Confronting Criminal Justice Debt: Introduction and Impact on Communities of Color

October 4th, 2017

Alexes Harris
Thomas Harvey
Mitali Nagrecha

with Moderator, Abby Shafroth

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Webinar Tips

• If you joined with a headset or through your computer speakers, please be sure your **device volume settings** are properly adjusted

• If your headset is not working, please try **unplugging and re-plugging** in your device

• Everyone will be muted during this presentation

• This training is being recorded
Webinar Tips

• **Questions?** Type it in the Q&A function and we will relay it to the speaker(s)

• If you are having technical problems, please use the Q&A function for help and I will assist you

• You can access the PPT for this webinar by opening the “materials” drop down. We will also post it on line and will send instructions on how to obtain a certificate of attendance.
Pleas join us in Washington, DC this November for NCLC’s annual Consumer Rights Litigation Conference!

November 16th-19th, 2017
Lobby Day, November 15th

This will be a particularly special and energizing conference, with more courses offered than ever before, all featuring high-quality and well-known speakers addressing the 900+ consumer attorneys expected to attend. We hope you will join us to network, brainstorm, and choose from over 60 breakout sessions taught by leaders in the field of consumer law, making the CRLC the most important event of the year for consumer advocates!

For more details, please visit https://www.nclc.org/conferences
Abby Shafroth is a staff attorney at the National Consumer Law Center and focuses on the intersection of criminal and consumer law as well as student loan and for-profit school issues. She is the co-author of two reports in the *Confronting Criminal Justice Debt* series: *The Urgent Need for Reform* and *A Guide for Litigation*. She is also a contributing author of the National Consumer Law Center’s *Student Loan Law* and *Collection Actions* treatises.

Prior to joining NCLC, Abby litigated civil rights and employment class and collective actions at Cohen Milstein Sellers & Toll PLLC in Washington, D.C. She also previously worked as an attorney at the Lawyers’ Committee for Civil Rights Under Law and as a law clerk for the Honorable Richard A. Paez of the Ninth Circuit Court of Appeals. Abby is a graduate of Harvard College and Harvard Law School.
Other Webinars

Below is a partial list of past webinars sponsored by NCLC's Racial Justice & Equal Economic Opportunity Project.

Find these and other webinars at: https://www.nclc.org/racial-justice.html

- The Color of Debt: Racial Disparity in Debt Collection Lawsuits
- Debt and Democracy: How the Collection of Civil Fees and Fines Contributed to the Unrest in Ferguson
- Weblining and Other Racial Justice Concerns in the Era of Big Data
- Holding Wall Street Accountable for the Subprime Mortgage Crisis in Urban America
- Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color
Prof. Harris earned her MA (1999) and PhD (2002) in sociology from the University of California, Los Angeles. Her research and teaching focuses on social stratification processes and racial ethnic disparities, particularly how contact with institutions like educational and criminal justice systems impact individuals’ life chances. Her recent research has investigated the sentencing practice of monetary sanctions, the fines, fees, surcharges, restitution and related payment costs imposed on people who make contact with systems of justice in the United States.

Dr. Harris’ book, *A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor*, (Russell Sage, 2016) has received widespread media attention. Her work has also been published in leading academic journals. With a grant from the Laura and John Arnold Foundation, Dr. Harris is continuing her research on monetary sanctions to replicate and expand her research in Washington State to study sentencing practices in seven other states with collaborators.

In 2015, Dr. Harris was appointed by United States Attorney General to a four-year appointment on the Office of Justice Programs Science Advisory Board. She has presented her research on monetary sanctions, racial, ethnic and class inequality in the criminal justice system, and U.S. race relations in general to audiences ranging from judges, policy makers, public defenders, academics and students (of all ages), and the U.S Department of Justice and the White House.
Presenter – Thomas Harvey  
Executive Director, Co-Founder, ArchCity Defenders, Inc.

Thomas B. Harvey is the Co-Founder and Executive Director of ArchCity Defenders, a non-profit civil rights law firm providing holistic legal advocacy to the poor and homeless in the St. Louis region and beyond. ArchCity Defenders uses direct services, impact litigation, and advocacy through policy and public relations as its primary tools to promote racial justice and protect civil and human rights. ArchCity Defenders represents more than 1000 people in civil and criminal cases and has filed federal class action challenges against debtors’ prisons and cash bail against 23 cities. ArchCity recently settled its class action against the City of Jennings for $4.75 million.

For his work to end cash bail and debtors’ prisons, Thomas was awarded Public Justice’s Trial Lawyer of the Year in 2017. Thomas is the lead author of ArchCity’s white paper on the systemic abuses of St. Louis County’s municipal court system published in August of 2014 that brought context to underlying factors in the protests following the killing of Mike Brown in Ferguson. Thomas’s work on these issues has been featured in the Wall Street Journal, The Economist, The New York Times, Democracy Now, MSNBC, and National Public Radio.
Mitali Nagrecha joined CJPP as an attorney with over seven years of experience working on criminal justice policy issues. For nearly as long, Mitali has had an interest in the issue of criminal justice debt and co-authored the Brennan Center’s 2010 report “Criminal Justice Debt: A Barrier to Reentry.”

Most recently, in partnership with Center for Community Alternatives and Mary Katzenstein, Professor of American Studies at Cornell University, Mitali published “When All Else Fails, Fining the Family,” a paper that provides first person accounts of individuals with criminal justice debt. The paper concludes that these individuals are often making ends meet only through reliance on family and goes on to suggest policy solutions. Mitali was Senior Director of Policy at The Fortune Society where she led the organization’s criminal justice policy efforts including state and local advocacy to increase use of alternatives to incarceration and sentencing reform; local, state and federal efforts to increase access to reentry housing; and legislative changes to child support laws.

Ms. Nagrecha joined the Fortune Society from the City of Newark Office of Reentry, where she served as the Senior Policy Director for Mayor Cory Booker. While in New Jersey, Ms. Nagrecha provided recommendations to the Office of the Governor as co-author of a report, “Prisoner Reentry Services in New Jersey: A Plan to Reduce Recidivism.” In between earning her B.A. at Cornell University and her J.D. cum laude from The University of Pennsylvania School of Law, Ms. Nagrecha served as a Fulbright Scholar in India.
Just a Reminder

• Tomorrow you will receive an email with:
  • The recording and materials for this webinar
  • A survey
  • Instructions for receiving a certificate of attendance.

• Thank you to our speaker!

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. www.nclc.org
Confronting Criminal Justice Debt: Introduction and Impact on Communities of Color

Alexes Harris, PhD
Professor of Sociology
Presidential Term Professor
University of Washington
Outline

• Background and Examples
• Research Findings
• Resources
BACKGROUND AND EXAMPLES
Figure 1: State and Federal Prisoners in the United States, 1950-2014

Source: Bureau of Justice Statistics, National Prisoner Statistics Program.
The Rise in Conviction and Incarceration

- 1 in 100 American adults 18 years and older lives behind bars
- Number of adults living with felony convictions in U.S. is 5.85 million
- Racial and Ethnic Disproportionality
The Problem: Monetary Sanctions

- Fines related to offense
- Court Imposed user fees for processing
- Surcharges for court and non-court related costs
- Collection costs and interest on unpaid balances
- Restitution for victim compensation

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Examples of Fines and Fees

• **Fines:**
  – Fixed financial penalties attached to a given offense
  – Example: WA: $1,000 drug conviction

• **Fees:**
  – Charges for costs of using the system
  – Example: WA – court costs, public defender, VPA, DNA

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Fees for a Public Defender

Charges for:

- Application fees for eligibility determination
  - LA $40, WA $10-25
- Actual attorney’s costs
  - AR $10-$100, WA $350 - $950, IL caps at $5,000
- Cost of prosecution
  - Ohio mandates

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Interest and Collection Fees

State Examples:

• FL - 4.75% interest
• GA - 7% interest
• WA - 12% interest
• IL - 15% penalty on unpaid, 30% collections fee
• AZ - 19% collections fee for delinquent, $35 fee

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Research Findings

1. Monetary sanctions are regularly imposed nationally

2. Legal debt is typically substantial relative to expected earnings

3. Non-legal factors significantly influence the amount of LFO sentenced

4. Monetary sanctions reduce family income and create long-term debt

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Research Findings

5. Lead to financial constraint particularly with interest the costs increase

6. Creates family stress and strain on relationships, leading to difficult choices for children

7. Generates accumulated disadvantage - accessing food, housing, employment, medication, and avoidance of police and other institutions

8. Produces emotional strain including frustration, distrust, anger, anxiety, disappointment

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
9. County level variation in implementation

10. People are regularly incarcerated for non-payment

11. Courts lack clear legal standards for “ability to pay,” “wilful nonpayment,” and “indigent”

12. LFOs create a two-tiered system of punishment that permanently punishes poor people

Source: Harris, Alexes. 2016. A Pound of Flesh: Monetary Sanctions as Punishment for the Poor.
Multi-State, Multi-year Study of Monetary Sanctions (On going research)

- 8 States: WA, CA, TX, GA, MO, MN, IL, NY
- Policy Review (state, county (3) and municipalities (3))
- Observations of sentencing and sanctioning hearings
- Interviews with court officials (judges, prosecutor, defense, clerk)
- Interviews with people sentenced to monetary sanctions
- Analysis of automated court data
- Funded by the Laura and John Arnold Foundation
- Alexes Harris is the principal investigator, U. of Washington
Resources

• “A Pound of Flesh: Monetary Sanctions as a Punishment for the Poor” Alexes Harris, https://www.russellsage.org/pound-flesh

• http://www.monetarysanctions.org/


• Harvard Law School, Criminal Justice Policy Program’s Criminal Justice Debt Reform Builder https://cjdebtreform.org/
EXTRA SLIDES
Future best practices

- Credit for restorative and rehabilitative activities (e.g., GED, restorative courts)
- Day fine
- Bench cards (e.g., Ohio and Washington)
- Court rules (e.g., require individualized assessment of indigence)
- Statute changes (e.g., outlining legal criteria for interpretation of indigence, eliminating non-restitution monetary sanctions)

Confronting Criminal Justice Debt: Introduction and Impact on Communities of Color in Ferguson
Mission Statement

ArchCity Defenders (ACD) is a 501(c)3 non-profit civil rights law firm providing holistic legal advocacy and combatting the criminalization of poverty and state violence against the poor and people of color.

• ACD uses direct services, impact litigation, and policy and media advocacy as its primary tools to promote justice, protect civil and human rights, and bring about systemic change on behalf of the poor and communities of color directly impacted by the abuses of the legal system.
Our Criminal Legal System:

- 500,000 People locked in a cage right now because of poverty
- 11 million people cycle through local jails yearly
- 96% of all arrests are for non-violent offenses
- The United States jails black men at a rate 6 times that of South Africa at the Height of Apartheid
Recipe for Disaster: 91 towns, 81 courts, 67 police departments for 900,000 people

91 Municipalities in St. Louis County
Ferguson

- Ferguson, a city of about 21,000
- Filed 11,400 traffic cases in fiscal year 2013
- In 2013, the municipal court in Ferguson issued 32,975 arrest warrants mostly for not coming to court to pay fines.
- That’s 90 arrest warrants issued per day.
- Fines and court fees were the second largest source of revenue for the city, a total of $2,635,400.
Municipal Divisions in Missouri

• Missouri Muni Courts
  2013: >132 Million net

• St. Louis City and County collected $61,152,087
#Ferguson

- "You don’t get $321 in fines and fees and 3 warrants per household from an about-average crime rate. You get numbers like this from bullshit arrests for jaywalking and constant 'low level harassment involving traffic stops, court appearances, high fines, and the threat of jail for failure to pay.'"

  – Alex Tabarrok, a professor of economics at George Mason University
The Fight

• Direct Representation

• Litigation

• Advocacy & Collaboration
Direct Representation: Nicole Bolden
Impact Litigation

• Illegal 4th Amendment Violations – St. Louis County’s “Wanted” Policy with CCR, Paul Weiss
• Police Misconduct Cases – Pine Lawn, Ferguson, City of St. Louis, Kinloch
• Crime Free Ordinance Case
• Large Debtors Prison and Conspiracy case against 13 municipalities with Arnold & Porter
• 3 additional Debtors’ Prison Cases against more affluent cities with Tycko and Zavareei
• Malicious Prosecution cases with Dowd & Dowd
Impact Litigation Partners

- Saint Louis University School of Law Legal Clinics
- Alec Karakatsanis, Civil Rights Corp
- White & Case
- Arnold & Porter Kaye Scholer
- Paul, Weiss, Rifkind, Wharton & Garrison
- Khazaeli Wyrsch
## ArchCity Impact Litigation

### ArchCity Defenders: Systemic Litigation

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<th>Court</th>
<th>Type</th>
<th>Name</th>
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<td>Cash Bail</td>
<td>Pierce v. Velda City</td>
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<td>Powell v. St. Ann</td>
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<td>Lampkin v. Jennings</td>
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<td>White v Pine Lawn</td>
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<td>Currie v. Ferguson</td>
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## ArchCity Impact Litigation

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<td>Debtors’ Prison</td>
<td>Bolden v. Foristell</td>
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<td>21</td>
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<td>Schwepp v Pine Lawn</td>
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<td>Franks v. Steinmeyer</td>
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<td>Kidd v. Ferguson</td>
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<td>Police Misconduct</td>
<td>O’Rourke v. King</td>
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<td>25</td>
<td>Federal</td>
<td>Wanteds, Police Misconduct</td>
<td>Furlow v. Belmar</td>
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<td>26</td>
<td>Federal</td>
<td>Police Misconduct</td>
<td>A. Qandah (St. Charles)</td>
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<td>27</td>
<td>Federal</td>
<td>Police Misconduct, Malicious Prosecution</td>
<td>Powers v. Ferguson</td>
</tr>
<tr>
<td>28</td>
<td>Federal</td>
<td>Police Misconduct, Malicious Prosecution</td>
<td>Phillips v. Ferguson</td>
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Partners in Advocacy: The Law Alone Can’t Fix This Problem

• Missourians Organizing for Reform and Empowerment (MORE)
• Metropolitan Congregations United (MCU)
• Organization for Black Struggle (OBS)
• Millennial Activists United (MAU)
• Hands Up United (HUU)
• Law For Black Lives (LBL)
• National Association of Public Defenders (NAPD)
• National Coalition for the Homeless
Advocacy: Redefine Public Safety

A Town Hall to re-define public safety!

Re-Envisioning Public Safety

This is a space for St. Louis citizens to talk about public safety & government accountability in a post-Ferguson world. We’ll engage in activities that challenge us to rethink how we can use our tax dollars to fight crime and to meet basic human needs. Let’s create a new public safety model for the City!

Thursday, June 23, 2016  6:00 - 8:00 pm  (Doors open at 5:30 pm)
Gateway Classic Sports Foundation  •  2012 Dr. Martin Luther King Drive

Childcare Provided  •  Food & Beverages Served

For more information, contact OBS at 314.367.5959 or contactus@obs-stl.org

Labor Donated

This event is made possible by the generous support of the Rockefeller Family Fund.
Collaboration: Pine Lawn Town Hall

PINE LAWN COALITION & ARCHCITY DEFENDERS PRESENTS:
INSTITUTIONAL ACCOUNTABILITY:
AN OPEN DISCUSSION ABOUT REDEFINING AND INVESTING IN GENUINE PUBLIC SAFETY.

WHEN
Sunday May 22nd
4:30-6:30pm (doors open at 4:00pm)

WHERE
Barack Obama Elementary School
3883 Jennings Station Road - St. Louis, MO 63121

Let's change the conversation around public safety and institutional accountability from investment in badget items that decrease public safety such as police and corrections. Instead we will discuss how we redirect funds to better long-term solutions that have been shown to create an environment where crime is less likely to occur. Solutions such as education, access to housing, substance abuse and mental health treatment, and employment opportunities.

Please RSVP using the case sensitive link below:
http://goo.gl/forms/Cbw0nmwTRK

Made possible by generous support from the Rockefeller Family Fund!

COMMUNITY TOWN HALL AND OPEN DISCUSSION

FREE FOOD
Enjoy free beverages and BBQ starting at 3pm outside!

CHILD CARE AVAILABLE
Childcare will be provided as needed so if you plan to attend with children please give us a call to request FREE childcare.

ARCHCITY DEFENDERS
ArchCity Defenders strives to prevent and end homelessness among the indigent and working poor in the St. Louis region by providing holistic legal representation, advocating for policy change, and by bringing impact litigation designed to combat the systemic problems in the legal system.

CONTACT US
publicsafety@archcitydefenders.org
Phone: 855-724-2489
Pine Lawn: 314-282-0123
FB: ArchCity Defenders, Inc.
Twitter: @ArchCityDefense
Collaboration: Mayoral Forum
Collaboration: Community Events
Collaboration & Advocacy: Circuit Attorney Debate
Advocacy: The White House
Collaboration & Advocacy: Bailout

[Group of people holding a sign that says "HAPPY MOTHERS DAY!"]
Results

• Reduction in Revenue

• Policy Change

• Damages
Reduction in Revenue: Municipal Divisions in Missouri

- In 2016:
  - $78,694,412.00 collected in fines
  - $8,427,939.00 collected in court costs
  - $9,583,316.00 collected in fees (jail costs)
  - $2,586,739.00 collected in Bond Forfeitures

- 2016: **99.3 Million** collected
  >32 percent decrease since 2013.
## Reduction in Revenue: Ferguson

<table>
<thead>
<tr>
<th>Ferguson</th>
<th>Total Population</th>
<th>Total Households</th>
<th>Median Household Income</th>
<th>Race: White</th>
<th>Race: Black or African American</th>
<th>Race: Other</th>
<th>Warrants Issued</th>
<th>Outstanding Warrants</th>
<th>Warrants Per Capita</th>
<th>Per HH</th>
<th>Total Fines*</th>
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</thead>
<tbody>
<tr>
<td>(FY)2014</td>
<td>21,164</td>
<td>8,600</td>
<td>$38,685</td>
<td>34.2%</td>
<td>66.0%</td>
<td>2.5%</td>
<td>32,907</td>
<td>45,185</td>
<td>1.6</td>
<td>3.8</td>
<td>$1,566,858.29</td>
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<tr>
<td>(FY)2015</td>
<td>21,151</td>
<td>8,557</td>
<td>$40,660</td>
<td>33.7%</td>
<td>67.8%</td>
<td>0.9%</td>
<td>8,819</td>
<td>N/A</td>
<td>0.4</td>
<td>1.0</td>
<td>$823,432.02</td>
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<tr>
<td>(FY)2016</td>
<td>21,120</td>
<td>8,475</td>
<td>$42,738</td>
<td>33.0%</td>
<td>68.1%</td>
<td>1.6%</td>
<td>4,167</td>
<td>N/A</td>
<td>0.2</td>
<td>0.5</td>
<td>$482,944.95</td>
</tr>
</tbody>
</table>
Reform

• Warrant Recall program in Ferguson and City of St. Louis among others

• Amendments to Rule 37
  – Requires municipal courts make a finding as to indigent status and proportion fines and costs
  – Requires court send summons to individuals prior to issuing warrant for failure to appear

• SB 5 (Mack’s Creek Law – revisions)
  – Lowers revenue to 20% in State, 12% in St. Louis County Currently on Appeal
The Results: Policy Change & More

– no individual be held for a non-payment without a meaningful inquiry into ability to pay
– Warrant fees eliminated
– Letter fees eliminated
– 400,000 warrants recalled
– municipal debts be collected like other civil debts and establishes alternative sentencing options for the indigent
– municipal courts can no longer incarcerate individuals for non-payment of fees, which mitigates the rate of incarceration for minor offenses
The Results: Damages

• $6 million in damages in warrant fee class actions alone
  – $3 million in debt relief

• $4.75 million in Jenkins v. Jennings
  – $2 million in debt relief
  – Largest debtors’ prison class action award
Is This Progress?

- allow the public to enter the courthouse
- ask people if they are too poor to pay
- not to charge illegal fines and fees
- stop making destitute people pay court costs
- offer community service
- take people who are arrested and jailed before a judge within 48 hours
- not to use the police or jail to raise revenue
- adequately staff the courts
- require strict compliance with due process before locking a human being
"If you stick a knife in my back nine inches and pull it out six inches, there's no progress. If you pull it all the way out that's not progress. Progress is healing the wound that the blow made. And they haven't pulled the knife out, much less healed the wound. They won't even admit the knife is there."

— El Hajj Malik El Shabazz, Malcolm X
For questions, please email me at tharvey@archcitydefenders.org
Follow us on twitter @archcitydefense
Find us on Facebook ArchCity Defenders

1210 Locust Street • Saint Louis, MO, 63103 • Tel: 855-724-2489 • http://www.archcitydefenders.org/

Confronting Criminal Justice Debt: A Comprehensive Project for Reform is a collaboration of the Criminal Justice Policy Program and the National Consumer Law Center (NCLC)
2. CONFLICTS OF INTEREST

Legislative Reforms
- Cap the Contribution of Court Revenue to Local Operating Costs
- Fully Fund Courts from State Budgets
- Eliminate Surcharges Imposed on Criminal Defendants
- Remove Perverse Incentives of Private Probation Companies
- Eliminate Fines and Fees That Are Specifically Earmarked for Law Enforcement Agencies
- Eliminate Fines and Fees Imposed Prior to Adjudication of Guilt

Judicial Reforms
- Exercise Supervisory Control Over Local Courts
- Monitor and Eliminate Racial Disparities

Executive Reforms
- Realign Incentives of Private Probation Companies and Private Debt-Collectors
- Disseminate Consumer Protection Information
### Poverty Penalties and Poverty Traps

#### Legislative Reforms
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- Scale Debts Based on Ability to Pay ......................................................... 19
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- Amend Court Rules ......................................................................... 24
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#### Executive Reforms
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Ability to Pay

4. ABILITY-TO-PAY DETERMINATION

Legislative Reforms
Codify Critical Elements of Ability-to-Pay Proceedings in State Law
Amend or Repeal Facial Unconstitutional Statutes
Eliminate Presumptions of Ability to Pay Criminal Justice Debt

Judicial Reforms
Provide Judicial Education
Create Standard Forms
Conduct Periodic Audits
Take Enforcement Actions

Executive Reforms
Disseminate Information to the Public
Issue Clarifying Legal Opinions
Conduct Audits and Monitor Compliance
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Establish a Commission to Review Existing and Proposed Fines and Fees ........34
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Our work on criminal justice debt

State Partners

Arizona

Massachusetts

North Carolina

Arkansas

Michigan

Criminal Justice Policy Program
Harvard Law School
Ability-to-Pay Inquiry

1. Individuals meeting the following criteria are presumed unable to pay or unable to pay in full.

- Eligibility for appointed counsel; or

- Income at or below 200% of the poverty guidelines;* or

- Full-time student; or

- Whether individual is, or within the past six months has been, homeless, incarcerated, or residing in a mental health or other treatment program; or

- Receiving means-tested public assistance.²

<table>
<thead>
<tr>
<th>*Number of people in household</th>
<th>Monthly gross income at 200% of poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$2,010</td>
</tr>
<tr>
<td>2</td>
<td>$2,707</td>
</tr>
<tr>
<td>3</td>
<td>$3,403</td>
</tr>
<tr>
<td>4</td>
<td>$4,100</td>
</tr>
<tr>
<td>5</td>
<td>$4,797</td>
</tr>
<tr>
<td>6</td>
<td>$5,493</td>
</tr>
<tr>
<td>7</td>
<td>$6,190</td>
</tr>
<tr>
<td>8</td>
<td>$6,887</td>
</tr>
</tbody>
</table>
North Carolina

2. LFOs should not pose an undue hardship to the individual or his or her dependents or deprive them of money needed for basic living expenses, including food, shelter, clothing, necessary medical expenses, child support/care, utilities, and transportation. The Court will consider the following factors to set LFO amounts. N.C.G.S. § 15A-1340.36(a).3

• **Resources of defendant.** Include debts (including other LFOs) and assets that can be liquidated without harm to individual or dependents.

• **Ability to Earn.** Consider employment history and educational attainment; discrimination, including because of criminal justice history; homelessness, health, or mental health issues including disability; and, limited access to public transportation or limitations on driving privileges.

• **Obligation to support dependents.** Include child support obligations and support of elderly dependents.

• **Any other** matters that pertain to the defendant’s ability to make payment.

<table>
<thead>
<tr>
<th><strong>Monthly Necessary Expenses for Health and Welfare (IRS)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Examples of totals:</strong></td>
</tr>
<tr>
<td>• 1 person with public transportation: $2,306 (+$511 if car)</td>
</tr>
<tr>
<td>• Family of 4 with public transportation: $4,573</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Housing, Utilities, Food, and other Living expenses³</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$2068</td>
<td>$2810</td>
<td>$3146</td>
<td>$3621</td>
<td>$2,003 + $325/perso n</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Other allowances per person per month</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation (Public): $189/person in household</td>
</tr>
<tr>
<td>Transportation (Car): $700/month/car</td>
</tr>
<tr>
<td>Out-of-pocket health cost: $49 if below age 65; $117 if over age 65</td>
</tr>
</tbody>
</table>
4. The **monthly payment amount for LFOs** should be set to a level **proportionate to the individual’s ability to pay and to the offense.** Guideline: 10% of **net** monthly income **after** basic living expenses.**

5. The Court should consider **waiving costs and fees** to arrive at a proportionate payment plan. In *Richmond Cty. Bd. of Educ. v. Cowell*, 776 S.E. 2d 244, 247-48 (N.C. Ct. App. 2015), the Court held fees and costs are remedial in nature. They may not be punitive unless collected money is allocated to the State’s public schools. *Id.*

6. **Payment plan length:** Individuals should be required to pay over a reasonable time frame based on the severity of the offense. For example, the Court may set payment plans to last no longer than the maximum sentence length for the offense. *See State v. Smith*, 90 N.C. App. 161, 168 (1998) (considering how much individual could reasonably pay over probation term). Further, the court may remit or revoke fines or costs when “the proper administration of justice requires resolution of the case.” N.C.G.S. §15A-1363.
Overview of Litigation Issues

Abby Shafroth,
National Consumer Law Center
Overview of Litigation Issues

- Importance of representation
- Types of criminal justice debt litigation
- Resources
Importance of Representation

- Harsh consequences of criminal justice debt:
  - Huge debts that may snowball with interest and collection costs
  - Garnishment
  - Frequent status hearings that interfere with job
  - License suspension (1 in 6 drivers in VA)
  - Restrictions on expungement, right to vote
  - Longer periods of probation
  - Warrants, arrest, and incarceration for failure to pay
  - Increased interaction with criminal justice system
Importance of Representation

- Advocacy Gap – Roles for Civil and Criminal Attorneys
  - Webinar: Tuesday, October 10 at 2pm EST
Types of Criminal Justice Debt
Litigation

• Defending against imposition of fines and fees
• Seeking modification or remission of debt after imposition
• Defending against collection and punishment for nonpayment, including incarceration
• Bankruptcy
• Protections against garnishment
• Affirmative claims
Resources: Litigation Guide

- Aimed at civil and criminal litigators/practitioners
- Primarily focused on individual representation
- Includes practice checklists
Topics in Litigation Guide

- Constitutional backdrop
- Defending against imposition of fines and fees
- Defending against collection
- Bankruptcy
- Protections against garnishment
- Affirmative claims
New Criminal Justice Debt Chapter Online

www.nclc.org/library
Upcoming Webinars

Upcoming criminal justice debt webinars:

- The Advocacy Gap
  - Oct. 10 @ 2 pm EST / 11 am PST
- Using Bankruptcy Law to Aid Criminal Justice Debtors
  - Oct. 17 @ 2 pm EST / 11 am PST
- Intro to CJPP’s 50-State Criminal Justice Debt Law Web Tool
- "Ability to Pay" (Policy and Practice)
- Affirmative Litigation
Other Resources

• NLADA Court Debt Listserv

• Criminal Justice Policy Program’s Criminal Justice Debt Reform Builder
  https://cjdebtreform.org/

• DOJ Fines and Fees Resource Guide
  https://ojp.gov/docs/finesfeesresguide.pdf
Questions?