

BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law



CRIMINAL JUSTICE DEBT

A TOOLKIT FOR ACTION

By Roopal Patel and Meghna Philip

ACTION MATERIALS



The following provides guidance on waging a successful debt reform campaign. For the purposes of an example, some of these materials focus on one aspect of criminal justice debt, such as a jail fee or an unjust collections practice. Tailor them to suit your specific needs.

1. HOW TO WAGE A WINNING CAMPAIGN
2. SELECTING AREAS FOR REFORM
3. WRITING TO ELECTED OFFICIALS
4. ADVOCACY MEETING HANDOUT
5. LETTERS TO THE EDITOR
6. OP-EDS
7. RELEVANT READINGS AND RESOURCE

HOW TO WAGE A WINNING CAMPAIGN

Building a successful campaign is a multi-stage process. Although every campaign has different contours, below are some guidelines that will increase your chances for success.

Identify an Achievable Goal

Regardless of your beliefs about criminal justice debt, chances are that you will be unable to overturn the entire system. Assess the landscape and pick an achievable goal or piece of legislation you would like to pass. Depending on the political landscape, it may make sense to identify an ideal demand you would like to make of policy makers and fall-back demands if the ideal demand is unachievable. Advocacy and progressive policy change is a slow, incremental process. Victories should be measured as the achievement of realistic goals in incremental steps. Prioritizing is central to success; without priorities an organization may fail due to being overly-ambitious and optimistic.

For example, it may be difficult to eliminate an existing fee. Instead of seeking to abolish fees, focusing on making sure waivers for poor people exist and that such waivers are enforced may be more achievable. Eliminating late fees, interest and surcharges on fees is also a more realistic goal. Relief from restitution may be difficult to win in an initial campaign because of the lobbying power of victims' rights groups. Relief from user fees or fines is a more winnable goal.

Communicate a Winning Message

Identify your audience, and tailor what you say accordingly. Generally, this audience will be specific legislators and/or voters. Research legislators' biographies and voting records to understand their backgrounds. If voters are the audience, research voting patterns, demographics, and learn about the most contentious issues facing the community.

Winning messages will highlight cost savings and public safety. In light of the fiscal crises so many states are facing, lawmakers are highly unlikely to pass legislation that ends up being more costly in the long run. People enmeshed in the criminal justice system are also not the most politically popular group. Any evidence you have that indicates that imposing and collecting the fees incurs costs rather than generates revenue will be an effective tool. Evidence that highlights that reducing fees and fines can increase public safety, by reducing recidivism and allowing probation and parole officers to focus on successful re-entry will also be compelling.

Build Support and Identify Allies

Allied Organizations: There are a number of organizations who are potentially invested in ending criminal justice debt, such as legal service providers, civil liberties organizations, public defender offices, local bar associations, private civil rights or criminal defense attorneys, religious groups (specifically those who value redemption) or organizations of prisoners' families.

Building coalitions with other organizations can raise awareness of all of the detrimental aspects of criminal justice debt by potentially placing different voices and perspectives in the media. Furthermore, organizations working in coalition can place increased pressure on electeds to take action on an issue, especially if some organizations represent larger constituencies in an elected official's district, such as the formerly incarcerated and their families.

Grassroots: Depending on the structure of your organization and the extent of your resources, grassroots outreach may be a centerpiece of your advocacy work, or it may take on a smaller role. However, grassroots support can only make your position stronger in front of elected officials. Targeted grassroots outreach means finding out

the interests and characteristics of certain groups of people (people of color, activists, prison workers, or court personnel, targeting your message to those groups, and maintaining regular contact.

Keeping grassroots leaders engaged means identifying specific tasks for them to do: writing letters, recruiting other leaders, coming to and running meetings with elected officials.

Feed the Press

Media is key to building support for your issue. No matter the importance you place on your effort, it is unlikely a reporter will feel the same way. Do not wait for the phone to ring; reach out and build relationships with media. Do not underestimate the importance of delivering a message to smaller media outlets including bilingual, community, and faith-based press. Smaller media outlets reach targeted constituencies and are often read by local elected officials. Getting coverage in smaller outlets is often easier than getting coverage in larger ones.

Make Contact: Build a list of local media outlets and contacts at each. Build relationships with reporters. Read local media and find out who covers a criminal justice beat, or find a new reporter trying to establish a beat for themselves. Meet them for coffee or lunch and talk about your advocacy work. Ask about the reporter's needs, and what they might require to build a story. Give them a document with background on your issue and any relevant press clippings. If you find people with compelling personal stories in the community where the media is circulated, pitch it to the relevant reporter.

Stories, articles and features: Reporters are busy; give them as much information as possible. Be sure to answer any questions they have to help them understand the issue. Find individuals with compelling personal stories about how their lives have been affected by criminal justice debt and pitch it to the relevant reporter. If your organization can pair a personal story with relevant facts and statistics it will turn the story into a larger social issue.

Feature stories are the hardest to achieve; many newspapers no longer devote space or time to longer, more complex feature stories. Yet, if you do succeed in convincing a reporter to write a feature story, take the time to consider which people you want the reporter to interview. Generally speaking, they should be as sympathetic as possible. Among the factors to consider are:

- Did the person commit a minor crime (i.e. underage drinking, marijuana possession, certain driving violations)?
- Did the person complete the terms of the sentence but is still faced with a large amount of criminal justice debt?
- Was the debt from long ago and is there a record of it?
- Could the person be reincarcerated because of an inability to pay debt?
- Was there any determination made of the person's ability to pay?
- Is this person having difficulty finding or keeping employment because of criminal justice debt?
- Does this person have a family to support and are debt obligations making it difficult for them to do so?

Build Relationships with Elected Officials

Identify the elected officials that represent your district or locality and learn about their bios, their policies, and the demographics of their districts. Learn about their prior or concurrent professions, their educational background, where they worship, their family involvement, and if they have volunteered somewhere. This will help identify the values of your elected officials, and will help you tailor your message effectively. Go back to their voting records; find out what issues they campaigned on, and what the centerpieces of their platforms were. Try to identify common ground. Find out if there is anyone in your area who has been a champion of criminal justice issues. Find out about racial makeup, income level, economic base, and challenges of the district.

Identify an effective sponsor for your bill or legislative action. You will not often have a readily available champion of criminal justice debt issues because it is often an unpopular issue. It may also be difficult to target all possible decision-makers. Again, prioritizing is key to success. Put lobbying and advocacy resources behind targets that are either supporters or undecided. Lobbying efforts should focus on turning supporters into champions of a bill and turn undecided legislators into supporters.

There are a number of ways to communicate with elected officials: personal visits, phone calls, letters, petitions, emails, rallies and demonstrations, and public meetings. In general, the tactics that involve more personal contact are more powerful and may require fewer people. A personal meeting with an elected official where a few advocates and/or constituents are present may have a strong impact on a decision maker. However, a petition, requiring only a signature on a pre-written form, will require many more constituents in order to be effective. A large public meeting with many constituents present is one of the most effective ways to gain support.

Tips for Effective Meetings with Legislators:

- **Introductions:** Identify any constituents at the meeting. Elected officials are most responsive to individuals who are responsible for keeping them in office or have the power to get them out.
- **Brief, clear statements:** Highlight your key points about why this is an important issue. Have a one-page document restating these points ready for your elected. Compelling statistics and facts can help legitimize your point.
- **Personal stories:** Personal stories demonstrate concrete impacts in the elected official's community. Stories are more memorable than talking points.
- **Ask for their support directly:** If you don't make a demand of your elected official, you will never know if s/he will support your position. You won't know if you have a supporter or if you need to move on to someone else.
- **Be a resource for them:** Offer to and be available to answer more questions and give more information.
- **Thank the legislator for his or her time.**

SELECTING AREAS FOR REFORM

The table below is designed to help identify possible elements of criminal justice debt that may be ripe for reform. Included are suggested solutions that can form the basis of reform proposals. There are four major areas to consider: fee and fine imposition, collection and reassessment, nonpayment enforcement, and re-incarceration for nonpayment.

Consulting with public defenders, prosecutors, criminal court staff and probation and parole department personnel can be invaluable in identifying practices in need of modification.

| <i>Questions for Policy-Makers</i> | <i>Consider . . .</i> | <i>Recommendations</i> |
|---|---|---|
| IMPOSITION OF FEES & FINES | | |
| <p>➤ Is the state trying to increase revenue by imposing new fees on criminal defendants in the court process?</p> | <ul style="list-style-type: none"> • Many of those reentering society are indigent, making collection difficult, and research shows that criminal justice debt can significantly impede successful reentry. | <ul style="list-style-type: none"> ✓ The legislature should refrain from adding new fees, late payment penalties, surcharges, and interest costs, and should reduce the state and judiciary's reliance on fees and fines revenue. ✓ To fully understand the impact of your state's fees and fines, your state should collect data to evaluate the effects of legal financial obligations (LFOs) on reentry. |
| <p>➤ Are courts imposing or enforcing the non-payment of LFOs without determining an individual's financial situation?</p> | <ul style="list-style-type: none"> • States' collection efforts and re-resources are wasted trying to collect from those without the ability to pay. • With fee waivers for indigency, state collection efforts could be focused on those able to pay. • For those unable to pay, criminal justice debt inhibits successful reentry. | <ul style="list-style-type: none"> ✓ State law should exempt the indigent from paying court fees. ✓ Judges should be required to inquire into a defendant's ability to pay before imposing fees and fines and enforcing sanctions for a failure to pay. |
| <p>➤ Are judges limited in their ability to impose alternative sanctions to fees and fines (such as community service)?</p> | <ul style="list-style-type: none"> • Meaningful community service benefits the community and can provide defendants with job training and skills that will further their reentry efforts. | <ul style="list-style-type: none"> ✓ Your state should give judges alternatives to ordering the payment of fees and fines, such as meaningful community service options. Community service should be designed to help defendants reintegrate into the community, not as a punitive measure. |



| <i>Questions for Policy-Makers</i> | <i>Consider . . .</i> | <i>Recommendations</i> |
|--|--|--|
| COLLECTIONS & REASSESSMENT | | |
| <p>➤ Do courts require payment at the time LFOs are imposed?</p> | <ul style="list-style-type: none"> • Paying the full amount of LFOs upfront is impractical for many individuals serving time in prison. • Requiring this lump sum payment can threaten their economic security, thus threatening reentry and encouraging recidivism | <ul style="list-style-type: none"> ✓ States should allow defendants to pay in installments over time in an amount tailored to their ability to pay. ✓ Payment plan programs should include opportunities for income and debt burden reassessments and the flexibility to adjust the payment schedule and amount in response to changed circumstances. ✓ Payment plan programs should not charge set-up fees or monthly interest, in order to avoid increasing the financial burden on indigent defendants |
| <p>➤ Does your state garnish wages or bank accounts to collect debt? Or obtain liens against a defendant's property?</p> | <ul style="list-style-type: none"> • Individuals reentering the community are likely to have low wage jobs but face a myriad of expenses, including hefty child support payments. • Entering civil judgments against defendants or using private collection companies can negatively impact defendants' credit ratings, making it more difficult for them to secure housing and other necessities. | <ul style="list-style-type: none"> ✓ Your state should set a maximum percentage of a defendant's income that can be assessed for payment of court debt. ✓ The defendant's other financial obligations, such as child support, should be taken into account when setting that maximum. ✓ To the extent possible, your state should not forward non-payment and lien information to credit rating agencies. |
| <p>➤ Do court clerks only accept payment in person? By money order?</p> | <ul style="list-style-type: none"> • Requiring payment in person can be disruptive for individuals who work during courthouse business hours. • Fees on money orders and certified checks can be very high and increase the financial burden on defendants. | <ul style="list-style-type: none"> ✓ Your state should offer defendants various ways to pay fees and fines such as online payment or payment by phone with a credit card. |

SELECTING AREAS FOR REFORM

| <i>Questions for Policy-Makers</i> | <i>Consider . . .</i> | <i>Recommendations</i> |
|--|--|---|
| ENFORCEMENT OF NON-PAYMENT | | |
| <p>➤ Does your state require defendants to “pay or appear,” (i.e. make payments by a certain date or appear in court to explain their failure to do so)?</p> | <ul style="list-style-type: none"> • While payment plans are a welcome option for defendants able to pay over the course of time, the use of “pay or appear” proceedings to enforce these payment plans is counterproductive. • Attending hearings, which often take place during business hours, is difficult for defendants with new jobs. • The consequence of missing a hearing can be serious: if a defendant misses a scheduled hearing a warrant can be issued for his or her arrest. This leads to the frequent incarceration of individuals who have not been determined able to pay and is not a cost-effective practice. | <p>✓ States should avoid disruptive and expensive processes for nonpayment by establishing a defendant’s ability to pay before a warrant issues and utilizing alternative methods of enforcement before resorting to issuing a warrant.</p> |
| <p>➤ Does your state authorize the suspension of an individual’s driver’s license or vehicle registration for a failure to pay fees and fines?</p> | <ul style="list-style-type: none"> • Restricting defendants’ ability to drive is a serious sanction that hinders their ability to work -- a necessity for reintegration into society and defendants’ future ability to pay debts. | <p>✓ Driver’s license and registration suspensions should be limited to cases where the court finds that the individual was able to pay the fees and fines and willfully failed to do so.</p> |



| <i>Questions for Policy-Makers</i> | <i>Consider . . .</i> | <i>Recommendations</i> |
|---|---|---|
| INCARCERATION AND CONSTITUTIONAL CONCERNS | | |
| <p>➤ Are individuals in your state incarcerated for non-payment of fees and fines?</p> | <ul style="list-style-type: none"> • The Equal Protection Clause of the United States Constitution protects individuals who are unable to pay fees and fines from incarceration solely for their failure to pay. | <ul style="list-style-type: none"> ✓ The state cannot imprison an indigent defendant for failure to pay LFOs unless such failure was willful and not the result of indigency.¹ ✓ The court cannot impose a fine and automatically convert it into a jail term because the defendant is indigent and unable to pay.² ✓ To protect defendants' constitutional rights, counsel should be provided for any proceeding resulting from a failure to pay fees and fines that may lead to incarceration. |
| <p>➤ Does state law condition parole or probation on the payment of fees and fines?</p> | <ul style="list-style-type: none"> • Parole or probation cannot constitutionally be revoked for the failure to pay fees and fines without a determination that nonpayment was willful and not a result of the defendant's indigency. • Individuals will often stop reporting to parole or probation because they do not have the money to meet their court imposed financial obligations.³ | <ul style="list-style-type: none"> ✓ States should not revoke parole or probation solely for a failure to pay fees and fines. ✓ States should not use missed reporting dates as a pretext for incarcerating individuals who cannot pay. ✓ States should not revoke parole or probation for a failure to comply with requirements such as treatment or drug or alcohol testing when that failure was because the defendant was unable to pay treatment program or testing fees. |

1 *Williams v. Illinois*, 399 U.S. 235; *Tate v. Short*, 401 U.S. 395 (1971); *Bearden v. Georgia*, 461 U.S. 660 (1983).

2 401 U.S. 395 at 398.

3 461 U.S. 660 at 668-75.

WRITING TO ELECTED OFFICIALS

Advocacy letters are most effective if several organizations representing many people are signatories. Letters should ideally be one page, elected officials and their staff may not read a longer letter. Try to avoid jargon. Be specific with your particular problem or request. If you are writing about a specific bill, include the bill number and title and how you would like the elected official to vote.

Sample Letter

March 1, 2012
The Honorable [Elected Official Name]
Address

Re: Assembly Bill 1234

Dear Title [Elected Official Last Name]:

We are a coalition of civil legal services attorneys, public defenders, prosecutors, and civil liberties organizations. We are writing to express our opposition to the jail fee that would be imposed by Bill 1234. Our primary objections are:

The fee will cost the state money: The imposition of a jail fee may end up costing states more in the long run. In places where a local jail fee has been implemented or considered (such as in California and Michigan), local sheriffs recognize that large percentages of those jailed will be unable to afford fees, necessitating collection efforts. In 2010, an investigative commission in Massachusetts concluded that an additional jail fee would increase costs to taxpayers because of the tracking and implementation system necessary, and that the fee would likely increase recidivism. In addition to the costs of imposing the fee, court and correctional officials end up acting as collection agents. Salary and overtime pay for judges, clerks, attorneys, and probation and parole officers are part of the fiscal cost of imposing such a fee.

The fee jeopardizes community safety: Law enforcement officials, sheriffs, and probation and parole officers have a duty to monitor public safety. Probation and parole officers have the specific responsibility to monitor those at high risk of recidivism. Forcing such officers to monitor individuals who have failed to pay a fee diverts the scarce resources of already overburdened officials to collect debt.

The fee encourages recidivism and creates paths to imprisonment: Time in jail may have already disrupted an individual's job. Leaving jail with a debt load and potentially no job may result in people committing crimes in order to obtain the funds to pay off debt. Furthermore, if individuals are unable to pay, they may be found in civil contempt for failure to pay a fee, resulting in further incarceration.

The fee raises constitutional questions, offends values of liberty and due process: Unpaid civil debt that could lead to incarceration subverts core constitutional protections against debtors' prisons. The Supreme Court has held that extending prison terms, probation, parole, or automatically converting criminal justice debt into a jail fee is unconstitutional. Not having an attorney at a civil contempt proceeding that could result in incarceration subverts a person's right to counsel.

In light of these serious concerns we ask that you oppose the imposition of a jail fee.

If we can provide any additional information on this matter, please contact [insert name]. We would welcome the opportunity to discuss Bill 1234 with you or a member of your staff.

Sincerely,
List organizations including:
name, address, name of specific person, title, phone number and e-mail address.

ADVOCACY MEETING HANDOUT

Advocacy documents are useful for meetings with elected officials. Like letters to elected officials, sample documents should ideally be one page, elected officials and their staff may not read a longer letter.

Sample One-Page Advocacy Document

[Organizational Letterhead]



Jail Fees Don't Work

Jail fees may be costly to implement.

In 2010, an investigative commission in Massachusetts concluded that an additional jail fee would increase costs to taxpayers because of the tracking and implementation system necessary, and that the fees would likely increase recidivism.



Jail fees jeopardize community safety.

Law enforcement officials, sheriffs, and probation and parole officers have a duty to monitor public safety. Probation and parole officers have the specific responsibility to monitor those at high-risk for re-offending. Forcing such officers to monitor individuals who have failed to pay a fee diverts the scarce resources of already overburdened officials to collect debt.



Jail fees increase recidivism.

Outstanding criminal justice debt can impede access to housing, employment, and public benefits, making it difficult for people to re-integrate into society. Outstanding debt combined with unemployment may encourage further criminal activity. Failure to make payments can result in re-incarceration.



Children and families shoulder the burden of jail fees.

Charging fees to these inmates will harm not just the inmates but also their families, by diverting money from food, rent, and health care for their children. Driving more children into poverty is the last thing we should be doing in the middle of a recession. Additionally, jail fees often hinder a person's ability to make child support payments.



Courts have ruled against the illegal imposition of jail fees.

After a 2006 lawsuit forced Clinch County, Georgia to repay money to several inmates who had been made to pay a daily jail fee for their time in custody before they were ever convicted of a crime.

LETTERS TO THE EDITOR

Letters to the editor are short responses to articles that were recently in the publication expressing the author's point of view. Keep tabs on any stories published that mention criminal justice debt and be ready to respond with letters to the editor quickly. For daily papers, responses should ideally be the same day. Letters to the editor should be short – no more than 250 words. The best letters are concise and have a first person story. Additionally, there's nothing wrong with a writing a letter to the editor that praises a story. You can then use that praise as springboard to make your key points. Highlight how criminal justice debt is having a detrimental impact on communities. If you have a grassroots base, writing letters to the editor is a valuable task for grassroots leaders to engage in. Consider distributing sample letters and talking points to your grassroots members. Remember to include your contact information with the letter. The paper may call to verify that you are the letter's author.

Sample Letter to the Editor

March 1, 2012

Dear Editor,

While I am pleased to see your coverage of the jail fee controversy, your story (Title, Date) did not fully convey the range of harms jail fees can spawn. As a civil legal aid attorney/ public defender/ advocate, I know first-hand how criminal debt fees can cripple the chances of a defendant's successful rehabilitation. Many people have fully completed the terms of their sentence, but remain saddled with debt.

People too poor to pay often have to serve time in lieu of paying, which acts as a punishment simply for being poor. Jail time also interferes with a person's ability to re-enter society, find and maintain work, or support their families, making it more likely that a person may re-offend.

Courts are illogically relying on poor people to fund the justice system. The imposition of such fees is a knee-jerk reaction to tightening budgets. Legislatures decide to impose such fees without considering the cost of collecting the fee or the fact that many people will be unable to pay entirely.

Studies have shown that incarcerating people solely due to an inability to pay debt is enormously costly. In 2010 Massachusetts did a study on a proposed jail fee and concluded the fee would have a host of unintended consequences. The costs of imposing the fee including tracking a person's ability to pay and trying to collect from a largely indigent population.

The imposition of a jail fee costs our communities and the government more money in the long run

Your Name, Title
Contact Information

OP-EDS

Op-Eds are longer and more substantive than letters to the editor. The most effective Op-Eds offer a unique perspective on an issue presented in the paper, and include a personal story of someone actually affected by the issue. As an advocate on criminal justice issues, your expertise distinguishes you from other writers, although your goal should be to write for a *general* audience. Above all, Op-Eds should not exceed 750 words. Most papers receive more Op-Eds than they can publish and may not read longer Op-Eds. Some newspapers have expanded Op-Ed sections on their websites. Check to see if the outlet considering your Op-Ed is one of them. If your submission is rejected for the newspaper's print version, ask if it can run on the website. One final tip: Spend no more than 60 seconds creating a title for your piece. The newspaper will craft a headline for it.

Sample Op-Ed

OVER the past two years, Philadelphia courts have initiated an unprecedented, aggressive drive to collect criminal justice debt. These efforts have targeted more than 320,000 people — roughly 1 in 5 Philadelphians — who allegedly owe more than \$1.5 billion in various criminal justice charges. These debts date as far back as the 1970s. Documentation is sparse, and the city may be going after thousands of people who actually owe nothing.

Take the case of Evelyn Piner, 53. She recently received notice that she owed the city \$900 in forfeited bail for skipping a court hearing 22 years ago. Piner had a good reason for missing the hearing — she was in prison. The city is willing to waive the bail charge if Piner can show documentary evidence that she was incarcerated. There's only one small problem. All of Philadelphia's prison records before 1991 were destroyed by a flood. So Piner, now on public assistance, is, through no fault of her own, saddled with a large debt that she has little hope of paying.

David D. Wasson, the chief deputy administrator of Philadelphia's courts has a different view. "These people have been thumbing their noses at us," he said recently. "It's a court order, and we want compliance."

Ironically Piner's experience is precisely the sort of systemic dysfunction that Philadelphia has been trying to correct through its Criminal Courts "Reform Initiative." The effort was launched in the wake of a 2010 *Philadelphia Inquirer* expose that concluded that the city's criminal justice system was in "dissarray." One source of the system's problems was the Office of the Clerk of Quarter Sessions which had the responsibility for maintaining court records and collecting fees and fines from defendants. The Office's record-keeping was so poor that it had \$54 million in a bank account with no records indicating to whom the money belonged.

Although the Office has been closed, its incompetence lives on. The new collections effort relies upon the Office's inaccurate records. It's no surprise, then, that courts are going after people whose debts either don't exist, or have previously been waived. Notices have arrived at decades-old addresses, prompting the imposition of added collection fees when no one responds. Because of mistaken identities, people have been charged with other peoples' debt.

The Brennan Center believes criminal justice debt collection must be reformed. Debt now acts as a second punishment to those who have already completed their sentences. Many are poor, and unless their debt is waived or reduced, the debt acts as yet another barrier to their successful re-integration into the community.

Cash-strapped jurisdictions such as Philadelphia that have seen criminal justice debt collection as an easy means for a windfall may find just the opposite. In 2010 a special commission in Massachusetts studied the imposition of a jail fee and found there would be a number of costs associated with trying to collect the fee, including tracking people's ability to pay.

Other jurisdictions have taken a more sensible approach. Leon County, Fla., which contains Tallahassee, determined it was cheaper to close its collections court and cancel about 8,000 warrants for people owing fees. Orange County, Fla., which contains Orlando, cancelled all writs for people without a verifiable address.

No one argues that the Philadelphia courts should not collect delinquent fees from those who can afford them. However, in a situation where the records are so shoddy that the tools aren't even available for defendants to contest what they owe, simple fairness — let alone due process — demands that the city reassess its approach. One first step would be to waive all debts incurred before 2005. Integrity is required not only for those who dispense justice, but records they rely upon to dispense it.

RELEVANT READINGS AND RESOURCES

| REFERENCE | SUMMARY |
|--|--|
| <p><i>Criminal Justice Debt: A Barrier to Reentry.</i> Bannon, Alicia, Mitali Nagrecha, Rebekah Diller. Brennan Center for Justice. (2010).</p> | <p>Reviews the practices of the 15 states with the highest prison populations, finding that they are introducing new user fees, raising the dollar amounts of existing fees, and intensifying collection of fees and other forms of criminal justice debt. Fees regularly total hundreds or thousands of dollars, but are levied on a population uniquely unable to pay. The result is onerous debt that puts individuals at risk of imprisonment and can impact everything from employment and housing to financial stability to the right to vote.</p> |
| <p><i>Sentencing for Dollars: The Financial Consequences of a Criminal Conviction.</i> Rosenthal, Alan and Marsha Weissman. Justice Strategies, Center for Community Alternatives. (2007).</p> | <p>Charts the growing use of financial penalties in the criminal justice system since the early 1990s, highlighting the lack of review of their cumulative effects. Lack of attention to the cumulative impact obscures policy questions about how society ought to balance its interests in revenue generation, individual accountability, community reintegration, and public safety.</p> |
| <p><i>In For a Penny: The Rise of America's New Debtors' Prison.</i> American Civil Liberties Union. (2010).</p> | <p>Ignoring <i>Bearden v. Georgia</i>, and in the wake of the fiscal crisis, courts are collecting legal debts more aggressively regardless of individuals' ability to pay. Many defendants are imprisoned for failure to pay, and even if they are not incarcerated, fees and fines pose a significant barrier to reentry by reducing income, worsening credit ratings, dimming prospects for housing and employment, and tethering individuals to the criminal justice system long after sentences are complete.</p> |
| <p><i>Repaying Debts.</i> McLean, Rachel and Michael D. Thompson. Bureau of Justice Assistance. (2007).</p> | <p>Argues that as policymakers attempt to improve reentry, they should consider the financial debt that affected populations owe, as well as their lack of financial resources. Provides a guide for policymakers to address collections in light of these issues.</p> |



| REFERENCE | SUMMARY |
|---|--|
| <p><i>Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States.</i> Harris, Alexes, Heather Evans, & Katherine Beckett. American Journal of Sociology 115(6): 1753-99. (2010).</p> | <p>This study analyzes national and state-level (WA) court data to assess imposition of fines and fees, and interview data to identify social and legal consequences. Findings indicate that monetary sanctions are imposed on a substantial majority of the millions of people convicted of crimes and that legal debt is substantial relative to expected earnings. Indebtedness reproduces disadvantage by reducing family income, limiting access to opportunities and resources, and increasing the likelihood of ongoing criminal justice involvement.</p> |
| <p><i>The Conflict over Bearden v. Georgia in State Courts: Plea-Bargained Probation Terms and the Specter of Debtors' Prison.</i> Wagner, Ann K. Comment. 2010 U. Chicago Legal F 383.</p> | <p>Although Bearden v. Georgia held that courts must make a determination of willful refusal to pay before incarcerating for failure to pay criminal justice debt, some courts have carved exception when defendants initially agreed to pay as part of plea bargain. This trend is a violation of due process, because it is fundamentally unfair to infer willful nonpayment solely on the basis of a plea bargain, without inquiry into a probationer's current state of mind or changed circumstances.</p> |
| <p><i>On Cash and Conviction: Monetary sanctions as misguided policy.</i> Beckett, K. and Alexes Harris. Criminology and Public Policy 10(3), 2011.</p> | <p>Assesses the ethical issues stemming from sanctions, concerning privatization of criminal justice system. Also discusses practical and policy considerations. Describes trends in the use of fees and fines in the U.S - evidence shows that they increasingly supplement other criminal penalties and create substantial long-term debts. Finds that widespread imposition of substantial fees and fines creates debt that is clearly at odds with goals of reintegration.</p> |
| <p><i>Fixing the Broken System of Financial Sanctions.</i> Burch, Traci R. Criminology and Public Policy 10(3), 2011.</p> | <p>Argues that reforms of monetary criminal justice sanctions should standardize the arbitrary nature of such fees and fines and reduce the overwhelming debt burden of current and former offenders.</p> |
| <p><i>A New Punishment Regime.</i> Katzenstein, Mary Fainsod & Mitali Nagrecha. Criminology and Public Policy 10(3), 2011.</p> | <p>Analysis of the technical and discursive normalization of debt collection, shown by: 1) how debt collection associated with presumptive criminal violations is becoming lodged within a vast array of organizational locales, and 2) how routinization and legitimation of these practices is growing.</p> |

BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, NY 10013
www.brennancenter.org