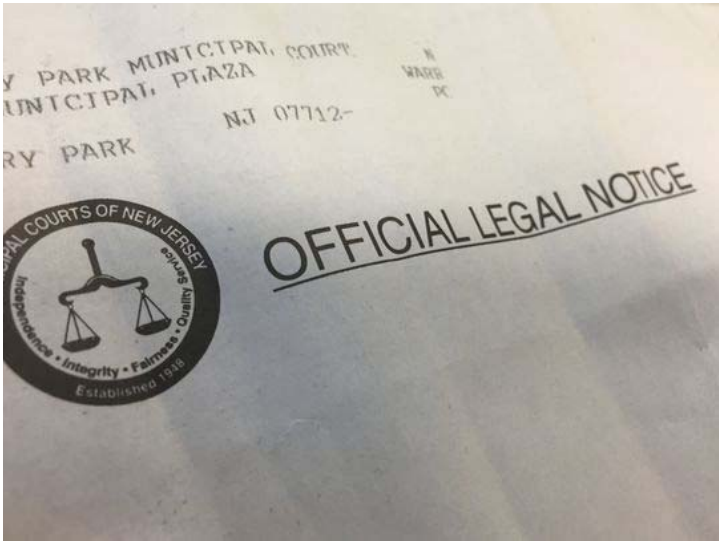
At the end of November 2016, 53 people sat in Monmouth County Jail and two in Ocean County Jail for failure to pay at least one fine.

An arrest warrant can be issued if an individual refuses to pay a fine or misses a payment, but they're not mandatory and can be issued at a judge's discretion.

Turning to the law for cash

The 2016 Press investigation (/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/) into the municipal court 'cash machine' found that cash-strapped towns often turn to the law for new revenue, especially in small Shore localities where court revenue doubled from 2010 to 2015.

Towns have the power to pass new rules or increase fines on old ones. Municipalities first enforce the higher fines through their police forces, then send the defendant to their local courts — headed by judges appointed by town leaders who started the revenue quest in the first place.



Asbury Park earned $1.4 million in municipal court revenue in 2015. *(Photo: Kala Kachmar)*

Municipal courts in New Jersey have to make enough money to pay for themselves, but experts during the Press investigation said municipalities and judges straddle the ethical line when excess court revenue is used to offset town expenses and property taxes.

In a May 2015 report from the New Jersey Bar Association on judicial independence, a panel of legal professional pointed out the need to study pressure on municipal judges to generate money for towns. Guilty findings — and the imposition of fines — could serve to assure a continuation of a municipal judge's position, the report said.

MORE: Lawmakers discuss reforming (/story/news/investigations/watchdog/government/2016/12/21/municipal-court-reform-discussion/95654534/)municipal (/story/news/investigations/watchdog/government/2016/12/21/municipal-court-reform-discussion/95654534/) court system (/story/news/investigations/watchdog/government/2016/12/21/municipal-court-reform-discussion/95654534/)

A subcommittee assembled by the Bar Association in 2016 to study municipal fines and the pressures judges face found in its 2017 report that budgetary needs of municipalities and the need for revenue to be generated "along with a pervasive bias toward the police" cannot continue to be the focus of municipal courts.

The public perception of municipal courts has been "eroded" and there is a lack of confidence in the "fundamental fairness in the adjudication of cases."

Rabner's committee on municipal court operations, fines and fees includes judges and staff from both municipal and superior courts, attorneys, representatives from the attorney general's office and the state's League of Municipalities. He said it will "bring to light" concerns and offer practical suggestions to "start a larger discussion about our municipal court system."

Kala Kachmar: @NewsQuip; 732-749-2238; kkachmar@gannettnj.com

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Appendix R

SUPREME COURT OF NEW JERSEY
D-14 September Term 2007

FILED

NOV 05 2007

IN THE MATTER OF

HENRY G. BROOME, JR.,

JUDGE OF THE MUNICIPAL COURT.

: ORDER

This matter having come before the Court on a presentment from the Advisory Committee on Judicial Conduct that concludes that **HENRY G. BROOME, JR., Judge of the Municipal Courts of Absecon, Brigantine, Egg Harbor City, Linwood, Mullica Township, Northfield, and Somers Point**, had violated Canons 1 (a judge should observe high standards of conduct), 2A (a judge should respect and comply with the law), 3A(1) (a judge should be faithful to the law and maintain professional competence in it), 3A(3) (a judge should be patient, dignified, and courteous to all with whom the judge deals in an official capacity), 3A(4) (a judge should be impartial), and 3B(1) (a judge should maintain professional competence in judicial administration) of the Code of Judicial Conduct; Rules 2:15-8 (a)(6) (a judge should not engage in conduct prejudicial to the administration of justice that brings the judicial office into disrepute), 7:3-2 (on first appearance, a defendant is to be told by judge of his right to counsel and right to remain silent), and 7:6-2(a)(1) (a judge shall determine from questioning a defendant that there is a

factual basis for a guilty plea before accepting the plea); and the rule of law in State v. DeBonis, 58 N.J. 182 (1971) (a defendant unable to pay the full fine shall be permitted to pay in reasonable installments);

And the Committee having recommended that **JUDGE HENRY G.BROOME, JR.**, be publicly reprimanded for his improper conduct as found by the Committee in respect of Counts II through VI of the Formal Complaint and having recommended that no discipline be imposed in respect of the conduct that is the subject of Count I because of an uncertainty as to the ability to assess fines for violations of N.J.S.A. 39:4-50.14;

And respondent, through counsel, having waived his right to a hearing before the Supreme Court and having submitted himself to the judgment of the Court based on the presentment and the record before the Advisory Committee on Judicial Conduct;

And the Court having concluded in its review of the matter that respondent's failure to report a civil law suit against him as required by Administrative Directive #4-81 (Count VI) does not warrant the imposition of public discipline;

And good cause appearing;

It is ORDERED that the Court hereby adopts the findings and recommendations of the Advisory Committee on Judicial Conduct, except as to the Committee's recommendation regarding Count VI, and publicly reprimands **JUDGE HENRY G. BROOME, JR.**, for

his violations of Canons 1, 2A, 3A(1),3A(3), and 3A(4) of the Code of Judicial Conduct and Rules 2:15-8(a)(6), 7:3-2, and 7:6-2(a)(1).

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 2nd day of November, 2007.

Clerk of the Supreme Court

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in the Court's Order.

The foregoing is a true copy of the original on file in my office.

CLERK OF THE SUPREME COURT
OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT

DOCKET NO: ACJC 2005-264

IN THE MATTER OF HENRY G. BROOME, JR. JUDGE OF THE MUNICIPAL COURT	:	**PRESENTMENT**

The Advisory Committee on Judicial Conduct, pursuant to Rule 2:15-15(a), presents to the Supreme Court its Findings that the charges set forth in Counts II through VI of the Formal Complaint against Henry G. Broome, Jr., Judge of the Municipal Court, have been proven by clear and convincing evidence and its Recommendation that the Respondent be publicly reprimanded.

On February 16, 2007, the Advisory Committee on Judicial Conduct issued a Formal Complaint against the Respondent, which alleged as follows:

> (1) By inappropriately, and without authority, imposing fines and surcharges against drivers found guilty of violating N.J.S.A. 39:4-50.14 (the "Baby DWI Statute"), Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count I);
>
> (2) By dismissing charges of refusal to submit to a breathalyzer test for first offenders in contravention of mandatory plea agreement guidelines, Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count II);

(3) By improperly participating in plea negotiations in cases over which he presided and by accepting guilty pleas without ascertaining a factual basis for the pleas, Respondent violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count III);

(4) By failing to advise the defendant in State v. Wood, a case over which he presided in the Linwood Municipal Court, that he had the right to be represented by counsel and the right to remain silent, Respondent violated Rule 7:3-2 and Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct, and by demonstrating a bias against the defendant and abusing his judicial authority, Respondent violated Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count IV);

(5) By creating and enforcing, without authority, his "$100 policy" concerning a litigant's obligation to pay fines, Respondent violated case law and Canon 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules (see Count V); and

(6) By failing to report his personal involvement in a lawsuit as required by an Administrative Directive issued by the Administrative Office of the Courts, Respondent violated Canon 3B(1) of the Code of Judicial Conduct (see Count VI).

Respondent filed an Answer on March 27, 2007, in which he admitted certain factual allegations of the Formal Complaint and denied others.

The Committee convened a formal hearing on July 10, 2007. Respondent appeared with Counsel and offered testimony in his defense. Exhibits were offered by both parties and accepted into evidence. After carefully reviewing the evidence, the Committee made factual determinations, supported by clear and convincing evidence, which form the basis for its Findings and Recommendation.

I. FINDINGS

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1966. At all times relevant to these matters, Respondent served as judge of the Municipal Courts of Somers Point, Northfield, Linwood, Absecon, Longport, Egg Harbor City, Mullica Township and Brigantine.

The facts are not in dispute. See P-1 (Stipulations).

A. As to Count I

On November 15, 2002, a memorandum was issued by Louis J. Belasco, Jr., Presiding Judge of the Municipal Courts for Atlantic and Cape May Counties, and Howard H. Berchtold, Jr., Assistant Trial Court Administrator/Municipal Division Manager for Atlantic and Cape May Counties ("Vicinage I"), to all Vicinage I municipal judges, court directors and administrators ("Belasco Memorandum"), discussing N.J.S.A. 39:4-50.14 (the "Baby DWI Statute"). See P-2. By virtue of Respondent's position as a municipal court judge in Vicinage I at the pertinent time, Respondent would have received a copy of the Belasco Memorandum. See P-1 at ¶ 4.

In discussing the Baby DWI Statute, the Belasco Memorandum states as follows:

> The statute does not contain a fine, although other penalties are included, such as license suspension, community service and IDRC. Some courts throughout the state have looked to N.J.S.A. 39:4-203 as authority to impose a fine under the [Baby DWI Statute]. That statute, however, allows a general fine only where no penalty is provided. [The Baby DWI Statute] does provide for

> penalties.... Some courts throughout the State have used the fine portion of 39:4-50 to impose the fine under the [Baby DWI Statute] under the theory that it is referenced in the law. The Committee Statement attached to the law makes clear that the reference to 39:4-50 is only there so as not to preclude prosecution under that section.

See P-2 at 3-4.

On February 27, 2004, Acting Administrative Director of the Courts, Richard J. Williams, J.A.D., issued a memorandum to all municipal court judges, directors, and administrators (the "Williams Memorandum"), which attached a revised form of Order and Certification for Intoxicated Driving and Related Offenses ("Revised Order"). See P-3. The Williams Memorandum directs all municipal court judges to use the Revised Order and provides that the Order "reflects all current possible penalties and is to be used whenever a court imposes penalties for driving or boating under the influence of alcohol or drugs." Id. With respect to Baby DWI or underage drinking violations, the Revised Order reflects the "Monetary Penalty" to be assessed by municipal judges as "$0." Id. at ACJC206.

Between February 2004 and May 2005, Respondent, in eleven known cases[1], imposed fines and surcharges, ranging from $250.00 to $780.00, against drivers found guilty of violating the Baby DWI Statute. This conduct was reported to Judge Valerie H. Armstrong, Assignment Judge of the Superior Court in Atlantic and Cape May Counties, by Judge Belasco in a June 28, 2005 memorandum. See P-4. Subsequently, Judge Armstrong issued an Order to reopen the eleven pertinent cases "for the purpose of resentencing" those individuals that had been assessed

[1] The eleven cases include: State v. Phillips, Linwood Municipal Court, Docket No. 0114 020106; State v. Kaleck, Longport Municipal Court, Docket No. 0115 018926; State v. Linblad, Longport Municipal Court, Docket No. 0115 029136; State v. Calareso-Hodges, Longport Municipal Court, Docket No. 0115 028544; State v. Soucier, Northfield Municipal Court, Docket No. 0118 C029246; State v. Kyle, Northfield Municipal Court, Docket No. 0118 C029915; State v. Lawlor, Northfield Municipal Court, Docket No. 0118 C029993; State v. Hudock, Northfield Municipal Court, Docket No. 0118 C030614; State v. D. Thomas, Northfield Municipal Court, Docket No. 0118 C030783; State v. Hagel, Pleasantville Municipal Court, Docket No. 0119 P019120; and State v. C. Thomas, Somers Point Municipal Court, Docket No. 0121 082664.

fines and surcharges by Respondent. See P-5 at ACJC231-232. On September 23, 2005, Judge Belasco ordered that all eleven defendants be refunded the fines and surcharges assessed by Respondent for their Baby DWI violations except for minimal costs. See P-6.

Count I of the Complaint charges that Respondent's foregoing conduct violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Canon 2A requires judges to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the Judiciary, while Canon 3A(1) requires that judges remain faithful to the law and maintain professional competence in it. Rule 2:15-8(a)(6) prohibits conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

During his appearance before the Committee, Respondent testified that it was "inconceivable" to him that the New Jersey Legislature intended there to be no fines associated with a violation of the Baby DWI statute, and that his review of the statute led him to conclude that he was allowed to assess penalties. Transcript of Formal Hearing ("Tr.") 14:3-23. He further testified that he did not believe that either the Belasco Memorandum or the Revised Order precluded his ability to assess fines for underage drinking and driving violations. Tr. 27:17-21; 35:3-22.

The Committee finds that at the time Respondent imposed the fines at issue, a genuine uncertainty existed regarding a municipal court judge's ability to assess fines under the Baby DWI statute and interpreting documents. The Committee appreciates that the language of the statute and legislative history could be construed as ambiguous. In addition, the Belasco Memorandum points out that other municipal court judges were interpreting the Baby DWI Statute in the same manner as Respondent, demonstrating that Respondent's statutory

interpretation was shared by other judges. See P-4. Finally, the Respondent indicated that he ceased imposing such fines once Judge Armstong's involvement in the issue commenced. Based upon all of the above, the Committee does not believe that discipline is appropriate with respect to Count I of the Complaint.

B. As to Count II

On June 24, 2005, Philip S. Carchman, J.A.D., Acting Administrative Director of the Courts, issued a memorandum to all municipal court judges (the "Carchman Memorandum"), which attached the following: (a) a copy of the Notice to the Bar on the Amendments to Guideline 4 of the *Guidelines for Operation of Plea Agreements in the Municipal Courts*; (b) a copy of the June 7, 2005 Order of the Supreme Court adopting the amended guideline; and (c) the amended guideline itself. See P-7. By virtue of Respondent's position as a municipal court judge in June 2005, he would have received a copy of the Carchman Memorandum. P-1 at ¶ 18.

As amended, Guideline 4 prohibits the dismissal by plea agreement of a charge of refusal to submit to a breathalyzer test (the "Refusal Charge") (see N.J.S.A. 39:4-50.4a) for first offenders. See P-7 at ACJC249. In his June 24, 2005 Memorandum, Judge Carchman advised all municipal court judges that the provisions of the amended Guideline 4 would become effective on July 1, 2005 "and should be applied to 'pipeline' cases . . . that is, to all pending cases whether or not the offense(s) occurred prior to the effective date." Id.

Despite the Carchman Memorandum, Respondent permitted the dismissal of Refusal Charge for first offenders in three cases in July 2005: (1) State v. Kinard, Somers Point Municipal Court, Summons No. 088284; (2) State v. Care, Somers Point Municipal Court, Summons No. 088294; and (3) State v. Larkin, Northfield Municipal Court, Summons Nos. 032127, 032128, 032129, 032130, 032131, and 032132. With regard to the Larkin matter, the

Respondent permitted the dismissal of the Refusal Charge over the specific objection of the prosecutor. P-1 at ¶ 22. In August 2005, Respondent independently reopened the Kinard, Care, and Larkin cases for the sole purpose of re-adjudicating the Refusal Charges. P-1 at ¶23.

Count II of the Complaint against Respondent charges that by permitting the dismissal of the Refusal Charge for first offenders whose cases were pending when the Carchman Memorandum and amended Guideline 4 were issued, Respondent violated Canons 2A and 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. During his hearing before the Committee, Respondent testified that he reopened the cases because he "reread Judge Carchman's memorandum and … decided that I had not done [the sentencing] correctly. So I called them back in and I resentenced them." Tr. 47:17-20. Respondent further testified that his decisions to dismiss the Refusal Charge in the concerned cases were based upon what he thought was "the law" and not to defy Judge Carchman's memo. Tr. 45:20 to 46:4. Respondent's actions in reopening the cases necessitated the reappearance of the litigants in each case and their need to pay additional court costs, which Respondent refused to waive despite the objection of at least one of the party's counsel. P-1 at ¶ 24-25.

The Committee finds that Respondent's conduct in permitting the dismissal of the Refusal Charge in the Kinard, Care and Larkin matters violated the pertinent Canons and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Carchman Memorandum, issued to Respondent prior to the dismissal of the pertinent three cases, succinctly states that Guideline 4, as amended, "no longer permits the dismissal by plea agreement of a refusal to provide a breathalyzer charge … for first offenders." P-7 at ACJC249. It further succinctly states that "the procedure established in amended Guideline 4 becomes effective on July 1, 2005 and should be applied to 'pipeline' cases…, that is, to all pending cases whether or not the offense(s) occurred prior to the

effective date." Id. In the face of such clarity, the Committee can conceive of no reasonable basis for the Respondent to conclude that it was appropriate for him to dismiss the Refusal Charges in the three pertinent matters. Respondent, like all judges, is charged with remaining faithful to the law and maintaining professional competence in it. See Canon 3A(1) of the Code of Judicial Conduct. The dismissal of the three Refusal Charges at issue demonstrates Respondent's failure in this regard. Further, the Committee believes that this failure necessarily failed to promote public confidence in the Judiciary in violation of Canon 2A and Rule 2:15-8(a)(6) of the New Jersey Court Rules.

Although the Committee credits Respondent's efforts in reinstituting the three matters for resentencing purposes, the Committee does not believe these actions can wholly excuse Respondent's disregard of binding authority and the inconvenience caused to the involved litigants. Under these circumstances, the Committee finds that public discipline is merited with respect to Count II of the Complaint.

C. As to Count III

On February 27, 2001, Respondent presided over State v. Plaud, Somers Point Municipal Court, Summons Nos. 74087 and 74089, in which the defendant was charged with careless driving, leaving the scene of an accident and failure to report an accident. Respondent admits that he "appears to have negotiated with the defendant for a dismissal of the charge of leaving the scene of the accident, an amendment of the charge for careless driving to a no-point violation to which the defendant agreed to plead guilty, and a guilty plea to the charge of failure to report an accident." P-1 at ¶27. Respondent further accepted the defendant's guilty plea without first ascertaining the defendant's factual basis for the plea. Id. at ¶ 28.

On April 6, 2004, Respondent presided over State v. McErlain, Egg Harbor City Municipal Court, Summons No. A033240, in which the defendant was charged with failure to yield to an emergency vehicle. When the defendant rejected the prosecutor's offer to downgrade the charge to a no-point ticket in exchange for a guilty plea, Respondent questioned the defendant regarding whether she was certain of her decision and asked the prosecutor to remind her of how many points she would face if convicted of the offense. P-1 at ¶30; P-34 at 2:15 to 3:2. The prosecutor eventually recommended the dismissal of the charge against Ms. McErlain in its entirety. P-1 at ¶31.

On July 22, 2004, Respondent presided over State v. Palmer, Longport Municipal Court, Summons No. 026686, in which the defendant was charged with allowing an unlicensed driver to operate his vehicle. In the Respondent's presence, the prosecutor offered the defendant a plea pursuant to which the prosecutor would agree to amend the charge to driving without a license, which does not carry the penalty of suspension of the defendant's driver's license. P-35 at 5:12-22. When the defendant expressed a reluctance to accept the prosecutor's offer, Respondent stated to the defendant: "I understand . . . You don't have to take it. I mean, you know, but, if you were my brother, I'd say you're lucky. You know, to run the risk of losing your license for six months, which is a suspension which comes with the 3-40." P-1 at ¶33. Following Respondent's remarks, defendant accepted the prosecutor's offer and pled guilty to the charge of driving without a license. Id. at ¶34. Respondent accepted defendant's guilty plea without first ascertaining from the defendant the factual basis for his plea. Id. at ¶35.

Count III of the Complaint against Respondent charges that by participating in plea negotiations while sitting as the judge in the case, negotiating and approving a plea agreement in the absence of the prosecutor, and accepting guilty pleas without first ascertaining the factual

basis for those pleas, Respondent violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6). Canon 1 requires judges to maintain high standards of conduct. Canon 3A(4) requires judges to be impartial. See, supra, Section A for discussion of other pertinent Canons.

During the hearing before the Committee, Respondent testified in his defense that the defendants in all three cases would necessarily have spoken to the prosecutor first, without Respondent's involvement. Tr. 56:8-17. He further stated that he considers it his responsibility to inform defendants, who express hesitation about accepting a plea bargain, of the "collateral consequences" they may face upon conviction of the offense for which they have been charged. Tr. 60:21-14. According to Respondent, this responsibility is motivated by his desire to help those before him avoid "mak[ing] mistakes." Tr. 65:2-6. With respect to the allegation of accepting guilty pleas without first establishing the appropriate factual predicate, Respondent explained he thought he "could relax the court rule," and relied upon Rule 1:1-2 in support of his assertion. Tr. 77:4-8; 79:20-25. See Rule 1:1-2 ("[A]ny rule [of Court] may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.").

The Committee finds that, with respect to State v. Plaud and State v. Palmer, Respondent violated the pertinent Canons and Rule of Court by participating in and negotiating plea agreements. It is well-settled that the role of negotiating plea agreements is for the prosecutor and not the judge. State of New Jersey v. Williams, 277 N.J. Super. 40, 47 (App. Div. 1994) ("What the trial court clearly may not do, however, is participate in plea negotiations."). The Supreme Court recognized the unique role of the municipal court prosecutor in plea negotiations in State of New Jersey v. Hessen, 145 N.J. 441, 452 (1996): "The regulation governing the

practice of plea bargaining in municipal courts recognizes the fundamental role of the prosecution in the enforcement of penal laws and accommodates prosecutorial discretion." In this regard, Guideline 3 to Rule 7:6-2(d) is also instructive:

> Nothing in these Guidelines should be construed to affect in any way the prosecutor's discretion in any case to move unilaterally for an amendment to the original charge or a dismissal of the charges pending against a defendant if the prosecutor determines and personally represents on the record the reasons in support of the motion. The prosecutor should appear in person to set forth any proposed plea agreement on the record....

Pressler, New Jersey Court Rules, Guideline 3 of *Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey* (2007).

On the other hand, it is the unique role of the courts, including municipal courts, to ensure that "exacting requirements" have been met before a guilty plea may be accepted:

> A defendant may plead not guilty or guilty, but the court may, in its discretion, refuse to accept a guilty plea. The court shall not, however, accept a guilty plea without first addressing the defendant personally and determining by inquiry of the defendant and, in the court's discretion, of others, that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea and that there is a factual basis for the plea.

Rule 7:6-2(a)(1). See also State of New Jersey v. Gale, 226 N.J. Super. 699, 704 (App. Div. 1988) ("Guilty pleas may be accepted by our courts, including our municipal courts, only after certain exacting requirements have been met."). The Comment to Rule 7:6-2 discusses "the necessity of scrupulous compliance with Rule 7:6-2(a)...." Pressler, New Jersey Court Rules, Comment to Rule 7:6-2 (2007).

By assisting in the negotiation of the pleas entered into by the defendants in both Plaud and Palmer, Respondent violated the pertinent Canons of Judicial Conduct as well as Rule 7:6-2(a)(1) and Rule 2:15-8(a)(6) of the New Jersey Court Rules. Respondent himself stipulated,

with regard to Plaud, that he "appear[ed] to have negotiated with the defendant for a dismissal of the charge of leaving the scene of the accident, an amendment of the charge for careless driving to a no-point violation to which the defendant agreed to plead guilty, and a guilty plea to the charge of failure to report an accident." P-1 at ¶27. Further, the record from both matters reveals that Respondent's conduct crossed the line into the realm of participating in plea bargaining, a function that is solely for the prosecutor. Although the Committee does not question Respondent's assertion that his motivation in involving himself in the plea discussions of both Plaud and Palmer was based upon his desire to help the defendants appreciate their situations, the Court Rules simply do not allow him the latitude to do so.

The Committee further finds that Respondent violated Rule 7:6-2(a)(1) in his handling of Plaud and Palmer by failing to ascertain a factual basis for the guilty pleas in those cases. Rule 7:6-2(a)(1) clearly provides that before a guilty plea can be accepted by a municipal court judge, the judge must personally address the defendant to ensure that the plea is made voluntarily, is understood, and a factual basis exists for the plea. Respondent stipulated that he failed to meet these requirements in either case and testified that he thought it was appropriate in those cases to "relax" the Rule in question. The Committee rejects Respondent's contention. Rather than justifying Respondent's interpretation, the Rule itself and interpreting case law speak of the need for "scrupulous compliance" with the Rule and the need for judges to fulfill the Rule's "exacting" requirements. The Committee finds that the requirements of Rule 7:6-2 simply could not be "relaxed" under the circumstances confronted by Respondent.

By violating Rule 7:6-2(a)(1) of the New Jersey Court Rules, the Committee finds that Respondent further violated Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 2:15-8(a)(6).

The Committee recommends the imposition of public discipline with respect to Count III of the Complaint.

The Committee does not find that the charge that Respondent engaged in judicial misconduct with respect to State v. McErlain was proven by clear and convincing evidence and does not rely upon that matter in reaching its recommendation.

D. As to Count IV

On February 10, 2005, Respondent presided over the trial of State v. Wood, venued in Linwood Municipal Court, in which the defendant was charged with smearing eggs on a car owned by the boyfriend of his ex-girlfriend and bending that car's wipers. Defendant, appearing without counsel, entered a plea of not guilty. P-1 at ¶38. The transcript from defendant's trial reveals that although Respondent verified that the defendant was waiving his right to counsel, Respondent failed to advise the defendant of his right to be represented by counsel. Id. at ¶45. Respondent further failed to advise the defendant that he had the right to remain silent, that if he elected not to testify the court would draw no adverse inferences against him, and that if he decided to testify, he would be subject to cross-examination by the prosecutor. Id.

When the defendant took the stand to testify in his own defense, Respondent asked the defendant if he knew the meaning of the word "perjury." When defendant respondent in the affirmative, Respondent stated: "Okay. Before you testify if I think you're lying under oath, I'm telling you, I'll have you indicted. Do you understand me?" Id. at ¶39. At no time during the trial did Respondent give the same warning regarding perjury to the prosecution's witnesses. Id. at ¶40.

At the conclusion of the trial, Respondent found defendant guilty of smearing eggs on the car and bending the car's wipers. After rendering his verdict, Respondent stated to the defendant:

"But that's not the end of it, young man. I'm going to direct the Lieutenant to take . . . [the victims] . . . and . . . talk to them, because I think the crime, the indictable offense of stalking, has been done in this case. And I think that probably [the defendant] should be charged with the indictable offense of stalking. And the indictable offense of stalking will – means that your – you leave people alone." Id. at ¶42. Respondent further stated to the defendant: "You are not allowed to follow them around. You're not allowed to ride by their house on a constant basis. You're not allowed to egg their homes. You leave them alone. They have the same rights that you have to live in peace. And, unfortunately, it appears to me, Mr. Wood, that you haven't learned that and I don't know why." Id. at ¶43.

Defendant appealed Respondent's decision to the Superior Court of New Jersey, Atlantic County. On June 7, 2005, Judge Neustadter entered an order remanding the matter for a new trial before a different judge due to Respondent's "inappropriate remarks to defendant and the appearance of bias against defendant's case." P-1 at ¶44; see also P-37.

Count IV of the Complaint against Respondent contains two charges: (1) that Respondent's remarks to the defendant in State v. Wood, including his comments and allegations regarding perjury and stalking, demonstrated Respondent's bias against the defendant and constituted an abuse of his authority in violation of Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules; and (2) that Respondent violated Rule 7:3-2 and Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct by failing to advise defendant, a *pro se* litigant, of his rights to counsel and to remain silent. Canon 3A(3) requires judges to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and other with whom the judge deals in an official capacity. Rule 7:3-2 expresses the entitlement of every defendant to be informed of

certain rights, including the right to remain silent and the right to be represented by counsel, at their first appearance before a judge. See, supra, Sections A and C for discussion of other pertinent Canons.

During Respondent's hearing before the Committee, Respondent agreed that he committed "serious procedural errors" by failing to advise the defendant in Wood of his right to counsel and to inquire about the defendant's comprehension of the rights he was waiving. Tr. 88:8-20. See also P-1 at ¶45. Additionally, Respondent testified that he "probably shouldn't have said" certain of his comments, including his threat to have the defendant indicted if he thought the defendant was not testifying truthfully under oath. Tr. 89:7 to 90:3.

The Committee finds that Respondent's remarks regarding defendant's understanding of the term "perjury" and his threats to have the defendant indicted for lying under oath and stalking were inappropriate and violated Canons 1, 2A, 3A(3) and 3A(4) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. As Judge Neustadter indicated in his order for a new trial in the case, such comments communicated a bias against the defendant, whether or not that bias actually existed, and therefore denied defendant his constitutional right to a fair trial. In addition, Respondent's comments were unnecessarily confrontational, in violation of Canon 3A(3), and were made without any foundation or support. Respondent himself admitted to the inappropriateness of his comments. The Committee finds Respondent's overall attitude and demeanor towards the defendant, both disrespectful and inequitable, to constitute conduct that necessarily undermines the public's confidence in the integrity and independence of the Judiciary.

The Committee likewise finds that Respondent's admitted failure to apprise defendant of his right to counsel and his right to remain silent was a clear violation of Rule 7:3-2 and,

consequently, Rule 2:15-8(a)(6) of the New Jersey Court Rules and Canon 3A(1) of the Code of Judicial Conduct. The Committee therefore recommends the imposition of public discipline with respect to both charges of Count IV of the Complaint.

E. As to Count V

Respondent begins each of his court sessions by showing a videotape of himself to those present in the courtroom, which describes the legal rights of litigants, the procedures of the municipal court, and, until June 2005, Respondent's "$100 Policy." P-1 at ¶47. Respondent's self-described "$100 Policy" provided as follows:

> If in fact you are fined today, and the fine is less than $100, that fine is due and payable in full. If the fine in cost is more than $100, at least a [sic] $100 is due today. What does this mean to you? If you think you may have to pay a fine today, and you came to court without any money, I would suggest you go out and use the phone and call your mother, or your best friend, or whomever and tell him to get down here with some money because the fines are in fact due and payable in full today.

Id. at ¶48. In or around June 2005, at Judge Belasco's urging, Judge Broome revoked his $100 Policy and removed all references to it from his videotaped remarks. Id. at ¶49.

Count V of the Complaint against Respondent asserts that as Respondent's $100 Policy did not provide affected defendants with the opportunity to prove their indigency status and thereby qualify for a payment plan, his adherence to that policy violated the rule of law in State v. DeBonis, 58 N.J. 182 (1971), Canon 3A(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The New Jersey Supreme Court held in State v. DeBonis that "[i]f a defendant is unable to pay a fine at once, he shall, upon a showing of that inability, be afforded an opportunity to pay the fine in reasonable installments...." Id. at 199. Respondent took the position during his hearing before the Committee that it was within his authority to require his $100 Policy. In making that argument, Respondent relied on the policies of at least

two other municipal judges who similarly require a minimal payment in their courtrooms. Tr. 93:17 to 94:1.

The Committee finds that Respondent's videotaped opening remarks regarding his $100 Policy disregarded the DeBonis rule of law, which clearly mandates that indigent defendants be provided the opportunity to pay fines in installment payments. Respondent's videotaped recitation of his "$100 Policy" failed to provide for any exception or qualification whatsoever for a defendant's inability to pay. Respondent's policy is, in fact, dissimilar to the minimal payment policies of the other two municipal judges as those judges acknowledged an exception for indigent defendants. See R-2; R-4. The Committee finds that by violating the rule of law in State v. De Bonis, Respondent likewise violated Canon 3(A)(1) of the Code of Judicial Conduct and Rule 2:15-8(a)(6) of the New Jersey Court Rules. The Committee recommends the imposition of public discipline with respect to Count V.

F. As to Count VI

On July 13, 2005, a civil complaint was filed against Respondent in his individual capacity. See Loretta and George Brewster v. Henry G. Broome, Jr. Esquire, et al., Superior Court of New Jersey, Atlantic County (the "Brewster Complaint). Respondent was personally served with the Brewster Complaint on July 27, 2005.

Pursuant to Administrative Directive #4-81 issued by the Director of the Administrative Office of the Courts, "[p]ersonal involvement by any judge in any type of litigation should be the subject of an official report.... A report should be filed not only in matters where the judge is personally named but also in those in which the judge is a party in interest." A reminder of the requirements of Directive #4-81 was issued to all judges on September 26, 1988 by then Acting Administrative Director of the Courts, Robert D. Lipscher. See P-11.

Count VI of the Complaint against Respondent charges that by failing to report his involvement in the Brewster matter as required by Directive #4-81, Respondent violated Canon 3B(1) of the Code of Judicial Conduct. Canon 3B(1) requires judges to diligently discharge their administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration. At the hearing, Respondent's counsel argued that the reporting required by the Administrative Directive in question "is not an administrative responsibility of the office of the judge, especially when it doesn't involve his judicial duties." Tr. 96:2-5.

The Committee finds that Respondent's failure to report his involvement with litigation in conformance with Directive #4-81 constitutes a violation of Canon 3B(1) of the Code of Judicial Conduct. Canon 3B(1) speaks broadly of the necessity for judges to "discharge the administrative responsibilities of the office." The Committee believes it self-evident that the requirements imposed upon judges pursuant to "Administrative Directives" of the Administrative Office of the Courts qualify as an "administrative" responsibility of the judicial office. Moreover, Administrative Directives generally function in the New Jersey Judiciary as expressions of the Supreme Court that are binding and controlling upon all judges. Respondent's failure to abide by an Administrative Directive, whose meaning was plain, violated Canon 3B(1).

The Committee recommends the imposition of public discipline with respect to Count VI.

II. RECOMMENDATION

In light of the above findings and determinations, the Committee recommends that Respondent be publicly reprimanded. The Committee finds that Respondent's actions, as alleged in Count II, III, IV, V and VI of the Complaint, constitute improper conduct and violated the pertinent Canons of Judicial Conduct and Rules of Court. In recommending a public reprimand,

the Committee acknowledges and recognizes Respondent's thirty-one years of service to the State of New Jersey as a municipal court judge.

Respectfully submitted,

Advisory Committee on Judicial Conduct

By: Alan B. Handler

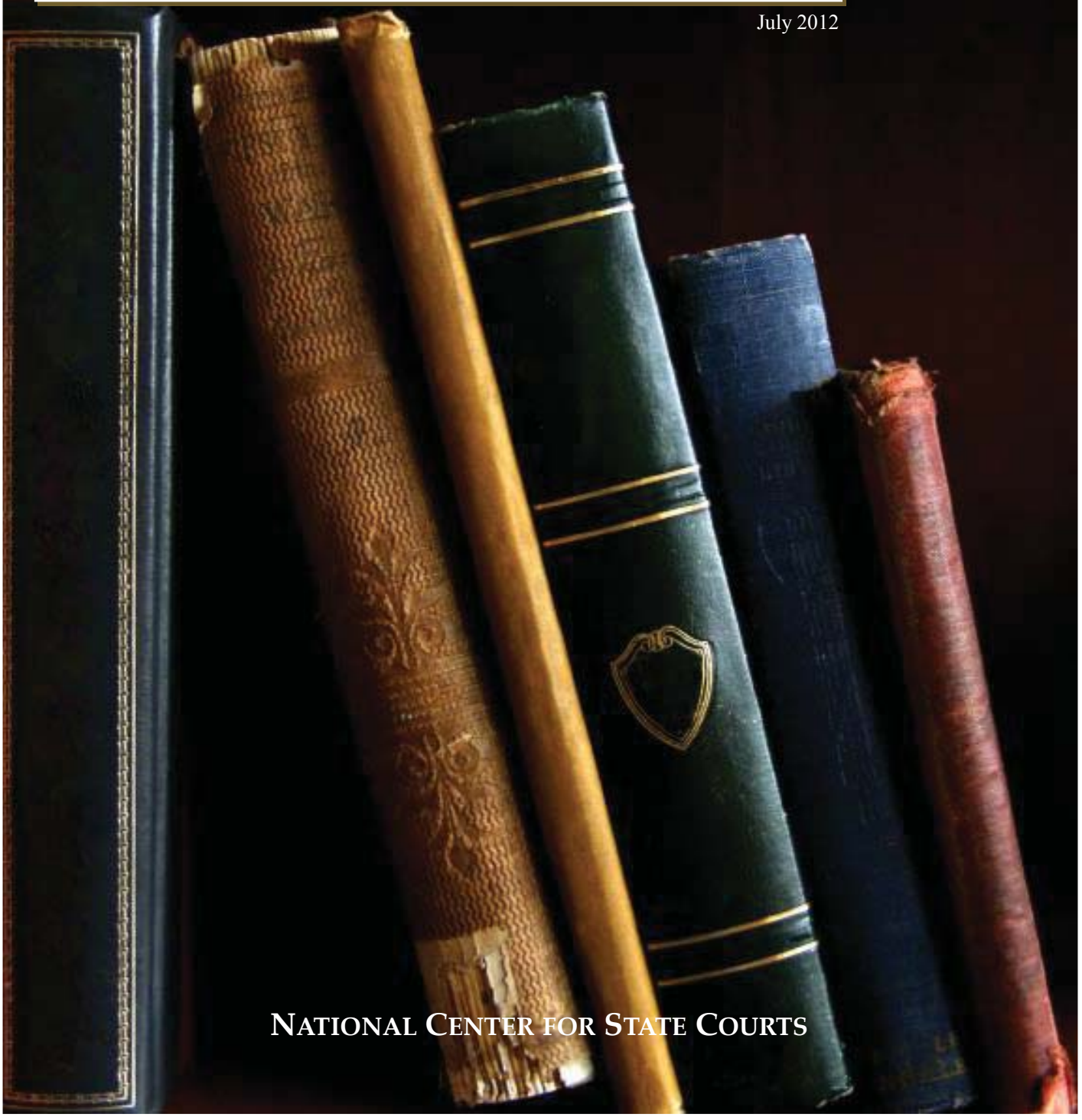
Alan B. Handler, Chair

Dated: September 25, 2007

Appendix S

Principles for Judicial Administration

July 2012



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July 2012

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PREFACE

Changing socioeconomic factors and shifting demands on our judicial institutions require courts to develop solutions that look beyond the short-term. To be relevant, courts must provide quality judicial services more efficiently. Court leadership and the legal profession have expressed a strong need for a set of principles to guide them as they seek to restructure court services and secure adequate funding. These principles relate to courts' governance structures, decision-making and case administration, and funding.

These are practical operational principles that are intended to assist chief justices and state court administrators—as well as presiding judges and trial court administrators in locally funded jurisdictions—as they address the long-term budget shortfalls and the inevitable restructuring of court services. The principles are designed for use by the judicial branch leadership of each state as a basis for establishing principles for judicial administration in their states. They are also intended to help members of legislative bodies and their staff understand the difficult structural and fiscal decisions required to enable courts to enhance the quality of justice while facing increased caseloads with fewer resources.

A number of groups have worked independently to develop these guiding principles. Principles relating to effective governance have been developed in conjunction with the National Center for State Courts (NCSC) Harvard Executive Session and the reengineering experience of several states. Decision-Making and Case Administration Principles have been completed through the High Performance Court Framework. Finally, Funding Principles have been developed using the Conference of State Court Administrators (COSCA) white papers, the Conference of Chief Justices (CCJ)/COSCA policy resolutions, the Trial Court Performance Standards, *CourTools* and recent NCSC reengineering projects.

This paper is intended to serve as a unifying document for all these principles. It is clear that these principles are interdependent. The first two sets of principles, which address governance and decision-making and case administration, are foundations that courts need in place to manage their resources efficiently and effectively.

These are necessary pre-conditions for the funding principles. These principles in their whole are intended to represent a comprehensive yet succinct set of ***Principles for Judicial Administration***. While these may be analogous to the *Court Administration Principles* adopted by the American Bar Association (ABA) in the 1970s, they are designed as operational guides to assist courts as they face the challenges of the twenty-first century.

This document has three sections. The first two address aspects of court administration that are foundations to pursuing adequate funding. The third section contains specific principles relating to funding. The funding principles are the means to connect the first two sets of principles.

This document and these principles have been and will continue to be vetted with the court community and the legal community. They will be refined over time in order to ensure and maintain their relevance, usefulness and appropriate application.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Governance Principles

- **Principle 1:** Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.
- **Principle 2**: Judicial leaders should be selected based on competency.
- **Principle 3:** Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.
- **Principle 4**: Court leadership, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.
- **Principle 5:** The court system should be organized to minimize the complexities and redundancies in court structures and personnel.
- **Principle 6:** Court leadership should allocate resources throughout the state or local court system to provide an efficient balance of workload among judicial officers and court staff.
- **Principle 7**: Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Decision-Making and Case Administration Principles

- ❑ **Principle 8:** Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.

- ❑ **Principle 9:** Court leadership should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:

  - The adversarial process.
  - A problem-solving, treatment approach.
  - Mediation, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.
  - Referral to an appropriate administrative body for determination.

- ❑ **Principle 10:** Court leadership should exercise control over the legal process.

- ❑ **Principle 11:** Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.

- ❑ **Principle 12:** Judicial officers should give individual attention to each case that comes before them.

- ❑ **Principle 13:** The attention judicial officers give to each case should be appropriate to the needs of that case.

- ❑ **Principle 14:** Decisions of the court should demonstrate procedural fairness.

- ❑ **Principle 15:** The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Court Funding Principles—Developing and Managing the Judicial Budget

- **Principle 16:** Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.

- **Principle 17:** Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.

- **Principle 18:** Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.

- **Principle 19:** Judicial Branch leadership should have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items.

- **Principle 20:** Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.

SUMMARY OF THE PRINCIPLES FOR JUDICIAL ADMINISTRATION

Court Funding Principles—Providing Adequate Funding

- **Principle 21:** Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff functioning in accordance with adopted workload standards.

- **Principle 22:** Responsible funding entities should ensure that courts have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines.

- **Principle 23:** The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.

- **Principle 24:** Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

- **Principle 25:** Court fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.

INTRODUCTION

As a separate branch of government, courts have the duty to protect citizens' constitutional rights, to provide procedural due process and to preserve the rule of law. Courts are a cornerstone of our society and provide a core function of government—adjudication of legal disputes. An adequate and stable source of funding is required for courts to execute their constitutional and statutory mandates. While the judiciary is a separate branch of government, it cannot function completely independently. Courts depend upon elected legislative bodies at the state, county and municipal levels to determine their level of funding. Judicial leaders have the responsibility to demonstrate what funding level is necessary and to establish administrative structures and management processes that demonstrate they are using the taxpayers' money wisely. With these processes as a foundation, principles can be established that guide efforts to define what constitutes adequate funding.

As mentioned in the preface, this document is divided into three sections. The first two sections address aspects of court administration that form the foundation to pursue adequate funding: governance, decision-making and case administration. These are foundational in the sense that courts need to demonstrate that they are effectively managing public resources in order to pursue and compete successfully for adequate funding. The third section contains court-specific Funding Principles which connect the first two sets of principles. The Funding Principles cannot be successfully implemented if a receptive and supportive governance and organizational infrastructure is absent.

There are two parts to the Funding Principles. The first five principles relate to the responsibility of Judicial Branch leadership to develop and manage the judicial budget. The second five identify the principles policy makers—both within and outside the judicial branch—should take into consideration when determining adequate funding for the judiciary.

GOVERNANCE PRINCIPLES

Governance is the means by which an activity is directed to produce the desired outcomes. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective, fair and impartial justice.

State court systems operate under a number of different structural models. In some states, trial courts operate in accordance with local rules and procedures; any centralized authority within the state exercises limited power. Some states have a relatively complex trial court structure with local units bound together by a strong central authority. Other states have a fully consolidated, highly centralized system of courts with a single, coherent source of authority; no subordinate court or administrative subunit has independent powers or discretion.[1]

Some state court systems are funded entirely by the state, some are funded entirely by local government and some court systems are funded by both state and local funding bodies.

Each model for court organization presents its own distinctive challenges to effective governance. Some challenges are structural in nature while others are cultural. For example, the sense of individual independence possessed by judges generally poses a significant obstacle to creating a system identity, and in turn fidelity to the decisions of a governing authority. It has been said that "the conflict in professional organizations results from a clash of cultures: the organizational culture which captures the commitment of managers, and the professional culture, which motivates professionals."[2]

Striking the balance between self-interest and institutional interests, while binding separate units of an organization together, requires strategies that embrace three elements: a common vision of a preferred future, helpful and productive support services that advance the capabilities of the organization's component parts, and a shared understanding of the threat and opportunities facing the system.[3]

The following principles are set forth as unifying concepts which can be employed in all existing court organization models and all funding models. Further, they offer a means for addressing the tension between the self-interest orientation of those working within courts and the organizational culture of the courts. They do not presuppose or advocate for any particular court organization or funding model.

[1] Henderson, Thomas et al. (1984) The Significance of Judicial Structure: The Effects of Unification on Trial Court Operations. Washington DC: National Institute of Justice.

[2] Realin, Joseph A. (1985) The Clash of Cultures, Harvard Business School Press.

[3] Griller, Gordon A. (2010) "Governing Loosely Coupled Courts in Times of Economic Stress," *Future Trends in State Courts: 2010*, National Center for State Courts.

- ***Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.***

Commentary: The governance structure should be apparent and explicit with clearly defined relationships among governing entities, presiding judges, court administrators and various court committees. Both the public and those working in the system need to understand how the governance structure operates, who has authority to make decisions, how decisions are made, and how all component parts relate. It is particularly important that the authority of judicial leaders, administrators and managers for policy decision-making and implementation be well-defined and articulated. The purpose of a well-defined governance structure is twofold. First, it should enable development of statewide or court wide policies that ensure uniformity of customer experience throughout the state or court. Second, the governance structure should enable reasonably uniform administrative practices for the entire court system that provide the greatest access and quality at the least cost. While flexibility, discretion and local control are desirable as they encourage initiative and innovation, standardization fosters efficiency and uniformity of treatment. The challenge of any governance structure is to define the boundaries between the appropriate level of administrative discretion and the need to enforce minimum standards through policies and administrative practices that ensure efficient expenditure of public resources and uniformity of treatment of similarly situated customers.

The Judicial Branch must have a clearly articulated mission, must state the values by which it operates and must identify its strategic objectives and goals. A well-defined governance structure enables the court system to accomplish these ends and to present a unified message to the public as well as to legislative and executive branches. The court system benefits from the continuity, stability and consistency of an effective governance structure.

Inherent in this principle is the need for open communication with meaningful input from all court levels into the decision-making process. An effective system of governance does everything possible to foster excellent communication and to keep information flowing.

- ***Principle 2: Judicial leaders should be selected based on competency.***

Commentary: The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leaders should explicitly identify and acknowledge those skills.

The development of selection criteria may be useful in attracting specific skill sets or experience levels to these executive judicial positions. It may also help to steer courts away from the rotation, seniority or volunteer selection methods which often fail to account for a judge's general interest in the position or ability to perform the duties successfully.

States have established a number of methods for selecting chief justices and presiding judges. Whichever method is used, the selection process should take into consideration the skills and experience required to govern complex organizations.

The minimum effective term length for a chief justice or presiding judge is no less than two years. A term of less than two years does not allow the judicial leader to set goals and effectively implement action plans. Developing the necessary leadership and management skills takes time. A lesser term also impedes the development of relationships with leaders of the other branches of government, which is critical to securing funding.

A successful chief justice or presiding judge should be considered to serve renewable or successive terms in order to maintain continuity in the leadership of the court, as well as institutionalize effective management policies.

Because management responsibilities for leadership judges will continue to increase, educational opportunities to develop increased proficiency in technology, case, personnel and financial management should be available and encouraged.

- ***Principle 3: Judicial leaders should focus attention on policy level issues while clearly delegating administrative duties to court administrators.***

Commentary: Decisions about policy belong with the structural "head" of a judicial system, but implementation and day-to-day operations belong to administrative staff.

Effective governance requires a strong court management team comprising judicial leaders and court administrators. An avoidance of micro-management by the policy-maker and clear authority for implementation in the managers are both important for the credibility and effectiveness of court governance while minimizing opportunities for undermining policy at the operational level.

- ***Principle 4: Court leaders, whether state or local, should exercise management control over all resources that support judicial services within their jurisdiction.***

Commentary: Fundamental to effective management is the control of resources. Court leadership must be given the authority to manage the available resources. While this authority can be shared with professional court administrative staff within the court system, it should not be exercised by anyone outside the court system. Courts must resist being absorbed or managed by the other branches of government.

The challenge for the court leadership is to ensure the availability of sufficient resources and to administer the use of those resources to meet all judicial responsibilities within a cost range that is acceptable to society and to do so without interfering with the independence of the judiciary in the decision-making process.

- ***Principle 5: The court system should be organized to minimize the complexities and redundancies in court structures and personnel.***

Commentary: While courts can be organized under one of several different models (see Governance Principles introduction), regardless of the model employed, every effort should be made to avoid overlapping or duplicative jurisdiction among courts within a given state. The quality of justice rendered by a court system correlates directly with citizens' ability to access the courts. The organization of the court system should promote access and the prompt, cost-effective and just discharge of the primary duty of dispute resolution. Removal of barriers such as multiple courts with similar or overlapping jurisdiction enhances citizen access while also reducing taxpayer costs. Clear and simplified structuring of the court system facilitates ease of use and engenders public understanding and ultimately support.

- ***Principle 6: Court leadership should allocate resources throughout the state or local court system so as to provide an efficient balance of workload among judicial officers and court staff.***

Commentary: Given the geographic distribution of the population, the workloads of courts throughout a state, region or district will vary. One of the most difficult challenges of court leadership is to equitably balance workloads among judges and staff and to ensure that these resources are assigned appropriately. Resource allocation to cases, categories of cases, and jurisdictions is at the heart of court management. Assignment of judges and allocation of other resources must be responsive to established case processing goals and priorities, implemented effectively and evaluated continuously. Objective workload models should be used to identify how many judicial officers and court staff are needed and to assist in allocating staff on an equitable basis. Through technology, workload from any court within a jurisdiction can be assigned to court staff working in other courts in order to balance the workload.

- ***Principle 7*: *Court leadership should ensure that the court system has a highly qualified, competent and well-trained workforce.***

Commentary: To earn the public's trust and confidence and to provide quality judicial services, courts need judges with the highest ethical standards, extensive legal knowledge, and complex and unique skills in leadership, decision-making, and administration. Courts similarly need highly professional, ethical and competent staff. The court management team should work to enhance the performance of the judicial system as a whole by continuously improving the personal and professional competence of all persons performing judicial branch functions. All judicial officers and court staff should have clear expectations of effective performance along with transparent systems to evaluate that performance. The evaluations should be used by court leadership to develop education and training programs that provide judicial officers and court staff the knowledge and skills required to perform their responsibilities fairly, correctly and efficiently while adhering to the highest standards of personal and official conduct.

DECISION-MAKING AND CASE ADMINISTRATION PRINCIPLES

The legal concept of procedural due process and the administrative aspect of efficiency are components of the manner in which courts process cases and interact with litigants. Caseflow management is central to the integration of these components into effective judicial administration. Defining quality outcomes is a difficult task, but with the emergence of the Trial Court Performance Standards (1990), the International Framework for Court Excellence (2008) and the High Performance Court Framework (2010), concepts and values have been developed by which all courts can measure their efficiency and quality via instruments such as CourTools (2005). These Principles of Decision-Making and Case Administration are imbedded in and fundamental to these performance management systems.

- ***Principle 8: Courts should accept and resolve disputes in all cases that are constitutionally or statutorily mandated.***

Commentary: Courts serve many functions. Primary among them is determination of legal status. Courts determine whether a defendant is guilty or innocent, whether one party owes money to another party, who owns a piece of property, and who has custody of a child. Thus it is obvious that courts must accept those cases that require the adjudication of legal status. One of the hallmarks of the American judicial system and particularly state judicial systems is the constitutional requirement that courts be open to give redress according to law.[4] This concept is expressed in most state constitutions or their statutes.[5] The ability to go to court is a fundamental right retained by the people. Consequently, court leaders have an obligation to structure their operational systems in a manner that promotes public access to the courts. Tight economic times do not justify the courts not accepting cases.

[4] In contrast to many state constitutions, the federal Constitution contains no "open courts" requirement. Thus it has been held in the context of federal litigation that except for those cases directly provided in the constitution, access to the federal courts is controlled by Congress, which has the authority to expand or limit access to the federal judiciary. Ankenbrandt v. Richards, 504 U.S. 689, 698 (1992) *citing* Cary v. Curtis, 44 U.S. (3 How.) 236 (1845).

[5] Maryland's open court provision, one of the earliest, states, "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land." Maryland Const. art. 19. Many other states have similar constitutional provisions that mandate that courts be open, all of them ultimately tracing their origins to 1215 and the adoption of the Magna Carta. The open court requirements are typically coupled with other language of the Magna Carta conferring a right to remedy in due course of law or a clause guaranteeing administration of justice without sale, denial, or delay. See, State ex rel. Herald Mail Co. v. Hamilton, 267 S.E.2d 544 (W. Va. 1980). Where found, open court requirements are usually contained in states' bills of rights and not the judicial articles. The implication to this placement is clear: the right to go to court is not an operational requirement placed on the judiciary but rather a fundamental right retained by the people. "The right to go to court to resolve our disputes is one of our fundamental rights." Psychiatric Assoc. v. Siegel, 610 So.2d 419, 424 (Fla. 1992).

- ***Principle 9: Court leadership should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:***
  - *A. The adversarial process.*
  - *B. A problem-solving, treatment approach.*
  - *C. Mediation, arbitration or similar resolution alternative that allows the disputants to maintain greater control over the process.*
  - *D. Referral to an appropriate administrative body for determination.*

Commentary: Historically courts have been thought of as venues in which an adversarial process existed as the highest and exclusive means for case resolution in the United States. Over the years, however, there has been a growing recognition that the adversarial process need not be the exclusive means or even the best means for resolving some types of disputes. Increasingly courts, the bar, and the public have recognized that alternative means of dispute resolution could be more timely, more resource efficient, and produce more satisfactory results. The development of court mediation programs, the evolution of problem-solving courts, the use of court diversion options, and the growth of restorative justice principles all evidence a growing recognition by courts that a menu of options must be provided to litigants. Court proceedings may use a mixture of the court processes identified in this Principle. In many jurisdictions the single door court-focused courthouse has been replaced by a multi-door consumer-focused courthouse, one that affords litigants different options and opportunities for resolving their disputes. In short, the rise of "alternative" dispute resolution methods is no longer alternative; it has become mainstream.

- ***Principle 10: Court leadership should exercise control over the legal process.***

Commentary: For years judges and lawyers have debated who should control a case. Some contend that the case belongs to the litigant/lawyer who knows the case and is in the best position to manage the flow of the case activities. Others argue that the parties and lawyers control the case until it is filed with the court, thereby calling upon the court to resolve a matter which the parties have been unable to do. Those with this view believe that invoking the jurisdiction of the court renders the court responsible for managing the adjudicatory process thus avoiding legal gamesmanship and making obtaining a just outcome the goal. Effective management of the court's entire caseload demands that judges, with the assistance of court administrative staff, manage and control the flow of cases through the court.

Several factors have been demonstrated as key elements of effective judicial management of the docket. These include establishing a set of meaningful events, adopting a realistic schedule, creating expectations that events will occur as scheduled, exercising firm control over the granting of continuances, sharing information among the parties early in the process, and using data to monitor compliance with established case processing goals. Control of the process by the trial court management team is the basic principle upon which these evidenced-based practices are founded.

- ***Principle 11: Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs.***

Commentary: Court leaders should adopt court procedures that reflect the practices that provide justice at the least expense to the litigants and taxpayers. Those procedures should be made uniform within the jurisdiction. Procedures should be proportionate to the nature, scope and magnitude of the case involved. One size does not necessarily fit all. While different rules may be required for different case types, redundancies or superfluous procedures must be eliminated.

- ***Principle 12: Judicial officers should give individual attention to each case that comes before them.***

Commentary: Procedural fairness guarantees certain basic rights to all parties in both civil and criminal cases. These rights include ensuring that all parties receive notice of the proceedings, have the right to be heard and to present evidence. A tenet of procedural fairness also involves the court giving individual attention to each case. Some courts use master calendars for routine, non-complex matters while employing individual calendars for complex cases in order to ensure the appropriate level of judicial attention and management of the case. Regardless of the calendaring method, court procedures must allow parties and attorneys to offer relevant information and to present their respective sides of the case. This Principle, coupled with Principle 10, calls upon courts to give individual attention to a case proportionate to the nature, scope and magnitude of the case while taking into account the aggregate nature of the court's entire caseload.

- ***Principle 13: The attention judicial officers give to each case should be appropriate to the needs of that case.***

Commentary: This Principle introduces the concept of proportionality when attempting to define the individual attention necessary for a case. Procedures should be proportionate to the nature, scope and magnitude of the case. The idea of proportionality also acknowledges that courts try individual cases within the context of their total caseloads. To a certain extent, courts have learned to reconcile the conflict between individualized attention and the overall caseload demands through the use of Differentiated Case Management. This formal, structured management strategy illustrates the concept of proportionality in a practical sense. It seeks to maintain equality and due process in the treatment of cases while recognizing the pressures of the overall court workload and the resources available. Without the proper balance, delays will occur and justice can be thwarted even when appropriate attention is given to an individual case.

- ***Principle 14: Decisions of the court should demonstrate procedural fairness.***

Commentary: Courts should provide due process and equal protection of the law to all who have business before them. Court decisions and practices should adhere to relevant laws, procedural rules and established policies. Adherence to established law and procedure assist in achieving predictability, reliability, integrity and the greater likelihood of justice in the individual case. Perceptions that procedures are fair and just influence a host of outcome variables, including satisfaction with the process, respect for the court and willingness to comply with court rulings and orders. When justice is perceived to have been done by those who directly experience the court's adjudicatory process and procedure, public trust and confidence increase and support for the court is enhanced.[6]

[6] Tom Tyler, a leading researcher in the field, suggests there are four expectations people have for procedurally fair court processes. The first expectation, *neutrality*, is that the law is applied in a consistent, impartial manner by unbiased decision makers. The second one is that all people are treated with *respect* and dignity, and court procedures serve to clearly safeguard individual rights. Third, individuals who are affected by a given decision have the chance to be heard (or *voice*) and to present information relevant to the decision. Finally, the judge is seen as *trustworthy* by listening to both sides, shows an understanding of the issues, and clearly explains the reasoning and implications of the decision. Implementing administrative practices to meet these expectations reinforces the perception of a court's commitment to procedural due process.

- ***Principle 15: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.***

Commentary: The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also the effectiveness with which resources are used. Such accountability requires a constant process of self-assessment and public scrutiny. Courts stand as an important and visible symbol of government. Compliance with the law is dependent to some degree upon public respect for courts. Public trust and confidence in courts stem from public familiarity with and understanding of court proceedings, actions and operations.

Courts must use available resources wisely to address multiple and conflicting demands. To do so they must continually monitor performance and be able to know exactly how productive they are, how well they are serving public needs and what parts of the system and services need attention and improvement. Courts must continually evaluate the effectiveness of their policies, practices and new initiatives. This requires the collection and use of relevant, timely and accurate information that must then be used to make decisions on how to best manage court operations to ensure the desired outcomes.

Assessments must rely on objective data and be methodologically sound. The evolution of court performance assessment led to the development of *CourTools*, a set of ten core court performance measures. These and other similar measures provide a means for self improvement and improved accountability to the funding entities and the public. Ideally courts that meet or exceed performance standards and share this information with the public will be recognized as doing so by the public. Where performance is good and public communications are effective, trust and confidence are likely to be present and support for the courts will increase.

COURT FUNDING PRINCIPLES

Under our tripartite system of government, the judicial system is dependent on the legislative branch for its funding. Given the high degree of interdependence among the branches and given that the courts often are competing with executive branch agencies for appropriations, it is critical that each branch understand and respect each others' constitutional roles in order to reach mutually accepted funding decisions. Further, as budget requests are prepared by the judicial branch for consideration by the legislative branch, it is useful to have a set of principles which can serve as a conceptual framework within which these actions are taken. These principles may be useful for all branches of government when exercising their respective duties and responsibilities regarding judicial budget requests and appropriations.

Developing and Managing the Judicial Budget

For the court system to exist as a preserver of legal norms and as a separate branch of government, it must maintain its institutional integrity while observing mutual civility and respect in its government relations. The Judicial Branch is necessarily dependent upon the other branches of government; thus they must clarify, promote, and institutionalize effective working relationships with all branches. Effective court management together with transparent budget requests supported by well-documented justification enhances the credibility of the courts and reduces obstacles to securing adequate funding. The following principles are aimed at establishing that credibility, discharging the responsibility of accountability, and maintaining necessary autonomy.

- ***Principle 16: Judicial Branch leadership should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and the application of appropriate performance measures.***

Commentary: The Judicial Branch recognizes that there is fierce competition for scarce public dollars and that budget requests must be made based solely on need. The High Performance Court Framework (HPC) offers a comprehensive means to understand and assess how well courts are fulfilling their role and responsibilities. The HPC integrates key reform initiatives into a single view and offers insights into how courts can elevate the way they do business, consequently justifying the resources needed to succeed. It has been shown that credible and objective workload models, such as the NCSC's Workload Assessment Model, successfully identify how many judges and court staff are needed to handle the diversity of cases filed in the courts. Such a model tells policy

makers and court managers what the capacity of the current staffing structure is and can be related to performance measures (see Principles 15 and 17). This has been shown as a critical piece to building good communications and relations with the legislative branch. From the court manager's perspective, an objective workload model can be used to identify efficiencies in one location that can be adopted by others and measure the impact of changes, such as budget cuts and institution of technologies, on the capacity of courts to handle the caseload.

- ***Principle 17: Judicial Branch leadership should adopt performance standards with corresponding, relevant performance measures and manage their operations to achieve the desired outcomes.***

Commentary: In the past courts focused on their structures and processes not on their performance. Knowing whether and to what degree a court is high performing is a matter of results. A high performance court is evidence based. Performance standards, or targets, are established. Progress towards meeting those standards is measured by performance measures. Beginning in 1987, with the development by the National Center for State Courts of the Trial Court Performance Standards,[7] attention shifted to outcome-based measurable performance standards as a means of identifying what courts actually accomplish with the means at their disposal. The evolution of court performance assessment led to the development of *CourTools* (2005), a set of ten core court performance measures. By prescribing what courts should accomplish, appropriate emphasis can be placed on performance measurement and performance management. Performance assessment provides a means for internal evaluation, self-improvement, and improved accountability to the funding entities and the public. Courts acknowledge that with judicial independence comes the corresponding right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court operations. Accountability and transparency are critical to judicial governance and to the preservation and strengthening of an independent judiciary.

- ***Principle 18: Judicial Branch budget requests should be considered by legislative bodies as submitted by the Judicial Branch.***

Commentary: Courts are a separate branch of government responsible for executing their constitutional mandates in an efficient and effective manner. State and local legislative bodies should require that the judiciary's budget be presented directly to

[7] NCSC, (1987) ***Trial Court Performance Standards,*** *at* http://www.ncsconline.org/D_Research/TCPS/.

them by judicial leadership without prior approval of the executive. Too often, state and local legislative bodies consider the executive's budget submission and recommendations for the judiciary's budget as if the judiciary were one of the executive branch departments. This often arises as executives address their duty to manage a balanced budget. However, the executive is not responsible for administering the judicial branch and does not have the knowledge necessary to determine needed funding levels in the judicial branch. The court management team is in the best position to know what resources are needed to fulfill its constitutional mandates and how best to present and justify its need for those resources.

- ***Principle 19: Judicial Branch leadership should have the authority to allocate resources with a minimum of legislative and executive branch controls including budgets that have a minimal number of line items.***

Commentary: The Judicial Branch is dependent on the state and local legislative bodies for its budget. Notwithstanding that fact, under the separation of powers doctrine, no branch should exercise the powers properly belonging to the other branches. Inherent in the functioning of a branch of government is the ability to manage and administer its appropriated funds subject to the responsibility of being accountable for such management. Court leadership must have broad authority to administer the operation of the judicial branch, without being unduly directed through detailed budget line items, allow reasonable autonomy by the Judicial Branch to manage scarce resources.

- ***Principle 20: Judicial Branch leadership should administer funds in accordance with sound, accepted financial management practices.***

Commentary: Much like the measurement of court performance demonstrates a commitment to effective management, administering all funds in accordance with sound, generally accepted financial management practices maintains the court system's credibility. The other branches will not place confidence in the judiciary's ability to manage its own operations without external oversight. Effective and reliable financial management practices must be adopted and applied to all types of funds administered by the courts including appropriated funds, revenues and fees received, and trust funds held on behalf of litigants or other parties. To ensure transparency and accountability in financial operations, the courts should undergo regular internal and external fiscal audits in accordance with state or local requirements.

Providing Adequate Funding

The basic function of the court system is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution. To fulfill this mission courts must:

- Provide proceedings that are affordable in terms of money, time and procedures.
- Process cases in a timely manner while keeping current with its incoming caseload.
- Adhere faithfully to relevant laws and procedural rules.
- Provide a reasonable opportunity for litigants to present all necessary and relevant evidence.
- Allow participation by all litigants, witnesses, jurors, and attorneys without undue hardship or inconvenience including those with language difficulties, physical or mental impairments, or lack of financial resources.
- Provide facilities that are safe, secure, accessible, and convenient to use.
- Make a complete and accurate record of all actions.
- Provide for inclusive and representative juries.

While these broad responsibilities of the courts are clear, it is more difficult to determine the level at which the judicial branch is adequately funded to accomplish these duties. Compounding this issue is the fact that funding for any given court system may vary because of jurisdictional, structural and operational differences. Principles that address the adequacy of court funding provide a useful context to aid judicial leaders and funders in assessing and addressing their respective budgetary responsibilities and promote development of more stable and adequate funding. Principles focus budget discussions on policy and program issues as opposed to line item detail. The set of principles below help define when a court system is adequately funded. Many of these principles can be supported by nationally accepted performance measures or by such measures adopted by the judicial leadership in each state.

- ***Principle 21: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judicial officers and court staff functioning in accordance with adopted workload standards.***

Commentary: This principle must be taken in context with two earlier principles: courts must objectively demonstrate the need for resources (Principle 16) and have

performance measures (Principle 17) which include those that demonstrate the extent that courts are meeting time to disposition standards. Both timeliness and quality are requirements of satisfactory performance. Thus, having guidelines for timely case processing is fundamental to determining satisfactory performance. Workload models demonstrate when judges and staff are working to capacity. Courts should be funded so as to enable satisfactory performance by adjudicating cases in accordance with time standards with judges and court personnel working to capacity as measured by workload models.

- ***Principle 22: Responsible funding entities should ensure that courts have facilities that are safe, secure and accessible and which are designed, built and maintained according to adopted courthouse facilities guidelines.***

Commentary: Existing national standards relating to courthouse facilities should be used to assess compliance with this principle. The physical structure of a courthouse is the most obvious factor affecting access to justice. To ensure that all persons with legitimate business before the court have access to its proceedings, court facilities need to be safe, accessible, and convenient to use. This principle applies to facilities funded by local units of government as well as those funded by the state.

- ***Principle 23: The court system should be funded to provide technologies needed for the courts to operate efficiently and effectively and to provide the public services comparable to those provided by the other branches of government and private businesses.***

Commentary: As socio economic conditions change and caseloads continue to grow, and as the demands for access change as citizens' use of technology to interact with government grows, state-of-the-art technology is necessary for courts to meet future demands placed on them. Courts must provide services of a kind and convenience that the public has come to expect from their experiences with the other branches of government and the commercial world. Court systems need to continue to identify key technologies courts need in order to become more efficient and remain relevant in a constantly advancing technical society. Examples include electronic filing, effective case management systems, online jury services support, video conferencing of court hearings, centralized and automated payable processes, and virtual self-help centers to assist self represented litigants. Many states have created special technology earmark funds, consistent with Principle 25, to provide the necessary resources for these investments.

- ***Principle 24: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.***

Commentary: Principle 21 addresses the need to fund courts at a level that allows them to resolve cases that come before them in a quality fashion in accordance with time standards. Principle 9 addresses the need for courts to make the necessary alternative dispute resolution mechanisms available. This principle addresses the need to adequately fund those various dispute resolution mechanisms. For courts to function as efficiently as possible, the legislature needs to adequately authorize and fund the necessary dispositional methods. Research has revealed that one dispute resolution size does not fit all disputes. Some cases, such as criminal matters, may require the full adversarial process. Others, such as those with drug use as the underlying issue, may be more suited to a problem-solving, treatment approach. Some family cases may be amenable to mediation or some other similar resolution alternative where the disputants maintain greater control over the process and outcome. Still other cases can be resolved through purely administrative determinations. Appropriations must be sufficient to enable courts to offer various dispositional options as well as a triage process which allows courts to analyze the issues or causes of action in each individual case to determine the appropriate dispositional alternative. Without proper dispositional alternatives, legislative funding decisions may prevent courts from adjudicating entire case types that may arbitrarily be deemed a lower priority, when in fact all cases filed with the courts have constitutional standing to be properly adjudicated.

- ***Principle 25: Courts' fees should not be set so high as to deny reasonable access to dispute resolution services provided by the courts. Courts should establish a method to waive or reduce fees when needed to allow access.***

Commentary: Courts are a core function of government and as such should be primarily funded by general tax revenues. Citizens pay taxes to secure basic core services. However, most states also charge fees for court users. While circumstances occur where user fees are necessary, such fees should always be minimized and should never be used to fund activities outside the court system. Courts should not become a taxing vehicle of government for purposes extraneous to the courts. Court fees cannot be raised so high that they become a barrier to the public's access to justice. Recognizing that fees should be secondary to appropriations from general revenue funds, courts should be able to retain the major portion, if not all, of the revenue generated by those fees.

CONCLUSION

Judicial, legislative and executive branch leaders must understand the nature of the judicial function and the role courts play in the larger world. Courts are a core function of government and must always be so recognized: from maintaining a peaceful and orderly society, to providing stable resolution of business and commercial disputes—which is the basis for a vibrant economy, to maintaining the rule of law so fundamental to a democratic nation. The governance and the decision-making and case administration principles discussed above form the foundations that courts need in place to pursue adequate funding. Funding Principles cannot be successfully implemented unless courts have basic structural, management and administrative practices in place. These provide the foundation upon which court management and subsequent funding requests are based. The Funding Principles set forth herein provide a framework in which judicial and legislative leaders can secure stable and adequate funding so key to the successful discharge of the judicial branch mission.

Court leaders can use these Principles for Judicial Administration to critique existing models in place in both state and local court systems. Critiquing how a particular court system matches up to the principles of governance, decision-making and case administration, and court funding can lead to specific and tangible assessments about strengths and weaknesses and, in turn, to real reform. It is in the spirit of providing good government that these Principles for Judicial Administration are advanced.

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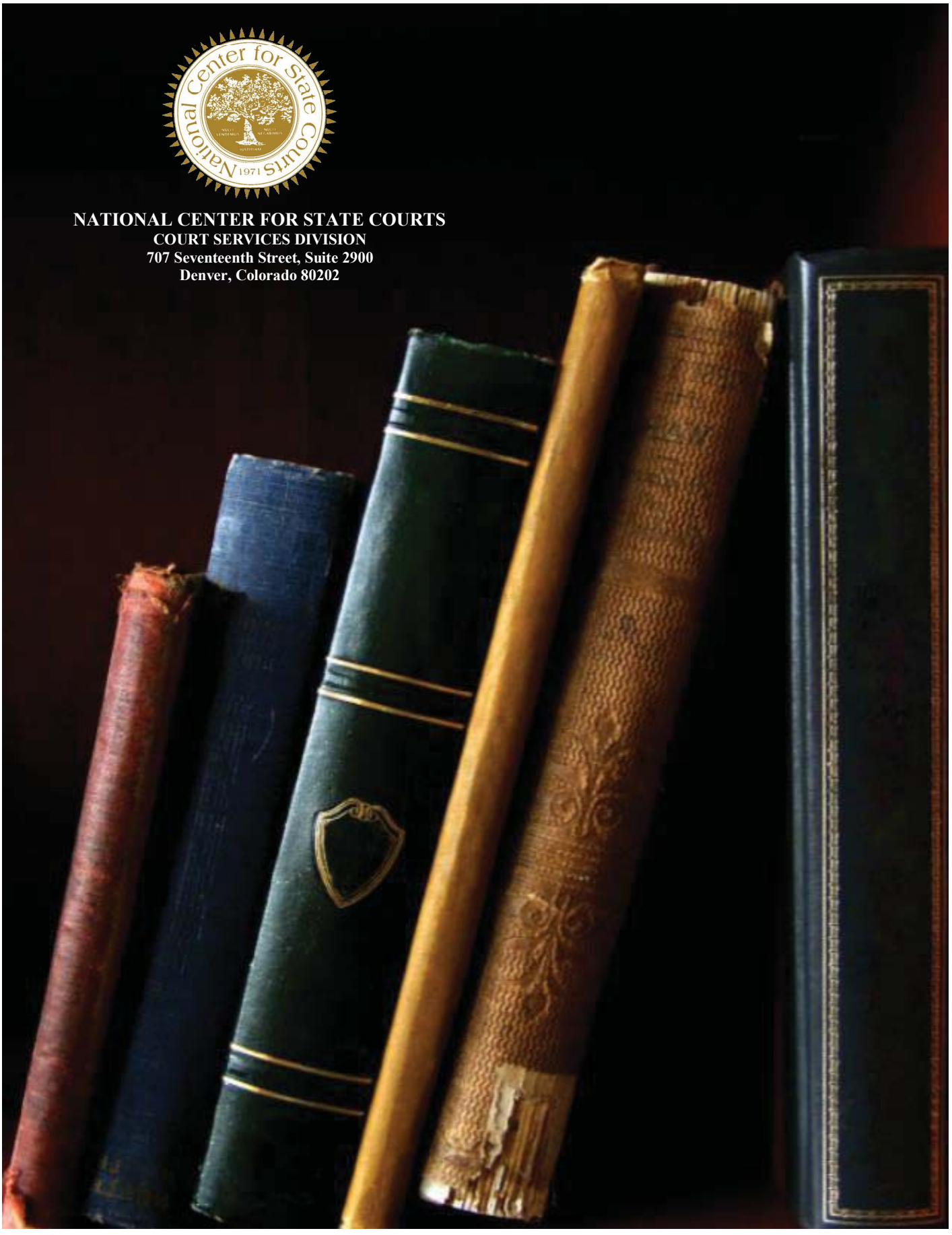

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INNOVATION FROM CRISIS: THE NEW JERSEY MUNICIPAL COURT EXPERIENCE

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The current fiscal crisis might prompt local courts to consider some sort of shared-services arrangement to consolidate operations and cut costs. The New Jersey experience offers some helpful tips and cautions.

> *"A crisis is a terrible thing to waste"*
>
> *- Paul Romer, Economist*

The state of New Jersey's fiscal crisis has reached every level of government. Many New Jersey municipalities, faced with a significant reduction in state aid and a precipitous increase in operating expenses, have been forced to explore creative options that impact the bottom line, including that of shared services. This trend toward shared services has included New Jersey's municipal courts, which are local courts of limited jurisdiction. This article focuses on that trend, treating this topic from a state, county, and local perspective.

The concept of shared services is not new. It has been studied extensively since the 1960s (Schermerhorn, 1979). The theory behind shared services is simple: increased efficiency and cost savings can be realized through economies of scale (New Jersey Department of Community Affairs, 2006). It can also provide an effective way of containing costs and reducing service redundancies.

All 50 states have passed legislation allowing for shared-service arrangements by their local entities. The state of Washington, for example, recently passed a law that provides for municipal court contracting, which states in pertinent part: "A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities." This language is consistent with that contained in the statutes of many other states.

In New Jersey, sharing services between local units of government is on the rise, with municipalities actively looking for ways to cut costs. This includes sharing everything from street sweepers and ambulance services to fire and police services. To provide for this, municipal leaders use courtesy or handshake agreements that allow for the sharing of facilities, equipment, or supplies, as well as formalized agreements that are sometimes required by state statute and that require the passage of local ordinances or resolutions. New Jersey has been at the forefront of the shared-services trend, especially as it relates to local or municipal courts; a sizable 21.7 percent of the state's 526 municipal courts are part of a formal shared arrangement.

The New Jersey Experience

In New Jersey, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40:65-1 et seq.) provides the statutory authority for municipalities to enter into an agreement to share services. A separate statute (N.J.S.A. 2B:12-1) provides the specific authority for municipal courts to be part of a formal shared agreement. This latter statute requires each municipality either to establish an individual court or to enter into an agreement with other municipalities to establish a shared or joint municipal court.

Joint and Shared Courts

A shared court in New Jersey is one in which two or more courts actually share resources, including staff, office space, technology, supplies, and even judges. In a shared-court arrangement, each court maintains its own identity. The caseloads, financial transactions, bank accounts, and other matters of court business are not commingled, but remain separate; they simply share resources.

A joint court, by comparison, involves two or more courts combining to form one larger court. Their cases, and all court business such as finances and administrative practices, are combined. They not only share resources, but become one entity, regardless of the number of participating municipalities.

Another important distinction between joint and shared courts involves the judicial appointment process. In a joint court judges are appointed by the governor, with the advice and consent of the state senate (New Jersey Constitution, Article IV, Section VI, Paragraph 1), while in a shared court judges are appointed by the local governing bodies.

Shared Courts

- Two or more courts share resources including staff, office space, technology, supplies, and judges
- Each court maintains its own identity
- Caseloads, financial transactions, bank accounts, and other matters of court business are not commingled, but remain separate
- Judges are appointed by the local governing bodies

Joint Courts

- Two or more courts combine to form one larger court
- Cases, along with all court business such as finances and administrative practices, are combined
- Become one entity, regardless of the number of participating municipalities
- Judges are appointed by the governor, with the advice and consent of the state senate

There are advantages and disadvantages to establishing each type of court. In municipalities wishing to retain the ability to select their own judge, a shared court is obviously preferable, given the role of the governor in appointing the judge in a joint court. Conversely, joint courts are considered easier to operate, since cases and finances are commingled. Joint court staff need not worry about maintaining separate filing systems or financial accounts, depositing monies into the wrong bank account, or entering a disposition under the wrong court code. These are everyday issues confronted by staff working in shared courts. For these reasons, the establishment of a joint court is generally preferable when merging large numbers of municipal courts, since the greater the number of courts involved, the more complicated the day-to-day administration.

Finally, although joint courts are generally easier to operate than shared courts, they have one significant disadvantage: they are more difficult to break apart once merged. In shared courts that disband, each court simply moves its operations to a new location. This is made easier by the individual operations being separate and distinct. Joint courts have the added burdens of determining who retains jurisdiction over which cases and how collected monies should be distributed. Who, for example, should have jurisdiction over a matter originally disposed of by the joint court, but reopened by motion a year after the separation? Who reimburses the defendant if he or she is later found not guilty and monies must be refunded? Complicating these issues is the fact that most court computer systems are simply inadequate to provide the level of flexibility and sophistication needed to process these changes, especially when large numbers of cases are involved.

Other Types of Shared Services

It is important to draw a distinction between what is meant in New Jersey by shared municipal courts and courts that simply share services. As discussed above, a shared municipal court is one in which two or more municipalities have formally merged by passing ordinances or resolutions, pursuant to state statute (N.J.S.A. 2B:12-1). In these arrangements, all court operations are generally centralized in one facility.

There are, however, less formal types of shared-service arrangements in our courts that do not require a formal resolution or ordinance. Although these arrangements are not the focus of this article, they still bear mentioning. Many courts, for example, routinely share equipment, including videoconferencing, sound-recording, and assistive-listening devices. Some municipalities even share security-related

equipment, including magnetometers and scanning wands. It is not uncommon for courts to share physical space, such as a courtroom or storage space. Although no specific data are kept on the number of such shared arrangements in New Jersey, they are fairly common, with some agreements lasting for a short duration and others lasting years.

Looking at the Numbers

There are 566 municipalities in New Jersey, organized into 21 counties. As of April 2009, 123 were part of a joint or shared court. This means that in the municipal courts, more than one in every five municipalities, or 21.7 percent, are currently part of a formal arrangement of a merged court.

Sixty-four municipalities have established a joint court, while 59 municipalities have established a shared court. In total, 18 of New Jersey's 21 counties have one or more merged courts, either joint or shared. Of particular interest is that, with few exceptions, all of the joint and shared courts are low-volume courts, with the individual courts involved in the mergers generally having annual caseloads of a few thousand or fewer.

Looking at the Numbers in New Jersey*

Number of Municipalities	566	
Municipalities that were part of a Shared or Joint Court	123	21.7%
Shared Courts	59	48.0%
Joint Courts	64	52.0%
	123	
Number of Counties	21	
Counties with one or more Shared or Joint Courts	18	85.7%

* As of April 2009

Recent New Jersey Trends in the Expansion of Shared Services

Joint and shared municipal courts have been common in New Jersey for decades. In fact, a fair number of New Jersey's merged courts have been in existence since the 1960s. In these towns, it is simply the accepted way to operate the court.

According to experts at the New Jersey Administrative Office of the Courts, many of the state's joint and shared courts were established within the past 10 to 15 years, with a fair number being established within the past 5. In fact, in the short time between January and March of this year, six merged courts were created, comprising 15 different municipalities. During that same time, two merged courts comprising four municipalities were disbanded.

Burlington County, located in the southern half of the state, provides an excellent example of the recent growth of shared court services. Consisting primarily of farmland and small communities, Burlington County is considered by many to be a county ripe for shared services. Currently, 11 of its 40 municipal courts are combined into five shared-services arrangements. While one of the shared courts, Bass River/Washington, has been in existence for more than a decade, the oldest of the four remaining shared courts was established in 2005. Additionally, merger talks between other municipalities are ongoing. In fact, local leaders from one centrally located municipality recently sent letters to local leaders in all contiguous municipalities advising that they were interested in a shared-services agreement.

Burlington County is not alone. These same discussions are occurring throughout the state. Local leaders, for example, in Gloucester, another southern county, are even exploring the possibility of creating a regional municipal court. This "super" municipal court would provide court services for most of the municipalities in the county. Discussions between local leaders from the interested municipalities are ongoing.

Finally, several other things are happening on the state level that may affect shared-court services. Each county, for example, has a shared-services coordinator, who is responsible for identifying local entities that may benefit from shared services. In one county, this coordinator recently effectuated the merger of five municipal courts. Additionally, a report recently published by the state's Local Unit Alignment, Reorganization and Consolidation Commission (LUARC), whose name aptly describes its role, noted the appeal of merging municipal courts. The New Jersey State Bar Association's Judicial Administration Committee has also supported the fusion of local courts where appropriate.

The Effectiveness of Shared Services

When it comes to shared services, the all-important question is: Does it work? A growing number of municipalities in New Jersey are hiring outside firms to conduct feasibility studies to help answer this question. In fact, grants to conduct these studies are available in New Jersey through the "SHARE" (Sharing Available Resources Efficiently) Program, which is administered by the state's Department of Community Affairs.

In New Jersey and elsewhere, the jury seems to be out on the effectiveness of shared court services. While many local leaders claim significant savings, others state that savings are far less than anticipated, if even realized at all. Some even claim they are losing money. A newspaper article appearing in the April 8, 2009 edition of the *Star Ledger* highlights the financial problems of several municipalities that are part of the state's largest joint court, the North Hunterdon Municipal Court. Several local leaders of this eight-municipality joint court claim their municipality is losing money, since they are paying significantly more to operate the merged court than is being received in revenues.

The reality is that, similar to any business venture, the savings realized by a court merger are tied to many factors, with the most important being the financial stipulations contained in the merger agreement. Based on the agreement and related factors, some municipalities will realize significant savings while others will not.

Cost-Benefit Analysis

The best way to determine whether a proposed merger makes sense is to conduct a cost-benefit analysis. The relevant issues to consider when merging two courts, whether joint or shared, are lengthy and situation specific. In addition to the financial implications, there are many other issues that warrant consideration, including some that raise sensitive political or local control issues (see "Considerations for Merged Courts" checklist).

The Role of the Judiciary

The independent authority of a municipality to establish a single, joint, or shared court is clearly established, but there exists a larger framework in which a municipal court operates. Before concluding, it is important to clarify the judiciary's role in this process. While New Jersey statute makes it clear that the decision to establish a joint or shared court rests with the local municipality, the state constitution and applicable court rules make it clear that the oversight responsibility for the efficient

Considerations for Merged Courts

- Will the newly merged court be a joint or shared municipal court?
- In which municipality will the merged court be located?
- Will the new facility be able to handle the increased volume, staffing, and filing needs? If not, what facility renovations will be needed?
- What impact will the increased court volume/traffic have on other offices in the building?
- What impact will the merger have on the public in terms of convenience?
- How will the merger impact the police department?
- How many staff members at what titles will be needed to properly staff the merged court? Will anyone be demoted or fired? If so, staff from which court(s)?
- Who will run the court? That is, who will be the judge and court administrator?
- Are caseloads for each municipality expected to increase or decrease in future years? What impact will this have on the facility and future staffing?
- Is the merger agreement static or will it change based on future operational needs?
- How often will court sessions be needed?
- Will the judge, court administrator, or other staff be given additional compensation to handle the additional responsibilities?
- Who pays for future facility upgrades or the purchase of new equipment? Who has control over these decisions?
- Who is responsible for providing court security?
- Who assumes liability risks?
- How much does it cost a municipality to operate its present court? How does that compare to the anticipated cost of being part of the merged court?
- How can the agreement be terminated? What are the town's options if it is?

administration of the court rests with the judiciary, specifically, the assignment judge or chief judge, who is an appointee of the chief justice assigned to oversee all judicial processing in the vicinage, or judicial district. In this partnership between the local court and the state judiciary, a partnership that is not always amicable, the municipality is responsible for the staffing, budget, and physical-plant needs of the court, while the assignment judge is responsible for the judicial and administrative handling of all cases.

As a result of this dual responsibility, municipal leaders and assignment judges must work together to ensure that each court has the resources and expertise it needs to properly serve the public. This becomes even more important when a municipality considers establishing a joint or shared court. Too often, decisions are made without sufficient input from the judiciary. This can lead to decisions based more on economics than on the administration of justice. It is essential that when contemplating the establishment of a joint or shared court, municipal leaders involve the assignment judge in the discussions as early as practicable.

Conclusion

No one knows what the future will bring. It is clear, however, that in New Jersey and elsewhere, more and more municipalities are contemplating shared-services arrangements due to the weakened economy. Whether this will lead to an increase in the number of shared and joint courts remains to be seen.

For some, shared services represent an opportunity to do more with less. But as highlighted in this article, it is not always the panacea it appears to be. Mergers benefit some municipalities, but not all. Municipal leaders should carefully analyze the impact the consolidation will have on the entire community, rather than just focusing on the bottom line. Crafting a deal that is economically feasible and also serves the public is possible. The potential for cost savings and improved service is real. Decision makers must approach the shared-services choice with care, cognizant of the risks and aware of the substantial benefits that can be gained from doing it right.

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Appendix T

MISSOURI MUNICIPAL COURTS: BEST PRACTICE RECOMMENDATIONS

FINAL REPORT
NOVEMBER 2015

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This study was prepared under a State Justice Institute grant for the Supreme Court of Missouri and the Office of State Courts Administrator (OSCA), the administrative arm of the Supreme Court. The grant was administered through OSCA and supported consulting services provided by the National Center for State Courts ("NCSC," "National Center," or "Center"). The NCSC is an independent, private nonprofit corporation, chartered in 1971, targeting the improvement of courts nationwide and around the world. **This study reviews the operations and procedures of Missouri's municipal courts and recommends a series of improvements based on various best practices operative in limited jurisdiction courts throughout the country.** The points of view and opinions expressed in the report are those of the authors as agents of the National Center, and do not necessarily represent the official position or policies of the State Justice Institute, the Missouri Judicial Branch, the Supreme Court of Missouri, or the Office of State Courts Administrator.

Online legal research provided by LexisNexis.

Acknowledgements

The NCSC consultants wish to thank the judges and staff of the various municipal courts reviewed throughout Missouri for their cooperation and assistance in site visits, data collection, interviews, and observations of court operations and proceedings on three separate trips to the state. The Center is also indebted to the lawyers, city and county officials, circuit court judges, court staff, and members of the public who provided information and suggestions about the workings and performance of Missouri's municipal justice system. Finally, the authors are especially appreciative of the advice and counsel provided by staff of the Office of State Courts Administrator, and in particular Kathy Lloyd, Missouri State Court Administrator, for her guidance, and Jill Schroeder, Administrative Coordinator, for logistical and scheduling arrangements that aided the work of the NCSC project team.

Missouri Municipal Courts
Best Practice Recommendations

Table of Contents

EXECUTIVE SUMMARY

This study, was conducted by the National Center for State Courts (NCSC) at the request of the Supreme Court of Missouri, and funded through a State Justice Institute (SJI) grant. It is directed at identifying best practices in operating and managing limited jurisdiction courts throughout the United States and suggesting how those practices may be applied to municipal courts in Missouri. The impetus for this analysis was sparked by a recent Department of Justice (DOJ) assessment of the Ferguson Missouri Police Department which also alluded to problems and improprieties in the operation of the Ferguson Municipal Court. Court officials feel some of the difficulties in Ferguson may extend to a broader range of municipal courts in the state.[1] To that end, National Center consultants, beginning in May 2015, reviewed studies and reports on Missouri's municipal courts (including the March 2015, DOJ Report), examined data on court performance, met twice with the Supreme Court of Missouri, and visited, observed, and interviewed judges, lawyers, and court staff in a select number of municipal courts throughout the state. A variety of attorneys, judges, county, city, and court officials and staff throughout Missouri were interviewed during three separate trips to the state.[2]

The analysis was conducted independently by the National Center. No person pressured, influenced or otherwise compromised the objective nature of this review. All those interviewed and contacted provided requested data and information openly and in a timely manner. At all times the consultants were free to determine whom to interview, what questions to ask, how to collect needed data and information, which courts and cities to visit, and how to assemble this report.

The NCSC project director Gordon Griller is a Principal Court Management Consultant at the Center. He is a nine-year, full-time employee of the Center's Court Consulting Services, and has over 40 years of experience in leading, managing and analyzing limited and general jurisdiction state trial courts. Mr. Griller was assisted by two subject matter experts, Ms. Yolande

[1] United States Department of Justice, Civil Rights Division. *Investigation of the Ferguson Police Department*. (March 4, 2015).

[2] The NCSC project team conducted three site visits to Missouri to observe, review, interview and discuss court operations and procedures with judges, lawyers, city officials, and court staff. The dates, courts, and selected noteworthy events and interviews included the following. *May 12-14, 2015*: Ferguson Municipal Court, DOJ sponsored Ferguson Town Hall Meeting on the Ferguson Court, State Courts Administrator. *June 22-26, 2015*: Florissant Municipal Court, Bella Villa Municipal Court, Presiding Judge of the Twenty-first Judicial Circuit Court (St. Louis County), Columbia Municipal Court, OSCA Chief Technology Officer, Supreme Court of Missouri, Court Administrator of the Thirteenth Judicial Circuit, Project Director of the Center for Court Innovation Pretrial/Jail Overcrowding Study on St. Louis County (MacArthur Foundation grant targeting a reduction in unnecessary over-incarceration), and a representative of the Missouri Municipal and Associate Circuit Judges Association. *August 10-13, 2015*: Kansas City Municipal Court, Lees Summit Municipal Court, Higginsville Municipal Court, Fulton Municipal Court, Presiding Judge of the Sixteenth Judicial Circuit Court (Greater Kansas City), and Supreme Court of Missouri.

E. Williams, Court Administrator for the Seattle Washington Municipal Court, and Mr. Russell R. Brown, III, Court Administrator for the Cleveland Ohio Municipal Court. Both are accomplished and highly regarded professionals who manage progressive, well-respected municipal courts in their communities.

The report is divided into four subject matter sections:

- leadership and governance
- judicial selection retention and evaluation
- court management
- fiscal and financial operations

Various topics under each section represent recognized best practices in operating municipal courts. Admittedly, these practices may not be the only leading protocols in administering municipal courts, but the National Center maintains they are among the most important and practicable in promoting both immediate and sustained improvement in Missouri's municipal courts.

The following pages outline the best practice recommendations found under each of the above sections and provides the page number the recommendation can be found.

Best Practice Recommendations

Leadership and Governance

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1. Model contracts for the appointment of full or part-time municipal judges should be developed by the Supreme Court in a manner and through a process as decided by the Court and directed at strengthening the independence of municipal courts and upholding impartiality and fairness in situations where a judge serves under contract with a city.
2. Model ordinances (city codes) should be developed by the Supreme Court that clearly define a municipal division as a court of law funded and supported by the city but structurally a component of the Missouri Judicial Branch.
3. The Supreme Court should clarify to a greater extent the criminal and civil powers of municipal divisions and how the criminal rules of procedure and criminal statute of limitations apply.

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4. The Office of the State Courts Administrator (OSCA) should develop monographs and brochures, as they so determine, that clearly describe in fact and law the relationship of municipal courts to the State Judicial Branch, require their distribution to all current full and part-time municipal court judges and staff and all new employees upon hiring or assignment to a municipal court on an ongoing basis.
5. To the extent feasible, signage, stationery, forms, orders and documents related to and used by municipal divisions should convey to the public and court customers that the court is part of the Missouri Judicial Branch. This should not bar the court from using the name of its related municipality in its official designation as a court, but in so doing it should be clear the court is a court of law functioning as part of the State Judicial System not a department of municipal government.

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6. The Missouri Judicial Branch, in concert with selected members from the Municipal and Associate Circuit Judges Association, and the Presiding Judges of the various Circuit Courts in the State, should develop a brochure or pamphlet and pilot a visitation program directed at all current and newly elected city councilpersons and mayors in various municipalities by appropriate Judicial Branch representatives to explain and review the importance and features of judicial independence for municipal divisions and the fact that such divisions are constitutionally part of an integrated Missouri Judicial Branch. A report on the pilot project, its impact, and any elements that ought to be improved, along with recommendations regarding the statewide expansion of the pilot, should be submitted by OSCA to the Supreme Court no later than 12 months after program initiation, and, as appropriate, the Supreme Court may wish to issue a directive for the continuation and expansion of the program on a permanent basis.

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7. Circuit court presiding judges should assertively exercise administrative supervision over the municipal courts (aka as municipal divisions) in their circuits. The presiding circuit judges, assisted by the staff and other judges of the circuit court as they determine, should meet on a regular basis with the presiding judges of the municipal courts to discuss separation of powers,

resources, use of technology and legal, administrative and other relevant issues to ensure the overall proper functioning and independence of the courts of the circuit.

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8. A report should be filed annually by each presiding municipal judge with the presiding judge of the circuit court outlining reforms, improvements, efficiencies and services that benefit the public and enhance the independence, fairness and impartiality of their court. Copies of such reports should be transmitted to OSCA. Where it may be determined from reports, observations, performance data or investigations that a municipal division may be operationally dysfunctional or problematic, and is beyond the circuit court presiding judge's capacity to ameliorate as determined by that judge, the matter shall be referred to the Chief Justice and State Courts Administrator for appropriate remedies.
9. Within a city, the presiding municipal judge should function as the administrative head of the municipal division and supervise the judicial and internal management functions of the court by developing and overseeing the budget, supervising the chief clerk or court administrator, and ensuring the proper functioning of the court. Such duties may be delegated to the chief clerk or court administrator, but such delegation should not relieve the presiding judge of accountability for the operations and administration of the court.

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10. The duties of the presiding municipal judge as administrative head of a municipal division should be clearly outlined in any municipal code and employment contract related to the appointment of the presiding municipal judge. In turn, the presiding municipal judge should be fairly compensated for the additional time required to perform such duties.

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11. It is suggested that the Supreme Court develop a committee or task force to investigate, research and recommend plausible options for municipal division consolidations where appropriate.
12. Consolidation and reorganization of some of the 82 municipal divisions in St. Louis County should be a priority given the dense population in the Greater St. Louis area and large number of municipal divisions.

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13. The Supreme Court should request appropriate funding from the State Legislature to develop a special OSCA unit dedicated to Municipal Court Services. Formal reports on the work and achievements of this special group should periodically be submitted to the Supreme Court and other interested parties.
14. The new OSCA Municipal Court Services division should have dedicated staff and a strategic agenda based on policy decisions by the Supreme Court to methodically coordinate, upgrade, and monitor the work of municipal divisions in concert with the presiding judges of the circuit courts.

Judicial Selection, Retention, and Evaluation

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15. By rule, administrative order, or statute, a specially-appointed citizen advisory board should be required in every municipality wherein a judge is appointed by the city council and/or mayor and serves on a contract, pursuant to an ordinance, or some other specially designated process by the elected governing board of the municipality. The purpose of the board is to recommend to the city governing body the best qualified persons to become municipal division judges, to evaluate incumbent judges regarding their responsibility to perform with impartiality, integrity, proficiency and fairness, and to advise the governing body as to whether incumbent judges should be retained in office. To these ends, it would also be appropriate for the Supreme Court to develop helpful guidelines regarding judicial evaluation criteria for use by such a board.
16. In appointing members to the advisory board, the city governing body should be sensitive to representation reflecting the diversity of the community served by the municipal division. Advisory board meetings should comply with all open meeting laws of the state. The city should arrange administrative support for the advisory board by preparing notices of meetings, keeping formal minutes, sending information packets to members, advertising notice to the public about judicial vacancies and reappointments, and fulfilling other clerical and management duties needed by the board. The advisory board should not limit its investigation of applicants to the applications and letters of recommendation received but should hold public hearings, personal interviews and conduct such other investigations into the background, performance and qualifications of the applicants as the advisory board deems necessary.

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17. The advisory board should recommend more than one candidate for each vacancy. If at least two candidates are not qualified, the advisory board shall submit a formal report to the municipal governing board as to the general reasons for a lack of qualified candidates and those reasons should be made public. Candidates submitted by the advisory board should be the only nominees considered, voted upon, and installed as municipal division judges by a municipal governing body. Should no candidates be qualified, the municipality shall notify the presiding judge of the circuit court in which the municipality is located for the assignment of an associate circuit judge as a municipal division judge, or other such remedy as the presiding judge shall determine.

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18. In the interest of independent, impartial courts and the importance of preserving the public's confidence and trust in them, the Supreme Court should consider a rule that prohibits lawyers who serve as municipal judges from simultaneously working as municipal prosecutors.

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19. The Supreme Court, through its Office of State Courts Administrator, should assertively and actively engage in continuing judicial education programming for all municipal and associate circuit judges serving as judges in municipal divisions, beyond merely certifying, accrediting, and staffing the educational activities of the Missouri Municipal and Associate Circuit Judges

Association. To that end, it is recommended that additional funding and staff be requested from the State Legislature.

20. OSCA should consult with the National Association of State Judicial Educators to develop a more comprehensive judicial branch education program for Missouri, including but not limited to municipal divisions.

Court Management

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21. To the extent feasible, municipal court space for judges, staff, record keeping, and work processes should be sight and sound separated from police and prosecution activities.
22. Courtrooms must be dignified and convey that proceedings in them are fair, unbiased and conducted under the authority of the Missouri Judicial Branch, not a city municipal government. It is challenging to convey that impression to the public when court proceedings are held in police facilities, city council chambers, or gymnasiums, and prosecutors sit next to the judge at city council tables which National Center consultants observed in some locations. Consequently, it is suggested the State Courts Administrator establish minimum standards for décor, design, and accouterments for municipal division courtrooms, with special attention given to make-shift city council courtrooms and courtrooms located in police stations.
23. The Office of the State Courts Administrator should develop courtroom and court facility security guidelines for municipal governments to follow regarding municipal division space in city facilities. To those ends, the presiding judges of each circuit court, or their designee, should ensure every municipal division in the circuit has complied with the established guidelines.

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24. The Supreme Court of Missouri Rules Governing Court Personnel should be amended to include municipal court clerks and clearly state that no court employee shall job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.
25. Further, should non-justice system work be permitted for municipal court employees, the working arrangement should be allowed only through written, formal authorization by the presiding municipal judge and a clear understanding of the restrictions on the court employee's work activities by the non-justice system employer(s).

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26. The Supreme Court should establish a committee or task force to develop strategies and pathways to transition municipal divisions to courts of record employing digital audio records.
27. Costs associated with equipment purchase, installation and training to establish digital audio records in all Missouri municipal courts should, to the extent possible, avoid placing a financial burden on municipalities.

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28. OSCA should initiate a statewide effort to review court issued forms and instructions provided to the public with the goals of simplifying the language, removing legal jargon and terms that may be familiar to the court but confusing to the public.
29. Court calendars should be publicly available. Courts should be encouraged to schedule cases at times and on dockets that are not rushed which in many municipal divisions is the current situation. In OSCA's monitoring role (see section 2.7), random reviews of court dockets should take place and guidelines for setting calendars should be developed.
30. A program to administer periodically the National Center's CourTool Measure One Survey on Access and Fairness in municipal divisions should be developed by OSCA. The survey is in the form of a questionnaire whereby court users on a specific day or a few days rate the court's accessibility and its treatment of customers in terms of fairness, equality and respect. Comparisons of results among courts by location, type of customer, and type of service can inform and improve court management practices.

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31. Improved assistance in developing more useful, consistent and uniform municipal division websites should be a strong objective of state court administration. Numerous litigants who receive traffic citations are not residents of the municipality where the offense occurred. With a mobile population it would be helpful if OSCA could develop a model website for municipal courts that would give visitors useful information; provide a common, helpful look and feel among municipal divisions; and facilitate easier, more familiar navigation for users.

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32. State court administration should ensure the court system's statewide technology plan includes municipal divisions and is updated consistent with a more inclusive role for limited jurisdiction courts within the Judicial Branch, including a qualified vendor list for municipal courts to purchase an electronic case management system.
33. Identify and implement a common data exchange system that allows courts to transfer important case information to regional repositories or a central data warehouse. To that end, the Supreme Court should request the necessary funding from the State Legislature.

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34. The Office of State Courts Administration, should consider engaging in a more involved and active role in continuing education programming for municipal division chief court clerks and court administrators beyond merely certifying and accrediting the educational activities of the Missouri Association for Court Administrators and the Metropolitan St. Louis Association for Court Administration.
35. OSCA should consult with the National Association of State Judicial Educators and other state court administration offices regarding ideas and strategies to promote a more comprehensive judicial branch education program for non-judicial municipal division chief clerks and court administrators as well as counsel with the leaders of MACA and MSLACA toward those ends.

Fiscal and Financial Operations

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36. All employment contracts and city codes or ordinances outlining the duties and responsibilities of municipal judges and prosecutors should clearly state that tenure and/or reappointment is not contingent on generating revenue for the municipality.
37. Fees and costs, however set, should be determined in consultation with the municipal judge and presiding judge of the circuit court, and all municipal division fees and costs should be reviewed periodically by the municipal judges and presiding judge of the circuit at a meeting of them en banc.
38. Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.

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39. Training should be provided to municipal judges on the fundamentals of bail as coordinated through the presiding judges of the circuit courts.
40. Municipal courts should be encouraged to use evidence-based bail determinations and individual assessments of each defendant's background and criminal history in setting bail.
41. Municipal governments should consider the creation of a pretrial service function in an existing municipal agency, apart from the police department, to administer an objective risk assessment tool and the collection and verification of background information on arrestees for pretrial judicial decision-making.
42. OSCA should develop a task force to research and explore ways to institute oversight and accountability measures in the municipal court bail determination process.

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43. OSCA should review and study the array of diversion and community service programs in the State available to the municipal divisions with the objective to identify and cataloging their locations, types of services, client capacities, court and client costs, and operations for distribution to presiding judges of the circuit courts and all municipal judges. The catalog should be periodically updated to ensure its continued accuracy.
44. Based on a review and study of diversion and community service programs in the State, OSCA should pinpoint close geographic clusters of municipal courts regardless of their jurisdictions that could benefit from working together to access local diversion and community service programs, and provide such information to the affected presiding judges of the circuit courts and municipal judges for further action.
45. Presiding judges of the circuit courts and the municipal judges in those circuits should develop a task force to study and determine the viability of municipal division operated and shared community service and diversion programs in a circuit.

Findings:

Best Practices
Observations/Commentary
Recommendations

1.0 LEADERSHIP AND GOVERNANCE

Much has been written lately within the national court community on governance and leadership in state and local trial court systems. In many ways it is a reaction in modern fast-paced times to the historic operating principles of the American justice system. The set of roles and responsibilities conveying power and control to those in authority over state and local courts are generally so fragmented, consensus focused, loosely-coupled, and laissez-faire driven, that it is both complicated and protracted for top leaders to develop binding organization-wide (read: state-wide) policies, directions and strategies.[3]

As scholars and experts in judicial and court management have examined leadership and governance in today's courts, most conclude state judicial systems are complex for reasons endemic to the basic purposes and functions of courts. Namely, administering justice in individual cases.[4]

Judges, like professors and doctors, are highly trained professionals with extensive individual autonomy. Both management and professional decisions made by them are largely decentralized. Tension is commonplace between institutional commitment and individual independence. Reliance on multiple, external funding sources add to system disintegration by causing dispersed, varied resource levels throughout the collective institution. Managing such widely spread, loosely connected, and complex organizations requires governing mechanisms different from traditional hierarchical or corporate command-and-control structures.[5]

In courts, colleges and hospitals, effective leadership is commonly based more on persuasive, collegial approaches exercised by recognized leaders who are seen as having professional and managerial legitimacy and competence, who are inclusive and collaborative in their decision-making, who operate through open, transparent communication procedures. And, who are invested in a reform process directed at sustainable improvements that avoid severe, disruptive crisis-centered change that can further splinter an already fragmented system or is merely cosmetic rather than substantive in its impact. To those ends, the National Center recommends throughout this report a series of best practices found in high performing limited jurisdiction courts that, in our opinion, will improve the operations and functioning of Missouri's municipal courts without creating undue hardship on the courts themselves or the cities that

[3] Durham, Christine M., Becker, Daniel J., *A Case for Court Governance Principles*. A monograph in a series of Perspectives on State Court Leadership emanating from the Executive Session of State Court Leaders in the 21st Century, A Harvard Kennedy School Program. National Center for State Courts. Williamsburg, VA (2012)
[4] Griller, Gordon M., "Governing Loosely Coupled Courts in Times of Economic Stress," Future Trends in State Courts, National Center for State Courts. Williamsburg, VA (2010).
[5] McQueen, Mary Campbell, *Governance: The Final Frontier*. A monograph in a series of Perspectives on State Court Leadership emanating from the Executive Session for State Court Leaders in the 21st Century, A Harvard Kennedy School Program. National Center for State Courts. Williamsburg, VA (2013).

fund them. We start with improvements in overall leadership and governance, the foundation for the remaining recommendations.

1.1 Municipal courts must operate independently with clearly defined powers

Best Practices:

Municipal courts (aka "municipal divisions" of the circuit courts in Missouri) are courts of law and therefore required by constitution and statute to operate independently. Many states define the case types handled by municipal courts as serious matters subjecting defendants to possible loss of liberty and harsh fines. As such, limited jurisdiction courts are generally recognized as having criminal adjudication responsibility and governed by criminal rules of procedure and related statutes of limitations.

Observations/Commentary: Judicial independence and the three branch concept prevalent at the federal and state levels (executive, legislative and judicial) is blurred at the municipal level in Missouri and many other states. State constitutions generally don't mandate separation of powers in city or county governments, and state and federal courts have historically been reluctant to require them to do so under what appears to be two theories of reasoning. "One theory holds that the doctrine applies only where the government possesses sovereignty. Municipalities are administrative units of the state possessing no sovereignty and, as such, their powers are strictly limited to those expressly granted by statute or charter. The other theory relies upon the fact that municipal governments have not kept the three departments separated in form or practice, but have tended to intermingle their functions."[6]

Municipal divisions in a handful of larger Missouri communities with charter governments (e.g. St. Louis, Kansas City, Columbia, Springfield, Independence, etc.) are generally seen to operate as separate, independent judicial divisions. Where municipal judges are elected rather than appointed, or where associate circuit judges serve as municipal division judges, the courts operate more independently and are better positioned to resist improper influences and job-related pressures from politicians or special interest groups.[7]

In visiting and reviewing those municipalities that contract with private lawyers as part-time judges, it is the National Center's opinion there is a greater tendency that the judge's independence may be threatened or compromised through a fear of losing his or her job by

[6] "Separation of Powers Doctrine as Applied to the Cities," *Indiana Law Journal*: Vol. 18: Iss.2, Article 12, Maurer School of Law: Indiana University. Pages 147-148.

[7] There are 955 municipalities in Missouri. Of those 955, 911 are general law municipalities, 38 are home rule charter cities and 6 operate under a special legislative charter permitted prior to the adoption of the state's constitution in 1875. Only the largest cities have full-time judges.

displeasing city officials through rulings against the city or a reluctance to generate higher levels of revenue from fines and fees. Certainly, such circumstances are not true in every municipality that contracts with private lawyers for judicial services. But given the fact that contracts are for limited periods of time, and judges can and have been summarily removed at the end of their contracts for spurious reasons, such an employer-employee situation without suitable protections for judges who must administer the law impartially and fairly presents the very real possibility of damaging the fundamental purposes of courts.

In addition to recognizing municipal divisions as courts of law, it would be helpful to clearly define their criminal/civil nature. Based on the National Center's observations, municipal courts in Missouri are adjudicating many ordinance violations that have criminal overtones, mimic state criminal statutes, and subject those found or pleading guilty to criminal penalties. On the other hand, we acknowledge the Supreme Court of Missouri has issued decisions that recognize municipal divisions as generally civil in nature.

Recommendations:

1. *Model contracts for the appointment of full or part-time municipal judges should be developed by the Supreme Court in a manner and through a process as decided by the Court and directed at strengthening the independence of municipal courts and upholding impartiality and fairness in situations where a judge serves under contract with a city.*

2. *Model ordinances (municipal codes) should be developed by the Supreme Court that clearly define a municipal division as a court of law funded and supported by the municipality but structurally a component of the Missouri Judicial Branch.*

3. *The Supreme Court should clarify to a greater extent the criminal and civil powers of municipal divisions and how the criminal rules of procedure and criminal statute of limitations apply.*

1.2 Municipal courts must visibly function as part of the judicial branch

Best Practices: Limited jurisdiction courts in other states with decentralized judicial systems (e.g. Washington, Arizona) such as exist in Missouri are clearly defined as part of the state judicial branch for purposes of policy oversight and operational direction. As such, municipal courts are subject to the administrative authority of state Supreme Courts and are concurrently obligated to work cooperatively with their respective municipal governments.

Observations/Commentary: Changes in Missouri's State Constitution in the early and mid-twentieth century shifted broad authority from the Legislature regarding the structure and jurisdiction of courts and vested that authority in the Judiciary (MO. CONST. art. V). Additionally,

the Supreme Court has clear ability to adopt procedural rules governing the operations and adjudication processes in all state and local general and limited jurisdiction courts.

In many municipal courts, employees and, tragically, some municipal judges, are confused about their overall attachment to the State Judicial Branch. It isn't a new dilemma for court personnel who often take their cues from judges who are part-time with little interest or time to oversee court staff. Surveys of municipal court administrators and clerks in the recent past (circa 2004) found half of them reported to and were supervised by city executive department administrators, including local police officials.[8]

Recommendations:

4. *The Office of the State Courts Administrator (OSCA) should develop monographs and brochures, as they so determine, that clearly describe in fact and law the relationship of municipal courts to the State Judicial Branch, require their distribution to all current full and part-time municipal court judges and staff and all new employees upon hiring or assignment to a municipal court on an ongoing basis.*

5. *To the extent feasible, signage, stationery, forms, orders and documents related to and used by municipal divisions should convey to the public and court customers that the court is part of the Missouri Judicial Branch. This should not bar the court from using the name of its related municipality in its official designation as a court, but in so doing it should be clear the court is a court of law functioning as part of the State Judicial System not a department of municipal government.*

1.3 Municipal court operations must be distinguishable from city functions

Best Practices: Supreme Courts in many states with decentralized court systems similar to Missouri have held that municipal judges are judicial officers, not officers or agents of a town, city or municipality. So, while the judge is selected in a manner set forth in local charter or ordinance, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court must be limited by the need for the court to operate in a fair, impartial and independent manner.

Observations/Commentary: After observations, interviews, and discussions with numerous municipal elected and appointed officials throughout Missouri regarding the role and function of municipal courts in their communities, it is the conclusion of the National Center that substantial confusion and misunderstanding exists by a vast majority of them. That confusion

[8] Myers, Lawrence. "Judicial Independence in the Municipal Court: Preliminary Observations from Missouri," *Court Review*. (Summer 2004). American Judges Association. Williamsburg, VA

often carries over to court staff as well, especially given the fact that many chief court clerks and court administrators report to and are supervised on a day-to-day basis by managers and administrators employed by city executive agencies. Part-time judges, in the meantime, are generally absent from the courthouse except for the few times each month when formal proceedings are held. Admittedly, clerks and administrators do contact absentee judges for procedural advice and directives related to adjudication processes from time-to-time, but such interactions represent only a small portion of the workplace activity.

The result is that the immutable purpose of a court to operate as an independent, unbiased and fair tribunal can unknowingly be compromised at the local municipal level. Not by callous disregard for its operational integrity, but by confused misunderstandings about the subtle yet critical distinctions and separations needed at the local level between municipal divisions as courts of law and the executive and legislative functions of their host municipal governments. It is the obligation of the Judicial Branch to highlight and strengthen those distinctions among municipal court employees as well as city elected and appointed officials.

Recommendation:

6. *The Missouri Judicial Branch, in concert with selected members from the Missouri Municipal and Associate Circuit Judges Association, and the Presiding Judges of the various Circuit Courts in the State, should develop a brochure or pamphlet and pilot a visitation program directed at all current and newly elected city councilpersons and mayors in various municipalities by appropriate Judicial Branch representatives to explain and review the importance and features of judicial independence for municipal divisions and the fact that such divisions are constitutionally part of an integrated Missouri Judicial Branch. A report on the pilot project, its impact, and any elements that ought to be improved, along with recommendations regarding the statewide expansion of the pilot, should be submitted by OSCA to the Supreme Court no later than 12 months after program initiation, and, as appropriate, the Supreme Court may wish to issue a directive for the continuation and expansion of the program on a permanent basis.*

1.4 Circuit courts should exercise greater oversight of municipal divisions

Best Practices: Nationwide, it is common for a chief or presiding judge of a general jurisdiction court operating in a circuit, district or county (depending on the way a state court is organized) to be vested with administrative oversight of limited jurisdiction courts in their region on behalf of the Supreme Court. This is true as well in Missouri. Generally, such duties and functions are outlined in court rules or administrative orders and directives issued by a Supreme

Court or its chief justice through their inherent powers to oversee the Judicial Branch. Such responsibilities include, but are not limited to, coordinating the work of limited jurisdiction courts (e.g. uniform bond schedules, information sharing among courts, compliance with judicial branch educational policies and standards, etc.), monitoring the performance of courts within their region, and upon a specific directive of the Supreme Court taking a court into receivership and temporarily managing failing or dysfunctional courts until long-term, permanent remedies are effectuated.[9]

Observations/Commentary: Increasingly across the country, leaders of general jurisdiction courts are looked to by Supreme Courts to help oversee limited jurisdiction courts in their regions. The Supreme Court of Missouri has requested little of the circuit courts in this regard to date largely due to limited circuit court resources, and little in-depth knowledge about the problems and shortcomings in the state's municipal court system prior to the recent revelations and reports centered on the Ferguson Municipal Court.

There is little doubt in law and practice, however, that the presiding judge of each circuit court in Missouri has administrative authority over the judges and court personnel of the municipal divisions within their circuit.[10] Their involvement throughout the state, however, is quite varied. Some circuits invite municipal judges to circuit court meetings, routinely monitor municipal division performance, and assist in coordinating activities among the divisions. Other circuits, interact little or not at all with municipal courts in their localities.

Recommendations:

7. *Circuit court presiding judges should assertively exercise administrative supervision over the municipal courts (aka as municipal divisions) in their circuits. The presiding circuit judges, assisted by the staff and other judges of the circuit court as they determine, should meet on a regular basis with the presiding judges of the municipal courts to discuss separation of powers, resources, use of*

[9] With the large number of municipal courts in the state, and the fact that numerous judges and courts operate responsibly, it is difficult to pinpoint from a distance those judges and courts that may not be performing well. Some state court administration offices have audit teams that periodically review all trial courts within their states. Still, it is a daunting task given the number of limited jurisdiction courts in the states. An encouraging development has been pursed recently in Arizona, however, that may hold promise for Missouri in helping to detect dysfunctional courts, isolate problems, and develop corrective actions by using methods to identify areas of higher risk and vulnerability. An article on the Arizona approach appears in the latest National Center for State Court's Trends in State Courts 2015 authored by Elizabeth Evans, Court Operations Officer, Arizona Supreme Court, entitled *Applying Risk Management Principles to Court Oversight*. It can be downloaded from NCSC's website at www.ncsc.org/trends.

[10] See MO. Revised Statutes, Chapter 479; Rule 37.04, Criminal Rules of Procedure for Missouri.

technology, and legal, administrative and other relevant issues to ensure the overall proper functioning and independence of the courts of the circuit.

8. *A report should be filed annually by each presiding municipal judge with the presiding judge of the circuit court outlining reforms, improvements, efficiencies and services that benefit the public and enhance the independence, fairness and impartiality of their court. Copies of such reports should be transmitted to OSCA. Where it may be determined from reports, observations, performance data or investigations that a municipal division may be operationally dysfunctional or problematic, and is beyond the circuit court presiding judge's capacity to ameliorate as determined by that judge, the matter shall be referred to the Chief Justice and State Courts Administrator for appropriate remedies.*

1.5 Presiding municipal judges must be the administrative heads of municipal courts

Best Practices: In municipal courts throughout the states, it is a common and best practice for a judge to assume the responsibility of presiding or chief judge and function as the head of the municipal court. Where there is more than one judge in a court, the judges typically select the presiding judge from among the members of the bench. The presiding judge, in turn, is responsible for supervising the staff; preparing, presenting and overseeing the court's budget; developing and promulgating polices, rules and procedures for adjudication processes; ensuring all cases are handled efficiently and fairly; providing for the effective maintenance and improvement of court facilities and security; and working to promote suitable electronic data systems.

Observations/Commentary: Many municipal divisions in Missouri do not operate according to this best practice. Typically, they function with absentee part-time judges who are available by phone for sporadic, short conferences with a chief clerk or court administrator when there is a question or problem related to court operations. Resultantly, for day-to-day supervision, the top non-judicial staff person generally reports to a city department executive, often the city finance director, mayor, and sometimes the police chief. Not only is this inappropriate, but it clearly runs counter to a coherent management structure that promotes the necessary independence of the court at the local level and confuses, at best, any clear line of Judicial Branch authority from the Supreme Court to the presiding judge of the circuit court and eventually to the presiding judges of the municipal divisions in a circuit.

Recommendations:

9. *Within a city, the presiding municipal judge should function as the administrative head of the municipal division and supervise the judicial and*

internal management functions of the court by developing and overseeing the budget, supervising the chief clerk or court administrator, and ensuring the proper functioning of the court. Such duties may be delegated to the chief clerk or court administrator, but such delegation should not relieve the presiding judge of accountability for the operations and administration of the court.

10. *The duties of the presiding municipal judge as administrative head of a municipal division should be clearly outlined in any municipal code and employment contract related to the appointment of the presiding municipal judge. In turn, the presiding municipal judge should be fairly compensated for the additional time required to perform such duties.*

1.6 Options should be available to reorganize; consolidate municipal courts

Best Practices: Optimum trial court performance requires court leaders to consider and strive to improve the administration of justice in five basic areas: enhanced and convenient access to justice by the public; expedition and timeliness in litigating matters; equality, fairness and integrity in the judicial process and decisions and actions of judges and staff; independence and accountability in the operations of the court; and a commitment to engender public trust and confidence in the justice system. To those ends, many states have revisited basic justice delivery patterns and re-engineered organization structures and services. One such change that has occurred in states with an abundance of small, separately operated limited jurisdiction courts that often struggle to survive has been the decision to permit and encourage them to consolidate in various ways to reduce costs, professionalize operations, and improve service to the public. These efforts are often driven by broad, thoughtful assessments of the five trial court performance measures as well as cost control reasons. The review process is certainly a best practice for any court system. What seems to resonate more so for everyone in the process is the development of multiple options for improved justice system services from both court and public viewpoints.

Observations/Commentary: The Supreme Court of Missouri and its administrative arm, OSCA, are challenged by the number and variety of municipal governments in the state; somewhere in excess of 900 with over 80 percent of the cities with populations of 2500 residents or less. Based on the latest data, there are 595 municipal courts in the state; 427 are independently operated by their respective municipalities, and 168 are conducted via circuit

courts by associate circuit court judges.[11] Up until September 1, 2015, no one was quite sure how many municipal courts existed since cities can abolish and create them at will. Missouri Senate Bill (SB) 5 passed and signed into law now requires the presiding judge of each circuit court to report to the Supreme Court the number and location of all municipal divisions in the circuit and provide a running account of those that are abolished or created.

With the restrictions on municipal division revenue to the cities pursuant to the recent passage of Senate Bill 5, and the likely problems it will generate for various small cities with courts, it would be wise to explore options regarding consolidation of municipal divisions. Currently, the National Center understands that open, active cases from municipalities that abolish their courts are transferred to the circuit court; certainly a solid solution. Perhaps with some changes in the law, other options may be possible, including absorption of city municipal divisions by county municipal courts where they exist, or consolidation of municipal courts themselves under the guidance and authority of presiding circuit court judges.[12]

Recommendations:

11. *It is suggested that the Supreme Court develop a committee or task force to investigate, research and recommend plausible options for municipal division consolidations where appropriate.*

12. *Consolidation and reorganization of some of the 82 municipal divisions in St. Louis County should be a priority given the dense population in the Greater St. Louis area and large number of municipal divisions.*

1.7 Expand OSCA's role in monitoring and coordinating municipal courts

Best Practices: Each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands and the Virgin Islands have a state court administrator or equivalent official dedicated to managing and improving state court systems including all trial courts within them. It is a universal practice among state court administration offices to assist, monitor and coordinate limited jurisdiction courts in concert with presiding judges of general jurisdiction courts who commonly oversee such courts in their regions.

Observations/Commentary: Currently, OSCA plays a limited role in monitoring, assisting and coordinating municipal divisions. To a certain extent it is understandable given the number, diversity and geographic expanse of municipal divisions in the state, and the limited resources presently available to state court administration. OSCA does an outstanding job in

[11] Source: Office of the State Courts Administrator as of October 28, 2015.
[12] New Jersey recently experimented with special legislative provisions that allowed municipalities to merge their courts where cities were small and geographically close together, and willing to share common court facilities and staff while judges, calendars, and proceedings remained separate.

numerous areas, including (a) *administrative services* programs directed at overall Judicial Branch activities such as legislative liaison, legal advice, standing committee support, and special projects; (b) *court business services* activities that target, for the most part, appellate and circuit court program development, research, and support, while providing some ancillary assistance to municipal courts;[13] and (c) *information technology services* that develop and advance the Branch's electronic Justice Information System (JIS) as well as promote various other high-tech initiatives.

Based on the problems and needs of municipal divisions, special attention should be given to those courts. Municipal justice systems are where most people experience the American legal system firsthand. Nationwide, they handle close to 55 percent of the 100 million plus trial court matters filed nationally. One traffic, parking or ordinance violation case is filed annually for every five people in the United States.[14] Given the number and activity of municipal divisions in Missouri, that statistic may even be higher for Missourians. The National Center is convinced that Judicial Branch leaders are committed to bring about meaningful changes in the structure, operations and work of municipal divisions throughout the State. To that end, OSCA must be a key player in those reforms. It is the National Center's opinion that although many municipal division judges and employees are open and willing to make substantive improvements in their operations, procedures and activities, they often lack the insights, perspective, skills and resources to do so. OSCA likely will need additional resources (read: staff and funding) to spearhead, coordinate and monitor improved performance in limited jurisdiction courts as directed by the Supreme Court.

Recommendations:

13. *The Supreme Court should request appropriate funding from the State Legislature to develop a special OSCA unit dedicated to Municipal Court Services. Formal reports on the work and achievements of this special group should periodically be submitted to the Supreme Court and other interested parties.*

14. *The new OSCA Municipal Court Services division should have dedicated staff and a strategic agenda based on policy decisions by the Supreme Court to methodically coordinate, upgrade, and monitor the work of municipal divisions in concert with the presiding judges of the circuit courts.*

[13] Currently for municipal courts, OSCA provides and updates a Municipal Clerk Manual (electronic; hard copy), develops forms for use statewide, conducts on-site reviews upon request, and notifies courts of their records of conviction reporting based on data from the Missouri Department of Revenue.
[14] National Center for State Courts' Court Statistics Project (2010).

2.0 JUDICIAL SELECTION, RETENTION, AND EVALUATION

Judges at all levels are required by federal and state constitutions, laws and rules to render fair, impartial, objective judgment over disputes whether they involve individuals, corporate entities or the government, and in so doing, to avoid wrongdoing or the appearance of misconduct in their actions. These provisions pertain equally to jurists that are elected or appointed; full or part-time.

2.1 Transparency should govern judicial appointment; termination; evaluation

Best Practices: As courts of law, any lawyer selected and retained by a municipality in Missouri to serve as a full or part-time municipal judge should be chosen on merit, and certainly without regard to politics or any revenue-raising commitment. Transparency, citizen involvement, and formal performance assessments increasingly are features in judicial appointment processes at all levels of courts throughout the country. It should be especially true where judges are subject to contractual employment or yes/no retention elections.

Observations/Commentary: At the municipal level, most city councils and mayors in Missouri appear to have a very muddled, clouded process for selecting municipal judges in comparison to other states. Increasingly, court reform organizations have encouraged states to employ more open, public processes in selecting limited jurisdiction judges, including those appointed and serving on a contract. Open, public, understandable judicial selection, termination and evaluation procedures are slowly becoming more prevalent throughout the nation for limited jurisdiction courts and are instructive as to changes that should be instituted in Missouri.[15]

Arizona is one of the more advanced states in opening its local municipal judge appointment processes. It is a recommended practice by the Supreme Court of Arizona. Cities can opt into the procedure and are free to develop and modify their own rules to promote the guidelines encouraged by the Supreme Court. Due to widespread public dismay regarding

[15] Admittedly, there are numerous variations among the states as to how limited jurisdiction court judges are selected, retained, and evaluated. Some states have eliminated lower courts altogether by creating a single, unified trial court. Examples include Minnesota, Iowa, Florida, California, District of Columbia, Arkansas, and Illinois. A number of states require all judges be elected. Several states such as Idaho and Kansas have vested special, independent judicial commissions with the selection, assessment and termination of limited jurisdiction judges. Alaska, Massachusetts, Rhode Island, and New Mexico permit the governor to appoint from candidates recommended by a nominating commission. Hawaii permits the Chief Justice to appoint from a slate of nominating commission candidates with senate confirmation. South Dakota allows appointment by circuit court presiding judges with state Supreme Court approval. A number of state judicial systems similar to Missouri permit limited jurisdiction judges to be elected and appointed depending on state law and city charters, including such states as Alabama, Arizona, Texas, Colorado, Delaware, Georgia, New Jersey, Ohio, Washington, Oregon, Oklahoma, Mississippi, Wyoming, and South Carolina.

Missouri's municipal court system, especially in St. Louis County, and noted problems in the performance of various limited jurisdiction courts, the National Center suggests the basics of the Arizona approach, centering on appointed citizen advisory boards in screening, appointing and evaluating judges, be required for all municipalities that contract for municipal judge services, with the exception of municipalities that utilize associate circuit court judges as municipal division judicial officers.[16]

Recommendations:

15. *By rule, administrative order, or statute, a specially-appointed citizen advisory board should be required in every municipality wherein a judge is appointed by the city council and/or mayor and serves on a contract, pursuant to an ordinance, or some other specially designated process by the elected governing board of the municipality. The purpose of the board is to recommend to the city governing body the best qualified persons to become municipal division judges, to evaluate incumbent judges regarding their responsibility to perform with impartiality, integrity, proficiency and fairness, and to advise the governing body as to whether incumbent judges should be retained in office. To these ends, it would also be appropriate for the Supreme Court to develop helpful guidelines regarding judicial evaluation criteria for use by such a board.*

16. *In appointing members to the advisory board, the city governing body should be sensitive to representation reflecting the diversity of the community served by the municipal division. Advisory board meetings should comply with all open meeting laws of the state. The city should arrange administrative support for the advisory board by preparing notices of meetings, keeping formal minutes, sending information packets to members, advertising notice to the public about judicial vacancies and reappointments, and fulfilling other clerical and management duties needed by the board. The advisory board should not limit its investigation of applicants to the applications and letters of recommendation received but should hold public hearings, personal interviews and conduct such other investigations into the background, performance and qualifications of the applicants as the advisory board deems necessary.*

[16] The National Center is not adverse to a variation of the Arizona nominating commission approach found in some other states, namely independent judicial commissions at judicial circuit court levels with appointment, evaluation, and retention decisions by the presiding judges of judicial circuits or city councils and mayors upon the recommendation of nominating commissions. (See footnote 14). We do feel, however, the appointment process for municipal judges in Missouri should be centered largely on local involvement given the dispersion, numbers and sizes of municipalities.

17. *The advisory board should recommend more than one candidate for each vacancy. If at least two candidates are not qualified, the advisory board shall submit a formal report to the municipal governing board as to the general reasons for a lack of qualified candidates and those reasons should be made public. Candidates submitted by the advisory board should be the only nominees considered, voted upon, and installed as municipal division judges by a municipal governing body. Should no candidates be qualified, the municipality shall notify the presiding judge of the circuit court in which the municipality is located for the assignment of an associate circuit judge as a municipal division judge, or other such remedy as the presiding judge shall determine.*

2.2 Develop strong, formal conflict of interest rules for municipal judges

Best Practices: Municipal judges, as part of the state judicial branch, must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and avoids behavior and conflicts that impugn the dignity and fairness of the court.[17]

Observations/Commentary: Part-time judges serving as part-time prosecutors create situations where reasonable people often raise questions about the underlying incompatibility in those roles and a lawyer's capacity to effectively separate them and serve impartially as a judge. These perceptions are palpable among people who appear in municipal court and understand part-time judges also serve as part-time prosecutors. States have dealt with the issue differently, but most place some restrictions on part-time judges who also practice law. Many states require all judicial positions to be full-time and bar judges from practicing law.[18] Some, like Georgia and New Jersey, prohibit part-time judges from simultaneously serving as prosecutors in any matters, and others, like Utah and Arizona, ban part-time judges or judges pro-tem from appearing as attorneys in any types of cases they preside over as judges.

Admittedly, such conflicts of interests can be responsibly managed by numerous part-time lawyer-judges and not debase the integrity of the municipal justice system. However, it takes a constant, concerted, principled effort to do so and even in situations where the potential conflicts are effectively balanced, the appearance of impropriety remains in the public mind. National Center observations and interviews gave us the impression that some lawyers who are

[17] Supreme Court of Missouri Code of Judicial Conduct encompasses this required tenet for all judges. Rule2 of the Code states in part, "Judges should maintain the dignity of judicial office and avoid both impropriety and the appearance of impropriety. They should aspire to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence."

[18] In instances where there isn't enough work in a court to keep a full time judge busy, judges "ride circuit" from one court to another covering multiple calendars.

both municipal judges and municipal prosecutors do have difficulty effectively and ethically balancing those roles.

Our charge to recommend best practices, leads the National Center to take a tough stance on this controversial topic. We also conclude there is an obvious appearance of impropriety in regard to attorneys who serve as judges, prosecutors, and defense lawyers in the same criminal law arena. Consequently, the Center advises a strong position against the current practice.

Recommendation:

18. *In the interest of independent, impartial courts and the importance of preserving the public's confidence and trust in them, the Supreme Court should consider a rule that prohibits lawyers who serve as municipal judges from simultaneously working as municipal prosecutors. States that permit part-time judges and part-time prosecutors in limited jurisdiction courts commonly place formal restrictions on the ability of lawyers to serve in both functions.*[19]

2.3 Formalize municipal judge training through the Supreme Court

Best Practices: In many states, state court administration offices, under the direction and guidance of their respective Supreme Courts, actively plan, coordinate and deliver judicial education programs for all appellate and trial courts, including limited jurisdiction courts. Ancillary education and training may be permitted through judges associations, national organizations such as the American Bar Association, National Center for State Courts, or National Judicial College, and universities. For judicial education at the limited jurisdiction court level to be developed and provided largely by a judges association, as is the case in Missouri, is not considered a best practice.

Observations/Commentary: The Missouri Municipal and Associate Circuit Judges Association (MMACJA) has been accredited by Missouri Judicial Branch leaders as a program sponsor for municipal judge education in the State and has provided education for municipal judges at its annual conference for the past 50 years. In large measure, they do an adequate job, invite speakers from national education organizations to present, publish newsletters and a bench book.[20] The National Center is concerned, however, that program content, topics,

[19] A common restriction in states that allow part-time judges and part-time municipal prosecutors is to limit municipal judges from handling cases in their practice of law that are inconsistent with their duties as a municipal judge. In other words, part-time municipal judges could have a felony, family or civil law practice, but not a municipal law practice.

[20] OSCA does provide some supportive services to the MMACJA regarding judicial education including staffing the Municipal Judges Education Committee, assisting with new municipal judge training/certification, Continuing Legal Education tracking, and information materials. OSCA executive staff also meets with the MMACJA Board on a regular basis.

curriculum, multi-year objectives, and learner outcomes are largely too controlled by the MMACJA.

The National Association of State Judicial Educators (NASJE), a professional alliance of court system educators, strongly endorse Judicial Branch control, development and delivery of judicial education. To that end, they have developed a set of *Principles and Standards for Judicial Branch Education* that guide curriculum development and educational policy for both judges and court staff. Specific recommendations encourage each state judicial branch to have (a) a comprehensive judicial education process, (b) programs that teach specific skills and subjects that comprise career-long judicial education and development opportunities, (c) appropriate adult education practices that focus on needs assessments, learning objectives, learning activities, adult learning methodologies and faculty development, and (d) activities that provide active, hands-on development and delivery of education in the context of the judicial branch as an organization.

Furthermore, the National Center submits that when professional judicial branch educators exercise hands-on control of educational development and programming more advanced and impactful courses and learning is possible, including on-line courses with follow-up in-person sessions at annual judicial conferences, learning management systems that provide libraries of interrelated courses and educational subject matter, wide-ranging instructional design capable of coordinating career-long judicial educational programming, and special analytics that track and test learner comprehension levels and tailor needed improvements. Voluntary associations such as the MMACJA are not in the same league, nor should they be when it comes to basic and advanced learning for judges.

Recommendations:

19. *The Supreme Court, through its Office of State Courts Administrator, should assertively and actively engage in continuing judicial education programming for all municipal and associate circuit judges serving as judges in municipal divisions, beyond merely certifying, accrediting, and staffing the educational activities of the Missouri Municipal and Associate Circuit Judges Association. To that end, it is recommended that additional funding and staff be requested from the State Legislature.*

20. *OSCA should consult with the National Association of State Judicial Educators to develop a more comprehensive judicial branch education program for Missouri, including but not limited to municipal divisions.*

3.0 COURT MANAGEMENT

Court management focuses on the day-to-day operational issues in running a court from records to space to training to calendaring and hundreds of other important, yet sometimes mundane, functions that must be melded effectively together to competently operate a trial court and process cases expeditiously. Here, the National Center selected overarching topics where observations and interviews posed serious deficiencies in operating and managing Missouri's municipal courts.

In defense of the judges and staffs in the municipal divisions, the National Center was amazed in many instances as to how they were able to stretch budgets, personnel, equipment, and facilities to support the necessary and basic work of their courts. Many municipal courts operate with too few resources and under very arduous conditions. There is a definite need for Judicial Branch leaders to develop goals and chart pathways toward improved management and performance in the critical areas the Center points out in this section.

3.1 Court space must be dignified, safe, and separate from police; prosecution

Best Practices: Court operations and staffing should be physically and functionally separate from day-to-day interactions with city agencies other than for required, official court duties. It is especially important to guard against comingling police and prosecution activities with day-to-day court-related activities. To do so risks violating the court's responsibility to remain neutral and independent both in fact and appearance. Casual ex parte communications regarding cases and case information involving police or prosecution with the court breaches that duty as well as job-sharing between the court and police or prosecution functions.

Observations/Commentary: Municipal judges and court staff often work in close quarters with police and prosecutors since space in municipal buildings is often limited and many court staff in smaller volume courts may work part-time for the court and part-time for city departments. Close proximity among justice system agencies can and does breed problems in the ability of court staff and judges to remain free of inappropriate contact and influence. The Supreme Court of Missouri has outlined recommended minimum standards for municipal division facilities [Chap. II 2.1] and state statutes direct that city council's designate a place for the municipal court and provide a *suitable* [italics added] courtroom for hearings. [MO. Revised Statutes 479.060 (1) (2).]

The comingling of court functions with police and prosecution operations is especially troublesome where part-time judges have little time or inclination to oversee court personnel and often leave day-to-day supervision of court staff to city executive branch administrators, who, in turn, understand little about the need of the court and court staff to function

independently. Resultantly, it is the practice in too many municipal courts for court staff to be directed to perform work for prosecutors and police, including filing, data entry, and recordkeeping, that compromises the necessary autonomy a judicial system needs to maintain its neutrality and objectivity.

Recommendations:

21. *To the extent feasible, municipal court space for judges, staff, recordkeeping, and work processes should be sight and sound separated from police and prosecution activities.*

22. *Courtrooms must be dignified and convey that proceedings in them are fair, unbiased and conducted under the authority of the Missouri Judicial Branch, not a city municipal government. It is challenging to convey that impression to the public when court proceedings are held in police facilities, city council chambers, or gymnasiums, and prosecutors sit next to the judge at city council tables which National Center consultants observed in some locations. Consequently, it is suggested the State Courts Administrator establish minimum standards for décor, design, and accouterments for municipal division courtrooms, with special attention given to make-shift city council courtrooms and courtrooms located in police stations.*

23. *The Office of the State Courts Administrator should develop courtroom and court facility security guidelines for municipal governments to follow regarding municipal division space in city facilities. To those ends, the presiding judges of each circuit court, or their designee, should ensure every municipal division in the circuit has complied with the established guidelines.*[21]

3.2 Develop restrictions on court staff work for other justice system agencies

Best Practices: Court staff should not job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.

[21] Based on NCSC protocols for court security, there are three essential components in promoting adequate security in court facilities and courtrooms: 1. Conduct a threat analysis assessing the courts historical, current and anticipated threat [see the National Sheriffs' Association, U.S. Marshall's Office, or the U.S. Department of Justice], 2. Conduct a court facility site survey assessing the facility external and internal weaknesses including policies, procedures, staffing and training; and 3. Establish a Court Security Committee for both short and long-term work, including leadership representation from government users of the court facility, city government, elected political leadership and court representatives. In developing security protocols, OSCA should consult with the Supreme Court Marshall.

Observations/Commentary: Through National Center interviews and observations, it was noted that court employees are often requested or directed by their day-to-day supervising authorities, who are frequently city executive branch officials, to work for other city departments. This is especially true in smaller courts where there may not be enough court work to keep a person employed full-time.

Conflict of interest problems regarding this practice surface when an employee is asked to do work for a city justice system agency. Unfortunately, in many instances, that agency is the police department or the prosecutor's office since those functions and their work is tied closely to court processes. Not only does this cause difficulties for employees themselves in complying with Judicial Branch ethical obligations to conduct themselves impartially as court staff, but it presents a most definite appearance of impropriety.

Recommendations:

24. *The Supreme Court of Missouri Rules Governing Court Personnel should be amended to include municipal court clerks and clearly state that no court employee shall job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.*

25. *Further, should non-justice system work be permitted for municipal court employees, the working arrangement should be allowed only through written, formal authorization by the presiding municipal judge and a clear understanding of the restrictions on the court employee's work activities by the non-justice system employer(s).*

3.3 Audio record municipal court proceedings

Best Practices: Limited jurisdiction court proceedings should be digitally audio recorded to reduce costs and time for litigants in the appeal process, to permit written appellate opinions that can guide municipal judges in their work and procedures, and to provide transparency and greater public faith in the judicial process. Nationwide, most municipal courts audio record formal courtroom proceedings.

Observations/Commentary: The National Center acknowledges that Missouri municipal divisions are not now, nor have they ever been, courts of record. Court trials and formal proceedings are heard "de novo" on appeal to the circuit court; meaning decisions and rulings can be re-litigated entirely as if no prior trial or proceeding had occurred. Seemingly, such a situation provides the greatest of protections for litigants who may feel they have been convicted wrongly or treated unfairly.

In practicality, however, it is a remedy little understood, rarely used, and burdensome to the majority of litigants. The vast majority of litigants who appear in municipal court are self-represented and have marginal incomes. The de novo appellate process is so foreign and complicated that it would never come to mind, and if it did, the procedures and costs would likely dissuade them from requesting a re-hearing. Appeals must be filed and perfected within ten days of the entry of judgment together with all necessary filing fees and an appropriate bond unless the circuit or associate circuit judge assigned the case finds the appealing party indigent. The re-trial takes place at the circuit court courthouse which may be at some distance from the municipal court, and occurs during the business day at a time convenient for the court.

A far better approach in the opinion of the National Center is for all limited jurisdiction courts, regardless of jurisdiction, to be courts of record. The Center is joined in that viewpoint by the Conference of State Court Administrators (COSCA).[22] COSCA's contention, as is the National Center's feeling, is that to do so will fundamentally elevate how both the law and public view these important courts.

The Center understands this is a huge change in the status and legal standing of municipal divisions, and ultimately will require a statutory amendment. It is felt, however, that such a change would significantly elevate the quality of judging and the fairness of the adjudication process in municipal divisions across the state.

Technology exists to permit digital audio recording of court proceedings at reasonable cost. Admittedly, equipment and training costs connected to such a change, and additional burdens placed on circuit courts in writing appellate findings and decisions in lieu of conducting trials, cannot be avoided. The benefits, however, in creating a more legally sound municipal court system and more tightly integrating municipal divisions within the Judicial Branch are worth the costs.

Recommendations:

26. *The Supreme Court should establish a committee or task force to develop strategies and pathways to transition municipal divisions to courts of record employing digital audio records.*

27. *Costs associated with equipment purchase, installation and training to establish digital audio records in all Missouri municipal courts should, to the extent possible, avoid placing a financial burden on municipalities.*

[22] Pepin, Arthur W., *2013-2014 Policy Paper: Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century*, Conference of State Court Administrators. Williamsburg, VA

3.4 Procedural fairness and understandable processes are essential

Best Practices: High performing courts are procedurally fair. They treat those who appear before the court with respect, dignity, and understanding. Procedural fairness is not a feel-good, vague ideal; it is a tangible operational philosophy that promotes the highest ideals of justice.

Observations/Commentary: All municipal divisions, whether rural or urban, confront similar work patterns in delivering justice to large numbers of people in relatively routine matters. Proceedings are informal. Facts are clear and rapidly established. The courts primary objective is to apply the law expeditiously and move onto the next case.

In such an atmosphere, unless there is a conscientious, consistent effort by judges and staff toward sincerely instituting and conveying procedural fairness – the perception and reality that the processes and decisions of the court are reasonable and just - litigants will view the court as sacrificing fairness for efficiency and becoming a revenue generating or bill-collecting agency for the city. To guard against that occurrence, limited jurisdiction court judges must rightfully take on a more active role in protecting the rights and interests of those accused, establishing the facts of the case, monitoring the proceedings and establishing fairness. It becomes doubly important to do so in these fast-acting courts since lawyers are sparse, and litigants are often confused about the process and their rights. Court staff must also ensure court operational procedures, the treatment of litigants, and case resolution options are clearly and understandably conveyed to litigants in a dignified, respectful, informative manner.

Procedural fairness includes not only litigant perceptions about whether judicial decisions are fair ("outcome fairness"), but more importantly, an assessment as to how court users perceive their case was handled and the quality of the treatment they received from judges and staff. Much of it is related to the work of New York University Professor Tom Tyler who has pioneered the idea. Tyler's research, vetted by many others, identifies four primary elements of procedural fairness.[23]

- *Respect:* People react positively when they feel they are treated with politeness and dignity; when they feel valued and their rights are respected. Helping people understand how things work and what they must do to navigate through the court system is strongly associated with court user satisfaction.
- *Voice:* People want the opportunity to tell their story; to explain their unique situation and circumstances. Often, as patrons describe their viewpoints and reasons for seeking court intervention, judges and court staff can help them grasp issues, terms and processes more clearly.

[23] Tyler, T.R., Why People Obey the Law. Princeton University Press. (2006)

- *Trustworthiness:* People look for actions to indicate they can trust the character and sincerity of those in authority and that those in authority are aware of and genuinely concerned about their needs. People look for conduct or behavior that is competent, benevolent (e.g. putting the needs of the customer ahead of the needs of the employee), caring, and seeking to do the right thing.
- *Neutrality:* People are more likely to accept direction, decisions, and help when those in authority do things that both are, and perceived as, fair and neutral (e.g. litigants have been treated like everyone else with similar circumstances), the importance of the facts are clearly understood, and the next steps or reasons for a decision or course of action have been clearly explained.

In efforts to introduce more procedural fairness, various court leaders have created citizen task forces on court feedback to help in promoting improvements in the courtroom and throughout the court. Some courts have developed "court watcher" programs to provide candid, private feedback regarding perceptions about the court (i.e., work by the Council for Court Excellence in Washington DC is an example). Still others have distributed internal, confidential judicial and court performance surveys. Innovative examples include Hennepin County Minnesota District Court and the Maricopa County Arizona Superior Court where management coaches have worked with judges to improve their effectiveness in the courtroom and their interactions with lawyers and the public.[24]

Recommendations:

28. *OSCA should initiate a statewide effort to review court issued forms and instructions provided to the public with the goals of simplifying the language, removing legal jargon and terms that may be familiar to the court but confusing to the public.*

29. *Court calendars should be publicly available. Courts should be encouraged to schedule cases at times and on dockets that are not rushed which in many municipal divisions is the situation currently. In OSCA's monitoring role (see section 2.7), random reviews of court dockets should take place and guidelines for setting calendars should be developed.*

30. *A program to administer periodically the National Center's CourTool Measure One Survey on Access and Fairness in municipal divisions should be developed by OSCA. The survey is in the form of a questionnaire whereby court users on a specific day or a few days rate the court's accessibility and its treatment of customers in terms of fairness, equality and respect. Comparisons of results among courts by*

[24] Coaching is not advice, therapy or counseling; rather it targets assessments about working relationships, organization challenges, communication improvements, options building, and values clarification.

location, type of customer, and type of service can inform and improve court management practices.[25]

3.5 Maximize services to the public via the internet and court websites

Best Practices: Many limited jurisdiction courts across the country are serving constituents better, faster, less expensively, while minimizing person-to-person contact through the Internet and high tech – high touch court websites. Traffic and ordinance violations where fact situations are narrow and remedies are limited provide ideal customer/court touch points where service can be improved and advanced.

Observations/Commentary: Many municipal courts do not have websites and those that do often have minimal help or assistance in developing and updating them. Where courts provide robust internet information in terms of data about court processes, online payment options, court schedules and calendars, do-it-yourself forms and instructions, and wayfinding information about parking, mass transit services and court locations, it is welcomed by court users.

The vast majority of municipal divisions in the State have little helpful information on websites, if they even have a website at all. Dependent on their city government to host court websites, cities generally regard courts as low priority in comparison to city departments and any help in the future may even be more reserved as municipal courts become a tighter component of the State Judicial Branch.

Recommendation:

31. *Improved assistance in developing more useful, consistent and uniform municipal division websites should be a strong objective of state court administration. Numerous litigants who receive traffic citations are not residents of the municipality where the offense occurred. With a mobile population it would be helpful if OSCA could develop a model website for municipal courts that would give visitors useful information; provide a common, helpful look and feel among municipal divisions; and facilitate easier, more familiar navigation for users.*

[25] More information on CourTools measures can be found at www.courtools.org

3.6 Update courtwide technology strategies to include municipal divisions

Best Practices: Decentralized, locally-funded state court systems similar to those in Missouri generally have judicial branch technology strategic plans that encompass all limited jurisdiction courts within their state.

Observations/Commentary: Municipal courts would benefit from additional assistance in determining and addressing their technology needs. Currently, the methods used by individual courts vary widely, some use custom electronic case management systems (CMS), others have a variety of proprietary vendor systems (e.g. ITI, REJIS, Tyler and Encode), and approximately 90 municipal courts use the Judicial Branch's Justice Information System (JIS). Since JIS is presently limited in its expansion capability, the State Judicial Records Committee has approved a list of court e-CMS vendors that can be engaged by municipal divisions and their municipalities.

The most common complaints from judges and staff regarding technology are (a) the lack of a common e-CMS for use by all municipal divisions in the State, (b) the inability to electronically transfer data between courts with different e-CMS products, (c) the lack of connectivity with the Missouri Uniform Law Enforcement System (MULES), a Highway Patrol developed/managed repository for warrants to determine if a defendant has a warrant in a surrounding county, and (d) a noticeable lack of knowledge by municipal court clerks and court administrators about statewide e-CMS plans, options, and approved vendors.

Recommendations:

32. *State court administration should ensure the court system's statewide technology plan includes municipal divisions and is updated consistent with a more inclusive role for limited jurisdiction courts within the Judicial Branch, including a qualified vendor list for municipal courts to purchase an electronic case management system.*

33. *Identify and implement a common data exchange system that allows courts to transfer important case information to regional repositories or a central data warehouse. To that end, the Supreme Court should request the necessary funding from the State Legislature to do so.*

3.7 Formalize court staff training through state court administration

Best Practices: Many states with limited jurisdiction courts have comprehensive training programs for municipal court staff developed and presented by state court

administration offices. In doing so, it helps uniformity in practices among courts and a sense of unity with the Judicial Branch. It is a best practice.

Observations/Commentary: As with municipal judges, the Missouri Judicial Branch largely depends on professional court management associations to conduct training for municipal court employees, namely the Metropolitan St. Louis Association for Court Administration (MSLACA) and the Missouri Association for Court Administrators (MACA). Representatives of OSCA often attend conferences held by these associations and may on occasion conduct technology training programs.[26] As with any professional association, not all court employees are able to attend.

These two associations provide substantial work related benefits to their members aside from conferences and formal education sessions. Both groups serve a clearinghouse function for procedural and management information sharing through their websites, email and phone interactions. The downside, however, is without approved, enforced statewide uniform standards in common work tasks and procedures there are various ways the same processes may be performed throughout the state. This is true even though some procedures are recommended in the Municipal Clerk Handbook.

Recommendations:

34. *The Office of State Courts Administrator, should consider engaging in a more involved and active role in continuing education programming for municipal division chief court clerks and court administrators beyond merely certifying and accrediting the educational activities of the Missouri Association for Court Administrators and the Metropolitan St. Louis Association for Court Administration.*

35. *OSCA should consult with the National Association of State Judicial Educators and other state court administration offices regarding ideas and strategies to promote a more comprehensive judicial branch education program for non-judicial municipal division chief clerks and court administrators as well as counsel with the leaders of MACA and MSLACA toward those ends.*

[26] OSCA is working with the leadership of the Missouri Association of Court Administrators (MACA) to enhance the role state court administration in training and information dissemination at MACA regional meetings. In that regard, OSCA is developing a "roadmap" to incorporate training needs of municipal clerks more fully into Judicial Branch activities including the submission of a proposal to the Supreme Court Coordinating Commission for Judicial Education to appoint a Municipal Clerk Education Committee staffed by OSCA and funded through the Commission. Also, OSCA is in the process of evaluating available course for municipal clerks, and is looking at methods/technology to make web/video training available to municipal clerks.

4.0 FISCAL AND FINANCIAL OPERATIONS

The intersection of municipal budgets and municipal court funding is complex, and includes constitutional, statutory and case law mandates and restraints governing access to justice, governmental revenues, and appropriate uses of court-generated revenues. In traffic and ordinance violations, whether characterized as criminal or civil, court leaders face significant challenges in ensuring that fines, fees and surcharges are not simply an alternative form of taxation.[27]

4.1 Municipal courts should not be deemed revenue generators for cities

Best Practices: Limited jurisdiction courts, as core functions of government, should be substantially funded by general government revenues. Any fees or miscellaneous charges for court services should not preclude access to courts and should be waived for indigent litigants. The tenure and/or reappointment of contracted municipal judges and prosecutors should never be contingent on their ability to generate revenue for a municipality.

Observations/Commentary: To a considerable extent, the current public dissatisfaction with municipal courts in Missouri largely centers on alleged actions by some city authorities (i.e. mayors and city council persons) encouraging appointed judges and prosecutors (as well as police officials) to maximize court-generated revenues to help pay for the law enforcement and justice systems of the municipality. Undoubtedly, much of that discontent is concentrated in St. Louis County,

Likely lurking in the background for some contracted municipal judges and prosecutors are concerns about reappointment. These circumstances, if true, may violate the due process clause of the Fourteenth Amendment which guarantees the right to a trial before a disinterested and impartial judicial officer.[28]

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[27] *2011-2012 Policy Paper: Courts are Not Revenue Centers*, Conference of State Court Administrators.

[28] In *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927) the U.S. Supreme Court held as unconstitutional an Ohio Mayors Court system which provided mayor/judges were compensated by a fee taxed as part of the costs against a defendant who was convicted in the mayor's court. Almost fifty years later the U.S. Supreme Court extended Tumey to apply to instances where the local government was the beneficiary rather than the judge. In *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) the Court was confronted with an instance where a "major" part of the village's income was derived from the fines, forfeitures, costs, and fees imposed by the mayor/judge. The "possible temptation" to find against defendants in order to fund the locality was held too great for the mayor to continue to preside. Supreme Court of Arkansas in 1977 echoed this sentiment finding in *Gore v. Emerson*, 262 Ark. 463, (1977) that while that state's City Courts were constitutional, the judge of the court (mayor) could be so conflicted with regard to fines, forfeitures and their impact to city finances that his continued service as a judge failed to meet the requirements of due process. Eventually, Arkansas phased out its City Court system entirely through a 2000 constitutional amendment.

Recommendations:

36. *All employment contracts and city codes or ordinances outlining the duties and responsibilities of municipal judges and prosecutors should clearly state that tenure and/or reappointment is not contingent on generating revenue for the municipality.*

37. *Fees and costs, however set, should be determined in consultation with the municipal judge and presiding judge of the circuit court, and all municipal division fees and costs should be reviewed periodically by the municipal judges and presiding judge of the circuit at a meeting of them en banc.*

38. *Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.*[29]

4.2 Bail should not punish the accused or enrich municipal treasuries

Best Practices: The purpose of bail is not to punish the accused ahead of a trial or to enrich the city treasury, but to enforce the criminal laws by requiring the accused to appear in court (*Missouri Municipal Judge Bench Book* 2010, Chapter VI, Bail and Sureties, p.3, Rule 37.15). To those ends, the use of evidence-based, validated pretrial risk assessment tools in release decisions and the conditions of release are best practices.

Observations/Commentary: In some municipal jurisdictions, persons are being detained on a failure to appear warrant and are required to pay a bond amount or pay outstanding fines and fees. Subsequently, where persons may have multiple warrants from different jurisdictions, individuals are being transferred to multiple jurisdictions which also requires similar payment of bond or outstanding fines and fees as a condition of release. In some cases, a person can spend in excess of a week in custody while being transferred from jurisdiction to jurisdiction on multiple warrants.

Many pretrial defendants do not present a substantial risk of failure to appear or are a threat to public safety, but they do lack the financial means to be released. And, jail time can result in irreparable harm to persons including loss of job, loss of home, and disintegrating social relationships which can all increase the likelihood of a person reoffending upon release.

The use of pretrial risk assessment tools in making judicial decisions whether to release or not and the attendant conditions of release are used most often in larger jurisdictions where

[29] Although fees must be authorized by law and should not be imposed without statutory authorization, the application of the law can be subject to interpretation, and a listing of fees is not often posted, understandable or readily available to the public.

courts or other government agencies have dedicated pretrial release staff stationed at jails or detention centers. Such programs, though, are becoming more prevalent in smaller jurisdictions as well.[30] Conversely, when bail officials make the discretionary decision to grant pretrial release and decide the bond amount to be imposed *without the use of evidence based validated pretrial risk assessment tool*, it is possible that the race of the arrestee plays a role in a way that disproportionately and adversely subjects African Americans to pretrial detention and harsher bail conditions.[31] While there is no one-size-fits-all solution for the misapplication of the bail system in Missouri's municipal divisions, the recommendations noted below can improve the discretionary decision making process and prevent unwarranted detention.

Recommendations:

39. *Training should be provided to municipal judges on the fundamentals of bail as coordinated through the presiding judges of the circuit courts.*

40. *Municipal courts should be encouraged to use evidence-based bail determinations and individual assessments of each defendant's background and criminal history in setting bail.*

41. *Municipal governments should consider the creation of a pretrial service function in an existing municipal agency, apart from the police department, to administer an objective risk assessment tool and the collection and verification of background information on arrestees for pretrial judicial decision-making.*

42. *OSCA should develop a task force to research and explore ways to institute oversight and accountability measures in the municipal court bail determination process.*

4.3 Expand and coordinate community service opportunities in lieu of fines

Best Practices: Community service and diversion programs in lieu of monetary sanctions are important and valuable sentencing options for limited jurisdiction judges. Where municipal courts do not have a probation function as part of court operations to provide such choices, methods and approaches should be developed and organized through consortiums of courts to promote and establish some form of coordinated community service and diversion opportunities. To do so is a best practice.

Observations/Commentary: A few larger Missouri municipal divisions in charter cities have probation functions as part of the court's operations. Small to mid-size courts – the bulk of

[30] *2012-2013 Policy Paper: Evidence-Based Pretrial Release*, Conference of State Court Administrators.
[31] Jones, Cynthia E., "Give us Free: Addressing Racial Disparities in Bail Determinations." Legislative and Public Police [Vol. 16:919]

municipal divisions in the State – lack the financial resources to do so, but many express a high interest in establishing community service prospects. Where such options do exist, individual courts struggle to find, partner and oversee organizations in the community who are willing to accept and work with those referred by the court.

Private and non-profit community services agencies in Missouri do present options for some municipal divisions across the State. They appear to be most useful where there are large numbers of courts in a region that can sustain their operations with higher referral numbers.

Recommendations:

43. *OSCA should review and study the array of diversion and community service programs in the State available to the municipal divisions with the objective to identify and cataloging their locations, types of services, client capacities, court and client costs, and operations for distribution to presiding judges of the circuit courts and all municipal judges. The catalog should be periodically updated to ensure its continued accuracy.*

44. *Based on a review and study of diversion and community service programs in the State, OSCA should pinpoint close geographic clusters of municipal courts regardless of their jurisdictions that could benefit from working together to access local diversion and community service programs, and provide such information to the affected presiding judges of the circuit courts and municipal judges for further action.*

45. *Presiding judges of the circuit courts and the municipal judges in those circuits should develop a task force to study and determine the viability of municipal division operated and shared community service and diversion programs in a circuit.*

EPILOGUE

The best practices and recommendations outlined in this report for municipal courts in Missouri pinpoint hopeful improvements and offer a range of ideas to Judicial Branch leaders in architecting strategic agendas for change. The National Center realizes the array and scope of these suggestions may appear overwhelming and understands some of the proposals may be controversial, some require additional staff, funding, and all demand a concerted effort over time to accomplish. There should be some comfort in knowing, however, that other states throughout the nation have embraced many of these directions in successful ways over the years, and details regarding their implementation can be sought from them.

It is the National Center's contention that Judicial Branch leaders, and Missourians in general, are at a point where meaningful limited jurisdiction court reform is needed. Missouri has a strong tradition of progressive justice system reorganization beginning most notably in 1940, with the development of the "Missouri Plan" for selecting judges at the appellate and general jurisdiction levels by merit. As suggested in this report, it is time to extend that approach to municipal judge selection, retention and evaluation, and to embrace additional enhancements that modernize and upgrade the operations of the State's municipal divisions.

Weighty improvements to justice systems such as proposed here are certainly not for the short-winded. Not only will such reforms take time and courageous leadership to bring about, but there undoubtedly will be resistance and opposition to new directions and policies by those affected. As organizational change experts often note, transformational leadership is risky business since it's about altering the status quo where most people are comfortable.

Although easier said than done, those who have successfully instituted major change in complex organizations like courts, and helped skeptics and naysayers overcome their fears of abandoning the present, have only been able to do so in an approach that delivers "...disturbing news and raises difficult questions in a way that people can absorb, prodding them to take up the message rather than ignore it or kill the messenger."[32] The National Center's hope is that this report, among others submitted to the Supreme Court of Missouri, will motivate justice system stakeholders to take up the message and generate the necessary changes to create a more effective limited jurisdiction court system.

[32] Heifetz, Ronald A., and Linsky, Marty, Leadership on the Line: Staying Alive through the Dangers of Leading. Harvard Business School Press, Boston MA (2002). pp. 12.

2013-2014 Policy Paper

Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century

Conference of State Court Administrators

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Introduction

Most states have one or more levels of limited jurisdiction courts that adjudicate traffic offenses, misdemeanor crimes, and civil cases with a limited amount in controversy. Known by many titles, this paper will refer to these as limited jurisdiction courts.[1] A state or a county may have several types of limited jurisdiction courts with each organized differently. This paper focuses on recommendations for the structure and administration of limited jurisdiction courts that best promote fair and impartial justice, including 1) qualified judges, 2) timely disposition of cases that are on the record, 3) judicial independence fostered by disinterested methods for appointment or election of judges along with funding that is adequate and independent from case outcomes, and 4) professional court governance. COSCA recognizes that numerous limited jurisdiction courts already include these elements. Where they do not, COSCA encourages adoption of the measures recommended in this paper in all limited jurisdiction courts.

Part I. A Brief History of Limited Jurisdiction Courts

Limited jurisdiction courts in the United States grew out of the development of Justices of the Peace over several centuries in England. The pattern of western settlement strongly influenced the way limited jurisdiction courts operate in America. A brief review of this history can provide a context appropriate to consideration of how these courts should be structured in the 21st century.

A. King's Justice and the Rise of Limited Jurisdiction Courts

In the original Magna Carta in June 1215, King John promised "[w]e will not make men justices, constables, sheriffs, or bailiffs, except of such as knows the laws of the land."[2] More than seven centuries later in 1976, Mr. Justice Stewart (in dissent) asserted this promise remained unfulfilled in American limited jurisdiction courts presided over by non-lawyers and with *de novo* appeals from non-record dispositions.[3]

In the century following the king's execution of the Magna Carta, a tradition arose of dispensing justice through the justice of the peace, a non-lawyer respected in the community. The Justice of the Peace Act of 1361 codified the authority of these lay judicial officers to resolve a broad range of offenses without a jury.[4] The Justice of the Peace model worked for several centuries as an accommodation in rural areas because of the need to resolve daily disputes. When the United States adopted the common law system, the concept of the non-lawyer judge presiding over misdemeanor and small claims cases took root. By 1915 the constitutions of 47 states included Justice of the Peace courts.[5]

B. In the United States – the People's Court

The concept of a non-lawyer Justice of the Peace to resolve community disputes flourished in colonial America and spread westward with the expansion of the United

States. "[A] short supply of legally-trained individuals necessitated courts headed by laymen, many of whom were paid from the fees they collected" and the community expected these courts to "dispense with technical forms and pleadings, and require cases to be disposed of with as little delay as possible."[6]

Apart from the practical challenge of finding lawyers to serve as judges in the era of westward American expansion, "using non-lawyer judges was more consistent with democratic ideals, such as the public's belief that the law should be understandable, and thus applicable, by lay persons."[7] Most Americans at the time believed a non-lawyer Justice of the Peace would be "more likely to reflect the community's sense of justice."[8]

Part II. The Current State of Limited Jurisdiction Courts in the States

A. Types, Number, and Locations of Limited Jurisdiction Courts

Four states (California, Illinois, Iowa and Minnesota), as well as the District of Columbia and Puerto Rico, have established a unified trial court where the same lawyer judges preside over criminal felonies and misdemeanors, and where the jurisdiction of civil judges is consolidated in a single trial court regardless of the amount in controversy.[9] The remaining 46 states have at least one type of limited jurisdiction court, ranging from 14 states with a single type of limited jurisdiction court to one state with eight types of such courts.[10] Across the country, limited jurisdiction courts resolve 66 percent of all cases in all state courts, or about 70 million of the 106 million cases that enter the state court systems annually.[11] In addition to adjudication of traffic citations and misdemeanors, limited jurisdiction courts usually have jurisdiction over civil cases up to a defined dollar amount in controversy. Small claims limits vary widely with upper limits ranging from $2500 to $15,000, while the upper limits on civil cases in limited jurisdiction courts can be as low as $3,000 or as high as $15,000.[12]

There are at least 30 different titles for courts of limited jurisdiction.[13] Common titles include "magistrate court," "justice court," "justice of the peace," and "municipal court." As noted above, this paper uses limited jurisdiction court as a generic term for all courts with jurisdiction more limited than the court of general jurisdiction. A limited jurisdiction court's criminal jurisdiction may extend to all or a limited range of misdemeanors and usually includes some jurisdiction over civil cases up to a maximum amount in controversy. In some states at least some of the limited jurisdiction courts are not state courts, but instead are locally funded and operated by a municipality or county.

In some states all judges in limited jurisdiction courts are lawyers with at least a minimum number of years of legal experience and are selected by the same process as the judges in the state's general jurisdiction courts. Some limited jurisdiction courts make a record of all proceedings that can be reviewed on appeal. Some limited jurisdiction courts are funded and governed as suggested in this paper. For example, in Kentucky limited jurisdiction judges are lawyers elected in a non-partisan election and cases are heard on the record.[14] Maine requires limited jurisdiction judges to be lawyers and cases are heard on the record.[15] However, there are many limited jurisdiction courts where the court's structure, funding and governance make it more difficult to deliver fair and impartial justice.

B. Efforts to Change Limited Jurisdiction Courts

Roscoe Pound criticized limited jurisdiction courts and non-lawyer judges in a 1906 speech to the American Bar Association, a criticism that he repeated in a 1912 article.[16] In 1927 and 1928 the United States Supreme Court decided two cases that made it clear that a limited jurisdiction court could not adjudicate a case in which the limited jurisdiction judge had a direct pecuniary interest, although an indirect monetary interest was constitutionally tolerable.[17] In the last few decades of the twentieth century, other litigation raised issues about the structure of limited jurisdiction courts.

Legislative changes to the structure of limited jurisdiction courts proved difficult to accomplish. For example, following in-depth studies with recommended changes to the limited jurisdiction courts in 1952, 1974, 1989, and 1995, no legislative changes were enacted in Arizona.[18] One author concluded the result in Arizona was "the justice court system remains highly decentralized, subject to inefficient administration, and retains outdated qualification requirements for its judges."[19] Similar criticisms of the unsuccessful efforts to change the limited jurisdiction system in Utah are found in a series of reviews by different authors over the past decade.[20]

New York's efforts to reform their Justice Court system began with the Tweed Commission, which concluded in 1958 that even if its recommendations were adopted by the legislature, the voters would defeat them in the required constitutional referendum.[21] New York saw similar recommendations by various commissions and other groups in 1967, 1973, 1979, and 2006. In September 2008 the Special Commission on the Future of the New York State Courts recommended the following for limited jurisdiction courts: combining local courts to reduce overlap and inefficiency; elevating judge qualifications from 18 years of age and local residence to at least age 25; requiring a two-year undergraduate degree and successful completion of a rigorous exam after every election; initial training of two weeks in person and five weeks at home; improved infrastructure; increased judicial compensation; and court financing independent from collection of fines and fees.[22]

The Commission considered recommending that all limited jurisdiction judges should be lawyers. However, the Commission ultimately recommended elevated qualifications and training requirements because "even if we were to agree that non-attorney justices should be ineligible to preside in Justice Courts, we believe that such a proposal would be virtually impossible to implement throughout our state" largely because the Commission believed lawyers would not be available for or interested in serving in these courts.[23]

In November 2009, the Vermont Commission on Judicial Operations recommended that the state legislature eliminate non-lawyer "assistant judges" in small claims cases because "the use of assistant judges in these cases means that no one in the equation is law-trained. The legal issues in small claims cases include all of the complex, civil legal issues that are decided in Superior Court; only the amount in controversy is less. Not surprisingly, when assistant judges sit in small claims, some use a disproportionate amount of law clerk time relative to the trial judges, raising concerns about whether they have the necessary skill and training to perform these

functions."[24] The Vermont Commission also recommended that all probate judges, with jurisdiction over adoptions, wills, and guardianships, be required to be lawyers.[25] As of this writing Vermont continues to have non-lawyer assistant judges and non-lawyer probate judges.[26]

Those advocating for lawyer judges stress the increased complexity of legal issues in misdemeanor cases as well as the weighty collateral consequences of what were once minor crimes. The increased complexity of cases in limited jurisdiction courts led one author in 1975 to predict, "the time may soon be at hand to write an appropriate epitaph for this office. . . It is likely that all the states will have replaced the institution before the end of the 20th century.[27]

The predicted death of courts of limited jurisdiction proved unfounded. In many varied forms, the institution of courts of limited jurisdiction continues in many states. To promote fair and equal justice in such courts, COSCA supports the implementation or maintenance of four essential elements in courts of limited jurisdiction. These include a qualified judge, dispositions that are reviewable on the record, processes for judicial selection and court funding that promote court independence, and professional court governance.

Part III. Four Elements Required to Foster Independent, Fair, Impartial and Just Limited Jurisdiction Courts

A. A Qualified Judge

The issue of non-lawyer judges is frequently addressed in legal literature. Although most agree that non-lawyer judges are constitutionally permitted, most authors of articles on the subject favor lawyer judges or at the very least considerable ethical and substantive training for non-lawyer judges.

Those who oppose the requirement of lawyer judges usually do so on the ground that it remains impractical to have a lawyer judge in every remote county of rural states. They also point to examples in well-functioning limited jurisdiction courts to demonstrate that limited jurisdiction judges can be well qualified through rigorous training and certification without a three-year law school education.

Historically "Americans, particularly in rural Western areas, disfavored judges with formal legal training. Lawyers were viewed as obfuscators and oppressors because of their ability to interpret a complex web of common law decisions. Frontier justices themselves eschewed legal training, believing that ordinary people were just as capable of resolving disputes as lawyers."[28]

As of this writing, qualifications for limited jurisdiction judges vary among states; however, many focus on age of majority, residence, and a minimum education of at least a high school diploma. For example, New Mexico requires magistrates in the state courts of limited jurisdiction to have a high school diploma and be eligible to vote in the county where the court is located, while in West Virginia magistrates in the state courts of limited jurisdiction must have a high school diploma, be a resident of the county where the court is located, and be at least age 21.[29]

By contrast with the age and experience requirements for limited jurisdiction judges, most states impose a minimum age of 30 or greater before a lawyer can serve as a judge in a court of general jurisdiction. For example, in New Mexico a district court judge must be

at least 35 years of age with at least 6 years' experience in the practice of law.[30] In West Virginia, general jurisdiction circuit court judges must have been a citizen for at least 5 years, be a resident in the circuit, be at least 30 years of age, and have at least 5 years' experience in the practice of law.[31]

The United States Supreme Court held it did not deny due process to have a non-lawyer judge decide criminal cases in North v. Russell, ("[w]e conclude that the Kentucky two-tier trial court system with lay judicial officers in the first tier in smaller cities and an appeal of right with a de novo trial before a traditionally law-trained judge in the second does not violate either the due process or equal protection guarantees of the Constitution of the United States").[32] In his dissent, Mr. Justice Stewart reasoned that trial before a non-lawyer judge that results in imprisonment is unconstitutional because the defendant may not know of his right to a trial *de novo*, the process requires multiple court appearances with attendant costs and delay, and the process makes a sham of the first trial.[33]

At the same time as the United States Supreme Court decided North, the Court also approved the two-tier system in Massachusetts where no jury was available to the defendant in the first court but would be provided in the *de novo* appeal trial.[34] Four justices dissented on the ground that this process deprived a defendant of the right to a jury trial in the first trial and that the *de novo* process did not cure the deprivation.[35]

A number of state courts interpret their state constitutions in accord with the majority of the United States Supreme Court: a non-lawyer judge with a *de novo* appeal is constitutional.[36]

By contrast, the California Supreme Court held it denied due process under the California state constitution to permit a non-attorney judge to preside over a criminal trial punishable by jail sentence.[37] The Tennessee Supreme Court also found the Tennessee state constitution required judges in limited jurisdiction courts to be lawyers in City of White House v. Whitley.[38] Wyoming permits non-lawyer judges to rule on probable cause in a felony preliminary hearing, distinguishing this context from having non-lawyer judges preside over criminal trials.[39]

This division of legal authority among the states is not mirrored in the writings of legal scholars, where the shared view is that limited jurisdiction court judges should be attorneys. This is true in civil cases: "If limited jurisdiction courts are expected to operate in civil matters as smaller versions of the rest of the court system, and to adjudicate matters involving technical statutory law and common law . . . the best training for this task is a law degree."[40] It is also true for criminal cases: "We must set minimum standards for our judges, and that standard should be to have lawyers serving in these positions."[41]

One reason to require limited jurisdiction judges to be lawyers is the increased complexity of the consequences associated with a misdemeanor conviction. Once it may have been true that these "minor" offenses resulted in a night in jail and a fine. That is not the case today. For example, in 2010 the United States Supreme Court held that in an era when deportation results from many misdemeanor convictions including any drug offense "except for the most trivial marijuana possession offenses," the constitutional right to the effective assistance of counsel requires a defendant be advised of the risk of deportation before entering a guilty plea.[42]

The Court limited an attorney's burden to advising a client that a guilty plea "may carry a risk of adverse immigration consequences" because the Court recognized that "[i]mmigration law can be complex, and it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges, in either state or federal court or both, may not be well versed in it. There will, therefore, undoubtedly be numerous situations in which the deportation consequences of a particular plea are unclear or uncertain."[43]

The complexities of immigration consequences present just one of many complicated collateral consequences from a misdemeanor conviction. For example, in many states a misdemeanor conviction for simple possession of marijuana or a single marijuana plant erects a bar to adoption of a child, eligibility for food stamps and temporary aid to needy families, ability to obtain or keep professional licensure, voting, and eligibility for public housing, while in seven states and the District of Columbia such a conviction results in a period of time, which can be for life, during which the individual is prohibited from possessing a firearm.[44] The American Bar Association (ABA) found this issue so critical that, through a grant awarded by the National Institute of Justice, the ABA now maintains a state-by-state database listing collateral consequences for all crimes, including misdemeanors.[45] The far-reaching and complex variety of consequences beyond time in jail or a fine make the task of adjudicating misdemeanor offenses challenging even for those with a law school education.

In some rural areas it is impractical to expect to attract attorneys to serve in limited jurisdiction courts. Some states or counties may prefer non-lawyer judges or it may be unlikely the political opposition to requiring lawyer judges can be overcome. Where limited jurisdiction judges continue to be non-attorneys, states should mandate training in judicial ethics and in the types of substantive law within the limited jurisdiction court's jurisdiction. A requirement to pass a certification test is recommended. The Special Commission on the Future of New York Courts concluded that after 50 years of failed efforts to require limited jurisdiction judges to be lawyers, the practical solution was to require seven weeks of training after election and successful completion of a "rigorous exam" within 18 months of election or appointment.[46]

At least 15 states require some initial and annual continuing legal training for limited jurisdiction non-lawyer judges.[47] For example, Montana requires non-lawyer limited jurisdiction judges to pass a qualifying exam every four years.[48] Texas requires new non-lawyer limited jurisdiction judges take an in-person course of 80 hours of legal training within the first year of taking office.[49] In Delaware candidates for non-lawyer magistrate positions are given an examination that consists of a "battery of written tests. These tests assess whether an applicant possesses qualities needed by a judge. Legal knowledge is not tested."[50]

Arizona requires a rigorous multi-tiered training for lawyer and non-lawyer limited jurisdiction state court judges. First, all new judges must complete eight computer-based, independent training modules on 1) the Arizona court system; 2) domestic violence for judges; 3) evidence; 4) initial appearances, arraignments and guilty pleas; 5) legal research; 6) legal technology; 7) restitution; and 8) victims' rights. Then all new judges must attend a three-week, in-person New

Judge Orientation training that addresses the topics above in more detail as well as a comprehensive series of general judicial subjects that includes all civil and criminal matters within the jurisdiction of the court and general procedural and administrative issues.[51] All limited jurisdiction judges are required to demonstrate their ability to conduct civil and criminal proceedings and must pass a series of three assessments during the three-week training with a score of at least 70 percent. New judges in Arizona are assigned mentors who often work with them throughout their career to observe, shadow on the bench, and remain available to answer questions.

COSCA recommends as best practice the requirement for limited jurisdiction judges to be lawyers. The complexity of misdemeanor criminal and "small claims" civil cases in the twenty-first century presents sophisticated legal issues. With the presence of self-represented parties in such cases and the possibility that "minor" crimes may be prosecuted by law enforcement officers, the justice system benefits when the judge has the benefit of a legal education. Still, as was found in New York, a shortage of lawyers in rural communities and political opposition to this requirement make it impractical in some states to require that all limited jurisdiction judges be lawyers. Where that is the case, states must require rigorous training and certification of non-lawyer limited jurisdiction judges.

B. Dispositions on the Record and Reviewable

One practice that is unique to some limited jurisdiction courts is the procedure of not creating a record of the proceedings in limited jurisdiction court and then providing for an appeal *de novo.* This practice should be abandoned.

A *de novo* appeal usually means that cases appealed from a limited jurisdiction court begin anew. If the limited jurisdiction court is a court of record, an appeal from the limited jurisdiction court may be to a court of general jurisdiction or to an appellate court (intermediate appellate court or court of last resort) for review on the record. However, when no record is made in the court of limited jurisdiction, the "appeal" to a higher court begins the case anew. In a *de novo* appeal, there can be no consideration by the higher court of anything that occurred in the limited jurisdiction court, even a verdict rendered by a jury. Because there is no record of limited jurisdiction court proceedings, no review of the limited jurisdiction judge's rulings or procedures occurs. The limited jurisdiction judge never learns, by being affirmed or reversed, whether the judge's process and legal rulings were correct or, if incorrect, for what reason.

The practice of not recording limited jurisdiction court proceedings requires litigants to go through the same process of trial and verdict again in the general jurisdiction court before there is an opportunity for appellate review. No defendant accused of a felony and no litigant in a high-value civil case is burdened with such a "two-tier" system of adjudication. In 2010, over forty of the fifty states reported having some form of *de novo* appeal, most often from a non-record limited jurisdiction court.[52]

This oddity garnered the attention of the United States Supreme Court in Colten v. Kentucky, where the Court examined a Kentucky system that provided a defendant convicted in a limited jurisdiction court a right to a *de novo* trial in a general jurisdiction court if the defendant requested a new trial within a

specified time after the conviction.[53] The defendant in Colten received a fine of $50 after the *de novo* trial although the fine after the limited jurisdiction court proceeding had been only $10. The United States Supreme Court affirmed this "two-tier" system: "In reality, [the defendant's] choices are to accept the decision of the judge and the sentence imposed in the inferior court or to reject what in effect is no more than an offer in settlement of his case and seek the judgment of a judge or jury in the superior court, with sentence to be determined by the full record made in that court."[54]

Four years later the Court upheld the Massachusetts *de novo* system in part because "[n]othing in the Double Jeopardy Clause prohibits a state from affording a defendant two opportunities to avoid conviction and secure an acquittal."[55] The Court later reiterated this holding even if the first conviction in the limited jurisdiction court rested on insufficient evidence.[56] Lydon is the most recent case from the United States Supreme Court to address *de novo* appeals. The contrary view is found in the dissent by Justice Stevens in Ludwig:

> A second trial of the same case is never the same as the first. Lawyers and witnesses are stale; opportunities for impeachment that may have little or much actual significance are present in the second trial that were not present in the first, a witness may be available at one time but not the other; [and] the tactics on cross-examination, or on the presentation of evidence, in the first trial will be influenced by judgment of what may happen at the second.[57]

State courts have not overwhelmingly embraced this dissenting view. In reviewing a system where defendants typically without counsel had to obtain a certificate of probable cause in order to stay the limited jurisdiction court's judgment on appeal *de novo* by filing a legal memorandum that demonstrated the likelihood of reversal, the Utah Supreme Court rejected the "perceived inadequacies relating to a defendant's ability to obtain a stay of his or her conviction" and upheld this process.[58] Part of the court's reasoning was that a limited jurisdiction court defendant would get a "second opportunity to relitigate facts relating to his or her guilt or innocence after having had the advantage of learning about the prosecution's case during the first trial."[59]

The Nevada Supreme Court found whether due process is violated when a non-attorney presides over criminal cases absent a right to a *de novo* appeal remained an open question after North in Goodson v. State, 991 P.2d 472 (Nev. 1999) (holding Nevada's *de novo* process did not violate due process). Several states have upheld as not a violation of due process having criminal trials before non-lawyers followed by appeal on the record.[60]

The Delaware Supreme Court recently advised that legislation allowing an appeal from non-jury verdicts by non-lawyer judges in limited jurisdiction courts would be constitutional only if the sentence includes a fine of $100 or more or imprisonment of more than one month.[61] A federal court in Arkansas approved of the procedure requiring a bench trial in limited jurisdiction court with a right to a jury during the *de novo* appeal.[62] By contrast, the Montana Supreme Court held that the right to a jury trial under the state constitution required a jury trial in limited jurisdiction court and upon a *de novo* appeal.[63] In the same case in which it found a requirement that limited jurisdiction judges must be lawyers, the California Supreme

Court rejected the claim that the right to an appeal corrected for the lack of a record: "an appeal from a justice court judgment is particularly inadequate to guarantee a fair trial since justice courts are not courts of record,[64] and thus no transcript is ordinarily made of the original proceeding. If there is no transcript, an appeal would be based solely upon a statement of the case settled or prepared by the non-attorney judge himself."[65]

The Kansas Supreme Court's Blue Ribbon Commission recommended in January 2012 that limited jurisdiction judges should be attorneys, all limited jurisdiction proceedings should be recorded, and appeals should be on the record and not *de novo*.[66] As of this writing none of the recommendations had been enacted and prospects for future adoption appear slim.

An unusual demonstration of the unintended impact of not making a record of limited jurisdiction court proceedings is underway in Bexar County, Texas (San Antonio). In fiscal year 2012-2013, defendants convicted of traffic offenses in limited jurisdiction courts filed 6,406 appeals to the general jurisdiction court, an increase of 500% above the 1,253 appeals in the prior year, at great expense to the county. Reasons given for the increase in appeals include that the lack of record makes the appeal inexpensive and the low priority given such cases on appeal in the higher court results in plea agreements to a lower fine than the defendant received in the limited jurisdiction court.[67]

The practice of not recording proceedings in limited jurisdiction courts has passed its expiration date. Technology exists to permit digital audio recording at more reasonable cost than would be required for a court reporter. The making of a record in this manner is recommended by COSCA: "State courts should move to digital recording as the method for making the verbatim record, with the possible exceptions for complex civil and capital criminal cases where real-time or stenographic reporting are specifically designated. State courts should establish ownership of the record and review the feasibility of the digital recording being the official record on appeal."[68]

Requiring limited jurisdiction court proceedings to be on the record would allow for review of those proceedings on the record on appeal. This does not impose any expense for limited jurisdiction courts in those states where the limited jurisdiction courts record preliminary hearings to determine if there is probable cause to proceed in the general jurisdiction court in felony cases. However, the expense of providing a court reporter or method for digital audio recording of proceedings in limited jurisdiction courts would be required where limited jurisdiction courts do not yet have such capacity. The cost to implement digital audio recording, including equipment, staff training, and placing a court employee in the courtroom to monitor the equipment, is not insignificant. State-funded grants or a phased implementation could more reasonably spread the cost than a sudden, expensive transition.

Beyond the need for funding to buy equipment and provide staff and training, the change to a court of record would be a fundamental change in how the law views limited jurisdiction court proceedings in those states, counties and municipalities that do not now make a record in limited jurisdiction courts. Written appellate opinions approving the work of a limited jurisdiction judge or correcting any errors that occur in limited jurisdiction court would guide limited jurisdiction court

judges on proper processes and procedures. The legal acumen of limited jurisdiction judges, whether lawyers or not, could be readily determined by review of the recorded proceedings. This would provide transparency and promote faith in the judicial process that is not found when limited jurisdiction court proceedings are not recorded.

The tide has not yet turned fully toward the view that there is a constitutional imperative to make a record of limited jurisdiction court proceedings. Judicial economy and basic fairness to court litigants make this change critical. Readily available technology that can be funded and implemented over time diminishes the objection of costs for recording limited jurisdiction court proceedings. In 2013 COSCA adopted a policy advocating court ownership of and control over all court records.[69] In 2009 COSCA adopted a policy advocating digital audio recording for all but the most complex court proceedings.[70] The cases that are resolved in a limited jurisdiction court without a record impose costs and time on courts and litigants to preserve the notion of justice from a people's court. COSCA recommends as best practice that a record be created of all limited jurisdiction court proceedings, allowing for meaningful review of the court's cases.

C. Foster Judicial Independence through the Processes for Appointment or Election of Limited Jurisdiction Judges and Court Funding

In many states, a local governing body such as a city council or an elected official such as a mayor appoints some limited jurisdiction judges. States with municipal appointment of judges include Alabama, Arizona, Colorado, Delaware, Mississippi, New Jersey, New York, Ohio, Oklahoma, Oregon, South Carolina, Texas, West Virginia and Wyoming.[71] These courts are also funded by the municipality. The appointment process combined with local fiscal pressures may diminish the judicial independence that is essential to fair and impartial justice. As the Special Commission on the Future of New York State Courts found:

> [A]t least some [limited jurisdiction] justices feel inappropriate pressure from municipal leaders to take measures to maximize the local revenue that their courts generate, revenue that is not necessarily used to fund the courts but which can be used for any purpose the municipality sees fit. . . Especially given that these same municipal leaders decide court budgets, fix justices' salaries and can influence a justice's reelection prospects, the resulting risk to judicial independence cannot be overstated.[72]

In many states, following appointment or election, general jurisdiction judges continue in office upon retention by 50 percent or more of the electorate who vote to retain or non-retain. In other states, judges in general jurisdiction courts are confirmed after appointment or run directly in partisan elections. COSCA does not here support a particular method for selection of general jurisdiction judges or advocate for elimination of locally funded or municipal courts. COSCA does support a method for selection of limited jurisdiction judges that reflects whatever safeguards are in place for ensuring judicial independence in the state's selection process for general jurisdiction state court judges.

A comprehensive survey of limited jurisdiction municipal courts in Washington by the National Center for State Courts found

that local officials strongly favored local control of judicial appointments and administration, although the NCSC found, "[t]he predilection toward a high degree of city control over court operations creates obvious concern in regards to judicial independence and the ability of the judiciary to exercise authority over the cases as an independent branch of government." [73]

A fact that appears to aggravate the perception of improper interference with judicial independence is the existence in many limited jurisdiction courts of part-time judges. This may be especially acute when the method of selection is a local appointment without a defined term for the judge, and where the judge is a practicing attorney or local business owner the majority of the time. Balancing such concerns is the idea that an experienced attorney with an active legal practice may bring superior qualifications to a part-time position than would otherwise exist in candidates for a part-time position with limited compensation.

Aggregating a number of part-time positions into a full-time judgeship with responsibilities in several regional limited jurisdiction courts, as is discussed in the NCSC examination of Washington's limited jurisdiction courts presents one means of reducing concerns about part-time judges.[74] COSCA recommendations made in this paper, especially regarding selection and funding structures that support judicial independence as well as mandatory ethics and substantive training, will support the perception and fact of fair and impartial justice where limited jurisdiction courts include part-time judges.

Interference by local political office holders with locally appointed judges may be discrete and difficult to identify, but these structural challenges clearly add a layer of complexity to the other administrative responsibilities facing the limited jurisdiction court. The opportunity for interference with judicial independence may be avoided by ensuring a process of election by voters or appointment and confirmation independent from the discretion of those who hold local political office. The process for appointment and reappointment of limited jurisdiction judges should reflect the process for selection and retention of the state's general jurisdiction judges.

Funding is another area in which judicial independence can be threatened in courts of limited jurisdiction. Almost a century ago the United States Supreme Court held a court denied the defendant due process in a trial held by a village mayor where both the village and the mayor-judge received a portion of the fine collected.[75] However, the following year the United States Supreme Court held there was no denial of due process when the defendant was tried by a town mayor whose fixed salary was not dependent on the fines collected, although the collections went to the town coffers.[76] Today limited jurisdiction courts may not be subject to the direct connection between judicial compensation and collection of revenues; however, the perception of an indirect relationship remains and has an impact on the public perception of the courts' independence.

In 2012, facing a shortfall in available funding, the New Orleans Municipal Court threatened to reduce or eliminate the option of community service in lieu of paying fines in order for the court to generate more than $1,000,000 in court revenues; "[a]s the Court will be looking to maximize revenues, incarceration has proven to be a more persuasive incentive to collections than alternative sentencing."[77] Throughout the

New Orleans criminal courts, fees collected in the courts flow into "judicial expense funds" over which judges have discretionary spending authority that has been used to purchase health insurance and cars, the product of patent structural and personal conflicts of interest that one author concludes "violate defendants' due process rights."[78] Concern over links between revenue generation and court funding is not new. In a 2004 survey of court employees in the municipal courts of Missouri, only 34 percent of respondents disagreed or strongly disagreed with the statement that one of the important responsibilities of the court is to raise revenue for the city or municipality.[79]

In 2011, COSCA adopted a Policy Paper entitled "Courts Are Not Revenue Centers" which included as Principle 7 that "[t]he proceeds from fees, costs and fines should not be earmarked for the direct benefit of any judge, court official, or other criminal justice official who may have direct or indirect control over cases filed or disposed in the judicial system."[80] Even an indirect link between court revenue and judicial compensation creates the appearance of impropriety. In Washington, follow-up interviews with judges after an extensive survey of limited jurisdiction courts revealed that "most judges made clear that city officials did their best to avoid interfering or 'crossing the line' in any particular case" even though in at least one locality the municipality placed management of the court under the police department.[81]

As Utah Chief Justice Christine M. Durham asserted in 2008, there is a "growing public perception that justice courts are vehicles for generating revenue."[82] A recent series of reports on National Public Radio criticized the impact on the poor from rising court fees for indigent defense, jury fees, electronic monitoring devices, jail room and board, drug testing, and payment plans.[83] Even if due process is not threatened when fines and fees indirectly relate to court funding, the perception of courts as a business threatens the authority of courts to function independently.

Separating court funding from court revenue also establishes institutional distance between local politics and court operations, or the perception of local influence on court actions. The New York Special Commission on the Future of New York Courts found that local funding of limited jurisdiction courts left these courts with grossly disparate physical and technology resources which were almost universally inadequate. The Commission concluded there was a need "for the state to turn its attention to this long-neglected institution and to provide a significant infusion of direct financial assistance" in order to "strengthen judicial independence in that the Justice Courts will be less dependent on town and village boards, because they have a funding source separate and apart from the locality."[84]

In sum, funding courts through fines and fees that flow to the local town or county that pays court staff and judges creates at least the perception that judicial independence is diminished. Moreover, local funding can be so variable as to defeat the goal of uniform justice throughout a court system. Although it may not be necessary to require state funding of all courts, it is necessary to have a uniform standard for funding limited jurisdiction courts that provides fair funding and compensation for judges with institutional segregation between the decisions made by a judge and the funding source. Added to a process that segregates judicial selection or retention from local appointment, segregation of court

funding from revenue generation helps support the judicial independence that is at the center of a properly functioning justice system.

D. Professional Court Governance

In its 2001 "Position Paper on Effective Judicial Governance and Accountability," COSCA advocated for courts to "[t]ake the lead in addressing judicial governance issues and not leave it to the bar associations, court reform groups or other civic entities to develop standards or define issues in this area."[85] It is time to recognize that the need for professional court management is not confined to state courts of general jurisdiction, but applies as well to state and local limited jurisdiction courts.

In assessing what is essential for an effective, modern court system, the National Association for Court Management (NACM) identified "Caseflow Management" as one essential competency because, "[e]ffective caseflow helps ensure that every litigant receives procedural due process and equal protection. The quality of justice is enhanced when judicial administration is organized around the requirements of effective caseflow and trial management."[86] The Special Commission on the Future of New York Courts reached the same conclusion in 2008:

> We believe that administrative help is necessary, not optional, to the sound functioning of the Justice Courts. To this end, we propose that all Justice Courts be required to employ, at minimum, a part-time court clerk to assist the town or village justice(s) with administrative, recordkeeping, and other tasks necessary to the smooth functioning of the courts . . . [I]t is our view that Justice Courts can no longer be expected to function optimally without some degree of professional administrative assistance.

We also believe that clerks should report, not to the town or village board as is currently the case, but instead to the court to which the clerk is assigned, to promote the independence of the judicial function by vesting in the court the ability to hire, supervise and discharge non-judicial staff.[87]

In a 2004 survey of court employees in the Missouri municipal courts, the most serious interference with court administration was identified as occurring when the court employees were under the supervision of the city's finance director, police department or city manager.

> One administrator provided this overall assessment of the tension that can arise when the court is supervised by non-judicial personnel: "As a court administrator, I have always tried to maintain a certain degree of independence from the other offices of city government and I am finding this harder and harder and more frustrating all the time. I have lost several judges that I have worked for, because they stood up for what they believed the Constitution stands for, and because they were appointed and not elected, they were 'let go' by a majority of the board of aldermen or mayor. This does not give us, as court administrators or court clerks, much security in our positions . . ."
>
> The vast majority of respondents wanted to report to the judge: 76 percent wanted to report only to the judge, while another 19 percent wanted to report to the judge and another city official . . . Most, though, believed that it was especially important to make sure that judges not allow someone in

> the executive branch of city government to influence the judging of cases, and that the court structure should be separate from the executive branch of city government.[88]

In an article published as part of the Harvard Kennedy School's Program in Criminal Justice Policy and Management, in 2012 Utah Chief Justice Christine M. Durham and Utah State Court Administrator Daniel Becker urged as a Principle of Court Governance that "the judicial branch should govern and administer the operations that are core to the process of adjudication," concluding that non-court management and local oversight of court records are "likely the vestiges of an earlier time when the administration of courts lacked structure and organization. Courts that follow this model should reexamine this structure."[89]

The importance of professional court governance does not diminish when the courts being managed are limited jurisdiction courts. Following the NCSC's May 2013 examination of limited jurisdiction municipal courts in Washington, one recommendation "to standardize municipal court operations and procedures, ensure consistent municipal operating costs, and advance the goal of equal justice for all Washington citizens" was a transition to regional courts. While a number of municipalities had regionalized based on earlier similar recommendations, "many other municipalities oppose the regional court concept on the grounds of maintaining autonomy, ensuring local control over municipal court operations and costs, and providing only the services that their communities require. *The status quo, however, does not help to pursue the goals of standardizing court procedures, providing for a consistent cost structure or advancing equal justice throughout the state* (emphasis added)."[90]

In 2013 COSCA identified court ownership of and responsibility of court records as an essential component of delivering justice at all court levels.[91] Here COSCA recommends requiring that limited jurisdiction courts make a record of all proceedings. Managing those court records, and managing all the activities of limited jurisdiction courts where so many Americans interact with the justice system, is the work of professional court staff.

In those state court systems where the general jurisdiction courts are administered by the Administrative Office of the Courts (AOC), the AOC should be responsible for management of limited jurisdiction courts. In those states with decentralized court structures, the governance structure for the district or county courts should include limited jurisdiction courts. These existing governance structures include staff trained and solely dedicated to court administration, in contrast to local or municipal employees for whom court activities can be a part-time duty that competes with the employees' other responsibilities. Inclusion of courts of limited jurisdiction in the governance structure of courts of general jurisdiction is an important structural means toward the end of efficient, effective delivery of equal justice in limited jurisdiction courts.

COSCA recommends all courts, including limited jurisdiction courts, be managed by professional court staff dedicated to the principles of court governance so widely recognized as essential to the fair and impartial administration of justice.

Part IV. The Way Forward

COSCA recognizes and celebrates the healthy variety of court structures among the states. Appreciation for diversity does not require tolerance of inadequacy. Limited jurisdiction court structures that originated in the distant past are inadequate to deliver fair and impartial justice today. COSCA adopts and supports the following four essential elements for limited jurisdiction courts:

First – Require that limited jurisdiction judges are members of the local state bar in good standing. Where non-lawyer judges are continued, implement rigorous training, testing, and mentoring to ensure minimum knowledge commensurate with the cases within the limited jurisdiction court's jurisdiction.

Second – Require limited jurisdiction courts to make a record of all proceedings.

Third – Foster judicial independence in limited jurisdiction courts by a process for appointment or election of limited jurisdiction court judges that includes safeguards for judicial independence similar to those adopted by the state for judges in the courts of general jurisdiction, and fund limited jurisdiction courts in a manner that also promotes the perception and actuality of judicial independence.

Fourth – Require management of limited jurisdiction courts by professional court staff dedicated to principles of sound court governance in limited jurisdiction courts that are included in the county or state court structure.

References

[1] Among the names given to a court of limited jurisdiction are "limited jurisdiction court," "magistrate court," "county court," "city court," and "justice court," although some of these might instead be the name of the state's court of general jurisdiction. This paper adopts the generic term "limited jurisdiction court" to refer to courts with jurisdiction inferior to the court of general jurisdiction. A limited jurisdiction court has jurisdiction over non-felony crimes, sometimes limited to a subset of misdemeanors and sometimes extending to all misdemeanors, and the court also most commonly has civil jurisdiction up to a limited amount in controversy, typically a ceiling of $10,000.

[2] Magna Carta, paragraph 45.

[3] North v. Russell, 427 U.S. 328, 338 (1976) 340 (Stewart, J., dissenting).

[4] Justice of the Peace Act, 1361 Chapter 1 34 Edw 3, available at http://www.legislation.gov.uk/aep/Edw3/34/1 *See also* Samuel P. Newton, Teresa L. Welch, and Neal G. Hamilton, *No Justice in Utah's Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah's Infamous Local Courts,* 2012 Utah L. Rev. OnLaw 27, 31-32.

[5] Benjamin Will Bates, *Exploring Justice Courts in Utah and Three Problems Inherent in the Justice Court System*, 2001 Utah L. Rev. 731, citing James A. Gazell, *A National Perspective on Justice of the Peace and Their Future: Time For an Epitaph*, 46 Miss. L. J. 795, 797 (1975).

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[11] Janet G. Cornell, *Limited Jurisdiction Courts--Challenges, Opportunities, and Strategies for Action,* NCSC Future Trends in State Courts 2012, 66, 67, citing Schauffler et al., 2011:3.

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[22] *Justice Most Local: The Future of Town and Village Courts in New York State*, A Report by the Special Commission on the Future of the New York State Courts (September 2008) pages 83-105.

[23] *Justice Most Local*, *supra* note 22, at pages 70-71.

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[25] Vermont Commission *Final Report* at p.37.

[26] American Judicature Society, Methods of Judicial Selection: Vermont (2014).

[27] James A. Gazell, *A National Perspective on Justices of the Peace and Their Future: Time for an Epitaph?,* 46 Miss. L. J. 795, 813 (1975).

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Appendix U

SMALL COURT DATA

(Filing Totals Based on Court Year 2017 - July 1, 2016 through June 30, 2017)

STATEWIDE TOTAL COURTS 572

FILINGS	**# OF COURTS (INCLUDING ALL FILINGS)**	**# OF COURTS (EXCLUDING PARKING FILINGS)**
< 5000	318	362
< 4000	264	305
< 3000	225	255
< 2000	166	194
< 1000	105	114

Appendix V

REPORT OF THE SUBCOMMITTEE

ON JUDICIAL INDEPENDENCE IN THE

MUNICIPAL COURTS

Barbara E. Ungar, Esq., Chair
Past Chair, Municipal Court Practice Section

Jon-Henry Barr, Esq.
Hon. Linda Feinberg, A.J.S.C. (ret.)
Arnold Fishman, Esq.
Hon. Lawrence Lawson, A.J.S.C. (ret.)
Richard Nunes, Esq.
Jessica Oppenheim, Esq.
Robert Pinizzotto, Esq.
Patricia Quelch, Esq.
Michael Testa, Esq.
Hon. Frank Zinna, P.J.M.C. (ret.)
Hon Bonnie Goldman, P.J.M.C. (ret.)
(non-voting member)

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I. INTRODUCTION AND BACKGROUND

A. Formation of the Subcommittee on Judicial Independence in the Municipal Courts by the New Jersey State Bar Association

At an October 1973 meeting of the New Jersey State Bar Association, Chief Justice Pierre P. Garven addressed the members of the New Jersey State Bar Association (NJSBA) and proposed reforms to the municipal court system[1]. At that time, Chief Justice Garven noted that the municipal courts had handled almost 3 million cases and yielded in excess of $32 million dollars in revenues from court fines and penalties. During his address to the association, he noted criticism of the municipal courts in the lack of training for municipal court judges, most of whom were part-time judges, the impact of political pressure on the appointment of municipal court judges, and the lack of efficiency of the courts. Chief Justice Garven recommended reform in the municipal courts to include the following: providing education to newly appointed municipal court judges; a probationary period for newly appointed municipal court judges with involvement of the county Judicial and Prosecutorial Appointments Committee and the assignment judge; and tenure for municipal court judges or alternatively, reappointment of the judges for terms of five or seven years, once the initial appointment term of three years concluded. Chief Justice Garven also recommended the elimination of the municipal courts, or alternatively, the regionalization of the

[1] Chief Justice Garven's Municipal Court Proposal that was the subject of the presentation to the New Jersey State Bar Association as set forth in *New Jersey Law Journal*, Oct. 25, 1973, 96 N.J.L.J. 1337-1343 and in the Appendix.

municipal courts into a consolidated district court or a consolidation of two or more municipal courts into regional courts in the county to save taxpayer funds.

In 2013, the NJSBA created an independent Task Force on Judicial Independence, which was comprised of approximately 14 members. It conducted four public hearings throughout the state to consider threats facing a fair and independent judicial system. The Task Force released a report in May 2015 that detailed recommendations to protect the future of continued judicial independence in the courts[2]. Many of the recommendations contained in the report were ultimately adopted by the New Jersey State Bar Association.

The May 2015 report of the Task Force on Judicial Independence, recognized that "municipal courts are charged with the responsibility to judge traffic offenses, disorderly persons and petty disorderly offenses, and violations of municipal ordinances. They also handle instances of alleged domestic violence and certain housing matters. All of these matters may lead to the imposition of fines along with other associated penalties. The manner in which such issues are disposed of can and often does have a significant impact upon a municipality's budget and financial strength." The Task Force also acknowledged that "a comprehensive study of the inter-relationship that may exist between a municipal court's financial performance and the length of a municipal court judge's service requires extensive time and resources" and should be conducted.

The Task Force recommended that the association create a separate entity charged with the singular focus to examine judicial independence in the municipal

[2] The report of the New Jersey State Bar Association's Task Force of Judicial Independence can be found at njsba.com and in the Appendix.

courts. The Task Force further recognized that "the municipal court is the court with which most citizens come into contact. Its integrity, both actual and perceived, is critical to the public's acceptance of its determinations, which must be made without regard to whether findings of guilt, and the imposition of fines, could serve to assure continuation of a judge's position." (Report of the Task Force on Judicial Independence, May 2015 at 30-32).

In the fall of 2015, the NJSBA created a subcommittee within its Municipal Court Practice Section to address judicial independence in the municipal courts. The Subcommittee on Judicial Independence in the Municipal Courts (Subcommittee) determined that it was necessary to gather and compile anecdotal information in further examining these issues through additional public hearings. The goal of the process of conducting the public hearings was to enable the Subcommittee to make recommendations to the association that would lead to the enhancement of continued and future independence of the municipal courts and to benefit the public.

Ultimately, four public hearings were held to consider the issues of judicial independence in the municipal courts. They were held on April 4, 2016, at the New Jersey Law Center in New Brunswick; May 2, 2016, at Rowan University in Glassboro; May 19, 2016, at the Annual Meeting of the New Jersey State Bar Association held at the Borgata Hotel Casino & Spa in Atlantic City; and June 6, 2016, at Seton Hall Law School in Newark.[3]

[3] Copies of the transcripts of the four public hearings can be found at njsba.com and in the Appendix.

B. History and Creation of the Municipal Courts and Municipal Court Judges

The New Jersey municipal courts are not constitutional courts, but rather were created by the Legislature. Article VI of the New Jersey Constitution created the position of the Chief Justice, who oversees the administration of all the courts in New Jersey.

Article VI further established that the judicial power shall be vested in a Supreme Court, Superior Court, county courts and courts of limited jurisdiction. In 1978, the Constitution was amended to abolish county courts and remove the term "inferior courts." The term "courts of limited jurisdiction" were substituted for that phrasing.

Under N.J.S.A. 2A:8-1-4, the justices of the police were abolished and the local system of the municipal courts was established with magistrates presiding. Jurisdiction in the municipal courts was limited to drunk driving, traffic and parking offenses and ordinance violations. There was no requirement for municipal court prosecutors and public defenders to be appointed. That statute was repealed on Feb. 15, 1994, and was replaced by N.J.S.A. 2B:12- 1 et. seq.

Under N.J.S.A. 2B:12-1 et. seq., the municipal courts in each municipality, or in a shared municipal court, were created. Local governments are responsible for providing the court facilities, equipment and supplies, which in turn fund the courts and the salaries of municipal court judges and the court personnel.

Municipal court judges are required to be practicing New Jersey attorneys admitted to the bar for five years. The judges are appointed by the governing local body for a three-year term with no tenure. There is a designation of a chief judge in the municipal courts, where there is more than one municipal court judge sitting in that

court. Municipal prosecutors are also required to be established in the municipality, serving one-year terms.

Following the conclusion of the three-year term, municipal court judges can be considered for reappointment by the governing local body. At the conclusion of the term of reappointment, a municipality can decide to reappoint the judge for an additional term. There is no provision in the constitution or in Title 2B concerning the tenure of municipal court judges or uniformity as to the appointment process and reappointment process and salaries of the municipal court judges.

Since their creation, various studies focusing on improving the municipal courts have been conducted. One of the most extensive studies was undertaken in 1985 by the Supreme Court's Task Force on the Improvement of the Municipal Courts. Its goal was to upgrade the status and improve the operation of the New Jersey's municipal courts, which were handling approximately 5 million cases at the time.[4]

The 1985 task force went on to study the operation and administration of the municipal courts; the budget, personnel and physical facilities of the courts; trial practice and procedure; and the computerization of the municipal court. As a result of its recommendations, municipal courts now have a statewide systemized process for the issuance of traffic tickets and complaints by the local or state police or done through citizen complaints.

The 1985 task force also made recommendations that a presiding judge be established in each vicinage to assist the assignment judge in overseeing the operation

[4] The report of the New Jersey Supreme Court Task Force on the Improvement of the Municipal Courts of 1985 is in the Appendix.

of the municipal courts. It also recommended that a uniform budget format be established statewide to aid the presiding judge and the municipal court judges in having sufficient resources to operate the courts with the impasse being resolved by the assignment judge. To that end, the 1985 task force recommended a uniform budget reporting system promulgated by the Administrative Office of the Courts.

The task force also recommended the establishment of uniform criteria for hiring, evaluating and terminating municipal court judges, recognizing the political component to be accomplished by the municipality. It was recommended that a candidate for a municipal court judgeship be an attorney admitted to the practice of law for five years and cleared through a confidential investigative background check adopted by the Administrative Office of the Courts and then reviewed by the assignment judge. It was also recommended that within a 90-day period of the appointment as a municipal court judge that the judge be certified as having satisfied the requirements for the educational requirements the Administrative Office of the Court required. Following that evaluation, the task force recommended municipal court judges be evaluated on an annual basis.

The task force further recommended that standards for uniform compensation for all municipal court judges, statewide, be promulgated with a cap on judicial salaries to prevent multiple judgeships. The task force also recommended establishing tenure for municipal court judges to ensure quality judges remain in their positions and to ensure less turnover of qualified judges, which would be disruptive to the municipal court system.

In the 30 years since the recommendations of the 1985 task force, there is now substantial oversight of the municipal courts by the Municipal Division of the Superior Court, which conducts annual visitation of all courts and court records, and random audits of all monies collected by the municipalities. The presiding municipal court judge in each vicinage provides training to the municipal court judges; conducts in-session visitations; and files confidential reports with the assignment judge. The Administrative Office of the Courts through its Municipal Court Division also provides oversight to the operation and administration of the local municipal courts.

A certification system for court administrators has been expanded under the court rules, so that assignment judges are directly involved in the hiring of deputy court administrators and court administrators. The assignment judge also has the authority to suspend the certification process for municipal court administrators.

Although not quite county regionalization of the municipal courts, there has been an expansion of the duties of the municipal court judges. For example, many municipal court judges are assigned by the assignment judge to handle telephonic blood-draw warrants, and other telephonic warrants, and they may be cross-assigned to hear matters of another municipality where a judge has a conflict. And some counties have even gone so far as to join one or two municipal courts together for efficiency purposes in addressing the needs of those courts.

As a result of Criminal Justice Reform, which became effective on Jan. 1, 2017, each county has a centralized judicial processing court staffed by judges and individuals working in the newly created Pre-Trial Services Division to handle first appearances for

people charged with offenses in a complaint warrant, set bail for disorderly persons offenses, and address all indictable offenses as to each defendant.[5] During the first appearance, the court addresses the offenses and makes a decision as to the conditions of pre-trial release and bail for the offenses charged in the complaint warrant, based upon a review of the Pre-Trial Services Division risk assessment.[6] If there is a request by the county prosecutor for detention of the defendant charged with a disorderly person's offense or an indictable offense in a complaint warrant, the decision to detain or release the defendant is made by a Superior Court judge in the county.[7]

The municipal courts in New Jersey are the courts where most individuals appear as their first experience with the criminal justice system. Defendants are charged in municipal court with routine traffic summonses, minor infractions, and more serious offenses of DWI and disorderly person's offenses. For most individuals, this may be the first and only experience they have with the court system. As a result, people who appear in the municipal courts form opinions about the judicial system based upon their interaction with the court staff, the municipal prosecutor, and the municipal court judge. It is, therefore, critically important that the municipal courts ensure the fair and impartial handling and disposition of cases with the utmost integrity and independence.

[5] See N.J. Court Rule 3:4-2(d), concerning first appearances after the filing of the complaint; N.J. Court Rule 3:26-1(a)(1) concerning the right to pre-trial release before conviction.
[6] See N.J. Court Rule 3:26-2, concerning the authority to set conditions of pre-trial release; See also N.J.S.A. 2A:162-17, concerning consideration for pre-trial release.
[7] See N.J. Court Rule 3:4A, concerning pre-trial detention; See also N.J.S.A. 2A:162-19, concerning pre-trial detention for certain eligible defendants requested by the state.

C. A Historical Perspective of New Jersey's Municipal Courts

Without question, the legal community in New Jersey has deemed the municipal courts the "most important courts" in the state. To this end, the words of Chief Justice Richard J. Hughes on the historical perspective of the municipal court system in *In Re Yengo*, 72 N.J. 425, 429 (1974) are illustrative for consideration:

> In light of this reform in the municipal court system, Chief Justice Vanderbilt stressed the importance of these courts, expressing a caveat to the constitutional characterization of them as 'inferior' courts (actually a term of art, not implying any disrespect). He believed that the local courts of first instance are the very foundation of the enforcement of the criminal law; that upon them rests primary responsibility for the maintenance of peace in the various communities of the State, for safety on our streets and highways, and most important of all, for the development of respect for law on the part of our citizenry, upon which in the last analysis all of our democratic institutions depend. He said '(t)his is the underlying reason why I have repeatedly called the municipal courts the most important in our state.' Id. at 650. He rejoiced at their post-Constitution accomplishments which had brought about legislative enlargement of their jurisdictional power, [FN3] and he said '(t)he manner in which the municipal courts over a period of seven years have exercised their growing powers makes a proud record.' Id. at 653. He emphasized outward symbolism as a spur to judicial probity and impartiality and consequent public confidence in the courts:
>
> FN3. 'The municipal court as an institution has made remarkable strides in the last seven years in earning the respect of the people in this State and as a result it has been entrusted with greatly enlarged jurisdiction * * *.' In re Klaisz, 19 N.J. 145, 148, 115 A.2d 537, 538 (1955) (Vanderbilt, C.J.).
>
> The wearing of a judicial robe by a judge is important in part because it reminds all concerned of the fact that the

judge represents the law on which liberty depends, but-and this is even more important-the robe is even more significant as a constant reminder to the judge that he does not have the freedom of the ordinary individual but is himself bound to submerge his personal feelings in the impartial administration of the law. The judicial robe is a constant reminder to the magistrates that they, like all other judges, are subject to the Canons of Judicial Ethics as rules of court… It is not enough that a judge be honest and impartial; it is essential that he have the reputation in his community for being a man of absolute integrity, whose judgment is not and cannot be influenced by other than the proofs introduced before him in court. (Id. at 653).

Later, Chief Justice Weintraub expressed a similar view as to the importance of the local courts:

> (I)n terms of human experiences our magistrates preside in the most important courts in the state. To appreciate that this is so, we need but look at the nature and number of the matters they handle.
>
> (A) very substantial percentage of our citizens are directly involved with our municipal courts, to say nothing of the thousands who appear as witnesses or spectators. For most of them, it is their only contact with the judicial process. The impressions they receive serve to shape their opinion of the judicial system, our laws and law enforcement. We cannot permit that opinion to be anything but one of confidence and respect. (81 N.J.L.J. 597 (1958)).

Chief Justice Weintraub would often repeat this theme. In greeting Municipal Judges at the Eleventh Annual Conference of Magistrates in 1959, he reminded them that they ‘represent(ed) by far the most productive, the most active part of the judicial system, and … in terms of citizen exposure, the most important one’; that ‘all of us' must have ‘active concern’ with the standing and reputation of the municipal court; that ‘anything that happens in just a

few of the courtrooms casts a shadow upon all of us.'

In re Mattera, 34 N.J. 259, 275, 168 A.2d 38, 47 (1961), he stressed:

In many respects the municipal court is the most important in our judicial system. No other court can match its volume of causes. Our municipal courts dispose annually of approximately one and one-half million matters, a number which dwarfs the total proceedings in all other courts of the State. For all practical purposes, the judgments of the municipal court are final. It is there that most citizens have their sole exposure to the judicial process. The respect they have for the judiciary hinges upon that experience. Thus, the magistrate has a unique responsibility for the popular image of the entire system.

In another context, but equally relevant, this Court noted in In re Spitalnick, 63 N.J. 429, 431-32, 308 A.2d 1, 2 (1973), that:

> **This Court cannot allow the integrity of the judicial process to be compromised in any way...A community without certainty in the true administration of justice is a community without justice.**

Nowhere can the community be more sensitive to the regularities-and irregularities-of judicial administration than at the local level.

The same view was expressed during the unfortunately brief tenure of the late Chief Justice Garven. During his last illness his speech to the Judicial Conference of Municipal Court Judges was read for him by Justice Mark Sullivan, and he reminded those judges that:

> You, judges of the municipal courts of this State, represent the first bastion of our judicial system. Thousands of our citizens are exposed to justice in New Jersey through the municipal courts. They are unaware of the activities of any other court. To these people, you Are the judicial

> system. This alone places a heavy burden upon you. (96 N.J.L.J. 1237 (1973) (emphasis added)).
>
> …
>
> **In a free society, the court's influence, acceptance and power alike rest, not only on Constitution and statutory law but upon public confidence in its probity, objectivity and freedom from outside pressure of whatever kind. This applies to all courts, including the hundreds of Municipal Judges who, as Chief Justice Vanderbilt used to say, were those nearest to the people.**
>
> …
>
> [1] It is therefore apparent, despite the many societal changes which have occurred in recent years, that the policy of the Supreme Court continues unaltered in its insistence that all courts within its constitutional and administrative direction shall so comport themselves as to dignify the administration of justice and deserve the confidence and respect of the public.
> [Emphasis added]

New Jersey's municipal courts are, undoubtedly, the face of the Judiciary based on the volume of cases heard by municipal court judges. Although the municipal courts are the most important courts in our state, the Supreme Court has recognized the system's "shortcomings," without impugning the good people appointed to the municipal court bench:

> The Legislature long ago provided for a retrial at the county level because of the weaknesses inherent in the system of local courts whose judges were locally appointed, served part time, and frequently were not even members of the Bar. A structure of that kind could not command the complete confidence of the public. **Although the municipal court of today is much improved over its ancestors, the structure remains unsound.** There are 523 municipal courts. **Their judges are still appointed locally, still serve part-time, and although membership at the Bar is now**

> **required (subject to a grandfather clause, N.J.S.A. 2A:8-7), this antiquated system of local courts cannot inspire the confidence with which the public approaches our county courts.** We intend no reflection upon the many judges of the municipal courts who work hard and conscientiously notwithstanding the shortcomings of the system itself.
> *State v. DeBonis*, 58 N.J. 182, 188-89 (1971).
> [Emphasis added]

And finally, Chief Justice Hughes envisioned that our municipal courts would one day be free of local control and become truly independent:

> "The impact of the impressions gained from experiences in these [municipal] courts upon public confidence in our legal system is profound. Consequently, I believe that the merger of municipal courts into the unified state court system would be a major step forward in meeting criticisms of "assembly-line justice" and related ills. I have asked that New Jersey begin to lay the groundwork so that the complicated procedure of court merger may be accomplished within the next few years."
> Richard J. Hughes, July 1967, ATLA address.

It is against this backdrop that this report is written.

D. Overview of the Need for Judicial Independence in the Municipal Courts

The Subcommittee convened four public hearings throughout the state to gather information as to the need for judicial independence in the municipal courts. During the public hearings, there was testimony provided from attorneys, former and current municipal court prosecutors, a former and a current municipal court judge, an assemblyman and members of the public. During the testimony of the witnesses, there were references made to news articles that had appeared in the *Asbury Park Press*.[8]

[8] The articles appeared in the *Asbury Park Press* in November and December 2016, including one in which the municipal courts were seen by the municipality as a "cash machine;" one that addressed the emails sent between town officials discussing the increased revenue as a basis for the replacement of the municipal court judge and detailing the revenues generated from the municipalities' courts in Ocean and Monmouth counties; one that explored the need for reforms in the municipal courts, that were more interested in cash than in justice; and finally one addressing money as a driving force ruling over the municipal courts and calling for reforms in the municipal court system. They can be found in the Appendix.

The testimony provided in the four public hearings addressed an overall concern for the integrity of the Judiciary with pressure being placed on municipal court judges to generate revenue for the municipality and being seen as the "profit centers" for municipalities. The testimony was that towns rely on the revenues that municipal courts generate to assist with their budgets, allowing them to not raise taxes on their citizens. Towns often will review the revenues generated by a municipal court judge prior to deciding whether a judge will be reappointed.

There were additional concerns raised as to the involvement of local police in achieving a favorable outcome for the municipalities in order to increase revenue funds to be raised for the municipality. The testimony was that often municipal court judges feared reprisal from the police and the local governing body in rendering a not-guilty finding because it would be viewed as a personal affront to the police officer and could result in disparaging comments being made concerning the court's decision. The testimony provided was that municipal court judges are worried about being criticized for decisions they make in cases they hear in the municipal courts, as they fear alienating the police. In certain parts of the state, the testimony showed a court liaison from the local police, instead of a municipal prosecutor, was granted the responsibility of meeting with *pro se* defendants to provide a resolution of their charges in an effort to expedite the process.

The testimony also concerned the concept of local or home rule playing a heavy influence in the operation of the municipal courts related to the appointment and reappointment of municipal court judges, as well as municipal court prosecutors. There

was testimony provided that in South Jersey the police issue complaints even though they have an insufficient basis for the filing of the complaints. It was stated during the hearings that in some towns police officers have tremendous political power and exert influence with respect to the appointment of municipal court judges.

Testimony was also provided at the public hearings regarding the appointment of municipal court judges who have few qualifications to serve in that capacity and insignificant experience in criminal law or municipal court. The testimony from the witnesses also raised concerns as to amount of training provided to and the reappointment process for judges. Witness testimony also suggested that tenure or retention of municipal court judges for life or successive terms, with the county bar association and the assignment judge being involved in the process, would allow judges the ability to decide cases without fearing reprisal from the municipality or local governing body. In so doing, the result would allow the judges to focus on justice rather than revenue production. The testimony recommended that there must be a separation between the politics and appointment of municipal court judges, almost like a wall, to ensure independence and to allow the Judiciary to act as a fully independent branch of government.

The Middlesex County Bar Association submitted a statement, which was read at the public hearing held at the NJSBA Annual Meeting at the Borgata Hotel Casino & Spa in Atlantic City, on May 19, 2016. The statement indicated that reform must be implemented to address situations where municipal court judges feel pressured to render decisions based on the municipality's financial interest and fear that he or she

will not be reappointed should he or she did fail to generate enough revenue. The Middlesex County Bar Association recommended an initial four-year term, with eligibility for successive terms based upon the advice of the assignment judge and a committee comprised of municipal court practitioners, the county bar association and the public. It also proposed a county due diligence committee for review of municipal court judicial candidates be established in each county in the state.

An overarching review of the testimony shows there is a crisis in the municipal court system, due to a lack of confidence in the independence and integrity of the Judiciary by members of the bar and the public. Based upon the testimony presented at the four public hearings, it can be concluded that there is a perception by the public that municipal court judges are influenced by the police and favor the police over the defendant. It was therefore determined that there is a need for judicial independence in the municipal courts to ensure the integrity of the courts be free to make fair and just decisions without the need for undue influence from outside fiscal pressures of the municipalities to raise revenues.

The testimony of the witnesses further addressed the need for uniformity and change in the municipal courts throughout the state, with consideration given to some form of regionalization in the municipal courts. Several witnesses recommended that the Legislature be urged to abolish local control over the municipal courts, and instead, implement regionalization of the courts with uniform funding and resources. It was noted that the enactment of Criminal Justice Reform establishing a centralized judicial processing court in each county has now established the framework for a regionalized

municipal court to hear certain types of violations, offenses, petty disorderly persons offenses or disorderly persons offenses from the municipal courts.

E. Four Public Hearings Held and the Summary of the Testimony of Witnesses at the Public Hearings

The four public hearings were held throughout the State of New Jersey with the first public hearing held on April 4, 2016, at the Law Center in New Brunswick. At that hearing, testimony was provided from Michael Speck, Esq.; Mark Garfinkle, Esq.; and Steven Hernandez, Esq., then chair of the association's Municipal Court Practice Section.

The second public hearing was held on May 2, 2016, at Rowan University in Glassboro. At that hearing, testimony was provided by Jim Gerrow, Esq.; Paul Catenese, Esq.; Robert Ramsey, Esq.; and Robert Herman, Esq., and Assemblyman Reed Gusciora.[9]

The third public hearing was held at the Annual Meeting and Convention of the New Jersey State Bar Association at the Borgata Hotel Casino & Spa in Atlantic City on May 19, 2016. At that hearing, testimony was provided by Jeffrey Gold, Esq,; James Abate, Esq.; Michael Hoffman, Esq.; John Menzel, Esq.; Craig Aranow, Esq., then president of the Middlesex County Bar Association; and Hon. Louis J. Belasco, P.J.M.C.

The fourth public hearing was held on June 6, 2016, at the Seton Hall Law School in Newark. The testimony provided from Thomas Prol, Esq., then president of the New Jersey State Bar Association; Matthew Reisig, Esq.; Dennis Epperly; April Cabbell; and Thomas McDonough, Esq.

[9] Robert Ramsey, Esq., presented a PowerPoint presentation as to the history of the creation of the county district courts and then of the municipal courts in New Jersey at the public hearing held on May 2, 2016.

Additional materials submitted for the Subcommittee's review from Mitchell Ignatoff, Esq., and Judge Edward Stern, retired presiding judge of the Appellate Division, who were unable to attend the hearings.[10]

Following the four public hearings, the Subcommittee divided into two working groups to consider the testimony of the witnesses and the recommendations of the Subcommittee. One focused its efforts on devising recommendations as to the initial application process for the municipal court judges; the appointment and reappointment process and tenure for the municipal court judges and any additional training required for the judges. The second focused on the administration of the municipal courts and any required changes within the municipal court system to ensure fairness in the administration of justice in the municipal courts in New Jersey.

[10] Copies of the materials submitted to the Subcommittee following the public hearings from Mitchell Ignatoff Esq., and the Hon. Edwin Stern (retired P.J.A.D.) appear in the Appendix.

II. RECOMMENDATIONS

The Subcommittee reviewed the oral and written testimony of anecdotal information, as well as all additional information and documentation provided by the witnesses at the hearings and subsequent to the hearings. Based upon the testimony of the witnesses, a common theme emerged noting both a reality and a perception that the municipal courts are dominated by two forces: the appointing entity and law enforcement. These forces can result in the need on the part of the appointing entity to rely upon revenues generated by the court system, and for law enforcement to use the power of arrest to generate revenue to support local government.

After noting that the municipal courts handle almost 6 million cases per year, based upon the Administrative Office of the Courts Municipal Court Report for 2016[11], and engaging in extensive discussion and debate, the Subcommittee determined that numerous recommendations are necessary to foster public confidence and ensure the continued judicial independence in the municipal courts. The recommendations that are set forth in this report below emanated from each of the working groups of the Subcommittee and were ultimately adopted by the full Subcommittee.

A. Appointment Process for the Municipal Court Judges

There currently exists no uniform, statewide system for appointment and reappointment of municipal court judges. Each municipality has its own procedure for interviewing prospective individuals for the position of municipal court judge and each municipality has its own process for appointments. Once a municipal court judge has

[11] The AOC Municipal Court Summary for 2016 of cases pending and disposed of between January 2016 and December 2016 is attached in the Appendix.

concluded an initial three-year term, there is also no uniform and statewide system for reappointment process. Each municipality determines the salary of the municipal court judge based on the budget of the local governing body.

The Subcommittee recommends that a uniform process be established for the appointment and reappointment of municipal court judges. Once the municipality selects a candidate for the position of municipal court judge, the credentials and qualifications of the prospective applicant for the position shall then be reviewed by a due diligence committee of the relevant county bar association (hereinafter referred to as Due Diligence Committee).

The Subcommittee further recommends that the Due Diligence Committee, to be selected by the president of the county bar association in which the municipal court is located, should consist of at least five members, who practice in the municipal courts.

Prior to an appointment, the candidate would be required to appear before the Due Diligence Committee of the county, where the municipal court is located. The committee would make a determination as to whether the applicant is qualified or not qualified and make a recommendation to the assignment judge. The assignment judge shall appoint a Municipal Court Judge Review Committee (Review Committee) to review the recommendations of the Due Diligence Committee. The members of the Review Committee shall include the assignment judge, the municipal court presiding judge, the vicinage municipal court division manager and any other individuals deemed necessary, at the discretion of the assignment judge.

The assignment judge and the Review Committee have the discretion to consult with the Superior Court judge assigned to hear municipal court appeals and any other individuals approved by the assignment judge. The assignment judge, in consultation with the Review Committee, would make the final determination.

In the event the assignment judge does not approve the candidate selected, the municipality shall submit the name of a new appointee. The new appointee shall be considered in accordance with the procedures set forth herein.

The Subcommittee recommends that the term of municipal court judges remain three years. Following the conclusion of the three-year term, the Subcommittee recommends that subsequent terms be limited to three additional three-year terms. Upon reappointment to a fourth consecutive term, the judge shall have tenure. The municipality or local governing body must present to the assignment judge good cause for non-appointment of the judge to a tenured term.

To implement the newly created review process, the Subcommittee recommends the adoption of a new court rule to read "no attorney may serve as a municipal court judge unless the assignment judge of the vicinage has approved the appointment. In the confirmation process, the assignment judge of the vicinage shall consider, *inter alia*, the recommendation of the Due Diligence Committee of the county bar association as set forth herein".

The commentary proposed to accompany the proposed rule makes clear that the rule leaves the power of the municipality to appoint its municipal court judge intact. It prohibits any attorney, whose conduct is already governed by the rules of court, from

serving as a municipal court judge without the approval from the assignment judge of the vicinage where the municipal court is located.[12]

The Subcommittee also considered a statutory amendment, as an alternative for the appointment and reappointment of municipal court judges, in order to ensure that the selection process is based on merit and not on other factors. The Subcommittee determined that the process to adopt a statutory amendment would require a lengthier process and would delay the implementation of the recommendations set forth by the Subcommittee.

B. Qualifications for the Municipal Court Judges

Other than the requirement of serving as a practicing attorney for five years in New Jersey, no other requirements currently exist to become a municipal court judge. Therefore, the Subcommittee recommends the appointment of a statewide committee, staffed by the Municipal Court Practice Division of the Administrative Office of the Courts, to develop standards specifically designed to assist a municipality and its governing body in the selection process.

C. Terms of Municipal Court Judges and Full-Time or Part-Time Positions

The statute specifies that the term for the municipal court judge is a three-year term, with three consecutive three-year terms being permitted. The Subcommittee discussed the term of the initial appointment and agreed that it should remain a three-year term. The Subcommittee agreed that the term of the reappointment of municipal court judges should be up to three consecutive untenured terms. The Subcommittee

[12] The Explanatory Statement and the Court Rule with the comment can be found in the Appendix.

discussed the benefits of having a full-time municipal court judge assigned to the municipality, instead of a part-time judge. Since each municipality has its own fiscal and budgetary issues that the decision of whether to appoint a full-time or part-time municipal court judge would be left to the municipality or the local governing body, unless some form of regionalization was to occur in the courts.

D. Training Required for Municipal Court Judges

1. Initial Training for New Municipal Court Judges

The Subcommittee discussed educational opportunities and training provided to new municipal court judges. The training includes an initial comprehensive orientation program, offered by the Administrative Office of the Courts, as well as monitoring and oversight provided by the presiding judge of the municipal courts in each county. The presiding judge of the municipal courts also frequently visits each of the municipal courts in their vicinage with announced and unannounced visits. The Subcommittee determined the training provided to municipal court judges through the Courts is sufficient to ensure the judges are properly trained.

2. Ongoing Training for Municipal Court Judges

The Courts provide ongoing training to municipal court judges. The Subcommittee finds that the ongoing training is sufficient to address recent updates in the municipal courts.

E. Reappointment Process and Retention of the Municipal Court Judges

1. Evaluations

The Subcommittee discussed the reappointment process for municipal court judges and determined the assignment judge, in conjunction with the Due Diligence Committee of the county bar association and the Review Committee would determine, based upon that judge's performance over the three-year period, if reappointment would be appropriate.

2. Review Process for Reappointments of Municipal Court Judges

The Subcommittee determined that the uniform process discussed in this report, for the initial appointment of the municipal court judge, be the same process followed for reappointment. The Subcommittee further recommended that in the event the municipal court judge's performance would not support reappointment, the recommendation of the assignment judge in consultation with the Due Diligence Committee and the Review Committee would be binding on the municipality or the local governing body.

3. Retention and Tenure

There was testimony presented at the four public hearings both in favor and against tenure for municipal court judges in New Jersey. The Subcommittee determined, as noted previously, that tenure shall apply only if a municipal court judge has been granted a fourth consecutive term.

F. Current Municipal Court Judges to be Grandfathered

Given the recommendations of the Subcommittee in making changes to the appointment and reappointment process of municipal court judges, the Subcommittee determined that all currently sitting municipal court judges should be grandfathered in and would not be required to submit to the due diligence process until their current term expires. Once their term of appointment is concluded, the judge would be required to submit to the new due diligence process.

G. Limitations on Number of Courts per County

There was testimony at the four public hearings raising issues concerning judicial independence, given that certain judges are sitting as municipal court judges in multiple courts in that county and in other counties. Given that the assignment judge oversees the administration of the municipal courts in that county, the Subcommittee determined that the issue of limiting the number of courts that a municipal court judge is permitted to sit there, would be a determination to be made by the assignment judge in that county.

H. Regionalization of the Municipal Courts and Takeover of the Municipal Courts vs. Localization of the Courts

The Subcommittee engaged in extensive review of the current municipal court system and the difficulties inherent in the current system with local politics playing a significant role in the choice of municipal court judge and municipal court prosecutor. The Subcommittee also considered the impact of the potential political influence of the local police on the municipal court judges in the determination of the outcomes in municipal court proceedings.

The Subcommittee further considered the regionalization of the municipal courts or a centralized judicial processing court in some fashion given these political realities. The consensus of the Subcommittee was that some form of regionalization of the municipal courts was necessary to reform the system and to both ensure judicial independence in the municipal courts and eliminate home rule issues. Yet, at the same time, the realities of litigants and witnesses that may be unable to travel to the seat of the county and other difficulties existed in all cases being heard in a regional court. Other considerations are of the budgetary and fiscal implications of municipal court cases being heard in regional courts with the funding source still maintained by the local municipality unless changed by the Legislature.

The Subcommittee ultimately concluded that given the fiscal considerations and administration considerations in the creation of a regionalized municipal court that it is recommended that the NJSBA recommend to the Supreme Court that a new committee be created to study the mechanism for the fiscal and administration of the regionalized municipal court to be created in the counties around the state. The Subcommittee identified the following advantages and disadvantages of regionalization that the new committee should consider, as well as offenses that can be handled regionally, as noted below.

1. **Advantages for Regionalization of the Courts vs. Localization of the Courts**

The Subcommittee considered some of the benefits to a regionalized system that allows politics to be taken out of equation. The Subcommittee noted regionalized courts would permit the local police to have less of an influence with the decisions to be made

by the judge in the regionalized court. The appointment and reappointment process of the judges in the regionalized court would then be a decision made without the local political process, thereby ensuring a fair and independent Judiciary.

There are additional considerations that a regionalized court may lead to a pooling of resources of court staff, lessening of the heavy caseloads and backlog in the system, and saving the local municipalities funds since each would not have the burden of maintaining court facilities, court staff or judge. Consideration would be needed for the Legislature to contemplate the administration of the regionalized court by sharing the cost of the court staff and the fines and penalties to be generated, which would further relieve the budgetary pressure on the local municipality. There was also consideration for the splitting of the fines and penalties with some portion of the fines and penalties generated being sent to the state, if the state bears the cost of administering the regionalized or centralized court.

2. Disadvantages for Regionalization of the Courts vs. Localized Courts

The Subcommittee also considered some of the technical difficulties in having regionalized courts, in particular with litigants and witnesses having to travel to regionalized courts. This could have a devastating negative impact on low-income defendants, unless video court proceedings are available. In addition, there are more complex issues in the administration of regionalized courts, since traffic violations and offenses considered by the courts would have been committed in a local municipality, with the local police being the issuing authority for the summonses or complaints being generated.

There were additional fiscal considerations with the funding source of the courts formally residing with each municipality. Further consideration would be needed of the process of sharing the costs of the administration of the courts, the court staff and judge, which would need to be addressed by the Legislature.

3. Regionalization of Municipal Courts -- Certain Offenses

The Subcommittee determined that some regionalization of disorderly persons offenses and petty disorderly persons offenses could be handled in a regionalized court in the county, especially given that disorderly persons offenses are currently being handled in the Centralized Judicial Processing court in each county.

I. Subcommittee Consideration of Other Recommendations

During the testimony of the witnesses, other issues were raised and brought to the attention of the Subcommittee. Many encouraged the Subcommittee to consider the appointment and role of the municipal prosecutor and its impact upon the administration of the municipal courts. Because the municipal prosecutors are ultimately officers of the Executive Branch, it was agreed that any recommendations regarding municipal prosecutors would be beyond the scope of this committee's review authority.

A number of witnesses testified to a practice utilized in some municipal courts where a police liaison meets with *pro se* litigants, instead of with the municipal prosecutor, and a plea bargain and resolution of traffic violations or offenses is negotiated and agreed to by the litigant. The Subcommittee considered the potential statutory and ethical violations with a non-attorney police liaison engaging in

discussions with a *pro se* litigant and resolving traffic violations or other offenses. The Subcommittee agreed to a recommendation that the practice of a police liaison being utilized to reach a resolution of traffic violations or other offenses should be abolished, as it arguably amounts to the unauthorized practice of law and violates R.P.C. 3.8 requiring the independent judgment of the prosecutor.

The witnesses also testified, and the Subcommittee recommends, that there should be some form of separation within the municipal courts between the court staff and the police to ensure that judges are insulated from the politics of the local body or municipality. The testimony reflected a public view that there was not an even playing field in the municipal courts, where police presence exists and where municipal court judges lean often to the side of the prosecutors. There was a recommendation that rules be promulgated to ensure that police presence inside the courtroom is limited to certain areas and not adjacent to or behind the municipal court judge. There was also a recommendation that municipal court judges not participate in holiday parties hosted by the local police departments.

There was also a recommendation that there be a uniform process established through the Administrative Office of the Courts for anonymous evaluation of municipal court judges. In that manner, individuals from the public and attorneys practicing in the municipal courts are able to submit evaluations of the judges without the fear of appraisal of submission of the evaluations. The Subcommittee, therefore, recommends that the Courts implement an anonymous evaluation process of municipal court judges.

III. EXECUTIVE SUMMARY OF RECOMMENDATIONS

The Subcommittee offers several proposals to further a fair and independent municipal court system. The recommendations are:

1. Establish a uniform process for appointment and reappointment of municipal court judges, with the assignment judge having final approval, after considering information from a county bar association Due Diligence Committee and consulting with a Municipal Court Judge Review Committee;

2. Adopt a new court rule formalizing the role of the proposed appointment process;

3. The initial term of a municipal court judge should be three years, with eligibility to be reappointed for up to three additional three-year terms;

4. Tenure should be established for municipal court judges upon appointment to a fourth consecutive term;

5. Establish a statewide committee to develop standards specifically designed to assist a municipality and its governing body in the selection process;

6. A committee should be created to study the viability of regionalization;

7. A formal separation should exist between municipal court staff and police officers of that municipality;

8. Police representatives should be barred from being used in court proceedings to reach a resolution for traffic violations and other offenses; and

9. The Administrative Office of the Courts should create an anonymous evaluations system of municipal court judges.

IV. CONCLUSION

Judicial Independence touches the core values that we espouse and which are conveyed to the public in the municipal court system. The cornerstone of the Judiciary is the core values that we share with the Superior Courts, which are: quality, service, fairness, integrity and independence. The Subcommittee recognizes that the municipal courts in New Jersey are the places where most people come into contact with the justice system and form their opinions of the courts.

While recognizing there are inherent realities that exist with politics playing a role in the administration of the municipal courts, due to the source of funding coming from the local body or municipality, the Subcommittee recognizes that the public perception of the municipal courts has been eroded and there is a lack of confidence in the municipal courts about fundamental fairness in the adjudication of cases in the municipal courts by the municipal court judges. The pressures of budgetary needs of the municipality and the local governing body, and the overall need for revenue to be generated along with a pervasive bias towards the police, cannot continue to be the focus of the municipal courts and of judicial appointments in the municipal courts. The obligation of the municipal courts and its judges to adjudicate justice fairly and impartially without regard to external influences must be restored to the municipal courts.

In conclusion, the Subcommittee recommends that the New Jersey State Bar Association adopt the recommendations of the Subcommittee to ensure that judicial independence be maintained in the municipal court system. The Subcommittee also

recommends that the association request that the Court adopt and implement these recommendations as part of the Supreme Court's Task Force on Municipal Court Committee on Operations, Fines and Fees that was recently created by the Court.

APPENDIX

I. ***In re Yengo*, 72 N.J. 425 (1974)**

II. **1985 Report of the Task Force on the Improvement of the Municipal Courts**

III. **Article submitted by the Honorable Edwin Stern, Retired P.J.A.D.**

IV. **Submission from Mitchell Ignatoff, Esq.**

V. **2016 Municipal Court Statistics from the AOC**

VI. **A-4418 by Sponsor Erik Peterson-Establishing County Municipal Courts with limited county jurisdiction (Introduced Dec. 15, 2016)**

VII. **Explanatory Statement, the Court Rule and comment**

VIII. **Articles from Asbury Park Press**

Inside the Municipal Court Cash Machine, Nov. 27, 2016
http://www.app.com/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/

NJ Assembly Judiciary Chair: Study Municipal Courts, Nov. 29, 2016
http://www.app.com/story/news/investigations/watchdog/government/2016/11/29/legislature-fix-municipal-courts/94559102/

Municipal Courts Slam Poor the Hardest, Dec. 9, 2016
http://www.app.com/story/news/investigations/watchdog/government/2016/12/09/municipal-courts-hit-poor-hardest/94735926/

Lawmakers: Reform Municipal Court System, Dec. 21, 2016
http://www.app.com/story/news/investigations/watchdog/government/2016/12/21/municipal-court-reform-discussion/95654534/

Reforms Could Ease Pressure on Local Courts, June 21, 2017
http://www.app.com/story/news/investigations/watchdog/investigations/2017/06/21/nj-municipal-court-reform-discussion-trenton/414081001/

IX. **Transcripts of Subcommittee public hearings**

April 4, 2016

https://tcms.njsba.com/personifyebusiness/Portals/0/NJSBA-PDF/Reports%20&%20Comments/40416njlaw.pdf

May 2, 2016

https://tcms.njsba.com/personifyebusiness/Portals/0/050216.pdfMay 19, 2016

https://tcms.njsba.com/personifyebusiness/Portals/0/NJSBA-PDF/Reports%20&%20Comments/051916full.pdf

June 6, 2016

https://tcms.njsba.com/personifyebusiness/Portals/0/NJSBA-PDF/Reports%20&%20Comments/060616SETONHALL.pdf

X. Report of the Task Force on Judicial Independence

https://tcms.njsba.com/PersonifyEbusiness/images/content/1/0/1008603.pdf

NJ SPOTLIGHT
NEWS, ISSUES AND INSIGHT FOR NEW JERSEY

DISORDER IN MUNICIPAL COURT: CAN OFFICIALS, MONEY, AND THE COPS AFFECT DECISIONS?

COLLEEN O'DEA | APRIL 5, 2016

Too many actions that are taken for granted can compromise the independence of the municipal court system

Robert Pinizzotto, subcommittee chair Barbara Ungar, and retired Superior Court Judge Linda Feinberg -- members of the Subcommittee on Judicial Independence in the municipal courts.

Town council members saying they want to replace their municipal judge because she doesn't generate enough revenue … The police chief sitting in on the interview to choose a local judge … The police court-shopping because they don't like a municipal court judge …

These are just some of the actions that compromise the independence of the municipal court system. That's what a subcommittee of the New Jersey State Bar Association heard on Monday as it held its first hearing into possible problems with and political influence over the state's lowest court system, the one residents are most likely to encounter.

Barbara Ungar, a New Brunswick defense attorney who is chairing the subcommittee, said the group is looking into the impact that fiscal constraints have on municipal courts. It's also investigating the lack of uniformity in appointing judges, as well as their lack of tenure. The goal: recommend changes that will "enhance the future independence of the courts, which ultimately benefits the public as a whole."

New Jersey's 537 municipal courts handle traffic offenses, disorderly persons and petty disorderly persons offenses, and violations of municipal ordinances. They also handle instances of domestic violence and some housing matters.

The Municipal Court Practice Section of the bar, at the request of the association's board of trustees, created a Subcommittee on Judicial Independence in the municipal courts. It is tasked with holding four public hearings throughout the state to gather information and data from lawyers, judges, and members of the public on the topic.

This charge grew out of hearings by the Task Force on Judicial Independence in 2014. Created to address Gov. Chris Christie's decision to not reappoint two Supreme Court justices and his threat to not reappoint Chief Justice Stuart Rabner, the task force also heard testimony about the growing influence of politics and money in the municipal courts. In its May 2015 report, the task force urged the creation of a separate body to study the issue.

The task force wrote that the various offenses heard in municipal courts "may lead to the imposition of fines along with other associated penalties. The manner in which such issues are disposed of can and often does have a significant impact upon a municipality's budget and financial strength … The question is critically important; the municipal court is the court with which most citizens come in contact. Its integrity, both actual and perceived, is critical to the

public's acceptance of its determinations, which must be made without regard to whether findings of guilt, and the imposition of fines, could serve to assure continuation of a judge's position."

Municipal court judges are appointed by local officials to three year terms. After a judge's term expires, he can be refused reappointment for any reason, or for no reason -- just because a new regime is in power in town hall and wants to hire its ally to be the judge.

Michael Speck, a Freehold lawyer who said he has represented hundred of defendants in municipal court, termed the lack of independence "a serious problem" that is complicated because of the influence of elected officials, money, and the police.

He said that state troopers used to delay stopping cars they caught breaking the law on the Garden State Parkway in one town in Middlesex County until they entered another town because it was a more favorable environment.

"If you find a defendant not guilty, there is a concern you will not be reappointed because the police won't like you anymore," Speck said. "I think we have to figure out some kind of way to give them tenure ... We need to protect judges from the pressure that can be put on them from politicians, the police and the public."

"The process would not be an easy one," said former longtime Belleville Municipal Court Judge Frank Zinna, who retired three years ago. "We know tenure might be the answer, though it could also be counterproductive. If we say, 'on your third appointment you are tenured,' we know many municipalities would not appoint them again because they don't want a tenured judge."

Zinna floated the idea of having most municipal judges represent several towns, rather than one, as a way of professionalizing the system.

Marc Garfinkle, a Morristown lawyer who estimated he handled 2,000 municipal cases in 20 of the state's 21 counties, opposes tenure for judges and said municipal courts need to maintain their autonomy because they best can deal with the specific circumstances of each community -- for instance, shore towns have different issues than rural towns or cities. He compared it to different umpires calling different strike zones in baseball games.

"It's still OK and it's not fair and it's not equal," he said. "We are not supposed to be equal. We are supposed to have equal rights. Don't look to pensions to solve that problem. That problem is one of integrity. A judge knows what he is supposed to do."

Steven Hernandez, a Toms River lawyer almost exclusively representing clients charged with drunk-driving offenses, disagreed with Garfinkle and said there are problems when cases are handled differently by different judges in different counties. He said the greatest issue affecting the independence of the courts is that "those municipal court judges are expected to be revenue generators for towns."

He cited several examples from around the state. In one, a mayor said his borough depends on revenues from its municipal court to survive. In another, he said a local judge denied his request for funds to hire an expert to defend an indigent client and then court officials got angry when he appealed and the municipal court was ordered to pay the bill, which was no more than $600.

"The court administrator was so unhappy about it because I cost the town money and that's a no-no," Hernandez said. "If a defendant is innocent until proven guilty, the municipal court budget should be set at zero. But that's not realistic because the towns count so much on these. The judges won't do things to upset the apple cart."

He also pointed to the case of Eatontown, where leaked emails showed township committee members complaining they had hired the wrong judge because revenues were down and urging the hiring of a different judge who had brought additional revenues into another town. That

judge, Richard Thompson, had handled nine municipalities in Monmouth County and was suspended last October pending an investigation by the Advisory Committee on Judicial Conduct.

Hernandez said tenure is not the answer, severing the relationship between the judge and town officials is. He suggested that someone else, perhaps the county Superior Court assignment judge, appoint local judges.

That's an idea that Linda Feinberg, the former Mercer County Superior Court assignment judge, said she found "interesting."

Committee members also discussed the possibility of having local bar associations vet municipal judge candidates or having the assignment judge appoint a committee of lawyers, public defenders and prosecutors to recommend local judges or determine whether local judges be reappointed.

The next public hearing is scheduled for May 2, from 5 p.m. to 7 p.m. at Rowan University in Glassboro. Additional hearings are set for May 19 in Atlantic City and June 6 at Seton Hall University School of Law in Newark.

Tempest in Court: An Ousted Judge; Metuchen Officials Want More Fines From Municipal Court

By CLIFFORD J. LEVY and

Metuchen calls itself the "brainy borough" of central New Jersey, a haven of petite streets, petite stores and grand self-esteem. It hardly seems like one of those fabled backwaters where out-of-towners are summarily ticketed to fatten the coffers of the local chieftains.

But that was the impression that lingered recently after some officials in Metuchen squashed the reappointment of their municipal judge because, they suggested, he had failed to wring enough fines from his part-time court on Main Street, which handles traffic violations, petty theft, zoning disputes and other offenses too trifling for the judicial big leagues.

Their apparent reasoning has roiled the legal waters across New Jersey, drawing a rare rebuke from the state's chief judge and kindling a debate over the relationship between justice and money in the state's localities.

"It's an attack on the basic fairness that we expect in our legal system," said James B. Smith, 51, the Metuchen judge whose eight-year tenure ended after he was likened to a vice president of marketing who had neglected the bottom line. "I couldn't believe why they did it and then I couldn't believe it when they actually came out and said it in public."

But the officials who ousted Mr. Smith said they had been badly misunderstood. They said they never tried to meddle with the court in this wealthy borough of nearly 13,000, which got its nickname decades ago because of the many residents who worked nearby at Princeton and Rutgers Universities. What they wanted, these officials said, was to cut the court's expenses so that it would operate as efficiently as some of its counterparts around the state.

At the root of the disagreement was a recent survey by The New Jersey Law Journal that contained some very enticing statistics for local officials hard pressed by the recession and cuts in state aid. The survey found that municipal courts can be wellsprings of money, sometimes yielding three or four times what it costs to run them.

The municipal court in Hoboken, for example, took in $2,895,209 in 1992 on only $636,855 in expenses, a 355 percent return. Over all, the 567 municipal courts in New Jersey took in $135 million and spent $70 million in 1992, The Law Journal said, for a rate of return of 93 percent. Below Average Return

The Democrats who control the Metuchen Borough Council seemed irritated to learn from the survey that their court was below average, earning a 31 percent return -- $152,501 in revenues on $116,483 in expenses. The nearby Borough of Middlesex, whose population is similar to Metuchen's, had a 102 percent return, taking in $196,256 on expenses of $97,332.

So in late March, when Metuchen's Mayor, Susan Marshall, a Republican, nominated Mr. Smith, a Democrat, for another three-year term, the Council balked. Thomas Sullivan, the Democratic Council President, compared the court to a poorly performing corporation, according to a tape of the meeting provided by Ms. Marshall, who was eager to pin the blame for the furor on the Democrats.

"I believe that it is possible for us to maximize and do a better job for our taxpayers with this court, and the place where you start usually is at the top," Mr. Sullivan said on the tape. "And I think it's time to bring in a new corporate vice president."

Another Democratic member, Barbara Buono, said, "It is incumbent upon the Council in these tough economic times to explore innovative ways to increase our revenues to stabilize property taxes." She later added that "the taxpayer is not getting the biggest bang for the buck." An Unsuccessful Appeal

About two weeks later, when Ms. Marshall was on vacation, the Democrats replaced Mr. Smith with their own candidate, Lydia Kuhn, a lawyer. Mr. Smith, who has a private law practice here, unsuccessfully appealed the move to the Middlesex County Superior Court.

But his removal did touch off protests from residents and lawyers around the state. William H. Gazi, a trustee of the New Jersey State Bar Association who is a municipal judge in Piscataway Township and Highland Park, resigned as a substitute

judge in Metuchen. And the state's Chief Justice, Robert N. Wilentz, issued a statement calling Mr. Sullivan's comments "intolerable."

"It puts cash on the scales of justice," Mr. Wilentz said. "It encourages what amounts to judicial misconduct. It threatens judicial independence and undermines the public's confidence in municipal courts."

Mr. Sullivan, 34, a reporter for Dow Jones, the financial services company, said he regretted equating the court to a corporation. But he said his comments had been wildly misconstrued and he maintained that Ms. Marshall was keeping the fight alive to make the Democrats look bad.

"We take our responsibility to increase the efficiency of government very seriously," Mr. Sullivan said. "We felt to achieve those goals it was time for a change. We wanted somebody to take a fresh look at the situation and that required a fresh face. To say that we wanted to turn the entire town into a speed trap is ludicrous and loathsome."

Ms. Marshall, 37, an administrator at a Roman Catholic high school in Metuchen, said Mr. Sullivan was being disingenuous, pointing out that the Democrats had never indicated any problem with Mr. Smith before the journal's findings were publicized.

"For him to deny that he had any other spin on it is a lie," Ms. Marshall said. "The whole thing is horrible. We are being characterized as a town where justice is for sale."

Some legal experts said the criticism of Mr. Smith was unfair because municipal judges, who can rule on offenses with a possible punishment of less than six months, assess fines under guidelines set by the Legislature, the State Supreme Court and the localities. Aggressive policing tends to have a greater impact on fines than aggressive judges, they added.

And Mr. Smith, who was paid about $13,500 a year as judge in Metuchen, said the statistics in The Law Journal could be misleading because municipalities calculated their expenses differently. He noted that when he served as judge in nearby Dunellen in 1992, the court there took in revenues of $63,874 on expenses of $29,618, a 116 percent rate of return.

The legal experts were divided about the extent of inappropriate political influence on the municipal courts. One prominent trial lawyer active in the state bar

association, who spoke on condition of anonymity, said he was "floored" by The Law Journal's figures, as well as their ramifications.

"What took place out in the open in Metuchen happens every day elsewhere," he said. "Many municipal court judges do not get reappointed for reasons that are never talked about publicly. One is that they have not generated enough money. The other is that they do not back up the police."

In recent years, the Legislature has considered changing the system by giving municipal judges tenure, similar to that of judges on the county-level Superior Courts, who are named by the governor to a seven-year term and receive tenure if reappointed. But the proposal has faced stiff opposition from local officials who say it is their right to choose judges.

Ann Bartlett, chairwoman of the state bar association's judicial administration committee, said she believed that most municipal judges were able to resist pressure from those who select them. But she said she still favored tenure.

"The benefits of tenure far outweigh the interests of municipalities in maintaining their political autonomy because the political autonomy is what is invariably linked to influence-peddling," she said.

Such changes might soothe tempers in Metuchen, where residents like Daniel P. Spiegel said they were disgusted with both factions. Mr. Spiegel, 30, a mortgage banker who as a Republican served on the Borough Council in the late 1980's, said the other day that the Mayor and the Council should stop bickering and ask the county or the state to appoint a new municipal judge, even though Ms. Kuhn has said she is confident that she will be able to be fair and impartial.

A version of this article appears in print on May 9, 1994, on Page B00001 of the National edition with the headline: Tempest in Court: An Ousted Judge; Metuchen Officials Want More Fines From Municipal Court.

STATEMENT BY CHIEF JUSTICE ROBERT N. WILENTZ

Metuchen has refused to reappoint its municipal court judge. That is its unquestioned power. The stated reason, given by the President of the Borough Council as reported in the press, was the judge's failure to generate sufficient revenue. That reason is intolerable. It puts cash on the scales of justice. It encourages what amounts to judicial misconduct. It threatens judicial independence and undermines the public's confidence in municipal courts.

Municipal Court judges will not be intimidated by such a statement. They will continue to impose fines and penalties only to enforce the law, only in accordance with the law, and only to do justice.

April 22, 1994

Appendix W

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS

RICHARD J. HUGHES
JUSTICE COMPLEX
P.O. BOX 037
TRENTON, NEW JERSEY 08625-0037

MEMORANDUM

Directive # 02-10

To: **Assignment Judges**
Municipal Court Presiding Judges
Municipal Court Judges
Trial Court Administrators
Municipal Division Managers
Municipal Court Directors and Administrators

From: **Glenn A. Grant, J.A.D.**

Subj: **Implementation of L. 2009, c. 317, Authorizing Municipal Courts to Provide Payment Alternatives**

Date: **March 2, 2010**

Legislation authorizing municipal courts to provide payment alternatives was enacted effective January 18, 2010. L. 2009, c. 317. This memorandum is intended to provide the municipal courts with guidance on implementation of that enactment.

Establishment of a Time-Payment Order

L. 2009, c. 317 (emphasis added) provides that "if a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing . . . , the court may order the payment of the penalty in installments for a period of time determined by the court." Thus, for the court to establish a time-payment plan under this statute, the municipal court judge is required to first make a finding that the defendant is unable to pay the full amount on the date of the hearing.

By memorandum of November 20, 2003 directed to Municipal Court judges, then Administrative Director Richard Williams indicated that the "Financial Questionnaire to Establish Indigency - Municipal Courts" (Financial Questionnaire) should be used "in determining the indigency status of defendants . . . for payment of fines in installments." That policy remains unchanged. A completed Financial Questionnaire will contain the financial information that a judge needs in order to be able to make a reasoned decision

as to whether the defendant has an ability to pay a penalty in full or whether to grant defendant a time payment.

Additionally, judges also should continue to follow the long-established practice of considering the federal poverty guidelines as one factor in determining whether a defendant has the ability to pay fines and penalties in full on the day of the hearing. The most recently distributed guidelines (copy attached) suggest in that regard that defendants earning up to 250% of the federal poverty guidelines be considered for time-payment orders. Updated guidelines for 2010 will be issued by this office in the spring.

Payment Alternatives After Default

The new statute also includes provisions to cover the situation where an individual defaults on a previously ordered time-payment because the individual does not have the ability to pay. In those situations the court is provided a number of options. The statute specifically provides as follows:

> If a person defaults on any payment and a municipal court finds that the defendant does not have the ability to pay, the court may:
>
> (1) reduce the penalty, suspend the penalty, or modify the installment plan;
> (2) order that credit be given against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default;
> (3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;
> (4) order the person to perform community service in lieu of payment of the penalty; or
> (5) impose any other alternative permitted by law in lieu of payment of the penalty. [L. 2009, c. 317, § 1.]

The two situations in which a defendant shall be considered to be in default are (a) if defendant's driver's license has been suspended after a failure to pay (N.J.S.A. 2B:12-31(a)(2)), or (b) if a warrant has been issued for defendant's arrest after a failure to pay.

These payment alternatives may only be used under this statute after a defendant defaults on an already established time-payment order. They may not be used at a defendant's initial sentencing hearing. Moreover, the court may resort to the payment alternatives only after a finding that the defendant does not have the ability to pay. Just as when determining whether to establish a time-payment order, a

determination of ability to pay should be based on the financial information on a current Financial Questionnaire completed by the defendant. Also as with time-payment order determinations, the judge in determining ability to pay should consider, as one factor, whether defendant's income is less than 250% of the federal poverty guidelines (again, see the attachment).

In addition, these payment alternatives may not be used to reduce, revoke or suspend payment of restitution or of the $250 surcharge assessed for operating a vehicle in an unsafe manner under N.J.S.A. 39:4-97.2(f). L. 2009, c. 317, § 1.

With specific regard to the court's ability to revoke the unpaid portion of the penalty (subsection 3 above), a judge before implementing this particular alternative must make one of two additional findings. The judge must find either that "the circumstances that warranted the imposition [of the penalty] have changed" or that it would be unjust to require defendant to pay. The judge must place on the record the facts upon which these findings are based. See R. 1:7-4(a).

If a judge wishes to implement a payment alternative for only a portion of the outstanding balance, then the judge should merely designate the lump sum dollar amount that is to be reduced, revoked or suspended, without indicating which individual fines, penalties or assessments are to be affected. For example, a judge could order that defendant's time-payment order is reduced by $100. The judge should not specify that $50 is reduced from VCCO and $50 from the fine. Any future payment of the remaining portion of the penalty will be disbursed consistent with N.J.S.A. 2C:46-4.1.

As with all changes of sentence, the implementation of any of the payment alternatives must be made in open court on notice to the defendant and the prosecuting attorney. R. 7:9-4.

Any questions regarding this directive should be directed to Assistant Director Debra A. Jenkins, Municipal Court Services Division, at 609-984-8241.

G.A.G.

attachment
cc: Chief Justice Stuart Rabner
AOC Directors and Assistant Directors
Lawrence Walton, Municipal Court Services Division
Steven Somogyi, Municipal Court Services Division
Carol A. Welsch, Municipal Court Services Division
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

As distributed by May 14, 2009 memo from the Administrative Director.

2009
Income Eligibility Guidelines for Establishing Time Payments

Data reflect 250% of the Federal poverty guidelines as defined by the U.S. Department of Health and Human Services

Household Size	One	Two	Three	Four	Five	Six	Seven	Eight
Annual Gross Income	$27,075.00	$36,425.00	$45,775.00	$55,125.00	$64,475.00	$73,825.00	$83,175.00	$92,525.00
Monthly Gross Income	$ 2,256.25	$ 3,035.42	$ 3,814.58	$ 4,593.75	$ 5,372.92	$ 6,152.08	$ 6,931.25	$ 7,710.42
Weekly Gross Income	$ 520.67	$ 700.48	$ 880.29	$ 1,060.10	$ 1,239.90	$ 1,419.71	$ 1,599.52	$ 1,779.33

* If the household size exceeds eight, add $9,350.00 gross income per year, $779.17 per month, or $179.81 per week for each additional member of the household.

Source data:

Poverty Guidelines updated by the U.S. Department of Health and Human Services, published in the *Federal Register, Vol. 74, No.14, January 23, 2009, pp. 4200.*

New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

www.njcourts.com • Phone: 609-984-0275 • Fax: 609-984-6968

MEMORANDUM

To: **Municipal Court Judges**
Municipal Court Directors and Administrators

From: **Glenn A. Grant, J.A.D.**

Subj: **Completion of the Financial Questionnaire to Establish Indigency Form when Authorizing Time Payments**

Date: **May 9, 2011**

The purpose of this memorandum is to provide additional guidance regarding the granting of time payment orders in municipal courts. It is also intended to clarify the policy regarding the completion of the Financial Questionnaire to Establish Indigency form (hereafter Financial Questionnaire) when a time payment is requested. This guidance is based on recommendations made by the Conference of Presiding Judges-Municipal Courts.

Guidance previously issued by this office provides that indigent defendants should complete a Financial Questionnaire when applying to pay their penalties in installments. This policy was set forth in then Administrative Director Richard J. Williams' November 20, 2003 correspondence to all municipal court judges, as well as in Directive #2-10. Please be advised that this policy remains unchanged.

Completion of the Financial Questionnaire is needed to help protect the rights of indigent defendants, consistent with the provisions of N.J.S.A. 2B:12-23 and N.J.S.A. 39:4-203.1 and the holding in State v. DeBonis, 58 N.J. 182 (1971). All provide that indigent defendants shall be afforded the opportunity to pay their financial penalties in installments. Completion of the Financial Questionnaire better ensures that the court has the necessary financial information to make a reasoned decision. It also provides documentation that the court's decision to grant or deny a time payment based on indigency was not arbitrary or based on improper criteria.

Therefore, when a defendant who asserts indigency requests permission to pay his/her penalties in installments, the municipal court judge is required to first make a finding that the defendant is unable to pay the full amount on the date of the hearing. The basis for the approval of the time payment and the terms established by the order are determined by the information contained in a completed Financial Questionnaire.

Richard J. Hughes Justice Complex • PO Box 037 • Trenton, New Jersey 08625-0037

While the Financial Questionnaire should always be used for establishing appropriate time payment terms in cases of indigency, it is recognized that there needs to be a practical accommodation for allowing a short-term delay in receiving full payment. In the situation in which a delay in payment is **solely caused by a logistical inability to access funds at the time of the sentencing and is not related to a claim of indigency,** a short-term time payment order may be granted by the judge without the requirement to complete the Financial Questionnaire. It may, however, still be required, in whole or in part, at the discretion of the judge.

Furthermore, I would like to emphasize our longstanding policy that the granting of all time payment orders, for any defendant, must be done on the record in open court.

Finally, the policy regarding completion of the Financial Questionnaire for defendants requesting indigent defense services remains unchanged. Judges should still require defendants to complete the Financial Questionnaire when an application is made for a municipal public defender.

Please do not to hesitate to contact Assistant Director Debra Jenkins, Municipal Court Services Division, at 609-984-8241 if you have any questions.

cc: Chief Justice Stuart Rabner
Assignment Judges
Presiding Judges-Municipal Courts
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Municipal Division Managers
Gurpreet M. Singh, Special Assistant
Steven A. Somogyi, Municipal Court Services Division
Carol A. Welsch, Municipal Court Services Division

Appendix X

Nebraska Court Compliance Pilot Project Final Report

July 17, 2013

Nial Raaen, Principal Court Consultant

Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
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(303) 293-3063

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Introduction and Background

The National Center for State Courts (NCSC) has assisted the Nebraska courts with the design and implementation of a pilot project to improve compliance with court-ordered financial obligations in criminal cases. In addition to increasing compliance, the Nebraska courts are interested in how they can better utilize staff and resources in rural areas to improve system effectiveness. The stated goals of the project are to:

- Increase compliance with payment of fines, costs, and restitution
- Test the viability of remote work activities
- Determine the effectiveness of new collections methods and processes

Under the leadership of Judge Anne Paine, the 11th Judicial District became the site for experimenting with new procedures to encourage compliance with financial penalties. These included using special notification procedures, setting time to pay cases for court review, and utilizing shared staff resources within the district to enhance enforcement. The initial pilot project has focused on misdemeanor cases where the defendant has been placed on probation and ordered to pay fines, fees, and costs as a condition of the sentence.

One of the issues that the project has addressed is the lack of coordination of enforcement of financial judgments when defendants are placed on probation. The past practice has been to allow defendants to pay any time up to the last month of their probation period. Therefore, in many cases the court or probation officer would only take action when the defendant was approaching the end of the probation period. Without regular monitoring and notification, defendants often failed to make installment payments. As a result, probation officers would either have to extend probation or request a waiver of fines and costs by the court. There was also little active effort to encourage defendants to make timely payments.

In many rural districts and regions across the country case filings have diminished in recent years. This is due to a variety of factors, including population and business activity loss to urban areas, aging of the population, and cutbacks to law enforcement as a result of the recent recession. One of the challenges for rural courts has been to maintain full-time court office hours in areas with low levels of judicial activity. An approach which has shown promise in other states is "in-sourcing" court support work. This concept has been adopted, for instance, by the South Dakota judiciary which has shifted tasks such as entering citations, responding to background check requests, and enforcement of overdue fines, from busier courts to those with less work, usually in more rural locations. This enables courts to balance workloads and helps justify maintaining staff in the rural courts. The same concept has been applied in Nebraska for collections under this pilot project.

The 11th Judicial District covers a large rural area in the southwestern part of the state. The overall misdemeanor caseload for the 11th District continues to decline and is at its lowest level since 2005: [1]

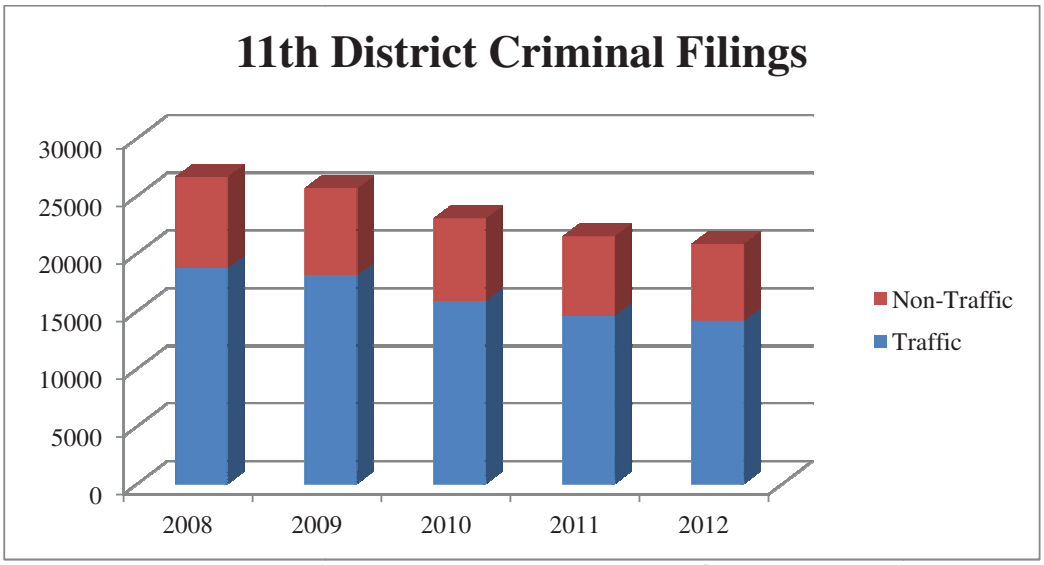


Figure 1: Five Year Misdemeanor Filings - 11th District

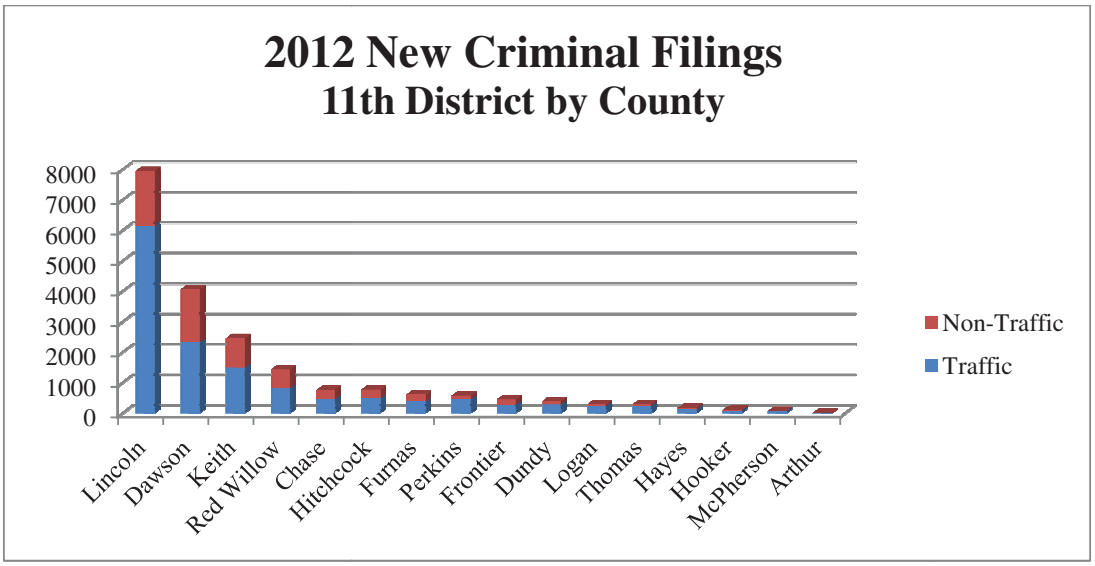
The number of individuals placed on probation for misdemeanor offenses and discharges declined in 2011 from the previous year:

Year	Probation Ordered	Discharged
2010	1,109	1,186
2011	973	991

Table 1: Misdemeanor Probation Ordered/Discharged – 11th District

As the following graph illustrates, there is a considerable difference in the criminal workload between the largest three or four counties in the 11th District:

[1] Annual Caseload Reports for All Courts, Nebraska Administrative Office of Courts, http://supremecourt.ne.gov/community/adminreports/index.shtml



Pilot Project Features

The primary features of the pilot project are closer monitoring of time payments, the use of mobile phone texting reminders, and scheduled review hearings to encourage greater compliance. Defendants who are granted time to pay are requested to provide their email address, cell phone number, and carrier information to compliance staff. Court staff determine a payment plan and set specific due dates when the defendant comes out of court. Generally, the total amount of fines, costs, fees, and restitution is divided by the number of months on probation. For example, payment over a 12 month probation period would be in 11 installments.

Defendants receive a courtesy reminder text from compliance staff prior to their due date, and will receive further texts if they miss a payment date or the court issues a warrant. Defendants are scheduled for a future review date at 60 day intervals which they are not required to attend if they are in compliance with payment terms. Defendants also receive a text message regarding their next show cause hearing date. If the defendant fails to appear for a show cause hearing the court may issue a warrant. An outline of pilot project procedures agreed upon at the beginning of the project is included as Appendix B.

Two staff of the 11th District agreed to take the primary responsibility for implementing the new procedures, splitting the counties between them. Both report that they are seeing an overall increase in payments and more regular compliance on the part of defendants. Interestingly, many defendants have expressed their appreciation for the reminder notices. Concerns that defendants would be unwilling to provide cell phone information have been unfounded. Staff was asked to assess the impact of these new procedures on compliance, as well as the amount of additional time that was required to collect information, monitor accounts, and send text or email notifications. The results are summarized in this report.

Findings

Pilot Project Outcomes

Impact on Staff and Judicial Resources

Dundy Court Clerk Deb League reported that she dedicates approximately three to four hours each month to review and send notices, with Dawson County matters taking up the most time. Show cause hearings in Dawson are scheduled monthly and approximately 50 to 60 cases are set each month. Ms. League estimates that monitoring takes about four minutes per case each month. The other counties (Perkins, Frontier, and Chase) that she is responsible for have required a total of about three hours of her time each month.

Hitchcock County Clerk/Magistrate Linda Smith reported that as of April 12, 2013, there were a total of 328 time payment cases in the counties of Lincoln, Red Willow, Furnas, Hitchcock, Gosper, Hayes, Hooker, Logan, McPherson, and Thomas. The highest volume is for Lincoln County which has show cause hearings scheduled on Mondays, Wednesdays, and Fridays. Red Willow has hearings on Tuesdays, Furnas County on Mondays, and Hitchcock on 2nd and 4th Wednesdays. The remaining counties set show cause hearings once each month. Ms. Smith reviews records daily to ensure that payments are recorded. If a defendant is in compliance and is scheduled for court, they must be taken off the docket to prevent a warrant for non-compliance from being issued. She estimates that she spends about two hours total each day, including time for checking payments and sending reminder texts to defendants.

For judges one of the challenges has been access to accurate payment history information. The CGLANCE function displays recent payments but does not show the actual arrearage if the defendant is behind in payments. This is related to the lack of specific language in payment agreements setting the exact due dates for payments. This apparently makes monitoring defendant compliance more complicated that it needs to be. Defendants who are making payments each month believe they are in compliance, however it may appear in the system that they are in arrears.

The use of texting as a method of notification has caused some concerns when it comes to enforcing non-payment. Some judges have been reluctant to issue a warrant when a defendant fails to appear for a hearing that they were notified of by text, or fails to respond to a texted non-compliance notice. In reality this may be no more or less reliable than a mailed notice. As Judge Paine has noted, the solution is to make it clear when the defendant is granted time to pay that they are responsible for keeping the court informed of their current phone number, just as they are required to notify the court of their current address. In addition, the defendant should be required to acknowledge acceptance of notification by text when they sign their partial payment agreement.

Eleventh District Chief Probation Officer Lonnie Folchert indicates that creating the expectation that the defendant must appear in court if they fail to make payments, and that they may face jail time for non-compliance, has allowed probation officers to focus more on other terms and conditions of probation that are related to behavioral change. He notes that probation officers have not had to extend probation periods as frequently for failure to pay as a result of the new procedures.

Impact on Overall Receivables

Receivable reports for the 11th District were prepared prior to commencement of the pilot project in 2012 and at the conclusion of the project in May 2013. While the past due amounts remain remarkably similar, a substantial reduction in amounts which are due and owing (but not overdue) occurred during this period. The reduction may be the result of successful efforts to compel defendants to pay their obligations earlier rather than allowing the amount to accumulate to the end of their probation term.

	Due	**Past Due**	**TOTAL**
2012	$ 345,836	$ 354,660	$ 700,496
2013	$ 243,782	$ 354,901	$ 598,683

Table 2: Comparison of Probation Case Pending Receivables as of April 5, 2012 and April 5, 2013

Compliance with Payment Terms

Compliance staff provided two "snapshots" of the compliance status of cases which were being enforced under the pilot in the 11th District on November 1 of last year and April 15 of this year. A defendant is considered "in compliance" if the amount has been paid in full or payments are current. A defendant was considered to not be in compliance if he/she has been granted an extension, probation has been revoked, a warrant issued, the defendant chose to sit out the time in jail, or the balance has been waived by the court. As the following tables indicate, there is a high level of overall compliance for cases in the pilot counties:

County	**Time Payments Granted**	**In Compliance***	**% Compliant**
Lincoln	112	95	85%
Red Willow	39	37	95%
Furnas	10	10	100%
Hitchcock	8	8	100%
Gosper	4	3	75%
Hayes	6	6	100%
TOTAL	**179**	**159**	**89%**
*paid in full or in compliance with payment plan			

Table 3: Snapshot of Cases in Compliance, November 1, 2012

County	Time Payments Granted	In Compliance*	% Compliant
Lincoln	213	172	81%
Red Willow	74	60	82%
Furnas	15	14	93%
Hitchcock	12	12	100%
Gosper	6	4	66%
Hayes	6	5	80%
Logan	2	2	100%
TOTAL	**328**	**269**	**82%**
* paid in full or currently in compliance with payment plan			

Table 4: Snapshot of Cases in Compliance, April 15, 2013

Payment of Probation Fees

Table 5 compares payments and assessments for a six month period prior to pilot project activity with the final six months of the one year pilot for probation enrollment and supervision fees. The comparison shows an improvement in payment rates during the pilot period.

	May 1 – October 31, 2011			Nov. 1, 2012 – April 30, 2013		
	Assessed	**Paid**	**%**	**Assessed**	**Paid**	**%**
Enrollment Fee	$12,770	$6,011	47%	$11,370	$7,167	63%
Probation Fee	$72,358	$21,478	30%	$84,078	$31,198	37%

Table 5: Comparison of Probation Fee Assessments and Payments

Overall Compliance Rates

Figures 2 – 5 in Appendix A illustrate the amounts assessed, paid, and waived for the years 2007 through 2012 for the 11th District. The charts show several trends:

- Judgment fee assessments increased in 2012, as did the proportion of judgment fees waived, unlike other fee types.
- Assessments of costs remained similar to the previous year, although the amounts waived and paid were lower.
- Probation enrollment fees have shown a steady decline along with the decline in criminal filings. The proportion of waivers in 2012 reached its lowest level.
- Probation fee assessments, despite lower caseloads, have increased and the proportion of fees waived has continued to decline.

It should be noted that the numbers for 2012 include only a portion of the period in which the pilot project was in effect, so that the total impact may not be readily apparent from these tables. The encouraging news is that the proportions of fees being waived appears to be declining

overall, except for judgment fees. This was one of the objectives of the pilot project. Additional analysis is needed to determine the reasons for lower rates of collection of judgment fees.

Comparisons with Other Jurisdictions

While there are no accepted collection rate standards that serve as a bench mark for assessing program effectiveness, studies in other states do provide some comparisons. The following are some examples of reported collection rates for various types of debt from several studies:

Arizona – The data from misdemeanor criminal cases in eight limited jurisdiction courts found an overall compliance rate of 70.[2]

Colorado – A ten year analysis of all offenses (infractions to felonies) found that 70 percent of total amounts assessed had been collected. Payment rates for traffic-related cases were 82 percent.[3]

Florida – The Florida Clerks of Court Corporation has set a collection rate goal of 40% for misdemeanor criminal and traffic cases. A survey of selected Florida courts indicated that less than half of the clerks met the 40% goal for criminal cases, though all easily exceeded the goal for collection of traffic fines.[4]

Michigan – The Michigan State Court Administrator's Office studied cumulative collection rates over 18, 30, 42, 66, and 78 month periods for all case types. Results indicate that over a period of 78 months, district courts collect over 90 percent of assessments for misdemeanors and civil infractions. In the circuit courts, the 78 month collection rate for felonies is just below 30 percent.

Research has generally revealed that compliance with less serious misdemeanor and civil infraction penalties is higher, while the rate of collection of felony financial orders is considerably lower. This is likely attributable to a variety of factors. Restitution is ordered more frequently and at higher amounts in felony cases than misdemeanors, making full compliance more difficult. Defendants with serious charges are less likely to have the economic means to pay large fines and restitution, and many will serve jail or prison terms before being required to begin making payments. Generally, the enforcement of financial obligations has been a higher priority in misdemeanor and traffic courts.

[2] Dybas, Julie Application of CourTools Measure 7. Institute for Court Management Court Executive Development Program research paper, May 2007.
[3] Litschewski, Paul. Fines and Restitution, Collecting by Investing. The Court Manager, Volume 26, Issue 1.
[4] Matthias, John and Raaen, Nial. Study of the Effectiveness of Collections in Florida Courts. National Center for State Courts, November 2012.

Considerations for Further Implementation

Additional Clerical Time

The main issue that was identified during the pilot was simply the amount of time required to gather additional information (cell number and carrier) from defendants. The other aspect of the project that has consumed more time is requiring defendants who are not in compliance to appear for a show cause hearing. This does require additional time for both judges and clerks. The anecdotal evidence from the pilot indicates that most defendants are responding to the reminder messages and the number of show causes has remained relatively low. Even when a warrant has been issued staff has found that defendants are more responsive when they receive a text message notifying them of the outstanding warrant. While difficult to quantify, requiring defendants to appear in court sends a strong message that the court takes these obligations seriously which may ultimately result in higher compliance rates.

Timely Information Exchange

For the system to work effectively the individuals tasked with entering defendant information and sending messages need timely and accurate information from the courts they serve. It was recommended by staff that they be provided with at least a weekly report identifying the individuals who had been placed on probation. Fortunately, the fact that Nebraska has a state-wide case management system makes it much easier to access current case information from any location. Without this it is unlikely that in-sourcing clerical work would be feasible.

Improved Information for Defendants

Staff noted the need to improve the language and format of time payment orders to make them more understandable for defendants and staff. Clearer language indicating when partial payments are due is needed. Revised forms have been developed by project staff and are included in the appendix.

Clarification of Roles

The collection workers have taken on new roles and there will need to be additional clarification of their duties and responsibilities if the project is expanded. As an example, when defendants receive texts indicating they are in arrears, if they believe they are current with their payments they typically call the court for clarification. As the collections workers already have the information it may be easier for them to be the point of contact for the defendant once a time payment has been set up. Otherwise, as Judge Paine has pointed out, court staff has to log on, look at all the payments and try to figure out why they are getting the texts. It may also be beneficial to give staff the discretion to continue show cause hearings under specific conditions when a defendant appears to be making a good faith effort.

Application of Results to Other Districts and Cases

Application to Non-Probation Cases

Although the pilot was originally intended for cases in which probation and time payments were ordered, the process has already expanded to include other cases with time payment agreements. Staff reports that required appearances for show cause hearings are rare, and most people are very willing to provide the additional information when the purpose is explained to them. Proposed procedures for collection of non-probation cases which were prepared by program staff are included in Appendix C.

Application to Other Districts

One of the benefits of conducting the pilot project in the 11th District is the opportunity to demonstrate how resources in the more rural courts can be used more efficiently. One staff member was able to manage cases in ten counties, owing in part to the relatively small number of cases in many of them. However, if the process works in a setting where there are multiple offices to work with, it should work as easily for higher volume districts with fewer courts. The primary question will be whether there are staff available to take on the additional work, either for their own court or collectively as has been the case in the 11th District. If so, there appears to be no reason why the process can't be applied successfully in other areas of the state.

Principles of Effective Collection

Though its research and experience with court collections across the country, NCSC has identified a set of principles that are characteristic of effective programs.[5] The following is an assessment of how these principles have been applied in the 11th District:

Demonstrate judicial and administrative commitment – Judicial leadership has been a key part of the 11th District pilot, as has support from the Administrative Office of the Courts (AOC). If the program is duplicated in other districts both local judicial leadership and on-going support from the AOC will be needed. NCSC has found that one way of ensuring continuing interest and commitment is through development and periodic publication of performance measures and feedback on program effectiveness.

Establish clear responsibility for collection – Clerk's staff, judges, and probation officers each have important roles in holding defendants accountable for financial obligations. The pilot project identified these responsibilities prior to commencement of the effort. Based on the results a more formal set of policies and procedures should be developed to guide other courts.

[5] Klaversma, Laura and Matthias, John. *Current Practices in Collecting Fines and Fees in State Courts: A Handbook for Collection Issues and Solutions* (2nd edition), National Center for State Courts, 2009.

Communicate expectations to defendants – Participating judges and staff noted that improvements to payment agreements and probation orders are needed to ensure that defendants are clear about due dates for payments. The text messaging feature seems to effectively communicate to defendants what is expected and the consequences for non-compliance.

Establish and adhere to procedures – All indications are that the staff who volunteered to monitor payments and manage the notification process has followed the agreed-upon procedures for the program. Because of concerns about the notice process itself, some judges have chosen to not issue warrants for failure to appear or have opted out of the program. As noted in the recommendations, the issue of what constitutes proper notice needs to be addressed.

Immediate responses to non-compliance – This is another hallmark of the pilot project. The texting/email feature provides a direct and immediate way to communicate with defendants when they have failed to pay or appear as required.

Ensure that procedures are understood by all – Early communication and exchange of ideas between participating judges and staff, as well as during the pilot project, was evident. This has helped head off potential problems and ensured that staff had an opportunity to offer input and ideas for improvement. Open communication is especially important when courts venture into new ways of doing business.

Employ a range of effective sanctions – The pilot project focused primarily on improving communications with defendants. As part of an on-going assessment of collection practices the AOC may want to review the available sanctions for non-compliance and assess to what extent various courts use these sanctions, and their effectiveness. The enforcement process does, however, employ a series of graduated responses, beginning with notification, followed by a show cause hearing, additional notification and eventually a bench warrant.

Set short periods for payment – This was not specifically addressed as part of the pilot project. Future discussions about policy should assess current practices for determining the length of payment periods based on defendant ability to pay, as well as the feasibility of requiring most defendants to make a partial payment at the time of sentence. During the initial assessment there was some discussion about encouraging defendants to utilize the on-line payment feature available on the public terminals at each court.

Set collection goals and monitor performance – Data collected for the pilot project to establish a collection baseline and measure the effectiveness of the project activities will be the basis for a more comprehensive assessment of current accounts receivable and the development of performance goals and measures.

Recommendations for Further Action

Based on comments, data, and observations from pilot project participants and leaders, the following recommendations are offered:

Recommendation 1: The pilot project should be expanded in the 11th District to include defendants who are not placed on probation supervision but eligible for time payments.

Recommendation 2: Forms language should clearly state that defendants are responsible for providing current contact information, and a place on the form for them to acknowledge acceptance of electronic notification by text or email should be included.

Recommendation 3: The AOC should take the initiative to review current statutes and court rules that impact collection and recommend changes. Issues identified during the pilot project include recognizing the validity of electronic notification, clarification of the application of bonds to payment schedules, and procedures for ordering joint and several restitution.

Recommendation 4: Based on recommendations from pilot staff, new versions of court forms should be adopted state-wide to make it easier for clerks to enter payment schedule information and for defendants to understand payment plan terms. These include the *Order of Probation*, *Time Payment Application/Orders* (probation and non-probation) and *Journal Entry and Order.* Other forms, such as the *Financial Affidavit* and *Adult Report Form* should have space for cell phone and email information. (Please see sample time payment application/order and payment calculation forms prepared by Judge Paine and her staff in Appendix D and E)

Recommendation 5: Improved functionality is needed on JUSTICE to set up and calculate time payments, including more flexibility in setting payment due dates and amounts.

Recommendation 6: Screen layouts and functionality in JUSTICE, such as CGLANCE, should be reviewed and modified if possible to provide judges and staff with more complete information on payment compliance, such as the current amount past due.

Recommendation 7: The feasibility of adding functionality to JUSTICE to automatically generate emails and text messages based on payment due dates and hearings, as well as post this information to the case chronological record, should be investigated.

Recommendation 8: Once final modifications to the current procedures and forms have been made, program procedures and protocols should be documented in the form of a guide for other districts.

Recommendation 9: The AOC should support expansion of the pilot project to other districts and facilitate staff training to ensure consistent implementation. The AOC should also consider offering general collections training for judges and court staff.

Recommendation 10: The AOC determine if there is a need to develop a new or revised job description or other directive that clarifies the duties and responsibilities of staff assigned to these tasks, and whether there should be any adjustment in compensation.

Recommendation 11: The AOC should develop reports for periodic review to assess the effectiveness of collection efforts and publish this information for judges and staff. This includes reports by individual court, judicial district, and state-wide.

APPENDIX A – 11th District Assessment, Payment, and Waiver Rates – 2007-2012

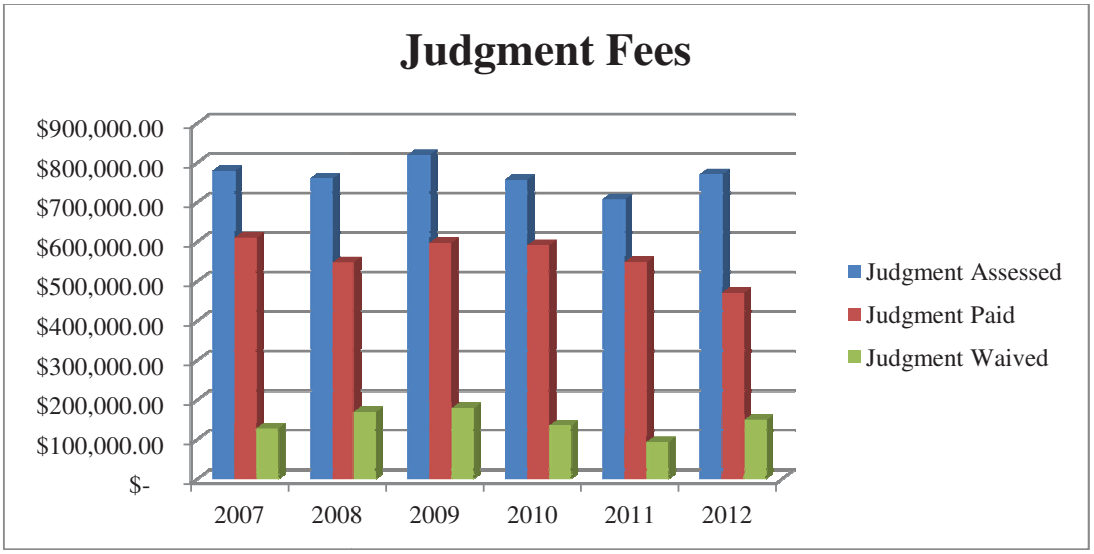


Figure 2: Judgment Fees Assessed, Waived, and Paid

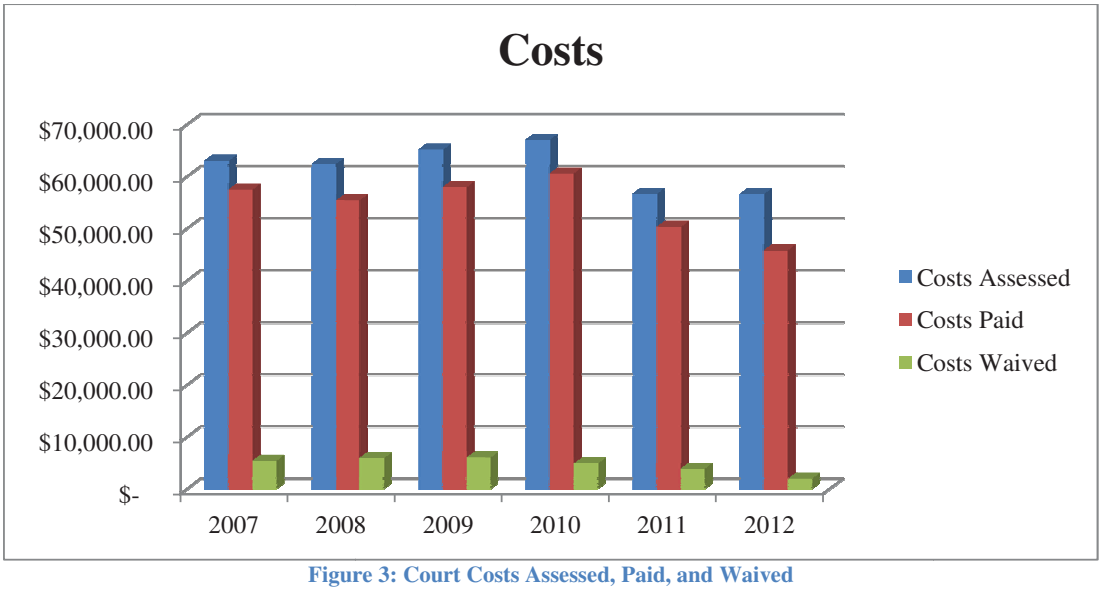


Figure 3: Court Costs Assessed, Paid, and Waived

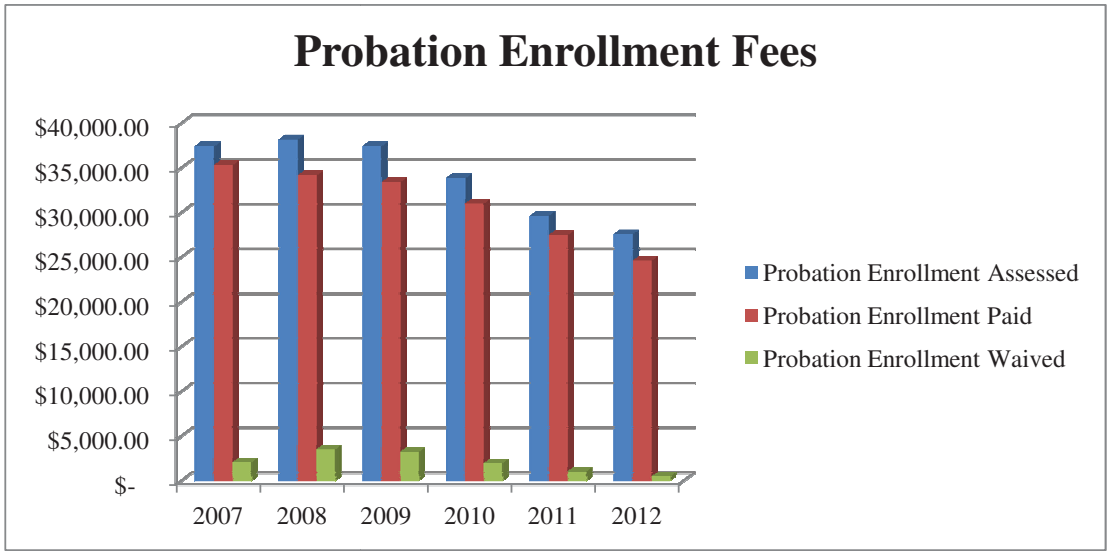


Figure 4: Probation Enrollment Fees Assessed, Paid, and Waived

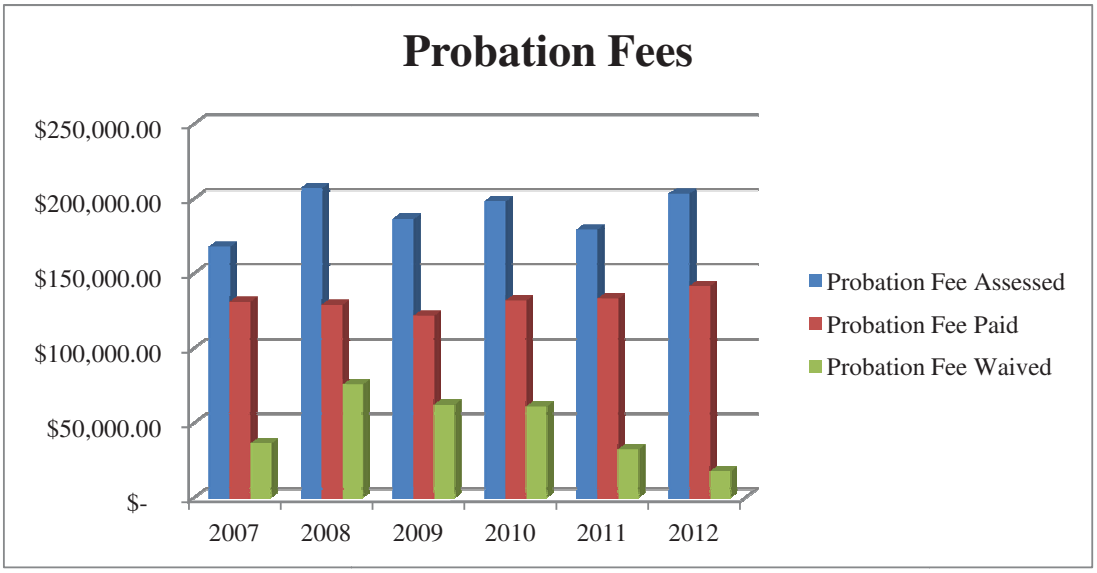


Figure 5: Probation Fees Assessed, Paid, and Waived

APPENDIX B – Pilot Project Procedures

The following procedures were outlined at the beginning of the pilot project:

- When a defendant put on probation with fines, costs and restitution ordered (including probation fees), and time payments are allowed, the defendant will sign a time payment agreement which sets out a specific payment plan (monthly payments divided equally over the period of probation, minus one month). Time payments are set up by each court on the TPINFO screen. The judge will order as condition of probation that the defendant be in compliance with the payment plan.

- Time payment agreement sets the first order to show cause (OTSC) hearing approximately 60 days after sentencing. Information is obtained as to defendant's address, e-mail, and cell phone number and cell phone provider.

- If a defendant is in compliance with payment plan, a text message and e-mail message will be sent telling defendant that they do not have to come to court and will give them a new OTSC hearing date (approximately 60 days down the road). Collection workers schedule a new OTSC hearing. (Collection workers will have to get regular court dates from all courts and make sure court is scheduled on that specific date).

- If the defendant is NOT in compliance with payment plan, a text message and e-mail reminder will be sent to the defendant that they must come to court to show cause why they are not in compliance. If willfully failing to pay, the defendant can be held in contempt and/or a violation could be filed.

- If the defendant fails to appear and is not in compliance, a warrant is issued or MTRP filed.

- Reminders are sent out from collection worker's location. Court dates for the OTSC hearings must be obtained from the individual courts.

- If a warrant is issued, collection workers will send notification that a warrant has been issued and that if the defendant becomes compliant, the warrant will be recalled.

APPENDIX C – Applying Pilot Procedures to Non-Probation Time Payments

The following procedures have been outlined by 11th District staff for managing the enforcement of non-probation time payments:

- Judges or clerks will determine the terms of the defendant's payment plan.
- Judge or clerk will set the first OTSC hearing date.
- Payment and hearing date information will be recorded on the Time Payment Agreement, which the defendant must sign. A copy will be forwarded to the remote collection worker.
- The clerk will obtain the defendant's cell number and phone carrier, and/or email address. This information will be entered into JUSTICE.
- The defendant will be advised that he/she will receive a text message or email of the OTSC hearing, or if in compliance, a notice waiving their appearance and setting a new hearing date.
- The defendant is notified that messages are a courtesy and that they must inform the court of any changes to their contact information. Further, if they do not receive the messages they must appear at court for their hearing.
- Collection workers will monitor payments and send messages to defendants either confirming compliance and notifying them of a new hearing/compliance date, or reminding them of the hearing approximately 5-7 days prior to the date.
- At a hearing the presiding judge will be able to check payments in CGLANCE.
- If the defendant fails to appear for a scheduled hearing and is not in compliance, the judge may issue a warrant. When a warrant is issued the collection worker will send a text or email notice that the warrant has been issued and what the defendant must do to come into compliance. This step will be subject to approval of the presiding judge.

APPENDIX D – Time Payment Application/Order

IN THE COUNTY COURT OF HITCHCOCK COUNTY, NEBRASKA
P.O. BOX 248 - TRENTON, NE - 69044-0248
308-334-5383

State v. Joe G. Cool Case ID: CRXX-234 Citation No.: EE XXXXXXX

APPLICATION

I, the defendant in this matter, do not have sufficient funds to pay the judgment(s) against me. I wish to apply for an extension of time in which to pay such judgment(s). I acknowledge receipt of a copy of this agreement and agree to abide by its terms. I understand I can make partial payments and that if this time payment is for a traffic offense, failure to pay as directed may result in the suspension of my operator's license. I further understand that if my fine and costs are not paid by the due date, a warrant may be issued for my arrest and that failure to pay restitution my ultimately result in the garnishment of my wages and/or the seizure of personal assets. Payment can be made to the Court at the above address or online at **http://ne.gov/go/paycourts**.

Address: _____City/State/Zip: _____
Home Phone: _____Cell Phone: _____
Carrier: _____Email: _____

The undersigned understands that the monthly payment shown below must be paid on or before the 10th day of each month and that failure to do so may result in a warrant being issued for my arrest. I agree that notice for any subsequent hearings to show cause for nonpayment may be made by text message, email, phone or regular mail at the contact information given above. Failure to keep the court advised of changes in this information resulting in failures to appear at future court hearings may result in a warrant being issued for my arrest.

Defendant's Signature: _____

ORDER

The defendant's application is granted. It is ordered that the defendant pay:

Probation Enrollment Fee $_____ is to be paid immediately.
Probation Fees $_____ are to be paid at the rate of $25 by the 10th of each month.
Fines: . . . . . $_____
Costs: . . . . . $_____
Restitution: . . . . . $_____

Total of: . . . . . $_____ / by ____ months on probation = $ _____ monthly payment.
First monthly payment is due _____ and due the same date each month thereafter.
If the judgment(s) is/are not paid by said date, it is further ordered that the defendant appear before this court on _____ at _____ __.M. in courtroom ___ to show cause why he/she should not be committed to jail and/or fined for contempt for nonpayment of judgment(s).
Special Conditions: _____

CASE FILE COPY

By the Court: _____

APPENDIX E – Time Payment Worksheet

_____ COUNTY
OTSC CASES

Name: _____
Case NO: _____
Probate started: _____
# of months on Probation: _____
$_____ / _____ = $_____ per month

PAYMENT DUE DATE	$ TO PAY	CREDIT/PAY DATE	CREDIT/ PAYMENTS MADE	REMAINING BALANCE
TOTAL				

An Experiment in the Law:

Studying a Technique to Reduce Failure to Appear in Court

Alan J. Tomkins, Brian Bornstein, Mitchel N. Herian, David I. Rosenbaum & Elizabeth M. Neeley

It would be ideal if we knew the best ways to structure the judicial system, the best processes to use to ensure fairness for litigants, and the best incentives to ensure compliance with the law. Unfortunately, as all of us who work in or with the system and those of us who study such issues well know, we do not. So what should we do?

As social scientists trained to examine the judiciary and judicial processes from the perspectives of economics, law, political science, psychology, and sociology, we suggest that *systematic experimentation should be used* whenever feasible and warranted *to study the operations of the courts for purposes of improving the courts' functioning*. As has been learned in the case of medical procedures and treatments, systematic, experimental, or quasi-experimental study helps to determine what works, what does not, and why. Decades ago, in the face of charges that experimentation in the law would undermine due process and equal treatment, the Federal Judicial Center rebutted these concerns, arguing that rather than thwarting justice, experimentation in the law promotes justice, ensuring an evidentiary basis for court reforms and administrative decision making.[1] Our work operates under this approach to examining potential judicial reforms. In this article, we discuss our use of the methods of science[2] to examine systematically whether there might be a technique that would, without costs that exceeded their benefits, reduce misdemeanants' failure to appear in court.[3]

It is not *overly* hyperbolic to assert that failure to appear (FTA) at a scheduled court appearance[4] is an epidemic problem afflicting defendants who do not have attorneys: Some estimates of misdemeanants who do not appear for their court hearing are as high as one in three, depending on the jurisdiction and offense type.[5] FTAs increase resources that need to be expended

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Footnotes

1. Federal Judicial Center, Experimentation in the Law: Report of the Federal Judicial Center Advisory Committee on Experimentation in the Law (1981). *See also* Jerry Goldman, *Experimenting with Justice: The Federal Judicial Center Report*, 8 L. & Soc. Inquiry 733 (1983).
2. *See, e.g.*, David Goodstein, *How Science Works*, *in* Reference Manual on Scientific Evidence 37 (3d ed., 2011).
3. The research summarized here is based on a project funded by the National Institute of Justice (Award # 2008-IJ-CX-0022) and is adapted from three peer-reviewed publications: The project's final report submitted to NIJ, Brian H. Bornstein, Alan J. Tomkins, & Elizabeth M. Neeley, Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach (2010), available at http://www.michigan.gov/documents/corrections/Reducing_Courts_Failure_to_Appear_Rate_376119_7.pdf (NIJ does not endorse project final reports, but they do subject them to internal and peer review before the final report is accepted and made available through the Inter-University Consortium for Political and Social Research [ICPSR] data and document repository, hosted by the University of Michigan); and two journal articles, Brian H. Bornstein et al., *Reducing Courts' Failure-to-Appear Rate by Written Reminders*, 18 Psychol. Pub. Pol'y & L. (in press) (PDF version available online, doi: 10.1037/a0026293; page numbers herein refer to the PDF version because the pagination for the journal article are not presently available); and David I. Rosenbaum et al., *Using Court Date Reminder Postcards to Reduce Courts' Failure to Appear Rates: A Benefit-Cost Analysis*, 95 Judicature 177 (2012). The primary data themselves also are available through ICPSR, at http://dx.doi.org/10.3886/ICPSR28861.v1. *See also* Joseph A. Hamm et al., *Exploring Separable Components of Institutional Confidence*, 29 Behav. Sci. & L. 95 (2011) (psychometric development of trust and confidence measures); Joseph A. Hamm et al., *Deconstructing Public Confidence in State Courts* (unpublished manuscript, available upon request, currently under review for publication, 2012) (further psychometric refinement of trust/confidence measures). We also published preliminary insights in our state's bar magazine, Mitchel N. Herian & Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, Neb. Lawyer, Sept. 2010, at 11.
4. Over the past 40 years, the issue of failure to appear in court has primarily been studied in the context of whether to liberalize pretrial release for defendants who are charged with minor offenses to reduce unnecessary detention of defendants who do not appear to be risks for non-appearance. *E.g.*, Stevens H. Clarke, Jean L. Freeman, & Gary G. Koch, The Effectiveness of Bail Systems: An Analysis of Failure to Appear in Court and Rearrest While on Bail (1976); Chris W. Eskridge, An Empirical Study of Failure to Appear Rates Among Accused Offenders: Construction and Validation of a Prediction Scale (1978); Richard R. Peterson, Pretrial Failure to Appear and Pretrial Re-Arrest Among Domestic Violence Defendants in New York City (2006); Qudsia Siddiqi, Assessing Risk of Pretrial Failure to Appear in New York City: A Research Summary and Implications for Developing Release-Recommendation Schemes (1999). In this study, however, we look at failure to appear for the initial hearing. This has become a topic of interest because of the high failure-to-appear rates seen for misdemeanor offenses across the nation. *See infra* notes 5-7.
5. *See, e.g.*, Warren Davis, *Should Georgia Change Its Misdemeanor Arrest Laws to Authorize Issuing More Field Citations? Can an Alternative Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend Processing Nontraffic*

for courts and law-enforcement agencies and can increase penalties for defendants, including pretrial incarceration and greater fines for what sometimes begin as minor offenses. FTAs thus are costly to both court systems and defendants.[6]

Why would a defendant not appear in court? Why would a person risk a greater penalty when charged with a relatively minor offense? Why not simply show up and accept whatever is going to happen given that the consequences tend to be relatively minor for misdemeanors? Some commentators note that some defendants willfully fail to appear, but they also find, unsurprisingly, that many defendants fail to appear not only because they fear the consequences of the legal proceedings but also because they are unable to arrange for transportation to court, they have other, competing responsibilities (*e.g.*, work, care for child or other person), or they are disorganized, forgetting the appointment or losing critical information (*e.g.*, citation, contact, or location).[7]

We wondered whether there might be a discernible pattern of defendants' psychosocial characteristics that influence their failure to appear in court. Tom Tyler and others have found that positive compliance with the law is increased when people feel like they have been subjected to fair procedures and have high levels of trust and confidence in the legal system.[8] Inspired by judicial reminder programs that have conceptualized non-appearance in court as a client-management challenge similar to appearing for one's health-care appointment, we wondered whether the apparent success of such programs might be explained by defendants' perceptions of procedural justice combined with their trust and confidence in courts. If so, it could provide an empirical roadmap for courts to use to increase compliance with the law.

We also saw this as an opportunity to study systematically what effect implementing a reminder program has on defendant-appearance rates. Court reminder programs have been implemented somewhat haphazardly across the country, primarily using telephone reminders.[9] A call-reminder system, however—either automated or using employees to make the calls—can be expensive.[10] Might it be as effective to use reminder *postcards* as it is to use the telephone? Postcards are relatively cheap to process and mail, and studies in other con-

Misdemeanor Offenders? 22 GA. ST. U. L. REV. 313 (2005); Eric Helland & Alexander Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping*, 47 J. L. & ECON. 93 (2004); Timothy J. McGinty, *"Straight Release": Justice Delayed, Justice Denied*, 48 CLEV. ST. L. REV. 235 (2000); Christopher Murray, Nayak Polissar, & Merlyn Bell, The Misdemeanant Study: Misdemeanors and Misdemeanor Defendants in King County, Washington (1998), *available at* http://your.kingcounty.gov/exec/news/1999/030499fos.rtf; MATT NICE, COURT APPEARANCE NOTIFICATION SYSTEM: PROCESS AND OUTCOME EVALUATION, A Report for the Local Public Safety Coordinating Council and the CANS Oversight Committee (Mar. 2006), *available at* http://www.thecourtbrothers.com/fta_repo/cans_eval_00206_final.pdf; Matt O'Keefe, Court Appearance Notification System: 2007 Analysis Highlights, *available at* http://www2.co.multnomah.or.us/County_Management/Budget/Budget%20Office%20Evaluation/Reports/Public%20Safety%20Research/CANS%20Highlights.pdf; Timothy R. Schnacke, Michael R. Jones, & Dorian M. Wilderman, *Increasing Court Appearance and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program*, 48 CT. REV. 86 (2012) (this issue); WENDY F. WHITE, COURT HEARING CALL NOTIFICATION PROJECT (May 17, 2006), *available at* http://www.thecourtbrothers.com/fta_repo/Coconino_County_court_hearing_notification_project.pdf.

6. *Id.*

7. BARRY MAHONEY ET AL., PRETRIAL SERVICE PROGRAMS: RESPONSIBILITIES AND POTENTIAL 39-40 (Off. Just. Programs, Nat'l Inst. Just.) (March 2001), *available at* http://www.ncjrs.gov/pdffiles1/nij/181939.pdf. *See also* references in note 5, *supra*. *See generally* Court Brothers, FTA Repository (2012), *available at* http://www.thecourtbrothers.com/web_court/fta_fta_repository.pl; Marie VanNostrand, Kenneth J. Rose, & Kimberly Weibrecht, STATE OF THE SCIENCE OF PRETRIAL RELEASE RECOMMENDATIONS AND SUPERVISION 15-20 (June 2011), *available at* http://pretrial.org/ Featured%20Resources%20Documents/PJI%20State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20(2011).pdf.

   It is likely some undocumented defendants fear being deported, and this is a reason for non-appearance. However, there is no evidence that this reason constitutes a large proportion of failures to appear.

8. *E.g.*, TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006). *See especially* Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*. 44 CT. REV. 4 (2007-2008) (AJA White Paper on Procedural Fairness). *See generally Procedural Justice*, 44 CT. REV. 1 (2007-08) (special issue devoted to procedural justice with numerous citations to key empirical evidence regarding procedural justice as well as public trust and confidence), *available at* http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2.pdf. Public trust and confidence in the courts is closely related to procedural justice. In fact, Tyler and others treat trust and confidence as a component of procedural justice. *See, e.g.*, TYLER, *supra* note 8. *See also Public Trust and Confidence in the Courts*, CT. REV., Fall 1999, at 1, *available at* http://aja.ncsc.dni.us/courtrv/cr36-3/CR%2036-3.pdf, and *Public Trust and Confidence in the Courts*, 19 BEHAV. SCI. & L. 197 (2001) (both special issues devoted to public trust and confidence in the courts and include empirical evidence and legal commentary related to the nationwide survey of trust and confidence in the courts conducted by the National Center for State Courts; *see* NAT'L CTR. ST. CTS., HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY [1999]).

9. There even is a company that offers calling services, nationwide. The Court Brothers, Reminder Call Service, *available from* http://www.thecourtbrothers.com/web_court. The Court Brothers calling service costs range from $0.75 to $3.00 per defendant per appearance, depending on the services desired. Email from Chad Columbus, The Court Brothers, to Alan J. Tomkins, Director, University of Nebraska Public Policy Center (Oct. 19, 2012) (on file with author). *See also* notes 5 & 7, *supra*.

10. Cost estimates for Multnomah County, OR, were $40,000 in FY 2006 and $56,000 in FY 2007. O'Keefe, *supra* note 5. Also, as noted previously, *id*, the Court Brothers calling service can cost as high as $2.00 per defendant. http://www.thecourtbrothers.com/web_court/pf_features.pl (features). In contrast, another company, Tavoca, offers cheaper calling services for physician-appointment reminders. Tavoca, *available at* http://www.tavoca.com/ac_calculatecosts.asp (depending on numbers of calls, call costs are in the 10 to 20 cents per call range).

texts suggest they are effective.[11]

Although others have examined reminder programs, there are limitations in how informative these inquiries have been for determining impacts. Because there have been no comparison groups, the extent of increases in appearance rates due to the interventions were not clear, and although there have been estimates of benefits,[12] these estimates tend to be general rather than passing muster of what would be expected of a high-quality, benefit-cost analysis conducted by an economist.[13]

In our study, we used experimental methods, guided by theory[14] (specifically, procedural justice and trust/confidence) to guide our assessment of the use of postcards to reduce failure to appear in a cost-effective manner *compared* to no postcards. We also conjectured there would be a race-of-defendant effect, with our hypothesis being the greatest impact would accrue to minority defendants. Thus, while we understood that a one-jurisdiction inquiry is at best simply suggestive but is not definitive, we thought we could advance the field with our systematic research effort.

THE STUDY AND ITS RESULTS

A. METHODS

With the partnership of the Nebraska Administrative Office of the Courts and funding from the U.S. National Institute of Justice, we implemented a postcard-reminder study in 14 counties across Nebraska between March 2009 and May 2010.[15] We hypothesized misdemeanants' likelihood of failing to appear would be reduced if defendants were sent a postcard reminder of the hearing date. For all misdemeanants who met certain criteria in these 14 counties during the study,[16] we randomly assigned them to receive one of three different postcard reminders or a control condition of no reminder. One postcard was intended to reflect elements of procedural justice, specifically addressing *voice* concerns, letting the defendant know a *fair* and *neutral* fact-finder (*i.e.*, judge) was interested in *hearing* the defendant's side of the story. Moreover, the judge would treat the defendant with *respect* and would take the defendant's *concerns seriously*. This postcard also informed defendants of the punishments that were possible if they failed to appear. The other two postcards were a) simple reminders, and b) reminders coupled with a caution that harsher punishments were possible for those who failed to appear (but without the procedural-justice information). Different postcard versions were used to determine whether the postcard's content or message would make a difference in appearance rates, that is, whether effects could be obtained simply by notification (Reminder-Only Condition), whether the threat of sanctions by itself would increase compliance (Reminder-Sanctions), or whether a postcard that included both the sanctions information and the elements of procedural justice (Reminder-Combined) were key.[17]

We encountered a practical problem that conflicted with our scientific desire to keep the postcard conditions as different from one another as possible. Specifically, we would have preferred that the postcard that included the procedural-justice elements not also include a statement about sanctions. However, the real-world intruded, and the courts' personnel we worked with asked us not to send out a postcard that excluded the potential for greater sanctions if the defendant failed to appear in court. The concern was that it might be misleading, and unfair, not to mention the potential of harsher penalties. Consequently, the Reminder-Combined postcard also included the same language about sanctions as the Reminder-Sanctions postcard.[18]

Because of a substantial proportion of Spanish-speaking residents in Nebraska, the postcard content was provided in both Spanish and English in all conditions.[19] Thus, there was a no-reminder (*control*) condition or one of three different postcards. The postcard versions are presented in Figure 1.

The participants in our study were 7,865 defendants (19 and older)[20] issued a non-traffic ticket by law-enforcement officials instructing them to appear in court for an initial hearing on their non-waiverable, misdemeanor offense. The race/ethnic distribution was 69.8% White, 10.7% Hispanic; 10.1% Black, 6.6% Unknown; 1.6% Native American; 1% Asian American; and .2% Other.[21]

On a daily basis during the workweek, researchers reviewed the database of cases uploaded by the 14 trial courts to the

11. *Cf.* Eric B. Larson et al., *Do Postcard Reminders Improve Influenza Vaccination Compliance?: A Prospective Trial of Different Postcard "Cues,"* 20 MEDICAL CARE 639 (1982).
12. *E.g.*, O'Keefe, *supra* note 5.
13. For an example of a more systematic benefit-cost study, see the Jefferson, CO, FTA study conducted by Schnacke, Jones, and Wilderman, *supra* note 5, at n.15.
14. This approach, using experimental methods guided by theory, is the *sine qua non* of science. *See e.g.*, Goodstein, *supra* note 2.
15. The complete NIJ report of the project is available online. BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3. *See also supra* note 3 for the other peer-reviewed publications stemming from this project.

    We benefited tremendously from the efforts of court administrators and clerks in the 14 counties where we collected data, as well as from the support of the Nebraska Minority Justice Committee. We thank the Clerk Magistrates from each of the 14 counties for allowing us to test this program in their counties, and we also are grateful to the Committee for its support and assistance in developing and implementing this study. We would also like to thank staff at the Nebraska Administrative Office of the Courts, particularly Sherri Dennis and Ross Johnson, for their help in collecting data and for their insights.
16. *See infra* notes 22-23 and accompanying text.
17. Our design was thus akin to a clinical trial in a medical study, with each postcard a level of intervention (*i.e.*, reminder), and the no-reminder condition serving as the comparison group.
18. We pretested the *order* in which we would present the information, and these results guided our decision to place the sanctions information first, followed by the procedural-justice information. BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-20.
19. We used the practice of two different translators, with a translation from the English version to Spanish first, and then an independent translation of the Spanish version back into English. The process revealed an acceptable Spanish version of the postcard.
20. Because the age of majority in Nebraska is 19, we excluded any offender younger than 19.
21. The officer issuing the citation generally made the race/ethnicity classification. Our data were extracted from the citation or other information obtained from the case file.

FIGURE 1
POSTCARD REMINDER CONDITIONS

REMINDER-ONLY

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 12/11/2009.

Estimado(a) XXXX XXXX:

Este aviso es para recordarie que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el dia 12/11/2009.

Case ID: C X CR X XXXX
If you have questions about this postcard, please call: (XXX) XXX-XXXX

REMINDER-SANCTIONS

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 5/1/2009.

Failure to appear for this hearing may result in a number of negative consequences, including:

- You may be charged with the additional crime of failure to appear, which is a Class II misdemeanor.
- You may receive up to six months in jail and/or a $1,000 fine for this additional charge.
- A warrant may be issued for your arrest.
- It may be harder to get bail in the future.
- Even if you are not formally charged with a failure to appear, failing to appear may be considered by the judge in determining your sentence on the original misdemeanor charge.

We strongly encourage you to not miss your hearing on the date and time listed above!

Estimado(a) XXXX XXXX:

Este aviso es para recordarie que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el día 5/1/2009.

El no presentarse para esta audiencia puede traer como resultado un número de consecuencias negativas, que incluyen:

- Ud. puede ser acusado de un deito adicional por faltar a comparecer, que es un deito menor, Clase II.
- Ud. puede recibir hasta sies meses en la cárcel y/o una multa de $1,000 por este cargo adicional.
- Una orden judicial puede ser expedida para su arresto.
- Puede ser más difícil calificar para una fianza en el futuro.
- Aunque no sea acusado formalmente por falter a comparecer, el faltar a comparecer puede ser considerado por el juez en la determinación do su pena por el delito menor original.

¡Le advertimos enérgicamente que no faltes a comparecer en la fecha y el tiempo descrito arriba y que no deje de presentarse!

If you have questions about this postcard, please call: (XXX) XXX-XXXX
Case ID: C X CR X XXXX

REMINDER-COMBINED

Dear XXXX XXXX:

This notice is to remind you that you have a hearing scheduled at the XXXX County Courthouse at 1:30 PM on 5/1/2009.

Failure to appear for this hearing may result in a number of negative consequences, including:

- You may be charged with the additional crime of failure to appear, which is a Class II misdemeanor.
- You may receive up to six months in jail and/or a $1,000 fine for this additional charge.
- A warrant may be issued for your arrest.
- It may be harder to get bail in the future.
- Even if you are not formally charged with a failure to appear, failing to appear may be considered by the judge in determining your sentence on the original misdemeanor charge.

This Court aims to serve the best interests of both you and the public by:

- Providing neutral and consistent judgements to all defendants. The judge who presides over your hearing will be fair and open-minded.
- Treating all defendants charged with the same kind of offense in the same way.
- Treating all defendants politely, with courtesy, dignity and respect.
- Taking defendants' concerns seriously. We understand that you might be worried about the hearing and its consequences, and we are prepared to listen to your concerns and offer explanations as best we can.
- Allowing defendants to explain the situation from their perspective.

We strongly encourage you to not miss your hearing on the date and time listed above, and to be sure to appear for it!

Estimado(a) XXXX XXXX:

Este aviso es para recordarie que tiene una audiencia programada en la Corte del Condado de XXXX a las 1:30 PM en el día 5/1/2009.

El no presentarse para esta audiencia puede traer como resultado un número de consecuencias negativas, que incluyen:

- Ud. puede ser acusado de un deito adicional por faltar a comparecer, que es un deito menor, Clase II.
- Ud. puede recibir hasta sies meses en la cárcel y/o una multa de $1,000 por este cargo adicional.
- Una orden judicial puede ser expedida para su arresto.
- Puede ser más difícil calificar para una fianza en el futuro.
- Aunque no sea acusado formalmente por falter a comparecer, el faltar a comparecer puede ser considerado por el juez en la determinación do su pena por el delito menor original.

Esta Corte tiene la meta de servir mejor a los intereses de Usted y del público al:

- Emitir fallos neutrales y contundentes para todos los acusados. El juez que preside sobre su audiencia será justo y de actitud abierta.
- Tratar a todos los acusados con iqual justicia.
- Tratar a todos los acusodos con buenos modales, con cortesía, dignidad, y respeto.
- Tomar seriamente en cuenta las preocupaciones do los acusados. Entendemos que Ud. pueda estar preocupado sobre la audiencea y sus consecuencias, y estamos preparados para escuchar sus preocupaciones y para ofrecerle la mejor explicación que podamos.
- Permitir a los acusados explicar la stiuación desde su perspectiva o punto de vista.

¡Le advertimos enérgicamente que no faltes a comparecer en la fecha y el tiempo descrito arriba y que no deje de presentarse!

If you have questions about this postcard, please call: (XXX) XXX-XXXX
Case ID: C X CR X XXXX

Nebraska Administrative Office of the Courts. As we explained in one of our earlier articles:

> All of the misdemeanor categories provided for by state statute were represented in the sample, with most coming from the relatively severe categories. For example, 30.5% of defendants were charged with an alcohol-related misdemeanor (*e.g.*, first offense driving-under-the-influence charge) and an additional 31.0% were charged with violations of city ordinances (*e.g.*, injuring or destroying property). Roughly one-sixth (17.6%) were charged with a Class 1 misdemeanor (*e.g.*, carrying a concealed weapon, first offense; failing to stop and render aid), with the remainder charged with a Class 2 (9.3%; *e.g.*, shoplifting $0-$200) or Class 3 misdemeanor (11.2%; *e.g.*, minor in possession of alcohol). Four individuals were charged with a Class 3A misdemeanor (0.1%; *e.g.*, possession of marijuana, third offense); 21 were charged with a Class 4 misdemeanor (0.3%; *e.g.*, possession of marijuana, second offense); and five were charged with a Class 5 misdemeanor (0.1%; *e.g.*, unlawful entry of state park without a park permit).[22]

Once we determined the offense was non-waiverable, and there was sufficient time to send out a postcard at least five days before the scheduled court date, the defendant was included in the study. We then randomly assigned defendants to one of the four experimental conditions: the control condition or one of the three postcard conditions.

B. RESULTS

1. Failure-to-Appear Rates: Impact of Reminder Conditions

As shown in Table 1,[23] the baseline (control) FTA rate in our sample was 12.6%.[24] The data revealed *postcard reminders significantly reduced FTA rates*.[25] The specific amounts of reduction varied, dropping to about 11% FTA rate for the Reminder-Only postcards, about 10% for Reminder-Combined postcards, and about 8% for the Reminder-Sanctions postcards. The two reminders that included substantive information (sanctions or sanctions plus procedural justice) resulted in greater, statistically significant reductions than the simple reminder postcard.[26] There was no statistical difference between the two substantive postcards.[27] Thus, the critical finding from our extensive study is that while a postcard reminder has an effect overall, there likely is an even greater impact if the postcard contains substantive language beyond the reminder of the court date.

TABLE 1
FAILURE-TO-APPEAR RATE BY EXPERIMENTAL CONDITION

Reminder Postcard Treatment	Appeared For Court		Total
	No	Yes	
Control	12.6%	87.4%	2,095
Reminder-Only	10.9%	89.1%	1,889
Reminder-Sanctions	8.3%	91.7%	1,901
Reminder-Combined	9.8%	90.2%	1,980
Total	**10.4%**	**89.6%**	**7,865**

2. Other Factors that Predict FTA: Race/Ethnicity, Sex, Rural vs. Urban Jurisdiction, and Nature/Number of Offense(s)

In light of previous work that indicated a relationship between trust/confidence and compliance with the law,[28] we hypothesized there would be a race/ethnicity impact, specifically, that Non-Whites would have higher baseline FTA rates than Whites. We did not anticipate there would be a sex difference. We wondered whether there would be a difference for rural versus urban defendants, hypothesizing that there would be a greater FTA rate for urban defendants. Finally, we examined whether FTA rates differed significantly depending on the severity of offense and/or on the number of offenses charged (one versus two or more). We were not aware of literature that would lead us to make a prediction one way or the other regarding offenses, but our belief was that offense would be an important factor to measure.

The *overall* FTA rate (all conditions combined) varied as a function of the defendant's race/ethnicity, with greater FTA rates for Black defendants (16.4%) than Whites (9.5%) or Hispanics (9.4%). The control condition (no postcard) revealed the *baseline* FTA rates likely started differently: Nearly 19% for Blacks versus approximately 12% for Whites and 10.5% for Hispanics (Table 2). Although it may appear as if there is a substantial race/ethnicity effect, our statistical analy-

22. Bornstein et al., *supra* note 3, at 5.
23. These and the other data tables and figures are taken or adapted from the three, primary publications from the project. For example, Table 1 is taken from Bornstein, Tomkins, & Neeley, *supra* note 3, at 14, Table 1; Table 2 is taken from Bornstein et al. *supra* note 3, at 9, Table 2. *See also* Rosenbaum et al., *supra* note 3, at 180, Table 1 (same data but presents the information for each of the postcard combinations, not limited to experimental conditions as we have presented in the table here). Similarly, the statistical tests we report beginning with note 24 *infra* are also taken from these other publications, but are not hereinafter cross-referenced.
24. This is a comparatively lower rate than reported in other jurisdictions.
25. The omnibus test showed the four conditions were different from one another. $X^2(3) = 20.90$, $p < .001$, $\phi = .05$. Additional (*i.e.*, post hoc) analyses pinpointed the differences were between the reminders (taken together) versus no reminder (control condition). $X^2(1) = 14.29$, $p = .001$, $\phi = .04$. For background information on the use of statistics, intended for legal audiences, see Robert M. Lawless, Jennifer K. Robbennolt, & Thomas S. Ulen, Empirical Methods in Law (2009).
26. $X^2(1) = 4.63$, $p = .031$, $\phi = .03$.
27. $X^2(1) = 2.60$, $p = .11$, $\phi = .03$.
28. *E.g.*, Tyler, *supra* note 8.

sis indicated there was not, when we used a statistical test controlling for other factors,[29] such as offense type and number of offenses.[30] Sex also did not reveal a statistically significant difference, although the FTA rate for male defendants was slightly greater than for female defendants (10.8% vs. 9.4%).[31] As expected, the FTA rate was greater in urban jurisdictions than in rural counties (12.4% vs. 6.8%) (Table 3).[32] We found a strong effect for the offense variables: Offense type significantly influenced FTA rates (Table 4),[33] as did the number of offenses charged (Table 5).[34] *Thus, offenses in general, and specifically the number of offenses, are the strongest predictors of FTA we found in our study.*

TABLE 2
FAILURE-TO-APPEAR RATE BY RACE/ETHNICITY

Reminder Postcard Treatment	FTA Rates			Total
	Whites	Blacks	Hispanics	
Control	11.7%	18.7%	10.5%	12.6%
Simple-Reminder	9.6%	18.8%	11.8%	11.0%
Reminder-Sanctions	8.0%	13.5%	4.7%	8.1%
Reminder-Combined	8.8%	13.6%	10.1%	9.5%
Total	**9.5%**	**16.4%**	**9.4%**	**10.3%**

TABLE 3
FAILURE-TO-APPEAR RATE BY COUNTY AND URBAN/RURAL AREAS

County	Baseline Appearance Rate			Overall Appearance Rate		
	Appeared for Court			Appeared for Court		
	No	Yes	*n*	No	Yes	*n*
Adams	33.3%	66.7%	3	33.3%	66.7%	6
Buffalo	3.4%	96.6%	59	1.8%	98.2%	225
Colfax	50.0%	50.0%	4	19%	81.0%	21
Dakota	8.8%	91.2%	57	10.0%	90.0%	211
Dawson	9.5%	90.5%	84	6.1%	93.9%	314
Dodge	2.7%	97.3%	37	5.4%	94.6%	149
Douglas	10.6%	89.4%	264	8.2%	91.8%	1,027
Hall	10.8%	89.2%	222	7.8%	92.2%	781
Lancaster	17.8%	82.2%	828	14.8%	85.2%	3,185
Madison	6.8%	93.2%	73	4.8%	95.2%	289
Platte	8.3%	91.7%	157	7.1%	92.9%	506
Saline	9.3%	90.7%	43	12.3%	87.7%	154
Sarpy	10.2%	89.8%	236	8.6%	91.4%	864
Scotts Bluff	0.0%	100%	28	2.3%	97.7%	133
Urban (Douglas, Lancaster, Sarpy)	15.0%	85.0%	1,328	12.4%	87.6%	5,076
Rural	8.5%	91.5%	767	6.8%	93.2%	2,789
Total		**87.4%**	**2,095**		**89.6%**	**7,865**

TABLE 4
FAILURE-TO-APPEAR RATE BY OFFENSE TYPE

	All Conditions		Control		Reminder-Only		Reminder-Sanctions		Reminder-Combined	
Offense Type	FTA Rate	*n*	FTA Rate	*n*	FTA Rate	*n*	FTA Rate	*n*	FTA Rate	*n*
Class 1	7.6%	1,377	7.3%	358	8.2%	365	7.0%	330	8.0%	324
Class W (alcohol)	9.4%	2,389	9.7%	628	11.1%	96	7.2%	567	9.4%	598
Class 2	13.8%	732	18.9%	212	11.7%	145	10.5%	191	13.0%	184
Class 3/ 3A/4/5	8.4%	908	10.2%	254	8.5%	213	6.8%	220	7.7%	2,212
City Ordinance	12.9%	2,424	17.5%	636	13.2%	560	10.1%	587	10.6%	641

TABLE 5
FAILURE-TO-APPEAR RATE BY NUMBER OF OFFENSES

Offense Type	Baseline Appearance Rate			Overall Appearance Rate		
	Appeared for Court			Appeared for Court		
	No	Yes	*n*	No	Yes	*n*
1 Offense	6.7%	93.3%	1,012	5.4%	94.6%	3,868
2 or More Offenses	18.2%	81.8%	1,067	15.4%	84.6%	3,962
Total	12.6%	87.4%	2,088	10.4%	89.6.%	7,830

29. The statistical analysis appropriate for this determination is a regression analysis. *B* = -.09, *S.E.* = .09, *p* = .32, Exp(b) = .91, Exp(b) CI (.77-1.09). We did find that the Reminder-Sanctions postcard had the greatest absolute impact upon reducing FTA rates for Hispanic defendants, as the FTA rate was reduced to 4.7% from 10.5% in the control condition, $X^2(1) = 4.94$, $p < .026$, $\phi = .11$. For Black defendants, the decrease from 18.7% to 13.5% was not statistically significant, though it would have been significant had there been a larger number of Black defendants in the sample. For more detailed information and additional race-related analyses, *see* BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 16-18, 21-23; Bornstein et al., *supra* note 3, at 9-14.
30. *See* infra notes 33-34 and accompanying text.
31. *B* = -.10, *S.E.* = .09, *p* = .29, Exp(b) = .91, Exp(b) CI (.76-1.09).
32. *B* = .40, *S.E.* = .11, *p* < .001, Exp(b) = 1.50, Exp(b) CI (1.21-1.86).
33. *B* = -.18, *S.E.* = .03, *p* < .001, Exp(b) = .83, Exp(b) CI (.79-.88).
34. Only 5.4% of defendants with one offense failed to appear, whereas 15.4% of individuals with two or more offenses failed to appear. *B* = -1.28, *S.E.* = .10, *p* < .001, Exp(b) = .28, Exp(b) CI (.23-.34).

3. Procedural-Justice and Trust/Confidence Perceptions

To reiterate, in the main part of our FTA study, we did not find that a postcard containing procedural-justice language (that also included an admonition about potential sanctions, as discussed previously) had the anticipated, beneficial impact, over and above merely mentioning sanctions. It might be the case, however, that because we were not able to single out procedural-justice elements in the postcard communication, we missed its potential added value. Or it might be that we did not adequately communicate critical procedural-justice elements in a meaningful way to defendants. Although we are unable to determine such limitations of this study, we were able to conduct a follow-up inquiry that allowed us to inquire further into the potential impact of perceptions of procedural justice, as well as trust and confidence perceptions.

In our follow-up inquiry, we sent a survey that included questions about procedural-justice and trust/confidence perceptions to all 819 of the misdemeanants who did not appear for their hearing and to 20% (1,538 randomly selected) of those who appeared.[35] For the survey part of the study, 77.6% of the survey respondents were White, 7.8% Black, and 5.7% Hispanic.

The 19.2% (452) overall response rate was 21.6% (335) for participants who appeared in court and 14.5% (117) for those who failed to appear.[36] The survey items for defendants who did not appear included questions about fairness, bias, and respect generally related to the judicial system. We also asked the defendants who appeared for their hearing additional questions about the procedural-justice subconstructs of fairness, voice, dignity, and respect.[37]

We had hypothesized that those defendants who appeared for their hearing would have greater levels of perceived procedural justice and be more likely to indicate higher levels of trust and confidence in the courts. The data confirmed our procedural-justice hypotheses, such that defendants who appeared for their hearing rated levels of procedural justice in their overall experience with the criminal justice system (General Procedural Justice scale) higher than those who did not appear.[38]

Our findings also provided quite a bit of support for the hypothesized impact of trust and confidence. Those defendants who appeared in court had significantly greater *confidence* scores (Total Institutional Confidence scale)[39] and *trust* scores (Trust in the Courts scale)[40] than those who did not. We also found that defendants who did not appear were more *cynical* than those who appeared.[41] Of further interest is the fact that we found high correlations between our measures of procedural justice and trust/confidence.[42]

Based on an extensive literature indicating that Blacks, in particular, have less trust and confidence in the courts than other groups in the U.S., especially Whites,[43] we had hypothesized that there would be significant race/ethnicity differences. As shown in Table 6, our results revealed significant differences for dispositional trust[44] and on the two trust scales, Total

TABLE 6
TRUST/CONFIDENCE AND PROCEDURAL-JUSTICE SCALE MEANS BY RACE/ETHNICITY

	Whites		Blacks		Hispanic			
Scale	Mean	SD	Mean	SD	Mean	SD	*F*	Sig.
Trust in the Courts	3.26^{a}	0.84	2.79^{b}	0.91	$3.24^{a,b}$	0.87	4.34	.014
Total Institutional Confidence	3.20^{a}	0.70	2.84^{b}	0.81	$3.15^{a,b}$	0.66	3.71	.025
Dispositional Trust	2.90^{a}	0.80	2.34^{b}	1.02	2.44^{b}	0.89	9.20	.000
General Procedural Justice	3.35	1.04	3.13	1.31	2.99	0.98	0.23	.795
Specific Procedural Justice	3.47	1.04	3.38	1.13	3.35	1.03	1.34	.264

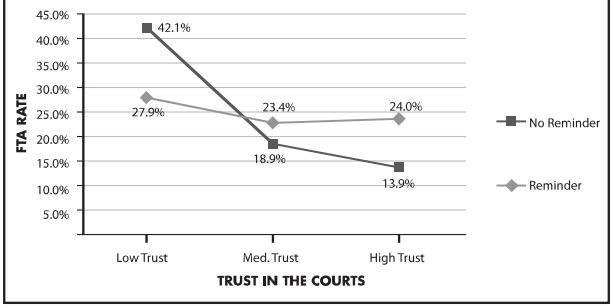
Note. Within a row, means with different superscripts are significantly different, $p < .05$.

35. We sent the defendants a pre-notification that we would be sending them a survey one week after the hearing date. Two weeks later, the defendants were sent a survey accompanied by a $2 bill as a token of appreciation. Replacement surveys were mailed two weeks later. Each of these steps are in accordance with suggested best practices to increase responsiveness to survey requests. DON A. DILLMAN, JOLENE D. SMYTH, & LEAH MELANI CHRISTIAN, INTERNET, MAIL AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD (3d ed. 2008).
36. For more details about the sample, including differences in responses rates across race/ethnicity (proportionally more Whites responded), offense types (defendants with certain misdemeanors were more likely to respond), and age (older defendants more likely to respond), as well as lack of sample differences (residing in urban versus rural county, number of offenses, reminder condition), see BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 10-11.
37. For complete details regarding the items we used and scales we created, *see* BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-23; Bornstein et al., *supra* note 3, at 11-12.
38. M =3.53 versus 3.23, $F(1,438) = 6.61$, $p = .01$, $\eta_p^2 = .02$.
39. M =3.24 versus 3.02, $F(1,445) = 7.82$, $p = .005$, $\eta_p^2 = .02$.
40. M = 3.30 versus 3.04, $F(1,441) = 7.78$, $p = .006$, $\eta_p^2 = .02$.
41. M =3.48 versus 3.20, $F(1,444) = 5.984$, $p = .015$, $\eta_p^2 = .01$.
42. *See* BORNSTEIN, TOMKINS, & NEELEY, *supra* note 3, at 19-21.
43. *E.g.*, Richard R. W. Brooks & Haekyung Jeon-Slaughter, *Race, Income and Perceptions of the U.S. Court System*, 19 BEHAV. SCI. & L. 249 (2001); David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, CT. REV., Fall 1999, at 24; Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want From the Law and Legal Institutions?*, 19 BEHAV. SCI. & L. 213 (2001). *See generally* NAT'L CTR. ST. CTS., *supra* note 8 (nationwide survey of public trust and confidence in the courts, sufficiently large to allow breakdown of the data by race/ethnicity).
44. $F(2,401)=9.20$, $p < .001$, $\eta_p^2 = .04$, Whites greater than both Blacks and Hispanics.

Institutional Confidence[45] and Trust in the Courts.[46] We tested for, but did not find, a race effect for procedural justice.

We also tested for a more complicated relationship between those *lower* in trust and the impact of a postcard reminder.[47] It was the case that higher levels of trust in the courts were associated with a greater probability of appearing.[48] Yet the reminder made a difference, significantly reducing the FTA rate for those in our sample with the lowest trust (but not for the medium- or high-trust categories—see Figure 2). Put another way, the reminder eliminated differences in FTA rates as a function of degree of trust in the courts.

FIGURE 2
FTA RATES AS A FUNCTION OF TRUST IN THE COURTS AND REMINDER TREATMENT



Finally, we asked the defendants for the reasons they did or did not appear. The primary reasons for appearing were to avoid additional sanctions (an FTA offense, additional penalties) or because of a feeling that the law should be obeyed. For those defendants who did not appear, scheduling issues and work conflicts were rated as the primary reasons for non-appearance, followed by transportation issues. Overall, however, those defendants who did not appear indicated they were influenced less by the reasons they gave for not appearing than those who appeared.

TABLE 7
REASONS FOR APPEARANCE/NON-APPEARANCE

REASON FOR APPEARANCE	MEAN	STD. DEV.
I wanted to avoid an additional offense (for failure to appear) on my record.	4.60	1.02
I wanted to avoid additional penalties.	4.59	.98
I felt I should obey the law.	4.38	1.05
The system depends on compliance from people like me.	3.73	1.37
I wanted to tell my side of the story.	3.16	1.62
REASON FOR NON-APPEARANCE	**MEAN**	**STD. DEV.**
I had scheduling conflicts.	2.77	1.81
I had work conflicts.	2.39	1.66
I had transportation difficulty.	2.07	1.59
I forgot about the hearing date.	1.89	1.50
I had family conflicts (e.g., childcare conflicts).	1.84	1.44
I was afraid of what the outcome would be if I went to court.	1.72	1.20

Note. The scale ranged from 1 (affected not at all) to 5 (affected very much). *N*s ranged from 317-325 for appearers, and from 109-113 for non-appearers.

4. Benefit-Cost Analysis[49]

We conducted an analysis of the benefits associated with the postcard reminders, compared to the costs, at the county level.[50] Benefits were estimated by determining the labor cost avoided by not having to detain, at a subsequent date, those defendants who had failed to appear. County-specific FTA-cost estimates were developed for the largest urban counties since they have the most misdemeanor, non-traffic offenses each year and are the three most-populous counties in Nebraska. In County A, law enforcement estimated that approximately 70% of FTA bench warrants were resolved through arrest. In County B, a judge and a law-enforcement official independently estimated the percentage of FTA bench warrants resulted in arrest at 30% and 50%, respectively. An average of these two estimates, 40%, was used in County B's per-unit arraignment, FTA-cost estimate. County C law enforcement estimated that at least 50% of FTA bench warrants resulted in arrests.

Table 8 indicates the annual and hourly salary costs of labor in Nebraska as derived from the U.S. Bureau of Labor Statistics.[51] Table 9 presents the range of costs associated with

45. $F(2,402) = 3.71$, $p = .025$, $\eta_p^2 = .02$. Additional statistical analyses showed the significant difference was driven by the gap between Whites and Blacks rather than differences between Whites and Hispanics or between Blacks and Hispanics.
46. $F(2,398) = 4.34$, $p = .014$, $\eta_p^2 = .02$. Additional statistical analyses showed the significant difference was driven by the gap between Whites and Blacks rather than differences between Whites and Hispanics or between Blacks and Hispanics.
47. We used a binary logistic regression. As explained in greater detail elsewhere, we dichotomized the reminder variable (*i.e.*, any reminder vs. none), turned trust in the courts into a categorical variable (*i.e.*, low, medium, or high), and controlled for race. Bornstein, Tomkins, & Neeley, *supra* note 3, at 21-24; Bornstein et al., *supra* note 3, at 12-13.
48. $B = 0.79$, $p = .008$, Exp(b) = 2.21, Exp(b) CI (1.23-3.94).
49. *See* Rosenbaum et al., *supra* note 3, for the complete benefit-cost analysis, including more detailed explanations of the assumptions and methodologies employed.
50. Although it is the case that benefits and costs accrue to both the county *and* the state, using the county as the level of analysis was deemed most appropriate given that the county is the unit of government where the costs and benefits primarily and directly accrue.
51. U.S. Dep't Labor, Bureau of Labor Statistics, *Occupational Employment Statistics*, *available at* http://www.bls.gov/oes/2008/may/chartbook.htm#organization.

TABLE 8 ANNUAL AND HOURLY SALARY COSTS 2008		
POSITION	NEBRASKA MEAN ANNUAL SALARY	NEBRASKA MEAN HOURLY COST
Judge	$125,349	$60.26
Law Clerk	$32,630	$15.69
Court Clerk	$32,140	$15.45
Patrol Officer	$44,020	$21.16

TABLE 9 SUMMARY OF POTENTIAL LABOR-COST SAVINGS FROM ONE FTA REDUCTION ACROSS THREE COUNTIES		
EVENT	MINIMUM	MAXIMUM
Type of Warrant Issued:	–	–
Bench Warrant	$15.49	$15.49
Arrest Warrant	$14.78	$14.78
FTA Charge Added	$1.05	$3.20
Clearing Warrant from System	$4.70	$4.70
Arrest for Outstanding Warrant and Booking Processing	$18.51	$32.40
Bond Processing	$2.50	$2.86
Jail (Cost/Inmate for 24 hrs)	$60.00	$85.00
Total Cost	**$49.41**	**$80.10**

an FTA. Although there are variations in costs across counties, the procedures used in the wake of a defendant's failure to appear are similar across counties.[52] Likewise, although there are some labor cost differences across counties, we used constant labor-cost estimates for all the counties in the study. There were differences across counties in the likelihood of an FTA incident; thus, we adjusted the expected benefit of one FTA reduction for each county for the benefit-cost analysis. As we described elsewhere:

> As a proxy for jail utilization in all three counties, each arrested defendant who does not post bond spends an estimated .75 jail days waiting for arraignment. The figure for the value of estimated jail utilization for each arraignment FTA is thus the county FTA arrest percentage multiplied by the percentage that do not post bond multiplied by 0.75. The three largest counties are similar in that bench warrants are issued when defendants fail to appear for arraignment. In the cost estimates of all three counties, the estimated rate of unresolved warrants used is five percent. These figures are conservative estimates based on interviews with county officials.[53]

TABLE 10 AVERAGE COST PER POSTCARD			
	TYPE OF POSTCARD		
	REMINDER-ONLY	REMINDER-SANCTION & REMINDER-COMBINED	WEIGHTED AVERAGE
Labor	$1.15	$1.15	$1.15
Materials	$0.04	$0.04	$0.04
Postage	$0.27	$0.49	$0.42
Total	**$1.46**	**$1.68**	**$1.61**

As Table 9 shows, the savings from each reduction in a failure to appear ranges between $49.91 and $80.10 across the three counties.

We also determined cost estimates for the entire reminder process. Using an estimate of 335 labor hours for the reminder-postcard process (including identifying cases, addressing the postcards, and then printing and mailing them), we came up with a labor cost of $1.15 per postcard. Costs for each of the postcards, however, were estimated independently because they had differential impacts on FTA-reduction rates, and because there were different postage costs associated with mailing the two postcards with substantive content.[54] A cost estimate of $1.46 was determined for the Reminder-Only postcard and $1.68 for the Reminder-Sanctions and Reminder-Combined postcards, with a weighted-average cost per postcard of $1.61 (Table 10). We also estimated that if the identification of cases was automated rather than manualized as in our project, the costs would decrease to $.69 for the Reminder-Only postcard and $.91 for the other two postcards, with a weighted-average cost of $.84 per postcard.[55]

Given that not all postcards were deliverable and that there was not a one-to-one correspondence between postcards mailed and reductions in failures to appear, the cost of each failure to appear in terms of postcards mailed was determined. These costs were $55.81 for the combined Reminder-Sanctions and Reminder-Combined postcards and $97.99 for Reminder-Only postcards. The difference was driven by 1) the different effectiveness of each treatment in reducing FTA rates, and 2) the different costs in mailing the varying types of postcards. The next step in the benefit-cost assessment was to assess the benefit of an FTA reduction relative to its cost, which effectively determines the net benefit of postcard reminders; that is, the benefit of a one-unit reduction in FTA minus the cost of a one-unit reduction under the different postcard options, calculated on a per-unit and aggregate basis. Table 11 shows that the net benefit of an FTA reduction for three of the counties[56] differs as a function of which postcard is used. It also changes depending on whether automation can be used. Thus, if automation were used, the net benefit from using the Reminder-Sanctions and Reminder-Combined postcards is $50

52. Rosenbaum et al., *supra* note 3, at 180-182 and summarized at 181, Fig. 2.
53. *Id.* at 183.
54. The Reminder-Only postcard cost $0.27 in postage, whereas the postage cost for the other two was $0.49 each.
55. Rosenbaum et al., *supra* note 3, at 184-186.
56. To preserve the confidentiality of the jurisdictions involved, we have not specifically identified the three counties.

TABLE 11
NET BENEFIT OF A 1-UNIT FTA REDUCTION

		COSTS TO PREVENT ONE FTA WITHOUT AUTOMATION			COSTS TO PREVENT ONE FTA WITH AUTOMATION		
COUNTY	Benefit from Preventing One FTA	Reminder Only	Reminder Sanctions & Reminder Combined	All 3 Weighted	Reminder Only	Reminder Sanctions & Reminder Combined	All 3 Postcards Weighted
		$97.99	*$55.81*	*$64.08*	*$46.39*	*$30.28*	*$33.49*
A	*$80.10*	($17.89)	$24.29	$16.02	$33.71	$49.82	$46.61
B	*$49.91*	($48.08)	($5.90)	($14.17)	$3.51	$19.63	$16.42
C	*$58.72*	($39.27)	$2.91	($5.36)	$12.33	$28.44	$25.23

TABLE 12
AGGREGATE IMPACT OF POSTCARD-REMINDER SYSTEM

COUNTY	2009 Misdemeanor Non-Traffic Offenses*	Estimated Non-Waiverable Offenses (33%)	Estimated FTA Reduction with Rem. Sanctions & Rem. Combined (3.5%)	**Aggregate Net Benefit Without Automation**	**Aggregate Net Benefit With Automation**
C	33,884	11,182	336	**$977**	**$9,556**
A	22,991	7,587	228	**$5,537**	**$11,358**
B	8,810	2,907	87	**($516)**	**$1,715**
3 County Total	65,685	21,676	651	**$5,999**	**$22,628**

* Nebraska Judicial Branch, 2009 Annual Caseload Report, available at http://www.supremecourt.ne.gov/sites/supremecourt.ne.gov/files/reports/courts/cc-caseload-09.pdf.

per FTA reduction in County A, almost $30 in County C, and nearly $20 in County B.

The aggregate benefit, of course, varies as a function of case numbers and case types. In Table 12, using numbers of misdemeanor offenses in 2009 for each of the focus counties, we estimate the number of citations eligible to receive postcard reminders,[57] and the benefits that would be accrued from the positive impacts of the Reminder-Sanctions and Reminder-Combined postcards. Without automation, the benefits range from 228 fewer FTAs at an aggregate net benefit of $5,537 in County A to 87 fewer FTAs at a net cost of $516 in County C. With automation, the benefits from reductions in FTAs increase to over $11,000 in County A and generate a positive, net benefit of $1,715 in County B.

III. CONCLUSIONS

In this experimental study, we asked whether postcard reminders would decrease failure-to-appear rates for misdemeanants in Nebraska, and if so, what would be their cost-effectiveness. We found that postcard reminders did, indeed, reduce failure-to-appear rates. Based on procedural-justice and trust/confidence theories, we predicted that failure-to-appear rates would decrease for all defendants if they were reminded of the court-hearing date and time using language that included components of procedural justice. Although postcard reminders did decrease FTA significantly, the postcard with the procedural-justice information did not differentially decrease FTA rates compared to the postcard with only sanctions information. The two substantive reminder postcards, however, were generally superior to the simple reminder postcard. FTA rates also varied as a function of geography (urban versus rural) and the nature and number of the offenses.

We also had predicted, consistent with theories of the impacts of procedural justice and trust and confidence, that procedural-justice and trust/confidence perceptions would be related to failure to appear. Our data revealed some support for procedural justice and even greater support for trust and confidence, in that defendants scoring higher on these constructs were more likely to appear. We also found effects for race/ethnicity related to trust/confidence perceptions.

Our more elaborate benefit-cost analysis allowed us to learn that while postcards were cost-effective overall, they were not so in all cases. Moreover, projections indicated that more benefits would accrue if the reminder process could be automated.

Thus, our experimental approach to examining a court reform allowed us to obtain specific insights into what worked, what the circumstances were for what worked versus what did not, and why things worked. Moreover, by conducting an actual benefit-cost analysis, we were able to show more precisely what costs versus benefits were associated with the reforms. This approach to assessing potential administrative changes to court procedures provides insights that allow for more strategic decision making than simply implementing a reform and/or globally projecting cost-savings.[58] In fiscally challenging times, it is worthwhile to know whether incurring the costs for more expensive interventions such as phone calls

57. There were 18,581 offenses, of which 6,149 were non-waiverable.
58. Our approach was similar to the approach taken in Jefferson County, where different variations were assessed, systematically and using random assignment to conditions. Schnacke, Jones, & Wilderman, *supra* note 5.

makes sense when automated postcards might bring more bang for the buck.[59]

There might be a range of solutions that could be used to increase court appearances for misdemeanants.[60] In the end, research in general, and experimentation in particular, along with systematic evaluation, should guide court reforms and help identify justice policies and practices that protect public safety without incurring unnecessary costs.[61]

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59. Other options exist besides calling defendants or mailing them postcard reminders. For example, Nebraska's 11th judicial district, in collaboration with the National Center for State Courts, is currently piloting whether text-message reminders for probation/restitution payments will increase compliance with court-ordered payments. This same free text-messaging technology, which uses the Administrative Office's database, could be used to implement court reminders.
60. It certainly makes sense to avoid unnecessary incarcerations, so the practice of citing defendants for misdemeanors and expecting them to appear is good policy. *See, e.g.*, http://www.pretrial.org/ (arguing for pretrial practices that assure safety without comprising defendants' liberty interests).
61. We realize we are preaching to the choir: Members of the American Judges Association have long used experimental techniques to assess court reforms. *See, e.g.*, Deborah A. Eckberg & Marcy R. Podkopacz, *Family Court Fairness Study* (Fourth Jud. District Res. Division, Hennepin Co., MN) (2004), *available at* http://www.mncourts.gov/Documents/4/Public/Research/Family_Court_Fairness_Report_Final_(2004).pdf (past-AJA President Kevin Burke's court's experimental study of the use of messaging decisions to defendants, based on procedural-justice principles, as part of domestic-violence case).

Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders:

The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program

Timothy R. Schnacke, Michael R. Jones & Dorian M. Wilderman

It is likely during our first jobs in the justice system when we realize the adjective "important" is a somewhat relative term as it relates to the issues that we face. Far from what we learned in college or law school—and further still from the topics typically reported in the media—often the most important issues we face will be found in the most common of cases. There is a saying in city government that the public's idea of how well you are doing your job is only as good as how well you administer the water bills. That is because every household gets one, and, for many citizens, it represents the only contact that they may ever have with their local government. The same is true in criminal justice. Most people will never face a felony trial, but a relatively large number of them will be summonsed into court on lesser charges such as misdemeanor and traffic offenses. For any particular defendant, a court appearance required by summons may be his or her singular personal experience with the justice system; how we guide that defendant through the system is perhaps one of the most important issues we may ever face and says a lot about how we administer justice. Doing this well promotes judicial-branch legitimacy by increasing the defendant's overall sense of procedural fairness, lessens system costs associated with any particular case, and avoids the compounding array of negative consequences associated with a single yet preventable incident such as the defendant's failure to appear for court.

In 2004, one of the most important issues facing Jefferson County, Colorado, criminal justice leaders was the rising numbers of these failures to appear (FTAs). That year, consultants working on behalf of the National Institute of Correction's Jails Division completed a local system assessment showing that 33% of the county jail's inmates were compliance violators (*i.e.*, failure to comply with court orders by failing to appear, pay, or perform some task), up from only 8% in 1995.[1] Subsequent jail-population analyses found that three-fourths of these compliance violators had been booked on failure-to-appear warrants for misdemeanor, traffic, or municipal offenses, and in 90% of the studied cases these FTA warrants were issued to defendants missing the very first court event in their case. In 2004, the jail was rapidly nearing its operational capacity, and county leaders felt compelled to address the increasing demand for jail beds. As a matter of jail-population management alone, a facility with roughly 25% of its inmates incarcerated for failing to appear for mostly lower-level offenses did not seem like the best use of the limited jail resources. Moreover, because these leaders also felt the FTA issue to be largely avoidable, an overall sense of procedural fairness to at least avoid worst-case-scenarios—such as someone's grandmother being jailed for failing to appear in a dog-at-large case—was foremost in their minds.

Criminal justice systems expend substantial resources to deal with FTAs and FTA warrants. In Jefferson County, researchers found that there were roughly 600 traffic and misdemeanor FTA warrants issued in a single month in 2004.[2] Further study of those warrants revealed that after one year, 25% had been cleared by defendants coming in on their own, 50% had been cleared by police arresting the defendant, and 22% of the warrants remained outstanding—all outcomes that trigger significant financial and social costs. Indeed, from the time a particular defendant fails to appear for court, the burden from that FTA begins to drain public resources at multiple points in the system. Any people associated with the case during the life of an FTA warrant, including judges, clerks, law-enforcement officers, attorneys, and jail staff, find that their workloads increase significantly because of that warrant. Moreover, the tangible and intangible costs of FTAs extend to victims, witnesses, and even to the defendants themselves. Finally, and perhaps most importantly, FTAs undermine the integrity of the justice system, as each FTA tends to erode the

Footnotes

The authors thank Mona Malensek, Paula Hancock, and Nan Vorhies of the Jefferson County Sheriff's Office for their assistance with this article through their valuable input and their work with the Jefferson County FTA Pilot Project and the Court Date Notification Program.

1. The National Institute of Corrections provides free technical assistance to state and local correctional agencies. For more information, go to http://nicic.gov/TA.
2. These data were collected in August of 2005 by examining half of the court files of all defendants who were issued FTA warrants during June of 2004. The overall number of misdemeanor and traffic FTA warrants for that month (590) is somewhat higher than the number of warrants issued in July of 2005 (524). The June 2004 data were examined to collect arrest and walk-in rates after one year, and the number was rounded to 600 for ease of computation.

respect that an independent judiciary deserves.

With these data in hand, Jefferson County leaders, through the county's criminal justice coordinating committee (CJCC),[3] initiated a multifaceted approach to increase court appearance rates[4] and to lessen the impact of FTAs and FTA warrants on the jail. In this article, we describe the results of a randomized experiment designed to study the effectiveness of one part of that approach—telephone reminder and notification calls to defendants. The "FTA Pilot Project," as it was called, was borne mostly of logic and knowledge of doctor-office practice, but it was patterned after successful programs found in King County, Washington, and the Seattle Municipal Courts. It ultimately spawned a fully funded program, the "Court Date Notification Program" nested within the Jefferson County Sheriff's Office. The program has served as the model for numerous similar efforts across Colorado as well as several in other states. In addition to describing the details of the experimental pilot project, we will also discuss the ongoing strategy and results of the Court Date Notification Program and offer several observations concerning the implications of these findings and results for policy making.

WHY WAS THE STUDY DONE?

Across America, police issue citations in a staggering number of cases. In Jefferson County, a county with roughly 14 law-enforcement agencies feeding into its court system, the local Sheriff's Office Patrol Division alone wrote 15,693 traffic tickets in 2009.[5] As an issue connected to the topic of pretrial release or detention, the practice of issuing a citation in lieu of making an arrest is one of delegated release authority, and it is generally favored by national pretrial standards that recommend release prior to trial under the least restrictive conditions.[6] Nevertheless, there are pros and cons to citation release. As noted in one report, while cost savings are greatest when field citations are used, "[c]itation release . . . has been criticized for resulting in unacceptably high rates of failure to appear (FTA) and a consequent loss of justice system credibility in the eyes of defendants and the general public."[7]

FTAs undermine the integrity of the justice system [and tend] to erode the respect that an independent judiciary deserves.

The reason people fail to show up for court on relatively minor offenses is the subject of debate. Some argue that the typically long period of time between the citation and the court date naturally leads to FTAs due to the relative instability of many defendants. Others argue that defendants are largely unaware that failing to show up for court can lead to an arrest warrant for seemingly minor violations of the law. Some say defendants fail to appear for court on purpose. Others say they just forget. The Jefferson County Criminal Justice Planning Unit (CJP), staff to the Jefferson County CJCC, interviewed numerous defendants jailed for failing to appear for court and found that their reasons for not appearing varied widely and included each of the hypothesized reasons listed above.

A better understanding of why defendants fail to appear for court might help formulate a testable hypothesis based on some established theory of crime or delinquency, such as "rational-choice theory, " its offspring "routine-activities theory," or theories explaining a defendant's sense of anonymity, such as those proposed by noted psychologist Philip Zimbardo in the 1960s.[8] However, the Jefferson County CJCC had little time for that type of research. Like many entities struggling to find answers to pressing problems, the CJCC was addressing the somewhat urgent issues of unsustainable jail-population growth, increas-

3. *See* Robert Cushman, Guidelines for Developing a Criminal Justice Coordinating Committee, U.S. Dep't of Justice, Nat'l Inst. of Corr., NIC Accession No. 017232 (Jan. 2002), *available at* http://static.nicic.gov/Library/017232.pdf.
4. The current trend in the field of pretrial justice is to use the phrase "court-appearance rates," which focuses on the positive and typically larger number of defendants who actually appear for court, rather than the phrase "failure-to-appear-rates," which focuses on the negative and less-frequent cases. The two phrases represent different ways of describing the same phenomenon: a jurisdiction with a 97% court appearance rate has a 3% failure-to-appear rate.
5. *See* Linda Detroy Alexander, *Backing Law with a Lecture*, Golden Tr., Dec. 2, 2010, at 4, available from the Jefferson County Criminal Justice Planning Unit.
6. *See* American Bar Association Standards for Criminal Justice Pretrial Release (3rd ed., 2007), Std. 10-1.3, at 41 ("The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to the first judicial appearance in cases involving minor offenses."), *available at* http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc.html. The term "minor offenses" is used rather than "misdemeanors" because the latter term is often defined differently among jurisdictions across the United States. Generally, according to the commentary to Standard 10-1.3, "'minor offenses' are the equivalent of lower-level misdemeanors. However, when the alleged offense involves danger or weapons—as, for example, is often the case in domestic violence misdemeanors—the Standard allows jurisdictions to determine that the offense is not 'minor,' regardless of its statutory designation." *Id.*
7. Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman, Pretrial Services Programs: Responsibilities and Potential, Nat'l Inst. of Justice (2001), at 62 (further citation omitted), *available at* http://www.ncjrs.gov/pdffiles1/nij/181939.pdf.
8. In hindsight, Zimbardo's early theories may be the best to describe the Jefferson County experience. In the 1960s, Zimbardo wrote how a sense of anonymity versus a sense of community can cause social deviance. *See Anonymity of Place Stimulates Destructive Vandalism*, *available at* http://www.lucifereffect.com/about_content_anon.htm. During Jefferson County's discussions over court-date-reminder call script language, county leaders considered the relative worth of messages focusing on letting defendants know that: (1) they were not anonymous; (2) they were part of a social community; (3) the court system recognized their individuality and humanity; and (4) the court also knew how to reach them if they failed to appear.

The script was framed in terms of defendant choice[, and a] strong sanctions message for "choosing" not to show up for court was included intentionally . . . .

ing case filings, high FTA rates, and an unacceptable number of people jailed pursuant to FTA warrants. Accordingly, the Committee was content with knowing that simple logic, coupled with the experience of at least one other jurisdiction (King County, Washington, known for its advancement of innovative criminal justice practices) provided a basis for testing the hypothesis that court-date-reminder calls would improve court-appearance rates in summonsed cases. This approach also appeared to follow the writings of at least some experts in the field of pretrial justice, who had documented the complicated nature of FTAs and focused on practical system solutions involving pre-FTA court-date reminders and swift action on warrants.[9]

WHY DID WE USE A LIVE CALLER?

Jurisdictions seeking to increase their court-appearance rates through reminder calls inevitably face the question of whether to use live versus automated callers. When the Jefferson County FTA Pilot Project was undertaken, there was very little written on the efficacy of either approach. Through telephone conversations, King County, Washington, officials reported to CJP staff an overall decrease in failure-to-appear rates of approximately 60% using live reminder calls for misdemeanor defendants. At the time, those officials advised against using an automated system and stressed the need for the caller to have multiple databases to find defendants' contact information, as well as extensive knowledge of the criminal justice system to answer defendants' questions.

Through those same conversations, Jefferson County became aware of one other unpublished Washington study reporting FTA-rate decreases of approximately 38% using automated calls. Since then, Multnomah County, Oregon, began its own study of an automated Court Appearance Notification System (CANS) in 2006. In the final report to that study, Multnomah County reported an overall decrease in FTAs of 37% using an automated calling system on the targeted population.[10]

In Jefferson County, the live-caller option was ultimately chosen for primarily practical purposes: At a meeting in March 2005, the head of the Probation Department announced that he had money in his budget to hire a person part-time for three months to call defendants. Given the lack of hard data for either option as well as the perceived complexity over the logistics of setting up an automated system, there was no real debate over this opportunity, and, accordingly, the Pilot Project proceeded with a live caller.

WHAT DID THE RESEARCHERS DO?

The FTA Pilot Project

The Subcommittee assembled a small Implementation Team, made up of a County Court Judge, the Court Clerk, the hired caller, and CJP Staff to work out the logistics of the live-caller study. The Team believed that it was important for the caller to see the actual court files when calling, but those files were not allowed out of the courthouse. Accordingly, the court made space for the caller in a vacant room on the floor where most of those files were kept. Due to time constraints, the caller was given access to only a telephone book to aid in searching for defendants' phone numbers. The effectiveness of the Pilot Project was thus somewhat at the mercy of police officers legibly writing down phone numbers on their citations. Typically, tickets having no numbers, or with illegible numbers, meant that no telephone call could be made.

The court provided the caller with a desk, a computer with a spreadsheet for data collection, and a telephone. Throughout the study, CJP Staff would also work in the room entering control-group information into the spreadsheet.

The Implementation Team created a script in English and Spanish to be used as a primary tool for conveying information to the defendant when he or she was reached directly, and to be read verbatim when leaving a message on voicemail. The script was framed in terms of defendant choice, reflecting the experience of one Team member from the field of psychology. A strong sanctions message for "choosing" not to show up for court was included intentionally, although that language has been softened since. The fact that such a script was created quickly (and the fact that it was apparently successful) should not diminish the crucial role of script content. As seen with recent important studies by the Nebraska Public Policy Center, variations in content can affect overall appearance rates.[11] Pilot Project logistics also required the Team to develop a fairly detailed procedure for gathering files, separating cases, making calls, inputting data, and monitoring outcomes.

For 10 weeks, the caller collected data on approximately 30 variables on a total of 2,100 randomly selected defendants summonsed to appear on misdemeanor and traffic offenses in the Duty Division of the Jefferson County Court.[12] Although

9. MAHONEY et al., *supra* note 7, at 39, 62.
10. *See* MATT NICE, COURT APPEARANCE NOTIFICATION SYSTEM: PROCESS AND OUTCOME EVALUATION, A REPORT FOR THE LOCAL PUBLIC SAFETY COORDINATING COUNCIL AND THE CANS OVERSIGHT COMMITTEE (Mar. 2006).
11. *See* Mitchel N. Herian and Brian H. Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, THE NEB. LAWYER, Vol. 13, No. 8, at 11 (Sept. 2010); Brian H. Bornstein, Alan J. Tomkins, Elizabeth M. Neeley, Mitchel N. Herian, and Joseph A. Hamm, *Reducing Courts' Failure-to-Appear Rate by Written Reminders*, 18 PSYCHOL. PUB. POL'Y & L. (in press), *available at* doi: 10.1037/a0026293.
12. In Colorado's First Judicial District (made up of Jefferson and Gilpin counties), the county-court judges take turns staffing a "Duty Division," which handles, among other things, defendants on felony, misdemeanor, and more serious traffic citations and summonses. Less serious traffic and misdemeanor cases are handled in "Division T" by a magistrate. The Pilot Project focused solely on cases heard in the Duty Division.

the Duty Division handles felony matters, those cases, along with cases in which defendants had legal representation, were excluded. The Pilot Project proceeded in two phases. In the first phase, defendants were called one week ahead of their court dates to remind them to appear. In the second phase, defendants who had failed to appear were called the next day to notify them of their FTA warrants.

Call-Ahead Phase

On average, there were 70 unrepresented misdemeanor and traffic cases per day in the Duty Division. Each day during the Pilot Project, the caller would take a random sample of all cases with arraignments scheduled exactly one week in the future to use for data input. All of the data, such as the case number, defendant demographics, offense information, statutory penalties, etc., were gathered from the court file and recorded on a spreadsheet.

The parameters for calling defendants were strict. The caller was given only three opportunities to telephone defendants—exactly seven days prior to the initial court date—to remind them of the upcoming Duty Division proceeding. If the caller "successfully contacted" a defendant, the caller read a script (in either English or Spanish) reminding the defendant of the court date, giving directions to the court, and warning the defendant of the consequences of failing to appear. The script was carefully worded with guidance from the judges assigned to Duty Division and included a list of anticipated defendant questions with appropriate answers to those questions. A "successful contact" was defined as any call in which the script was read to either: (a) the defendant; (b) the defendant's voicemail; or (c) an apparently responsible adult living with the defendant. Because the caller had three opportunities to reach the defendant, that caller had some discretion in how to use those opportunities. To collect the maximum amount of data, however, the caller's protocol was to read the script on voicemail anytime the caller reached a recording that was clearly the defendant's. "Successful" and "unsuccessful" (wrong number, no number on ticket, disconnected number, etc.) contacts were documented in fields for each of the three allowable attempts. A "comments" section on the spreadsheet allowed the caller to clarify miscellaneous data issues and to qualitatively document defendant and other household member reaction. All of the telephone calls were made between 8:00 a.m. and 7:00 p.m., Monday through Friday. Throughout the project, an individual from the CJP Unit collected and separately inputted data for the control group, which consisted of randomly selected defendants from the court's files. The outcome measured was whether or not the defendants failed to appear on their scheduled dates.

Call-After Phase

The day after the Duty Division arraignments, the caller collected all of the files for those defendants who had failed to appear—on average, 15 per day. The caller randomly selected half of the files and collected the same demographic and case-specific data as described in the call-ahead phase. The caller also filled out an "outcome sheet," which included the defendants' names and case numbers, as well as check boxes designed to help the court clerks document the outcome measures for this phase. Given the same strict calling parameters, the caller telephoned defendants to advise them of their failure to appear for court and to explain the consequences of the arrest warrant. Again, a carefully worded script (in English and Spanish) was created to convey that message. Each of the judges assigned to the Duty Division agreed, in advance, to stay these warrants for five business days after the FTA; accordingly, the caller also advised the defendant that if he or she came into court within five business days, the warrant would not be issued. As in the call-ahead phase, the caller documented the results of successful and unsuccessful contacts across the three allowable calling attempts. And again, a second individual collected complete control data for later comparison. Files (along with the outcome sheet) were returned that day to the court clerks with instructions to hold them for five business days. The outcomes that were measured were whether defendants came to court within five business days, and what the defendants did when they appeared for court (*e.g.*, pleaded guilty, rescheduled, etc.).

When defendants were . . . reminded of their court dates . . ., the court-appearance rate was increased to 88% (a 43% reduction in the FTA rate). . . .

WHAT DID THE RESEARCHERS FIND?

The Call-Ahead Phase

Normally, the court-appearance rate in the Jefferson County, Colorado, Duty Division for the types of cases studied was 79%. When defendants were successfully contacted[13] and reminded of their court dates one week in advance of their arraignments, however, the court-appearance rate was increased to 88% (a 43% reduction in the FTA rate). This overall increase in the appearance rate can be further broken down by how the successful contact was made. If a message was left with either voicemail or a responsible adult, the appearance rate was increased to 87%.[14] If the message was delivered to the actual defendant, however, the court appearance rate rose to approximately 92%.

The Call-After Phase

Normally, 10% of people who fail to appear for court do return to court on their own initiative within five business

13. In the call-ahead phase, the caller attempted to contact 1,176 defendants and "successfully contacted" 695, for a successful-contact rate of approximately 60%. By contrast, only 44% of the defendants in the call-after phase were successfully contacted.
14. The decrease in the FTA rate for leaving a message with either voicemail or with a responsible adult (38%) was approximately the same as the automated-reminder-call decreases reported verbally by King County, Washington, officials and reported in Multnomah County Oregon. *See* NICE, *supra* note 10.

[T]he pre-calls primarily focused on customer service, a priority of the Jefferson County Board of County Commissioners . . . .

days. When defendants were notified of their warrant after they failed to appear, however, 50% returned to court within five business days.

THE JEFFERSON COUNTY COURT DATE NOTIFICATION PROGRAM

Based on the success of the Pilot Project, the Jefferson County CJCC created a Task Force to make recommendations for creating a permanent call-reminder program designed to increase court-appearance rates. Those recommendations, along with a detailed cost/benefit analysis of FTA reduction,[15] were subsequently presented to the CJCC, which unanimously supported the concept of developing a program using a live caller to telephone defendants to remind them in advance of their upcoming court dates.

Because pre-FTA call reminders and post-FTA call notifications were ultimately shown to be equally effective during the pilot project, the Task Force and the Committee discussed the advantages of starting with one component over the other. While there was some consensus that the ideal program would likely consist of both pre- and post-FTA calls, the Task Force and Committee ultimately recommended that the caller begin by making reminder calls to defendants one week in advance of their arraignments.

This recommendation was made for several reasons. First, the Committee and Task Force recognized that substantial effort goes into preparing for the first court appearance. Decreasing failures to appear altogether, rather than simply using the warrant as an incentive to get defendants back into court, would maximize the initial work of court staff and would reduce the amount of redundant efforts expended when a defendant arrives sometime after the planned appearance date. Second, the Committee and Task Force believed that calling defendants in advance of their court dates would provide opportunities to tell those defendants important information about their particular case that would reduce the chances of a continuance. For example, the court experienced many unnecessary continuances in car-insurance and license cases when defendants arrived without proof of insurance or proof of license reinstatement. A pre-call script, it was believed, could be drafted to tell these defendants what they needed to bring with them so that their case could be resolved. Third, the Committee was already working on other projects designed to reduce FTA bookings after the warrant was issued, and the Committee and Task Force believed that pre-calls would provide balance to these other post-FTA initiatives. Finally, and perhaps most importantly, the pre-calls primarily focused on customer service, a priority of the Jefferson County Board of County Commissioners at the time. In addition to reminding defendants about their court dates, the Committee and Task Force believed that pre-calls would provide a human voice to guide defendants through a daunting criminal justice system and would ultimately reduce the number of frantic, last-minute phone calls placed by defendants to court clerks.

The Program, named the Jefferson County, Colorado, Court Date Notification Program, is funded and staffed by the Sheriff's Office and is located inside the Jefferson County Combined Court. The staff person who served as the caller during the Pilot Project was hired full-time as a civilian Program Specialist to implement the Program. As originally planned, this Program Specialist was hired to spend roughly equal amounts of time on Program implementation and expansion, with 50% of her time spent actually calling defendants and 50% spent evaluating the effectiveness of those calls and on investigating and addressing the FTA issue associated with other courtrooms and court events. The Program Specialist (hereinafter the caller) began making calls for the Program during the last week of March 2006.

Program Process

Like the FTA Pilot Project, the Court Date Notification Program began by focusing on the court-appearance rate for the Duty Division of the Jefferson County Court, which was staffed on a rotating basis by seven county-court judges in Jefferson County. At Program inception, the Duty Division heard an average of 77 unrepresented traffic and misdemeanor cases summonsed daily into court by municipal, county, and state ticketing agencies. Because the initial intent of the Program was for the caller to spend only half of her time making calls, an implementation group consisting of a county-court judge, the Court Clerk, and others decided to initially limit those calls to defendants who had no proof of insurance (NPOI) as one of their charges. This emphasis on NPOI cases was made for several reasons. First, files containing this charge accounted for over half of the cases seen in Duty Division each day. Second, defendants facing an NPOI charge often had other charges associated with the same traffic stop. Third, fines for these charges were typically high, so increasing court-appearance rates for these cases might ultimately lead to significant increased revenue to the State. Fourth, as noted previously, defendants facing NPOI charges frequently asked for continuances to bring in the required documentation, causing addi-

15. There appear to be relatively few cost/benefit analyses on this issue. The Jefferson County analysis concluded that by using the FTA Pilot Project's result of a reduction in misdemeanor and traffic warrants of 43% in Duty Division, an FTA-reduction program aimed at all misdemeanor and traffic offenses in the County would: (1) reduce the overall number of FTA warrants issued for those cases from 7,200 to 4,100 per year; (2) reduce the overall time spent by court clerks processing the warrants from 3,800 to 2,200 hours per year; (3) reduce law-enforcement-officer hours spent serving the warrants from 5,400 to 3,100 hours per year; (4) reduce the hours spent by jail booking staff to process the arrestee from 7,200 to 4,104 hours per year; and (5) assuming an arrest rate at 50% and a two-day length of stay for persons with FTA warrants (both estimates documented), save approximately $200,000 per year in jail-bed costs.

tional strain on the court's workload. After the implementation group made this decision, it created a customized script specifically for NPOI cases.[16]

File security issues and the need to create non-obtrusive working relationships with court-division clerks led to a logistical decision to locate the Program in the court building on the same floor as the county-court judges and clerks. Because the Program's caller would be working primarily from documents in the official court file, this location allowed the caller and the clerks to share files with little disruption to their normal work flow. The caller worked Monday through Friday during business hours. Her office was private, with a computer with access to multiple databases for data collection and defendant tracking, and a telephone with call-back capability.[17] The primary spreadsheet for data collection had twenty fields, which included defendant contact information, call outcomes, and court-appearance outcomes. To adequately measure the court-appearance outcomes of the Program, the caller created (with input from the judges and Court Clerk) a colored sheet of paper that she filled out and placed in each file targeted for calling. The paper had three possible outcomes for the case that the court clerks were to check and that were ultimately measured in the data set: (1) FTA; (2) Disposition (pled, settled, or dismissed); and (3) Pretrial Conference, which is also used to indicate a continuance for any reason. This colored outcome check sheet was an additional duty given to court clerks, but it provided (and continues to provide) crucial data needed for the ongoing evaluation of the Program.

Due to the rotation in Duty Division, the caller had to adapt her own procedures to accommodate differing policies and practices among the judges. Nevertheless, her daily routine (as observed by CJP Staff) was fairly consistent between divisions. Each day, the caller would ask Duty Division clerks about the FTAs from the day before.[18] She then collected the colored outcome check sheets, and typed the outcomes into the spreadsheet.[19] The caller next retrieved the files for all misdemeanor and traffic cases that were set to be heard in Duty Division in seven days. The caller then read through the files, looking for her target group of NPOI defendants. The information found in those files, primarily from the summonses themselves, was then transferred onto a printed docket sheet and into the Program's spreadsheet. If there was no contact information for a particular defendant, the caller used one of two online directories to try to locate a useable phone number.[20] Once she input the required data into the spreadsheet, the caller was prepared to telephone the defendants. In the initial stages of the Program, the caller became accustomed to alternately entering a page or two of data and then making her initial calls.

[T]he normal court-appearance rate for [this category of] defendants was 77%.

In the Pilot Project, the caller was limited to only three attempts at calling any particular defendant. The resulting Program was designed with no such restrictions; however, on her own, the caller apparently placed the same limits on her calls to keep from clogging her workflow. Calls were documented using the following codes: (1) talked to defendant personally; (2) left message on defendant's home/personal voicemail; (3) talked with relative/roommate of defendant and left message; (4) wrong number; (5) phone disconnected; (6) no answer, no device on phone for messages, busy signal, "subscriber not available" message on cell phones; and (7) no phone number listed on summons or found with online directory. The caller also used a variety of sub-codes to record other information she deemed to be relevant. Successful contacts were those in the first three categories. If the caller successfully contacted a defendant, she read a script (in either English or Spanish) reminding the defendant of the court date, giving directions to the court, and warning the defendant of the consequences of failing to appear for court. The caller had (and still has) considerable discretion as to whether she would leave a message or call back later. In many cases, the caller simply left a generic message for the defendant to return her call, and she then fielded return calls from the defendants throughout the day.

Six-Month Outcomes

During the first six months of the Court Date Notification Program, the total number of docketed cases with unrepresented defendants facing traffic or misdemeanor charges in County Court Duty Division reached approximately 10,000, for an average of 385 per week. Of those 10,000 cases, approximately 5,600 were targeted for telephone calls. Of those targeted, approximately 3,500 defendants were "successfully contacted" (defined as either talking to the defendant in person, or by leaving a message on the defendant's voicemail or with a third party) and 2,100 were unsuccessful, for a successful-contact rate of 63%. As documented in the FTA Pilot Project, the normal court-appearance rate for NPOI defendants was 77%. When these defendants were successfully contacted and reminded of their court dates one week in advance of their

16. For example, because defendants with NPOI charges typically face steep fines, the script made a specific reference to "payment options," which was designed to allay defendants' fears concerning any inability to pay.
17. Giving defendants the ability to telephone the caller back is an important improvement over the Pilot Project, which had no call-back capability.
18. The caller compared the clerk's verbal report of FTAs to the outcome sheets as an error check.
19. While the Program was not designed to track and contact defendants after they failed to appear, the caller nonetheless informally kept track of FTAs for defendants with whom she had directly spoken. After six months, the caller reported that a follow-up call appeared to cause more defendants to come back to court at a higher rate than those who were not called; however, more formalized study is required to make any definitive conclusions on the effectiveness of this practice.
20. In the Pilot Project, the percentage of tickets that had no defendant phone numbers or were unreadable was approximately 10%. In 2011, the percentage of tickets that had no phone numbers and for which the phone numbers were not found in either of the two online directories was 4.4%.

[D]irect contact with a defendant led to the highest appearance rate—as high as 93% . . . .

arraignments, however, the appearance rate increased to 89%. This result represented a 52% decrease in the FTA rate for the targeted population. In more concrete terms, it meant that 425 FTA warrants were avoided during the first six months of the Program.

Additional analyses of data from June and September 2006 again showed that the overall court-appearance rate varied based on how the successful contact was made. As in the Pilot Project, direct contact with a defendant led to the highest appearance rate—as high as 93% in the September data set. Contact by leaving a message was second best (86% in June, 90% in September), and contact by leaving a message with a third party was the least effective method. These analyses also suggested a need to convince law enforcement to collect verifiable defendant contact information at the scene, and to perhaps revise program elements (*e.g.*, adding additional databases for finding defendants with bad contact information; calling defendants at night or on weekends) to better locate the defendants themselves to further increase the overall court-appearance rate.

Finally, the six-month data showed that of those defendants successfully contacted, most (approximately 54%) came to court and reached a disposition on their case on the day the case was set for arraignment, but approximately 35% of the defendants had their cases continued. This latter percentage suggested the need to inquire into the reasons for these continuances and to assess whether they were unnecessary or otherwise burdensome to the criminal justice system.

Program Expansion

During 2006, the Program's caller was able to increase the number of cases called by using volunteers (when available) obtained through the Sheriff's Office volunteer pool. On certain days, this meant providing full-time coverage, which allowed the caller to target 100% of the traffic-and-misdemeanor docket in the Duty Division. Nevertheless, that docket represented only a portion of the overall number of cases having FTA issues in the Combined Court. In response to queries by the Sheriff and Chief Judge of the District, CJP Staff analyzed the extent of the FTA issue in all courts of the District and made a number of recommendations, including: (1) expanding the procedure to the remaining cases in Duty Division (primarily felony summonses) while using techniques to improve the "successful-contact rate"; (2) based on the analyses in the report, working with the judges to identify and target other court events (such as "pro se sentencing hearings," etc.) requiring telephone reminder or notification calls; (3) beginning to make calls for cases in Division T, the division devoted to less-serious misdemeanor and traffic matters; (4) allowing Program staff time to conduct continuing research into best practices; and (5) implementing a "court-closure-notification system" to cover emergency court closures due to weather, etc.

Based in part on those recommendations, the Sheriff's Office hired a second full-time Program Specialist, who now assists with the daily calls. With her addition, the program has significantly expanded to include calls to 100% of unrepresented traffic and misdemeanor cases in Duty Division and 100% of the unrepresented misdemeanor and non-infraction[21] traffic cases in Division T. At the time this article was drafted, the Program had also expanded to begin calling pro se defendants with felony summonses in one division of the district court,[22] with plans to expand to three other district court divisions in the near future.

Court-Appearance Benefits

Overall, the results of the Program to date are exceptional. The successful-contact rate has risen from an initial rate of 60% in the Pilot Project to 74% in 2010 for the Duty Division, and from 78% in 2009 to 80% in 2010 for Division T. In 2007, the court-appearance rate for defendants who were successfully contacted was 91%, compared to an appearance rate of 71% for those who were not. In 2010, combining all statistics from both Duty Division and Division T, the court-appearance rate for defendants who were successfully contacted was 92%, compared to an appearance rate of 73% for those who were not. These increases have significantly reduced the costs of FTAs, including the somewhat intangible costs to victims and society in general. Moreover, although not empirically tested, these numbers indicate that the use of a live caller appears to have permitted experimentation and "tweaking" of the process, which has, in turn, fostered steady improvement.

Other Benefits

In addition to increasing court-appearance rates, Jefferson County has experienced both a number of intended and unintended benefits from the Court Date Notification Program. Perhaps most important is enhanced customer service provided to defendants through personal reminder calls. While their primary responsibility is to convey the information from the script, the Sheriff's Office's civilian callers also field defendant questions that would normally be directed to court clerks,[23] give driving and busing directions and instruction, look up other court information, forward calls to appropriate agencies, and generally allay the fears of defendants who may be intimidated by the criminal justice system. Several of the court's divi-

21. When a defendant fails to appear for court in low-level traffic infractions in Colorado, it results in a civil judgment rather than an arrest warrant.
22. In Colorado, district courts generally handle more serious criminal and civil cases, as well as probate, domestic relations, and juvenile cases. While most defendants appearing on the district court's criminal docket have representation, FTAs still occur.
23. Anecdotally, court clerks have told the authors that prior to the Court Date Notification Program many defendants would call the day before their court date with numerous questions about their cases. The Program has, to some extent, removed that burden from the clerks. Not surprisingly, by proactively calling defendants the callers have also learned that many defendants have forgotten about their court dates, do not have directions, have lost

sion clerks have heard from numerous defendants who have praised these mostly immeasurable aspects of the Program. In comments compiled throughout 2007 and 2008, defendants themselves routinely articulated their appreciation for the reminders. The callers have been named by some in the county as the "goodwill ambassadors" of the Sheriff's Office, offering a helpful and friendly component to the case that many people do not normally perceive from their experiences with law enforcement. Although customer service was one of four key values articulated by the Jefferson County Board of county Commissioners at the time of Program creation, opportunities for providing quality customer service in the criminal justice system can seem elusive. Nevertheless, the Jefferson County Court Date Notification Program has shown that local leaders can provide quality and sometimes unexpected customer service in a delicate government function that is too often seen as cold and unfriendly to its participants.

Answering questions, though, represents only one aspect of the Program's ability to enhance customer service. Additionally, the callers have provided significant benefits as quality control agents for "internal" customers. In particular, the callers have caught and corrected many advisement, ticket, and ticket-agency-record errors, have helped clerks to combine cases, and have even uncovered instances of identity theft.[24] When the callers learn that a defendant is already incarcerated, they are able to advise the court so that an FTA warrant will not be issued. With access to the Sheriff's Office's records-management system, the callers are also able to gather additional contact information that is unavailable through traditional online directories and to update the court files accordingly.

Quality control is also reflected in at least two more global endeavors. First, primarily due to the callers' frustration with the existing half-page Colorado Uniform Summons and Complaint (the ticket issued for most traffic and misdemeanor offenses), Jefferson County created a "Ticket Task Force," made up of municipal, county, and state agencies, to create a model full-page summons for use across Colorado.[25] Since then, members of that Task Force have independently worked to begin developing electronic citations using the data fields from the full-page ticket. Second, recognizing that having officers collect good defendant contact information is foundational to the calling program, the callers have kept detailed records of both agencies and individual officers who are deficient in doing so. The callers have contacted officers to discuss the need for legible phone numbers on the tickets, and the callers continue to discuss the efficacy of alternative methods, such as emails or text messaging, for contacting defendants.

[C]allers have caught and corrected many . . . errors . . . and have even uncovered instances of identity theft.

Finally, the Court Date Notification Program has benefited numerous other jurisdictions as the live callers of the Program continue to educate—free of charge—others seeking to implement the same or similar programs. For example, after visiting with Jefferson County staff members, Coconino County, Arizona, essentially replicated the Jefferson County FTA Pilot Project in 2006, independently finding that calling defendants prior to their court appearance resulted in a court-appearance rate of 87.1%, compared to 74.6% for the control group.[26] Other jurisdictions, too, have visited the Program, and many of those jurisdictions have since begun similar projects.[27] As one notable example, Douglas County, Colorado, recently implemented a "Court Call Ahead Program" that is similar to the Court Date Notification Program, and that county has reported an increase in its court-appearance rate to slightly above 98% for the targeted population.[28]

IMPLICATIONS FOR COURT POLICY AND PRACTICES

What causes defendants to fail to appear for court? Is it the length of time between the citations or summonses and the court dates? Is it their fear of the system? Is it their sense of anonymity? Do they do it on purpose, or do they just forget? Until we know the answers to these questions, we can nonethe-

their tickets, or have questions about the consequences of certain actions, such as failing to appear. In a limited number of cases, the callers have helped defendants reschedule cases, helped family members who have incarcerated or deceased defendants, and helped defendants with multiple cases navigate the system.

24. This has occurred when the callers have contacted a defendant, only to learn that a third party had used the defendant's identification during a traffic stop.
25. In the full-page ticket, the Task Force made room for two separate phone numbers to enhance the callers' ability to successfully contact defendants.
26. *See* WENDY F. WHITE, COURT HEARING CALL NOTIFICATION PROJECT (May 17, 2006), *available at* http://www.coconino.az.gov/cjcc.aspx?id=4692. Like the Jefferson County Pilot Project, the rates varied based on how contact was made—the highest court-appearance rate was for defendants who were personally contacted (94.1%), followed by the rate for defendants for whom a message was left with another person (85%) and for whom the message was left on an answering machine (79%).
27. The ongoing list of those interested in the Program includes visitors from three Colorado municipalities, three other Colorado counties, and jurisdictions in seven other states. Many of those jurisdictions have adapted a version of the Jefferson County script.
28. Douglas County, Colorado, performed its own pilot project from April to September of 2009, using a live caller to remind defendants of their upcoming court dates, and has since funded its own "Call Ahead Program," which calls defendants in advance but also includes an "FTA-recovery" component that involves calling defendants again if they fail to appear. In a short description of the pilot and resulting program, one county official stated as follows: "The general consensus is that the public appreciates the courtesy call and the opportunity to ask questions as to what they can expect when they report to the Justice Center. With specific instructions as to where to appear along with defined expectations regarding resolving court matters the docket management experienced a noticeable improvement in efficiency and a decrease in FTA warrants." For more information on that particular program, contact Scott Mattson at SMatson@douglas.co.us.

[T]elephone reminders using live callers work. They increase court-appearance rates, . . . reducing the significant costs associated with FTAs . . . .

less recognize that, for whatever reason, telephone reminders using live callers work. They increase court-appearance rates, dramatically reducing the significant costs associated with FTAs and FTA warrants. These costs include fiscal impacts, such as money to process, serve, and house defendants on FTA warrants, but they also include the varied social costs triggered by needlessly arresting and incarcerating individuals for a behavior that might be prevented by a simple phone call. In Jefferson County, the benefits of reducing FTAs clearly outweigh any costs associated with the Notification Program borne by the Sheriff's Office, [29] and other agencies (*i.e.*, municipal police agencies, prosecutors, court clerks, and judges) have realized the benefits of a decreased workload at virtually no cost to them.

FTAs also tend to adversely affect defendants and the larger society long after the initial case is resolved, and reminder calls can help minimize those effects. For example, a person's bail is frequently determined largely on the number of FTAs on his or her criminal record, and removing false or unfair indicators of FTAs from defendants' records has become an important but complex issue for discussion among those who rely upon criminal histories to guide them in the bail-setting process. To the extent that the justice system can prevent the FTA altogether, no indication of any failure can exist on the criminal history, and the issue of a needless FTA affecting a later case is avoided.

Court-date-reminder programs can also be important additions to any pretrial-justice initiative that seeks to increase the use of citations and summonses, as is recommended by national standards on pretrial release.[30] Because the criminal justice system is often reluctant to purposefully increase the use of citations and summonses, implementation of a workable notification system may mitigate system fears and thus reduce system resistance to pretrial justice reform in this area.

A significant (albeit empirically unmeasured) benefit to using live reminder calls appears to be in the area of customer service, an area often overlooked in the criminal justice system. The Jefferson County Court Date Notification Program strives to make most people's first—and often only—trip to the courthouse something other than an entirely negative experience.

Finally, as demonstrated by the FTA Pilot Project, calling people *after* they fail to appear for court can be equally effective at increasing court-appearance rates, and although such calls lack the full customer-service benefits of reminder calls, they can be done for significantly less money. The future of the Jefferson County Court Date Notification Program, and perhaps the model program for the future, includes strategic use of a combination of court-date reminders along with a call-after notification component for all court events, based on empirical data indicating the need for intervention. The hope is that this strategic planning, coupled with ongoing research and practice to increase the number of successful contacts (especially contacts with defendants themselves) might lead to court appearance rates of 95% and higher. Additional research needed to move toward this goal should focus on script content, message timing (*e.g.*, one week versus three days prior to the court date), message delivery (*e.g.*, using a male versus a female voice, and the nuances between leaving a message with a human being versus a machine), program placement and operation (*e.g.*, operated by the law enforcement versus operated by the courts), and new ways of communicating with defendants, such as via email or text message.

CONCLUSION

For many jurisdictions, the singular response to defendants failing to appear for court is to issue warrants, typically with high monetary bonds attached, and then to wait for law enforcement to serve those warrants through arrests.[31] Unfortunately, this way of doing business is costly, and it has resulted in some jurisdictions having court-appearance rates as low as 70%. Innovative ways of dealing with the issue of court-appearance rates should be of primary concern to all people in the criminal justice system, including judges. The Jefferson County FTA Pilot Project demonstrated that live telephone callers either reminding defendants to come to court or notifying them of their impending warrant status after they fail to appear for court can have a dramatic effect on appearance rates. The resulting Court Date Notification Program has shown that these results can be improved and that customer service is significantly enhanced through the use of a live caller intervening in advance of the court event.

The administration of justice does not normally play out in the types of cases that dominate newspaper headlines or law-school and criminal-justice-program curricula. More often, justice is done in the routine, if not mundane cases at the lower end of the system, such as misdemeanor and traffic cases—the figurative water bills of the criminal justice system. The aggregate commonality of these cases should not erode our sense of urgency in dealing with them fairly; instead, we should see them as opportunities to demonstrate a glimpse of justice on a grand scale. Doing so, quite simply, is good public policy.

29. CJP Staff has estimated that in 2006 alone, the Sheriff's Office spent roughly $900,000 processing and housing persons arrested on FTA warrants. CJP staff further estimated that if the program became fully implemented throughout the First Judicial District and reached its full potential of reducing FTA warrants by 52% (its six-month benchmark), the Sheriff's Office could realize a net savings of approximately $400,000 per year.

30. *See*, *e.g.*, AMERICAN BAR ASSOCIATION STANDARDS, *supra* note 6, at 41, 63-70.

31. As reported by The Denver Post, the spokesperson for the Jefferson County Sheriff's Office stated that its deputies' "most common arrest is for those who don't appear in court, a needless use of time." *Phone Roundup Helping Courts Stay Filled*, THE DENVER POST (Nov. 23, 2007), at http://www.denverpost.com/ci_7536476?source=bb.

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Email: dwilderm@jeffco.us.

Appendix Y

FINANCIAL QUESTIONNAIRE TO ESTABLISH INDIGENCY - MUNICIPAL COURTS

PART I - GENERAL INFORMATION

APPLICATION BY: ☐ DEFENDANT ☐ PARENT OR GUARDIAN IF DEFENDANT IS UNDER 18 OR INCOMPETENT

FOR: ☐ INDIGENT DEFENSE SERVICES* ☐ INSTALLMENT PAYMENT OF FINES / PENALTIES

* NOTE: IF YOU ARE APPLYING FOR INDIGENT DEFENSE SERVICES, YOU MAY BE CHARGED WITH AN APPLICATION FEE.

ARE YOU RECEIVING WELFARE OR PARTICIPATING IN ANOTHER GOVERNMENT BASED INCOME MAINTENANCE PROGRAM? ☐ Yes ☐ No

ARE YOU ONLY COMPLETING THIS FORM FOR INSTALLMENT PAYMENTS OF YOUR FINE? ☐ Yes ☐ No

ARE YOU ONLY CHARGED WITH TRAFFIC OR PARKING OFFENSES? ☐ Yes ☐ No

■ **IF YOU ANSWERED "YES" TO ALL OF THE ABOVE 3 QUESTIONS, GO TO PART VI AND COMPLETE CERTIFICATION.**

COMPLAINT NUMBER(S)	NUMBER OF CO-DEFENDANTS

CHARGES

LAST NAME	FIRST NAME	MIDDLE INITIAL	EYE COLOR	☐ Male ☐ Female	DATE OF BIRTH / /

SOCIAL SECURITY NUMBER	DRIVER'S LICENSE NUMBER	STATE

HOME STREET ADDRESS	CITY	STATE	ZIP

HOME PHONE NUMBER ( ) -

HOW LONG AT THE ABOVE ADDRESS?

MARITAL STATUS ☐ Married ☐ Single ☐ Widowed ☐ Separated ☐ Divorced

NUMBER OF THOSE YOU SUPPORT (Children or other family members)

WHICH INCOME TAX RETURNS DID YOU FILE LAST YEAR? ☐ Federal ☐ State ☐ None

HAVE YOU POSTED BAIL FOR THIS CHARGE? ☐ Yes ☐ No

NAME AND ADDRESS OF BAIL BOND AGENCY OR PERSON WHO POSTED BAIL

AMOUNT POSTED $

PART II - EMPLOYMENT HISTORY

ARE YOU NOW EMPLOYED? ☐ Yes ☐ No

IF YES, LENGTH OF EMPLOYMENT

CURRENT EMPLOYER, IF EMPLOYED; IF UNEMPLOYED, LAST EMPLOYER AND DATE LAST EMPLOYED

EMPLOYER'S ADDRESS	PHONE NUMBER ( ) -	POSITION HELD

PART III - INCOME AND ASSETS (include all assets you own by yourself or with someone else)

GROSS WAGES (before all deductions for taxes, etc.) $

PER ☐ Week ☐ 2 Weeks ☐ Month

OTHER INCOME RECEIVED MONTHLY (for example: welfare, social security, unemployment compensation, worker's comp, disability pension) $

DO YOU RECEIVE ALIMONY OR CHILD SUPPORT? ☐ Yes ☐ No

BY COURT ORDER? ☐ Yes ☐ No

AMOUNT RECEIVED MONTHLY $

DOES ANYONE CONTRIBUTE TO THE PAYMENT OF YOUR EXPENSES? ☐ Yes ☐ No

IF YES, WHO?

TOTAL AMOUNT CONTRIBUTED MONTHLY $

MONTHLY INCOME - ALL SOURCES $

CHECKING ACCOUNT: BANK	ACCOUNT NUMBER	BALANCE $

SAVINGS ACCOUNT: BANK	ACCOUNT NUMBER	BALANCE $

OTHER CASH AVAILABLE	AMOUNT $

REAL ESTATE OWNED? ☐ Yes ☐ No

ADDRESS Describe

ADDRESS Describe

CURRENT VALUE $

VEHICLE / VESSEL ☐ Auto ☐ Truck ☐ Motorcycle ☐ Moped ☐ Boat

YEAR MAKE MODEL

CURRENT VALUE $

OTHER PERSONAL PROPERTY? ☐ Yes ☐ No

ITEM Describe

CURRENT VALUE $

TOTAL ASSETS $

(OVER)

PART IV - EXPENSES AND LIABILITIES

DO YOU HAVE A MORTGAGE? ☐ Yes ☐ No / DO YOU PAY RENT? ☐ Yes ☐ No	DO YOU LIVE IN A HALFWAY HOUSE? ☐ Yes ☐ No		MONTHLY PAYMENT $	BALANCE OWED $
DO YOU HAVE OUTSTANDING LOAN(S) (CAR, HOME, PERSONAL, ETC.)?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
DO YOU OWE INSURANCE PREMIUMS AND / OR SURCHARGES?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
DO YOU OWE MEDICAL EXPENSES - DOCTOR / HOSPITAL / OTHER?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
DO YOU OWE CREDIT CARD BALANCES?	☐ Yes ☐ No	CREDIT LIMIT $	TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
DO YOU OWE COURT FINES / PENALTIES / COSTS?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
ARE YOU REQUIRED TO PAY CHILD SUPPORT AND / OR ALIMONY?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
DO YOU PAY FOR LIVING EXPENSES (FOOD, CLOTHING, UTILITIES, TRANSPORTATION, ETC.)?	☐ Yes ☐ No		MONTHLY AMOUNT $	LIVING EXPENSES OWED $
DO YOU OWE MONEY FOR ATTORNEY FEES?	☐ Yes ☐ No		TOTAL MONTHLY PAYMENT $	TOTAL BALANCE OWED $
TOTAL LIABILITIES			**TOTAL MONTHLY PAYMENT** $	**TOTAL LIABILITIES** $

TOTAL NET WORTH	**TOTAL ASSETS** $	-	**TOTAL LIABILITIES** $	=	**TOTAL NET WORTH** $

PART V - ATTORNEY INFORMATION

CAN YOU AFFORD TO PAY FOR AN ATTORNEY? ☐ Yes ☐ No	IF YES, HOW MUCH? $	CAN PARENTS, GUARDIANS, RELATIVES OR FRIENDS HELP YOU PAY FOR AN ATTORNEY? ☐ Yes ☐ No	DID A PRIVATE ATTORNEY EVER REPRESENT YOU? ☐ Yes ☐ No

NAME OF ATTORNEY	ADDRESS	PHONE NUMBER

WHO PAID FOR ATTORNEY?	AMOUNT PAID $

PART VI - AUTHORIZATION

I AUTHORIZE THE COURT OR THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONDUCT SUCH INVESTIGATION AS MAY BE NECESSARY TO VERIFY MY FINANCIAL STATUS, WHICH MAY INCLUDE BUT MAY NOT BE LIMITED TO A REVIEW OF MY CREDIT HISTORY, STATE AND/OR FEDERAL INCOME TAX RETURNS, WAGE RECORDS, BANK ACCOUNTS AND OTHER FINANCIAL INSTITUTION RECORDS.

SIGNATURE	DATE	WITNESS, NAME AND POSITION	DATE

PART VII - CERTIFICATION PURSUANT TO NEW JERSEY COURT RULE 1:4-4(b)

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE AND UNDERSTAND THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

SIGNATURE	DATE

FOR COURT USE ONLY

COUNSEL ASSIGNED	APPLICATION FEE
☐ Yes ☐ No	☐ ASSESSED $_____ ☐ WAIVED ☐ PARITAL PAYMENT SCHEDULE_____

COUNSEL DENIED - REASONS

APPROVED BY JUDGE	SIGNATURE	DATE	
☐ Yes ☐ No			Please notify the court if you have a disability and will require assistance.

NOTES:

Rev. November 2003

Appendix Z

_____ Municipal Court

Incarcerated Defendant Request for Relief Form

This form is for use by unrepresented defendants incarcerated in a New Jersey State or County correctional facility who are asking that a Municipal Court grant relief or in some way modify the status of the defendant's case. **Send this form *only* to the particular Municipal Court that has jurisdiction over the matter(s) in question.** When submitting this completed form to that Municipal Court, you must enclose the original, for the court's use, and one copy, for the Municipal Prosecutor. Please also retain a copy for your records.

The Rules of Court (Rule 7:7-2(d)) require that the Municipal Court respond to a request for relief submitted by an unrepresented incarcerated defendant using this form within 45 days of receipt of the completed form. If at the end of 45 days after submitting the form you have not received a response from the Municipal Court (taking into account mail delivery times), you may seek further relief from the Municipal Presiding Judge of the county within which the particular Municipal Court is located. The addresses for the Municipal Presiding Judges are included on page 3 of this form. When seeking such further relief from the Municipal Presiding Judge, please include a copy of the completed form that you earlier submitted to the particular Municipal Court requesting relief.

Requestor Information

Name		
AKA (Also Known As)	Date of Birth	U.S. Citizen ☐ Yes ☐ No
Correctional Institution: Name and Address	Inmate Number	
	Projected Release Date	
Home Address (or expected address after release)		

Complaint(s) Information

Provide as much information as possible to enable the court to identify the complaint(s)

☐ I am not represented by an attorney on any of the following charges.

Complaint Number(s)	Date of Offense	Charges	Date of Conviction (if appropriate)

☐ Additional page(s) attached if needed.

Relief Sought (check all that apply)

☐ I wish to apply for a municipal public defender.

☐ I request that my warrant be recalled.
(cite reason) _____

_____

☐ I request that my bail amount/conditions of release be modified.
(cite reason) _____

_____

☐ I request that the fines/penalties I owe be converted to jail time.
(cite reason) _____

_____

☐ I request that the court grant me credit for time served.
(cite reason) _____

_____

☐ I request that all or a portion of the monies I owe be vacated.
(cite reason) _____

_____

☐ Other relief sought (describe)

_____

_____

_____

_____

☐ I would like my matter(s) scheduled for a court hearing.

_____

☐ Additional page(s) attached if needed.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____ _____
Date Requestor's Signature

For Court Use Only

Date Received: _____ Explanation: _____

Granted: ☐ _____

Partially Granted: ☐ _____

Denied: ☐ _____

_____ _____
Date Signed Judge's Signature

Vicinage Municipal Presiding Judges

(for Further Relief if No Response to the Completed Form Received within 45 Days)

As indicated on page 1 of this form, if the Municipal Court to which you submit this completed form does not respond within 45 days, under the Court Rules you may seek further relief from the Municipal Presiding Judge who oversees that and the other Municipal Courts in the county. The addresses of the Municipal Presiding Judges by county/counties are as follows. (Reminder: Initial submission of the completed forms does not go to the Municipal Presiding Judge, but rather to the particular Municipal Court having jurisdiction over the matter(s).)

Atlantic/Cape May Vicinage
Municipal Presiding Judge
Mays Landing Criminal Courts Complex
4997 Unami Boulevard
Mays Landing, NJ 08330

Bergen Vicinage
Municipal Presiding Judge
Bergen County Justice Center
10 Main Street, Suite 309
Hackensack, NJ 07601

Burlington Vicinage
Municipal Presiding Judge
Burlington County Courts Facility
49 Rancocas Road
Mount Holly, New Jersey 08060

Camden Vicinage
Municipal Presiding Judge
6 Executive Campus
Suite 300
Cherry Hill, NJ 08002

Essex Vicinage
Municipal Presiding Judge
Essex County Veterans Courthouse
50 West Market Street
Newark, New Jersey 07102

Hudson Vicinage
Municipal Presiding Judge
Administration Building
595 Newark Ave. – Rm. 406
Jersey City, NJ 07306

Mercer Vicinage
Municipal Presiding Judge
Mercer County Courthouse
209 South Broad Street
Trenton, NJ 08650

Middlesex Vicinage
Municipal Presiding Judge
Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903

Monmouth Vicinage
Municipal Presiding Judge
Monmouth County Courthouse
71 Monument Park – Rm. 322 S
Freehold, NJ 07728

Morris/Sussex Vicinage
Municipal Presiding Judge
Morris County Courthouse
Washington & Court Streets
Morristown, NJ 07963

Ocean Vicinage
Municipal Presiding Judge
Ocean County Justice Complex
120 Hooper Ave
Toms River, NJ 08754

Passaic Vicinage
Municipal Presiding Judge
Passaic County Courthouse
77 Hamilton Street – Room 648
Paterson, NJ 07505

Union Vicinage
Municipal Presiding Judge
Union County Courthouse
2 Broad Street
Elizabeth, NJ 07207

Somerset/Hunterdon/Warren Vicinage
Municipal Presiding Judge
Somerset County Courthouse
20 North Bridge Street
Somerville, NJ 08876

Gloucester/Cumberland/Salem Vicinage
Municipal Presiding Judge
Municipal Division Office
19 North Broad Street
Woodbury, NJ 08096

Appendix AA

ACS OUTSTANDING BENCH WARRANTS
AS OF SEP 28, 2017

YEAR ISSUED	FTA	FTP	TOTAL
1993	194	41	235
1994	5,315	300	5,615
1995	10,566	969	11,535
1996	11,684	4,981	16,665
1997	17,735	4,103	21,838
1998	20,179	3,669	23,848
1999	21,924	3,691	25,615
2000	24,679	4,180	28,859
2001	24,407	4,156	28,563
2002	26,079	4,068	30,147
2003	27,325	3,748	31,073
2004	25,563	3,740	29,303
2005	26,991	3,711	30,702
2006	30,206	3,802	34,010
2007	41,921	3,622	45,543
2008	43,277	4,269	47,546
2009	40,544	5,518	46,062
2010	38,612	4,531	43,143
2011	29,841	5,104	34,945
2012	30,744	5,077	35,821
2013	29,032	5,947	34,979
2014	31,604	5,642	37,246
2015	41,154	7,658	48,812
2016	42,004	12,541	54,545
2017	57,276	23,931	81,207
TOTAL	**698,856**	**128,999**	**827,857**

ATS OUTSTANDING BENCH WARRANTS
AS OF SEP 28, 2017

YEAR ISSUED	FTA	FTP	TOTAL
1986	490	13	503
1987	1,971	71	2,042
1988	4,821	53	4,874
1989	8,867	331	9,198
1990	19,647	411	20,058
1991	26,078	256	26,334
1992	46,759	689	47,448
1993	54,101	1,289	55,390
1994	43,038	883	43,921
1995	38,581	1,517	40,098
1996	41,503	2,174	43,677
1997	43,066	2,814	45,880
1998	104,396	5,967	110,363
1999	82,664	5,532	88,196
2000	80,109	13,158	93,267
2001	83,166	6,419	89,585
2002	94,703	7,655	102,358
2003	83,240	8,553	91,793
2004	74,634	7,990	82,624
2005	61,752	6,747	68,499
2006	61,390	7,104	68,494
2007	60,409	6,724	67,133
2008	67,488	8,081	75,569
2009	48,950	7,613	56,563
2010	45,504	7,596	53,100
2011	36,153	6,397	42,550
2012	37,621	6,129	43,750
2013	35,950	7,248	43,198
2014	34,615	6,971	41,586
2015	37,229	7,750	44,979
2016	48,750	11,929	60,679
2017	70,653	18,275	88,928
TOTAL	**1,578,298**	**174,339**	**1,752,637**

Appendix BB

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

GLENN A. GRANT, J.A.D.
ACTING ADMINISTRATIVE DIRECTOR
OF THE COURTS

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 037
TRENTON, NEW JERSEY 08625-0037
(609) 984-0275

DIRECTIVE #15-08
[Supersedes Directive #18-06]

To: **Assignment Judges**
Trial Court Administrators

[Questions or comments may be addressed to 609-633-2390 or 609-984-4853.]

From: **Glenn A. Grant, J.A.D.**

Subject: **Use of Warrants and Incarceration in the Enforcement of Child Support Orders**

Date: **November 17, 2008**

This directive supersedes Directive #18-06 (issued August 29, 2006) and establishes an "Order for Relief to Litigant, Enforcement of Litigant's Rights (Form: CN 11213)," which replaces Appendix C "Order for Coercive Incarceration" and Appendix F "Order for Relief to Litigant" from the prior directive. The new form of order was endorsed by the Conference of Family Presiding Judges.

The orders promulgated under Directive #18-06 were designed specifically for use at expedited enforcement hearings before a judge. Their use required that the judge and probation officer have two orders ready for use, depending upon the reliefs determined by the court. One was to be used when incarceration was ordered and the other when alternative reliefs were ordered. Combining the orders will help to streamline probation's preparation for enforcement hearings and enable the judge to use a single, uniform order regardless of the outcome of the hearing. In addition, this new, combined order more clearly and comprehensively addresses the findings that need to be made (e.g., determinations of indigence and ability to pay) and the various other reliefs that may be ordered. This new order replaces the two existing ones and is to be used at expedited enforcement hearings before a judge. The Uniform Summary Support Order (See Appendix XVI in the New Jersey Court Rules) should continue to be used for orders resulting from scheduled enforcement hearings, usually before a child support hearing officer.

Besides the changes to the orders as described, no other substantive changes were made to the prior directive. Some editorial clarifications have been made. The

Probation Child Support Enforcement Operations Manual will be updated to include a new section on procedures involving the use of warrants and incarceration in the enforcement of child support orders.

Any questions about this directive may be directed to Richard R. Narcini, Chief, Child Support Enforcement Services at 609-633-2390.

G.A.G.

Attachment

c: Chief Justice Stuart Rabner
Family Presiding Judges
Jennifer Velez, Commissioner, Department of Human Services
Jeanette Page-Hawkins, Director, Division of Family Development
AOC Directors and Assistant Directors
Richard R. Narcini, Chief, Child Support Enforcement Services
Elidema Mireles, Esq., Chief, Child Support Hearing Officer Program
Vicinage Chief Probation Officers
Family Division Managers
Finance Division Managers
Vicinage Assistant Chief Probation Officers, Child Support
Child Support Hearing Officers
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

**Enforcement of Child Support Orders –
Use of Warrants and Incarceration**

A. Introduction

This Directive presents a conceptual and legal framework for the use of incarceration in cases involving obligors who are brought before the court on child support enforcement cases under Rule 1:10-3, Relief to Litigant. This sets forth standards on the conduct of proceedings, the use of forms, and the setting of an amount the payment of which will secure the obligor's release from custody, referred herein as a "release amount" In an opinion decided March 8, 2006, the Supreme Court in Pasqua v. Council, 186 N.J. 127 (2006) ("Pasqua"), held that indigent parents, charged with violating child support orders and subject to coercive incarceration at hearings to enforce litigants' rights, have a right to appointed counsel.

This Directive relates primarily to child support enforcement actions brought by the Probation Division and discusses the nature of the court's findings, the rights of the obligor, and the conduct of hearings. Although this Directive applies to all relief to litigant proceedings, including those initiated by individuals, it is not intended to involve the Probation Division's support enforcement staff in cases other than support matters enforced through the Probation Division.

New Jersey law defines three distinct bases for incarceration for refusal to comply with obligations established by child support orders:

- Relief to litigant proceedings pursuant to R.1:10-3, R. 5:3-7.
- Contempt proceedings pursuant to R. 1:10-2.
- Criminal prosecution pursuant to N.J.S.A. 2C:24-5.

Of these three, relief to litigant proceedings under R. 1:10-3 are the most frequently used enforcement process and they are discussed in this Directive in the greatest detail. Since resort to either criminal prosecution under N.J.S.A. 2C:24-5 or contempt proceedings under R. 1:10-2 is rare in New Jersey, this Directive concludes with a brief description of these practices.

B. Rule 1:10-3 Relief to Litigant Proceedings

1. Two Types of Hearings

To coerce payment from an obligor who has become delinquent in the payment of court-ordered child support, the court may conduct a hearing to enforce litigant's rights under R. 1:10-3. Such a hearing may be either a scheduled enforcement of

litigants rights hearing (ELR hearing) or an expedited enforcement of litigants rights hearing (Expedited ELR hearing). In an ELR hearing an obligor is compelled to appear before a judge or a Child Support Hearing Officer (CSHO). In an Expedited ELR hearing, the obligor is compelled to appear before a judge and may be compelled to appear without additional notice. The Probation Division will recommend to the court whether an Expedited ELR hearing is required. The obligor's appearance for an Expedited ELR hearing may be compelled by either the issuance of a warrant or a notice to appear.

At ELR and Expedited ELR hearings, there must be a determination of the obligor's non-compliance with the child support order and the extent of such non-compliance. Having found there to be non-compliance, the court may then fashion a remedy to give appropriate relief to the obligee. Probation may indicate the remedies available to the court, which should take into consideration a number of factors, as more fully described below in Section B5 (ELR and Expedited ELR Hearing Procedures).

(a) ELR Hearings Before a Child Support Hearing Officer

Generally, the first enforcement activity in such matters is an ELR hearing scheduled before a Child Support Hearing Officer (CSHO) on notice of motion pursuant to R. 5:4-1, with that notice indicating that a warrant may issue for failure to appear. The notice directs the obligor to appear for the hearing at a specific date and time. The obligee is also provided notice of the proceeding, but the obligee's appearance at the hearing is optional. In the event a party disagrees with the CSHO's recommendation that party is entitled to an immediate de novo hearing before a judge.

The obligor is required to appear at the ELR hearing to respond to the allegations of non-compliance contained in the motion. The ELR hearing allows the obligor to present any defenses, with the CSHO making findings as to the validity of the defenses and the obligor's ability to pay or comply with the order. Any recommended order providing relief must take into consideration factors affecting the obligor's ability to pay, e.g., employment, disability, public assistance. Such hearings may result in an order in aid of litigant's rights requiring an additional payment or a series of periodic payments to liquidate the accrued arrears. As a further relief component, the order may provide that if future payments are missed, a warrant may be issued without any additional notice to the obligor. The purpose of such a warrant is to bring the obligor before the court on an expedited basis in the event of future alleged non-compliance.

In order to recommend that enforcement include coercive incarceration, the CSHO must make findings as to the obligor's non-compliance and ability to pay. The CSHO also will make findings with respect to the obligor's indigency, ensuring that all of the information required to complete the Probation Child Support Enforcement Obligor Questionnaire (Form: CN 10819) has been elicited from the obligor. As required by R. 5:25-3(c)(10)(B), once all of the information required to complete the Obligor

Questionnaire is elicited and the hearing is concluded, any recommendation by the CSHO for incarceration must go to a judge for determination.

(b) A Warrant for an Expedited ELR Hearing Before a Judge

A warrant for an Expedited ELR hearing before a judge is usually issued when there is a continued failure to make support payments or provide medical coverage subsequent to an ELR hearing or failure to appear at one or more ELR hearings. As noted above, the recommendation that such a proceeding occur is made by Probation based on consideration of several factors related to the case. A supervisory review within Probation also is required before any such recommendation to issue a warrant is forwarded to the judge.

A warrant requiring expedited appearance before a judge should, where appropriate, specify a release amount, the payment of which would eliminate the need for an enforcement hearing.

Characteristics of the Expedited ELR Hearing before a judge are described below in detail in Section B5 (ELR and Expedited ELR Hearing Procedures).

2. <u>Use of Warrants and Incarceration in ELR and Expedited ELR Hearings</u>

The court may issue warrants to arrest obligors or order the coercive incarceration of obligors in connection with ELR and Expedited ELR hearings in three basic circumstances: (See Sections B3 and B5 below for detailed explanation of what must occur prior to and during these hearings)

- **Failure to Appear for an ELR Hearing.** Where an obligor, after service of notice to appear, fails to appear for a ELR hearing and arrest thus is necessary to ensure obligor's appearance before the court. See "Warrant – Failure to Appear (Form: CN 10815)."

- **Future Failure to Make One or More Child Support Payments.** Where an order resulting from a ELR hearing provides that if the obligor fails to make one or more child support payments in the future, a warrant for arrest may issue in order to address the non-compliance expeditiously. See "Warrant – Failure to Pay After Order (Form: CN 10816)."

- **Coercive Incarceration.** Where an obligor has been ordered at an Expedited ELR hearing before a judge to make a payment toward child support arrears or provide medical coverage and refuses to do so, and incarceration is necessary to coerce compliance with the court's order. See

"Order for Relief to Litigant, Enforcement of Litigant's Rights (Form: CN 11213)."

3. Circumstances for Issuance of Warrants and Subsequent Arrests

It is of great importance to have a clear understanding of the different circumstances that may form the basis for issuance of warrants and subsequent arrests. Each of the following circumstances raises different issues that must be addressed to ensure that the process is fair and that the rights of all parties are protected. Each such circumstance will be addressed here in turn.

(a) Failure to Appear for an ELR Hearing

When the obligor has failed to appear for a scheduled ELR hearing, a warrant may be issued. The purpose of the arrest and incarceration is to ensure the appearance of the obligor before the court to respond to the motion related to the obligor's failure to pay court-ordered support. See "Warrant – Failure to Appear (Form: CN 10815)." Key points regarding the issuance of a Failure to Appear warrant are as follows:

- Warrant is issued because of obligor's failure to appear.
- Purpose of warrant/incarceration is to ensure obligor's appearance before a judge.
- Legal authority for warrant is in R. 1:10-3 and R. 5: 4-1 (c).
- Payment of a specified amount will secure release. (See Section B5(a) below.)

(b) Future Failure to Make One or More Child Support Payments

The court may prospectively and conditionally order issuance of a warrant based on one or more future missed payments. See "Warrant – Failure to Pay After Order (Form: CN 10816)."

The court has discretion to order the issuance of a warrant conditioned on a future failure to pay when it believes that bringing an obligor before the court on an expedited basis will be necessary. For example, this approach may be used when an obligor has demonstrated a history of failing to appear, of using scheduled hearings to delay payment of support, or has income sources that cannot be attached prior to the hearing (such as being self-employed or working "off the books").

Additionally, a child support order requiring the obligor to make a lump sum payment toward arrears on or before a specified date may include a provision for the issuance of a warrant if the lump sum payment is not made. The child support order

requiring the lump sum payment would specify that the refusal by the obligor to make a lump sum payment by the specified date may result in the issuance of a warrant.

While appearance can be achieved by the less extreme use of a notice to appear at an ELR hearing, the issuance of a warrant is used to compel the obligor's expedited appearance to address non-compliance. Key points regarding the issuance of a Failure to Pay After Order Warrant are as follows:

- Warrant is issued for failure to make court-ordered payments.
- Purpose of warrant/incarceration is to ensure obligor's expedited appearance before a judge to address obligor's non-compliance with the order.
- Legal authority for warrant is found in R. 1:10-3 and R. 5: 4-1(c).
- Payment will secure release. (See Section B5(a) below.)

(c) Coercive Incarceration

Coercive incarceration, ordered pursuant to R. 1:10-3, is designed to force compliance with the payment ordered at ELR and Expedited ELR proceedings. See "Order for Relief to Litigant, Enforcement of Litigant's Rights (Form: CN 11213)." Unlike incarceration that takes place prior to an Expedited ELR hearing – that is, incarceration to ensure obligor's timely appearance before the court -- coercive incarceration that is ordered by the court during the course of such a hearing is based on the court's finding that the obligor has a support order established and possesses the ability to pay, but refuses to pay. Coercive incarceration may only occur after an obligor is advised of his or her right to counsel. If the court determines the obligor to be indigent, the obligor must be afforded counsel upon request. The court may proceed with the Expedited ELR hearing and make appropriate findings and order appropriate relief. However, the court may not incarcerate an indigent obligor to coerce compliance with the order unless a method is found to provide counsel to obligors who are determined to be indigent. Accordingly, coercive incarceration ordered pursuant to R. 1:10-3:

- **Must Be Based on a Finding of Failure to Comply with the Order**. The court must conclude that a child support order has been established and that the obligor has failed to comply with the order. The court must determine the extent of non-compliance by entering a finding as to the amount of arrears or other form of non-compliance. The court must then enter an order setting forth the nature and extent of compliance it deems required to enforce litigant's rights and the obligor must fail or refuse to comply with that enforcement order.

- **Must Not Infringe on the Rights of those Deemed Indigent**. A determination of the obligor's indigence must be made prior to the Expedited ELR hearing. If the court determines the obligor to be indigent, and obligor is

not afforded counsel, incarceration is not available as a relief. This does not preclude the court from ordering other reliefs, such as directing the obligor to seek employment or to report to Probation on a regular basis in order to keep the court apprised of his or her economic status.

- **Must Be Based on a Finding of Ability to Pay.** With respect to any payment or other action sought to be coerced by the incarceration, the court must make a finding that the obligor has the current ability to make payment or otherwise comply with its order. Since incarceration imposed under R. 1:10-3 is intended to be coercive, not punitive, it is essential that the court at the hearing find the obligor has an ability to pay an amount acceptable to the court. Such payment will secure obligor's release without delay. Therefore, it is within the obligor's control to avoid incarceration and such incarceration is considered coercive. If the obligor does not have the ability to pay, incarceration is not available as a relief, as such incarceration in that situation would be punitive in effect.

Key points with regard to coercive incarceration are as follows:

- Cause of incarceration is obligor's refusal to make a specified payment as ordered by the court.

- Purpose of warrant/incarceration is to coerce compliance with the order for payment.

- Legal authority for coercive incarceration is found in R. 1:10-3.
  Payment of a specified amount will secure obligor's release. (See Section B5(a) (Release Upon Payment of Arrears) below.)

4. Probation Division's Role in the Issuance of Warrants

The Probation Division will recommend to the court whether an expedited hearing is required. In such cases, the obligor's appearance may be compelled by the issuance of a warrant rather than a notice to appear. Such warrants must be issued by a judge. Probation's recommendation should take into consideration a number of factors that may include, but are not limited to the following:

- Prior compliance with the provisions of the court order over a significant period of time.
- Age of the order containing the self-executing warrant provision, if applicable, and whether the obligor has been regularly paying since issuance of that order. In cases where the obligor has been paying regularly for an extended period, subsequent non-payment would ordinarily be addressed by first scheduling an enforcement hearing.

- Whether or not some payments have been received.
- Whether a motion with a return date has been filed with the court for modification of the support obligation, determination of arrears, direct payment credit, emancipation, or termination of support.
- Amount of the order and unpaid support.
- Any known delays in posting payments to ACSES/NJKiDS[1] or pending payments due to known administrative enforcements such as tax offset and Financial Institution Data Match (FIDM).
- Age of the child or children covered by the court order and the likelihood that a child age 18 or older may be subject to emancipation.
- Enforcement history of the case.
- Pending civil settlements where the obligor anticipates a significant monetary award.
- Payments are being received through an income withholding order.
- Request of the obligee that a warrant for the obligor's arrest not issue.
- Any other relevant information about the case, e.g., a verified change of circumstances.

Note: If there is a current income withholding order in place and the employer is not remitting the payments directed by the order, Probation should proceed against the employer.

5. ELR and Expedited ELR Hearing Procedures

The purpose of ELR and Expedited ELR hearings is to enforce litigant's rights by determining whether there has been non-compliance with the child support order and, if so, taking appropriate action to effectuate compliance. Where an obligor through issuance of a warrant has been compelled to appear for an Expedited ELR hearing before a judge, the hearing must be conducted as expeditiously as possible, but not later than 72 hours after obligor's apprehension. This 72-hour maximum is intended for situations where obligors are held over weekends. It is otherwise expected that obligors will in most instances be brought before a judge within two business days.

(a) Release Upon Payment of Arrears.

An obligor may avoid the ELR or Expedited ELR hearing by acknowledging non-compliance and bringing his or her child support obligation into compliance with the order by making the required payments prior to the hearing. Warrants issued to compel

[1] The current statewide automated child support system, ACSES, will soon be replaced by a successor system named NJKiDS.

appearance at an Expedited ELR hearing typically specify the arrears amount – referred to as the "release amount" – the payment of which will eliminate the need for the hearing. Payment of the release amount is applied to the child support arrears, thus making the hearing no longer necessary. If the hearing thus is no longer necessary, so is incarceration of the obligor to ensure appearance at the hearing. The obligor at that point thus would be released from incarceration. See "Notice and Receipt for Child Support Release Payment (Form: CN 10818)."

This procedure provides a means to address the rare circumstance in which the obligor is willing to pay the release amount but wishes to contest the factual basis for the arrears at the hearing that follows his or her arrest. In this circumstance, release from incarceration may also be obtained where the obligor wants to contest the issue of non-compliance and demonstrates the probability of his/her subsequent appearance at the ELR or Expedited ELR hearing by posting the amount claimed due to be deposited in the support account and held in abeyance pending the hearing. Upon release under these conditions, the obligor must report to the Probation Division by noon of the following business day to confirm the contest and obtain a hearing date. See "Notice and Receipt for Child Support Release Payment (Form: CN 10818)." The Probation and Finance Division within each county should establish a protocol for communicating such contests to ensure that the release payments are held until a determination is made at the hearing.

(b) Pre-Hearing Interview.

Prior to an ELR or Expedited ELR hearing, in all cases in which coercive incarceration is a reasonable likelihood, the Probation Division must conduct an interview of the obligor and complete the "Probation Child Support Enforcement Obligor Questionnaire" (Form: CN 10819) in order to facilitate the court's determination as to the obligor's indigence.

(c) Right to Counsel and Indigence Determination.

At an Expedited ELR hearing, before coercive incarceration can be ordered, the obligor must first be advised of the right to counsel. If the obligor indicates that he or she wants to retain counsel, but the attorney is not present, the court in its discretion may release the obligor or may remand the obligor to the jail until such time as the attorney is able to appear.

At the hearing, the court must then make a determination as to non-compliance with the child support order and, if so, the extent of the non-compliance. The court will then gather information about the obligor's financial situation, based on information provided by Probation and through the obligor's testimony. See "Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant (Form: CN 11212)."

Information provided by the obligee may also be considered. Based on these various information components, the court will make findings as to the obligor's ability to (1) retain private counsel (indigency), and (2) pay some or all of the current support obligations (ability to pay).

If the judge determines that an obligor is indigent, the court may proceed with the hearing and make appropriate ability-to-pay findings and consider the appropriate remedy for enforcement of its order. However, unless a method is found to provide counsel to obligors who are determined to be indigent, incarceration may not be used as an option to coerce compliance with support orders. If the judge finds that the obligor is not indigent and has the ability to pay but chooses not to, incarceration is available as a relief.

(d) Alternative Remedies

In addition to incarceration, other appropriate remedies that the court may consider for enforcement of its order include, but are not limited to:

- Wage execution, if not already in place
- Lump sum payable on the same date as the hearing
- Lump sum payable on a future date
- Missed payment status (also known as a "bench warrant stipulation," usually stating that missing two subsequent payments may result in issuance of a new bench warrant)
- Liens on any pending lawsuits
- Job search report to Probation (directing obligor to provide Probation with proof of application for a certain number of suitable jobs on a weekly or biweekly basis)
- Referral to the Department of Labor's "One Stop Center" (Work Requirements Program)
- Direct obligor to apply for benefits to which she/he may be entitled, such as Social Security
- Direct obligor to provide Probation/NMSN (National Medical Support Notice) Center with medical insurance information
- Initiation of driver's or professional license suspension
- Community service as provided in R. 5:3-7(b)
- Direct obligor to sell assets and turn over the proceeds to the court.

Where an obligor has been ordered at a Expedited ELR hearing to make a payment toward child support arrears or provide medical coverage and fails to do so, and relief other than incarceration has been deemed necessary to coerce compliance with the order, the court may set forth those requirements in the "Order for Relief to Litigant, Enforcement of Litigant's Rights" (Form: CN 11213).

If the obligor's responses lead the court to conclude that modification of the support order may be appropriate because of the obligor's incarceration, disability, or other change in circumstance, the court in its discretion may (1) recommend that the obligor file a support modification motion, or (2) arrange for a hearing to address the relevant change in circumstances, with such hearing to be on a date provided by the Family Division or the Probation Division, as appropriate, that will allow adequate time for service of notice on the obligee of the hearing.

(e) Ordering Coercive Incarceration

To order coercive incarceration, the court, after advising the obligor of his or her right to retain counsel, must make each of the following findings in the following sequence:

- Obligor is subject to an order to pay child support;
- Obligor has failed to comply with that order and thus owes arrears;
- The court previously has directed obligor to make a payment to be applied to arrears;
- Obligor is not indigent and is therefore not entitled to court-appointed counsel, or the obligor is indigent and appointed counsel is available
- The court has determined that the obligor has financial ability to pay the amount ordered by the court at the ELR hearing;
- Obligor refuses to pay the amount ordered at the ELR hearing; and
- Incarceration is necessary to coerce compliance.

When the court orders an obligor to be incarcerated, the obligor must be brought back before the court at least every two weeks to consider the obligor's particular circumstances and whether incarceration is still an effective means to coerce compliance. Since incarceration is coercive rather than punitive, a party must be released when the coercive purpose is deemed to have failed and continued incarceration would be punitive only. Marshall v. Matthei, 327 N.J. Super. 512, 527-529 (App. Div. 2000).

Releasing an Obligor

The court may also release the obligor on condition that the obligor makes certain payments or meet other conditions. Examples of conditions of release include, but are not limited to, requiring the obligor to seek employment and report back to the court on those efforts, requiring the obligor to apply for unemployment benefits, and taking action to provide health care coverage for his or her dependents. Most commonly, however, the relief requires the obligor to make payments.

Indigent Obligors

If the judge determines that an obligor is indigent, the court may proceed with the hearing and make appropriate findings and order appropriate relief. However, unless a method is found to provide counsel to those obligors whom the court finds to be indigent, incarceration may not be used as an option to coerce compliance with support orders.

C. Generating Warrants

Presently warrants are produced by Probation's automated Warrant Generator Program. (See Warrant – Failure to Appear (Form: CN 10815) and Warrant – Failure to Pay After Order (Form CN 10816)). In the future, they will be produced on the new automated system NJKiDS, once implemented. These warrants set out the accumulated arrears amount, with the full arrears amount as of the day the warrant is issued constituting the "release amount." In the event that the warrant is issued for failure to provide medical support, the obligor's release should be conditioned on the obligor furnishing proof of medical coverage. The child support hotline phone number should be printed on the face of the warrant. This provides the Sheriff's Office with access to reliable information to verify, at the obligor's request, the current arrears amount. If that verified amount is less than the amount noted on the warrant, the arresting authority must accept payment of that lesser amount as the release amount. Payment of the amount stated on the warrant will satisfy the warrant even if the total arrears amount on ACSES/NJKiDS is greater than the amount at the time of obligor's arrest.

D. Receipts for Payment of Release Amount

Obligors paying release amounts, payments of child support obligations, must be given receipts for those payments. It is important to maintain the distinction between release amounts and bail payments. Release amounts are not bail, nor should money paid as bail be used for release payment purposes. All vicinages must use the form of receipt attached as "Notice and Receipt of Child Support Release Payment (Form: CN 10818)." The form includes an acknowledgment by the payer that the payment will be applied to the support arrears and will not be returned to the payer. The form also provides for release of the obligor upon payment of the release amount, even if the obligor wishes to contest the arrears amount (see the procedure described in Section B5(a) above). This form is available at all locations where such payments are collected.

The Judiciary has enlisted the cooperation of the County Sheriffs and local municipalities to use this form consistently for arrests on child support warrants. Accurate reporting of child support warrant collections benefit the Title IV-D Child Support Program as well as the Sheriffs' Title IV-D cooperative agreements.

E. Rapid Notice to Probation of Obligor's Arrest

Since the Probation Division routinely receives rapid notification of an obligor's arrest, Probation generally is able to schedule an obligor to be brought before a judge the same day or the following day. The few exceptions occur either because Probation and the court are unavailable on the weekend or a holiday, or because the court is not available for these matters on Mondays or Fridays in some counties. Obligors arrested on warrants for violating support orders must be brought before a court as soon as possible, but in any event within 72 hours of arrest.

F. Rapid Initial Contact with the Arrested Obligor

Some arrested obligors pay the support arrears amount (release amount) shown on the face of the warrant or the amount of their current arrears as verified by the Sheriff's Office and are released immediately.

Those obligors who do not pay the Sheriff either the release amount as shown on the face of the warrant or their full arrears amount as verified by the Sheriff are taken into custody. In addition to the indigency interview procedure outlined in Section B5(b) above, Probation is authorized in appropriate cases to attempt to reach agreement with the arrested obligor on a payment amount that will be recommended to the judge, which amount may be less than the full amount shown on the warrant. In such matters, the recommendation generally is accompanied by an agreement by the obligor to resume timely payment of the ongoing court-ordered obligation(s). Agreement is reached in the substantial majority of such cases. If the judge decides to accept Probation's recommendation, the terms of the agreement will be included in the judge's order. After that payment is made, the warrant should be discharged and the obligor released. In the majority of cases, this happens on the same day as the arrest or the following day. However, if no such agreement is reached, the Expedited ELR hearing shall proceed**.**

Probation conducts the required indigency interview and arranges for a prompt hearing before a judge, and, wherever practical, attempts to negotiate a release amount with the obligor prior to the obligor seeing the judge.

G. Notifying Obligee of Arrested Obligor's Expedited ELR Hearing

The obligee frequently has information that can help the judge determine the obligor's ability to pay. Probation thus should attempt to contact the obligee by telephone in all cases in which an arrested obligor will have an Expedited ELR hearing. In those cases where Probation is able to reach the obligee prior to such hearing, the obligee can submit relevant information over the phone or by fax to Probation, by the obligee appearing in person at the hearing, or by the obligee speaking by phone with the judge's staff. It should be emphasized to the obligee that he or she may appear in

person at the Expedited ELR hearing. Probation should ask for relevant information whenever an obligee calls regarding missed payments. The obligee can send the information in writing, or Probation can make a record of any oral report as a case note on ACSES/NJKiDS. This information would then be available to the judge at the hearing.

While Probation should make efforts to contact the obligee and while the obligee may appear at the hearing, such efforts must not delay the hearing. See Anyanwu v. Anyanwu, 339 N.J. Super. 278 (App. Div. 2000), certif. den.170 N.J. 388 (2001).

H. Timing of the Expedited ELR Hearing Following Arrest – Within 72 Hours, Excluding Holidays

In all cases in which an obligor has been arrested on a warrant to compel appearance and where the release amount has not been paid, Probation shall arrange for the obligor to be brought before a judge for an Expedited ELR hearing. Probation also should attempt to contact the obligee. (See Section G above.) All arrested obligors should be seen by a judge as soon as possible. That normally means within two business days, unless a weekend intervenes or there is no judge available. In no case, however, should this occur any later than 72 hours after the time of arrest, excluding holidays. Video conferencing, where available, should be used in order to expedite the process.

I. Subsequent Hearing or Reviews

In cases where the judge orders coercive incarceration at the ELR hearing (See Section B5 above), the judge must conduct subsequent periodic reviews to determine whether incarceration continues to be an effective means to compel obligor's compliance. Such subsequent reviews should be held at least every two weeks. At each review, Probation should advise the judge as to how long the obligor has been incarcerated.

These subsequent reviews require that the court determine whether the continued incarceration is still coercive, rather than punitive. At the point that the incarceration is no longer coercive, the court has the discretion to release the obligor or to refer the case to the County Prosecutor pursuant to N.J.S.A. 2C:24-5.

J. Rule 1:10-2 Contempt Proceedings

It is contemplated that the great majority of those who are incarcerated subsequent to the ELR or Expedited ELR hearing will be jailed to coerce compliance under R. 1:10-3. However, the judge also may determine that the obligor's acts or

omissions are sufficiently severe to warrant punishment. In such cases, the judge may institute an order to show cause or for arrest specifying those acts or omissions to be contumacious under R. 1:10-2. It is important to keep in mind the important distinctions that differentiate these R. 1:10-2 proceedings from the R. 1:10-3 hearings: (1) R. 1:10-2 proceedings are punitive, rather than coercive, and (2) any sentence of incarceration must be determinate in length.

In R. 1:10-2 proceedings, the alleged contemnor (1) must receive notice of the specific acts alleged to be contumacious and must have the opportunity to be heard, (2) may have the right to a jury trial, (3) has the right to retain counsel or, if indigent, to have counsel appointed, and (4) has the right to be released on his or her own recognizance, unless the court determines that the imposition of bail is necessary to ensure appearance. For example, this approach may be appropriate where the obligor has demonstrated a pattern of failing to appear before the court, intentionally hiding assets, accumulating an excessive amount of unpaid support, and/or continuing to refuse to pay when the judge is satisfied that the ability to pay exists.

These R. 1:10-2 cases must be prosecuted by the Attorney General or the County Prosecutor. The aggrieved litigant's (obligee's) attorney should not prosecute except for good cause shown. If found guilty of contempt under R. 1:10-2, the obligor may be punished by serving up to six months in jail, paying a fine of not more than $1,000, or both.

K. N.J.S.A. 2C:24-5 Criminal Prosecution

Notwithstanding any action taken by the court pursuant to R. 1:10-2 or R. 1:10-3, the Attorney General or the County Prosecutor may pursue criminal charges against the obligor under N.J.S.A. 2C:24-5. Such approach is appropriate if the obligor willfully fails to provide support that he or she (1) can provide, and (2) knows that he or she is legally obliged to provide. In such proceedings, the obligor would be charged with a fourth degree criminal offense. A person who is convicted of a fourth degree crime may be sentenced to imprisonment for a term not to exceed 18 months, a fine not to exceed $10,000, or both. In addition, persons convicted of this offense may also be ordered to make restitution. As with R. 1:10-2 proceedings, in these matters the obligor has the right to be represented by counsel and, if indigent, is entitled to assigned counsel or a public defender. In such matters the accused (that is, the obligor) may be entitled to a trial by jury. If the obligor makes that demand, the Rules of Court require the prosecution to be transferred from the Family Part to the Criminal Division.

FORMS

CN: 10815 Warrant – Failure to Appear

CN: 10816 Warrant – Failure to Pay After Order

CN: 10818 Notice and Receipt for Child Support Release Payment

CN: 10819 Probation Child Support Enforcement Obligor Questionnaire

CN: 11212 Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant

CN: 11213 Order for Relief to Litigant, Enforcement of Litigant's Rights

SAMPLE

WARRANT

FAILURE TO APPEAR

DATE OF WARRANT:2/4/2002

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF CAPE ESSEX

DOCKET FD-22-772-95
CS90090643Q DFD ID: C512345022

THE STATE OF NEW JERSEY,

TO THE SHERIFF OF THE COUNTY ABOVE OR ANY CONSTABLE OR POLICE OFFICER,

GREETINGS:

PURSUANT TO THE AUTHORITY OF THIS COURT AS DETAILED IN PART 1, SECTION 10, SUBSECTION 3, OF THE RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY, YOU ARE HEREBY COMMANDED TO ARREST

JOHN JONES

AND CONFINE THIS PERSON TO THE COUNTY JAIL.

SUBJECT HAS FAILED TO APPEAR IN COURT ON 12/23/2001 FOR A HEARING TO ENFORCE LITIGANT'S RIGHTS

IF THE ABOVE NAMED PERSON CANNOT SATISFY THE CONDITIONS OF RELEASE, YOU MUST BRING THAT PERSON BEFORE A JUDGE OF THIS COURT THE SAME DAY OR NO LATER THAN 72 HOURS FROM THE TIME OF THE ARREST.

CONDITIONS OF RELEASE:
THE SUBJECT MAY BE RELEASED UPON THE PAYMENT OF **$13,726.40**.IF SAID PERSON, UPON ARREST, ALLEGES THAT THE TOTAL ARREARS ARE LOWER THAN THE AFORESTATED AMOUNT, THE ARRESTING AGENCY MAY CALL THE CHILD SUPPORT HOTLINE AT 1-800-621-5437 TO CONFIRM THE ARREARS AMOUNT. IF, AFTER MAKING SAID CALL, THE TOTAL ARREARS ARE DETERMINED TO BE LESS THAN THE AFORESTATED AMOUNT, THE ARRESTING AGENCY IS AUTHORIZED TO ACCEPT THE LESSER AMOUNT AS A CONDITION OF RELEASE AND SHALL NOTE SAME ON THE RETURN OF THIS WARRANT TO THE COURT. **THIS IS A RELEASE PAYMENT. IT IS NOT BAIL AND IS NOT REFUNDABLE.**

I, THE HONORABLE I.A. JUDGE, JUDGE OF THE SUPERIOR COURT,
IN AND FOR THE COUNTY OF CAPE ESSEX,
DO HEREWITH ISSUE AND MAKE THIS YOUR WARRANT TO ARREST JOHN JONES TO ANSWER FOR SAID TRESPASSES AGAINST THE DIGNITY, POWER, AND AUTHORITY OF THIS COURT.

HONORABLE _____, JSC

WARRANT INFORMATION
NAME: JONES, JOHN
ADDRESS: 216 FOB AVE VALDOSTA NJ 08000-1357
SUBJECT
DOB: 11/9/1950 SSN: 123-45-6789 SEX: M RACE: CAUCASIAN
DESCRIPTION: HEIGHT: 6 FT. 01 IN. WEIGHT: 210 LB. HAIR: BROWN EYES: BLUE

ALL PAYMENTS RECEIVED MUST BE ACKNOWLEDGED WITH A NOTICE AND RECEIPT FOR RELEASE PAYMENT. BAIL RECEIPTS MUST NOT BE USED.

REVISED FORM PROMULGATED BY DIRECTIVE #15-08 (11/17/08), CN 10815-ENGLISH

SAMPLE

WARRANT

FAILURE TO PAY AFTER ORDER

DATE OF WARRANT:2/4/2002

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY OF CAPE ESSEX

DOCKET FD-22-772-95
CS90090643Q DFD ID: C512345022

THE STATE OF NEW JERSEY,

TO THE SHERIFF OF THE COUNTY ABOVE OR ANY CONSTABLE OR POLICE OFFICER,

GREETINGS:

PURSUANT TO THE AUTHORITY OF THIS COURT AS DETAILED IN PART I, SECTION 10, SUBSECTION 3, OF THE RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY, YOU ARE HEREBY COMMANDED TO ARREST

JACKIE DOE

AND CONFINE THIS PERSON TO THE COUNTY JAIL.

SUBJECT HAS FAILED TO MAKE CHILD SUPPORT PAYMENTS AS DIRECTED UNDER THE COURT ORDER DATED 5/13/1996 WHICH REQUIRES THAT IF PAYMENT IS NOT MADE HE/SHE BE BROUGHT BEFORE THE COURT FOR AN ENFORCEMENT HEARING ON AN EXPEDITED BASIS.

IF THE ABOVE NAMED PERSON CANNOT SATISFY THE CONDITIONS OF RELEASE, YOU MUST BRING THAT PERSON BEFORE A JUDGE OF THIS COURT THE SAME DAY OR NO LATER THAN 72 HOURS FROM THE TIME OF THE ARREST.

CONDITIONS OF RELEASE:
THE SUBJECT MAY BE RELEASED UPON THE PAYMENT OF **$13,726.40**.
IF SAID PERSON, UPON ARREST, ALLEGES THAT THE TOTAL ARREARS ARE LOWER THAN THE AFORESTATED AMOUNT, THE ARRESTING AGENCY MAY CALL THE CHILD SUPPORT HOTLINE AT 1-800-621-5437 TO CONFIRM THE ARREARS AMOUNT. IF, AFTER MAKING SAID CALL, THE TOTAL ARREARS ARE DETERMINED TO BE LESSTHAN THE AFORESTATED AMOUNT, THE ARRESTING AGENCY IS AUTHORIZED TO ACCEPT THE LESSER AMOUNT AS A CONDITION OF RELEASE AND SHALL NOTE SAME ON THE RETURN OF THIS WARRANT TO THE COURT. **THIS IS A RELEASE PAYMENT. IT IS NOT BAIL AND IS NOT REFUNDABLE.**

I, THE HONORABLE I.A. JUDGE, JUDGE OF THE SUPERIOR COURT,
IN AND FOR THE COUNTY OF CAPE ESSEX,
DO HEREWITH ISSUE AND MAKE THIS YOUR WARRANT TO ARREST JACKIE DOE TO ANSWER FOR SAID TRESPASSES AGAINST THE DIGNITY, POWER, AND AUTHORITY OF THIS COURT.

HONORABLE _____, JSC

WARRANT INFORMATION

NAME: DOE, JACKIE
ADDRESS: 216 FOB AVE VALDOSTA NJ 08000-1357
SUBJECT
DOB: 11/9/1950 SSN: 761-55-7897 SEX: M RACE: AFRICAN-AMERICAN
DESCRIPTION: HEIGHT: 6 FT. 01 IN. WEIGHT: 210 LB. HAIR: BROWN EYES: BROWN

ALL PAYMENTS RECEIVED MUST BE ACKNOWLEDGED WITH A NOTICE AND RECEIPT FOR RELEASE PAYMENT. BAIL RECEIPT MUST NOT BE USED.

REVISED FORM PROMULGATED BY DIRECTIVE #15-08 (11/17/08), CN 10816-ENGLISH

Notice and Receipt of Child Support Release Payment

In the Matter of

Docket / Warrant No. _____
Child Support Case No. _____
Amount Paid $ _____

_____
Obligor

NOTICE

The above named person (obligor) is subject to proceedings to enforce a court order to pay child support. In order to be released from custody on this matter the total amount printed on the warrant or a subsequent court order must be paid. **This amount IS NOT bail and will not be returned.** It will be used to satisfy all or part of the total amount in arrears on the obligor's child support order.

Since the above amount **IS NOT** bail, no surety bonds or 10% (bail) of the arrears can be accepted. This amount must be paid in full by cash, check or money order. It must equal the amount shown on warrant, unless a lesser amount is determined by the arresting agency either by confirming the arrears amount on the 24-hour Child Support Hotline at 1-800-621-5437 or by a subsequent court order changing the amount.

ACKNOWLEDGMENT BY PAYER

I understand that my payment will be applied to the amount in arrears on the obligor's child support order. I further understand that this amount will not be returned to me.

Payer Information:
Print Name: _____ Address: _____

_____

Signed: _____ _____

Date: _____ Telephone: _____

☐ Check here if the obligor contests that this payment is owed and requests a hearing. If checked, the obligor must:

- Pay the release amount; **and**
- Appear at the Probation Division in the county enforcing the case by noon of the business day following release to obtain the date, time and place of the hearing; **and**
- Appear at that hearing and bring any proofs needed to support his/her position.

If contested, the funds will be deposited in the support account and placed on hold pending the outcome of the hearing. The obligor must appear at the Probation Division **AND** at the scheduled hearing, or the matter will be deemed uncontested.

Payment Received By:
Name: _____ Title: _____
Signature: _____ Agency: _____

New Jersey Judiciary

Probation Child Support Enforcement Obligor Questionnaire

1. Last Name	2. First Name	3. Middle Name

4. Also Known As	5. CS#	6. Docket #	7. Driver's License #

8. Date Of Birth	9. Age	10. Place of Birth	11. Social Security #	12. Sex	13. Race

14. Height	15. Weight	16. Eye Color	17. Hair Color	18. Distinguishing Marks

19. BW Date	20. Arrest Date	21. Release Amount	22. Interpreter Needed? ☐ Yes ☐ No	23. Language

1. Residence

24. Residence Status ☐ Rent ☐ Own ☐ Other	25. How Long at Current Address	26. Residence Phone No.	27. Cell Phone No.

28. Street Address	29. City	30. State	31. Zip

32. Name of Co-habitant	33. Relationship to Co-habitant	34. Pay support on another case? ☐ Yes ☐ No Additional CS #

35. Number of Dependants	36. Is the Mortgage/rent payment current?

37. Does the obligor have primary care of children or other dependents? ☐ Yes ☐ No ☐ N/A	38. If yes, has the obligor made Alternate care arrangements? ☐ Yes ☐ No	39. Has alternate care information been obtained or referral made? ☐ Yes ☐ No

2. Employment Status

40. ☐ Employed ☐ Unemployed ☐ Disability ☐ Workers Compensation ☐ General Assistance ☐ Other

41. Current Employer's Name And Address	42. If Unemployed, How Long?
	43. Applied/Receiving Unemployment?
	44. Reason For Unemployment

45. Employer Phone #	46. Occupation	47. Salary/Hourly Rate	48. Hours Per Work Week

49. Date Started	50. Skills	51. Supervisor's Name

52. Does Your Employer Provide Medical Insurance? ☐ Yes ☐ No	53. Name Of Medical Insurance Company

54. If Yes, Who Is Enrolled On The Medical Insurance?	55. Medical Insurance Policy Number

56. Previous Employer's Name And Address	57. Date Employment Started
	58. Date Employment Ended

59. Phone No.	60. Salary	61. Reason Employment Ended

3. Financial Status

62. Monthly Income (Salary/Wages/Hourly Rate)	$	63. House(s)/Land Market Value	$
64. Unemployment/Disability/Worker's Comp	$	65. Value Of All Motor Vehicles	$
66. Social Security/Veterans Administration	$	67. Cash	$
68. Pension	$	69. Account Balances - Checking/Savings/etc.	$
70. Public Assistance/Subsidies/Food Stamps	$	71. Civil Judgment Awards/Pending	$
72.Child Support/Alimony	$	73. Current Value of Stocks/Bonds/CDs'/IRA	$
74. Other Income - Trust Fund/Insurance/etc.	$	75. Pending Law Suits	$
76. Misc. Income	$	77. Misc. Assets	$
78. Total Monthly Income	**$**	**79. Total Assets**	**$**
80. Rent/Mortgage Payment	$	81. Loan Balances - Mortgages/Vehicle	$
82. Loans - Vehicle/Boat/etc.	$	83. Medical/Dental/Hospital Debts	$
84. Child Support/Alimony Obligations	$	85. Fines Owed to Other Courts	$
86. Medical Insurance	$	87. Credit Card Balances	$
88. Household Utilities	$	89. Civil Judgments Owed	$
90. Other Household Expenses	$	91.Other Debts and Expenses	$
92. Total Monthly Expenses	**$**	**93. Total Debts**	**$**

Certification

I certify that the foregoing statements made by me in the above financial statement are true. I am aware that if any statements made by me in the financial statement are willfully false, I am subject to punishment as provided by *R.* 1:4-4(B).

94. Obligor's Signature		95. Date
96. Interviewer's Signature	97. Title	98. Date

Record notes related to special circumstances (e.g., disability, unemployment, etc.) below:

Conducting the Ability to Pay Hearing for an Obligor Held on a Support Warrant

Documents for review prior to the hearing:

Obligor Questionnaire

Wage and Hour report

Payment History

Current Support Order

Suggested Steps for obtaining all necessary information from the Obligor:

Review the Obligor Questionnaire and other documents

Swear the Obligor

Begin with the Demographic Questions below, reviewing, as needed, the Questionnaire with the Obligor (the questions that are included in the Questionnaire *are in italics with the Questionnaire number (in parentheses)*

Clarify inconsistent, inconclusive or ambiguous answers

Determine why the bligor is failing to pay support

Ensure that the Obligor has a plan to address arrearages – memorialize the plan in an order

Demographic Questions: (to complete or confirm the information in the questionnaire)

What is your current address? (28)
(Do not accept only a Post Office Box number; obtain a residential address.) (28)

What is your Social Security Number? (11)

What is your Date of Birth? (8)

Where were you born? (10)

Are you employed? (40)

Current Support Order:

Probation is saying you owe $_____, do you agree?

How many children are on the order, what are their ages?

Do you have other children you are required to support? (34)

What are you prepared to pay today?

How much can you raise?

Why have you not paid the support amount? (Listen to the Obligor's responses before you initiate further questions.)

What is your plan to try to satisfy the arrears and pay the child support?

Living Arrangements (Section 1*):*

Do you own your home, pay a mortgage or rent? (24)

Are you current with your rent or mortgage? (36)

What is the amount of your rent/mortgage? (80)

Who is paying for your rent and food?

Is the lease in your name?

If no, who rents the place?

How long have you lived there?

Are you living alone? (32)

If the Obligor is employed (Section 2)

Where are you employed? (41)

Please give the full address and telephone number of your employer. (41/45)

How long have you been employed? (49)

How many hours do you work? (48)

Are you salaried or paid by the hour? (62/47)

How often are you paid? (Weekly, monthly, twice a week or every two weeks)

Do you have any other source of income?

How much do you make?

Did you have a pay stub available?

Do you receive tips or other monies not reflected in your paycheck?

Medical Coverage:

Does your employer provide medical coverage? If no, are you a member of a union?

Have you applied for medical coverage for your child/children through this job or union?

Do you have the medical coverage for your child/children? Do you have proof? (such as a copy of the insurance card.)

If the Obligor is unemployed (Section 2)

How long have you been unemployed? Or, When was your last job? (42/58)

What happened to your prior job? (44)

What type of work did you do? (46/56)

How long were you there? Or, When did you start working in that job?

Did you apply for Unemployment Insurance payments? (43/64)

Are you collecting unemployment compensation? (43/64)

Do you have any prospects for a job? (*See Comment Section on Questionnaire)*

What have you done to try to find a job? (*See Comment Section on Questionnaire)*

Are you disabled in any way that I should know about? (See Comment Section on Questionnaire)

If so, do you have medical proof of the disability?

Did you apply for any type of disability income?

Are you collecting any disability payments? State? Social Security? Veterans? Worker's Compensation?

Do you have proof of the type of income you are receiving as a result of the disability?

Is the obligor receiving any Social Security income? Determine if it is SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance) payments.

Is your child receiving any kind of income as a result of your disability payment?

Other income source: (See Comment Section on Questionnaire)

Have you filed any lawsuit? (75)

If so, what is the name, address and phone number for your attorney?

What is the status of the lawsuit?

Do you have a workers compensation claim? (See Comment Section on Questionnaire)

What is the status of your case, and are you represented by counsel in this case?

Do you own any property, stocks and/or bonds, or annuities? (63/65/73)

Are you receiving any pension income? (68)

Have you had any winnings from the lottery or from a casino in the last six months? (If yes) how much?

Do you have any other assets?

Ask the Obligee, if present, if she or he is aware of any assets the Obligor has?

If the Obligor states that she/he is disabled and is not receiving any benefits based on the Disability: (See Comment Section on Questionnaire)

What is the nature of your disability?

How did the injury or condition happen?

When did this happen?

Were you employed at the time of your injury? If yes, who was the employer?

Are you under the care of a doctor? Obtain the name and location of doctor.

What is the diagnosis and prognosis according to your doctor?

When did you last see the doctor? What was the reason? What did the doctor say? When is your next appointment?

Are you taking any prescribed medications? Do you have any medical coverage?

Does your condition affect your ability work? How – seek specific details.

Do you have anything in writing from your doctor as to your ability to work?

(If the Obligor is not under medical supervision ask if she/he plans to see a doctor and request medical documentation as to disability.)

If the Obligor is participating in a Rehabilitation, or "Back to Work" Program: (See Comment Section on Questionnaire)

Is this a voluntary Program?
What is the name of the Program?
What is the address and phone number for the Program?
Who can we contact to confirm your participation?
Do you have any proof that you are participating in the Program?
When did you start the Program?
How long does the Program last?
Is it an in-patient or outpatient Program?
Are you allowed to work while your participate in the Program?
If yes, where have you been looking for work?
If working, what do you earn?
Do you have to pay the Rehabilitation Program any fees?
Are you receiving any training as part of the Program?
When will you be completing the Program?

If the Obligor has been incarcerated: (See Comment Section on Questionnaire)

How long were you incarcerated?
When were you released?
If unemployed, what have you been doing to find work?
What type of work did you do before?
Do you have any prospects for employment?
Are you living alone?
Are you on Criminal Probation or Parole? What is the name of your P.O.?
Are Child Support payments a condition of your probation or parole?
Do you have any criminal fines to pay?

For the Obligor who is unemployed and states he/she lacks income but is not disabled. (See Comment Section on Questionnaire)

(Note: Question carefully to ascertain how obligations are being met.)

Do you have any income from any source?
What is your cell phone number?
Do you have a car? Is it yours? Is it leased or financed? Make, model and color.
Is the car insured? What is the name of the insurance company? How much do you pay to insure it?
If no car, how did you get here today?
If by public transportation – how much did that cost? How did you get the money?
If someone else drove Obligor, ask who. How does Obligor know the person who gave Obligor the lift. Did you provide money for gas?
Do you have any consumer debt? Credit cards? (Get details of balance, and status of payments. Note that a good credit score means that a minimum payment is made on time.)
Any loans? (If yes, obtain details)
If Obligor lives at own place – Do you have cable? Internet access? How much is paid for these services?
Besides this case, are you responsible for supporting anyone else?

Possible Orders:

Order to Return to Incarceration
Insure that specific findings necessary to support the Order are included on the face of the Order to facilitate appellate review.

Order for alternative disposition
Consider all possible remedies such as:

- Wage Execution, if not in place
- Lump Sum payable today
- Lump Sum payable on a future date
- Missed payment status (also known as a bench warrant stipulation, usually stating that missing two subsequent payments may result in issuance of a new bench warrant)
- Lien on lawsuit
- Job search report to Probation (directing Obligor to provide proof of application for X number of suitable jobs on a weekly or biweekly basis to Probation)
- Referral to DOL One Stop Center (Work Requirements Program)
- Direct Obligor to apply for benefits to which she/he may be entitled such as Social Security
- Direct Obligor to provide Probation/MNSM Center with medical insurance information
- Initiation of Drivers or Professional License Suspension or Restoration
- Community service as provided in R. 5:3-7(b)
- Direct Obligor to sell assets and tender proceeds into court.

If Obligor's responses lead the court to conclude that modification of the support order may be appropriate because of the Obligor's incarceration, disability, or other change in circumstance, the court, in its discretion, may (1) recommend that the Obligor file for a modification of support or (2) arrange for a hearing to address the relevant change in circumstances on a date provided by the Division Manager that will allow adequate time for service of notice to the Obligee.

Superior Court of New Jersey
Chancery Division, Family Part
_____ County
Docket No. F _____
Probation Account No. CS _____

_____
Plaintiff
☐ Obligor / ☐ Obligee

v.

_____
Defendant
☐ Obligor / ☐ Obligee

Order for Relief to Litigant - Enforcement of Litigants Rights

With appearance by:
☐ Plaintiff ☐ Attorney for Plaintiff _____
☐ Defendant ☐ Attorney for Defendant _____
☐ IV-D Attorney _____
☐ _____ County Probation Division _____

THIS MATTER having come before the Court on the _____ day of _____, _____;

AND the Court having considered the evidence and arguments presented, and having found that:

The obligor is under a Court Order to pay $_____ per _____ for the support of _____ child(ren), $_____ per _____ for spousal support and $_____ per _____ toward arrearages effective _____;

The obligor has failed to make payments and owes arrearages totaling $_____ as of _____ due to the Obligee and/or _____ County Welfare;

☐ The obligor is indigent and: ☐ qualifies for court appointed counsel, but none is available;
☐ qualifies for court appointed counsel and _____ is appointed;

☐ The obligor is not indigent and does not qualify for court appointed counsel;

☐ The obligor has the current ability to pay $_____ toward the arrearages;

☐ The obligor has the financial ability to pay and refuses to do so, and that incarceration of the obligor is necessary to coerce compliance;

AND the Court having further found that:

_____
_____
_____
_____

Therefore it is hereby ORDERED that:

☐ The obligor be incarcerated in the _____ County Jail until the Obligor pays $_____ to be applied to said arrears or until further Order of this Court. The Court will review the continuing efficacy of this Order for coercive incarceration no later than two weeks from the date of this Order so long as the above release payment is not paid and the Obligor remains incarcerated.

☐ The obligor be released from custody in this matter;

☐ The support-related bench warrant currently issued in this matter is discharged;

☐ Payments shall be made by Income Withholding on current and future income sources, including:

Name of income source Address of income source

_____ _____

_____ _____

_____ _____

Obligor shall, however, make payments at any time that the full amount of support and arrears is not withheld.

☐ The Obligor shall make support payments of $_____ per _____ plus $_____ per _____ toward arrears for a total amount of $_____ per _____.

☐ A lump sum payment of $_____ must be paid by the obligor by _____ or a bench warrant for the arrest of the obligor shall issue without further notice.

☐ Effective _____ future missed payment(s) numbering _____ or more may result in the issuance of a warrant, without further notice.

☐ An employment search must be conducted by the obligor. Written records of at least #_____ contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be provided immediately to the Probation Division.

☐ The obligor is hereby noticed to appear before this court on _____ at _____ in _____ for further review and possible modification of the child support obligation. The _____ Family/ Probation Division shall serve notice to the Obligee and other interested parties, if any, in this matter.

☐ The Motor Vehicle Commission, State of New Jersey, shall TAKE NOTICE that the suspension of the Obligor's Drivers License caused by the non-payment of child support is hereby removed; the Obligor must take note, however, that the Commission requires a fee for restoration of the license, and that this order does not pertain to any reason for license suspension other than non-payment of child support.

☐ It is further ORDERED:

_____

_____

_____

_____

_____

_____

It is further ORDERED that all provisions of any prior Orders in this matter, not in conflict with this Order, shall remain in full force and effect.

_____ _____

Date , J.S.C.

Appendix CC

Procedures for Credit Card and Electronic Payments of Municipal Court Fees and Financial Obligations

Directive #8-98 November 17, 1998
Issued by: James J. Ciancia

This Directive establishes procedures for electronic payments to those municipal courts that have been authorized to accept credit cards, debit cards or electronic funds transfers to collect certain court imposed financial obligations.

I. Introduction

Pursuant to *N.J.S.A.* 40A: 5-43, *et seq.* and *N.J.S.A.* 2B:1-5, municipal courts that have been authorized by resolution of their governing bodies may establish systems to accept electronic payments to collect certain court imposed obligations. Those systems are subject to the Rules of Court and rules and regulations promulgated by the Director of the Division of Local Government Services.

The Supreme Court has adopted *R.* 7:14-4(c), which authorizes the various municipal, central and joint municipal courts to accept electronic payments for fees, costs, fines, penalties, service charges or other judicially imposed obligations, pursuant to procedures established by the Administrative Director of the Courts.

The Director of the Division of Local Government Services has promulgated rules, *N.J.A.C.* 5:30-9.1, *et seq.* (Government Electronic Receipt Acceptance), to guide local government units in their use of credit cards, debit cards and electronic funds transfer mechanisms to collect local unit obligations. (Attachment A is a reference copy of those Rules.) Counties and municipalities that have adopted enabling resolutions should apply those rules in implementing electronic payment systems on behalf of their municipal courts. The definitions contained in the enabling legislation and the rules, including those at *N.J.A.C.* 5:30-9.2 (Definitions), are applicable to the same terms when used in this Directive.

II. General Procedures

Consistent with law and *R.* 7:14-4(c), the following conditions apply to municipal, central and joint municipal courts that are lawfully permitted to establish systems to accept electronic payments for fees, costs, fines, penalties, service charges or other judicially imposed financial obligations using card-based payment or electronic funds transfer:

1. The municipality or county must have entered into a written contract, on behalf of its municipal court, with an organization that makes or processes electronic receipt transactions and the contract must have been obtained pursuant to the requirements of the Local Public Contracts Law (*N.J.S.A.* 40A:11-1, *et seq.)* and the rules adopted by the Director of Local Government Services (*N.J.A.C.* 5:30-9.1, *et seq.).* In addition to the conditions imposed by *N.J.A.C.* 5:30-9.4 (Contracting for services), the contract must require that:
   a. Any authorized service charges, fees, costs, surcharges or other

charges for processing electronic transactions in the municipal court will be billed directly to the county or municipality and paid in accordance with *N.J.A.C.* 5:30-9.10 (Payment of Electronic Receipt Fees), without deduction from any municipal court bank account; and

b. The manual or automated record keeping, processing and accounting practices of a county=s or municipality=s contract processor must be compatible with all Judiciary administrative procedures governing the operation of the municipal courts, including those related to the Automated Traffic System/Automated Complaint System (ATS/ACS).

c. With the exception of those fees authorized in Section 2 below, the municipality must not add any fees, costs or charges for processing credit card, debit card or electronic funds transfer system payments made through the municipal court, and its municipal courts must not assess or collect any such fees, costs or charges.

2. With the prior written approval of the Administrative Director of the Courts, the assessment of fees, in excess of the total obligation owed by a person or organization, may be permitted as an added cost of a specialized card or electronic funds transfer transaction. Such fees will only be authorized when that transaction cannot be completed through the payment of cash, check or negotiable forms of payment at the same location; for example, payments made for services provided through unattended kiosks or via pay-by-phone systems.

3. Consistent with the provisions of *N.J.S.A.* 2B:1-5b, no person or organization that is a defendant in a criminal matter may offer a credit card for the payment of bail or for the payment of fines or penalties related to the imposition of a sentence, for a crime of the first, second or third degree under Title 2C of the New Jersey Statutes. Debit cards and electronic funds transfer mechanisms may be utilized for the payment of bail or for the payment of fines or penalties related to sentences imposed for those matters. For all other matters, any form of electronic receipt, authorized by the enabling county or municipal resolution may be utilized to make payments for bail, fines, penalties or other court imposed financial obligations.

4. To better maintain the public=s confidence in the impartiality of the judicial process, on-site advertising of the availability of credit card, debit card or electronic funds transfer payments for municipal court obligations is restricted as follows:

a. Except as provided for in subparagraph c. below, commercial credit or debit card logos or other identifying signs are not to be displayed in any area of a building occupied by the municipal courtroom, the municipal court Violations Bureau, the court director=s or administrator=s offices or any other space used by the municipal court.

b. Automatic Teller Machines (ATMs) are not to be located in any area of a building occupied by the municipal courtroom, the municipal

court Violations Bureau, the court director=s or administrator=s offices or other space used by the municipal court.

c. A Notice of Payment Options, in the form of a sign not larger than 8-1/2 inches by 11 inches, is to be displayed only at each payment window of the Violations Bureau. Commercial credit or debit card logos or other identifying signs, each not larger than 3 inches by 2 inches, may be affixed to the Notice as indicated below. The Notice is to contain the same text in substantially the same format as contained in the exemplar in Attachment B.

III. Financial Procedures

The following financial procedures, consistent with *N.J.A.C.* 5:30-9.5 (Accounting and Control), are applicable to the municipal courts:

1. Electronic receipt transactions shall be considered a form of cash receipt and shall be subject to all approved municipal court financial procedures, internal controls and auditing requirements relating to cash receipts, including, but not limited to, daily reconciliation, cash counts and account testing.
2. In no event shall any fees, costs or charges for processing electronic transactions be recouped or paid from money designated as funds due or owing to the State, county or any restitution beneficiary.
3. The municipal court shall transfer any authorized service charges collected to the county or municipality as part of its regular monthly disbursements. The monthly ATS/ACS Miscellaneous Report will include a subtotal entry of service charges collected and disbursed to the county or municipality during the reported month.
4. Electronic receipt transactions shall be transmitted or otherwise sent to the processor on a daily basis at the close of the business day, or if done automatically by computer program, prior to the close of the business day of the processor.
5. The municipal court shall retain printed documentation of all electronic receipt transactions for a period of time, as required by the relevant State records retention law with regard to cash receipts or the county=s or municipality=s contract with the processor, whichever is longer.
6. All refunds of electronic receipt transactions shall be performed in accordance with Judiciary requirements related to the refunds of monies.
7. The municipal court shall secure authorization of the processor of all credit or debit card transactions prior to execution.
8. Use of pre-authorized transactions, as defined in *N.J.A.C.* 5:30-9.6, to enable the municipal court to initiate a transaction that electronically debits a person=s bank account, as part of a court-ordered time payment, is not permitted without the prior written approval of the Administrative Director of the Courts.

IV. Inquiries and Interpretation

Questions concerning any aspect of electronic receipt payments in the municipal courts or requests for interpretations of this Directive, especially to address unanticipated circumstances or new technologies, should be directed to the Administrative Office of the Courts, Municipal Court Services Division, Court Programs Unit, R. J. Hughes Justice Complex, PO Box 986, Trenton, NJ 08625-0986, telephone (609) 984-3072 and Fax (609) 292-4255.

Attachments:

A. N.J.A.C. 5:30-9.1, *et seq.* (Government Electronic Receipt Acceptance)
B. Notice of Payment Options

Editor=s Note

The attachments listed above are not included in this directive, but can be obtained by contacting the above-referenced address.

Appendix DD

New Jersey Courts
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Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

www.njcourts.com • Phone: 609-984-0275 • Fax: 609-984-6968

Memorandum

To: **Municipal Court Judges**

From: **Glenn A. Grant, J.A.D.**

Subj: **Court Costs on Dismissed Municipal Complaints**

Date: **February 17, 2015**

This memorandum memorializes the long-standing policy of the Judiciary, based on the provisions of N.J.S.A. 22A:3-4, that in municipal court matters no court costs may be assessed on a dismissed charge, unless such court costs are specifically permitted by statute.

N.J.S.A. 22A:3-4 (emphasis added) authorizes the charging of court costs in matters heard in the municipal courts:

> The fees provided in the following schedule, and no other charges whatsoever, shall be allowed for court costs in any proceedings of a criminal nature in the municipal courts but no charge shall be made for the services of any salaried police officer of the State, county or municipal police.
>
> For violations of Title 39 of the Revised Statutes, or of traffic ordinances, at the discretion of the court, up to but not exceeding $33.
>
> For all other cases, at the discretion of the court, up to but not exceeding $33.
>
> * * * *
>
> If defendant is found guilty of the charge laid against him, he shall pay the costs herein provided, but if, on appeal, the judgment is reversed, the costs shall be repaid to defendant.

This statute authorizes a judge to impose up to $33 in court costs on a defendant who has been found guilty. It does not authorize imposition of court costs upon a defendant when the charge against him or her has been dismissed.

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Thus, there is no authority for a judge to impose court costs on a dismissed charge in a municipal court matter, unless that authority is provided in another statute. Some of the more common statutes that permit a judge to impose court costs on a dismissed charge are listed here:

1. N.J.S.A. 2B:12-24, Costs Charged to a Complainant in Certain Cases;
2. N.J.S.A. 2C:43:13.8, Conditional Dismissal
3. N.J.S.A. 12:7-72, Issuance of License to Operate Power Vessel;
4. N.J.S.A. 12:7A-7, Possession of Boat Owner Certificate;
5. N.J.S.A. 39:3-10.18, Failure to Exhibit Commercial Driving License;
6. N.J.S.A. 39:3-29, Failure to Exhibit Documents;
7. N.J.S.A. 39:3-75.3, Failure to Exhibit Card for Approved Windshield Covering;
8. N.J.S.A. 39:4-14.3, Failure to Exhibit Documents for Motorized Bicycle.

This list is not exhaustive, however, and if you are unsure whether it is permissible to impose court costs for a certain dismissed charge, you will want to consult the text of the offense statute.

Further, court costs may only be charged against a party or complaining witness, and only upon such conditions and terms, if any, as may be authorized by that statute. Nor may court costs be imposed on a dismissed charge under a plea agreement, unless specifically authorized by a statute.

Any questions regarding this memorandum should be directed to Assistant Director Debra A. Jenkins, Municipal Court Services Division, at 609-984-8241.

c: Chief Justice Stuart Rabner
Assignment Judges
Municipal Court Presiding Judges
Steven D. Bonville, Chief of Staff
Trial Court Administrators
AOC Directors and Assistant Directors
Gurpreet M. Singh, Special Assistant
Municipal Division Managers
Municipal Court Directors and Administrators
Steven A. Somogyi, Chief, Municipal Court Services
Carol A. Welsch, Chief, Municipal Court Services