

BRENNAN

CENTER

FOR JUSTICE

THE HIDDEN COSTS
OF FLORIDA'S
CRIMINAL JUSTICE FEES

Rebekah Diller

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EXECUTIVE SUMMARY

Increasingly, states are turning to so-called “user fees” and surcharges to underwrite criminal justice costs and close budget gaps. In this report, we focus on Florida, a state that relies so heavily on fees to fund its courts that observers have coined a term for it – “cash register justice.” Since 1996, Florida added more than 20 new categories of financial obligations for criminal defendants and, at the same time, eliminated most exemptions for those who cannot pay. The fee increases have not been accompanied by any evident consideration of their hidden costs: the cumulative impacts on those required to pay, the ways in which the debt can lead to new offenses, and the costs to counties, clerks and courts of collection mechanisms that fail to exempt those unable to pay.

This report examines the impact of the Florida Legislature’s decision to levy more user fees on persons accused and convicted of crimes, without providing exemptions for the indigent. Its conclusions are troubling. Florida relies heavily on fees to underwrite its criminal justice system and, at times, uses monies generated by fees to subsidize general revenue. In many cases, the debts are uncollectible; performance standards for court clerks, for example, expect that only 9 percent of fees levied in felony cases will be collected. Yet, aggressive collection practices result in a range of collateral consequences. Missed payments produce more fees. Unpaid costs prompt the suspension of driving privileges (and, relatedly, the ability to get to work).

Moreover, collection practices are not uniform across the state. Court clerks have most of the responsibility. In some judicial circuits, the courts themselves take a more active role. At their worst, collection practices can lead to a new variation of “debtors’ prison” when individuals are arrested and incarcerated for failing to appear in court to explain missed payments.

As most prisons and jails are at capacity, and unemployment and economic hardship are widespread, it is time to consider whether heaping more debt on those unable to afford it is a sensible approach to financing essential state functions.

KEY FINDINGS

- 1. Florida increasingly relies on fees to finance core government functions.** The Legislature has added more than 20 new categories of legal financial obligations (“LFOs”) to the criminal justice process since 1996. The state has acted without considering the effects of the new LFOs and without examining whether cumulative debt promotes recidivism or otherwise hinders reentry into society for those convicted of crimes.
- 2. The Legislature has eliminated exemptions for the indigent, thus demanding revenue from a population unable to afford payment.** Florida ignores inability to pay when *imposing* LFOs, considers inability to pay, in theory, when *collecting* LFOs, but bypasses the requirement in practice. For example, Florida law permits the indigent to pay off debt through community service, but most courts have no such programs.
- 3. Despite rising pressure to collect fees, little attention is paid to the costs of collection.** As courts become more reliant on fee revenue, clerks’ offices are, increasingly, under pressure to step up the collections process. Yet, state performance standards only look at one side of the ledger – the revenue raised –

and fail to assess the costs and consequences of collection efforts. Some counties also incur hidden costs in budgets for sheriffs, local jails, and clerk operations.

4. **The current fee system creates a self-perpetuating cycle of debt for persons re-entering society after incarceration.** Fee amounts are often unpayable on limited budgets. Missed payments prompt additional fees and create a mounting debt cycle.
5. **Collection practices in some counties create a new form of debtors' prison.** In some counties, courts arrest individuals who miss court dates scheduled to discuss LFO debt, disrupting lives and employment. This practice resulted in more than 800 arrests and more than 20,000 hours of jail time in Leon County alone in one year. The arrests and nights spent in already overcrowded local jails cost the public money.
6. **Florida routinely suspends driver's licenses for failure to make payments,** a practice that sets the debtor up for a vicious cycle of "driving with a suspended license" convictions.
7. **Florida allows private debt collection firms to add up to a 40 percent surcharge on unpaid court debt.** Recent legislation requires courts to refer outstanding debt to collection agencies, which can add up to a 40 percent surcharge on existing debt.

RECOMMENDATIONS

In light of these findings the Brennan Center makes the following recommendations for immediate and longer-term steps for Florida officials to address the hidden costs of fee collection.

Immediate steps:

1. **The Legislature should exempt indigent defendants from LFOs.** An exemption system based on a rational determination of ability to pay would free officials from the burden of pursuing non-existent revenue and would relieve financial pressure on previously incarcerated individuals who are attempting to re-enter society. In light of the fact that performance standards expect only a 9 percent collection rate for felonies, an indigency exemption in felony cases would result in little lost revenue.
2. **Payment plans should be tailored to an individual's ability to pay, as state law already requires.** At minimum, the courts should follow the state law that presumes a person is unable to pay more than 2 percent of average monthly income when setting payment plans. Similarly, the Department of Corrections should sync monthly payments to income and should fully exempt the indigent from monthly probation supervision fees, consistent with existing state law.
3. **Florida's Supreme Court should adopt court rules to end the new debtors' prison.** In the absence of a prior finding that an individual can pay fees, courts should not authorize incarceration for failure to appear at LFO debt hearings. This would be consistent with the rules that apply to those who have failed to pay child support. The Court should also adopt rules to ensure that incarceration for contempt does not occur as a result of inability to pay.

4. **Counties can save money by eliminating debt-related arrests for failure to appear and resulting incarceration in already overcrowded local jails.** In the absence of a statewide rule, counties with collections hearings can change local practices to eliminate these arrests and jail stays, which are unrelated to public safety and cost taxpayers money.
5. **Florida should provide counsel in all collections or LFO-related collection contempt proceedings that may result in incarceration.** It should not be possible to end up in prison for LFO debt without having been represented by counsel.
6. **Courts should offer community service programs that build job skills to all those who cannot viably afford to repay fees.** While state law authorizes community service as an alternative to payment for those unable to pay, very few courts actually provide this option.
7. **The performance standards used to evaluate court clerks should be based on collection costs as well as collection rates.** Current practice only looks at one side of the ledger – the revenue raised – without considering the expenses of collection. Performance standards should also include compliance with state law and constitutional requirements related to collection of fees.
8. **Court clerks should suspend driver’s licenses only in those cases in which an individual can afford to repay court debt but refuses to do so.** In addition, the Legislature should create a conditional driver’s license that permits driving to and from work for those whose licenses have been suspended.
9. **The Legislature should limit service charges by private debt collectors and ensure adequate oversight.** Once court debt is turned over to private firms for collection, the amount owed increases as surcharges are added, yet current oversight of collection practices is scant.

Longer-term reforms:

1. **The Legislature should reconsider levying LFOs in felony cases – in which collection rates are extremely low, in any event – without a full understanding of how the debt may affect an individual’s attempt to re-enter his/her community.** People with felony convictions are likely to have limited financial and employment prospects; increased debt burden after release from prison may well increase the risk of recidivism.
2. **Reforms must ensure that counties and others do not bear hidden costs of state revenue collection.** For a number of counties, the fee system requires expenditures for collections, particularly the arrest and incarceration of non-payers, and increases the dockets of their already overburdened court systems. These costs are passed on to taxpayers at the local level. While the state gets a revenue enhancement from fee collection, the ledger sheet for other Floridians may well be in the red. A new source of revenue only works if it does not result in hidden costs. Counties and other stakeholders should be engaged to determine if the revenue enhancement of the existing system outweighs the costs of collection, both actual as well as social, and the fee system should be reformed accordingly.

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