

Revenue Over Public Safety

How Perverse Financial Incentives Warp
the Criminal Justice System

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PUBLISHED JULY 6, 2022

Table of Contents

Introduction	3
I. User-Funded Justice	6
Civil Asset Forfeiture	6
Fines and Fees	11
Privatized Community Supervision	15
II. Correctional and Detention Bed Markets	19
Monetizing Empty Beds	21
Speculative Jail Construction	22
Pass-Through Contracts	23
Bed-Minimum Guarantees	24
III. Enforcement-Oriented Performance Metrics	25
Police Quotas	25
Prosecutor Performance Metrics	29
IV. Unraveling the Incentives	31
Civil Asset Forfeiture	32
Fines and Fees	34
Privatized Community Supervision	35
Correctional and Detention Bed Markets	37
Enforcement-Oriented Performance Metrics	38
Conclusion	42
Endnotes	43

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Introduction

Bipartisan efforts to change the criminal justice system have gained momentum around the country in recent years. Nearly all 50 states, many counties, and the federal government have sought to reduce imprisonment and mitigate its harms.¹ A remarkable wave of legislation has shortened custodial sentences and widened eligibility for sentences served in the community. States and localities have also invested in rehabilitation and reentry services.

Yet the impact of these efforts has been relatively modest. While the nation's imprisoned population has declined since peaking in 2009, incarceration levels remain extraordinarily high (see figure 1).² Nearly 1.2 million people are serving sentences in state and federal prisons, and 10.3 million are admitted to local jails every year.³ Mass incarceration — a term now entrenched in the popular lexicon — is proving remarkably resistant to well-intentioned reforms.⁴

One explanation can be found in the infrastructure erected to support the United States' reliance on imprisonment as the country's primary crime control policy. Mass incarceration did not result simply from increased policing and harsher criminal penalties.⁵ Economic and financial incentives established by local, state, and federal agencies also played a role. Police, prosecutors, and corrections agencies competed for these benefits by escalating their enforcement practices. Law enforcement came to depend on these funding sources, particularly as declining tax receipts and intergovernmental transfers left them grasping to fill budget holes.⁶ These incentives are a persistent structural driver of punitive enforcement and mass incarceration.

The perverse financial incentives of direct federal funding programs for incarceration are relatively easy to identify. So too are laws passed by Congress that encourage more punitive policies.⁷ This report focuses instead on an interlocking set of economic incentives that are more deeply entrenched and difficult to unravel. These incentive structures raise the risk that officials will chase revenue rather than pursue public safety and justice, giving law enforcement agencies a stake in perpetuating mass incarceration. This report catalogs some of the most corrosive practices.

These perverse economic incentives fall into three primary categories:

- **User-funded justice.** Through mechanisms such as civil asset forfeiture, fines and fees, and privatized community supervision, the very people subjected to criminal enforcement activities are routinely made to contribute to the cost of their being arrested, detained,

charged, prosecuted, supervised, or incarcerated. Law enforcement officials and agencies reap the benefits while those trapped in the system struggle to pay.

- **Correctional and detention bed markets.** Officials seeking to alleviate prison and jail overcrowding by renting space from other jurisdictions have created a market in incarcerated people. The federal government has exacerbated this demand for bed space, particularly through stepped-up immigration enforcement. Fiscally distressed counties have seen this market as a solution to their budget woes, often expanding their jails to serve it. Incarcerated people, meanwhile, are reduced to dollars and cents in this rent-seeking ecosystem of carceral institutions seeking to maintain or grow their operations.

- **Enforcement-oriented performance metrics.** Police departments and prosecutors' offices reward staff for meeting productivity-based job metrics, such as arrest quotas and high conviction rates, and penalize those who fall short. With their job security and career advancement at stake, law enforcement officials are incentivized to pursue punitive measures even when leniency might be more appropriate.

In recent years, policymakers have come to see how these practices exacerbate poverty, create conflicts of interest for officials, and disproportionately harm communities of color. This has helped drive progress. But reforms that target specific incentives in isolation can have unintended consequences. A rollback of fines and fees, for example, may simply drive officials to increase civil asset forfeitures to fill the anticipated revenue gap. Proposals to reduce jail and prison populations by moving people into privatized community supervision may enrich for-profit firms while saddling people with costs they cannot afford.⁸

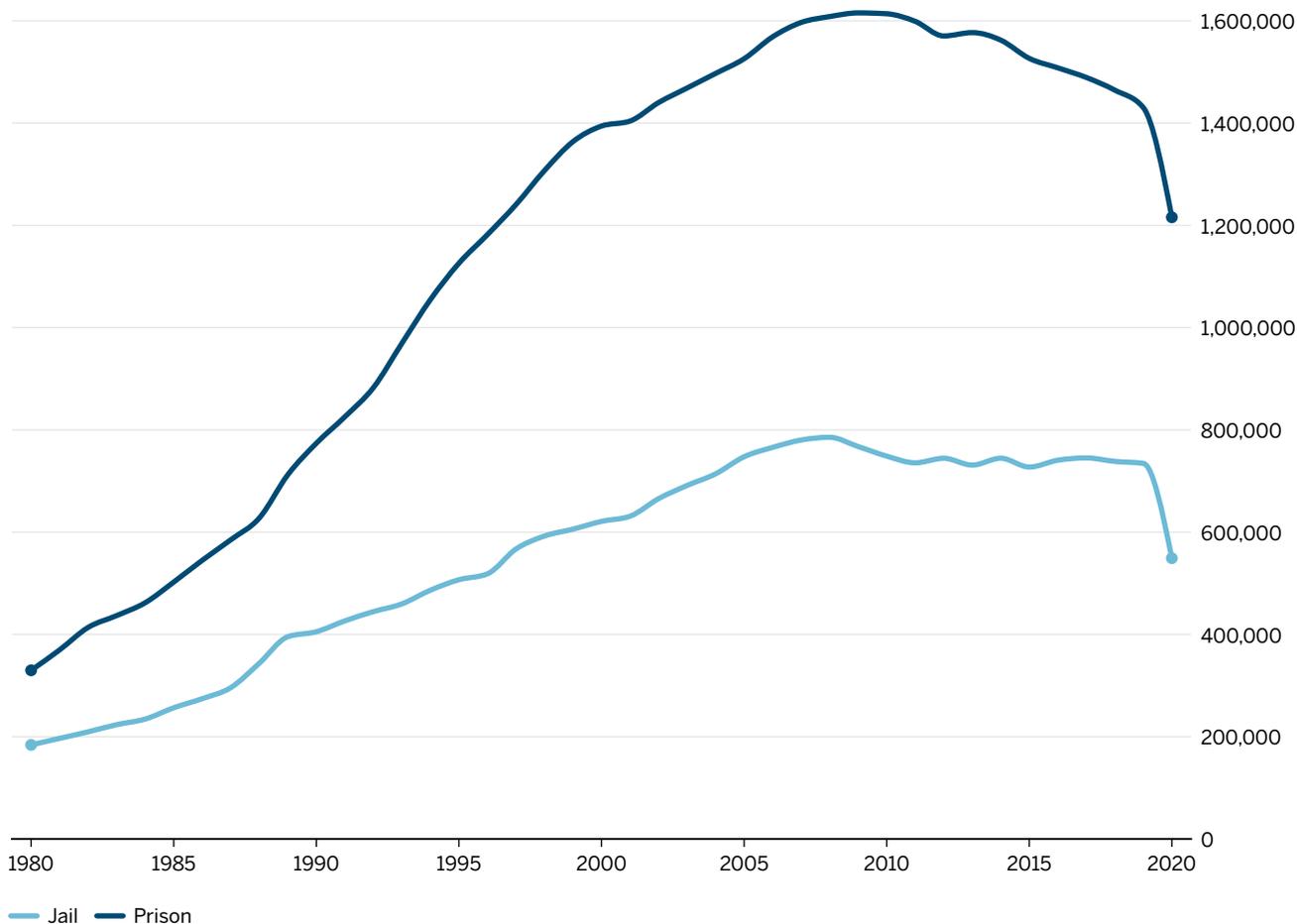
The array of perverse incentives in the criminal legal system makes unwinding mass incarceration extraordinarily difficult. A comprehensive approach will require an all-out mobilization by Congress, state legislatures, local governments, and law enforcement agencies. To decrease

the number of people under correctional control, policymakers must unravel these deeply embedded economic incentives. At the same time, dissuading public safety agencies from preying on the very people they are charged with protecting will require that they be adequately and equita-

bly funded. This report maps out the perverse incentive structures that have helped perpetuate the United States' overly harsh system of punishment and outlines reforms that can eliminate, change, or realign them, moving the country toward a more fair and just criminal justice system.

FIGURE 1

Incarcerated People in the United States, 1980–2020



Note: The prison population covers both federal and state prisons.
Source: Bureau of Justice Statistics (2022).

Federal Funding Incentives and Mass Incarceration

For more than a half century, the grant-making power of the federal government has played an outsized role in expanding the size and scope of incarceration.⁹ States and localities have been systematically rewarded for responding to crime and social disorder with punitive measures — more arrests, longer and more severe sentences, higher incarceration rates, and ever-expanding carceral capacity.¹⁰

>> Early Responses to Crime

Understanding today's bloated criminal legal system requires going back to the 1960s, when rising crime became a major feature of state and national political campaigns. The first Gallup polls showed that crime was among Americans' most critical concerns.¹¹ Indeed, throughout the 1960s the crime rate, and in particular the homicide rate, was increasing.¹²

The Law Enforcement Assistance Act of 1965 was the first major federal funding initiative to support local crime-control policies.¹³ Signed by President Lyndon B. Johnson, the measure sought to “improve methods of law enforcement, court administration, and prison operation.”¹⁴ Three years later, Johnson signed the Omnibus Crime Control and Safe Streets Act of 1968, which sent more money to states for any purpose associated with reducing crime. A few months later, Richard Nixon won the presidential election on a “law and order” platform, insisting that only harsh policing and long sentences could reduce crime.¹⁵

In the 1980s, President Ronald Reagan accelerated Nixon's war on drugs.¹⁶ The Anti-Drug Abuse Act of 1986 codified harsher penalties in federal drug cases, including mandatory minimum sentences and a 100-to-1 sentencing disparity between crack and powder cocaine offenses, which led to tremendous racial disparities.¹⁷ Despite these punitive responses, the violent crime rate rose 15 percent between 1986 and 1994. Congress responded by passing the Violent Crime Control and Law Enforcement Act of 1994, signed by President Bill Clinton.¹⁸

Among other things, the 1994 law created the Community Oriented Policing Services (COPS) Program, which has provided billions of dollars to police departments.¹⁹ A major goal of this funding was putting police in schools; by 2014 more than two-thirds of schools had a police presence.²⁰ The law also incentivized states to adopt tough “truth in sentencing” laws with grants to build or expand correctional facilities.²¹ In some states, this effectively doubled the time people could expect to spend in prison.²² Over the next 15 years, the nation's prison population increased by 53 percent.²³

>> Contemporary Grants

The Department of Justice (DOJ) is the largest source of federal grants, distributing more than \$5 billion a year for both national research and local initiatives.²⁴ But DOJ isn't the only source of enforcement-focused federal money. The Department of Homeland Security also directs funding to support local law enforcement efforts. Two of its counterterrorism and emergency preparedness grant programs, for example,

allocate at least 25 percent of their funds to law enforcement, amounting to at least \$206 million in FY 2021.²⁵

Likewise, the Department of Defense (DOD) sends millions of dollars' worth of military-grade weapons and armored vehicles each year to local law enforcement through the 1033 Program, named for the law that authorizes these transfers.²⁶ Since the program's inception, DOD has sent more than \$7 billion in equipment to almost 10,000 jurisdictions, along with “use it or lose it” provisions that encourage departments to deploy the equipment quickly and frequently.²⁷

>> Unexpected Funding Sources

Because enforcement and incarceration have been longtime federal priorities, money also flows from surprising sources. For example, in early 2009 Congress passed the American Recovery and Reinvestment Act (ARRA), sending billions of dollars in emergency stimulus funds to states to use for jobs and infrastructure — which some states took to mean correctional infrastructure.²⁸ Close to 30 percent of Alabama's corrections budget was supplanted by ARRA funds in 2010.²⁹ ARRA also resuscitated both the COPS Program, which provided billions of dollars to police departments, and the Edward Byrne Memorial Justice Assistance Grant, a leading source of federal funding for state and local jurisdictions. It did so with \$1 billion and \$2 billion cash infusions, respectively.³⁰ To help rationalize this new funding, some law enforcement organizations stoked public fears — even in places where crime did not rise.³¹

Federal Covid-19 relief funding from the CARES Act of 2020 and the American Rescue Plan Act of 2021 are also being directed toward law enforcement and corrections. Alabama designated nearly 20 percent of its federal Covid-19 funding to build and renovate state correctional facilities.³² Oklahoma County commissioners gave 72 percent of their CARES Act funds to the County Jail Trust.³³ Chicago spent 60 percent of its discretionary CARES Act funding on its police department.³⁴

In another perverse use of federal dollars, since 1996 the Department of Agriculture (USDA) has provided \$360 million in funds — originally intended for economic development — to build jails in rural communities.³⁵ The USDA Community Facilities Direct Loan & Grant Program provides “funding to develop essential community facilities in rural areas.”³⁶ Under grant parameters, a prison is considered an “essential community facility” that provides services and employment. USDA funds can also be used to maintain existing correctional facilities.³⁷

I. User-Funded Justice

Police, prosecutors, and judges exercise immense discretion to choose which crimes to investigate, prosecute, and punish.³⁸ When their discretion also encompasses an ability to extract revenue — and when agencies are expected to self-finance some portion of their operations — the risk of abuse runs high. This is especially the case when localities under pressure to support an increasingly expensive criminal justice system are saddled with limited options for raising revenue, shrinking state or federal financial assistance, eroded property and sales tax bases, and public distaste for tax increases.³⁹

Agencies thus increasingly rely on the people who cycle through the criminal legal system to reimburse the very enforcement machinery that ensnared them in the first place, often levying some sort of tariff at every stage of the process. Money is extracted not just through traffic citations and criminal fines but also through court surcharges, supervision fees, and seizures of property — now all routine features of American criminal punishment.⁴⁰ In 2012, approximately 10 percent of police departments derived almost one-third of their operating expenses from fine and forfeiture revenues, while approximately 1 percent of counties used such revenues to cover 90 percent or more of law enforcement operating expenditures.⁴¹ Because more people processed means more dollars to help pay for each component of the criminal legal system, police, prosecutors, sheriffs, judges, and others in law enforcement may be induced to make decisions about enforcement and punishment according to the financial needs of their agency.

Government agencies have grown increasingly reliant on revenue based on the head count of people in the justice system. Proceeds from criminal fines and property seizures account for more than 10 percent of general fund revenues in almost 600 jurisdictions nationwide and more than 20 percent in 284 of those jurisdictions.⁴² Notorious in this regard are states like Georgia. For example, Darien — a town of fewer than 2,000 people — derived 46 percent of its revenue in one year from law enforcement ticketing alone.⁴³ All of this is done outside of normal budgeting processes, providing a flexible way of generating revenue for discretionary expenditures.

This section discusses three key practices that create a perverse funding structure based on keeping high numbers of people cycling through the criminal legal process: 1) civil asset forfeiture, the practice of seizing any asset, from cash to real property, suspected to have been used in alleged criminal activity; 2) criminal fines and fees, a bewildering array of tariffs charged to recover almost every aspect of justice-system costs and expenses; and 3) expanded forms of privately run, community-based correctional control arising from recent decarceration

efforts, from privately run probation supervision to home-confinement surveillance technology.

Emerging from these practices is a predatory system of enforcement used to subsidize the operations of mass enforcement and mass incarceration rather than to distribute the costs of justice and public safety across society as a whole.⁴⁴ And this burden, unmistakably, falls too often on the poorest, most disenfranchised communities, further exacerbating social inequality and dislocation.⁴⁵ Nonpayment of financial obligations that stem from justice system involvement can lead to irrevocable life damage, including increased risk of incarceration, reduced lifetime earnings, and increased financial instability.⁴⁶ These social costs are not typically accounted for in the government ledger, and policymakers can easily disregard them when they consider policy or attempt to balance the books.

Civil Asset Forfeiture

Imagine this scenario: police raid a college party held at a warehouse without a liquor license and impound the vehicles of party attendees. Even though charges for “loitering in a place of illegal occupation” are dropped against the more than 100 people at the party, most are compelled to pay upwards of \$900 each to the police for towing and storage to get their cars back.⁴⁷ For some, this recovery fee is just an inconvenience. But others do not have the money and ultimately lose their vehicles, all because of a minor ordinance violation that they may not have even known about.

Or consider a case in which police officers stop a vehicle, search it, and find a considerable amount of cash. Although the money is meant for the purchase of a music studio, police seize it, their suspicions aroused by the mere existence of such a large amount of cash. Threatening criminal sanctions, the officers induce the owner to sign a waiver giving the cash up in order to be let go. No arrest is made or charges filed, and the person receives just a \$25 ticket for improper seat belt use. When the owner

attempts to recover the seized cash, the police file a petition in opposition, claiming that the cash was “abandoned.”⁴⁸

As absurd as these scenarios sound, they are real examples of a ubiquitous practice: civil asset forfeiture.⁴⁹ A legal doctrine with a long pedigree, civil asset forfeiture enables law enforcement agencies to seize and retain a person’s cash, property, home, or any other items suspected to have a connection to criminal activity, even without ever charging the property’s owner with any criminal offense.⁵⁰

Recovery of seized cash or property is not a foregone conclusion. As in the first example, property owners may have to pay a fee to get it back. Or they may have to petition a court, hire counsel, pay legal fees, and wait years to get it back.⁵¹ Even if ultimately successful, the process can take decades.⁵² In most cases, people never get their cash or property back, even if they are never charged, have their charges dismissed, are found innocent by a judge or jury, or are found guilty of only a minor offense.

Civil asset forfeiture involves fewer and lower procedural hurdles than criminal asset forfeiture. The latter requires the government to prove beyond a reasonable doubt not only that someone is guilty of a crime but also that there is a connection between that crime and the asset in question.⁵³ With civil asset forfeiture, by contrast, police can seize property from anyone on a mere suspicion of its connection to an alleged crime.⁵⁴ Based on the legal fiction that inanimate objects can be vicariously guilty of wrongdoing, law enforcement moves against the seized property in civil judicial actions known as *in rem* (“against a thing itself”) proceedings.⁵⁵ This not only renders irrelevant the guilt or innocence of the person who possesses the property, but also means that civil liberties, particularly due process rights, do not apply, since such rights attach only to people. Once property is seized, its owners effectively hold the burden of proving their property’s innocence to retrieve it, bearing all costs of the recovery effort.⁵⁶ It is unsurprising that few impacted people attempt recovery; only 22 percent of seizures are ever contested.⁵⁷

The Origins of Civil Asset Forfeiture

Modern civil asset forfeiture laws gained prominence in the United States over the last half century as a primary tool of the nation’s war on drugs.⁵⁸ Practiced first by the federal government, the procedure was soon taken up by states and local governments that wanted to use asset forfeiture to weaken organized crime.⁵⁹ Today hundreds of local, state, and federal laws exist authorizing asset forfeiture for a wide range of activities, including racketeering, securities fraud, animal cruelty, underground gambling, and human trafficking.⁶⁰ But asset forfeiture

also plays out in relation to activities not typically associated with organized crime, such as drag racing, drunk driving, and all sorts of low-level offenses — including violation of nuisance ordinances or license requirements — and results in highly disproportionate outcomes.⁶¹ Take, for example, an oft-cited case of a \$20 marijuana sale on the porch of a Philadelphia house leading to the seizure of the home, even though it was owned by innocent third parties.⁶² Or the case of Tina Bennis, who lost the car she jointly owned with her husband after his encounter with a sex worker inside the vehicle. She challenged the forfeiture, but the Supreme Court ultimately approved it.⁶³

Civil asset forfeiture practices raise staggeringly large pots of revenue every year (see table 1). According to a 2020 report from the Institute of Justice, an organization that tracks, analyzes, and advocates against current asset forfeiture practices, the federal government, 42 states, and the District of Columbia acquired more than \$3 billion worth of forfeited assets in 2018 alone. Going back to 2000, forfeiture revenue has amounted to nearly \$69 billion — an underestimate, since forfeiture activity during this period was not available for all 50 states.⁶⁴

More important, most seizing agencies are permitted to retain and use a significant proportion of forfeiture proceeds (see figure 2). In nearly two-thirds of states, that proportion is between 80 and 100 percent.⁶⁵ For example, Massachusetts raised more than \$12 million in state forfeiture revenue in 2018, all of which went to law enforcement agencies.⁶⁶ Before

Philadelphia curtailed self-funding in 2018, civil asset forfeitures raised as much as \$5.6 million annually, providing nearly 20 percent of the district attorney’s annual budget.⁶⁷ In addition, the federal government’s Equitable Sharing Program (ESP) allows state and local law enforcement agencies to seize property locally for forfeiture under federal law and receive a significant cut of the proceeds. Between 2000 and 2019, the federal government paid out \$8.8 billion to state and local agencies participating in the ESP.⁶⁸ Massachusetts added nearly \$25 million more in forfeiture revenue in 2018 using this program alone.⁶⁹

Given these high rewards, scholarly and legislative attention is increasingly focused on the potential for abuse.⁷⁰ A growing body of research demonstrates the extent to which forfeiture laws can skew law enforcement priorities, leading agencies to focus on activities that maximize revenue generation.⁷¹ Far from being the powerful crime-fighting tool the practice is purported to be, asset seizures do not lead to an increase in solved crimes or a decrease in drug use.⁷² States with the highest asset forfeiture revenue rates vary in their crime rates. In 2018,

Police can seize property from anyone on a mere suspicion of its connection to an alleged crime.

TABLE 1

Civil Asset Forfeiture Rates, 2018

STATE	FORFEITURES PER 100,000 RESIDENTS
Florida	\$1,155,766
Illinois	\$299,229
Tennessee	\$223,496
Rhode Island	\$215,670
Nebraska	\$206,926
Arizona	\$205,851
Louisiana	\$202,624
Delaware	\$196,013
Oklahoma	\$181,075
South Dakota	\$180,050
Minnesota	\$179,030
Massachusetts	\$174,441
Texas	\$173,219
New Jersey	\$163,195
Nevada	\$161,520
New York	\$154,388
Pennsylvania	\$128,843
Kentucky	\$123,355
Georgia	\$118,940
Washington	\$118,867
Michigan	\$104,533
Indiana	\$91,331
South Carolina	\$79,824
California	\$76,947
North Carolina	\$74,195
Utah	\$69,685
Virginia	\$67,711
Iowa	\$57,505
Hawaii	\$46,550
Connecticut	\$42,223
New Hampshire	\$42,031
Maryland	\$35,983
Oregon	\$29,115
Wyoming	\$25,534
Mississippi	\$24,047
Maine	\$16,812
Idaho	\$12,962

Continued on next page

Civil Asset Forfeiture Rates, 2018 Continued

STATE	FORFEITURES PER 100,000 RESIDENTS
West Virginia	\$11,640
Colorado	\$6,030
Montana	\$4,893
Missouri	\$3,294
District of Columbia	\$2,688
New Mexico	\$1,379
Wisconsin	\$444

Note: Data is not available for Alabama, Alaska, Arkansas, Kansas, North Dakota, Ohio, and Vermont.
Source: Institute for Justice (2020); U.S. Census Bureau (2018); and Brennan Center calculations.

Tennessee, Illinois, and Florida — the states with the three highest per capita forfeiture revenue rates — ranked 6th, 21st, and 30th in terms of crime rates (where the highest in the country is ranked first).⁷³ Recent research demonstrates that the elimination of civil asset forfeiture in New Mexico in 2015 did not lead to increases in crime.⁷⁴

Asset forfeiture may have been intended to focus on the huge pools of cash that drive organized crime, but something quite different has evolved. Police often target people who have enough resources to make seizure worthwhile but are unlikely to be able to successfully advocate the return of their property. Recall the examples above of how small violations can lead to big losses for ordinary people. There are countless examples of police on fishing expeditions for assets, relying on pretextual vehicle stops for minor violations — such as speeding, failure to signal, or a broken taillight — in order to strip people of vehicles, cash, or other property even when there is no probable cause or observable connection to a crime, and despite the fact that no arrest is made, nor even a citation or criminal charges subsequently filed.⁷⁵ Minor offenses can also be a pretext to seize major assets like people’s houses.⁷⁶ But most actions result in cash forfeitures that are surprisingly small, averaging only \$1,276 according to a study of 2015–2019 data from 21 states.⁷⁷ Many forfeiture actions produce sums that are considerably smaller. In Michigan and Pennsylvania, for example, half of all forfeitures during that period were \$400 or less.⁷⁸ Between 2011 and 2013, half of all cash seizures in Philadelphia were estimated to have involved sums of less than \$192.⁷⁹ Meanwhile, hiring an attorney to recover seized cash or property in a relatively simple state forfeiture case can cost upwards of \$3,000.⁸⁰

A significant portion of civil forfeitures are not accompanied by an arrest or conviction, meaning that law enforcement lacked either the evidence or the will to prosecute the alleged criminal activities that formed the basis of the seizure. In a 2017 audit of the more than \$4 billion in cash seizures executed by the Drug Enforcement Admin-

istration (DEA) between 2007 and 2016, the Department of Justice inspector general (IG) noted that “many of the DEA’s interdiction seizures may not advance or relate to criminal investigations.”⁸¹ The DEA could not verify such a connection in “more than half of the seizures sampled” by the IG, the vast majority of which were done without warrants or criminal proceedings.⁸² An analysis of South Carolina found that 20 percent of people subject to civil asset forfeiture were never charged with a crime, and another 20 percent were charged but never convicted.⁸³

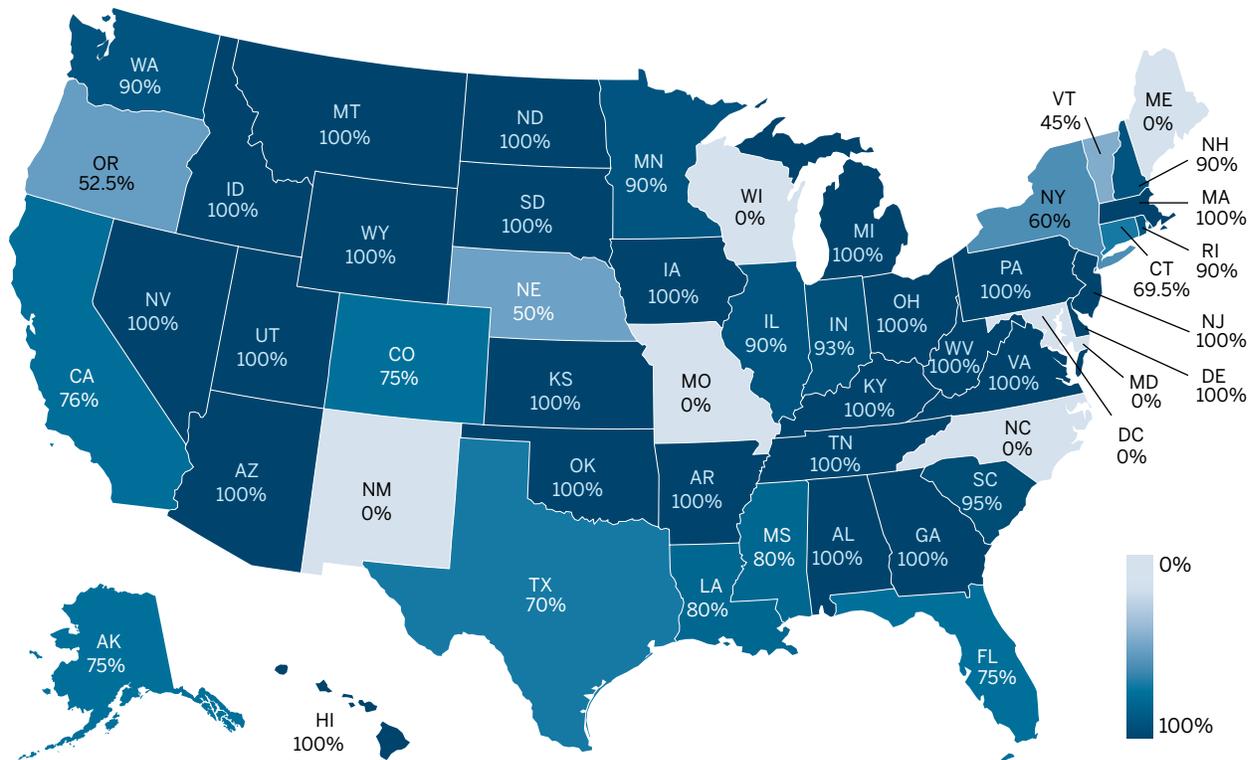
A System Ripe for Abuse

Given the permissive nature of civil asset forfeiture and the potential windfall it can yield, many law enforcement agencies have internalized the practice as a vital budgetary device.⁸⁴ Forfeiture proceeds often make up a sizable portion of their finances. A 2010 study of 52 Texas law enforcement agencies, for example, found that forfeiture revenues on average amounted to 14 percent of their budgets.⁸⁵ In some jurisdictions these proceeds funded up to one-third of expenses, despite the fact that Texas counties are not allowed to use forfeiture assets as a replacement for local funding.⁸⁶ In 2013 the Tarrant County District Attorney’s Office seized \$3.5 million in cash, plus nearly 250 cars and 440 computers, that together equaled about 10 percent of its budget.⁸⁷ Nearly \$900,000 of the proceeds was spent on salaries. Sometimes forfeiture proceeds greatly exceed agency operating budgets. Prosecutorial coffers across Texas have swelled with seized assets: such income was equal to 150 percent of the prosecutor’s 2012 budget in Medina County, 205 percent in Hill County, and 1,507 percent in Reeves County.⁸⁸

Studies have shown that some police departments increase forfeiture activity in times of fiscal distress or when they anticipate budget cuts.⁸⁹ During the Great Recession, multiple states saw sudden spikes in forfeiture revenue totals. For example, in Washington State, forfeiture revenue jumped from just over \$1 million in 2007 to

FIGURE 2

Percentage of Funds Forfeited to Law Enforcement, 2020



Source: Institute for Justice (2020).

approximately \$9 million in 2008 and again in 2009. Similarly, Kentucky saw its forfeiture revenue more than double from just over \$800,000 in 2008 to just over \$2,100,000 in 2009.⁹⁰

Stories chronicling how forfeiture laws have led to a predatory system of revenue-driven law enforcement practices abound. The *New York Times* reported in 2014 that officers are trained specifically in how to maximize revenue, prevail over property owners who contest seizures, and ensure that proceeds remain with law enforcement rather than be directed to general fund budgets.⁹¹ When seizing property, officers are sometimes counseled not to bother with jewelry (too hard to turn into cash) and encouraged to seize flat-screen televisions, cash, and cars. The former head of the Bronx district attorney’s forfeiture unit described the allure of prospective financial rewards through forfeiture, declaring: “There is a cash incentive [for police] to take money — it goes to their pension, it can even be used to buy equipment, to throw parties. You see a nice car parked outside? That’s civil asset forfeiture. Now it’s theirs.”⁹² And Columbia, Missouri, Police Chief Kenneth M. Burton explained at a meeting in 2012 that forfeiture funds often go to large, one-time expenses that have not been approved as purchases: “We just usually base it on something that

would be nice to have that we can’t get in the budget. . . . It’s kind of like pennies from heaven — it gets you a toy or something that you need.”⁹³

Ultimately, civil asset forfeiture bestows tremendous power ripe for misuse and abuse. Investigative journalists, scholars, and others have exposed disturbing patterns that have emerged as police focus on maximizing proceeds. One investigation found that Minnesota’s Metro Gang Strike Force targeted people clearly not involved in gang activity for stops and searches and engaged in “appalling and outrageous” behavior such as allowing officers’ families to purchase items — large-screen televisions, tools, appliances, personal watercraft, even a trailer — from evidence rooms or to borrow them for personal use.⁹⁴ Investigations of other agencies have found forfeiture proceeds used to purchase a wide variety of items for personal or non-law enforcement use, including food, bomber jackets, running gear, football tickets, and even reelection ads.⁹⁵

Journalists have documented police abusing their forfeiture power in other ways. These include:

- strategically erecting roadblocks on interstate highways to increase the chances of extracting cash forfeitures from would-be drug buyers;⁹⁶

- staging street-level drug operations that target buyers of small amounts of drugs, instead of major drug trafficking organizations or their agents, in pursuit of easy cash or asset forfeitures — such as “reverse sting” operations, where police pose as a drug dealer rather than a buyer;⁹⁷
- placing undue pressure on people to put up cash — a “redemption fee” — to secure release of seized cars or other property;⁹⁸
- pressing people to accede to seizures in exchange for leniency — including cash-for-freedom deals in which law enforcement agents promise not to arrest or charge people if they give up their property to police or withdraw a petition contesting seizure; and
- threatening people who refuse to relinquish their property with the removal of their children from the home by a child protective services agency.⁹⁹

Fines and Fees

At almost every level of the criminal legal system, individuals are saddled with having to pay various fines and fees.¹⁰⁷ The practice is so ubiquitous that there is a growing public perception that the criminal justice system is one whose primary role is that of bill collection.¹⁰⁸

Fines are imposed on a person convicted of an offense for the purpose of punishment and deterrence.¹⁰⁹ As a component of sentencing, judges generally have discretion to set a fine amount within a prescribed range, and some states allow — or even require — judges to evaluate an individual’s ability to pay before assigning fines, to ensure that people are not subsequently punished for fines they are unable to pay.¹¹⁰

In contrast, fees are intended solely to raise revenue; they are the most common and often the most expensive criminal justice cost imposed on defendants.¹¹¹ Criminal justice fees are usually automatically levied and often framed as “user fees,” shifting the burden of funding public services from taxpayers to defendants, who are all too often low-income individuals from underserved communities. Both of these practices function as a regressive tax.¹¹²

Jurisdictions impose fees at every stage of the criminal legal process. They are commonly assessed for crime lab analyses, bail payments, public defense, community supervision, electronic monitoring, diversion programs, drug treatment, filing clerk operations, jail admission and incarceration, and late payment of legal financial obligations of any kind. Money collected from fees may be allocated to prison construction, DNA database maintenance, police

Racial Disparities in Asset Forfeiture

Multiple studies make it clear that the practice of civil asset forfeiture disproportionately targets communities of color.¹⁰⁰ A 2017 Nevada study, for example, found that forfeitures often involved small cash sums taken from minority or low-income neighborhoods.¹⁰¹ Two South Carolina newspapers — the *Greenville News* and *Anderson Independent Mail* — discovered that police had seized more than \$17 million in 3,200 civil asset forfeiture cases from 2014 to 2016. While representing only 13 percent of South Carolina’s population, Black men made up 65 percent of those targeted for civil forfeiture. The investigation also found that white people subject to forfeiture activity were twice as likely as Black people to get their money back.¹⁰² A similar investigation in 10 Oklahoma counties in 2015 found that nearly two-thirds of cash seizures by Oklahoma law enforcement agencies targeted racial or ethnic minorities.¹⁰³ And a 2015 ACLU study of forfeiture cases in Montgomery County, Pennsylvania, estimated that Black people constituted 53 percent of property owners faced with forfeiture cases between 2012 and 2014 even though they made up only 9 percent of the county’s population.¹⁰⁴

More recently, a 2019 study found that arrests of Black and Latino people are more likely to be associated with increased forfeiture revenues than arrests of whites and that the share of minority arrests increases with local budget deficits in places where officials can more easily retain revenues from forfeited property.¹⁰⁵ And a 2020 study found a statistically significant relationship between the minority population share of a place and reported civil forfeiture revenue — a relationship that is only moderated by increasing numbers of Black or Latino officers.¹⁰⁶ This suggests that the racial makeup of a community and police organizations likely both have a substantial impact on asset forfeiture activities, yet another form of discrimination in the criminal justice system.

motorcycle units, or even public libraries. “Dismissal fees” offer quick case resolution and closure.¹¹³ Fees are not nominal; one Pennsylvania woman who was convicted of a drug crime was sentenced to pay a \$500 fine and \$325 of restitution, plus 26 different fees totaling \$2,464.¹¹⁴ Many fees are designated by statute as mandatory, creating a sanction that disproportionately punishes the poor.¹¹⁵

Revenue Generation for Government

Despite the difference in purpose between fines and fees, both tempt government with a similar potential revenue stream.¹¹⁶ Local governments rely on these revenues to fund their budgets. One study found that 86 percent of

U.S. cities derive at least some revenue from fines and fees — and that the amount of revenue derived closely correlates to the share of residents who are Black.¹¹⁷

While fines and fees make up a small portion of most jurisdictions' revenues, some local governments, mostly in small towns and cities with smaller tax bases, have grown dependent on this income, with some relying on it to maintain their solvency.¹¹⁸ For example, a report from 2019 found that in at least 284 jurisdictions, fines and other court-generated revenues accounted for at least 20 percent of general revenues; in 80 jurisdictions they accounted for more than half of general revenues.¹¹⁹ A 2021 *New York Times* analysis came to a similar conclusion, finding that more than 730 municipalities rely on fines and fees for at least 10 percent of their revenue.¹²⁰ States with municipal courts, such as New York and many in the South, seem especially predisposed to generating cash in this way. A study published in 2019 found that in Louisiana, fines, forfeitures, and other court revenues accounted for more than 20 percent of general revenues in 49 localities, and more than 50 percent in another 25.¹²¹ Another analysis found five municipal governments, three of which were in Louisiana, that received more income from fine revenue than from taxes in 2013.¹²² States, too, reap sizable income from fines and fees. In 2018, Florida sent \$256 million of its \$311 million fine and fee revenues to the state General Revenue Fund.¹²³

While many jurisdictions send fine and fee revenues to their general fund, others use it to fund courts, police departments, departments of corrections, or probation and parole services.¹²⁴ For example, North Carolina uses fees to pay for half of the state's judiciary budget, as well as some jail and law enforcement costs, and sends its fine and forfeiture revenues to public schools.¹²⁵ In 2015, \$5 million in fees funded 99 percent of the traffic court budget in New Orleans.¹²⁶ In 2018, Florida collected \$313 million in fines and fees, with \$298 million going to fund juvenile justice, local law enforcement education, crime prevention, law libraries, court technology, and court facilities. Fines and fees are the only funding source for Florida's circuit court and county court clerks.¹²⁷

Sheriffs and police commissioners, eager to build or expand jail facilities, have even supported using dollars collected from people accused or convicted of crimes to finance the construction of the jails that will incarcerate them. For example, in 1999, Washington County, Arkansas, funded its 36-bed juvenile detention center with bonds paid by court fine and fee revenues, not from the general revenue fund. The rural Alabama counties of Cleburne, Conecuh, and Lawrence all built jails in 2000, funding the construction largely with court fees. Kentucky

similarly issued bonds to construct 40 new jails, funded mostly by court fees assessed against anyone who pleaded or was found guilty of a crime.¹²⁸

Filling In Budget Gaps

Facing ever-mounting costs of services and limited revenue bases, local governments have turned to fines and fees to make up for budget shortfalls, especially in the criminal legal system, where costs have increased significantly over the last several decades.¹²⁹ While all other government spending increased 185 percent from 1977 to 2019 (based on adjusted dollars), spending on corrections increased 347 percent; spending on police increased 179 percent.¹³⁰

A quintessential example of government overreliance on fine and fee revenues to address tax shortfalls was uncovered by the 2015 DOJ investigation into practices in Ferguson, Missouri, following the police shooting of Michael Brown. The inquiry found that city officials had exhorted the police department and courts to maximize fine and fee revenues, prioritizing fundraising over public safety and the fair administration of justice. Fines and fees made up 13 percent of Ferguson's municipal budget in 2012 but leaped to 23 percent in 2015 — a planned increase that demonstrated the pressure police felt to meet the locality's increased budget projections.¹³¹ Despite the massive media attention around this practice in Ferguson — and a 2015 state law limiting the degree to which local budgets could benefit from fines

Local governments have turned to fines and fees to make up for budget shortfalls.

and fees — little has changed since then.¹³² Just two years later, the Missouri Supreme Court responded to a lawsuit filed by 12 cities by raising the revenue cap in the new law from 12.5 percent to 20 percent of a municipal budget.¹³³

Some local governments have begun to expect courts, probation and parole departments, and police departments to subsidize their expenses through fees and fines, sometimes decreasing future budget allocations as a result.¹³⁴ Police departments — under pressure to fund both their operations and local government more broadly — have responded to budget shortfalls by doling out more tickets or citations.¹³⁵ As one scholar noted, "Budgetary shortfalls have been connected to larger numbers of speeding tickets; stricter officers and larger fines; increased arrests for drug crimes, DUI, and prostitution; and higher rates of property seizure."¹³⁶ New York City's 2021 budget included a ticketing plan to make up for the reduced fine and fee assignments during the city's Covid-19 pandemic shutdown in spring 2020, which limited law enforcement and court operations. The proposed scheme was expected to capture \$42 million from New York motorists.¹³⁷ A Michigan police union president stated,

“When elected officials say, ‘We need more money,’ they can’t look to the department of public works to raise revenues, so where do they find it? The police department.”¹³⁸

Judges have similarly felt pressure to impose fines and fees to fund courthouse expenses, including staff salaries, in addition to generating revenue for their municipality.¹³⁹ In fact, Ferguson officials let municipal judges know that they considered revenue generation the court’s “primary purpose.”¹⁴⁰ One state court administrator in Utah said that he regularly heard complaints from city judges that they were pressured to raise revenues for their cities — and he is not alone.¹⁴¹ After the Washington State Supreme Court raised traffic fines by \$12, one judge in Seattle, where Black residents are twice as likely to receive a ticket as white residents, lamented that local judges are caught between trying not to increase the financial burden on residents and keeping the courthouse lights on. “The District and Municipal Court Judges Association has regularly deplored the use of penalties and assessments to fund court programs,” he wrote, “but then supported them because we need the money.”¹⁴²

When the allocation of revenue varies by offense, local judges may be inclined to pursue charges that go to municipal coffers rather than to the state. A review found that in 2006, 33 percent of New York State’s municipal courts reduced moving violations, for which fines are allocated to the state, to parking violations, which are local offenses, at least one-third of the time.¹⁴³ Another report found that half of speeding charges in New York State in 2009 were pleaded down, resulting in \$23 million for towns and villages.¹⁴⁴

Enforcement for Revenue

When revenue from enforcement provides agencies with a flexible, nearly on-demand funding stream, there is a high risk that they will make decisions based on financial calculations rather than public safety aims.¹⁴⁵ Researchers have found that police are more likely to enforce laws related to lower-level, often victimless offenses that present a higher windfall for the department, such as traffic, drug, and prostitution offenses, than to pursue more serious crimes that lack a clear fiscal benefit to the agency.¹⁴⁶ In one egregious case, the former assistant police chief of Henderson, Louisiana, pleaded guilty in 2016 to charges of false accounting, stemming from his department’s practice of illegally paying officers additional “hourly wages” based on the number of traffic citations they wrote.¹⁴⁷

The lure of dollars can lead to absurd enforcement practices that bear little relation to public safety. In one St. Louis suburb of only 3,000 residents, police issued more than 32,000 citations from 2010 to 2016 by enforcing

trivial and arbitrary laws — for example, not possessing matching curtains in a home’s windows or walking on the left-hand side of the sidewalk.¹⁴⁸ Much the same happened in Doraville, Georgia, an Atlanta suburb where the population is well over two-thirds Latino, Asian, or Black and a quarter of the residents live in poverty. There, in 2012, over-enforcement of low-level infractions, such as driveway cracks, chipped paint on a home, and weeds in backyards — all of which appear to be poverty penalties rather than public safety measures — helped to elevate the town of just 10,000 to a spot among the “top 10 cities in the United States for generating significant revenue through fines and fees associated with municipal code violations and traffic tickets.”¹⁴⁹ Lantana, Florida, billed one homeowner more than \$165,000 for parking cars partly on the grass in her personal driveway, storm damage to her fence, and cracks in her pavement.¹⁵⁰

These skewed law enforcement priorities can come at a cost to public safety: a 2020 study found that an increase in the share of revenue generated by fines, fees, and forfeitures was associated with statistically significant decreases in clearance rates for both violent and property crimes.¹⁵¹

Certain strategies have emerged among municipalities that depend on fine and fee revenue. One is the ticketing of out-of-town drivers, used in particular by small municipalities as a

cash cow.¹⁵² The towns of Georgetown and Fenton, Louisiana, with fewer than 500 residents each, earned 96 percent and 91 percent, respectively, of their fiscal year 2018 general revenues from fines.¹⁵³ In 2019 alone, Fenton brought in more than \$1.3 million from police and court fines and fees, topping the \$1 million mark for the fifth consecutive year.¹⁵⁴ Between January and February 2021, three Fenton police officers issued more than 900 citations.¹⁵⁵ A 2022 investigative report revealed that in Brookside, Alabama, police write more than 3,000 traffic citations annually on the 6.3 miles of roadway allotted to the small jurisdiction; income from fines, fees, and forfeitures makes up half of the town’s revenue.¹⁵⁶ While police ticketing of drivers may appear to be simply exploitative, these stops can sometimes quickly escalate into officers shooting unarmed civilians, the victims of which are disproportionately people of color.¹⁵⁷

Judges may be especially inclined to assign fines and fees when they will directly benefit from them. In Allegan County, Michigan, fees imposed on defendants pay for courthouse telephones, heat, copy machines, and even a gym.¹⁵⁸ Up until 2019, court-imposed fines and fees padded the Judicial Expense Fund in Orleans Parish, Louisiana, which local judges had exclusive control over; funds were spent on office supplies, conferences, and

The lure of dollars can lead to absurd enforcement practices that bear little relation to public safety.

even staff coffee.¹⁵⁹ In addition to subsidizing normal operational expenses, judges in New Orleans Municipal Court have sometimes used these funds for more dubious purposes, such as leather upholstery for a take-home vehicle or a full-time private chef.¹⁶⁰ In an ensuing lawsuit, the Fifth Circuit Court of Appeals found that an arrangement in which judges determine the amount of fines and fees individuals must pay and then reap the benefits of those funds presented an unconstitutional conflict of interest.¹⁶¹ Several other courts have similarly ruled that judges must be sufficiently separated from the fiscal outcomes of their decisions.¹⁶²

How High the Cost?

Padding budgets using fine and fee revenue — particularly as a way to deal with economic downturns — comes at a cost to jurisdictions. For one thing, it can create dependence on a volatile revenue source. Following Hurricane Katrina, New Orleans lost significant traffic court fine income, forcing major cuts to the public defender's office and causing individuals to be needlessly held in jail, waiting months for their case to be presented, or kept in jail after charges against them were dropped.¹⁶³ More recently, in Florida's 10 most populous counties, assessments of fines and fees in 2020 decreased by 45 percent, and collections fell 11 percent, relative to the prior year because of a government-mandated shutdown during the Covid-19 pandemic — potentially narrowing revenue streams for certain earmarked government operations.¹⁶⁴ Reliance on fines and fees creates an environment in which jurisdictions depend on system contact that can then generate sufficient fines and fees to sustain key operations.¹⁶⁵

A more significant cost, however, is borne by those ensnared in the criminal legal system, as well as by their families, friends, and communities.¹⁶⁶ Because judges regularly bypass ability-to-pay determinations or use ineffective methods to assess them, court costs are often not waived or are set too high, resulting in outstanding court debt that can easily pile up.¹⁶⁷ Low-income individuals can get stuck in a poverty trap, with debt hovering over their heads for years. Late fees, high interest rates, and drastic collection practices — such as garnished wages and intercepted tax refunds — can leave already struggling families even worse off.¹⁶⁸ In a 2018 survey of 980 people paying their own or another person's fines and fees in Alabama, nearly two-thirds said they received food

assistance or money from a faith-based charity that they would not have had to request if not for the court debt. Approximately 83 percent of those surveyed said they had given up necessities including food, fallen behind on rent or car payments, or had been unable to pay medical bills or child support in order to pay court debts averaging more than \$6,500.¹⁶⁹

Even economic supports intended to help individuals and families are sometimes siphoned off by local governments racing to collect criminal legal system debt. Some agencies garnished funds distributed under the American Rescue Plan Act — a relief package intended to assist individuals experiencing hardship due to the Covid-19 pandemic — for payment of fines, fees, and restitution.¹⁷⁰ The Lee County, Alabama, District Attorney's Office garnished the stimulus payments of incarcerated individuals convicted of crimes there.¹⁷¹ And the Arkansas state legislature required incarcerated people to use funds from federal relief or stimulus programs to first pay outstanding fines, fees, costs, or restitution.¹⁷² Similar stimulus garnishments have been reported in California, Michigan, New York, Oregon, Ohio, and Washington State.¹⁷³

Nonpayment of fees and fines can result in a cascade of adverse consequences. Outstanding court debt can lead to suspended driver's licenses, warrants for arrest, and even incarceration. For example, in Alabama, "willful nonpayment" of unpaid court debts of as little as \$100 can lead to four days of jail time, while debts equal to or greater than \$500 can lead to a month behind bars.¹⁷⁴ In Benton County, Washington, about a quarter of those in jail for misdemeanor offenses on any given day in 2013 were incarcerated for failure to pay fines and fees.¹⁷⁵ An estimated 11 million people have a suspended license due to unpaid debt.¹⁷⁶ Serious consequences can result from driving with a suspended license. In Florida, a third such conviction can be charged as a felony.¹⁷⁷

Incarceration, in turn, can lead to an array of even more damaging consequences, such as difficulty securing employment or getting occupational licenses, challenges securing housing, denial of public assistance, and a lifetime of earnings losses.¹⁷⁸ Some jurisdictions allow individuals to serve time in jail to satisfy fines and fees, a practice that needlessly incarcerates individuals simply for the crime of poverty.¹⁷⁹ The government not only fails to collect potential fine and fee revenue but also must bear the cost of incarcerating the person.¹⁸⁰

Like many other aspects of the criminal legal system, this method of revenue generation takes a disproportionate toll on people of color.¹⁸¹ In New Orleans, for example, Black residents make up about 59 percent of the population but paid 69 percent of the \$3.8 million in fine in fee revenue collected in 2015. They are also 64 percent more likely to face subsequent arrest from warrants related to unpaid fines and fees than their white counterparts.¹⁸² In Ferguson, Missouri, the Department of Justice’s 2015 investigation revealed that during traffic stops, Black drivers were twice as likely as white ones to be searched and twice as likely to be arrested, despite the fact that white people were more likely to be caught with contraband.¹⁸³

The disparities in Ferguson are a microcosm of what happens all over the country. National-scale research conducted in 2017 confirmed that jurisdictions heavily dependent on fine and fee revenue have a higher proportion of Black and Latino residents than the median municipality.¹⁸⁴ One study found that although Black residents make up only 3.8 percent of the median American city population, the 50 cities that earned the largest share of their revenues from fines in 2012 had an average Black population of nearly 19 percent.¹⁸⁵

Privatized Community Supervision

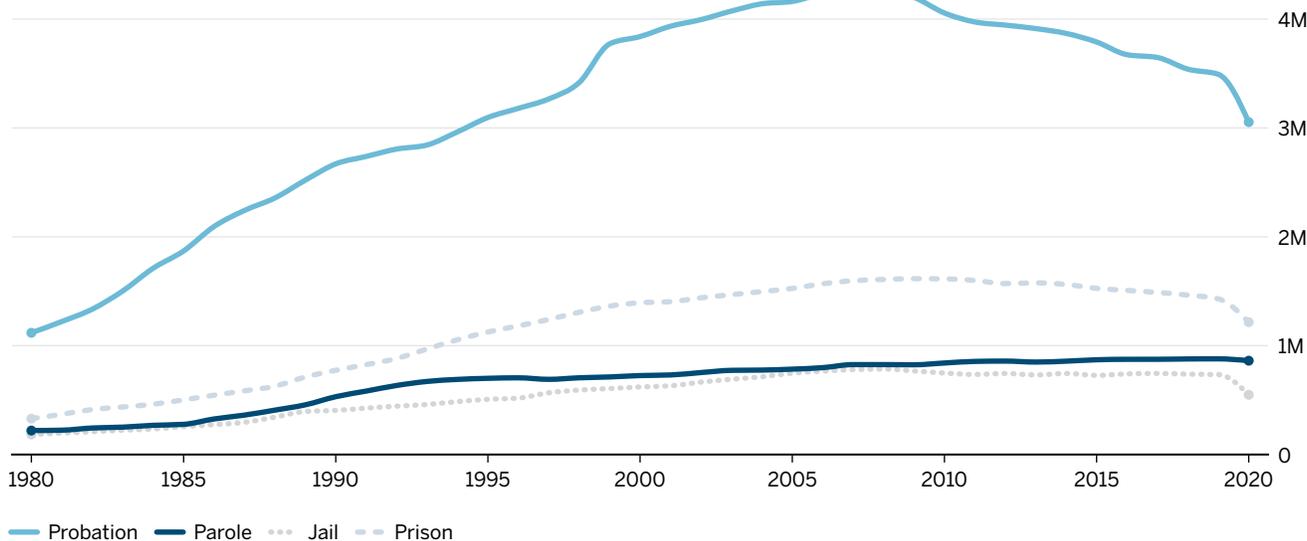
The opportunity to collect additional income is not the only financial incentive that drives local governments. Sometimes they simply seek to avoid spending money in one area so they can expand their budget elsewhere. One way they can accomplish this is by hiring private services and then passing along the costs to users. If the government can show that it is ostensibly meeting community goals without costing taxpayers anything, the temptation to do so becomes almost irresistible.

In part to reduce expenses, criminal justice agencies and policymakers have increasingly turned to community-based, noncustodial correctional supervision as an alternative to costly incarceration.¹⁸⁶ Today it is the largest part of the correctional system, with nearly 4 million people under some kind of correctional control outside of carceral facilities (see figure 3).¹⁸⁷ Most people on this type of supervision are on probation, a court-ordered period of correctional supervision in the community.¹⁸⁸

Those on probation must comply with state-imposed terms, such as routinely reporting to a supervision offi-

FIGURE 3

People Under Community Supervision, 1980–2020



Source: Bureau of Justice Statistics (2022).

cer, attending treatment programs, and avoiding new criminal conduct.¹⁸⁹ Failure to follow the rules of probation can result in being written up for a technical violation, which itself can serve as a trip wire to incarceration. In 2017, nearly one-fourth of all state prison admissions were due to technical violations of community supervision. In Kansas, Kentucky, Missouri, South Dakota, and Utah, technical violations constituted more than 50 percent of state prison admissions.¹⁹⁰

Jurisdictions promote community supervision as a more humane and cost-effective substitute for jails and prisons, but although it costs only a fraction as much as incarceration, some localities nonetheless struggle to implement it.¹⁹¹ In many areas plagued by chronic underfunding, supervision officers' caseloads vastly exceed their recommended size. Giant caseloads mean less attention and support for individuals under supervision, making it less likely that they will be able to disentangle themselves from the criminal legal system.¹⁹²

Many funding-strapped jurisdictions have outsourced this supervision to for-profit firms. Georgia, for example, has enacted laws explicitly encouraging municipalities to privatize probation services.¹⁹³ As of 2019, at least 25 companies provided probation services there.¹⁹⁴ These companies also often administer electronic location monitoring, another form of supervision, which increased nationwide by 140 percent between 2005 and 2015.¹⁹⁵

Private firms, whose revenues flow primarily from the people under supervision, are incentivized to ensure that terms of supervision are as long as possible. People under their watch are effectively renting their freedom, often charged exorbitant fees even as they face diminished earning potential due to a criminal record. If they are priced out of supervision, they risk being returned behind bars.¹⁹⁶

Private Probation

To offset some of the considerable costs of the criminal justice system, more than a dozen states allow localities to contract with private companies to provide community supervision.¹⁹⁷ Local governments pay nothing or next to nothing for private supervision of people they would otherwise be incarcerating at substantial cost. Instead, people under private supervision are expected to pay regular "supervision fees," which can range from \$30 to \$60 a month. They may face additional costs as well, such as for drug testing and treatment, which can raise monthly charges to hundreds of dollars.¹⁹⁸

The expenses of private supervision can rival or even exceed the court-assessed fees and fines stemming from a person's original case, meaning an individual ends up

paying twice for a conviction.¹⁹⁹ In Giles County, Tennessee, one woman was ordered to pay \$426 in fines and fees for driving on a suspended license — plus a \$45 monthly supervision fee and another \$45 per drug test to the probation company that supervised her. She missed a probation appearance while hospitalized and was jailed for violating the terms of her probation; by that time, she had already paid fees amounting to more than double the initial fine.²⁰⁰

Firms that provide private supervision are incentivized to focus on generating profits, often in lieu of ensuring that the people they supervise meet the terms and conditions of probation. In 2013, a lawsuit revealed that employees of Sentinel Offender Services — a major player in the industry — received bonuses when they met or exceeded fee collection targets.²⁰¹ This type of practice distorts the goals of community supervision: rehabilitating people and promoting public safety.

And nonpayment of fees to for-profit firms can pave the way back to incarceration. For example, Human Rights Watch reported on the case of Thomas Barrett, who pleaded guilty in Georgia in 2012 to stealing a \$2 can of beer. He was fined \$200 and sentenced to a year of probation, supervised by Sentinel Offender Services. Unable to pay the \$80 start-up fee for supervision, he spent a month in jail until he could persuade a friend to give him the money. After Barrett's release, Sentinel charged him approximately \$360 a month for its services, more than the \$300 per month he received from his

only source of income: selling his blood plasma. When Barrett fell behind on his payments, Sentinel petitioned the court to revoke his probation, and he landed back in jail. At this point, Barrett owed Sentinel more than five times the amount of his original fine — and more than 500 times the price of the beer.²⁰²

This story is not unusual. Human Rights Watch discovered that many private probation officers threaten to jail people on probation who fall behind on payments, even if all other conditions of probation are met.²⁰³ As one federal class action complaint put it, the "cycle of ever-increasing debts, threats, and imprisonment" leaves "thousands of people . . . trapped in a culture of fear and panic."²⁰⁴ In some instances, knowing that courts won't issue arrest warrants when a probationer's only debt is to a for-profit firm, probation companies split payments to ensure that the court debts are not paid down first.²⁰⁵ The companies have an incentive to prolong the probationer's obligations to the court, keeping them under supervision for longer.

Local governments have a strong financial incentive to use private supervision companies, and these companies have a strong financial incentive to keep people under their supervision for as long as possible, effectively usurp-

An individual ends up paying twice for a conviction.

ing the court function of determining the duration of a person’s probationary sentence. Tying financial gain to the duration of supervision through daily, weekly, or monthly supervision fees establishes a conflict of interest: companies risk prioritizing profit over providing high-quality services, like job training, housing placement, and family-relationship counseling, that help people reintegrate into their communities. Probation officers focused on generating revenue may keep people under supervision longer than necessary, subject them to requirements such as drug testing (for another fee) even if they are not relevant to the original offense, or demand increased contact with people under supervision.

A series of lawsuits and investigations substantiate this peril. Sentinel Offender Services purportedly petitioned judges to “pause” people’s probation sentences if they stopped reporting and not restart the clock until they were once again reporting regularly. This practice, known as “tolling,” allows probation companies to continue collecting supervision fees for the extended sentence.²⁰⁶ Another lawsuit alleges that to increase profits, Professional Probation Services, based in Gardendale, Alabama, would order longer periods of supervision than required by the courts.²⁰⁷ One former company probation officer raised a more insidious risk to the community from financially driven supervision practices: “You’ve also got the fear that private services start to look the other way on [substantive] violations as long as people are paying their money.”²⁰⁸

Companies’ incentive to raise revenue may also lead to violations of probationers’ right to due process. In September 2020, a panel of the U.S. Court of Appeals for the Eleventh Circuit, which covers Alabama, Florida, and Georgia, ruled unanimously that probation companies act in a “quasi-judicial capacity” over probationers when making unilateral decisions lengthening supervision sentences or imposing additional terms, and that their “direct pecuniary interest in maximizing the length of probation” may violate rules requiring the strict impartiality of judges and of those acting in a quasi-judicial capacity.²⁰⁹ While this ruling did not abolish the use of private probation companies, it does draw into question their future ability to single-handedly extend probation sentences, increase fines, and require additional probation conditions to increase company profits.

Local jurisdictions continue to contract with private probation companies despite evidence of coercion, malfeasance, and possibly unconstitutional behavior. Private probation allows lawmakers to shift spending to more politically popular programs without raising taxes. The companies also increase revenue for jurisdictions by acting as criminal justice debt collectors. In 2012 probation

Restrictions can prevent people from engaging with their families and communities.

companies collected \$98.6 million in fines and fees for the courts in Georgia with which they held contracts.²¹⁰ Moreover, though for-profit firms are doing the states’ business, many are not subject to government open-record laws or other oversight mechanisms, ensuring that these practices proceed unscrutinized.²¹¹ While governments could require public accounting, companies could then walk away, leaving

a gap in supervision services and court staff — often a single clerk — tasked with monitoring and collecting fees. Sentinel, the largest probation company in Georgia, pulled out of its contract with the Atlanta Municipal Court in 2017, two years after Georgia passed legislation limiting the powers of private probation companies.²¹² The threat of losing private probation services discourages jurisdictions from passing similar legislation or otherwise attempting to enforce oversight of these companies.

Electronic Monitoring

Cash-strapped counties have also looked to electronic monitoring as a solution to overcrowded, expensive jails. GPS monitors are placed on a person’s body — usually an ankle or wrist — to continuously track their location.²¹³ As an alternative to incarceration, this technology offers people under correctional control increased freedom of movement and the opportunity to maintain employment and community connections while costing governments less.

Before the Covid-19 pandemic, electronic monitoring devices were used on roughly 165,000 people on any given day.²¹⁴ Local data indicates a sharp increase in the practice as jurisdictions sought to reduce their jail and prison populations amid the pandemic. In Chicago, the number of individuals on electronic monitoring leaped from 2,417 before the pandemic to 3,365 by June 2020, a nearly 40 percent increase, and remained high at least through the end of the year.²¹⁵

While electronic monitoring may keep some people out of overcrowded jails and prisons, it still maintains control over those in the system by converting homes and entire communities into high-tech digital lockups.²¹⁶ And what is most appealing to the state — that it is less costly than incarceration and that the costs can be shifted to its users — makes it particularly harmful to those being monitored.

The vast array of companies that offer electronic monitoring services to governments generally make a profit by marking up prices and passing them along to the people under supervision. While the federal government covers the costs for people under its control, those required to wear location monitors by states are generally responsible for a setup fee that can be as high as \$200 and usage fees

that normally range from \$5 to \$20 a day but can run as high as \$40 a day.²¹⁷ Judges often rubber-stamp probation companies' fees. In fact, some judges have even expressed concern that not doing so would harm the companies as they rely on these fees to operate.²¹⁸

Just as those who cannot keep pace with the costs of private supervision are subject to incarceration, so too are those who cannot afford electronic monitoring. In some instances, people plead guilty to charges simply because probation is cheaper than electronic monitoring ordered as a condition of pretrial release, despite the long-lasting collateral consequences that accompany a conviction and the possibility of jail time.²¹⁹ And those who can afford the initial costs are often incarcerated or re-incarcerated anyway, not for committing new crimes or for violating the many conditions of probation or parole but simply because they cannot pay the ongoing fees.²²⁰ Monitoring firms are thus in the advantageous position of extracting payments from those who can afford them while foisting those who cannot back onto the state ledger.

Seeing the potential to draw in even more revenue, the two largest firms that own and manage private jails, prisons, and immigrant detention centers have begun to diversify their business model to include electronic monitoring services. One of these is GEO Group, a firm that posted total revenues of \$2.35 billion in 2020 through its subsidiary BI Inc. It has a presence in all 50 states and monitors around 155,000 people through electronic technologies and case management services.²²¹ The CEO of the other firm, CoreCivic, declared in a 2014 speech that "reentry programs and reducing recidivism are 100 percent aligned with our business model."²²² This acknowledges the financial incentive corrections companies have to ensure that community corrections populations increase as incarceration decreases. CoreCivic, reporting \$1.86 billion in 2021 revenue, bought Recovery Monitoring Solutions, which provides electronic monitoring and case management services to municipal, county, and state governments, in 2018.²²³

Electronic monitoring is harmful in nonmonetary ways as well. For one, it may widen the net of carceral control. Because judges may view electronic monitoring as more cost effective than incarceration, they may extend its use to cases that do not merit supervision in the first place. Many scholars believe that at least some people under electronic monitoring "would not in fact be incarcerated or otherwise under physical control" if not for the availability of electronic monitoring.²²⁴

GPS monitoring comes with rules including curfews, areas that may not be entered ("exclusion zones"), and requirements for charging the monitoring devices.²²⁵ These restrictions can prevent people from engaging with their families and communities, pursuing an education, and finding employment. Bus and subway routes often run through exclusion zones, making traveling on public transportation impossible.²²⁶ In one county in California, young people on monitors were required to abide by 50 restrictions, including avoiding "any social activity."²²⁷ In St. Louis, a 19-year-old, unemployed and struggling to make payments on his ankle monitor, was forced to leave a job training course by a police officer because the battery on his electric monitor had died.²²⁸

Additionally, because of their size, monitors can be difficult to wear discreetly, exposing people to social exclusion and causing physical pain.²²⁹ In a 2011 National Institute of Justice survey of 5,000 people being electronically monitored, 22 percent said they believed they had been fired from a job because of their electronic monitoring bracelet.²³⁰ A 2019 study found that many incarcerated Black people viewed electronic monitoring as so punitive that they preferred to remain imprisoned.²³¹ As scholar and activist Michelle Alexander has noted, "You're effectively sentenced to an open-air digital prison, one that may not extend beyond your house, your block or your neighborhood. One false step (or one malfunction of the GPS tracking device) will bring cops to your front door, your workplace, or wherever they find you and snatch you right back to jail."²³²

II. Correctional and Detention Bed Markets

Despite the overall decline in imprisonment rates since 2009, many government agencies still struggle to house everyone under their jurisdiction.²³³ State prison systems often rely on local jails to take in large proportions of their state-sentenced population.²³⁴ Louisiana and Kentucky stand out in this regard, sending more than 52 and 47 percent of their state-sentenced populations, respectively, to local jails in 2019 and paying hefty fees to cover their room and board.²³⁵

Meanwhile, federal law enforcement authorities are almost constantly seeking local detention and custodial beds. This is due to the recent growth in federal immigration detention, the dearth of federal detention facilities, and the near-total dependence of the U.S. Marshals Service (USMS) on state and local governments and for-profit firms to hold the just under 63,000 people it detains for violations of federal law on any given day.²³⁶ A national market of custodial beds has flourished, largely hidden from public view (see figure 4 and table 2).²³⁷

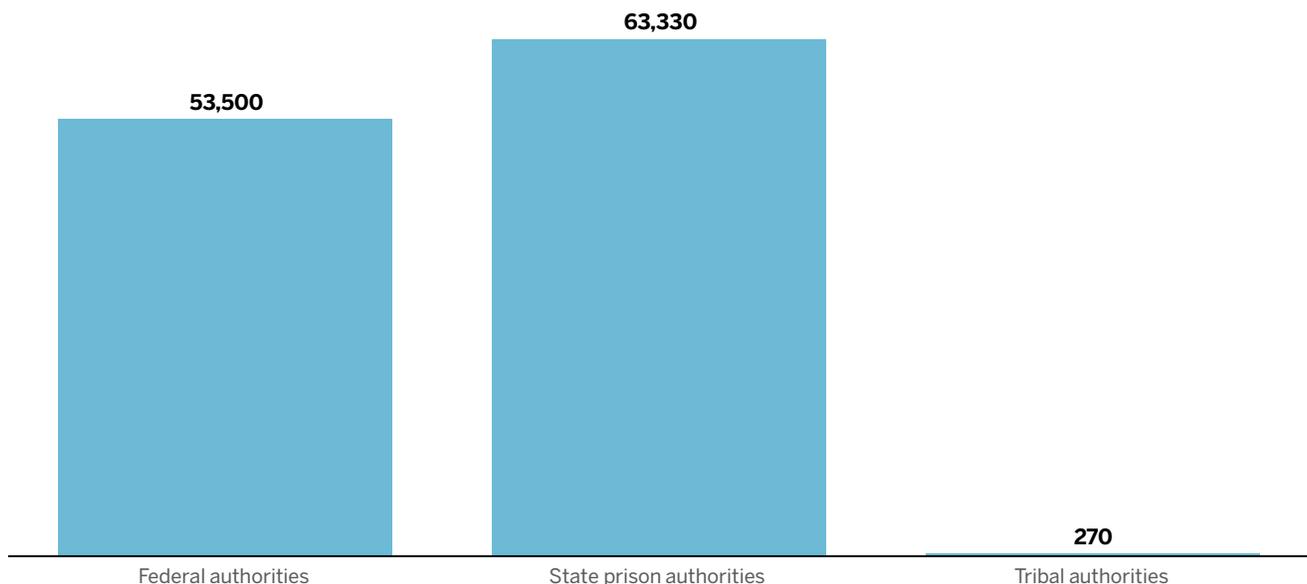
For financially struggling counties, participating in this market can be a rational solution to a budget problem.²³⁸ But turning correctional and detention beds into money-generating devices raises the specter that entrepre-

neurial sheriffs and wardens will pursue revenue rather than justice or public safety.²³⁹ They may not only set aside beds for rent but even expand their facilities — or build new ones — to serve the state and federal market.²⁴⁰ They need not even incarcerate people themselves to reap this market's benefits: through creative contracting, they can serve as intermediaries between federal agencies and private firms.

While law enforcement agencies feel pressure to fill empty beds, incarcerated people bear an entirely different cost as they are shuttled across jurisdictional lines, often far from their families, friends, and communities. Against the backdrop of pandemic-related economic downturns and a rise in violent crime, this trade in humans is poised to expand.

FIGURE 4

People in Jail Held for Other Authorities, Midyear 2019



Source: Bureau of Justice Statistics (2019).

TABLE 2

Jail Beds for Rent, 2019

STATE	JAIL POPULATION*	NUMBER HELD FOR OTHER AUTHORITIES**	PERCENTAGE HELD FOR OTHER AUTHORITIES**
Kentucky	26,190	12,720	49%
Mississippi	14,340	6,800	47%
Louisiana	32,560	12,040	37%
West Virginia	5,110	1,820	36%
Montana	2,510	850	34%
Utah	7,300	2,180	30%
South Dakota	2,010	600	30%
Idaho	4,250	1,230	29%
Arkansas	9,400	2,590	28%
New Jersey	9,550	2,610	27%
District of Columbia	1,820	490	27%
New Hampshire	1,400	360	26%
Alaska	50	10	20%
Missouri	11,580	2,190	19%
Iowa	5,020	970	19%
Virginia	28,380	5,050	18%
New Mexico	6,550	1,200	18%
Kansas	8,080	1,490	18%
Texas	68,770	11,420	17%
Tennessee	31,240	5,460	17%
North Dakota	1,470	250	17%
Minnesota	6,840	1,160	17%
Maine	1,620	280	17%
Alabama	16,450	2,760	17%
Washington	11,710	1,860	16%
Nebraska	4,200	680	16%
Illinois	16,490	2,410	15%
Oklahoma	10,630	1,460	14%
North Carolina	20,360	2,590	13%
New York	20,450	2,570	13%
Wyoming	1,570	190	12%
Massachusetts	9,260	1,070	12%
Georgia	44,810	5,600	12%
Pennsylvania	31,300	3,240	10%
Michigan	15,880	1,510	10%
Wisconsin	12,750	1,180	9%
South Carolina	11,470	1,060	9%

Continued on next page

Jail Beds for Rent, 2019 Continued

STATE	JAIL POPULATION*	NUMBER HELD FOR OTHER AUTHORITIES**	PERCENTAGE HELD FOR OTHER AUTHORITIES**
Oregon	6,040	570	9%
Ohio	20,580	1,580	8%
Indiana	20,430	1,540	8%
Florida	56,660	4,500	8%
Colorado	13,000	1,100	8%
Nevada	7,220	510	7%
Maryland	8,590	550	6%
California	75,060	4,240	6%
Arizona	13,540	580	4%

*Bureau of Justice Statistics data is reported for all locally operated jails in 45 states and the District of Columbia.

**Other authorities include the Federal Bureau of Prisons, U.S. Marshals Service, Immigration and Customs Enforcement, Bureau of Indian Affairs, other federal authorities, state prison authorities, and tribal governments.

Source: Bureau of Justice Statistics (2019).

Monetizing Empty Beds

A series of recent policy changes — including relaxed enforcement, enactment of bail reform, and decriminalization of certain activities — has caused some jail populations to decline.²⁴¹ Largely due to New York State’s bail reforms, Dutchess County’s jail population decreased by 44 percent between March 2019 and February 2020.²⁴² In April 2021, New Jersey officials announced that Union County’s jail would no longer house people serving sentences following a 67 percent population decline there since 2011.²⁴³ In Virginia, Chesterfield County attributed its declining jail population to the success of rehabilitative programs and the rise of court-initiated alternatives to incarceration.²⁴⁴

Additionally, policies enacted in response to the Covid-19 pandemic caused many jails to rapidly empty out. Orange County’s jails in Santa Ana, California, complied with court orders to reduce their population by 50 percent to ensure social distancing. Snohomish County Jail in Everett, Washington, experienced a 70 percent decline from a pre-pandemic population of 950 to 290 individuals in custody.²⁴⁵

Considering such trends, some sheriffs have jumped into action, renting out excess bed space to help support basic system operations.²⁴⁶ Jails across the country now take in people from overcrowded state prisons or congested, dilapidated, or decommissioned jails in neighboring counties.²⁴⁷ They also tap into the bed needs of the federal government. Jail systems typically receive per diem payments for each person they house on behalf of another agency.²⁴⁸

Because the interjurisdictional exchange in custody and detention beds is such a valuable potential source of reve-

nue, most county jails participate in it.²⁴⁹ According to the most recent federal Census of Jails, 117,100 of the 734,470 people in jail at midyear 2019 (approximately 16 percent) were held for federal, state, or tribal authorities; this number does not include people held by one county on behalf of another. Nearly half of the people in jails in Kentucky (49 percent) and Mississippi (47 percent); more than one-third of those in Louisiana (37 percent), West Virginia (36 percent), and Montana (34 percent); and more than one-quarter (27 percent) of those in rural jails were held for other authorities.²⁵⁰

Federal agencies are often reliable and lucrative clients: U.S. Immigration and Customs Enforcement (ICE) paid a median per diem rate of \$75 and USMS \$92 in 2019.²⁵¹ In Ohio, four counties — Butler, Geauga, Morrow, and Seneca — have contracted with ICE to detain immigrants in their local jails, amassing more than \$24.4 million among the jurisdictions from 2013 to 2017.²⁵² In Morrow County, ICE per diems made up more of the county’s jail bed rental revenue than all other outside agencies and jurisdictions combined. And in 2019, when decreases in state and local tax revenue constrained budgets, Morrow County renegotiated its contract with ICE to increase its per diem rate.²⁵³ County officials reason that revenue streams from ICE or USMS aid the local economy by keeping taxes down and boosting local businesses like hotels and restaurants that serve people visiting incarcerated friends and relatives.²⁵⁴ These economic benefits are often touted as a reason to maintain such contracts. One recent study indicates that immigration detention contracts are most sought after by counties where local labor market conditions are worsening, particularly in rural areas suffering fiscal distress.²⁵⁵

The trade in excess beds is so rampant that some counties have become dependent on it to fund core services. Oklahoma County in central Oklahoma once filled more than a quarter of its jail beds with people under state jurisdiction. When the state decided in 2014 to no longer send people there, the county lost 7 percent of its sheriff's office budget and cut 112 positions.²⁵⁶ Similarly, sentencing and drug policy reforms enacted in Mississippi in the same year resulted in fewer people sentenced to county jails, which in turn deprived some counties of the state funds they needed to stay solvent as well as the cheap incarcerated labor force they relied on to carry out core municipal services such as garbage pickup, lawn maintenance, and other manual labor.²⁵⁷

To keep their jails in the black, sheriffs seek out people to fill empty beds, and when supply dries up from one source, they can count on other suppliers at market. Sheriff Scott Scherer of Herkimer County, New York, anticipating a glut of beds due to New York's January 2020 bail reforms, reasoned that the county could turn to the federal government to fill its new \$40 million, 155-bed jail. But Scherer knew that competition to fill empty beds would be fierce: "Everybody's gonna be fighting for that same inmate and it's probably gonna drive the price down."²⁵⁸ At least nine Louisiana jails facing revenue declines from empty beds once occupied by state-sentenced individuals have entered lucrative deals with ICE to detain immigrants and, in some cases, receive per diem rates almost three times what the state had paid.²⁵⁹ When ICE terminated its 11-year contract with Santa Ana after the city announced that it would phase the contract out in response to public pressure, local officials didn't have to look far to fill the gap, more than tripling an existing bed rental contract with USMS to add \$5 million to the city's income in 2017.²⁶⁰

Conversely, New Jersey's Essex County, which earned millions of dollars holding undocumented immigrants for the federal government for 13 years, ended its contracts with ICE in August 2021 due to intense public pressure. Still, it has been able to fill the vacated beds with 300 people from neighboring Union County, which closed its own jail, to the tune of \$11 million annually. Essex County also maintains agreements to house people for Gloucester County and USMS, and it has similar partnerships to house juvenile detention residents from Passaic, Union, and Hudson Counties.²⁶¹

Speculative Jail Construction

Some counties, particularly rural and tax-poor ones, have become so dependent on bed rental income that they have gone beyond monetizing empty beds, expanding existing facilities or building new ones.²⁶²

In particular, the promise of trade in people under federal jurisdiction has spurred some counties to build facilities solely intended to serve that market.²⁶³ Localities have come to expect that so long as federal immigration and law enforcement agencies detain large numbers of people and must contract out to do so, federal revenue not only will pay for jail construction and operation but may generate a budget surplus.²⁶⁴ Struggling communities are hard-pressed to resist these opportunities. In 2019, two years after building a new, expanded jail, Bladen County, North Carolina (ranked the 17th most economically distressed out of the 100 counties in the state), began

detaining individuals for the federal government, raking in \$1,965,000 in the first year and a half of the program. At one point in 2021, federal detainees made up 66 percent of the jail's population.²⁶⁵

Neighboring localities are likewise a source of revenue. Jasper County, Iowa, is a rural area of just over 37,000 people that was badly impacted by the Great Recession.²⁶⁶ In 2018 it billed neighboring Warren County about

\$12,000 per month for access to its jail, more than covering the cost of renovating the facility to add 10 additional beds. The expansion is in turn expected to pour additional per diem revenue into the county coffers.²⁶⁷ Similarly, in 2010, Marshall County, Iowa — home to fewer than 30,000 people — replaced an existing facility with a new one with eight times the capacity. The new jail holds detainees for both neighboring counties and federal agencies; at one point in 2019, ICE supplied half of its population.²⁶⁸ This arrangement has reportedly produced millions of dollars for the county's general fund.²⁶⁹

But while bed rental income benefits some struggling counties, it exposes them to the whims of other jurisdictions and can lead to a vicious cycle of jail growth and debt. Construction and operational costs may exceed the actual income, and the trade in people can prove volatile: if other jurisdictions alter or end existing agreements, or if contracting authorities enact policies and practices that reduce

Counties have become dependent on the trade in excess beds to fund core services.

their overflow populations, demand could suddenly collapse.²⁷⁰ For example, Yakima County, Washington, saw revenue it derived from its booming contract jail population evaporate when counties that rented its beds decided not to renew their contracts. Competition from other jails offering cheaper rental beds, as well as state policy changes that reduced overall jail admissions statewide, put the facility Yakima County built in 2006 — solely to house this population — in financial jeopardy.²⁷¹

Glades County, Florida, provides another cautionary tale. In 2007 the county built a jail with more than 400 beds with the explicit aim of bringing in revenue by renting beds to ICE and USMS.²⁷² To fund construction, the county issued revenue bonds for the entire construction cost of \$33 million; the bonds were to mature by 2030 and be backed by income from bed rental. When the Obama administration sent fewer people than expected, the county found itself unable to make payments to the bondholders, and by 2015 revenues were so low they could not cover operating costs.²⁷³ Fortunes briefly changed under President Trump with an uptick in people ICE sent to the county. However, ICE decided not to renew its contract with Glades in March 2022 after alle-

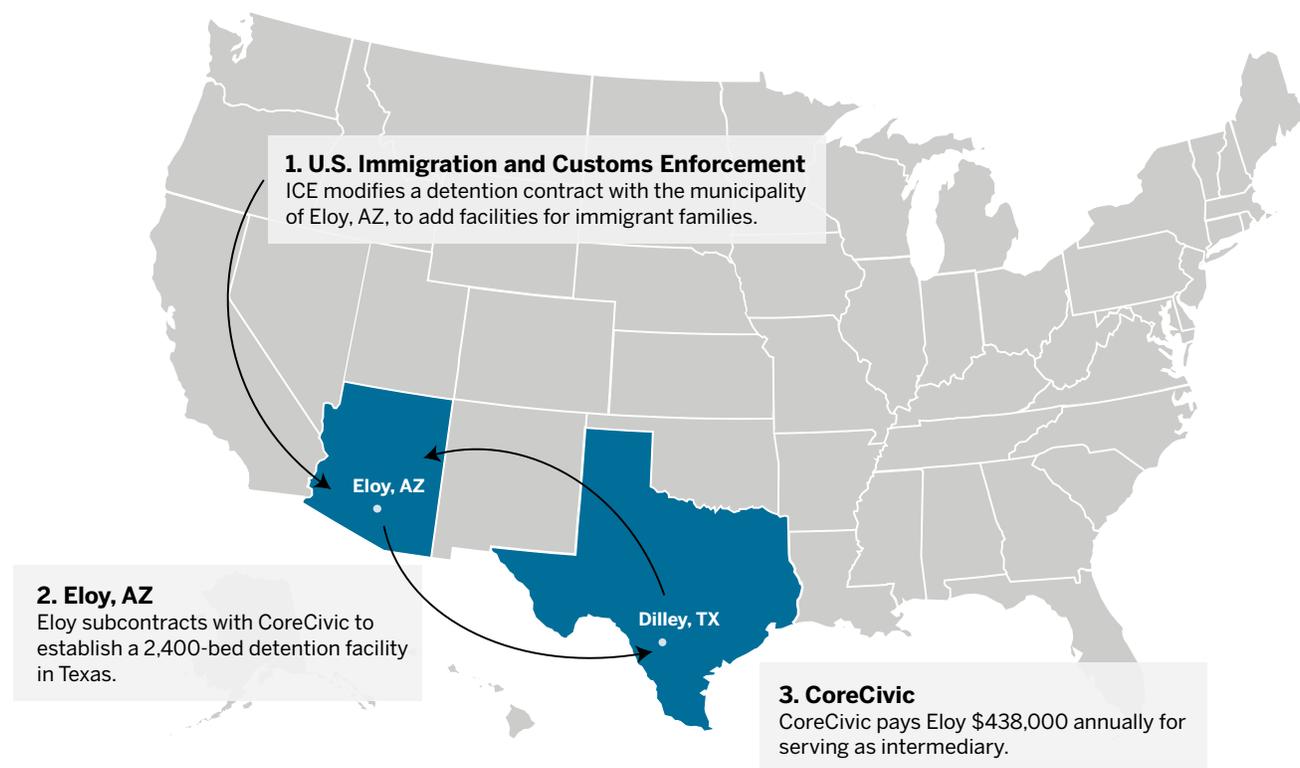
gations of abuse and dismal conditions generated public pressure to end the arrangement.²⁷⁴ Bondholders and investors will likely be left emptyhanded: filling empty beds or selling a facility designed for one purpose will be difficult.

Pass-Through Contracts

To gain a financial advantage from incarceration, counties don't even have to physically house incarcerated people. Localities that agree to hold people under the jurisdiction of federal law enforcement authorities enter into what are known as intergovernmental service agreements (IGSAs). IGSAs do not always have to comply with federal procurement regulations or open-government requirements, and localities can exploit this fact by subcontracting detention services out to private firms and passing on the federal per diem payments to them.²⁷⁵ The IGSA holders secure a cut of the earnings through fees paid to them by the subcontractors. For example, Adelanto, California, a city 63 miles east of Los Angeles with a population of about 34,049, entered into an IGSA with ICE and then

FIGURE 5

Example of Pass-Through Contracts for Immigration Detention



Source: Office of Inspector General, U.S. Department of Homeland Security.

subcontracted detention services to GEO Group to run a 1,940-bed ICE facility. Adelanto passed along some \$70 million in payments from ICE to GEO in 2017 and 2018 and received about \$1 million annually in return. This included an administrative fee of \$50,000; a fee of \$1 per contracted bed per day, regardless of whether the bed was occupied; and about \$340,000 for additional police officers, a significant economic boon for the city.²⁷⁶

In another example, the town of Eloy, Arizona, with a population of less than 20,000, received an annual fee of nearly \$440,000 for serving as the intermediary between ICE and the Corrections Corporation of America (CCA) — the for-profit firm now called CoreCivic — when ICE wanted CCA to establish and run a 2,400-bed immigration detention facility for families (see figure 5). It did not matter that the facility was constructed 900 miles and a time zone away in Dilley, Texas, where Eloy could not possibly provide meaningful oversight. ICE already had an agreement with Eloy, executed in 2006, in which Eloy provided 1,500 adult immigration detainee beds at the CCA-run Eloy Detention Center.²⁷⁷ Since existing IGSA can be modified to make detention expansion easier, ICE simply added a rider to that agreement. No new terms, conditions, or rates had to be negotiated, and the agreement could be completed in a matter of weeks.²⁷⁸

A 2021 report by the U.S. Government Accountability Office (GAO) found that ICE uses IGSA specifically because they involve fewer procedural hurdles and undergo significantly less scrutiny than is required for ordinary federal contracts.²⁷⁹ The acquisition of bed space using this contracting mechanism necessitates only limited evaluation of a prospective facility operator's past performance, and concerns about limited staff, design deficiencies, insufficient medical care, remote locations, and punitive conditions of confinement can be more easily overlooked. This may explain why the GAO found that 28 of the 40 IGSA ICE has entered into since 2017 do not have appropriate documentation from ICE field offices showing a need for the space, outreach to local officials, or the basis for decisions to enter into them.²⁸⁰

Such arrangements significantly raise the risk that localities will enter into federal contracts simply to maximize monetary awards. For cities like Eloy and Adelanto, the revenue may prove irresistible: hundreds of thousands — or even millions — of dollars a year for a signature to a contract they don't have to administer, regarding a facility they will neither fill nor oversee.

Bed-Minimum Guarantees

There is another troubling contractual trend that illustrates the skewed incentive structure of the corrections and detention bed market. Federal agencies depend on

local and private facilities and need to ensure that sufficient beds are available to absorb surges in the detention population. And local governments and firms have a strong incentive to lock in revenue from ICE and USMS. Federal contracts reconcile these interests with guaranteed minimum payments, whereby facility operators are paid for a fixed number of beds regardless of use.²⁸¹

Just as ICE secures detention facilities through IGSA, the USMS provides some local governments with funds under the Cooperative Agreement Program or nonrefundable service charge contracts to improve and expand jails in return for guaranteed bed space for a fixed period.²⁸² These contracts skew the incentives of federal and local agencies away from focusing on the well-being of the people being incarcerated or considering alternatives for those for whom incarceration is not necessary.²⁸³ And once the beds are rented, federal authorities, especially ICE, have little incentive to reduce enforcement.

A 2021 GAO report revealed that ICE increased its number of contracts and agreements with guaranteed minimums from 29 to 43 between 2017 and 2019, in step with policies of increased immigration enforcement and detention under President Trump.²⁸⁴ This raised the number of guaranteed beds from 19,342 in 2017 to 28,043 as of May 11, 2020.²⁸⁵ The total includes the 2,400 beds in Dilley, Texas, which ICE pays for under its IGSA with Eloy, Arizona, whether they are occupied or not.²⁸⁶

The 2021 GAO report found that ICE consistently overbuys beds. For example, in Tacoma, Washington, in April 2021, ICE was paying for approximately 800 empty beds at the GEO Group-operated Northwest ICE Processing Center.²⁸⁷ In one operational area, the GAO found that the agency had committed to 5,245 beds across six IGSA facilities, but from May 2019 to May 2020 average daily use was well below the guaranteed minimums for five of the six facilities. In fact, ICE has consistently paid for unused beds in more than half of the 43 facilities with guaranteed minimum payment provisions. For the year preceding May 11, 2020, ICE paid for just over 12,000 empty beds a day at a cost of \$20.5 million a month on average. The agency pays an additional \$41.2 million per month for beds in 11 facilities that receive a flat rate rather than a per diem rate, but uses less than half of their capacity. In 5 of those 11 facilities, ICE did not meet the guaranteed minimum for a single month in the entire prior year.²⁸⁸

Given the volatility of federal detention populations, localities that hitch fiscal solvency to the federal detention market risk leaving themselves in the lurch, not just for the lost per-diem revenue but also for the loss in demand for local services. Meanwhile, due to idiosyncrasies of existing detention contracts, federal authorities may be on the hook to pay for beds, unable to reduce payments to local governments even when detention populations decline.

III. Enforcement-Oriented Performance Metrics

Arguably, no public servants hold as much power over their constituents as police officers and prosecutors. Police have the discretion to enforce laws or look the other way and wield the power of state-sanctioned violence. Prosecutors make decisions that can sway the outcome of a case, including which charges to pursue and which to decline, whom to divert from prosecution, what to offer in a plea bargain, and what to recommend in sentencing. How these officials are evaluated affects how they perform their jobs, and how they perform their jobs can have serious, extensive, and long-lasting effects on those who are ensnared in the criminal legal system.²⁸⁹

For police, dominant management strategies of the last few decades have focused on statistics. Certain numbers — crime rates and clearance rates (the ratio of arrests to reported crimes) for a department, and numbers of arrests, citations, or stops for individual officers — are easy to ascertain; these are used to set productivity targets, or quotas, that managers in law enforcement agencies, formally or informally, require police officers to meet.²⁹⁰ Many of these metrics incentivize punitive enforcement. Officers who fail to meet the evaluation criteria assigned to them may be denied time off or overtime pay, passed over for promotion, or even terminated. Those who meet or exceed quotas are rewarded with career advancement and perks.

For many years, prosecutors, for their part, were similarly evaluated, largely on the basis of a few enforcement-related metrics: numbers of indictments, trials, and convictions.²⁹¹ Decades of scholarship has found that both line and chief prosecutors have been rewarded for punitive enforcement, including with internal promotions and electability.²⁹² For prosecutors who choose to leave the profession, high conviction rates also generate lucrative career opportunities such as federal judgeships or partnerships in large private practices.²⁹³

Law enforcement agencies' often myopic focus on very few performance metrics incentivizes punitive enforcement even when it is not necessary for public safety and does not serve the interests of justice. This in turn risks greater harms, such as decreased community trust in criminal justice institutions and skewed prioritization of enforcement activities, such that easy cases are pursued at the expense of more complex ones or opportunities for diversion are ignored. It can even encourage fraud and civil rights abuses.²⁹⁴ This serves neither the public nor individual officers or prosecutors.

Police Quotas

The modernization and diffusion of crime and police response tracking technology have contributed to the proliferation of police enforcement quotas. The New York City Police Department (NYPD) revolutionized the field in 1994 when it developed CompStat (short for “computer statistics”) to track geographic trends in crime.³¹² CompStat is now widely used: by 2014, 43 of the 50 most populous cities in the United States were using some form of it.³¹³ Departments that use CompStat share its data at regular group meetings, where managers review crime and clearance rate statistics, including those for individual officers.³¹⁴ Having at their fingertips the number of arrests, citations, and stops that each officer has performed, managers can be tempted to track and compare officers' so-called productivity over time.

While tracking the enforcement activity of each officer may be appealing for its ease, it oversimplifies the complex reality of public safety. It can also lead officers to prioritize enforcement activities that can be completed quickly, even where there is no real public safety need for them, over activities that take longer but build public trust. When arrest, citation, and traffic or pedestrian stop numbers are used to set enforcement quotas — numerical targets that managers impose upon officers, formally or informally — officers' priorities can become further distorted. Yet enforcement metrics are regularly used to evaluate officers' performance, with promotions and raises, paid time off, better shift locations and hours, or department recognition and awards yoked to sustained increases in quantifiable enforcement activities. While there are advantages to the increased statistical capacity and transparency that CompStat offers police leaders and rank-and-file officers, the system also creates and sustains perverse incentives in policing.³¹⁵

How Corrections Unions Maintain Mass Incarceration

Corrections unions, formed to protect officers' salaries, improve their working conditions, and increase workplace safety in a dangerous profession, routinely exercise political power to shape local and state government criminal justice priorities.²⁹⁵ Many if not most corrections officers today are members of either a national or a state union, including the American Federation of State, County and Municipal Employees (AFSCME), which currently represents 62,000 corrections officers and 23,000 other corrections employees.²⁹⁶ These organizations often see their members' fortunes — and their own — as dependent on punitive policies, and they push back against reforms.²⁹⁷ Their advocacy not only plays a role in perpetuating mass incarceration but also encourages its growth.

>> Support for punitive custodial sentences. Corrections unions have advocated for longer prison terms and more stringent parole policies to maintain institution size and population, which in turn ensure job security for their members.²⁹⁸ They spend millions each year lobbying for pro-incarceration policies, such as reclassifying crimes to higher grades of severity.²⁹⁹ In 1994, for instance, the California Correctional Peace Officers Association (CCPOA) contributed more than \$100,000 to help pass Proposition 184, California's "three strikes" ballot initiative, which among other things requires decades-long mandatory prison terms for those convicted of a third felony.³⁰⁰ More than 20 years later, in 2016, CCPOA spent more than \$1 million to defeat Proposition 66, which would have reduced the number of people serving mandatory life sentences.³⁰¹ And in 2020, CCPOA spent \$2 million supporting a failed ballot initiative that would have stiffened sentences and added 22 crimes to the list of offenses ineligible for early parole.³⁰² In total, from 2000 to 2010, CCPOA contributed just under \$32.5 million to campaign committees, political parties, candidates, and ballot measures.³⁰³

>> Opposition to prison closures. Corrections unions have also opposed prison closures across the nation, claiming that shuttering prisons jeopardizes officer safety.³⁰⁴ While many prisons are dangerously overcrowded, their advocacy has focused on maintaining or increasing prison facilities — and their members' job security — rather

than decreasing prison populations.³⁰⁵ For example, the Adirondack Correctional Treatment and Evaluation Center in New York State was slated to close in 1975, but after the union there waged a media campaign the center instead was annexed to Clinton Correctional Facility, which is known as New York's "Little Siberia."³⁰⁶ In 2012 AFSCME forced delays in the closure of Tamms Correctional Center, a notorious state supermax prison in southern Illinois, and waged a campaign in the legislature, courts, and media to keep the facility open, claiming necessity for the safety of staff and incarcerated people alike.³⁰⁷ Once the prison closed, AFSCME landed a spot on the Tamms Minimum Security Unit Task Force, established in 2019 to explore reopening and repurposing the facility.³⁰⁸

>> Political donations to tough-on-crime candidates. Corrections unions frequently donate directly to candidates who oppose prison closures and support tougher sentencing laws. For example, in 2010 CCPOA spent nearly \$2 million to support Jerry Brown's successful run for California governor due to his advocacy of prison expansion.³⁰⁹ Similarly, in 2020, CCPOA spent \$1 million to support Los Angeles County District Attorney Jackie Lacey in her unsuccessful bid for reelection.³¹⁰ Lacey had a track record of opposing criminal justice reforms, such as the 2019 law that retroactively shortened the sentences of people who had been convicted of participating in a felony in which a death had occurred but had not killed anyone themselves.³¹¹

The singular focus on increased arrests and citations made possible by CompStat can easily lead to an overemphasis on quantity over quality of police interactions with residents. In New York City, stop-and-frisk actions (when officers stop people on the street and conduct a search and pat-down) grew precipitously from 161,000 in 2003, when the NYPD began tracking this activity, to a peak of almost 686,000 in 2011.³¹⁶ One survey of New York City police officers revealed that nearly half of respondents had felt pressure from a supervisor to arrest a suspect. More than 30 percent of respondents said a “desire for career advancement/plainclothes assignment” affected their arrest decisions.³¹⁷ The National Police Research Platform, a DOJ-sponsored initiative, found that “8 out of 10 police officers reported that their agency is ‘more interested in measuring the amount of activity by officers (e.g., number of tickets or arrests) than the quality of their work.’”³¹⁸

Despite the culture of silence in police departments around enforcement quotas and similar productivity measurement systems, reporting and lawsuits confirm their widespread use. Forbidding quotas does not seem to have much effect. In 2014 in Waldo, Florida — home to just seven officers, 1,160 people, and one of the nation’s most egregious speed traps — then-Chief of Police Mike Szabo allegedly required officers to write one speeding ticket during every hour of their 12-hour shift, despite such quotas being illegal in the state.³¹⁹ Similarly, despite a prohibition in California state law, Los Angeles has had a recurring issue with police quotas that has cost the city millions.³²⁰ In three lawsuits settled between 2011 and 2013, Los Angeles Police Department officers alleged that they were required to write 18 tickets per shift, or suffer retaliation in the form of poor performance reviews, reassignments, harassment, loss of vacation time and overtime, and loss of promotion opportunities.³²¹ Similarly, California Highway Patrol officers who were sued for beating a 78-year-old man after a 2015 traffic stop alleged that they were under pressure from superiors to write at least 100 tickets a month.³²²

To be sure, traffic enforcement may result in public safety benefits and address civilian concerns.³²³ Millions of auto accidents occur every year, and one study found that increased traffic enforcement leads to fewer crashes and related injuries.³²⁴ However, some police departments clearly pursue revenue generation with traffic enforcement, relying on citations and arrests to the detriment of other strategies that may be more effective and cause the community less harm.

While most policing quotas operate as unwritten rules or verbal commands, some localities have made them more explicit. In Atlanta, police killed a 92-year-old Black woman while executing a no-knock warrant in 2006 and

then planted drugs in her home to justify their actions. The three officers later testified that superiors had issued a memo requiring officers to arrest nine people and execute two search warrants a month. A previous department memo had required different narcotics units to meet a quota of 20 or 30 arrests and execute two to four search warrants per week.³²⁵ In 2010 a Brooklyn police precinct posted two memos in a roll-call room, giving officers an explicit number of traffic tickets they were expected to dole out for seat belt, cell phone, double-parking, bus stop, tinted window, and truck route violations — and even told officers where to hand them out.³²⁶ A lieutenant in Gretna, Louisiana, was recorded in 2014 telling officers that “somebody has got to go to jail every 12 hours,” and threatening to terminate subordinates who did not meet the requirement. One former Gretna officer testified that he and his cohort had been threatened with loss of insurance and lower contributions to their retirement fund if they did not increase their arrests and citations.³²⁷

Although at least 26 states and Washington, DC, have laws prohibiting quotas, there has been remarkably little success in using legal avenues to rein in their widespread use.³²⁸ First, most anti-quota statutes are under-inclusive or written in a way that permits informal or implied quotas to continue. Statutes that prohibit departments from requiring a certain number of arrests or citations may still allow a department to require a certain number of traffic stops, for example.³²⁹ Second, while police officers are often the individuals best positioned to bring anti-quota lawsuits, many officers may be hesitant to report wrongdoing within their department because of the pervasive culture of silence surrounding misconduct among their ranks.³³⁰ Police unions, moreover, often attempt to resolve issues with arbitration instead of public-facing lawsuits, preventing transparency and hindering systemic reform.³³¹

Attempting to get around anti-quota laws, some jurisdictions have begun grading officers using a point system, awarding more points for more punitive enforcement actions like citations or arrests. In 2006, Massachusetts state troopers were subjected to a pilot program that credited troopers, for the purposes of calculating overtime, with an additional hour and a half on their daily time sheet for every ticket they wrote, one hour for every written warning, and only a half hour for a verbal warning. Some troopers reported that they had been threatened with sanctions for noncompliance, stating that the policy “was changed to encourage troopers to write civil infractions instead of written or verbal warnings.”³³² In 2011 Phillipsburg, New Jersey, implemented a system assigning more than eight times as many points for arrests as for community policing contacts.³³³ These point systems are functionally quotas.

Forbidding quotas does not seem to have much effect.

In 2020 the Illinois Supreme Court found that the city of Sparta’s “activity point” system violated Illinois laws prohibiting ticket quotas.³³⁴ The system, implemented in 2013, required officers to earn a set number of points, depending on shift, and awarded twice as many points for citations as for most other activities.³³⁵

Due to widespread public disapproval of enforcement quotas, many police departments operate quota systems informally, communicating their expectations nonverbally or in whispers and naming them something other than “quotas.” Agencies may use euphemisms, such as “productivity numbers” or “activity rates,” to create an environment that appears to be making well-rounded assessments. One NYPD whistleblower, Adhyl Polanco, struggled to get anyone to believe his assertions that his department had imposed a quota. He told NPR in 2015 that there was an unwritten rule that officers needed to bring in “20 and one,” or 20 tickets and one arrest per month. NYPD officials denied that the quota existed.³³⁶

These unwritten quotas can be much more difficult to prove than the explicit ones but are no less harmful. In a 2018 interview, an NYPD officer stated, “You’ll never get [police leadership] to say a number, but it’s understood that you’re expected to get so much.” In the same interview, officers said of a text message from a commander asking for a “traffic initiative” that it was really just a way to enforce an unofficial quota system. One noted, “He’s ordering them nicely to go and find those summonses. It doesn’t matter how you get them, just get them. We still have a quota. Nothing changes. You still have to pay your rent.”³³⁷

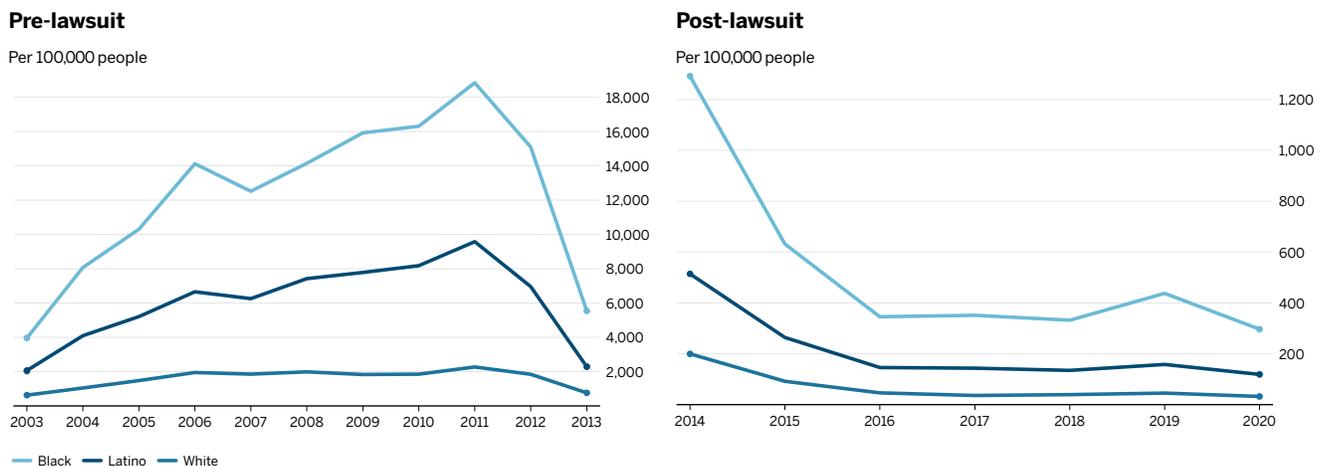
Strongly (and repeatedly) encouraging increased productivity — asking officers to “get your numbers up” — is a common way for commanders to sidestep any

formal or written requirement. Multiple officers surveyed during a 2008 legislative audit of the West Virginia State Police stated that while their agency did not have a specific numerical target, “numbers” were strongly emphasized; they also indicated that they were informally encouraged to meet certain minimums to stay “out of trouble.”³³⁸ In 2011, the NYPD created a program called Quest for Excellence, which required supervisors to set “performance goals” for “proactive enforcement activities” and warned that “officers whose numbers are too low should be subjected to increasingly serious discipline if their low numbers persist.”³³⁹ A 2013 class action lawsuit against the NYPD alleging that the department continued to engage in suspicionless and racially motivated pretextual stop-and-frisks in violation of an earlier settlement agreement revealed that lieutenants directed officers to “get those numbers” (see figure 6).³⁴⁰

Performance standards and quotas hold so much sway over law enforcement officers because success or failure in meeting them can have an immense effect on their careers. Some departments incentivize heavy enforcement activity with a wide range of fringe benefits or rewards. Departments have offered overtime, pizza, barbecue, car wash coupons, gift cards, and trophies to those who meet or exceed quotas.³⁴¹ In DeKalb County, Georgia, officers learned the mantra “Two tickets a day keep the sergeants away. Five a day keep the lieutenants at bay.” According to media coverage, repercussions for failure to meet quotas included being “transferred to areas far from their homes, put on shifts that made it hard to spend time with their children, denied days off or approval for special training or not cleared to work extra jobs,” or termination. Officers who fell below their weekly goals could be “placed on a

FIGURE 6

New York Police Department Stops by Race, 2003–2020



Source: U.S. Census Bureau; New York Police Department; and Brennan Center calculations.

90-day developmental plan and recommended for termination.” DeKalb’s quota system came under scrutiny in 2016 when the city was sued after an officer allegedly strip-searched and then planted marijuana on a man talking with friends at a gas station in order to meet his arrest quota.³⁴²

Whistleblowing on unlawful quotas can likewise have serious repercussions for officers’ work conditions. For example, six officers sued the city of Whittier, California, in 2015, alleging they were retaliated against for drawing attention to unlawful arrest and citation quotas.³⁴³ Consequences included negative evaluations, unwarranted transfers, denial of sick time, required job counseling, and disparaging comments.³⁴⁴ Whittier paid \$3 million to settle the case in 2020.³⁴⁵

Whether or not a department has explicit quotas, pressure on officers to perform can escalate. Decisions they make to protect their jobs and livelihoods can have harmful or even fatal effects on people in the communities they ostensibly protect. Officers who do not observe crime occurring during their shift may fabricate a reason for a stop or arrest or assign tickets to fictitious drivers — or even dead people.³⁴⁶ Officers may rush into making arrests.³⁴⁷ Those who are wrongfully arrested have their liberty taken without good cause and have few legal remedies to pursue. Worse, they may be shot in the course of the encounter.³⁴⁸

There are many other issues with police quotas. Crime rates and arrest or citation numbers are not necessarily an accurate, and certainly not a complete, measure of public safety.³⁴⁹ Many scholars have pointed out that crime and clearance rates can be manipulated simply by changing definitions. For example, the Los Angeles Police Department misclassified nearly 14,000 aggravated assaults as lesser offenses, effectively lowering the violent crime rate by 7 percent and the serious assault rate by 16 percent between 2005 and 2012. A 2018 study found that dozens of law enforcement agencies across the country made it appear as though they had solved a significant share of rape cases when they had simply closed them.³⁵⁰

Regardless of whether crime rates are increasing or decreasing, police departments use them to ask for more funding.³⁵¹ There is also no guarantee that a higher number of citations or arrests makes communities safer; in fact, as the number of traffic tickets declined sharply nationwide starting in the early 2000s, so did traffic injuries and fatalities.³⁵² Setting arbitrary targets for enforcement metrics without asking how they relate to public safety leads to absurd results, as when Chicago Deputy Chief Michael Barz allegedly required officers on the newly created Community Safety Team to make the same number of investigative stops per day regardless of

Arbitrary targets for enforcement metrics lead to absurd — and often racially biased — results.

whether they objectively had a reason.³⁵³ An investigation of body camera footage in 2020 showed that 90 percent of investigative stops in Chicago involve Black or Latino residents, even though the city’s population is 50 percent white.³⁵⁴

When police departments push officers to dole out excessive traffic tickets or municipal violations, minority communities are often hit hardest.³⁵⁵ Disproportionate enforcement

can be economically devastating. Moreover, encouraging officers to over-enforce low-level offenses means less attention is given to violent crime and raises the risk of fraudulent citations and arrests. It also severely damages community trust in police.³⁵⁶ Without community support and communication, police have a difficult time conducting effective investigations.³⁵⁷

Prosecutor Performance Metrics

Prosecutors wield virtually unfettered discretion over whom to charge, when, and with what criminal offense.³⁵⁸ For many years, line prosecutors were often evaluated according to metrics that incentivize increased enforcement, such as numbers of indictments, trials, and convictions.³⁵⁹ And lead prosecutors, who are for the most part elected, often seek community approval by offering up these same faulty metrics.³⁶⁰

Evaluating prosecutors on the basis of the number of individuals they indict, take to trial, or convict may appear to be a simple method of quantifying success. In reality, however, it incentivizes prosecutors to value convictions above other actions that might serve the interests of justice, such as declination, dismissal, or diversion.³⁶¹

Prosecutors’ stake in punitive systems of enforcement is neither abstract nor speculative: for many years, they were professionally and financially incentivized to seek more punitive outcomes. A 2005 study of U.S. attorneys in office between 1969 and 2000 found that those with “longer total prison months,” defined as the sum of all the prison sentences secured during their tenure, were more likely to become federal judges or partners in large private practices.³⁶² A 2000 study suggested that state and federal prosecutors may take cases to trial that could be resolved by plea in order to gain experience that will look good to prospective employers.³⁶³ Moreover, although U.S. attorneys are not elected, their appointment process — including nomination by the president and confirmation by the Senate — subjects them to political scrutiny, particularly if they are seeking reappointment.³⁶⁴

State and local prosecutors are similarly pushed to focus on convictions and lengthy sentences.³⁶⁵ Like any other employee faced with a performance metric pointing them toward a singular goal, prosecutors are incentivized to focus on the work that will further their careers.³⁶⁶ This not only exacerbates the overly punitive bent of the U.S. criminal legal system but prioritizes wins over justice. It leads to coercive plea bargaining tactics, punitive sentences, and even wrongful convictions — in sum, mass incarceration.³⁶⁷

Several prosecutors' offices have offered explicit rewards for staff prosecutors who prioritize convictions. In Arapahoe County, Colorado, in 2011, prosecutors received cash rewards and promotions for convictions.³⁶⁸ In the same year in Houston, prizes included afternoons off, and the first assistant district attorney to try 12 cases before a jury received the informal Trial Dawg Award.³⁶⁹ On the other side of the coin, federal prosecutors in Los Angeles County in 2008 reported that their office penalized prosecutors who failed to achieve certain filing numbers by transferring them to other divisions and giving them lower performance ratings.³⁷⁰ Offices have deployed other tactics to motivate assistant prosecutors to maximize their conviction rates, including computing each attorney's "batting average" and posting their wins and losses on a chart, with green stickers for victories and red stickers for losses.³⁷¹

But staff prosecutors are not the only ones whose evaluations are based on a tally of "wins" divorced from the underlying lives. In the United States, most chief prosecutors are elected by their communities. Forty-six states elect prosecutors at the local level.³⁷² Traditionally, chief prosecutors have run for election or reelection by emphasizing their reputations and track records for incarceration rather than rehabilitation.³⁷³ Prosecutors often tout that they pursue the harshest charges and longest sentences available. A 2021 study spanning 20 years found "causal evidence that being in a DA election year increases total admissions per capita and total months sentenced per capita."³⁷⁴ While "tough on crime" slogans may appeal to voters, they run counter to the obligation to do justice. Worse yet, they perpetuate mass incarceration, which addresses the symptoms instead of the causes of crime and disorder.³⁷⁵

Long sentences and high numbers of convictions are false indicators of productivity; a truly productive prosecutor instead acknowledges and responds to communities'

varied needs and tailors solutions to individual cases. Punitively focused statistics are inapt proxies for the more complex aims of criminal law enforcement, such as public safety, equity, and justice. These values are not easily measured, and a narrow focus on conviction rates says little about a community's progress toward them.³⁷⁶

Prosecutors do not focus on conviction rates only to win votes or soothe communities. These rates are also a convenient metric to justify the existence of the office and advocate its needs. Prosecutors' offices may tout their conviction rate when asking local governments for budgetary support, using a high conviction rate to justify a higher budget.³⁷⁷ Some funding mechanisms directly and specifically encourage enforcement. State funding for prosecutors' offices in Virginia, for example, is determined in large part by the frequency with which each office charges

felony offenses and obtains felony convictions. Virginia's Compensation Board recently changed the calculus to include the number of annual arrests as a factor in allocating funds; the hours prosecutors may spend on diversion go unrewarded. The thousands of misdemeanor cases that local prosecutors handle every year also go uncounted.³⁷⁸ The more people who are arrested, charged with felonies, and convicted, the more money a prosecutor's office receives. This creates a powerful financial incentive for prosecutors to overcharge cases as felonies and a disincentive to offer leniency.

While higher conviction and sentencing statistics can help local prosecutors' offices increase their budgets, most do not bear the fiscal cost of their sentencing decisions.³⁷⁹ Local prosecutors have rarely been asked to internalize the costs of the prison terms for which they argue.³⁸⁰ This is because state — not local — agencies are responsible for funding prisons. This makes lengthy sentences of incarceration easier, faster, and cheaper for prosecutors to pursue than community-based alternatives, which take prosecutors' time but give them no financial or obvious reputational rewards.³⁸¹ But while prosecutors who prioritize winning felony convictions may be rewarded with better career prospects or more votes, the costs of their ambitions are borne by others: individuals suffer from overly punitive sentences and states foot the hefty bill for an over-incarcerated population.³⁸² Nor do elected prosecutors necessarily face negative repercussions at the ballot box from those they incarcerate: in the vast majority of states, a felony conviction bars people from voting for at least the term of their sentence, and in 11 states the restriction is for life.³⁸³

Most prosecutors' offices do not bear the costs of the sentences they argue for.

IV. Unraveling the Incentives

Money plays an outsized role in U.S. criminal justice policy. As mapped out in this report, perverse fiscal and economic incentives exist across the continuum of the criminal legal process, spurring police, prosecutors, and other officials — and some private firms working in concert with them — to effectively become agents of revenue generation. Money can be extracted from those caught in the system, directly via fines and fees and indirectly through the seizure of their goods and homes. People themselves can be commodified by the governments and for-profit companies that enter into contracts to feed and house them while they are physically incarcerated — and monitor them when they are not — in an insidious market that has widened the reach of the carceral state.

More people cycling through the system means more money for localities, agencies, and contractors. This has resulted in a troubling trend, as law enforcement agents act as budget-maximizing bureaucrats. Unsurprisingly, these incentives are strongest when enforcement agencies are permitted to retain most or all of the proceeds for themselves, an institutional arrangement that is all too common. But more diffuse financial or economic motivations are also at work, such as a variety of job performance-related arrangements that translate increased enforcement actions into professional and reputational rewards.

This results in a complex web of interlocking incentives for individuals and agencies. Agencies that rely on user-generated revenue streams, for example, reward employees whose enforcement actions bring in more proceeds. At the same time, federal grants contribute billions of dollars more to the pot of rewards for increased enforcement. As agencies and individuals alike seek to cash in, they contribute to the growth of mass incarceration.

While it is easy to agree that governments should not be extracting money from the most vulnerable, nor agencies directly rewarded for securing overly harsh punishments, the primary challenge to reform is that these financial motivations — and their budgetary effects — have become persistent and self-reinforcing. With local governments and law enforcement agencies increasingly dependent on revenue extracted via the criminal legal system, any cost-benefit analysis they perform will likely favor more, not less, enforcement. So what is to be done to rebalance the scales of justice?

Unraveling these varied incentives will be a daunting task. They are scattered across a fragmented criminal legal

system that includes a wide variety of autonomous actors. Seeking to maximize their revenue streams, some agencies may even be in direct competition for a piece of the budgetary pie or driven by contradictory goals. The tangled knot of motivations threatens any cross-agency alignment toward reducing mass incarceration.

The issue is further complicated by three factors. The general opacity of decision making at each node of the system stymies attempts to discern appropriate intervention points. Meanwhile, key decision makers vary in their enthusiasm for, or indeed knowledge of, different types of enforcement alternatives or system off-ramps. Finally, governments make demands of law enforcement often without allocating adequate public funds, compelling them to seek out alternative sources of funding.

Jurisdictions around the country concerned about the influence of money in the criminal legal system have begun to explore ways to dismantle the intricate incentive infrastructure that shores up mass incarceration. Although these pockets of experimentation often target perverse incentives in a discrete manner and hence are limited in their reach or confounded by other aspects of the complex mechanism of enforcement and funding, they are still instructive.

What follows are steps that can attenuate the outsized influence of money in criminal justice enforcement. Reform need not be driven only by the political engines of Washington, DC, or state capitals. Local agencies and even individual officials can help ensure that public safety is not overshadowed by financial interest. These recommendations can free up law enforcement time and resources to deal with issues that truly impact public safety.

Reduce or eliminate dependence on civil asset forfeiture.

The practice of civil asset forfeiture has metastasized well beyond its original purpose. No longer does it simply target criminal kingpins and the fruits of their illicit enterprises. As this report has documented, it is now used to seize all kinds of property, from cash to cars to houses, however tangentially related to any kind of suspected criminal activity, even the most trivial. Supreme Court Justice Clarence Thomas has likened it to “a roulette wheel” employed to raise revenue, often “from innocent but hapless owners.”³⁸⁴

Unsurprisingly, public opinion surveys consistently show that current civil asset forfeiture practices are deeply unpopular and that sizable majorities support reform — in particular, changes to better protect people’s property and due process rights.³⁸⁵ In rare bipartisan accord, politicians on both sides of the aisle have raised concerns about abuse of civil asset forfeiture.³⁸⁶ More than two-thirds of states have enacted laws to rein in the practice since 2014.³⁸⁷ The federal government has not been silent on reform either. In 2000 Congress passed the Civil Asset Forfeiture Reform Act (CAFRA), adding to federal law some owner protections, an innocent owner defense, notice requirements, the provision of counsel in limited circumstances, a slightly higher burden of proof for the government, and the elimination of the cost bond requiring property owners to pay \$5,000 or 10 percent of the value of the seized property in order to contest forfeiture.³⁸⁸

State reforms vary but have included adding a criminal conviction requirement to civil forfeiture actions, diverting forfeiture proceeds to general funds or other non-law enforcement purposes, prohibiting or limiting participation in the federal Equitable Sharing Program (ESP), and adding more robust procedural protections to shield property owners from unmeritorious forfeitures.³⁸⁹

Maine, Nebraska, New Mexico, and North Carolina have gone as far as legislatively or judicially eliminating civil asset forfeiture in most or all circumstances.³⁹⁰ Notably, New Mexico eased into reform in 2014 by first eliminating the financial incentive, joining only four other states and the District of Columbia in barring law enforcement agencies from using forfeiture proceeds.³⁹¹

Despite these efforts, civil asset forfeiture remains widespread. This may be due in part to the relatively modest nature or narrow scope of some of the reforms.³⁹² Procedural reforms can go only so far, especially if the practice itself is simultaneously expanded to new types of conduct. For example, although CAFRA was touted for some of the protections it put in place for property

owners, the law expanded the scope of civil forfeiture to fungible property and established forfeiture power over virtually all federal crimes.³⁹³

Perhaps the most egregious reason why state reforms have failed to rein in civil asset forfeiture is the ESP, discussed above. The federal program not only allows agencies to circumvent restrictive state laws but also requires that the proceeds of seizures be devoted to law enforcement purposes.³⁹⁴

Despite the economic stress many state and local governments are under, it is still necessary for federal and state policymakers to support broad-based substantive changes to civil asset forfeiture, drawing from the wide set of reforms that states have recently enacted to understand what works and what doesn’t. Most important, policymakers must cast their gaze farther and consider changes that directly confront the huge payoff that civil forfeitures currently provide law enforcement agencies and local governments. To protect against potential abuse, it is vital to disengage financial incentives from any law enforcement forfeiture activity and close loopholes that law enforcement currently exploits.

Eliminate civil asset forfeiture or limit it to the narrowest of circumstances.

The most straightforward way of curing the abuses of civil asset forfeiture is to eliminate it. Law enforcement will still have a method for seizing property that is genuinely the fruit of criminal endeavor — criminal asset forfeiture — which comes with the robust due process protections of criminal proceedings.³⁹⁵

All jurisdictions that have not yet done so should either eliminate the separate civil track for asset forfeiture or limit it to the narrowest of circumstances (such as when property has been abandoned, or when a property owner has died). This will restrict confiscation of property to situations in which the owner has been convicted of a crime and the property has a proven connection to criminal activity.

Eliminate financial motives for civil asset forfeiture.

Civil asset forfeiture is so pervasive because it is so lucrative. Localities that retain the practice should institute guidelines to ensure that the agencies responsible for taking assets do not directly benefit from them. To do this, they must not only reroute funds from their police department but curtail access to the ESP. While this will not prevent, for example, a local elected official from pressuring the police department to fill budget holes, it will at a minimum ensure that departments are not constantly on the lookout for “pennies from heaven.”³⁹⁶

- **Redirect forfeiture proceeds away from forfeiting agencies.** Less than one-tenth of forfeiture proceeds are used for victim restitution, anti-drug education, or other community programs and resources — the purposes that are often used to justify the practice to community members. In contrast, the agencies responsible for seizures and forfeitures spend almost one-fifth of the proceeds on their own personnel and nearly one-third on their own equipment and capital expenditures.³⁹⁷

States and the federal government should reroute forfeiture proceeds away from the law enforcement agencies that collect them. This will help minimize the risk of unethical behavior and refocus enforcement activities on public safety rather than departmental financial goals.

- **Eliminate the Equitable Sharing Program.** As practiced, the ESP distorts the relationship between state and local law enforcement agencies, state legislatures, and the communities they serve. It constrains state legislatures and policymakers from responding to law enforcement abuse of civil asset forfeiture. By giving local agencies a way to bypass state laws that eliminate or curtail civil asset forfeiture, the ESP insulates law enforcement from the express desires of the electorate and their legislative representatives. To remove this peril, Congress should eliminate the ESP. Until then, states and localities should prohibit their police departments from participating. For example, as part of its 2021 forfeiture reforms, Maine substantially curtailed the circumstances under which police departments could participate in equitable sharing, joining seven other states and Washington, DC, in limiting the practice.³⁹⁸ Narrower reforms, such as attaching dollar thresholds for participation or limiting participation to certain types of investigations, would still be prone to exploitation.

Enact a robust set of due process protections.

As long as jurisdictions retain a civil avenue to forfeiture, they should adopt reforms that strengthen the property, due process, and other constitutional rights of those subjected to civil forfeiture actions. Jurisdictions should also significantly raise the burden of proof that the government must satisfy before it can seize property and institute forfeiture proceedings.

- **Require meaningful pre-deprivation hearings.** Currently, even reform-minded jurisdictions require owners to initiate an action to contest a forfeiture, an option many may be unaware of. The barriers this process entails — from the cost of counsel to the

inherent difficulty of navigating a complex, opaque, and time-consuming legal process — prevents most property owners from contesting the forfeiture.³⁹⁹ At the very least, they may question whether the property is worth more than the time and expense of retrieving it, and even if they move forward, they still hold the burden of proving their innocence.⁴⁰⁰ Some courts have even required owners to prove not just that they did not know about or participate in a crime, but that they “took all the precautions reasonably within their power to prevent [illegal activity] from occurring on their property.”⁴⁰¹

Instead, jurisdictions should require that a pre-deprivation hearing be promptly held in the case of any asset forfeiture. In it, the government would have to affirmatively show that the seized property is forfeitable, using the highest evidentiary standard in the justice system, “beyond a reasonable doubt,” normally reserved for a criminal conviction.⁴⁰²

If it is unfeasible for jurisdictions to add separate automatic pre-deprivation hearings, states should require a criminal conviction even while maintaining a separate track that tries property in civil court. Although at least 15 states now require a criminal conviction for at least some forfeitures, the requirement is often limited to certain types of property or allows the conviction of *any* person with a connection to the property. This means the government can convict someone other than the property owner and still seize the property and proceed with forfeiture. Some protections take effect only if property owners actively contest the forfeiture. Such conviction requirements should be strengthened.⁴⁰³ Special exceptions and procedures could be established for circumstances in which forfeitures could still be executed absent a conviction, such as when a crime has been committed but the property owner cannot be identified, is a fugitive, or is deceased.

- **Limit or ban rights waivers, settlement offers, and “redemption fees.”** Investigative reports and academic studies are replete with examples of law enforcement agents using strong-arm tactics to acquire desired property — from demanding a cash fee for the return of seized property or a storage fee for improperly impounded vehicles, to using the threat of custodial arrest and criminal prosecution to induce people under duress to waive their ownership rights or rights to contest seizure, including the use of statutory defenses that would protect their property.⁴⁰⁴ Law enforcement should be prohibited from engaging in this type of predatory behavior and categorically banned from coercing property owners to waive their rights. Law enforcement should, moreover, be required to affirmatively advise people of their rights prior to commencing

a forfeiture action. Any proposed settlement offers should be reviewed by the property owner’s counsel or by a neutral third party such as a judge.

Alleviate the burden of criminal court-imposed fines and fees.

Costly fines and fees are an insidious part of the criminal legal system. Those who are ticketed or convicted of an offense not only are made to pay a statutory fine that was most likely determined without taking into consideration their ability to pay, but are also on the hook for a plethora of so-called user fees that effectively force them to underwrite their own punishment.

After years of studies and reports, some state and local governments have changed their approach to fines and fees.⁴⁰⁵ Some jurisdictions have ended fees for certain services. In 2019 Contra Costa County, California, suspended a number of adult court fees including those covering probation, drug testing and diversion, booking, alcohol testing, public defenders, and alternatives to incarceration (such as work programs); it also issued a “moratorium on the collection of such fees on existing accounts.”⁴⁰⁶ In 2020 the Common Council of Buffalo, New York, voted to repeal 15 vehicle and traffic fees.⁴⁰⁷ The board of Ramsey County, Minnesota, eliminated 11 fees in 2020, cutting the amount the county charges people in jail by approximately \$675,000 annually.⁴⁰⁸ Other jurisdictions have focused primarily on forgiving or reducing old debts.⁴⁰⁹ For example, in 2021 the town of Phoenix, Oregon, cleared all traffic debts that were at least 10 years old and offered a 50 percent discount on debts incurred more recently if they were paid by a certain date.⁴¹⁰ Also in 2021, Dane County, Wisconsin, canceled old fines and fees owed to the county jail, totaling nearly \$150,000.⁴¹¹ In 2022 the mayor of Birmingham, Alabama, permanently suspended traffic and parking violations issued by its municipal court prior to 2011, eliminating debts from 756,531 violations totaling \$35 million.⁴¹² And some states have employed both strategies. For instance, between 2019 and 2021, California removed counties’ capacity to charge 23 court fees, eliminated 17 types of fines, and canceled \$534 million of court fee and traffic ticket debt.⁴¹³

These reforms are vital first steps toward a less economically oppressive criminal legal system. Yet there is more to be done. State and local governments should adopt bolder policies to protect their most vulnerable community members.

Eliminate criminal justice fees.

The best way to prevent overburdening individuals with court debt is to simply eliminate all fees in the criminal justice system and automatically forgive outstanding debts. The justice system should be funded not primarily by the community’s poorest, most marginalized members, but equitably by taxpayers, all of whom are served by it. Eliminating fees would not only remove an unfair load from people who are often already struggling but also offer governments more predictability in budgeting for criminal legal system services and alleviate pressure on courts and police departments to bring in revenue. While no state has yet eliminated all court-imposed fees, eight states — California, Colorado, Louisiana, Maryland, Nevada, New Jersey, New Mexico, and Oregon — have eliminated all fees for juveniles.⁴¹⁴

Require fines to be commensurate with ability to pay, and cancel outstanding debts.

The purpose of fines is to deter people from violating the law and to penalize those who do.⁴¹⁵ But flat fines often fail to accomplish either objective. To resolve this issue, legislatures should create (and courts should require) standardized criteria for evaluating defendants’ ability to pay, and fines should be proportionate to their finances and the gravity of the offense.

As demonstrated internationally and by several pilot programs in the United States, the use of “day fines” — in which fines are set relative to a person’s net daily income — holds great potential for rebalancing our system of fines.⁴¹⁶ But most states do not have a structure in place to assess them. However, there is a process by which those unable to pay the statutorily imposed sanction can get fines waived or reduced: they can show that paying a fine would cause hardship — that they do not have sufficient resources to pay.⁴¹⁷ And certain conditions that indicate indigence, such as disability, incarceration, or eligibility for government benefits, should trigger a presumption of hardship.⁴¹⁸

Computer systems can be developed to facilitate the neutral execution of ability-to-pay structures. Clerks, public defenders, or other court staff could then input individuals’ information in order to provide judges with suggested sanction ranges.⁴¹⁹ Twelve states already require courts to evaluate ability to pay whenever imposing court fines or fees, and 21 require a prosecutor to prove that a person’s failure to pay a fine or fee was “willful” before imposing sanctions for failing to pay.⁴²⁰ In addition, 11 states have codified standards that all courts are required to use to determine ability to pay.⁴²¹

Outstanding fines should also be forgiven or reevaluated. Fines are most likely to be collected soon after they are imposed; as fines age, they become more difficult for governments to collect. Efforts to pursue uncollectible debt can be costly for governments and harm low-income people for years.⁴²² Furthermore, fines and fees charged to those who can't afford to pay do not deter new crime, refuting any claim that they serve a rehabilitative function.⁴²³ Jurisdictions should consider eliminating all outstanding fine debts; as a general rule, fines should be considered uncollectible two years after they are imposed.⁴²⁴ Notably, studies have found that considering an individual's ability to pay and adjusting fine amounts accordingly yield much higher rates of collection.⁴²⁵

Offer alternatives to fines.

For too long and in too many jurisdictions, people have faced an impossible choice: pay an unaffordable fine, or sit in jail.⁴²⁶ This system turns jail into a debtor's prison and wastes fiscal resources on needless incarceration. Instead, courts should consistently provide community service and e-learning opportunities as alternatives to payment of fines.⁴²⁷ Community service should be defined broadly, compensated at a competitive rate, and coordinated with a person's family responsibilities and job so as not to adversely impact either. The Center for Court Innovation has created several e-learning modules, accessible through kiosks or home computers, that educate participants about social responsibilities and local laws to prevent future offenses.⁴²⁸

Adopt context-sensitive responses to nonpayment.

People may fail to pay an outstanding court debt for any number of reasons. They may not be able to afford it; they may not understand how, when, how much, or to whom they should pay their debts; or they may have simply forgotten. Courts should end the use of failure-to-appear charges, driver's license suspensions, jail sentences, and bench warrants for nonpayment. Jurisdictions can follow the example of Los Angeles, where the city attorney and district attorney voided almost 2 million citations and 500,000 warrants for people whose only contact with the criminal legal system was for a low-level, nonviolent crime and who subsequently failed to appear in court.⁴²⁹ When someone misses a payment, the court should send reminders; provide easily accessible (and no-fee) payment options, including reasonable payment plans; and reevaluate fine amounts if necessary due to unexamined or changed personal circumstances. If a court determines *willful* nonpayment, a full hearing should be held and the individual provided with free appointed counsel.⁴³⁰

Eliminate poverty penalties.

While making payments, low-income people are subject to poverty penalties — late fees, payment plan fees, collections fees, extended terms of community supervision, disenfranchisement, and high surcharges from private debt collectors — that they would not face if they were able to pay their full bill immediately.⁴³¹ For accountability to be applied fairly and consistently across the many people who interact with courts, socioeconomic factors must be taken into account. Without such considerations, low-income individuals suffer disproportionately punitive treatment. The following steps can address these disparities:

- **End voter disenfranchisement due to unpaid fines.** In 24 states, incomplete payment of fines can restrict one's right to vote.⁴³² People who have finished their term of incarceration should be empowered to participate in their communities by exercising their right to vote.⁴³³
- **End the use of private debt collectors.** When outstanding debts pile up, state and local governments turn to private debt collectors who impose hefty surcharges of up to 40 percent.⁴³⁴ States should follow the lead of Alabama, Connecticut, Delaware, Iowa, Kentucky, Minnesota, New Hampshire, Oklahoma, and South Carolina, which prohibit courts from using private firms for collecting fines and fees.⁴³⁵

Reduce the influence of privatized community corrections.

Like any for-profit entity, private supervision companies aim to make money. While they generate some from government agencies, most of their profits come from the people under supervision. It is therefore to the benefit of the company to keep people under supervision — and paying for it — for as long as possible. Some meaningful state and local reforms have attempted to remove this incentive by doing away with some or all supervision fees. For example, in 2020 California repealed more than 20 administrative fees in its criminal legal system, including supervision fees for probation and parole.⁴³⁶ In 2021 Oregon repealed a statutory requirement that individuals on community supervision pay supervision fees.⁴³⁷ St. Paul, Minnesota, eliminated 11 fees in early 2020, including a \$300 probation supervision fee and the \$16 daily fee for home electronic monitoring.⁴³⁸ And in 2021 Baltimore

County, Maryland, stopped charging individuals for pretrial community supervision and home monitoring.⁴³⁹ More reforms are pending: one bill in Florida would eliminate supervision fees for young people, and another in Delaware would eliminate fines and fees in juvenile court proceedings as well as prohibit payment of fines or fees as a condition of ending probation.⁴⁴⁰

But more is needed. Elected officials should specifically put an end to the perverse incentives underlying privatized probation by eliminating all supervision fees and requiring governments to cover the costs. Local officials should also abolish payment of fines as a condition of completing probation and refrain from contracting with supervision companies that base employee promotions and bonuses on the amount of money they collect, especially if it is from the people on probation. Finally, governments contracting with private supervision companies should create independent oversight mechanisms to ensure that private companies do not abuse their power in supervising individuals.

Require governments to pay for supervision.

States and local governments should eliminate all supervision fees. If they choose to use private companies for supervision services, they should stipulate in contracts that the government, not individuals under supervision, will pay any fees incurred. When companies must justify costs to the governmental entity they contract with, they will be less likely to order superfluous and onerous testing, courses, or reporting schedules. Eliminating fees for supervision ensures that individuals under supervision do not become further trapped in cycles of debt and incarceration. While no states have entirely abandoned supervision fees, many localities have taken positive steps. Los Angeles, Contra Costa, and Alameda Counties, in California, as well as Nashville and Davidson Counties, in Tennessee, have eliminated county probation fees.⁴⁴¹ And San Francisco County and Baltimore County recently eliminated electronic monitoring fees.⁴⁴² Shifting the cost of community supervision — whether for probation or electronic monitoring — back to local governments will encourage them to reduce unnecessary supervision.

Abolish payment of fines as a condition of probation completion.

In addition to eliminating fees, governments should stop requiring full payment of fines as a condition of completing probation. Keeping people under supervision until their court fines and fees are paid off does little more than punish them for their poverty and often imposes additional private supervision fees on those who can least afford them.⁴⁴³ Community supervision is intended to provide oversight and prevent the commission of new

crimes, and the payment of fines is not an indicator of rehabilitation. Governments should allow people to continue paying off debts after their term of supervision is complete.

Forbid contracts with private companies that engage in predatory collection practices.

Although state and local governments generally lack authority to control a private company's internal employee pay and promotion structures, they can choose not to contract with private monitoring companies that base employee performance metrics or professional advancement on fine and fee collection. Governments should instead partner with companies that reward employees according to the quality of service provided to people under supervision. Such a performance-based evaluation would reduce incentives for employees to harass people under probation and their families for payments.

To reduce the potential for abuse by company employees, states and counties should also end the practice of incarcerating people for technical violations of supervision. Failing to make payments constitutes such a violation, and supervision officers are known to threaten people with incarceration for missing payment.⁴⁴⁴ Ending the practice of incarceration for failure to pay will remove this leverage from supervision officers and better protect vulnerable people.

Establish oversight and transparency mechanisms for private supervision companies.

Governments contracting with private supervision companies should establish an oversight board or similar mechanism with responsibility for maintaining companies' registrations; selecting contractors after an open bidding process; establishing rules, regulations, and performance standards; performing audits and investigations; addressing grievances; and tracking and releasing information about contractor supervision numbers and profits. Georgia has established such a model with its Department of Community Supervision Advisory Council.⁴⁴⁵ But simply establishing an oversight body is insufficient. Governments must also fully fund and provide all necessary resources to such entities to ensure their effectiveness.

In the interest of transparency, each oversight board should release annual reports. These public reports should include the names of companies the state contracts with for probation and electronic monitoring services, how much the state pays them, revenues they collect from individuals under supervision, the number of people under their supervision, the number of people who successfully complete their community supervision term, recidivism rates among people under supervision,

and how much money companies collect for the courts with which they contract. States should also task their comptroller with auditing the performance of the oversight board.⁴⁴⁶

Reduce or eliminate pecuniary motives in the prison, jail, and immigration detention bed market.

The interjurisdictional trade in detention beds emerged as a solution to the problem of enduringly high custodial populations and insufficient housing capacity.⁴⁴⁷ Overflow populations from local jails and state prisons are regularly traded in a complex market. Given the additional revenue stream this exchange offers local governments in economic need and private firms pursuing profit, willing participants in the trade are easy to come by.

But state and local governments are not the only consumers in the custody bed market. ICE and USMS — together responsible for detaining more than 82,000 people on an average day — demand plentiful and accessible empty beds to house their populations.⁴⁴⁸ To this end, they often rely on intergovernmental service agreements (IGSAs), which are not subject to the full transparency requirements necessary for political accountability.⁴⁴⁹ This mechanism risks inefficient and costly outcomes best exemplified by guaranteed minimums, or flat-rate payment provisions, in bed space agreements that result in one of two negative outcomes: ICE either over-incarcerates people or spends millions on empty beds, in either case encouraging the overbuilding of carceral space.⁴⁵⁰ Because there is so little federal oversight of IGSAs, ICE also often fails to follow even its own insufficient protocols and procedures, which has led to convoluted contracting schemes involving for-profit prison companies.⁴⁵¹

While IGSAs are viewed by some as mere contracts for purchased services, they should be regarded, rather, as mechanisms critical to perpetuating mass detention and incarceration.⁴⁵² Bed space agreements reflect policy choices to drive up the scale of imprisonment — whether through mandatory detention for increasing categories of undocumented migrants, harsh mandatory sentencing laws and restrictive prison release policies, or precinct or department policies prioritizing custodial arrest over noncustodial responses. They add financial incentives to political ones. This can help drive self-perpetuating cycles of growth in detained and imprisoned populations and increasing bed space capacity at the local level.

But the growing trade in custody and detention beds is neither inevitable nor irreversible. Policymakers can push back against carceral expansion. They can end lucrative contracts, as some have in recent years — particularly in response to growing public outcry against punitive immigration enforcement practices and concern over the conditions of confinement.⁴⁵³ They can also consider whether new bed space is actually needed and contemplate steps to safely reduce populations, obviating the need for expansion. At the same time, where housing deficits still exist, negotiations and contracting should be subject to increased transparency and accountability. This would better acknowledge that increasing carceral capacity is a costly — and risky — investment for governments. It would also emphasize the very real harms for those people shuttled across jurisdictional lines of control.⁴⁵⁴

Reduce custodial and detention populations.

Policymakers should reduce their custodial and detention populations. This will help minimize agencies' reliance on the interjurisdictional trade in bed space and curtail the widening scope of the market. But population reductions need to be coordinated not only across local, state, and federal levels, but also across the criminal legal and immigration detention systems.⁴⁵⁵ While the overall lack of infrastructure to directly support federal agencies such as ICE and USMS means that some detention bed deficits are inevitable, it is possible to reduce custodial and detention populations to numbers that more closely align with available beds.

States, localities, and the federal government can draw from a wide set of reforms implemented in recent years to temper over-incarceration and over-detention, particularly around the expanding use of diversion and noncustodial detention. Localities can expand the use of cite-and-release policies — issuing a written order requiring a person to appear in a designated court at a specified time and date — such as those implemented in 2017 in the city of Dallas and in Harris County, Texas, in relation to low-level marijuana possession.⁴⁵⁶ States can also implement reforms to reduce overcrowding that do not simply shift people from prisons to jails. For example, statewide criminal justice reforms enacted in Louisiana in 2017 expanded noncustodial sanctions, reduced mandatory sentences, lowered drug penalties, and expanded parole eligibility.⁴⁵⁷ Bail reform measures can significantly reduce pretrial populations, as demonstrated most recently in New Jersey and New York.⁴⁵⁸

The federal government should lean more heavily on release-on-recognizance practices to allow more people to remain at liberty pending immigration case resolution without having to post bail. It should also expand alternative-to-detention (ATD) and other community-based case management alternatives. Some of these practices have a proven track record in ensuring compliance with

immigration court orders.⁴⁵⁹ For example, a 2018 study showed that 86 percent of families released from ICE detention between 2001 and 2016 appeared for all their subsequent immigration court hearings, a number that rose to 96 percent when looking only at asylum seekers.⁴⁶⁰ Similarly, a 2014 GAO report found that 95 percent of people in “full service” ATD programs, which include case management services to help people understand their rights and responsibilities, appear for their final hearings.⁴⁶¹ Community-based programs that offer full support, like Chicago’s Marie Joseph House, which costs as little as \$17 per person per day and boasts a 100 percent compliance rate with court proceedings, help people who would otherwise be incarcerated remain with their families and integrated in their communities through supports like food; shelter; and assistance finding health, legal, educational, language, and vocational services.⁴⁶² In contrast, ICE’s privately run ATD program does not provide case management and relies on electronic monitoring to ensure compliance, setting people up to be incarcerated — and eventually deported.⁴⁶³

The federal government should also conduct regular audits to assess how many undocumented immigrants are held unnecessarily at any one time. A 2009 report by the Department of Homeland Security, ICE’s parent agency, conceded that a substantial proportion of people detained did not fit statutory or policy categories of those for whom detention was intended — 34 percent were not subject to statutory mandatory detention, and 49 percent did not have a felony conviction — giving official imprimatur to the proposition that immigration detention is regularly applied inappropriately.⁴⁶⁴ But this knowledge has not brought about substantial policy change. As of July 2021, only 17 percent of people in immigration detention had been convicted of any crime.⁴⁶⁵

Reform IGSA contracting practices.

The federal government should institute more robust rules governing IGSA. Agreements that involve the exercise of coercive force against individuals should never be exempt from the procedural rules that routinely apply to other federal actions. Reforms can guard against the current secretive and unaccountable processes that obscure the real activity being negotiated — decisions not just about money or contracted services, but about how many people should be incarcerated, and where.⁴⁶⁶ Oversight and timely review of new contracts, as well as periodic review of existing ones, should be instituted so that improper or inappropriate decisions can be quickly identified and rectified.

The two current contracting practices with the highest risk of abuse and obfuscation should be categorically prohibited. One is the federal government’s use of riders on existing IGSA, particularly those with USMS, which allows ICE to rapidly increase its bed capacity in state,

local, or private facilities with even less oversight than when entering into a new IGSA.⁴⁶⁷ Acquiring space this way is fast and easy; ICE need not negotiate any new terms, rates, or conditions.⁴⁶⁸ Instead, the agency is merely added — often using boilerplate language in a short addendum — to an existing USMS contract.⁴⁶⁹ The other practice that should be proscribed is the use of pass-through signatory contracts that allow localities to serve as intermediaries between the federal government and for-profit firms in exchange for financial kickbacks.

Prohibit localities from entering into IGSA to hold federal detainees.

Even if federal changes to IGSA practices are not forthcoming, states can curb the prevalence of these agreements. To stem the growth of the profitable immigration detention trade, particularly through the troubling use of local governments as a rubber stamp on contracts for private facilities, states can constrain localities from entering into contracts with federal immigration or law enforcement authorities. Several states — including California, Illinois, New Jersey, and Washington — effectively prohibit localities and local law enforcement agencies from entering into, renewing, or extending private immigration detention agreements through IGSA with ICE.⁴⁷⁰ The Illinois Way Forward Act, signed into law in August 2021, goes the farthest; it not only prohibits the initiation of new contracts but also terminated existing ones.⁴⁷¹

Such laws may force ICE to undertake more regulated federal contracting processes when looking to increase its detention capacity, subjecting the agency’s participation in the bed space market to heightened transparency and accountability checks.⁴⁷² And without local government buy-in, private contractors will have fewer options for expanding their trade in detention beds.

Focus police and prosecutor performance metrics on safety and justice.

Historically, police departments and prosecutors’ offices evaluated their staffs using metrics that often prioritized punitive enforcement. This has played a key role in the growth of mass incarceration as well as the attendant harms of justice system involvement that ripple out beyond impacted individuals and their families to whole communities — disproportionately communities that are already marginalized.⁴⁷³

But changes in how society measures and rewards both policing and prosecution are afoot. For one, a consensus

has gathered around the harm of police quotas, spurring more than half of the states to enact prohibitions.⁴⁷⁴ But these laws vary significantly, and many of the statutes do not fully encompass de facto quota systems, which in turn can stymie court enforcement.⁴⁷⁵ For example, Florida’s law states “a traffic enforcement agency may not establish a traffic citation quota” without actually defining what a quota is, and this can provide an opening for the use of other so-called productivity measures.⁴⁷⁶ Agencies can, for example, urge officers to “get their numbers up” without setting specific numerical goals, or law enforcement leaders may imply a quota with their actions and reactions without specifically articulating it.

Reforms in prosecutorial practices are simultaneously gaining momentum. While prosecutors have historically played a significant role in fueling mass incarceration, their power also makes them uniquely positioned to change the criminal legal system through the reform of their own office cultures and practices.⁴⁷⁷ Indeed, a new wave of prosecutors has attempted to implement positive policy changes.⁴⁷⁸ More than two dozen offices, including some of the country’s largest jurisdictions, have promised to incorporate new performance metrics in order to incentivize fairness and efficiency rather than incarceration.⁴⁷⁹ But these reforms have yet to catch on nationwide. Moreover, current norms and practices are so ingrained that punitive prosecutorial habits can persist in even the most reform-minded offices.⁴⁸⁰

Several much-needed reforms can empower these institutions to work better for their communities while improving public safety. With new metrics and performance goals, police and prosecutors can be incentivized to rethink their roles.⁴⁸¹ And diversifying the performance criteria that police and prosecutors are evaluated on can help decrease the pressure put on any single factor.⁴⁸²

Reimagining goals and performance metrics allows law enforcement leaders to create clear priorities and incentives to move practices toward a redefined vision.⁴⁸³ And indeed, there are a number of other ways to evaluate law enforcement that take a more holistic approach and do not oversimplify the complex roles of public servants. For police, this may include helping individuals resolve conflicts before they escalate, directing people to community services instead of arresting them, or giving warnings instead of speeding tickets. For prosecutors, this may include declining to prosecute a larger share of criminalized behavior related to poverty, substance use, and mental health, or pursuing restorative responses to some types of harm rather than punitive sanctions. For police and prosecutors alike, gathering and implementing community input can also improve relationships with the public.⁴⁸⁴

State legislatures also have a role to play in reimagining prosecutorial and police practices. Legislation is required to strengthen existing anti-quota statutes. It can also

change prosecutors’ calculus by requiring cost analyses for different sentencing options, as research suggests that even limited exposure to such information is associated with a substantial reduction in the length of recommended prison terms.⁴⁸⁵ By adopting job performance metrics indicative of desired outcomes, state and local governments can avoid the pitfalls of the past that perpetuated over-enforcement and mass incarceration.

Prohibit police officer enforcement quotas.

Statutory enforcement quota prohibitions should clearly define what a quota entails, encompassing both informal and formal requirements; explicitly forbid quotas from consideration in review of an officer’s performance; and note concrete consequences for individuals and departments that fail to comply. Quota prohibitions should apply not only to citations and arrests but also to set numbers of warnings or stops, which serve as cloaked enforcement quotas.⁴⁸⁶ Finally, statutes should expressly prohibit policing for financial gain, in which increased enforcement is meant to address budget concerns.⁴⁸⁷ When departmental budgets are decoupled from enforcement, police no longer directly benefit from meeting high enforcement targets. And when local governments are not dependent on cash brought in by police to fill budget holes, policymakers are less likely to pressure departments to increase their enforcement activity. The following measures would set up a jurisdiction for success in avoiding enforcement quotas:

- **Ensure prohibitions create meaningful consequences for violators.** Anti-quota statutes lacking teeth are bound to be ineffective. One Tennessee town came under scrutiny in 2019 when its municipal government demanded that the police department issue 210 tickets and raise more than \$250,000 annually through traffic fines. A special prosecutor found that the city was in violation of Tennessee law, but no one was prosecuted because, according to media coverage, “there was no clear penalty attached to that crime.”⁴⁸⁸ Several methods for accountability exist, such as making a quota violation a misdemeanor (which was not the case in Tennessee until 2020); adding conditions to federal dollars, such as those from the COPS program, which would disqualify agencies that employ quotas from receiving funding; and threatening the loss of police officers’ pensions for participating in a quota system.⁴⁸⁹ Each state should solicit, consider, and implement community input regarding how law enforcement agencies should be held accountable for violating anti-quota statutes.
- **Require reporting and strengthen whistleblower protections.** The “blue wall of silence,” a part of police culture that discourages officers from reporting others’ misbehavior for fear of retaliation or alienation, impedes

accountability for those who violate department policies and the law.⁴⁹⁰ States should strengthen their existing anti-quota laws by mandating that line officers report whenever leadership exhibits behaviors suggesting quotas, and they should include explicit protections against retaliation. In the absence of mandated reporting, whistleblower protection laws can still support officers who report quota systems.

Change what law enforcement agencies measure and reward.

Police departments' singular emphasis on enforcement overlooks community needs and priorities that go beyond punishment and ignores or even discourages responses to crime that address its root causes — whether mental illness, substance use, housing insecurity, poverty, or other complex social issues.⁴⁹¹ Police departments can adopt holistic approaches to meet varied community needs by changing internal metrics of successful policing. New metrics could include the rate at which police encounters are safely deescalated, the number of successful diversion efforts, community members' satisfaction with their engagement with officers, and officers' participation in youth outreach programs.⁴⁹² Finding success through diversion programs will require investments beyond policing. Communities must create (or expand to sufficient levels) the infrastructure, programming, and funding needed for diversion programs — as well as the capacities of community-based services and supports — before law enforcement can be expected to be evaluated on diversion program efforts or collaborations with local service providers and other community organizations. Successful programs, such as Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity (LEAD), an initiative currently operating in 52 jurisdictions across the country, can serve as models.⁴⁹³ Even in places without robust diversion programs, practices encouraging citations in lieu of arrests can decrease the number of people arrested and jailed for low-level offenses.⁴⁹⁴

Police departments would not have to reinvent the wheel to achieve this. Across the United States, many already use CompStat360 to comprehensively evaluate performance based on a broad set of metrics.⁴⁹⁵ The tool integrates law enforcement, government partners, and community members. When the police department in Manchester, New Hampshire, adopted CompStat360 in 2021, it hosted a series of community meetings and established a prob-

lem-solving team to develop responses to public safety issues, including non-law enforcement responses.⁴⁹⁶ The team includes community leaders, public health and public works officials, and community organizations.⁴⁹⁷ The department has also increased transparency. Its public data dashboard, updated weekly, shows the number and types of calls that the department responds to.⁴⁹⁸ The collaboration and innovation suggest a culture shift toward community measures of public safety.

Change prosecutorial priorities and shift incentives for line prosecutors.

Chief prosecutors should, as a matter of policy, move away from relying on punitive performance metrics, such as the number of convictions, trial wins, and custodial sentences, when evaluating the work of prosecutors in their office. Instead, performance metrics should also focus on steps taken to reduce incarceration for low-level crimes, case efficiency and victim satisfaction, and the number of cases resolved through alternatives to incarceration, such as rehabilitative programming or community service.⁴⁹⁹ To incentivize line prosecutors to change their practices, benchmarks reflecting these values should be established, and offices should conduct yearly evaluations of prosecutors' progress toward these benchmarks, both by comparing rates from year to year and by comparing rates to those of similar jurisdictions.

To rein in predatory charging and plea bargaining practices, prosecutors' offices should rigorously screen cases and dismiss weak or unmeritorious ones quickly, prohibit the unethical practice of offering plea deals in those cases, and discourage prosecutors from filing the maximum possible charge as a matter of course or from overcharging to coerce a guilty plea. They should also prohibit prosecutors from making threats (such as conditioning more lenient plea offers on the waiver of a defendant's right to seek pretrial release or discovery, threatening to seek the death penalty, or charging or threatening to charge life-without-parole or habitual-offender offenses) to get defendants to agree to plea deals.⁵⁰⁰

Through the Prosecutorial Performance Indicators Project, a collaboration between researchers and prosecutors in partnership with the John D. and Catherine T. MacArthur Foundation, 13 district attorney's offices around the country have started putting these changes into effect.⁵⁰¹ The project seeks to implement 55 performance indicators promoting efficiency, community safety, and fairness, rather than convictions and lengthy sentences.

Reorient prosecutors' incentives with budgetary reforms.

When prosecutors make charging or sentencing recommendations, the costs are ultimately paid by others. There is little oversight or transparency, especially with regard to plea bargaining.⁵⁰² This creates a moral hazard in which prosecutors can make professional gains or win reputational rewards for decisions they make, while being shielded from responsibility for the fiscal cost of those very decisions.⁵⁰³ Their offices do not bear the costs of the carceral sentences they seek to impose, which are typically borne by the state, nor those of jail stays, rehabilitation programs, probation, or diversion — all of which are typically paid for by other county or municipal agencies.

To hold prosecutors fiscally accountable for sending individuals to prison, state legislatures should enact the following measures:

- **Charge counties for their share of the prison population.** States and municipalities should charge counties some share of the cost for the number of individuals they send to state prison or municipal jails. Doing so would shift some of the costs of incarceration back to prosecutors, incentivizing them to recommend prison sentences only when necessary for public safety.⁵⁰⁴
- **Provide bonus funding to prosecutors' offices that reduce incarceration.** Legislatures might also provide performance incentive funding to prosecutors' offices that reduce their incarceration rates. Bonus dollars could be provided to offices on the basis of specified performance metrics such as decreases in the number of defendants sentenced to state prison.⁵⁰⁵

Conclusion

Public safety and community well-being demand direct investment from governments. But when revenues are at stake and cash-strapped agencies or cities see potential windfalls, law enforcement is likely to give these considerations short shrift. With money to be made from over-enforcement and over-incarceration, these agencies have little incentive to divert people from arrest and prosecution or to strengthen alternative approaches to public safety.⁵⁰⁶

Ingrained enforcement behavior and practices forged by a large body of interlocking motivating mechanisms — revenue streams, federal policy mandates and funds, administrative directives around performance and compensation — not only come at a direct cost to the most vulnerable and marginalized communities but also

undermine the legitimacy of government and law enforcement. To provide true public safety and restore community trust in the criminal legal system, reforms must account for and change the full array of perverse incentives that drive unnecessary punishment and mass incarceration.

Endnotes

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56 Even then, not all claims contesting seizure are permitted to have their day in court, as prosecutors can often unilaterally keep petitions from moving forward. See Lisa Knepper et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 3rd ed., Institute for Justice, 2020, 29, <https://ij.org/report/policing-for-profit-3/> [<https://perma.cc/AK4E-KJSS>].

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58 Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. 91-513, 84 Stat. 1236, <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1236.pdf> [<https://perma.cc/5QUP-HZU6>]. This was followed by the Psychotropic Substances Act of 1978, which provided for civil *in rem* forfeiture both of proceeds traceable to drug crimes and of property used or usable for facilitating those crimes. Psychotropic Substances Act of 1978, Pub.L. 95-633, 92 Stat. 3768, <https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3768.pdf> [<https://perma.cc/7QE2-D5AM>]. Later, the Comprehensive Crime Control Act of 1984 allowed the forfeiture of real property used or intended to be used to commit or to facilitate the commission of a drug crime, and the Anti-Drug Abuse Act of 1986 expanded civil forfeiture to include the proceeds of money-laundering activity. Comprehensive Crime Control Act of 1984, Pub.L. 98-473, 98 Stat. 1837, <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1837.pdf> [<https://perma.cc/9E95-4438>]; and Anti-Drug Abuse Act of 1986, Pub.L. 99-570, 100 Stat. 3207.

59 Civil forfeiture was originally restricted to maritime, customs, and war powers cases; during Prohibition it was applied to violations of criminal statutes regulating alcohol. See “How Crime Pays: The Unconstitutionality of Modern Civil Asset Forfeiture as a Tool of Criminal Law Enforcement,” *Harvard Law Review* 131, no. 8 (2018): 2387–408, https://harvardlawreview.org/wp-content/uploads/2018/06/2387-2408_Online.pdf [<https://perma.cc/S62L-G52L>]. Beginning in 1970 the federal government expanded civil asset forfeiture to fight organized crime. See the Racketeer Influenced and Corrupt Organizations Act (RICO), a part of the Organized Crime Control Act of 1970, Pub.L. 91-452, 84 Stat. 922-3, <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg922-3.pdf> [<https://perma.cc/M3S4-465F>]. RICO allows the federal government (or any person injured in their business or property by reason of a RICO violation) to bring a civil forfeiture action to limit investments in RICO enterprises, the scope of which includes divestiture, restrictions on further investment, and dissolution or reorganization of the enterprise. See also Leonard W. Levy, *A License to Steal: The Forfeiture of Property* (Chapel Hill: University of North Carolina Press, 1996), 76. Levy explains that Congress was strongly motivated by its belief that RICO’s forfeiture provisions would “strike at the profits of organized crime and wipe out its hold on legitimate organizations.” For a discussion of adoption of similar forfeiture laws by the states, see Dee R. Edgeworth, *Asset Forfeiture: Practice and Procedure in State and Federal Courts*, 3rd Edition (Chicago: American Bar Association, 2014), 35 (discussing how 47 states and the District of Columbia passed *in rem* forfeiture statutes, most modeling their laws after federal asset forfeiture schemes). However, parameters of forfeiture proceedings, including standard of proof, vary significantly among jurisdictions. See Knepper et al., *Policing for Profit*, 3rd ed., 39–40.

60 Sarah Stillman, “Taken,” *The New Yorker*, August 5, 2013, <https://www.newyorker.com/magazine/2013/08/12/taken> [<https://perma.cc/F948-H4HC>] (“Hundreds of state and federal laws authorize forfeiture for cockfighting, drag racing, basement gambling, endangered-fish poaching, securities fraud, and countless other misdeeds.”); and U.S. Department of Justice, *Asset Forfeiture & Money Laundering Statutes*, 2019, <https://www.justice.gov/criminal-mlars/file/1146911/download> [<https://perma.cc/WNF8-C3WL>] (listing various statutes related to asset forfeiture).

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62 Stillman, “Taken” (discussing the civil asset forfeiture case impacting Mary and Leon Adams in Philadelphia, Pennsylvania). See also a similar case in *Commonwealth v. 1997 Chevrolet and Contents Seized from Young*, 160 A.3d 153, 158–59 (Pa. 2017), <https://casetext.com/case/commonwealth-v-1997-chevrolet-contents-seized-from-james-young-elizabeth-young-2> [<https://perma.cc/X7NG-V2VZ>] (in which the Philadelphia Police Department seized 71-year-old Elizabeth Young’s house and minivan after her 50-year-old son pleaded guilty to selling approximately \$140 worth of marijuana and was placed on house arrest for 11 months. The Philadelphia District Attorney’s Office initiated forfeiture proceedings and seized Ms. Young’s home and vehicle through Pennsylvania’s forfeiture statute. Ms. Young was never charged with a crime. The Supreme Court of Pennsylvania eventually dismissed the case, but for five years Ms. Young was prohibited from living in her home and was without her vehicle).

63 *Bennis*, 516 U.S. 442, 443–44. See also Emma Ockerman, “Michigan Cops Seized This Woman’s Car After Her Then-Boyfriend Allegedly Picked Up a Prostitute,” *Vice News*, February 5, 2020, <https://www.vice.com/en/article/9393np/michigan-cops-seized-this-womans-car-after-her-then-boyfriend-allegedly-picked-up-a-prostitute> [<https://perma.cc/6C3U-DHBK>].

64 Knepper et al., *Policing for Profit*, 3rd ed., 5.

65 Knepper et al., *Policing for Profit*, 3rd ed., 5.

66 Knepper et al., *Policing for Profit*, 3rd ed., 102.

67 Knepper et al., *Policing for Profit*, 3rd ed., 34.

68 Since 1984 the ESP has provided a mechanism of sharing up to 80 percent of federal forfeiture proceeds with state and local law enforcement agencies cooperating in federal investigations. Although “cooperating” mainly occurs through joint operations or participation in a convened task force, the program perversely allows state and local authorities to bring forfeiture cases made under state law to federal agencies so that they can be processed under the color of federal law even though federal authorities are otherwise not involved — permissible given overlapping or concurrent criminal jurisdiction over certain types of conduct. U.S. Department of Justice and U.S.

Department of the Treasury, *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies*, 2018, 4–6, 9, 14–16, <https://www.justice.gov/criminal-afmls/file/794696/download> [<https://perma.cc/TS8Q-AZPP>].

69 Knepper et al., *Policing for Profit*, 3rd ed., 102.

70 See, for example, Karis Ann-Yu Chi, “Follow the Money: Getting to the Root of the Problem with Civil Asset Forfeiture in California,” *California Law Review* 90, no. 5 (2002): 1635–73, <https://lawcat.berkeley.edu/record/1118251> [<https://perma.cc/43SP-Z45X>] (arguing that financial gain is the motivating force behind law enforcement’s problematic civil asset forfeiture practices and that, in California, where reforms have not reduced law enforcement’s financial stake in forfeiture proceeds, financial incentives remain to find and exploit loopholes); Katherine Baicker and Mireille Jacobson, “Finders Keepers: Forfeiture Laws, Policing Incentives and Local Budgets,” *Journal of Public Economics* 91, no. 11-12 (2007): 2113–2136, <https://doi.org/10.1016/j.jpubeco.2007.03.009> (finding that local governments offset police seizures by reducing their other allocations to police and that police as a result respond to net incentives of seizures by increasing the drug arrest rate); Jefferson Holcomb et al., “Civil Asset Forfeiture and Equitable Sharing Activity by Police,” *Criminology & Public Policy* 17, no. 1 (2018): 101–27, <https://doi.org/10.1111/1745-9133.12341> (finding that law enforcement agencies in states with laws that are more restrictive collect more forfeiture proceeds through the federal Equitable Sharing Program); Brian Kelly, *Fighting Crime or Raising Revenue? Testing Opposing Views of Forfeiture*, Institute of Justice, 2019, <https://ij.org/wp-content/uploads/2019/06/Fighting-Crime-or-Raising-Revenue-7.20.2020-revision.pdf> [<https://perma.cc/YZ9H-TH2E>] (finding that more federal equitable sharing funds does not translate to more crimes solved or less drug use and that police use forfeiture more in times of fiscal stress); Michael Makowsky, Thomas Stratmann, and Alex Tabarrok, “To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement,” *Journal of Legal Studies* 48, no. 1 (2019): 189–216, <https://www.journals.uchicago.edu/doi/abs/10.1086/700589> (finding that forfeiture revenues increase faster with arrests of Blacks and Latinos than with whites’ comparable arrests and that certain types of arrests of Blacks and Latinos and associated property seizures increase with local deficits in places where agencies can more easily retain forfeiture revenues); and Sean Nicholson-Crotty et al., “Race, Representation, and Assets Forfeiture,” *International Public Management Journal* 24, no. 1 (2020): 47–66, <https://doi.org/10.1080/10967494.2020.1728454> (finding evidence of a significant relationship between minority population share and reported forfeiture revenue).

71 Daniel Rothschild and Walter Block, “Don’t Steal: The Government Hates Competition: The Problem with Civil Asset Forfeiture,” *Journal of Private Enterprise* 31, no. 1 (2016): 45–46, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2959039 [<https://perma.cc/AY2Z-GH4P>] (arguing that police are rational actors who try to maximize their welfare, including by increasing use of asset forfeiture). See also Knepper et al., *Policing for Profit*, 3rd ed., 34–36 (“Under most state and federal forfeiture laws, most or all proceeds from forfeited property go to law enforcement coffers, often supplementing the budgets of the very agencies that seized the property and the prosecutors that secured its forfeiture. This arrangement risks biasing law enforcement priorities toward the pursuit of property over justice and enables agencies to self-fund outside normal legislative appropriations.”); Darpana Sheth, “Incentives Matter: The Not-So-Civil Side of Civil Forfeiture,” *The Federal Lawyer*, July 2016, <https://www.fedbar.org/wp-content/uploads/2019/12/Civil-Forfeiture-pdf.pdf> [<https://perma.cc/6F5Z-TAX7>]. This distortion of law enforcement objectives was captured in a 2018 federal district court ruling effectively ending the motor vehicle civil asset forfeiture ordinance in Albuquerque, New Mexico. U.S. District Court Judge James O. Browning found that the program created a “realistic possibility” that forfeiture officials’ judgment “will be distorted by the prospect of institutional gain” [because] the more revenues they raise, the more revenues they can spend.” See Harjo v.

City of Albuquerque, 326 F. Supp. 3d 1145, 1151 (D.N.M. 2018), <https://ij.org/wp-content/uploads/2016/08/Browning-Decision-July-2018-IJ098313xA6322.pdf> [<https://perma.cc/3NLA-2CGB>].

72 Brian D. Kelly, *Does Forfeiture Work? Evidence from the States*, Institute for Justice, 2021, <https://ij.org/wp-content/uploads/2021/02/does-forfeiture-work-web.pdf> [<https://perma.cc/RJA5-D7Z7>] (finding that more forfeiture proceeds do not help solve more crimes or lead to less drug use and that police increase their forfeiture activities in times of fiscal stress); and Brian Kelly, *Fighting Crime or Raising Revenue*.

73 Author calculations based on FBI UCR data, U.S. Census Bureau data, and civil asset forfeiture data from 2018. For FBI UCR data, see Federal Bureau of Investigation, *Crime in the United States 2018*, 2019, table 8, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-8/table-8.xls/view> (total crime for each state was calculated by adding all crime categories except arson). For U.S. Census Bureau data, see “2018 National and State Population Estimates,” U.S. Census Bureau, December 19, 2018, <https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html> (see NST-EST2018-01: Table 1. Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018. State totals for 2018 were taken from Column L; totals were used to control for population size in each state for both crime and asset forfeiture). For civil asset forfeiture data, see “Data Sources: Policing for Profit,” Institute for Justice, December 2020, <https://ij.org/report/policing-for-profit-3/> [<https://perma.cc/AK4E-KJSS>] (state revenue totals for 2018 were calculated by adding revenue numbers from National Revenue Data Column F that were from 2018).

74 Knepper et al., *Policing for Profit*, 3rd ed., 32–33.

75 For examples of civil asset forfeiture after a traffic stop, see Christopher Ingraham, “Why Oklahoma Cops Are Returning \$53,000 to a Christian Band, an Orphanage and a Church,” *Washington Post*, April 26, 2016, <https://www.washingtonpost.com/news/work/wp/2016/04/26/why-oklahoma-cops-are-returning-53000-to-a-christian-band-an-orphanage-and-a-church/> [<https://perma.cc/2LMR-QCC4>] (police in Oklahoma stopped the tour manager of a Burmese rock band and seized the money raised on a charity tour of the United States); and Nick Sibilla, “Cops Use Traffic Stops to Seize Millions from Drivers Never Charged with a Crime,” *Forbes*, March 12, 2014, <https://www.forbes.com/sites/instituteforjustice/2014/03/12/cops-use-traffic-stops-to-seize-millions-from-drivers-never-charged-with-a-crime/?sh=6c7b8129f54b> [<https://perma.cc/3PP9-QJY8>] (discussing the Nevada case of Tan Nguyen, who was pulled over for allegedly driving over the speed limit, although he was never cited. Instead, law enforcement seized \$50,000 in cash and cashier’s checks.). See also Joseph Darius Jaafari and Joshua Vaughn, “How State Police Seize Big Money from Drivers, Many of Whom Are Never Charged,” *Levittown Now*, October 1, 2020, <https://levittownnow.com/2020/10/01/how-state-police-seize-big-money-from-drivers-many-of-whom-are-never-charged/> [<https://perma.cc/RU37-66FQ>]; and Isaiah Thompson, “Law to Clean Up ‘Nuisances’ Costs Innocent People Their Homes,” *ProPublica*, August 5, 2013, <https://www.propublica.org/article/law-to-clean-up-nuisances-costs-innocent-people-their-homes> [<https://perma.cc/2X6V-TRGB>].

76 In Philadelphia between 2008 and 2012, 2,000 cases, often related to alleged minor offenses and involving innocent third-party owners, were filed against houses, raising on average \$1 million in real estate sales a year. In 2018 a settlement agreement was reached that prohibited Philadelphia police or prosecutors from seizing property in simple drug possession cases. The agreement also prohibited seizing any sum under \$1,000 unless it was considered evidence for an arrest. For more, see Chris Palmer, “Philly Agrees to Overhaul Civil Forfeiture Program to Settle Lawsuit,” *Philadelphia Inquirer*, September 18, 2018, <https://www.inquirer.com/philly/news/crime/philadelphia-civil-forfeiture-program-settlement-consent-decree-larry-krasner-seth-williams-mayor-kenney-20180918.html> [<https://perma.cc/>

<https://perma.cc/3NLA-2CGB>]. See also Scott Kelly, *Guilty Property: How Law Enforcement Takes \$1 Million in Cash from Innocent Philadelphia Every Year — and Gets Away with It*, American Civil Liberties Union of Pennsylvania, 2015, 5, https://www.prisonpolicy.org/scans/aclupa/guilty_property_report.pdf [<https://perma.cc/8CBX-ZYVJ>] (noting that between 2011 and 2013, 300 forfeiture cases were filed against houses and other real estate in Philadelphia); and Thompson, “Law to Clean Up ‘Nuisances’ ” (observing that nearly 2,000 cases were filed against Philadelphia houses from 2008 to 2012).

77 Knepper et al., *Policing for Profit*, 3rd ed., 20 (calculating average value of asset forfeiture among 21 states with available data). See also J. Mitchell Miller and Lance Selva, “Drug Enforcement’s Double-Edged Sword: An Assessment of Asset Forfeiture Programs,” *Justice Quarterly* 11, no. 2 (1994): 313–35, <https://doi.org/10.1080/07418829400092271> (Through covert observation of 28 cases, researchers found that maximizing asset seizure has become a primary objective of drug enforcement, influencing case selection and police conduct.).

78 Knepper et al., *Policing for Profit*, 3rd ed., 20.

79 Kelly, *Guilty Property*, 7.

80 Knepper et al., *Policing for Profit*, 3rd ed., 6.

81 U.S. Department of Justice Office of the Inspector General, *Review of the Department’s Oversight of Cash Seizure and Forfeiture Activities*, 2017, 20, <https://oig.justice.gov/reports/2017/e1702.pdf> [<https://perma.cc/D2E7-MW88>].

82 U.S. Department of Justice Office of the Inspector General, *Review of the Department’s Oversight of Cash Seizure*, 29.

83 Anna Lee, Nathaniel Cary, and Mike Ellis, “Taken: How Police Departments Make Millions by Seizing Property,” *Greenville (SC) News*, January 27, 2019 (updated April 22, 2020), <https://www.greenvilleonline.com/in-depth/news/taken/2019/01/27/civil-forfeiture-south-carolina-police-property-seizures-taken-exclusive-investigation/2457838002/> [<https://perma.cc/HK2F-FC28>].

84 Kelly, *Does Forfeiture Work?* (reviewing state forfeiture laws in five states); Kelly, *Fighting Crime or Raising Revenue* (regarding the Equitable Sharing Program); and Katherine Baicker and Mireille Jacobson, “Finders Keepers.” See also John Worrall, “Addicted to the Drug War: The Role of Civil Asset Forfeiture as Budgetary Necessity in Contemporary Law Enforcement,” *Journal of Criminal Justice* 29, no. 3 (2001): 171–87, <https://www.heartland.org/template-assets/documents/publications/1-s2.0-s0047235201000824-main.pdf> [<https://perma.cc/X3YJ-DJQ8>] (finding that a substantial portion of surveyed law enforcement agencies depend on civil asset forfeiture as a budgetary supplement); and Miller and Selva, “Drug Enforcement’s Double-Edged Sword.”

85 Marian R. Williams et al., *Policing for Profit: The Abuse of Civil Asset Forfeiture*, 1st ed., Institute for Justice, 2010, 12, <https://ij.org/wp-content/uploads/2015/03/assetforfeituretoemail.pdf> [<https://perma.cc/EN6R-7J7A>].

86 Williams et al., *Policing for Profit*, 1st ed., 17; John Burnett, “Cash Seizures by Police Prompt Court Fights,” *NPR*, June 16, 2008, <https://www.npr.org/2008/06/16/91555835/cash-seizures-by-police-prompt-court-fights> [<https://perma.cc/VN57-W8WD>]; Austin Clemens, Miner P. Marchbanks III, and Dottie Carmichael, *Asset Forfeiture in Texas: DPS and County Interactions*, Texas Office of Court Administration, 2014, 27–28, <http://www.txcourts.gov/media/782473/sting-report-final.pdf> [<https://perma.cc/N8JD-7YUB>] (citing Texas Code of Criminal Procedure § 59.06(d) (2021)).

87 Nick Sibilla, “Cops in Texas Seize Millions by ‘Policing for Profit,’” *Forbes*, June 5, 2014, <https://www.forbes.com/sites/instituteforjustice/2014/06/05/cops-in-texas-seize-millions-by-policing-for-profit/?sh=592f4c4f1a81> [<https://perma.cc/U2ZL-7QUD>].

88 Clemens et al., *Asset Forfeiture in Texas*, 27.

89 See Baicker and Jacobson, “Finders Keepers”; and Makowsky, Stratmann, and Tabarrok, “To Serve and Collect.”

90 For civil asset forfeiture data, see “Data Sources: Policing for Profit,” Institute for Justice (state revenue totals for 2007, 2008, and 2009 were calculated by adding revenue numbers for each year separately from National Revenue Data Column F. Totals for states were then compared across the three years).

91 Shaila Dewan, “Police Use Department Wish List When Deciding Which Assets to Seize,” *New York Times*, November 9, 2014, <https://www.nytimes.com/2014/11/10/us/police-use-department-wish-list-when-deciding-which-assets-to-seize.html> [<https://perma.cc/U228-EZCL>].

92 Rothschild and Block, “Don’t Steal; The Government Hates Competition,” 51.

93 Citizens for Justice, “‘Pennies from Heaven’ Police Chief Talks Asset Forfeiture (Raw Footage),” YouTube video, 1:27, November 19, 2012, <https://www.youtube.com/watch?v=ipHUN-xLLms>.

94 Andrew Luger and John Egelhof, *Report of the Metro Gang Strike Force Review Panel*, Metro Gang Strike Force Review Panel, 2009, 11, 15–18, https://dps.mn.gov/divisions/co/about/Documents/final_report_mgsf_review_panel.pdf [<https://perma.cc/G76E-8FVN>].

95 Williams et al., *Policing for Profit*, 1st ed., 17–19; Keith Brown, “‘We Don’t Have to Charge Anyone at All’ — Mercer County Car, Property Seizures Spike Under Forfeiture Law,” NJ.com, March 29, 2019, <https://www.nj.com/mercer/2014/12/civil-forfeiture-on-the-rise-in-mercer-county-drawing-criticism.html> [<https://perma.cc/5STX-L4UW>] (describing how, in Mercer County, New Jersey, police seized a wide range of items, including computers, cell phones, jewelry, flat-screen TVs, a sofa, a nail gun, an X-box gaming system, and more. Sean D. McMurtry, head of the Prosecutor’s Office Forfeiture Unit, describes how, once forfeited, the items are given to the police departments that seized them, adding that “every flat screen we’ve taken has been put to use in a police headquarters or in a training room.”).

96 Jan Reid, “Highway Robbery: One Man’s Painful Journey Through South Texas’ Addiction to Asset Forfeiture,” *Texas Observer*, May 16, 2008, <https://www.texasobserver.org/2760-highway-robbery/> [<https://perma.cc/JSR8-TA3S>]. See also Eric Blumenson and Eva Nilsen, “Policing for Profit: The Drug War’s Hidden Economic Agenda,” *University of Chicago Law Review* 65, no.1 (1998): 35–114, 68, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4969&context=ucdrev> [<https://perma.cc/BJB7-83PQ>] (citing congressional testimony of former New York City police commissioner Patrick Murphy, who states, “Police . . . have a financial incentive to impose roadblocks on the southbound lanes of I-95, which carry the cash to make drug buys, rather than the northbound lanes, which carry the drugs. After all, seized cash will end up forfeited to the police department, while seized drugs can only be destroyed.”); Michael Sallah et al., “Stop and Seize,” *Washington Post*, September 6, 2014, <https://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/> [<https://perma.cc/Q5JV-8PXC>] (discussing how law enforcement officers strategically place themselves on highways to seize assets — noting, for example, the case of a 40-year-old Latino carpenter from New Jersey who was stopped on Interstate 95 in Virginia for having tinted windows and ultimately lost \$18,000, and the case of a 35-year-old Black restaurant owner in Virginia who had \$17,550 seized after a traffic stop on Interstate 66 in Fairfax. Of the 400 federal cases reviewed by journalists, the majority of people trying to retrieve their property were people of color.).

97 Nick Sibilla, “Florida Cops Made Millions Dealing Cocaine: The Latest Asset Forfeiture Outrage,” *Forbes*, October 30, 2013, <https://www.forbes.com/sites/instituteofjustice/2013/10/30/florida-cops-made-millions-dealing-cocaine-the-latest-asset-forfeiture-outrage/?sh=3205e2221b59> [<https://perma.cc/DNH9-AUH2>]; and Blumenson and Nilsen, “The Drug War’s Hidden Economic Agenda,” 67 (regarding reverse stings). See also Adam Longo, “Police ‘Reverse Sting’ Operations Under Scrutiny by AZ Supreme Court,” *AZFamily.com*, April 28, 2013, <https://perma.cc/FZ4A-AX83> (highlighting a 2010 case in which a reverse sting

operation conducted by officers in Arizona resulted in the seizure of \$180,000 even though no drugs ever changed hands).

98 See, for example, First Amended Complaint at 3–4, Ingram, Wilson, and Reeves v. Wayne County, No. 2:20-cv-10288-AJT-EAS (E.D. Mich., filed May 11, 2020), <https://ij.org/wp-content/uploads/2020/02/Amended-Complaint.pdf> [<https://perma.cc/M2YD-G9QU>] (stating that in order to retrieve one’s vehicle after it has been seized, Wayne County residents must pay a “redemption fee” of at least \$900, along with other fees such as storage and towing costs). For another example, see Stillman, “Taken” (detailing the case of Nelly Moreira, who, following the seizure of her 2005 Honda Accord, had to pay a “penal sum” of more than \$1,000 to prevent police from auctioning off or using her seized car while she fought in court for its release).

99 Stillman, “Taken”; Danny Robbins, “Texas DA Reportedly Offered Leniency for Cash,” *Houston Chronicle*, October 25, 2011, <https://www.chron.com/news/article/Texas-DA-reportedly-offered-leniency-for-cash-2235636.php> [<https://perma.cc/22Y4-HGUG>] (discussing a Texas district attorney who reportedly offered lenient sentences to individuals engaged in money laundering and drug trafficking in exchange for their agreeing not to pursue the return of cash forfeited to prosecutors). See also Derek Cohen, “Taking Contraband Without Taking Our Liberties: Civil Asset Forfeiture Reform in Texas,” *Right on Crime*, March 16, 2014, 1, <https://rightoncrime.com/taking-contraband-without-taking-our-liberties-civil-asset-forfeiture-reform-in-texas/> [<https://perma.cc/EU64-GYTM>] (discussing one case in which police in Tenaha, Texas, threatened to place two young children with child protective services if their parents did not hand over \$6,000 in cash); and Phil Williams, “Video Shows Officer Offering Truckers Freedom for Cash,” *NewsChannel 5*, January 17, 2016, <https://www.newschannel5.com/news/newschannel-5-investigates/policing-for-profit/video-shows-officer-offering-truckers-freedom-for-cash> [<https://perma.cc/NJL3-QQHE>] (containing a video of an officer who, during a 2010 traffic stop in Hickman County, Tennessee, offered to let two truck drivers go without fear of criminal prosecution if they handed over cash they were suspected of transporting. The officer is heard saying, “The good thing for you is when we seize money we don’t deal with the feds. We seize it ourselves. And if it ain’t your money . . . I don’t even care where you got it. I want the product. That’s what I’m after.”).

100 See “Civil Asset Forfeiture,” Lucy Parsons Labs, accessed September 16, 2021, <https://lucyparsonslabs.com/projects/assetforfeiture/> [<https://perma.cc/83RV-ZK8T>] (displaying data from the investigation of 23,000 civil asset forfeitures over five years in Chicago by the Chicago Police Department (CPD), the Cook County State’s Attorney’s Office, and the state of Illinois); and Joel Handley, Jennifer Helsby, and Freddy Martinez, “Inside the Chicago Police Department’s Secret Budget,” *Reader*, September 29, 2016, <https://chicagoreader.com/news-politics/inside-the-chicago-police-departments-secret-budget/> [<https://perma.cc/46EL-WJVX>] (explaining how, since 2009, CPD brought in nearly \$72 million in cash and assets through civil forfeiture, keeping nearly \$47 million for itself and sending nearly \$18 million to the Cook County State’s Attorney and almost \$7.2 million to the Illinois State Police). For more on racial disparities in civil asset forfeiture practices in Chicago, see C. J. Ciaramella, “Poor Neighborhoods Hit Hardest by Asset Forfeiture in Chicago, Data Shows,” *Reason*, June 13, 2017, <https://reason.com/2017/06/13/poor-neighborhoods-hit-hardest-by-asset/> [<https://perma.cc/BT6P-MUGZ>].

101 Daniel Honchariw, “Who Does Civil Asset Forfeiture Target Most?,” Nevada Policy Research Institute, 2017, 3, https://www.npri.org/docLib/20170726_CompleteForfeitureReport.pdf [<https://perma.cc/9D8C-8W8K>].

102 Lee, Cary, and Ellis, “Taken: How Police Departments Make Millions.”

103 Clifton Adcock, “Most Police Seizures of Cash Come from Blacks, Hispanics,” *Oklahoma Watch*, October 7, 2015, <https://oklahomawatch.org/2015/10/07/most-police-seizures-of-cash-come-from-blacks-hispanics/> [<https://perma.cc/KW32-QHBC>].

- 104** Scott Kelly, *Broken Justice: An Investigation of Civil Asset Forfeiture in Montgomery County*, American Civil Liberties Union of Pennsylvania, 2015, 6, https://www.aclupa.org/sites/default/files/Broken_Justice_-_Montgomery_County_final.pdf [<https://perma.cc/N84H-EL3U>].
- 105** Makowsky, Stratmann, and Tabarrok, "To Serve and Collect," 189–216, 211.
- 106** Nicholson-Crotty et al., "Race, Representation, and Assets Forfeiture," 47–66.
- 107** Bannon, Diller, and Nagrecha, *Criminal Justice Debt*, 8. For example, there are 3,100 "fines, fees, surcharges, penalties, and assessments" that people could potentially be subject to in California. Alexes Harris, Heather Evans, and Katherine Beckett, "Drawing Blood from Stones: Monetary Sanctions, Punishment and Inequality in the Contemporary United States," *American Journal of Sociology* 115, no. 6 (2010): 1753–99, 1759, <http://faculty.washington.edu/kbeckett/articles/AJS.pdf> [<https://perma.cc/3BRD-AGDE>].
- 108** Andrew Wimer, "Policing Should Not Be About Generating Profit," *Forbes*, June 12, 2020, <https://www.forbes.com/sites/instituteforjustice/2020/06/12/policing-should-not-be-about-generating-profit/> [<https://perma.cc/M3B6-6FMQ>]; and Emily Shaw, "Where Local Governments Are Paying the Bills with Police Fines," Sunlight Foundation, September 26, 2016, <https://sunlightfoundation.com/2016/09/26/where-local-governments-are-paying-the-bills-with-police-fines/> [<https://perma.cc/4X7A-67A3>] (noting that "public awareness of the depth of the problem [municipal dependence on fines, fees, and forfeitures] has been growing since the Department of Justice's 2014 investigation into the Ferguson, Mo., police, following the shooting of Michael Brown").
- 109** Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties* (New York: Brennan Center for Justice, 2019), 6, https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees&Fines_Final.pdf [<https://perma.cc/7AY3-T7A7>].
- 110** For example, see Arizona Supreme Court Administrative Order No. 2017–80, Arizona Judicial Branch, July 5, 2017, <https://www.azcourts.gov/Portals/22/admorder/Orders17/2017-80.pdf> [<https://perma.cc/EP8C-TVC4>]. The Supreme Court has held that it is unconstitutional to imprison someone for unpaid fines and fees without a hearing to determine ability to pay. *Bearden v. Georgia*, 461 U.S. 660 (1983). However, that does not require judges to evaluate an individual's ability to pay at the point of assigning the fine or fee. "Ability to pay" is not a fixed standard, either. Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*, 2016, 21–22, 26–27, 125 ("Courts have determined that prior to incarcerating a defendant a judge must, at the very least, hold hearings to determine not only whether the defendant has failed to make payments but also whether he or she has 'willfully' chosen not to make payments.").
- 111** Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 6; and R. Barry Ruback, "The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society," *Minnesota Law Review* 99 (2015): 1779–1835, 1803, https://www.minnesotalawreview.org/wp-content/uploads/2015/09/Ruback_5fmt_PDF.pdf [<https://perma.cc/KGZ6-VAH9>].
- 112** State and local governments with little or no income tax and limited property tax can find themselves in a tight spot when it comes time to fund budgets — these places disproportionately rely on fines and fees for their revenues. Michael Makowsky, *A Proposal to End Regressive Taxation*, 9–10. Nine states (Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming) have no income tax, and several others (such as Massachusetts, Michigan, Oregon, and New York) place limits on property taxes. John Waggoner, "9 States That Don't Have an Income Tax," AARP, updated April 8, 2021, <https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html> [<https://perma.cc/HPM7-7G76>]; and Iris J. Lav and Michael Leachman, *State Limits on Property Taxes Hamstring Local Services and Should Be Relaxed or Repealed*, Center on Budget and Policy Priorities, 2018, <https://www.cbpp.org/sites/default/files/atoms/files/7-18-18sfp.pdf> [<https://perma.cc/47YT-ZTU5>]. Because some fees — such as bail, booking, or public defender fees — are assigned before a defendant is convicted of a crime, legally innocent people are effectively "taxed" for simply having had the misfortune of interacting with law enforcement. Shannon R. Graham and Michael D. Makowsky, "Local Government Dependence on Criminal Justice Revenue and Emerging Constraints," *Annual Review of Criminology* 4 (2021): 7, https://static1.squarespace.com/static/5329e895e4b09fd4786211a3/t/5ef78bcc068552405e48e66/1593281484693/CJS_FinesFees_AR_GrahamMakowsky_draft.pdf [<https://perma.cc/39ZY-EBM8>].
- 113** Bannon et al., *Criminal Justice Debt*, 8–9; Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 6; Graham and Makowsky, "Local Government Dependence," 8; Laura I Appleman, "Nickel and Dime into Incarceration: Cash Register Justice in the Criminal System," *Boston College Law Review* 57 (2016): 1495–1541, 1501–03, <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3536&context=bclr> [<https://perma.cc/6Q72-LWDJ>] (explaining "dismissal fees" or "pretrial abatement" as well as "pay to stay" and itemized product fees for incarcerated people); and Maciag, "Addicted to Fines" (noting a fee used to fund a police motorcycle unit). In some instances, people are even charged for pretrial detention (that is, before conviction). See Steven Hale, "Pretrial Detainees Are Being Billed for Their Stay in Jail," *The Appeal*, July 20, 2018, <https://theappeal.org/pretrial-detainees-are-being-billed-for-their-stay-in-jail/> [<https://perma.cc/MQ5L-HFXX>] (but note, "Such fees are often waived or refunded if a defendant's charges are dismissed or if they are acquitted at trial."); and Samantha Sunne, "Louisiana DAs Offer Motorists a Deal: Write Us a Check and We'll Dismiss Your Speeding Ticket," *The Lens*, July 27, 2017, <https://thelensnola.org/2017/07/27/louisiana-das-offer-motorists-a-deal-write-us-a-check-and-well-dismiss-your-speeding-ticket/> [<https://perma.cc/C5BS-HHRD>].
- 114** Bannon et al., *Criminal Justice Debt*, 9. Restitution requires a person convicted of a crime to compensate the victim for financial losses related to the crime and can be a component of restorative justice practices. Ruback, "The Benefits and Costs of Economic Sanctions," 1786–99.
- 115** See, for example, Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 41 (In Leon County, Florida, "judges have no discretion to reduce statutorily imposed fees."); and Chris Mai and Maria Rafael, *The High Price of Using Justice Fines and Fees to Fund Government in New York*, Vera Institute of Justice, 2020, 2, <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-new-york.pdf> [<https://perma.cc/WA8G-L82D>] ("In courts across New York State, when someone is convicted of a felony, a misdemeanor, or even a traffic offense they are charged a set of mandatory surcharges, with no possibility to reduce the amount if they are poor:").
- 116** Mai and Rafael, *The High Price of Using Justice Fines and Fees* 6–7. This collections habit can end up costing the locality more money than it brings in. For costly collections, see Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 5 (finding that several Texas and New Mexico counties spent more than 41 cents per dollar of revenue collected—or 121 times the Internal Revenue Service's rate of spending to collect taxes — and that one New Mexico county spent \$1.17 on collections for every dollar collected).
- 117** Michael W. Sances and Hye Young You, "Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources," *Journal of Politics* 79, no. 3 (2017): 1090–94, https://hyeyoungyou.files.wordpress.com/2015/08/fines_jop.pdf [<https://perma.cc/6Q5V-R2NW>].
- 118** Governments with the greatest share of their revenue coming from fines, non-property forfeitures, and court fees are mostly the U.S. counties in the lowest Census population quartile. See Graham and Makowsky, "Local Government Dependence," 5 ("True to historical form, it is within the smallest local governments that we

observe the greatest dependence on revenue generated by the criminal justice system.”); and Maciag, “Addicted to Fines” (“Robert Scott, president of the Public Affairs Research Council of Louisiana, agrees that weakened tax bases are contributing to the problem, but says it ultimately stems from localities’ ingrained habits. ‘If I had to point to one reason why this happens, it’s because culturally you have [local] agencies who’ve grown dependent on these types of revenue sources,’ he says. ‘They don’t want to let it go.’”).

119 Maciag, “Addicted to Fines.”

120 Mike McIntire and Michael H. Keller, “The Demand for Money Behind Many Police Traffic Stops,” *New York Times*, updated November 2, 2021, <https://www.nytimes.com/2021/10/31/us/police-ticket-quotas-money-funding.html> [<https://perma.cc/4WQM-JN94>].

121 Michael Maciag, “Local Government Fine Revenues by State,” *Governing*, August 20, 2019, <https://www.governing.com/archive/local-governments-high-fine-revenues-by-state.html> [<https://perma.cc/NMR7-N2VF>].

122 Shaw, “Where Local Governments Are Paying the Bills” (based on an examination of 2013 Census data).

123 Mai and Rafael, *Fines and Fees to Fund Government in Florida*, 8.

124 Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 6 (noting that North Carolina uses fees to fund “judicial budgets as well as jails, law enforcement, counties, and schools”). For states sending criminal legal system revenues to general revenue funds, see Bannon et al., *Criminal Justice Debt*, 30 (noting that of 15 states examined, “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”). Some states forbid criminal legal system fees from funding anything besides judicial services; see Carl Reynolds and Jeff Hall, *2011–2012 Policy Paper: Courts Are Not Revenue Centers*, Conference of State Court Administrators, 2012, 2, <https://ncsc.contentdm.oclc.org/digital/collection/financial/id/198/> [<https://perma.cc/2Z5J-BH3W>] (“Thirty-eight states currently have open courts provisions within their constitutions. . . . 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.’”). For states using criminal legal system revenues to fund probation and parole services and departments of corrections, see Geoff Walsh, Andrea Bopp Stark, and Amreeta Mathai, “Using Bankruptcy Law to Provide Relief from Criminal Legal System Debt,” National Consumer Law Center webinar via Zoom on May 13, 2021, slide 2, <https://vimeo.com/549431949>; and Dale Parent, *Recovering Correctional Costs Through Offender Fees*, National Institute of Justice, 1990, 17, <https://www.ojp.gov/pdffiles1/Digitization/125084NCJRS.pdf> [<https://perma.cc/8JB6-VPPU>] (“In Texas, adult probation departments keep fee revenues and have complete discretion to spend them for any authorized purpose.”). Using these revenues to fund courts is particularly frequent in jurisdictions that have municipal courts, which are often hard-pressed for funding and lack state oversight. Dick Carpenter, Ricard Pochkhanawala, and Mindy Menjou, *Municipal Fines and Fees: A 50-State Survey of State Laws*, Institute for Justice, 2020, <https://ij.org/report/municipal-fines-and-fees/> [<https://perma.cc/8BXF-8DYV>] (“Municipal courts must often raise their own funds from fees they collect in cases brought by municipalities . . . making them susceptible to municipal pressure to convict and impose fines on people. By contrast, state courts tend to enjoy greater financial independence.”); and Maciag, “Addicted to Fines” (“New York is home to approximately 1,300 town and village courts that, unlike the larger state-run city courts, keep most of their revenues from fines and fees. That means those judges have an incentive to show that their courts earn back the money spent on them, given that they’re funded almost entirely by the locality.”).

125 Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 6; and Michael Maciag, “Addicted to Fines: Methodology and Notes for States,” *Governing*, August 20, 2019, <https://www.governing.com/archive/local-government-fines-revenue-methodology.html> [<https://perma.cc/G2SP-P3YV>].

[governing.com/archive/local-government-fines-revenue-methodology.html](https://www.governing.com/archive/local-government-fines-revenue-methodology.html) [<https://perma.cc/G2SP-P3YV>].

126 Mathilde Laisne, Jon Wool, and Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans*, Vera Institute of Justice, 2017, 26, <https://www.vera.org/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans.pdf> [<https://perma.cc/7LLE-K7ZB>]; and Christian Henrichson et al., *The Costs and Consequences of Bail, Fines and Fees in New Orleans*, Vera Institute of Justice, 2017, 20, <https://www.vera.org/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans-technical-report.pdf> [<https://perma.cc/W9JP-EY2C>].

127 Mai and Rafael, *Fines and Fees to Fund Government in Florida*, 7.

128 Aaron Littman, “Jails, Sheriffs, and Carceral Policymaking,” *Vanderbilt Law Review* 74, no. 4 (2021): 861–950, 888–90, <https://wp0.vanderbilt.edu/lawreview/wp-content/uploads/sites/278/2021/05/Jails-Sheriffs-and-Carceral-Policymaking-1.pdf> [<https://perma.cc/A76P-9PCP>].

129 Beckett and Harris, “On Cash and Conviction,” 527; Patrick Liu, Ryan Nunn, and Jay Shambaugh, *Nine Facts About Monetary Sanctions in the Criminal Justice System*, The Hamilton Project, 2019, 1, https://www.brookings.edu/wp-content/uploads/2019/03/BailFacts_20190314.pdf [<https://perma.cc/7TB7-2FTV>] (“One estimate puts fee and fine revenues collected by state and local governments at more than \$15 billion per year.”); and Michael D. Makowsky and Thomas Stratmann, “Political Economy at Any Speed: What Determines Traffic Citations?,” *American Economic Review* 99, no. 1 (March 2009): 509–27, 510, <https://static1.squarespace.com/static/5329e895e4b09fd4786211a3/t/53eb748ce4b085c1278e6dd5/1407939724895/Political+Economy+at+Any+Speed.pdf> [<https://perma.cc/F79L-5RZ9>] (“The likelihood and dollar amounts of fines are decreasing functions of local property tax revenue.”).

130 Urban Institute, “Criminal Justice Expenditures: Police, Corrections, and Courts,” accessed December 10, 2021, <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures> [<https://perma.cc/LR8B-DLJ7>].

131 U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 2015, 9–10, https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/L244-8DCH>].

132 Missouri SB 5 (98th Assembly, 2015), <https://www.senate.mo.gov/15info/pdf-bill/tat/SB5.pdf> [<https://perma.cc/B9A7-8H8R>].

133 City of Normandy v. Greitens, 518 S.W.3d 183 (Mo. 2017); and Jacob Kim, “Missouri Supreme Court Alters Post-Ferguson Law on Fines,” *St. Louis Business Journal*, May 17, 2017, <https://www.bizjournals.com/stlouis/news/2017/05/17/missouri-supreme-court-alters-post-ferguson-law-on.html> [<https://perma.cc/UTM4-XX8E>].

134 For a description of police departments caught in a vicious funding cycle due to revenues from fines, fees, and asset forfeitures, see Graham and Makowsky, “Local Government Dependence,” 10 (“Police officials, for all their efforts, are likely to find themselves on little more than a budgetary treadmill. As law enforcement succeeds in generating revenue, the expectation of self-funding enters into the budget, eventually displacing previous support from general funds towards other expenditure line items . . . [and] leaving police increasingly dependent on their own revenue generation just to maintain their budgetary status quo.”); Karin D. Martin, “Monetary Myopia: An Examination of Institutional Response to Revenue from Monetary Sanctions for Misdemeanors,” *Criminal Justice Policy Review* 29, no. 6-7 (2018): 630–662, 639–40, (noting a similar expectation of self-funding for courts and probation and parole departments); and U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 13 (“Even as officers have answered the call for greater

revenue through code enforcement, the City [of Ferguson, Missouri] continues to urge the police department to bring in more money.”).

135 Graham and Makowsky, “Local Government Dependence,” 10, 16 (“Budgetary effects are persistent and self-reinforcing, as local governments and their police departments grow dependent on the criminal justice revenues for which they can be directly and indirectly credited.”) (citations omitted); Makowsky, *End Regressive Taxation*, 5; Makowsky and Stratmann, “Political Economy at Any Speed,” 509–10 (“We hypothesize that officers are agents of budget maximizing principals and, as such, when deciding whether to issue a fine, will consider their local government’s fiscal condition and the driver’s ability to vote in local elections. . . . Using a variety of model specifications, we find support for our hypotheses.”); and Thomas A. Garrett and Gary A. Wagner, “Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets,” *Journal of Law & Economics* 52, no. 1 (2009): 71–90, 72, <https://s3.amazonaws.com/real.stlouisfed.org/wp/2006/2006-048.pdf> [<https://perma.cc/KZ3B-RE9F>] (“Controlling for demographic, economic, and enforcement factors, we find that there is a statistically significant increase in the number of traffic tickets issued in the year immediately following a decline in local government revenue. Moreover, given that we find no evidence that fewer tickets are issued in response to increases in local government revenue, our results support the view that traffic tickets are, at least to some extent, viewed as a revenue tool by local governments.”). Note that “in practice, revenue from fines and fees is typically contributed directly to the municipal budget, not the police budget, meaning that direct financial incentives for police departments to collect revenue may be weak. . . . [But] police in some cities are under significant pressure from city authorities to raise city funds.” Rebecca Goldstein, Michael Sances, and Hye Young You, “Exploitative Revenues, Law Enforcement, and the Quality of Government Service,” *Urban Affairs Review* 56, no. 1 (2020): 5–31, 6, <https://journals.sagepub.com/doi/pdf/10.1177/1078087418791775> [<https://perma.cc/8SPS-Y5CU>].

136 Makowsky, *End Regressive Taxation*, 9 (“Every dollar generated via law enforcement is both an implicit subsidy of the police budget and a shift toward dependence on law enforcement for fiscal solvency. . . . The distortion in how officers apply their discretion in the day-to-day execution of their duties is demonstrable. . . . This distortion of law enforcement is self-reinforcing because local governments and their police departments become dependent on these revenues.”) (citations omitted).

137 “COVID-19 Fines & Fees Policy Tracker,” Fines & Fees Justice Center, last accessed December 9, 2021, <https://finesandfeesjusticecenter.org/covid-19-policy-tracker/reform-tracker> [<https://perma.cc/H24C-F2PB>].

138 George Hunter, “More Tickets in Hard Times,” *Car and Driver*, February 1, 2009, <https://www.caranddriver.com/features/a15148830/more-tickets-in-hard-times/> [<https://perma.cc/6G7V-AKKW>].

139 Cain et al. v. White, 937 F.3d 446, 449 (5th Cir. 2019), <https://clearinghouse.net/doc/106469/> [<https://perma.cc/U5Y4-PK6Z>] (“When collection of the fines and fees is reduced, the [Orleans Parish Criminal District Court] can have a difficult time meeting its operational needs, leading to cuts in services, reduction of staff salaries, and leaving some positions unfilled. During these times, the Judges have attempted to increase their collection efforts and have also requested assistance from other sources of funding, including the City of New Orleans.”); and Carpenter, Pochkhanawala, and Menjou, *Municipal Fines and Fees* (“To fund their staffing and operations, municipal courts often rely either on direct funding from their municipalities or on fees they collect in cases brought by their municipalities.”). In Florida, courts have put pressure on clerks to raise court-related fee amounts to make up for budget shortfalls. Rebekah Diller, *The Hidden Costs of Florida’s Criminal Justice Fees*, Brennan Center for Justice, 2010, 9, https://www.brennancenter.org/sites/default/files/2019-08/Report_The%20Hidden-Costs-Florida-s-Criminal-Justice-Fees.pdf [<https://perma.cc/H68H-62TA>] (“If a clerk’s projected budget is higher than the projected fee

revenue, the clerk is supposed to raise court-related fee amounts, as permitted by law.”). The pressure on court clerks is meaningful because they wield power as well; while they nominally do “administrative work,” this can include the discretion to set up payment plans or even decrease the amount of a fine or fee. See Harris, *A Pound of Flesh*, 132.

140 U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 14 (“The City has made clear to the Police Chief and the Municipal Judge that revenue generation must also be a priority in court operations. . . . Court staff are keenly aware that the City considers revenue generation to be the municipal court’s primary purpose.”).

141 Mark Flatten, *City Court: Money, Pressure and Politics Make It Tough to Beat the Rap*, Goldwater Institute, 2017, 5, 8, <https://goldwaterinstitute.org/wp-content/uploads/2017/09/City-Court-Policy-Paper-1.pdf> [<https://perma.cc/YC32-H5D8>] (“Rick Schwermer, state courts administrator in Utah, said that since he joined the office in 1990 he regularly received confidential complaints from city judges saying they were pressured to raise more money. ‘Some of our judges said to me, ‘My mayor told me I got to get the revenue up.’” Schwermer said. ‘That’s not something a judge is ever going to say in public, but they were able to say that to me.’ . . . Pressure on judges to raise revenue plays out in subtle ways, said Joseph St. Louis, a Tucson attorney. . . . ‘You certainly see decisions that result in convictions and fines being imposed that have the appearance of having been made in order to engineer that result, in order to make sure that there has been a conviction and that monies have been paid,’ said St. Louis. . . . ‘In my experience judges are very aware of how much revenue they are bringing in, where their caseload is at, how often people are being convicted or not convicted in their courtrooms. The pressure may manifest as rulings in individual cases that don’t make sense but which taken as a group consistently go against the defendants. It could be consistently siding with the police version of what happened.’”).

142 Sydney Brownstone, “Leaked E-mail: What a King County Superior Court Judge Really Thinks About Raising the Cost of Traffic Ticket Fines,” *The Stranger* blog, May 21, 2015, at 11:52 a.m., <https://www.thestranger.com/blogs/slog/2015/05/21/22255032/leaked-e-mail-what-a-king-county-superior-court-judge-really-thinks-about-raising-the-cost-of-traffic-ticket-fines> [<https://perma.cc/89PL-FGB8>].

143 Carey R. Dunne et al., *Justice Most Local: The Future of Town and Village Courts in New York State*, Special Commission on the Future of the New York State Courts, September 2008, 78, http://www.nycourtreform.org/Justice_Most_Local_Part1.pdf [<https://perma.cc/ZUW2-EZWN>]. See also McIntire and Keller, “The Demand for Money” (“Some lawyers say that a 2016 law designed to prevent repeat offenders’ drunken-driving records from staying hidden in local court systems has incentivized towns to downgrade offenses, keeping the ticket — and the revenue.”). And the same pressure can apply at the policing level: officers may be encouraged to issue citations that feed revenues back to the locality instead of citing offenses that would send funds to the state. Carpenter, Pochkhanawala, and Menjou, *Municipal Fines and Fees* (“In states that allow municipalities to regulate the same or similar conduct as state laws . . . local law enforcement may issue municipal ordinance citations instead of charging people under analogous state laws.”).

144 Mai and Rafael, *Fines and Fees to Fund Government in New York*, 6 (citing Office of the State Comptroller); and *Report on the Justice Court Fund*, August 2010, 14, <https://www.osc.state.ny.us/files/local-government/publications/pdf/justicecourtreport2010.pdf> [<https://perma.cc/X9ZZ-SX29>].

145 For the profitability of traffic citations, drug offenses, and property crimes, see Makowsky, *End Regressive Taxation*, 7 (“Traffic citations . . . are the predominant source of fines, but felony and misdemeanor crimes generate fines as well. In 2009 36 percent of all nonincarcerated drug offenders and 19 percent of property crime offenders were fined, typically with community service or treatment conditions attached.”); and Diller, *The Hidden Costs of Florida’s Criminal*

Justice Fees, 9 (noting that the Clerks of Court Operations Corporation in Florida sets performance standards for collection differently for various offenses: collection rates for civil cases are expected to be 90 percent; misdemeanors are expected to be 40 percent; and felonies and juvenile cases are expected to be just 9 percent).

146 Graham and Makowsky, “Local Government Dependence,” 10–11 (“If revenue motivations lead to greater prioritization of drug, DUI, or prostitution arrests, departments may, in turn, reduce the resources applied toward violent and property crime related enforcement. If police agents target revenue generating activity, police effort may be substituted away from other crimes.”). (Graham and Makowsky also note that police departments may be able to use fine and fee revenue toward solving violent and property crimes.) The problem of police prioritizing one type of offense over another is especially prevalent in smaller towns and cities, where police officers are not specialized. Goldstein, Sances, and You, “Exploitative Revenues,” 8 (“Importantly, the effect on violent crime clearance is driven entirely by cities with populations less than 28,010 [the bottom 80% of the U.S. city population distribution]. . . . Thus, our results are consistent with the hypothesis that officers devote time to revenue collection rather than investigation in departments where officers perform a wide variety of functions.”); and Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 9 (“When police and sheriff’s deputies are serving warrants for failure to pay fees and fines, they are less readily available to respond to 911 calls.”).

147 The additional wages amounted to a \$10–15 fee per ticket written. Henderson officers were expected to give at least two tickets per hour to get the “enhanced wage.” Louisiana law forbids such incentives for ticket quotas. Jason Brown, “Henderson Police Officials Arrested,” *The Advocate*, August 28, 2012, <https://oig.louisiana.gov/assets/docs/searchable/Henderson%20police%20officials%20arrested.pdf> [<https://perma.cc/M2J3-7AX5>]; and Richard Burgess, “Basin Blues: Ex-Henderson Official Sentenced for Illegal Police Bonuses in Traffic Ticket Quota Scheme,” *The Advocate*, April 24, 2016, https://www.theadvocate.com/acadiana/news/article_be3e89c0-0521-5fca-9014-47a2c4bbd3aa.html [<https://perma.cc/4NEB-4ZVX>].

148 Carpenter, Pochkhanawala, and Menjou, *Municipal Fines and Fees*; and “Pagedale Municipal Fines,” Institute for Justice, accessed December 10, 2021, <https://ij.org/case/pagedale-municipal-fines/> [<https://perma.cc/H9SK-H35Z>] (“According to the city code, Pagedale residents could be ticketed and fined for: having mismatched curtains; walking on the left-hand side of a crosswalk; wearing pants below one’s waist; having holes in window screens; and having a barbeque in front of a house.”).

149 Dick M. Carpenter, Kyle Sweetland, and Jennifer McDonald, *The Price of Taxation by Citation: Case Studies of Three Georgia Cities that Rely Heavily on Fines and Fees*, Institute for Justice, 2019, 6, <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf> [<https://perma.cc/BZM2-GAGB>].

150 Daryl James and Jaba Tsitsuashvili, “New Yorker Helps Pigeons, Pays Hefty Fine as Cities Peck for Cash,” *Inside Sources*, March 15, 2021, <https://insidesources.com/new-yorker-helps-pigeons-pays-hefty-fine-as-cities-peck-for-cash/> [<https://perma.cc/H48T-TEXF>].

151 Goldstein, Sances, and You, “Exploitative Revenues,” 8 (“A 1% increase in the share of own-source revenues from fees, fines, and forfeitures is associated with a statistically and substantively significant 6.1 percentage point decrease in the violent crime clearance rate and 8.3 percentage point decrease in the property crime clearance rate.”). Clearance rates are “the ratio of arrests to known offenses,” or the number of arrests divided by the number of reported crimes and offenses. “Clearance Rates,” Vera Institute for Justice, accessed November 16, 2021, <https://arresttrends.vera.org/clearance-rates> [<https://perma.cc/U4BU-BPAC>].

152 Graham and Makowsky, “Local Government Dependence,” 3–4 (“For each town, city, and municipal government identified, Maciag [2019] calculates the fines as a share of general revenues and the

total fines per adult resident, reporting the number of local governments over certain thresholds for each state. . . . Some of these local governments collect up to 80%–90% of their general revenues from fines and forfeitures, and others collect more than \$500 per resident, suggesting the majority of fine revenue comes from out-of-towners in those localities. These states tend to be concentrated in the South, where there are more rural towns.”) (referring to Maciag, “Addicted to Fines,” 2019).

153 Maciag, “Addicted to Fines”; The Vercher Group, *Village of Georgetown, Louisiana: Annual Financial Statements*, 2020, 15, [https://app.lla.state.la.us/publicreports.nsf/0/55619c6cb80a263f8625865c00545686/\\$file/000224c8.pdf?openelement&7773098](https://app.lla.state.la.us/publicreports.nsf/0/55619c6cb80a263f8625865c00545686/$file/000224c8.pdf?openelement&7773098) [<https://perma.cc/93KF-YJMA>].

154 Daryl James, “How Louisiana Perfected the Speed Trap,” *Reason*, July 19, 2021, <https://reason.com/2021/07/19/how-louisiana-perfected-the-speed-trap/> [<https://perma.cc/W44M-7KLL>]; and J. Walker & Company, *Village of Fenton, Louisiana Annual Financial Report*, 2020, 9, [https://lla.la.gov/PublicReports.nsf/0/15D895E95D8D30058625865C005455CE/\\$FILE/000224C7.pdf](https://lla.la.gov/PublicReports.nsf/0/15D895E95D8D30058625865C005455CE/$FILE/000224C7.pdf) [<https://perma.cc/TC5X-CKWX>] (“The major revenues in governmental activities for the Village’s sub-category are \$1,152,467 from Fines and Forfeiture for the fiscal year ended June 30, 2020, and \$1,343,157 from police and court fines for the fiscal year ended June 30, 2019.”).

155 James, “How Louisiana Perfected the Speed Trap.”

156 John Archibald, “Police in This Tiny Alabama Town Suck Drivers into Legal ‘Black Hole,’” *AL.com*, January 20, 2022, <https://www.al.com/news/2022/01/police-in-this-tiny-alabama-town-suck-drivers-into-legal-black-hole.html> [<https://perma.cc/U4JW-JJAX>].

157 McIntire and Keller, “The Demand for Money.”

158 Joseph Shapiro, “As Court Fees Rise, the Poor Are Paying the Price,” *NPR*, May 19, 2014, <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> [<https://perma.cc/CMQ6-BVR4>].

159 The Judicial Expense Fund had one limit: it could not be used for the judges’ own salaries. However, this was not enough to establish that there was no conflict of interest. The Fifth Circuit Court of Appeals found that the process of judges both determining the amount of fines and fees individuals could pay, and reaping the benefits from the funds, violated petitioners’ constitutional right to a fair trial. *Cain v. City of New Orleans*, 281 F. Supp. 3d 624 (E.D. La. 2017); and *Cain v. White*, 937 F.3d 446 (5th Cir. 2019). See also *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019) (regarding the financial conflict of interest for the magistrate in the Orleans Parish Criminal District Court).

160 Micah West, “Financial Conflicts of Interest and the Funding of New Orleans’s Criminal Courts,” *California Law Review* 101 (2013): 521–52, 532–34, <https://29qish1lqx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2014/10/05-West.pdf> [<https://perma.cc/VVN4-WCDD>].

161 *Cain v. White*, 937 F.3d 446. See also “Litigation: *Cain v. New Orleans*,” Fines and Fees Justice Center, August 23, 2019, <https://finesandfeesjusticecenter.org/articles/cain-v-new-orleans/> [<https://perma.cc/G3UZ-4LRU>]; and Laisne, Wool, and Henrichson, *Past Due*, 12.

162 See, for example, *Caliste*, 937 F.3d 525; Justice Network Inc. v. Craighead County, 931 F.3d 753 (8th Cir. 2019); Jon Wool, Alison Shih, and Melody Chang, *Paid in Full: A Plan to End Money Injustice in New Orleans*, Vera Institute of Justice, 2019, 8–11, <https://www.vera.org/downloads/publications/paid-in-full-report.pdf> [<https://perma.cc/4GA6-EHXQ>]; and Larry Schwartz et al., eds., *Confronting Criminal Justice Debt: A Guide for Policy Reform*, Criminal Justice Policy Program at Harvard Law School, 2016, 8, n.42, <https://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-3.pdf> [<https://perma.cc/HHD7-UL9M>] (“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. . . . 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.]")

163 Bannon et al., *Criminal Justice Debt*, 30.

164 Author's calculations. There was on average a 45 percent decrease in assessments for Florida's 10 most populous counties between FY 2019 and 2020, with a 41 percent decrease on average for all counties in the state. In contrast, collections fell just 11 percent for the 10 most populous counties and 10 percent on average for the state. What this suggests is that Florida collections work continued mostly unimpeded by Covid, possibly focusing more than in regular years on prior unpaid balances, while criminal court assessments fell by almost half.

165 Martin, "Monetary Myopia," 643 ("Senator Wiener expressed his concern. . . . 'We must hope many criminals perform illegal acts to ensure enough money is received to run the [Administrative Office of the Courts]. . . . It is disturbing that the whim of criminal behavior determines whether the AOC functions.' [Judge] Stephen Dahl . . . echoed this sentiment, saying, 'The policy subconsciously hopes for more crime. A good year in raising administrative assessment fees is a year when the crime rate goes up; a bad year is when the crime rate goes down. Success in raising administrative assessment fees depends in large part on our failure to prevent crime.'") (citations omitted).

166 Makowsky, *End Regressive Taxation*, 13; and Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, 2020, 7, https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf [<https://perma.cc/44LY-PR66>] (noting the lifetime earnings loss for those who have experienced incarceration). These debts can haunt individuals for years and often are (or accumulate to become) grossly disproportionate to the original offense. Menendez et. al., *The Steep Costs of Criminal Justice Fees and Fines*, 10 (documenting \$1.9 billion in unpaid criminal fee and fine debt in Texas, New Mexico, and Florida accumulated between 2012 and 2018). In fact, estimates suggest that at minimum, \$27.6 billion in fines and fees is owed across the United States — a conservative estimate that likely just scratches the surface, given the number of states that do not track such data. Briana Hammons, *Tip of the Iceberg: How Much Criminal Justice Debt Does the U.S. Really Have?*, Fines & Fees Justice Center, 2021, 4, <https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg-Criminal-Justice-Debt-BH1.pdf> [<https://perma.cc/669E-T4WA>]. Many who owe fees or fines turn to family members and friends for financial support in the face of mounting court debt, further depleting the family resources of communities that are over-policed. See Katzenstein and Waller, "Taxing the Poor," 639, 645 ("As one private probation officer in Georgia explains, 'I always try and negotiate with the families. Once they know you are serious they come up with some money. . . . They have to see that this person is not getting out unless they pay something.'"); and Matthew Shaer,

"How Cities Make Money by Fining the Poor," *New York Times Magazine*, January 8, 2019, <https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html> [<https://perma.cc/6SV2-LHN7>] ("Moreover, [nonprofit executive director Alec] Karakatsanis argues, jailing poor defendants has proved to be an effective way of raising money. By threatening a defendant with incarceration, a judge is often able to extract cash from a person's family that might otherwise be difficult to touch. 'A typical creditor,' he says, 'can't put you in a steel cage if you can't come up with the money.'").

167 An ability-to-pay determination evaluates whether a person can afford criminal legal system fines and fees. ABA Presidential Task Force on Building Public Trust in the American Justice System, *Ten Guidelines on Court Fines and Fees*, American Bar Association, 2018, 4, https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-ten-guidelines.pdf [<https://perma.cc/7CPE-RLP7>]. There are few codified structural boundaries on what, exactly, is evaluated in such determinations or what the standards of indigency in this context are. Ability-to-pay determinations are of vital importance to protecting indigent individuals from consequences, such as jail time, for failing to pay their fines and fees. Alana Semuels, "The Fines and Fees that Keep Former Prisoners Poor," *The Atlantic*, July 5, 2016, <https://www.theatlantic.com/business/archive/2016/07/the-cost-of-monetary-sanctions-for-prisoners/489026/> [<https://perma.cc/5WSR-N2N4>]; Myesha Braden et al., *Too Poor to Pay: Arkansas Fines & Fees Toolkit*, Lawyers' Committee for Civil Rights Under Law, 2019, 4, <https://lawyerscommittee.org/wp-content/uploads/2019/09/CJP-AR-Toolkit-FINAL.pdf> [<https://perma.cc/H92G-V6GZ>]; and David F. Levi et al., "Fixing Fees, Fines & Bail: Toward a Fairer System of Justice," *Judicature* 103, no. 3 (2019): 15–24, 23, <https://judicature.duke.edu/wp-content/uploads/2019/11/FairerJustice-Fall2019.pdf> [<https://perma.cc/G4CD-FGQP>].

168 Fair and Just Prosecution, "Fines, Fees, and the Poverty Penalty," Tides Center, 2017, 2–3, https://fairandjustprosecution.org/wp-content/uploads/2017/11/FJPBrief_Fines_Fees.pdf [<https://perma.cc/W3Y5-P4Z7>] ("When left unpaid, these charges can accrue interest at rates nearly 10 times standard borrowing rates. In California, for example, the \$100 fine for failing to stop at a red light can grow to \$490 with fees and surcharges, then up to \$815 if the initial deadline is missed. Similarly, in Alabama, private debt collectors can charge up to 30% interest on unpaid debts; in Florida, that number reaches 40%."); and Alabama Appleseed Center for Law and Justice, *Under Pressure: How Fines and Fees Hurt People, Undermine Public Safety, and Drive Alabama's Racial Wealth Divide*, 2018, 31, <https://www.alabamaappleseed.org/wp-content/uploads/2018/10/AA1240-FinesandFees-10-10-FINAL.pdf> [<https://perma.cc/LF9D-UMBK>] (In a survey of almost 1,000 Alabamians who had been justice-involved or had helped pay another's court debts, "the average amount of time people had been in debt was 54.74 months, or about 4½ years. . . . A majority of the sample (50.3%) reported that they had been in debt for 1 to 5 years.").

169 Alabama Appleseed Center for Law and Justice, *Under Pressure*, 31.

170 Fines & Fees Justice Center, "Why Are Stimulus Checks Being Taken from People Who Need Them Most?," April 20, 2021, <https://finesandfeesjusticecenter.org/2021/04/20/why-are-stimulus-checks-being-taken-from-the-people-who-need-them-most/> [<https://perma.cc/JU9V-JX9Z>]. (CARES Act stimulus checks were not eligible for similar interception.)

171 Elizabeth White, "Alabama Prosecutors Garnish Felons COVID-19 Stimulus to Pay Inmates' Victims," KXAN, updated April 3, 2021, <https://www.kxan.com/news/alabama-prosecutors-garnish-felons-covid-19-stimulus-to-pay-inmates-victims/> [<https://perma.cc/6FAT-Q5GH>].

172 Requiring a Person in the Custody of a Correctional Facility to Use Funds from Federal Relief or Stimulus Programs to First Pay Outstanding Fines, Fees, Costs, or Restitution; and to Declare an Emergency, Arkansas S.B. 544 (93rd General Assembly, Regular

Session, 2021), <https://www.arkleg.state.ar.us/Acts/FTPDocument?path=/ACTS/2021R/Public/&file=1110.pdf&ddBienniumSession=2021/2021R> [<https://perma.cc/WVS6-4BJH>].

173 Fines & Fees Justice Center, “Why Are Stimulus Checks Being Taken?”; and Asher Stockler and Daniel Moritz-Rabson, “Prisons Are Skimming Big Chunks of CARES Act Stimulus Checks,” *The Intercept*, February 17, 2021, <https://theintercept.com/2021/02/17/stimulus-checks-cares-prisons-skimming-irs/> [<https://perma.cc/LB8G-6WTC>].

174 Alabama Appleseed Center for Law and Justice, *Under Pressure*, 32.

175 Shapiro, “As Court Fees Rise.”

176 Joni Hirsch and Priya S. Jones, “Driver’s License Suspension for Unpaid Fines and Fees: The Movement for Reform,” *University of Michigan Journal of Law Reform* 54, no. 4 (2021): 875–91, 876, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2535&context=mjlr> [<https://perma.cc/RYR3-TXM4>].

177 Fla. Stat. § 322.34(2)(c) (2022).

178 Cameron Kimble and Ames Grawert, “Collateral Consequences and the Enduring Nature of Punishment,” Brennan Center for Justice, June 21, 2021, <https://www.brennancenter.org/our-work/analysis-opinion/collateral-consequences-and-enduring-nature-punishment> [<https://perma.cc/2HEX-8QVN>]; and Craigie, Grawert, and Kimble, *Conviction, Imprisonment, and Lost Earnings*, 13, 18.

179 Center for Court Innovation, “The Price of Justice Grant Program: Addressing the Overuse of Justice Fines and Fees,” 2016, 2, https://www.courtinnovation.org/sites/default/files/documents/The_Price_of_Justice_Grant_Program.pdf [<https://perma.cc/X88J-Y88T>] (noting a “pay-or-stay” practice in California). See generally Deborah Fowler et al., *Pay or Stay: The High Cost of Jailing Texans for Fines and Fees*, Texas Appleseed and Texas Fair Defense Project, 2017, https://www.texasappleseed.org/sites/default/files/PayorStay_Report_final_Feb2017.pdf [<https://perma.cc/W8EP-ZX5M>]; and American Civil Liberties Union of Washington and Columbia Legal Services, *Modern-Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People for Being Poor*, 2014, 9, [https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Modern%20Day%20Debtor’s%20Prison%20Final%20\(3\).pdf](https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Modern%20Day%20Debtor’s%20Prison%20Final%20(3).pdf) [<https://perma.cc/VDZ6-NDWL>] (“The [Washington] court often accepts [‘pay or appear’] agreements without inquiring whether the defendant can actually afford to pay. If an individual fails to make the monthly payments, the clerk then negotiates ‘pay or stay’ agreements, where individuals agree to pay a particular amount or serve jail time.”).

180 Fowler et al., *Pay or Stay*.

181 Graham and Makowsky, “Local Government Dependence,” 14 (“When combined with institutions that are racially biased, revenue-driven policing exacerbates broader racial bias in the criminal justice system.”) (citations omitted); Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 13; Andrea Bopp Stark and Geoffrey Walsh, *Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy*, National Consumer Law Center, 2020, 5, https://www.nclc.org/images/pdf/criminal-justice/Rpt_Bankruptcy_and_CJ_Debt.pdf [<https://perma.cc/3L6X-QBPY>]; and Stephanie Campos-Bui et al., *Making Families Pay: The Harmful, Unlawful, and Costly Practice of Charging Juvenile Administrative Fees in California*, University of California Berkeley Law Policy Advocacy Clinic, March 2017, 11–12, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937534 [<https://perma.cc/W7CA-GJ6V>] (“Because youth of color are punished more frequently and harshly in the juvenile system, Black and Latinx families are liable for higher administrative fees.”). Racial disparities occur at other points in the criminal legal system as well. See Laisne, Wool, and Henrichson, *Past Due*, 18–22; and Abby Shafroth et al., *Confronting Criminal Justice Debt: A Guide for Litigation*, National Consumer Law Center, 2016, 6, https://www.nclc.org/images/pdf/conferences_and_webinars/racial_justice/confronting-criminal-justice-debt.pdf [<https://perma.cc/VY9U-GYWX>].

182 Laisne, Wool, and Henrichson, *Past Due*, 3, 18–19; Christian Henrichson et al., *The Costs and Consequences of Bail, Fines and Fees in New Orleans*, Vera Institute of Justice, 2017, 44, <https://www.vera.org/downloads/publications/past-due-costs-consequences-charging-for-justice-new-orleans-technical-report.pdf> [<https://perma.cc/XZ8N-VBPP>].

183 U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 4, 77.

184 Catherine E. Lhamon et al., *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications*, U.S. Commission on Civil Rights, 2017, 3, https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf [<https://perma.cc/A47Z-SVG5>]. Similarly, scholars have found that places with a larger proportion of Black residents are more dependent on fine and civil asset forfeiture revenues. Sances and You, “Who Pays for Government?,” 2017, 1090.

185 Dan Kopf, “The Fining of Black America,” *Priceonomics*, June 24, 2016, <https://priceonomics.com/the-fining-of-black-america/> [<https://perma.cc/6AE7-758X>] (analysis using demographic data from the U.S. Census 2012 American Community Survey and revenue data from the U.S. Census’s Survey of Local and State Finances).

186 Ram Subramanian and Rebecca Tublitz, *Realigning Justice Resources*, Vera Institute of Justice, 2012, 4, https://www.vera.org/downloads/publications/Realigning_Justice_full_report.pdf [<https://perma.cc/37PQ-EASQ>].

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189 Other conditions of supervision may include paying mandatory fines and fees, avoiding certain geographical areas, remaining in the same city for the duration of supervision, clearing any travel with supervision officers, maintaining employment or pursuing an education, not driving a car, adhering to a curfew, sobriety, and not associating with people who have past felony convictions. See Council of State Governments (CSG) Justice Center, “Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets,” 2019, <https://csjusticecenter.org/wp-content/uploads/2020/01/confined-and-costly.pdf> [<https://perma.cc/6G6R-KFJ9>].

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- 198** Human Rights Watch, "Set Up to Fail": *The Impact of Offender-Funded Private Probation on the Poor*, 2018, <https://www.hrw.org/report/2018/02/21/set-fail/impact-offender-funded-private-probation-poor> [<https://perma.cc/ZF3Y-GUNE>].
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- 206** Steve Contorno, "Controversial Probation Company Sentinel Could Bring Checkered Past to Hillsborough," *Tampa Bay Times*, June 20, 2015, <https://www.tampabay.com/news/localgovernment/controversial-probation-company-sentinel-could-bring-checkered-past-to/2234483/> [<https://perma.cc/M5WT-BYKZ>].
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- 209** This decision was reached when reversal of a lower court dismissal was being considered. Ultimately, the Eleventh Circuit panel determined that the plaintiff's claims, if true, constituted a violation of due process rights by Professional Probation Services, Inc., and as such there was a question that had to be decided by the lower court. As of publication, this case is ongoing. *Harper v. Professional Probation Services et al.*, No. 19-13368 (11th Cir. 2020).
- 210** The companies also collected an estimated \$40 million in supervision fees. Human Rights Watch, *Profiting from Probation*, 18–19.
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- 215** Eli Hager, "Where Coronavirus Is Surging — and Electronic Surveillance, Too," *Marshall Project*, November 22, 2020, <https://www.themarshallproject.org/2020/11/22/where-coronavirus-is-surg-ing-and-electronic-surveillance-too> [<https://perma.cc/C9HV-5FKL>].
- 216** Alexander, "The Newest Jim Crow."
- 217** James Kilgore, *Electronic Monitoring Is Not the Answer: Critical Reflections on a Flawed Alternative*, Urbana—Champaign Independent Media Center, 2015, 10, <https://mediajustice.org/wp-content/uploads/2015/10/EM-Report-Kilgore-final-draft-10-4-15.pdf> [<https://perma.cc/Z38L-XJJ4>]; and Ava Kofman, "Digital Jail: How Electronic Monitoring Drives Defendants into Debt," *ProPublica*, July 3, 2019, <https://www.propublica.org/article/digital-jail-how-electronic-monitoring-drives-defendants-into-debt> [<https://perma.cc/GUQ6-88TY>].
- 218** Human Rights Watch, "Set Up to Fail," 21.
- 219** Avlana Eisenberg, "Mass Monitoring," *Southern California Law Review* 90, no. 2 (2017), 123–80, 175, <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1417&context=articles> [<https://perma.cc/5LPT-SGK5>].
- 220** In 1983 the Supreme Court ruled that probation cannot be revoked for nonpayment if a person is unable to pay. It can be revoked only if the person "has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay." *Bearden v. Georgia*, 461 U.S. 660, 660 (1983). However, Human Rights Watch and other watchdog groups have observed multiple instances in which judges have failed to consider a person's ability to pay before deeming their nonpayment willful, or failed to hold the necessary ability-to-pay hearings before establishing payments. So in at least some — and likely many — cases, people are incarcerated in direct violation of the

- holding in *Bearden*. Human Rights Watch, *Profiting from Probation*, 38–42; Human Rights Watch, “Set Up to Fail”; Menendez et. al., *The Steep Costs of Criminal Justice Fees and Fines*, 5; and Joseph Shapiro, “Supreme Court Ruling Not Enough to Prevent Debtors Prisons,” NPR, May 21, 2014, <https://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons> [<https://perma.cc/VF6K-TFF8>].
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- 230** Equal Justice Initiative, “Defendants Driven into Debt by Fees for Ankle Monitors from Private Companies,” July 23, 2019, <https://eji.org/news/defendants-driven-into-debt-by-fees-for-ankle-monitors/> [<https://perma.cc/83B6-YCWU>]. Many scholars also view electronic monitoring as so highly punitive that it is better understood as a new form of punishment or incarceration rather than as a form of supervision. Avlana Eisenberg explained in a 2017 article how electronic monitoring “causes pain and unpleasantness, and may negatively affect a wearer’s employment prospects, family relationships, and general wellbeing.” Eisenberg, “Mass Monitoring,” 136–137.
- 231** Yasmiyn Irizarry et al., “Mass Incarceration Through a Different Lens: Race, Subcontext, and Perceptions of Punitiveness of Correctional Alternatives When Compared to Prison,” *Race & Justice* 6, no. 3 (2016): 236–56, 245, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4894743/pdf/nihms772864.pdf> [<https://perma.cc/YE8E-5GV8>].
- 232** Alexander, “The Newest Jim Crow.”
- 233** Over a decade, the total incarceration rate (jail and prison) in the United States fell nearly 17 percent — from 915 per 100,000 in 2009 to 763 per 100,000 in 2019. In 2019 the prison incarceration rate fell for the 11th consecutive year, down from 665 per 100,000 in 2009 to 539 per 100,000—a nearly 19 percent decrease. The jail incarceration rate fell more modestly, from 250 per 100,000 in 2009 to 224 per 100,000 in 2019. See E. Ann Carson, *Prisoners in 2019*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2020, 10, 26–27, 35, <https://bjs.ojp.gov/content/pub/pdf/p19.pdf> [<https://perma.cc/R3VP-XAM2>]; and Zeng and Minton, *Jail Inmates in 2019*, 13.
- 234** Carson, *Prisoners in 2019*, 26–27. For a 50-state survey of the legal and fiscal arrangements by which state prisoners are housed in county jails, see Brian Albert, *State Prisoners in County Jails*, National Association of Counties, 2010, 6–15, <https://www.naco.org/sites/default/files/documents/State%20Prisoners%20in%20County%20Jails%20Updated.pdf> [<https://perma.cc/YQ2R-H5P7>]. There is also an interstate trade of people between state departments of corrections, but it is much smaller than the jail bed market. See Emma Kaufman, “The Prisoner Trade,” *Harvard Law Review* 133, no. 6 (2020): 1815–83, 1842–47, https://harvardlawreview.org/wp-content/uploads/2020/04/1815-1883_Online.pdf [<https://perma.cc/9LJM-UHYQ>].
- 235** Joshua Aiken, “Era of Mass Expansion: Why State Officials Should Fight Jail Growth,” *Prison Policy Initiative*, press release, May 31, 2017, <https://www.prisonpolicy.org/reports/jailsovertime.html> [<https://perma.cc/74HH-LN5Z>]. For the cost of these jail bed rentals see Albert, *State Prisoners in County Jails*, 8–9. Also in 2019, Mississippi, Tennessee, and Utah sent more than 28 percent, more than 26 percent, and more than 22 percent of their state-sentenced populations to local jails, respectively. See Carson, *Prisoners in 2019*, 26–27.
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279 ICE can acquire beds in one to two weeks through riders; or in two weeks to two months using IGSA. In contrast, procurement

under normal federal acquisition regulations can take more than a year to complete. See Government Accountability Office, *Immigration Detention: Actions Needed*, 13–14.

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288 Government Accountability Office, *Immigration Detention: Actions Needed*, 24–27.

289 See Shaun Ossei-Owusu, “Police Quotas,” *New York University Law Review* 96, no. 2 (2021): 529–605, 535–36, 587–90, <https://www.nyulawreview.org/wp-content/uploads/2021/05/Ossei-Owusu.pdf> [<https://perma.cc/NR59-FDUK>]; and Samuel J. Levine, “The Potential Utility of Disciplinary Regulation as a Remedy for Abuses of Prosecutorial Discretion,” *Duke Journal of Constitutional Law & Public Policy* 12, no. 2 (2017): 1–12, 4, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1122&context=djclpp> [<https://perma.cc/88RJ-D8VW>].

290 See generally Ossei-Owusu, “Police Quotas.”

291 Lauren-Brooke Eisen and Miriam Aroni Krinsky, “The Necessity of Performance Measures for Prosecutors” in *The Oxford Handbook of Prosecutors and Prosecution*, Ronald F. Wright, Kay L. Levine, and Russell M. Gold, eds. (New York: Oxford University Press, 2021), 227–51.

292 Daniel S. Medwed, “The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence,” *Boston University Law Review* 84, no. 1 (2004): 125–83, 135, n. 40 (collecting sources), 150–51, <https://repository.library.northeastern.edu/files/neu:332533/fulltext.pdf>.

293 Julia Shamir and Noam Shamir, “The Role of Prosecutor’s Incentives in Creating Congestion in Criminal Courts,” *Review of Law & Economics* 8, no. 3 (2012): 579–618, 586, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2166540.

294 The risk of fraud, corruption, and wrongful arrests and citations in order to meet quotas or performance metrics has been documented many times. See Nathaniel Bronstein, “Police Management and Quotas: Governance in the CompStat Era,” *Columbia Journal of Law and Social Problems* 48, no. 4 (2015): 543–81, 553, 565, <http://blogs2.law.columbia.edu/jlsp/wp-content/uploads/sites/8/2017/03/48-Bronstein.pdf> [<https://perma.cc/45VM-EQ5F>]. Also see Ossei-Owusu, “Police Quotas,” 577 (noting that “quota-based policing has led officers to plant crack on innocent people, lazily dump summonses on clearly abandoned cars, cite fictitious drivers, and ticket dead people”).

295 According to the U.S. Bureau of Labor Statistics, “correctional officers and jailers have one of the highest rates of injuries and illnesses of all occupations.” U.S. Department of Labor, Bureau of Labor Statistics, “Occupational Outlook Handbook: Correctional Officers and Bailiffs,” accessed October 22, 2021, <https://www.bls.gov/ooh/protective-service/correctional-officers.htm> [<https://perma.cc/JZD8-GZCV>]. It is unclear exactly how hazardous corrections officer work actually is. One study demonstrates that corrections officers are fearful of different forms of violence depending on their identity; other data shows that corrections officers are likely to be injured but those injuries are generally minor. Dana Goldstein, “What Are Correction Officers So Afraid Of?” *Marshall Project*, July 13, 2015, <https://www.themarshallproject.org/2015/07/13/what-are-correction-officers-so-afraid-of> [<https://perma.cc/3LVW-S7T8>]. Law enforcement comes in 22nd on the University of Delaware’s list of the 25 most dangerous jobs in 2020, and corrections work does not appear at all. University of Delaware Facilities, Real Estate, and Auxiliary Services, “25 Most Dangerous Jobs,” December 14, 2020, <https://www.facilities.udel.edu/safety/4689/> [<https://perma.cc/PE7E-Q3CX>]. Still, law enforcement and corrections officers do face occupational hazards, including shortened life spans, higher incidences of suicide and depression, and increased likelihood of substance abuse, as compared with the general population. Michael D. Denof, Caterina G. Spinaris, and Gregory R. Morton, *Occupational Stressors in Corrections Organizations: Types, Effects, and Solutions*, National Institute of Corrections, 2014, 5, <https://info.nicic.gov/nicrp/system/files/028299.pdf> [<https://perma.cc/4YQF-8LJR>]. Law enforcement and corrections unions often cite these facts when negotiating for higher pay and better benefits. See, for example, “Fighting for a Fair Contract,” Police Benevolent Association of the City of New York, Inc. (NYCPBA), accessed January 31, 2022, <https://www.nycpba.org/news/pba-issues/contract/> [<https://perma.cc/7FFM-QWBR>]. See also Elizabeth G. Hill, Jason Dickerson, and Michael Cohen, *Correctional Officer Pay, Benefits, and Labor Relations*, Legislative Analyst’s Office, 2008, 9, https://lao.ca.gov/2008/stadm/ccpoa_pay_020708/ccpoa_pay_020708.pdf [<https://perma.cc/P49L-Q9XM>].

296 American Federation of State, County and Municipal Employees, “Jobs We Do: Corrections,” accessed January 31, 2022, <https://www.afsme.org/about/jobs-we-do/corrections> [<https://perma.cc/R44B-284E>]. Corrections employees are also represented by the Service Employees International Union (SEIU), the American Federation of Government Employees (AFGE), and the Teamsters, as well as their own state or local unions. James Ridgeway and Jean Casella, “Big Labor’s Lock ‘Em Up Mentality,” *Mother Jones*, February 22, 2013, <http://www.motherjones.com/politics/2013/02/biggest-obstacle-prison-reform-labor-unions>.

297 See, for example, Avlana Eisenberg, “Incarceration Incentives in the Decarceration Era,” *Vanderbilt Law Review* 69, no. 1 (2016):

- 71–139, 102–07, <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1416&context=articles> [<https://perma.cc/EWJ2-ZKQC>] (discussing the political clout of correctional unions in resisting reform efforts).
- 298** John M. Wynne Jr., *Prison Employee Unionism: The Impact on Correctional Administration and Programs*, National Institute of Law Enforcement and Criminal Justice, 1978, 216–17, <https://www.ojp.gov/pdffiles1/Digitization/41472NCJRS.pdf> [<https://perma.cc/8G8X-FPWC>].
- 299** For example, the California Correctional Peace Officers Association (CCPOA) spends approximately \$8 million per year on lobbying efforts. Natasha Lennard, “Police Unions’ Opposition to Prison Reform Is About More Than Jobs — It’s About Racism,” *The Intercept*, August 14, 2018, <https://theintercept.com/2018/08/14/police-unions-prison-reform/> [<https://perma.cc/7E8B-M5QX>].
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- 301** Lennard, “Police Unions’ Opposition to Prison Reform”; and Proposition 66 (Cal. 2016).
- 302** Wes Venteicher, “California Prison Guards’ Union Spent Big and Lost with Tough-on-Crime Message,” *Sacramento Bee*, November 13, 2020, <https://www.sacbee.com/news/politics-government/the-state-worker/article247149034.html>; and Proposition 20 (Cal. 2020). Proposition 20 was defeated with 61.7 percent of voters opposing. California Secretary of State Alex Padilla, *Statement of Vote: General Election November 3, 2020*, California Secretary of State’s Office, 2020, 14, <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf> [<https://perma.cc/8NPF-FLG3>].
- 303** California Fair Political Practices Commission, *Big Money Talks: California’s Billion Dollar Club*, 2010, 41, https://www.fppc.ca.gov/content/dam/fppc/documents/Education-External-Division/Big_Money_Talks.pdf [<https://perma.cc/CX76-G6FE>].
- 304** Heather Ann Thompson, “Downsizing the Carceral State: The Policy Implications of Prison Guard Unions,” *Criminology & Public Policy* 10, no. 3 (2011): 771–79, 773.
- 305** American Federation of State, County and Municipal Employees, “Understaffing, Overcrowding and Violence in Prisons and Jails,” Resolution No. 13, 32nd International Convention, Chicago, June 17–21, 1996, <https://www.afsme.org/about/governance/conventions/resolutions-amendments/1996/resolutions/13-understaffing-overcrowding-and-violence-in-prisons-and-jails> [<https://perma.cc/EAW6-XFG6>].
- 306** M. Robert Montilla, *Prison Employee Unionism: Management Guide for Correctional Administrators*, U.S. Department of Justice, 1978, 182–87; and New York Correction History Society, “Clinton,” accessed January 31, 2022, <http://www.correctionhistory.org/html/chronicl/docs2day/clinton.html> [<https://perma.cc/EVQ7-VVBV>].
- 307** Ridgeway and Casella, “Big Labor’s Lock ‘Em Up Mentality.”
- 308** “Legislation Creates Tamms Task Force,” *Metropolis Planet*, September 2, 2019, updated September 3, 2019, https://www.metropolisplanet.com/news/legislation-creates-tamms-task-force/article_0d7b0b85-597a-5222-8cef-2ea00e623ed3.html [<https://perma.cc/MZ82-Z95L>].
- 309** Lennard, “Police Unions’ Opposition to Prison Reform”; and Saki Knafo, “California Prison Guards Union Pushes for Prison Expansion,” *Huffington Post*, September 9, 2013, https://www.huffpost.com/entry/california-prison-guards_n_3894490.
- 310** Venteicher, “California Prison Guards’ Union Spent Big.”
- 311** ABC7 Los Angeles, “Los Angeles County District Attorney Jackie Lacey Discusses Felony Murder Law Adjustment,” January 4, 2019, <https://abc7.com/jackie-lacey-los-angeles-county/5016420/> [<https://perma.cc/TTQ9-XWF8>].
- 312** Bureau of Justice Assistance, Police Executive Research Forum, *CompStat: Its Origins, Evolution, and Future in Law Enforcement Agencies*, 2013, 4–6, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF-Compstat.pdf> [<https://perma.cc/VU7K-5PRJ>].
- 313** Lauren Brooke Eisen, Oliver Roeder, and Julia Bowling, *What Caused the Crime Decline?*, Brennan Center for Justice, 2015, 68, <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline> [<https://perma.cc/2MAW-TRKE>].
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- 318** Shaun Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing,” *The American Prospect*, November 3, 2016, <https://prospect.org/justice/race-tragedy-quota-based-policing/> [<https://perma.cc/NX5Q-UFWF>].
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- 322** Radley Balko, “Lawsuit Shows Evidence of Possible Illegal Ticket Quotas by California Highway Patrol Officers,” *Washington Post*, June 17, 2015, <https://www.washingtonpost.com/news/the-watch/wp/2015/06/17/lawsuit-shows-evidence-of-possible-illegal-ticket-quotas-by-california-highway-patrol-officers/>.

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- 328** Ossei-Owusu, “Police Quotas,” 529–605, 598–604 (listing 21 states with anti-quota laws); Iowa Code § 321.492A (2021) (enacted); S.B. 3014, 2022 Regular Session (Miss. 2022) (enacted) (prohibiting funds to be “used for [] quota-based citations for violations of speed limits”); Mont. Code Ann. § 7-32-103 (2021); Nev. Rev. Stat. § 289.035 (2021); Va. Code Ann. § 2.2-5516 (2022); and Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, D.C. Act 23-336, Council Period 23 (2019–2020) (enacted).
- 329** For example, in *Fraternal Order of Police, Lodge 1 v. City of Camden*, the Fraternal Order of Police sued regarding a “directed patrol” program that asked officers to “engage” people, regardless of whether they were suspected of any wrongdoing, and to make at least 18 contacts per shift. The Third Circuit found that the program did not constitute a quota because it did not require arrests or citations. See *Fraternal Order of Police, Lodge 1 v. City of Camden*, 842 F.3d 231 (3d Cir. 2016); and Ossei-Owusu, “Police Quotas,” 560–61.
- 330** Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing.”
- 331** Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing” (“In some states it is only police officers who may challenge quota regimes in states with prohibitions, as opposed to civilians. . . . Police officers would be more likely to rely on grievance arbitration to challenge quota-based employment decisions as opposed to litigation. . . . Although remedies are often smaller in such disputes and limited to deleting the employment decision, as opposed to the money damages in litigation, arbitration is more private, which is an important concern for police officers who presumably want to avoid the stigma of being considered a ‘rat.’”).
- 332** Dave Wedge, “Troopers Squawk over Ticket Reward: Pressure on Staties to Snub Warnings, Go for Cash,” *Boston Herald*, November 16, 2006, <https://www.massscops.com/threads/troopers-squawk-over-ticket-reward-pressure-on-staties-to-snob-warnings-go-for-cash.20408/> [<https://perma.cc/WBW5-ADN4>].
- 333** *Phillipsburg Policemen’s Benevolent Ass’n Local No. 56 v. Twp. of Phillipsburg*, A-5016-12T3, 2014 WL 8765463, at *1 (N.J. Super. Ct. App. Div. May 5, 2015).
- 334** *Policemen’s Benevolent Labor Committee v. City of Sparta*, No. 125508, ¶ 26 (Ill. 2020), <https://www.thenewspaper.com/rlc/docs/2020/il-quotabad.pdf> [<https://perma.cc/34MM-NPA5>].
- 335** *Policemen’s Benevolent Labor Committee*, ¶ 3–4.
- 336** Joel Rose, “Despite Laws and Lawsuits, Quota-Based Policing Lingers,” NPR, April 4, 2015, <https://www.npr.org/2015/04/04/395061810/despite-laws-and-lawsuits-quota-based-policing-lingers> [<https://perma.cc/6Z5Y-7ZYL>].
- 337** George Joseph, “NYPD Commander’s Text Messages Show How the Quota System Persists,” *The Appeal*, December 12, 2018, <https://theappeal.org/nypd-commanders-text-messages-show-how-the-quota-system-persists/> [<https://perma.cc/MTG3-RDPR>].
- 338** West Virginia Legislative Auditor, *Legislative Performance Review: West Virginia State Police (Survey Comments)*, 2008, 45–46, http://www.wvlegislature.gov/Joint/PERD/perdrep/StatePolicesurvey_11_2008.pdf [<https://perma.cc/Y3Y2-F3PZ>].
- 339** Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing.”
- 340** *Floyd v. City of New York*, 959 F. Supp. 2d 540, 600 (S.D.N.Y. 2013).
- 341** Ossei-Owusu, “Police Quotas,” 541. In Atlanta, officers alleged that police were offered DVDs, pizza, and shorter work days if they met their metrics. In Fort Worth, Texas, officers with the most tickets got a trophy and letter of appreciation. Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing.”
- 342** Rhonda Cook, “Arrest Quotas Led DeKalb Officer to Plant Drugs, Lawsuit Claims,” *Atlanta Journal-Constitution*, November 28, 2016, <https://www.ajc.com/news/local/arrest-quotas-led-dekalb-officer-plant-drugs-lawsuit-claims/5AMfRowntaQrZfQLsAhL6K/> [<https://perma.cc/U7F4-JYNF>].
- 343** *Rivera v. City of Whittier*, No. BC574443 (Cal. Super. 2015), <https://www.mcnicholaslaw.com/wp-content/uploads/2015/03/Complaint1.pdf> [<https://web.archive.org/web/20181105234102/https://www.mcnicholaslaw.com/wp-content/uploads/2015/03/Complaint1.pdf>]. See also Veronica Rocha, “Whittier Police Officers Sue, Say They Were Forced to Meet Quotas,” *Chicago Tribune*, March 4, 2015, <https://www.chicagotribune.com/la-me-in-whittier-ticket-quotas-20150304-story.html>; and Cal. Veh. Code § 41602 (2021), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=41602 [<https://perma.cc/9254-F4ZK>].
- 344** Rocha, “Whittier Police Officers Sue.”
- 345** Mike Sprague, “Whittier to Pay \$3 Million to Settle Police Ticket Quota Case,” *Whittier Daily News*, updated January 16, 2020, <https://www.whittierdailynews.com/2020/01/15/whittier-to-pay-3-million-to-settle-police-ticket-quota-case/>.
- 346** Ossei-Owusu, “Police Quotas,” 577.
- 347** Ossei-Owusu, “Police Quotas,” 578, n.297; and Eterno and Silverman, *The Crime Numbers Game*, 11 (“False arrests have been identified as the result of arrests quotas or, for traffic officers, ticket quotas.”).
- 348** As long as a reasonable officer could have believed there was probable cause for an arrest, police are generally protected from consequences of false arrests under the doctrine of qualified immunity. See, for example, *Bunkley v. City of Detroit*, 902 F.3d 552, 559 (6th Cir. 2018) (“Qualified immunity shields government officials in the performance of discretionary functions from standing trial for civil liability unless their actions violate clearly established rights of which a reasonable person would have known.”). See also William Baude, “Is Qualified Immunity Unlawful?,” *California Law Review* 106, no. 1 (2018): 45–90, 53, <https://29qish1lx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/2Baude-33.pdf> [<https://perma.cc/35JF-EGEN>].
- 349** Barry Loveday, “Managing Crime: Police Use of Crime Data as an Indicator of Effectiveness,” *International Journal of the Sociology of Law* 28, no. 3 (2000): 215–37, 215 (“However, it has become clear, even in the police literature, that recorded crime can be little more than a relatively sophisticated artifice. This is because crime figures

can be, and are, used to demonstrate police efficiency in terms of clearance rates or, alternatively, lack of investment, when crime figures are high and clearance rates are low. The ability of the police to manipulate recorded crime is now recognized and identified in the literature.”).

350 Shima Baughman, “How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability,” *Alabama Law Review* 72, no. 1 (2020): 47–130, 62–64, <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1202&context=scholarship> [<https://perma.cc/3P8C-2F6C>].

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353 Paz v. City of Chicago, No. 2021L000514 (Cook Co. Cir. Ct., filed January 15, 2021), <https://www.scribd.com/document/491271193/Paz-Complaint>; and Dave Savini, “Lawsuit: Chicago Police Lieutenant Says Community Safety Team Pushes ‘Illegal’ Arrest Quotas, Retaliated Against Him for Speaking Out,” CBS Chicago, January 19, 2021, <https://chicago.cbslocal.com/2021/01/19/lawsuit-chicago-police-lieutenant-says-community-safety-team-pushes-illegal-arrest-quotas-retaliated-against-him-for-speaking-out/>.

354 Savini, “Community Safety Team Pushes ‘Illegal’ Arrest Quotas”; Samah Assad, Christopher Hacker, and Dave Savini, “Left in the Dark,” CBS Chicago, November 15, 2020, <https://storymaps.arcgis.com/stories/3603ef8cc492488c847cffbe03ad0f1d>; and U.S. Census Bureau, “QuickFacts: Chicago City, Illinois,” July 1, 2021, <https://www.census.gov/quickfacts/chicagocityillinois> [<https://perma.cc/567B-NFDP>].

355 Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing”; and Yelena Dzhanova, “Why This Former Cop Left the Force: ‘Policing Is Not About Helping,’” *Insider*, August 13, 2021, <https://www.insider.com/a-cop-turned-activist-leaves-force-and-reimagines-public-safety-2021-8> [<https://perma.cc/WHU4-L52F>] (“Over recent years, investigations have revealed that police officers nationwide abide by quotas that require them to hit specific numbers of arrests, which exacerbates the chance that they’ll stop people of color because of unchecked racial bias.”). When a group of minority officers brought suit against New York City in 2016 for establishing quotas that led to racial bias in policing, one officer told interviewers, “We go for the most vulnerable.” News 12 Staff, “NYPD Officer Suing City over Perceived Quotas,” News 12 The Bronx, March 1, 2016, <https://bronx.news12.com/nypd-officer-suing-city-over-perceived-quotas-34811223> [<https://perma.cc/L5JR-8RFH>]. As the suit proceeded, similar statements from other officers accumulated, with one recalling a commander’s explicit directive to “write [tickets for] more black and Hispanic people.” Joseph Goldstein and Ashley Southall, “I Got Tired of Hunting Black and Hispanic People,” *New York Times*, updated June 17, 2020, <https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html>. In *Martinez v. Village of Mount Prospect* (92 F. Supp. 2d 780 [N.D. Ill. 2000]), a Latino police trainee alleged that police leadership in Mount Prospect, Illinois, instructed officers to target Latino drivers to meet their ticket quotas. The employment discrimination claim was settled for more than \$1 million. See also U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 4–6.

356 Jason Sunshine and Tom R. Tyler, “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” *Law & Society Review* 37, no. 3 (2003): 513–47, 534, <https://doi.org/10.1111/1540-5893.3703002> (“Public evaluations of police legitimacy impact people’s compliance with law, their willingness to cooperate with and assist the police, and whether the public will empower the police. . . . No other independent variable measured had such a sweeping influence on police/community relations.”).

357 Bronstein, “Police Management and Quotas,” 568, 570.

358 See, for example, Levine, “The Potential Utility of Disciplinary Regulation,” 4 (“Through the decision whether or not to file charges, the prosecutor determines if a particular individual will face the machinery of the criminal justice system, while other discretionary decisions, such as those relating to what charges to file and the terms of a plea bargain, have a substantial — and often determinative — effect on the outcome of a case.”); and Bruce Frederick and Don Stemen, *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making — Summary Report*, Vera Institute of Justice, 2012, 2, <https://www.ojp.gov/pdffiles1/nij/grants/240335.pdf> [<https://perma.cc/ZG42-PB46>].

359 Eisen and Krinsky, “The Necessity of Performance Measures,” 227–51.

360 Carissa Byrne Hessick, *National Study of Prosecutor Elections*, Prosecutors and Politics Project, UNC School of Law, 2020, 4, <https://law.unc.edu/wp-content/uploads/2020/01/National-Study-Prosecutor-Elections-2020.pdf> [<https://perma.cc/9YLH-H6KC>].

361 Medwed, “The Zeal Deal,” 134.

362 Richard T. Boylan, “What Do Prosecutors Maximize? Evidence from the Careers of U.S. Attorneys,” *American Law and Economics Review* 7, no. 2 (2005): 379–402, 396. See also Medwed, “The Zeal Deal,” 134, n.39 (collecting research indicating that prosecutors with the highest conviction rates are best positioned to secure internal promotions and career advancement); and Jed Shugerman, “The Rise of the Prosecutor Politicians: Database of Prosecutorial Experience for Justices, Circuit Judges, Governors, AGs and Senators, 1880–2017,” Shugerblog, July 7, 2017, <https://shugerblog.com.wordpress.com/2017/07/07/the-rise-of-the-prosecutor-politicians-database-of-prosecutorial-experience-for-justices-circuit-judges-governors-ags-and-senators-1880-2017/> [<https://perma.cc/2UTM-YUBZ>] (comprehensive dataset of elected officials with prosecutorial backgrounds, reflecting that “the emergence of the prosecutor’s office as a stepping stone for higher office was a relatively recent/20th century phenomenon with dramatic consequences in American criminal law and mass incarceration”).

363 Edward L. Glaeser, Daniel P. Kessler, and Anne Morrison Piehl, “What Do Prosecutors Maximize? An Analysis of the Federalization of Drug Crime,” *American Law and Economics Review* 2, no. 2 (2000): 259–90. See also Cheryl Long and Richard Boylan, “Salaries, Plea Rates, and the Career Objectives of Federal Prosecutors,” *Journal of Law and Economics* 48, no. 2 (2005): 627–51 (pointing out that in districts with high private salaries, federal prosecutors are more likely to take cases to trial in order to secure experience necessary for desired private-sector employment).

364 See Medwed, “The Zeal Deal,” 152.

365 Medwed, “The Zeal Deal,” 135, n.40; and Shamir and Shamir, “The Role of Prosecutor’s Incentives,” 586.

366 Shamir and Shamir, “The Role of Prosecutor’s Incentives,” 587–88 (“Therefore, prosecutors who recognize that their conviction rate serves as a measure for their evaluation may shift their effort toward maximizing it, notwithstanding the fact that this does not necessarily imply maximizing social welfare,” citing Sanford Gordon and Gregory Huber, “The Political Economy of Prosecution,” *Annual Review of Law and Social Science* 5 [2009]: 135–56).

367 See John F. Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (New York: Basic Books, 2017), 6 (“The primary driver of incarceration is increased prosecutorial toughness when it comes to charging people.”); Ronald F. Wright, “Prosecutor Institutions and Incentives,” *Criminology, Criminal Justice, Law & Society* 18, no. 3 (2017): 85–100, 90, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/3_Reforming-Criminal-Justice_Vol_3_Prosecutor-Institutions-and-Incentives.pdf [<https://perma.cc/47DM-2DRF>] (collecting studies demonstrating “the ‘tunnel vision’ and ‘conviction mentality’ that lead some prosecutors to pursue wrongful convictions of innocent defendants and to resist efforts to revisit those errors”); and Tracy L.

Meares, "Rewards for Good Behavior: Influencing Prosecutorial Discretion and Conduct with Financial Incentives," *Fordham Law Review* 64, no. 3 (1995): 851–919, 869, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3220&context=flr> [<https://perma.cc/2YWW-2779>] (observing that overcharging and guilty pleas are driven in part by "an abhorrence of losing that is central to prosecutorial culture").

368 Jessica Fender, "DA Chambers Offer Bonuses for Prosecutors Who Hit Conviction Targets," *Denver Post*, March 23, 2011, <https://www.denverpost.com/2011/03/23/da-chambers-offers-bonuses-for-prosecutors-who-hit-conviction-targets/> (noting that to be found eligible for the average \$1,100 reward, ADAs had to participate in at least five trials during the year, and 70 percent of them had to end in felony conviction).

369 Brian Rogers, "Harris Co. Prosecutors Outline Rewards for Getting Cases to Trial," *Chron*, February 16, 2011, <https://www.chron.com/news/houston-texas/article/Harris-Co-prosecutors-outline-rewards-for-1684726.php> [<https://perma.cc/WA5Z-NXWR>].

370 Scott Glover, "U.S. Atty. in L.A. Set Quotas, Staff Says," *Los Angeles Times*, April 18, 2008, <https://www.latimes.com/archives/la-xpm-2008-apr-18-me-quota18-story.html>.

371 Catherine Ferguson-Gilbert, "It Is Not Whether You Win or Lose, It Is How You Play the Game: Is the Win–Loss Scorekeeping Mentality Doing Justice for Prosecutors?," *California Western Law Review* 38, no. 1 (2001): 283–309, 290, <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1176&context=cwlr> [<https://perma.cc/X9ZT-G648>]. See also Maurice Possley and Ken Armstrong, "The Flip Side of a Fair Trial," *Chicago Tribune*, January 11, 1999, <https://www.chicagotribune.com/investigations/chi-020103trial2-story.html>.

372 Hessick, *National Study of Prosecutorial Elections*, 4. See also Robert L. Misner, "Recasting Prosecutorial Discretion," *Journal of Crim. Law & Criminology* 86, no. 3 (1996): 717–77, 734, <https://scholarlycommons.law.northwestern.edu/jclc/vol86/iss3/3/> (noting that more than 95 percent of county and municipal chief prosecutors are elected).

373 See, for example, Jan Ransom, "With a Tough-on-Crime D.A. Stepping Down, Will Queens Turn to a Reformer?," *New York Times*, January 9, 2019, <https://www.nytimes.com/2019/01/09/nyregion/queens-district-attorney-richard-brown.html>.

374 Chika O. Okafor, "Prosecutor Politics: The Impact of Election Cycles on Criminal Sentencing in the Era of Rising Incarceration" (working paper, Harvard University, 2021), <https://scholar.harvard.edu/files/okafor/files/prosecutormapolitics.pdf> [<https://perma.cc/57NN-DX96>].

375 Prosecutors, of course, are not the only elected officials making decisions that affect mass incarceration and the vulnerable communities it damages. Sheriffs, too, are responsible for setting carceral policies in the community and are vulnerable to pressure especially in election years. While campaign contribution laws cover some aspects of political pressure, they frequently miss the conflicts of interest possible when incarceration-specific businesses make contributions to the sheriffs responsible for contracting with these businesses. See Jonathan Henry et al., *The Paid Jailer: How Sheriff Campaign Dollars Shape Mass Incarceration*. Common Cause, 2021, https://www.commoncause.org/wp-content/uploads/2022/01/CC_PaidJailer.pdf [<https://perma.cc/ENQ2-XMUX>].

376 Mary De Ming Fan, "Disciplining Criminal Justice: The Peril amid the Promise of Numbers," *Yale Law and Policy Review* 26, no. 1 (2007): 1–74, 5, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/17074/03_26YaleL_PolyRev1_2007_2008_.pdf?sequence=2&isAllowed=y [<https://perma.cc/VFS6-3HJD>] ("Statistics about numbers of people prosecuted stripped of qualitative consideration of impact or context are particularly susceptible to being used *in place of* an intractable and harder to reach value or goal, rather than a tool wielded constructively *toward* public aims and values" [emphasis in original]).

377 Medwed, "The Zeal Deal," 135.

378 Antonio Olivo, "Criminal Justice Changes in Virginia Prompt Debate over How Prosecutors Are Funded by the State," *Washington Post*, July 6, 2021, https://www.washingtonpost.com/local/virginia-politics/virginia-prosecutors-diversion-funding/2021/07/06/4a17691c-d45c-11eb-9f29-e9e6c9e843c6_story.html ("For decades, the state Compensation Board — which allocates funds to commonwealth's attorneys — has based its decisions on the number of 'sentencing events' an office has per year. The more offenders convicted in circuit court, the more money awarded. But what isn't rewarded are the hours of work that prosecutors put in every week for diversion efforts.").

379 See Olivo, "Criminal Justice Changes in Virginia"; and Pfaff, *Locked In*, 32. See also Lauren-Brooke Eisen and Inimai Chettiar, *Criminal Justice: An Election Agenda for Candidates, Activists, and Legislators*, Brennan Center for Justice, 2018, 25, https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal%20Justice%20Agenda.pdf [<https://perma.cc/98DK-835H>]; and Wright, "Prosecutor Institutions and Incentives," 93 ("As several scholars have noted over the years, the local prosecutor can benefit from a 'correctional free lunch.' That is, local residents benefit from their use of prison beds and other correctional resources, even though taxpayers all over the state fund those correctional programs. From the local prosecutor's vantage point, voters elsewhere in the state will fund a local benefit: the most expensive form of crime control.") (citations omitted). Although state attorneys general also send people to prisons, they do not prosecute nearly the same volume of cases as district attorneys.

380 Peter Wagner and Bernadette Rabuy, "Following the Money of Mass Incarceration," Prison Policy Initiative, January 25, 2017, <https://perma.cc/BQA5-KGZM> (estimating \$182 billion in aggregate costs of judicial and legal functions, policing, civil asset forfeiture, bail fees, corrections, and expenses that accrue to families from commissary and telephone calls).

381 Bryan Furst, "How to Reduce Incarceration? Change Prosecutors' Incentives," Brennan Center for Justice, July 9, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/how-reduce-incarceration-change-prosecutors-incentives> [<https://perma.cc/2N8T-SBAL>].

382 Over-incarceration comes at a great cost to individuals and the state; observers suggest that "an estimated 39 percent (approximately 576,000 people) are incarcerated with little public safety rationale." James Austin et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 7, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated> [<https://perma.cc/7K8C-RN8L>]. Each person incarcerated costs the state \$15,000 to \$70,000 per year — or an average of about \$33,000 annually — even before calculating the cost of reduced earnings, lack of tax income, and other costs after an incarcerated person return to the community. Chris Mai and Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010–2015*, Vera Institute of Justice, 2017, 8, <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf> [<https://perma.cc/W6ZA-PRX6>].

383 Jean Chung, "Voting Rights in the Era of Mass Incarceration: A Primer," The Sentencing Project, 2021, 1, <https://www.sentencingproject.org/wp-content/uploads/2015/08/Voting-Rights-in-the-Era-of-Mass-Incarceration-A-Primer.pdf> [<https://perma.cc/9VXE-M57Y>].

384 *Bennis*, 516 U.S. 442, 443–44. Twenty years later, Justice Thomas described it as "a system where police can seize property with limited judicial oversight and retain it for their own use," adding that "forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. [and] more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home." *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017) (cert. denied) (J. Thomas concurring).

385 A 2020 poll found that 59 percent of people nationwide oppose “allowing law enforcement agencies to use forfeited property or its proceeds for their own use,” and 70 percent oppose equitable sharing, which allows local agencies to receive a percentage of proceeds forfeited under federal law. Nick Sibilla, “Poll: Most Americans Want Congress to Abolish Civil Forfeiture,” *Forbes*, November 12, 2020, <https://www.forbes.com/sites/nicksibilla/2020/11/12/poll-most-americans-want-to-defund-civil-forfeiture/?sh=1b96144757b5>. A 2017 poll found that 73 percent of Arizonans believed the state’s civil asset forfeiture procedures were in need of reform. Holly Harris, “New Poll: Overwhelming Majority of Arizona Voters Support Civil Asset Forfeiture Reform,” Justice Action Network, March 10, 2017, <https://www.justiceactionnetwork.org/news/new-poll-overwhelming-majority-of-arizona-voters-support-civil-asset-forfeiture-reform> [<https://perma.cc/ZV8G-UK4X>]. A 2016 survey found that 84 percent of people nationwide oppose civil asset forfeiture entirely when it is described as “taking a person’s money or property that is suspected to have been involved in a drug crime before the person is convicted of a crime.” Emily Ekins, *Policing in America*, Cato Institute, 2016, 5, <https://www.cato.org/sites/cato.org/files/survey-reports/pdf/policing-in-america-august-1-2017.pdf> [<https://perma.cc/W4D5-ADPE>].

386 See, for example, Kanya Bennett and Nkechi Taifa, “There Is Bipartisan Agreement on the ‘Uncivility’ of Civil Asset Forfeiture,” ACLU, April 20, 2015, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/there-bipartisan-agreement-uncivility-civil-asset> [<https://perma.cc/S98Y-TFUK>] (“For months there has been national discourse around civil asset forfeiture and all that is uncivil about it. Members on both sides of the aisle — and organizations across the spectrum — are demanding reform.”). Party platforms of state Democratic and Republican parties alike have endorsed an end to civil asset forfeiture. See, for example, Iris Poole, “Asset Forfeiture Reform Fails to Go the Distance,” *Texas Scorecard*, June 2, 2021, <https://texasscorecard.com/state/asset-forfeiture-reform-fails-to-go-the-distance/> [<https://perma.cc/SPX5-L3HL>]. See also Institute for Justice, “Civil Forfeiture Reforms on the State Level,” last accessed January 18, 2022, <https://ij.org/legislative-advocacy/civil-forfeiture-legislative-highlights/> [<https://perma.cc/5JP6-3GD2>].

387 For an overview of state reforms across the United States, see Institute for Justice, “Civil Forfeiture Reforms on the State Level” (noting that since 2014, 36 states and the District of Columbia have passed civil forfeiture reforms, and 26 states and the District have required new reporting requirements for asset seizure and forfeiture).

388 Civil Asset Forfeiture Reform Act of 2000 (CAFRA), Pub. L. No. 106-185, 114 Stat. 202 (2000) codified as amended at 18 U.S.C. §§ 983, 985.

389 Pimentel, “Civil Asset Forfeiture Abuses,” 190–91, 195–204.

390 L.D. 1521, H.P. 1125, 130th Leg., 1st Special Sess. (Me. 2021); L.B. 1106, 104th Leg., 2nd Sess. (Neb. 2016); H.B. 560, 52nd Leg., 1st Sess. (N.M. 2015); and *United States v. Winston-Salem/Forsyth County Bd. of Educ.*, 902 F.2d 267, 271 (4th Cir. 1990) (“We believe that a state forfeiture proceeding under section 90-112 of the North Carolina Act [regarding forfeitures] is criminal in nature.”). The one exception to the prohibition on civil asset forfeiture in North Carolina is racketeering cases, which are held only to a “preponderance of the evidence” standard. Institute for Justice, “Policing for Profit: North Carolina,” accessed November 2, 2021, <https://ij.org/report/policing-for-profit-3/?state=NC> [<https://perma.cc/N77Q-MBFV>].

391 N.M. Stat. Ann. §§ 31-27-1 to -11 (2021). For the District of Columbia, see D.C. Mun. Regs. tit. 41, § 41-310(d) (2021). The other four states that prohibit law enforcement agencies from using forfeiture proceeds are Maryland (where proceeds go to the general fund), Missouri and North Carolina (where proceeds go to schools), and Wisconsin (agencies can keep up to 50 percent of forfeiture revenue; the remainder is designated for schools). Knepper et al., *Policing for Profit*, 3rd ed., 100–101, 110–11, 126–27, 158–59.

392 For example, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) “offered a number of modest reforms, but it did not change how forfeiture proceeds are distributed or otherwise ameliorate the

profit incentive law enforcement agencies have in civil forfeiture.” Williams et al., *Policing for Profit*, 1st ed., 11.

393 Fungible property is a good or commodity with indistinguishable units that are susceptible to substitution, such as money, precious metals, or volumes of crude oil. CAFRA’s fungibility provisions are codified at 18 U.S.C. §984.

394 Jonah Engle, *Above the Law: An Investigation of Civil Asset Forfeiture in California*, Drug Policy Alliance, 2015, 4, https://drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Above_the_Law_Civil_Asset_Forfeiture_in_California.pdf [<https://perma.cc/D7TY-UZGF>] (“In the wake of abuses of civil asset forfeiture, California reformed its asset forfeiture law to improve due process and property rights, while limiting law enforcement’s ability to profit from seizing private property. California law enforcement has found a way around this by pursuing forfeitures federally where the state’s protections do not apply.”). Of more dubious precedent, some local law enforcement agencies have claimed authority under municipal ordinances to continue carrying out civil forfeitures where such practices are banned by state law. See Pimentel, “Civil Asset Forfeiture Abuses,” 187 (citing Anne Constable, “Civil Forfeiture Ongoing Despite Change to State Law,” *Santa Fe New Mexican*, September 5, 2016, https://www.santafenewmexican.com/news/local_news/civil-forfeiture-in-santa-fe-albuquerque-ongoing-despite-change-to/article_bbc6c721-b1ff-5438-b735-65d533fd3706.html [<https://perma.cc/TBF3-PAZ9>]).

395 For example, the Department of Justice currently uses both civil and criminal forfeiture to accomplish the same ostensible purposes. U.S. Department of Justice Asset Forfeiture Program, *FY 2022 Performance Budget Congressional Justification*, 2021, 2–3, <https://www.justice.gov/jmd/page/file/1398271/download> [<https://perma.cc/GL8Y-ERKD>].

396 Citizens for Justice, “‘Pennies From Heaven’ Police Chief,” at 1:27.

397 Data from 13 surveyed states (Arizona, Florida, Georgia, Hawaii [Department of the Attorney General only], Massachusetts [district attorneys and Office of the Attorney General only], Oklahoma, Oregon, Pennsylvania, South Dakota [attorney general only], Tennessee [Department of Safety and Homeland Security only], Texas, Utah, and Virginia) suggests agencies rarely use forfeiture proceeds for restitution, education, or other community resources. In 2018, agencies in these 13 states spent almost no proceeds on victims and just 9 percent on community programs, on average. Meanwhile, the Department of Justice uses less than one-third of forfeiture proceeds for victim restitution or other third-party compensation. See Knepper et al., *Policing for Profit*, 3rd ed., 52–54, 163.

398 LD 1521 (Maine, 2021); and Nick Sibilla, “Maine Abolishes Civil Forfeiture, Now Requires a Criminal Conviction to Take Property,” *Forbes*, July 14, 2021, <https://www.forbes.com/sites/nicksibilla/2021/07/14/maine-abolishes-civil-forfeiture-now-requires-a-criminal-conviction-to-take-property/>.

399 Knepper et al., *Policing for Profit*, 3rd ed., 28–29.

400 All jurisdictions have incorporated some protections for innocent third-party owners, although property owners in 29 states and in the federal system still hold the burden of proving their innocence. Knepper et al., *Policing for Profit*, 3rd ed., 37. What innocence means varies widely among the states. New Hampshire and the District of Columbia protect owners who never consented to the illegal use of their property; Maryland, Montana, Nebraska, New Mexico, Ohio, and Minnesota protect owners who lack actual knowledge of the illegal use. Pimentel, “Civil Asset Forfeiture Abuses,” 202–3. Other jurisdictions deny this defense to owners who “should have known” about the activity, or limit it to those who had perhaps known but not “knowingly acquiesce[d]” to the illegal use of their property. Fla. Stat. § 932.703(7)(a) (2021) (“Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either *knew*, or *should have known* after a reasonable inquiry, that the property was being employed or was likely to be

employed in criminal activity.”) (emphasis added); and Minn. Stat. § 609.5311(3)(g) (2021) (“Property is not subject to forfeiture based solely on the owner’s or secured party’s knowledge of the unlawful use or intended use of the property if: . . . (2) the property is real property owned by the parent of the offender, unless the parent actively participated in, or knowingly acquiesced to, a violation of chapter 152.”).

401 United States v. 785 St. Nicholas Ave., 983 F.2d 396, 404 (2d Cir. 1993) (citing United States v. 141st Street Corp., 911 F.2d 870, 879 [2d Cir. 1990], cert. denied, 111 S. Ct. 1017 [1991]; and United States v. 418 57th St., 922 F.2d 129, 132 [2d Cir. 1990]).

402 The preponderance of the evidence standard — a showing that something is a little more likely than not to be true — is used in civil asset forfeiture in 20 states. An additional 10 states use the standard of “clear and convincing” evidence, a slightly elevated standard of proof. (Massachusetts uses the even lower probable cause standard usually used to justify a search or arrest by law enforcement.) Knepper et al., *Policing for Profit*, 3rd ed., 39; and Mass. Gen. Laws ch. 94C § 47(d) (2021).

403 Knepper et al., *Policing for Profit*, 3rd ed., 41.

404 See, for example, Stillman, “Taken.”

405 For reports exploring the extent and harms of fines and fees, see, for example, Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*; Bannon et al., *Criminal Justice Debt*; Carpenter, Pochkhanawala, and Menjou, *Municipal Fines and Fees*; Maciag, “Addicted to Fines”; Mitali Nagrecha et al., *Fees, Fines, and the Funding of Public Services: A Curriculum for Reform*, Arthur Liman Center for Public Interest Law at Yale Law School, Criminal Justice Policy Program at Harvard Law School, Fines & Fees Justice Center, and Policy Advocacy Clinic at UC Berkeley School of Law, 2020, https://law.yale.edu/sites/default/files/area/center/liman/document/fees_fines_and_the_funding_of_public_services.pdf [<https://perma.cc/YLG5-6GKP>]; and Anna VanCleave et al., *Money and Punishment, Circa 2020*, Arthur Liman Center for Public Interest Law at Yale Law School, Fines & Fees Justice Center, and Policy Advocacy Clinic at UC Berkeley School of Law, 2020, https://law.yale.edu/sites/default/files/area/center/liman/document/fees_fines_and_the_funding_of_public_services.pdf [<https://perma.cc/5V4D-TUZE>].

406 Board of Supervisors of Contra Costa County, Cal., Resolution No. 2019/522 (September 17, 2019), http://64.166.146.245/docs/2019/BOS/20190917_1334/38924_BO_Criminal%20Justice%20Adult%20Fees.pdf [<https://perma.cc/VL37-4PCU>].

407 Fines & Fees Justice Center, “Local Policy Guides: Fee Elimination and Debt Relief,” February 2022, 2–3, <https://finesandfeesjusticecenter.org/content/uploads/2022/03/Local-Policy-Guides-Fee-Elimination-Final.pdf> [<https://perma.cc/777N-BJ5L>].

408 Shannon Prather, “Ramsey County Eliminates Nearly \$700,000 in Criminal Fines and Fees,” *Star Tribune*, April 14, 2020, <https://www.startribune.com/ramsey-county-eliminates-nearly-700-000-in-criminal-fines-and-fees/569640712/?refresh=true>.

409 Brennan Center for Justice, “Easing the Burden of Fees and Fines During Covid-19,” updated November 18, 2021, <https://www.brennancenter.org/our-work/research-reports/easing-burden-fees-and-fines-during-covid-19> [<https://perma.cc/9WZ4-EHZY>].

410 Fines & Fees Justice Center, “COVID-19 Fines & Fees Policy Tracker,” last accessed October 15, 2021, <https://finesandfeesjusticecenter.org/covid-19-policy-tracker/reform-tracker/> [<https://perma.cc/3MSF-TWPP>].

411 Dane County, Wisc., Resolution 2021 RES-001 Authorizing the Sheriff’s Office Elimination of Outstanding Debt (May 6, 2021), <https://dane.legistar.com/View.ashx?M=F&ID=9383888&GUID=7E48D67B-313D-40CF-9EF7-64B4899C0FC6> [<https://perma.cc/F8SM-YNR3>].

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Traffic Tickets from Before 2011.” AL.com, updated March 23, 2022, <https://www.al.com/news/2022/03/birmingham-pardons-parking-and-traffic-tickets-from-before-2011.html> [<https://perma.cc/CVT6-KK8B>].

413 A.B. 1869, 2020 Sess. (Cal. 2019–2020); A.B. 177, 2021 Sess. (Cal. 2020–2021); and TCR Staff, “California Writes Off \$534M in Justice Debt for Low-Income Residents,” *The Crime Report*, October 4, 2021, <https://perma.cc/B567-ZTND>.

414 Fines & Fees Justice Center, “California SB 190: Juveniles,” January 26, 2017, <https://finesandfeesjusticecenter.org/articles/california-sb-190-juveniles/> [<https://perma.cc/B7CT-WCLB>]; Fines & Fees Justice Center, “Colorado HB21-1315: Concerning Eliminating Certain Monetary Amounts a Juvenile in the Justice System Is Required to Pay,” June 21, 2021, <https://finesandfeesjusticecenter.org/articles/colorado-hb21-1315-concerning-eliminating-certain-monetary-amounts-a-juvenile-in-the-justice-system-is-required-to-pay/> [<https://perma.cc/5UUG-T8AF>]; Karen Clark, “Debt Free Justice in Louisiana,” Stand for Children, November 8, 2021, <http://stand.org/louisiana/blog/debt-free-justice-louisiana> [<https://perma.cc/ES35-HVUJ>]; Fines & Fees Justice Center, “Nevada Assembly Bill 439: Abolishes Juvenile Fees,” March 25, 2019, <https://finesandfeesjusticecenter.org/articles/nevada-assembly-bill-439-abolishes-juvenile-fees/> [<https://perma.cc/3RRR-3SEW>]; National Center for Access to Justice, “Fines and Fees,” 2021, <https://ncaj.org/state-rankings/2020/fines-and-fees> (New Mexico); National Conference of State Legislatures, “Juvenile Justice Update Newsletter,” December 2020, <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-justice-update-december-2020.aspx> [<https://perma.cc/ZA4X-CHSD>] (Maryland and New Jersey); and Youth, Rights & Justice, “Youth, Rights & Justice Thanks Governor Brown for Signing Landmark Bill Eliminating Juvenile Fees and Fines in Oregon,” press release, July 26, 2021, <https://youthrightsjustice.org/press-release-youth-rights-justice-thanks-governor-brown-for-signing-landmark-bill-eliminating-juvenile-fees-and-fines-in-oregon/> [<https://perma.cc/7D9Q-A5WH>].

415 Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 11.

416 Day fines are a system of monetary punishment scaled to how much net income a person earns in a day; that number is then multiplied by a punitive unit to determine the actual fine. Following a successful pilot program in Staten Island, New York, additional programs were tested in Maricopa County, Arizona; Bridgeport, Connecticut; Polk County, Iowa; four counties in Oregon; and Milwaukee, Wisconsin. Notably, the Staten Island pilot provided evidence that if the program continued, day fines would return higher revenues and incur lower expenditures; Maricopa County was able to increase the rate of collection, lower probation expenditures, and decrease recidivism. Beth A. Colgan, “Graduating Economic Sanctions According to Ability to Pay,” *Iowa Law Review* 103, no. 1 (2017): 53–112, 56–57, 105–6, <https://ilr.law.uiowa.edu/assets/Uploads/ILR-103-1-Colgan.pdf> [<https://perma.cc/EC9Z-Z9N7>]. Besides these pilot programs, Oklahoma has a law permitting judges to order day fines, although it is unclear how much this option is exercised in reality. 22 Ok. Stat. §22-991av2 (A)(1)(y) (2020), <https://law.justia.com/codes/oklahoma/2020/title-22/section-22-991av2/> [<https://perma.cc/3N7C-QHFQ>]. While in many (if not most) cases day fines are not much different from what would have been the amount of a flat-fee ticket, or constitute a reduction in the amount owed, in a few cases they will result in a substantial increase — for those who can afford it. The Nordic countries are frequently mentioned as examples of places where this principle has been put into action. For a discussion of how day fines operate in the Nordics, see Joe Pinsker, “Finland, Home of the \$103,000 Speeding Ticket,” *The Atlantic*, March 12, 2015, <https://www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/> [<https://perma.cc/B5UG-YUET>].

417 Fines & Fees Justice Center, *First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service*, November 17, 2020, https://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC_

[Policy_Guidance_Ability_to_Pay_Payment_Plan_Community_Service_Final_2.pdf](https://perma.cc/6HUW-AQ7A) [https://perma.cc/6HUW-AQ7A].

418 The categories of people who are presumed indigent may include: individuals who are recipients of public benefits; those who qualify for public defenders; people who are disabled; individuals who are incarcerated or living in a mental health institution, treatment center, or halfway house; individuals currently or recently experiencing homelessness; full-time students; or those whose income meets a threshold percentage of the U.S. Department of Housing and Urban Development's "very low-income" limit or similar standardized poverty threshold, adjusted for local costs of living. Fines & Fees Justice Center, *First Steps Toward More Equitable Fines and Fees*, 4; and New York City Council, *Establishing a Day-Fines Pilot in the Office of Administrative Trials and Hearings: Hearing Before New York City Council, Committee on the Justice System, Committee on Governmental Operations*, December 11, 2019 (testimony of the Center for Court Innovation), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4265949&GUID=E0A979D8-2CA8-4516-AA8A-AEF657142A55&Options=&Search=>. Nine states have standards in place to trigger a presumption that a person is indigent and unable to pay fines or fees. National Center for Access to Justice, "Fines and Fees."

419 Dave Byers et al., *Justice for All: Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees and Pretrial Release Policies*, Arizona Supreme Court, 2016, 14–15, [https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20\(002\).pdf?ver=9pLeF4I9Bwm-V5BSVeB1vQ==](https://www.azcourts.gov/Portals/74/TFFAIR/Reports/FINAL%20FairJustice%20Aug%2012-final%20formatted%20versionRED%20(002).pdf?ver=9pLeF4I9Bwm-V5BSVeB1vQ==) [https://perma.cc/ST65-AH3B]. For an example of such a system, see Superior Court of California, County of San Francisco, "Can't Afford to Pay," accessed April 21, 2022, <https://www.sfsuperiorcourt.org/divisions/traffic/cant-afford-pay> [https://perma.cc/CU2C-47LB].

420 National Center for Access to Justice, "Fines and Fees."

421 National Center for Access to Justice, "Fines and Fees."

422 Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, 10, 20; and Alexander Kaplan et al., *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California*, University of California Berkeley Law Policy Advocacy Clinic, March 26, 2016, 12–14, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710 [https://perma.cc/TU2M-SFCK] (noting that Alameda County, California, "expends significant resources assessing and collecting juvenile administrative fees" yet "collects minimal revenue from juvenile administrative fees").

423 Devah Pager et al., "Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment," *American Sociological Review* (2022): 16–18, <https://journals.sagepub.com/doi/10.1177/00031224221075783>.

424 Fines & Fees Justice Center, "End Fees, Discharge Debt, Fairly Fund Government," January 2022, 12, <https://finesandfeesjusticecenter.org/content/uploads/2022/01/FFJC-Policy-Guidance-Fee-Elimination-1.13.22.pdf> [https://perma.cc/Y8HZ-YZTA].

425 Stephen Bingham et al., *Paying More for Being Poor: Bias and Disparity in California's Traffic Court System*, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 2017, 21, <https://lccrsf.org/wp-content/uploads/2017/05/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf> [https://perma.cc/P47E-MGEG]; and Karin D. Martin, "Monetary Myopia," 630–62, 648.

426 See, for example, Sharon Brett and Mitali Nagrecha, *Proportionate Financial Sanctions: Policy Prescriptions for Judicial Reform*, Criminal Justice Policy Program at Harvard Law School, 2021, 54, n.36, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3759204 ("From September 1, 2018, through February 28, 2019, Texas justice and municipal courts (which handle low-level offenses) issued 276,510 warrants for failure to pay and 456,220 cases were resolved by "jail credit," where people spend days in jail to pay off their fines."); Center for Court Innovation, "The Price of Justice Grant Program," 2; Deborah Fowler et al., *Pay or Stay* (noting the past

practice of "pay or stay" in Texas); and American Civil Liberties Union of Washington and Columbia Legal Services, *Modern-Day Debtors' Prisons*, 9.

427 Brett and Nagrecha, *Proportionate Financial Sanctions*, 24–25.

428 Judicial Engagement Network, "Information Technology Systems," last accessed November 18, 2021, <https://judicialengagementnetwork.org/resources/technology/information-technology-systems> [https://perma.cc/D5GC-ND8B]; and Center for Court Innovation, "An Alternate Solution in the Justice System," last accessed November 18, 2021, <https://www.blenderbox.com/project/center-for-court-innovation> [https://perma.cc/JT39-P44P].

429 Cities & Counties for Fine and Fee Justice, *Roadmap to Bold and Equitable Fine and Fee Reform*, 2020, 16, Appendix A, https://www.policylink.org/sites/default/files/ccffj_guide_062520_a_BRIEF.pdf [https://perma.cc/X9BB-WLFR]; and Office of the Los Angeles City Attorney, "LA Law Enforcement Leaders Take Action to Dismiss Old Infraction Warrants and Uncollectible Fines," press release, October 2, 2019, updated March 5, 2020, <https://www.lacityattorney.org/post/2019/10/02/la-law-enforcement-leaders-take-action-to-dismiss-old-infraction-warrants-and-uncollectib> [https://perma.cc/GT88-9ZPY].

430 Despite a constitutional prohibition on jailing individuals for being unable to afford fines and fees, in many states individuals can be and are incarcerated for failing to pay fines and fees. Arguably, this issue persists because courts fail to evaluate ability to pay before assigning fines and fees. Brett and Nagrecha, *Proportionate Financial Sanctions*, 42–44. For federal and constitutional jurisprudence involving this practice, see Beth A. Colgan, "Fines, Fees, and Forfeitures," in *Reforming Criminal Justice Volume 4: Punishment, Incarceration, and Release*, Erik Luna, ed. (Phoenix, AZ: Academy for Justice, 2017), 223–27, https://law.asu.edu/sites/default/files/pdf/academy_for_justice/Reforming-Criminal-Justice_Vol_4.pdf [https://perma.cc/94ZC-BNYX]; and Louis Fisher, "Criminal Justice User Fees and the Procedural Aspect of Equal Justice," *Harvard Law Review Forum* 133, no. 5 (2020): 112–46, 113, https://harvardlawreview.org/wp-content/uploads/2020/03/112-146_Online.pdf [https://perma.cc/7FJY-NJS5].

431 Bannon et al., *Criminal Justice Debt*, 17–18.

432 See National Center for Access to Justice, "Fines and Fees."

433 Sean Morales-Doyle, "A Major Court Victory for Voting Rights in Florida," Brennan Center for Justice, May 27, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/major-court-victory-voting-rights-florida> [https://perma.cc/5WT2-BE2U].

434 Walker Bragman, "Americans Are at Least \$27.6 Billion in Debt to Courts," *Jacobin*, June 23, 2021, <https://www.jacobinmag.com/2021/06/debt-collection-companies-harassment-court-fines-state-profit> [https://perma.cc/4LQ2-NJF6].

435 National Center for Access to Justice, "Fines and Fees."

436 A.B. 1869, 2019 Leg., (Ca. 2020).

437 S.B. 620, 2021 Leg., (Or. 2021).

438 Prather, "Ramsey County Eliminates Nearly \$700,000."

439 Baltimore County Government, "Olszewski Eliminates Pretrial Supervision Fees in Baltimore County," press release, July 29, 2021, <https://www.baltimorecountymd.gov/county-news/2021/07/29/olszewski-eliminates-pretrial-supervision-fees-in-baltimore-county> [https://perma.cc/36E9-SKUV]; and Baltimore County Government, "Baltimore County Eliminates Home Monitoring Fees," press release, January 4, 2021, <https://www.baltimorecountymd.gov/county-news/2021/01/04/baltimore-county-eliminates-home-monitoring-fees> [https://perma.cc/Z55T-C5HN].

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441 Office of Los Angeles County Supervisor Hilda S. Solis, "LA County to Eliminate Criminal Justice Fees," press release, February 18, 2020, <https://hildasolis.org/la-county-to-eliminate-criminal->

- [justice-fees/](#) [<https://perma.cc/TUM2-VAYC>]; San Francisco County, Cal., Ordinance No. 180132 (June 14, 2018); Contra Costa County, Cal., Resolution No. 2019/522 (September 17, 2019); Alameda County, Cal. Ordinance No. 2018-67 (December 4, 2018); and Nashville Metro Council Ordinance BL2021-782 (July 21, 2021).
- 442** San Francisco County, Cal., Ordinance No. 180132 (June 14, 2018); and Baltimore County Government, “Baltimore County Eliminates Home Monitoring Fees.”
- 443** Human Rights Watch, *Profiting from Probation*.
- 444** Human Rights Watch, *Profiting from Probation*.
- 445** Georgia Department of Community Supervision, “Adult Misdemeanor Probation Oversight,” accessed October 4, 2021, <https://dcs.georgia.gov/offender-supervision-0/adult-misdemeanor-probation-oversight> [<https://perma.cc/YXN8-7G4B>].
- 446** One audit in Tennessee discovered that the Tennessee Private Probation Services Council routinely failed to fulfill its oversight duties and placed people under supervision at risk. Wilson, *Private Probation Services Council Performance Audit Report*.
- 447** Littman, “Jails, Sheriffs, and Carceral Policymaking,” 861, 878.
- 448** As of May 5, 2022, USMS had a total population of 62,823 incarcerated individuals. U.S. Marshals Service, “U.S. Marshals Service – Coronavirus (COVID-19) Data and Information Prisoner Statistics,” accessed May 5, 2022, <https://www.usmarshals.gov/coronavirus/stats.html> [<https://perma.cc/NT6D-62YF>]. As of April 24, 2022, ICE held 19,502 people in detention. TRAC Immigration, “Immigration Detention Quick Facts.”
- 449** Government Accountability Office, *Immigration Detention: Actions Needed*, 14; and Jameson, “ICE Detention Through U.S. Marshals Agreements,” 279, 315. In 1982, the Office of Management and Budget (OMB) granted an exception that allowed the U.S. Immigration and Naturalization Service (the predecessor to ICE), the USMS, and the Bureau of Prisons to contract with local jails outside the scope of the Federal Acquisition Regulations. Instead, those intergovernmental agreements are governed by the guidelines in OMB Circular A-87, which applies to grants and “cost reimbursement contracts” in which local or state governments administer federal programs. See Office of Management and Budget, Executive Office of the President, *OMB Circular A-87 Revised: Cost Principles for State, Local, and Indian Tribal Governments*, 2004, https://obamawhitehouse.archives.gov/omb/circulars_a087_2004 [<https://perma.cc/PHK9-EG49>].
- 450** Government Accountability Office, *Immigration Detention*, 24–29.
- 451** For the finding more generally that ICE often fails to follow its own internal protocols, see Government Accountability Office, *Immigration Detention: Actions Needed*, 18–23. For Eloy see John V. Kelley, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines*, 3–4.
- 452** Ryo and Peacock, “Jailing Immigrant Detainees,” 91 (quoting a Washington County, Oregon, commissioner who justified the county’s decision to contract with ICE by saying, “We’re not doing anything but providing a bed for [ICE detainees] in the night and meals. . . . It’s renting a bed, like a motel room.”). Jameson, “ICE Detention Through U.S. Marshals Agreements,” 279 (arguing against the framing of detention contracts as a technocratic procurement process; arguing that these contracts should be seen instead as deliberate acts of policymaking).
- 453** For example see, Matt Katz, “Local Officials Shutting ICE Out of Local Jails,” NPR, October 14, 2018, <https://www.npr.org/2018/10/14/657238852/jails-nationwide-end-contracts-with-immigration-and-customs-enforcement> [<https://perma.cc/T5E8-WRH3>].
- 454** Littman, “Jails, Sheriffs, and Carceral Policymaking,” 884 (stating that jail expansions are often “the most expensive forms of capital expense a county can incur”). Among the many harms of incarceration, loss of family and community contact is one of the most lasting and has the farthest-reaching consequences. Research has repeatedly shown that people who maintain strong community ties while incarcerated are less likely to recidivate than those who do not, and have an easier time rejoining the community, securing housing, and finding and retaining employment. Children with incarcerated parents are at increased risk of mental health problems and substance use disorders — issues that are at least somewhat mitigated by frequent, in-person contact with their loved ones. Leah Wang, “Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families,” Prison Policy Initiative, December 21, 2021, https://www.prisonpolicy.org/blog/2021/12/21/family_contact/ [<https://perma.cc/H7N6-RKAB>].
- 455** See, for example, Jacob Kang-Brown et al., *The New Dynamics of Mass Incarceration*, Vera Institute of Justice, 2018, 26–27, <https://www.vera.org/publications/the-new-dynamics-of-mass-incarceration> [<https://perma.cc/9D3F-8RN8>]. For example, although Essex County, New Jersey, terminated its contract to house people for ICE, it will repurpose those beds to hold people from neighboring Union County. Alvarado, “Essex County Will End Contract.”
- 456** Davis Land, “Dallas Begins Its Own ‘Cite and Release’ Program December 1st. How Is Harris County’s Doing?,” Houston Public Media, November 30, 2017, <https://www.houstonpublicmedia.org/articles/news/2017/11/30/253662/dallas-begins-its-own-cite-and-release-program-december-1st-how-is-harris-countys-doing/> [<https://perma.cc/C3XZ-U3QY>].
- 457** See Julia O’Donoghue, “As Prison Population Drops, Louisiana Sheriffs Ask for More Money,” *Times-Picayune*, April 18, 2019, https://www.nola.com/news/article_ce3f6329-d9fe-55f4-a295-97db50afe4ff.html. For an overview of Louisiana’s 2017 criminal justice reforms, see Terry Schuster, *Louisiana’s 2017 Criminal Justice Reforms: The Most Incarcerated State Changes Course*, Pew Charitable Trusts, 2018, https://www.pewtrusts.org/-/media/assets/2018/03/pspp_louisianas_2017_criminal_justice_reforms.pdf [<https://perma.cc/2B2D-FLJA>].
- 458** New York’s bail reforms, effective January 1, 2020, resulted in a 40 percent decline in New York City’s pretrial jail population between April 2019 and March 2020. But amendments to the law resulted in a 7 to 11 percent increase as of November 2020, even with the city’s efforts to decarcerate as the Covid-19 pandemic erupted. Michael Rempel and Joanna Weill, *One Year Later: Bail Reform and Judicial Decision-Making in New York City*, Center for Court Innovation, 2021, 2–3, https://www.courtinnovation.org/sites/default/files/media/document/2021/One_Year_Bail_Reform_NYS.pdf [<https://perma.cc/5YS7-GDEM>]. New Jersey’s pretrial jail population declined by just under 44 percent between 2015 and 2018. Glenn Grant, *Jan. 1–Dec. 31 2018 Report to the Governor and Legislature*, New Jersey Administrative Office of the Courts, 2019, 39, <https://www.njcourts.gov/courts/assets/criminal/2018cjrannual.pdf?c=dSE> [<https://perma.cc/9VUB-UKX9>].
- 459** For example, between 1997 and 2001, the Vera Institute of Justice ran a successful pilot, the Appearance Assistance Program, that provided individualized support services for immigration. An evaluation found that 90 percent of all program participants attended their immigration hearings and that the program was especially effective for asylum seekers, people facing deportation because of criminal convictions, and unlawful workers. See Anjum Gupta et al., *Freed But Not Free: A Report Examining the Current Use of Alternatives to Immigration Detention*, Rutgers School of Law, 2012, 7–8, <https://www.afsc.org/sites/default/files/documents/Freed-but-not-free.pdf> [<https://perma.cc/ZU9R-YHV8>]. Also see Eileen Sullivan et al., *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program, Volume I, Final Report to the Immigration Naturalization Service*, Vera Institute of Justice, 2000, https://www.vera.org/downloads/publications/INS_finalreport.pdf [<https://perma.cc/77SN-842Y>].
- 460** Ingrid Eagly, Steven Shafer, and Jana Whalley, *Detaining Families: A Study of Asylum Adjudication in Family Detention*, American Immigration Council, 2018, 2, https://www.americanimmigrationcouncil.org/sites/default/files/research/detaining_families_a_study_of_asylum_adjudication_in_family_detention_final.pdf [<https://perma.cc/FV23-G6U3>].

- 461** Government Accountability Office, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, 2014, 30, <https://www.gao.gov/assets/gao-15-26.pdf> [<https://perma.cc/QEZ6-KKSP>].
- 462** David Secor, Heidi Altman, and Tara Tidwell Cullen, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration*, National Immigrant Justice Center, 2019, 6–7 and note 22, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf> [<https://perma.cc/YD6B-J238>].
- 463** Secor, Altman, and Cullen, *A Better Way*, 10–11.
- 464** Dora Schiro, *Immigration Detention Overview and Recommendations*, U.S. Department of Homeland Security, Immigration and Customs Enforcement, 2009, 2, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf> [<https://perma.cc/2G5G-STP3>].
- 465** Randy Capps and Doris Meissner, *From Jailers to Case Managers: Redesigning the U.S. Immigration Detention System to Be Effective and Fair*, Migration Policy Institute, 2021, 8, https://www.migrationpolicy.org/sites/default/files/publications/mpi_rethinking-immigration-detention-2021_final.pdf [<https://perma.cc/9K4Y-FWGN>].
- 466** Jameson, “ICE Detention Through U.S. Marshals Agreements,” 314.
- 467** At the end of fiscal year 2019, 17 percent of people in ICE detention were held under such agreements. See Government Accountability Office, *Immigration Detention: Actions Needed*, 1.
- 468** Government Accountability Office, *Immigration Detention: Actions Needed*, 13.
- 469** Jameson, “ICE Detention Through U.S. Marshals Agreements,” 286–88.
- 470** See, for example, AB 32 (Cal. 2019); Public Act 102-0234 (Ill. 2021) and Public Act 101-0020 (Ill. 2019); AB 5207, 2020-2021 Session (NJ 2021); and HB 1090 (Wash. 2021). Consistent with the Tenth Amendment, states act within their traditional authority in preempting their own localities and law enforcement from cooperating with federal immigration authorities. *United States v. California*, 921 F.3d 865, 887 (9th Cir. 2019) (“Federal law does not suggest the intent — let alone a clear and manifest one — to prevent states from regulating whether their localities cooperate in immigration enforcement.”) (citations omitted). Also see *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018) (rejecting federal preemption challenge to state law limiting local law enforcement’s cooperation with federal immigration enforcement, because states are free to regulate whether and to what extent local entities will participate in federal–local immigration enforcement cooperation); and *GEO Group v. City of Tacoma*, No. 3:18-cv-05233-RBL (W.D. Wash. 2019) (rejecting preemption claims where state’s ordinance requirements “do not interfere with the government’s decision to contract with [the private contractor] and detain immigrants at [the private detention facility]”).
- 471** SB 667, 102d Gen. Assemb. (Ill. 2021). See also Katy Murdza, “New Illinois Law Expected to Go Furthest Toward Ending Immigration Detention in the US,” *Immigration Impact*, August 10, 2021, <https://immigrationimpact.com/2021/08/10/illinois-law-end-immigration-detention/> [<https://perma.cc/5V35-HA2H>]. However, in drafting new laws curtailing localities from participating in the custody bed market through IGSA’s, states must not intrude on or discriminate against the federal government’s authority. In 2020 the Ninth Circuit Court of Appeals enjoined enforcement of a 2019 California law banning operation of all privately run facilities in the state, including immigration detention facilities, on these bases. The Court of Appeals also held that the bill discriminated against the federal government by treating the state — which could continue to operate its own facilities — more favorably than the federal government, which had access only to private facilities. See *GEO Group v. Newsom*, No. 20-56172 (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/10/05/20-56172.pdf> [<https://perma.cc/6CL7-DT9Y>].
- 472** Creative maneuvering has led to financial and legal contortions to save lucrative contracts put at risk by new restrictive state laws. For example, when California passed a law restricting IGSA’s in 2017, private prison company GEO Group urged Adelanto city officials to pull out of a detention center contract and terminate the city’s IGSA with ICE prior to the state law coming into force. In return, GEO promised to continue paying the city the bed tax — nearly \$1 million — as well as a \$50,000 annual fee, per the original 2016 agreement, no strings attached, for complying with the request. Rebecca Plevin, “How a Private Prison Giant Has Continued to Thrive in a State That Wants It Out,” *Palm Springs Desert Sun*, January 24, 2020, <https://www.desertsun.com/in-depth/news/2020/01/24/private-prison-giant-geo-thrives-california-state-wants-out/2589589001/> [<https://perma.cc/YY9F-2EAS>].
- 473** Kimble and Grawert, “Collateral Consequences”; and Craigie, Grawert, and Kimble, *Conviction, Imprisonment, and Lost Earnings*, 6.
- 474** Ossei-Owusu, “Police Quotas,” 598, Appendix A (listing 21 states with anti-quota laws); Iowa Code § 321.492A (2021) (enacted); S.B. 3014, 2022 Regular Session (Miss. 2022) (enacted) (prohibiting funds to be “used for [] quota-based citations for violations of speed limits”); Mont. Code Ann. § 7-32-103 (2021); Nev. Rev. Stat. § 289.035 (2021); Va. Code Ann. § 2.2-5516 (2022); and Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, D.C. Act 23-336, Council Period 23 (2019–2020) (enacted). Some police officers and unions have even supported anti-quota advocacy, focusing on better work environments. Ossei-Owusu, “Police Quotas,” 545, 591. For states proposing or passing anti-quota statutes, see, for example, Keith Goble, “Three States Continue Push to End Ticket Quotas,” *Land Line*, May 13, 2020, <https://landline.media/three-states-continue-push-to-end-ticket-quotas/> [<https://perma.cc/HBX3-KTJE>]; Tim Farley, “Bill to End Ticket Quotas Moves Forward in Senate,” *Southwest Ledger*, February 11, 2021, <https://www.southwestledger.news/news/bill-end-ticket-quotas-moves-forward-senate> [<https://perma.cc/NG6P-VPQ9>]; and KOMO Staff, “State Senate Passes Bill to Prevent Traffic Ticket Quotas for Cops,” *KOMO News*, February 17, 2020, <https://komonews.com/news/local/state-senate-passes-bill-to-prevent-traffic-ticket-quotas-for-cops> [<https://perma.cc/2QNA-HRMM>].
- 475** Quota statutes vary widely: 17 states forbid citation and traffic violation quotas, nine also prohibit arrest quotas, and a further two states preclude quotas regarding warning notices or investigative stops. Three states explicitly allow warnings or “points of contact” to have quota requirements. Ossei-Owusu, “Police Quotas,” 547–49.
- 476** Fla. Stat. § 316.640(8)(b) (2021).
- 477** Avandar Singh and Sajid A. Khan, “Public Defender Definition of Progressive Prosecution,” *Stanford Journal of Civil Rights & Civil Liberties* 16, no. 3 (2021): 475–88, 476, <https://www-cdn.law.stanford.edu/wp-content/uploads/2021/03/Singh-and-Khan-Public-Defender-Definition-of-Progressive-Prosecution.pdf> [<https://perma.cc/RJ5L-LP9E>] (“True progressive prosecution requires wholesale, bold, dramatic reform in how prosecutors view people accused of law violations, how they adjudicate and punish violent crime, and the way they pursue convictions. Progressive prosecution must mean a change in culture and priorities in district attorneys’ offices. We define ‘progressive prosecution’ as the model of prosecution committed to truth-telling about systemic racism, shrinking mass criminalization, addressing root causes of crime, and bringing the criminal legal system in line with basic notions of justice and humanity.”).
- 478** See, for example, Penn Law, “The Role of Progressive Prosecutors in the Criminal Justice Reform Movement,” *Penn Today*, October 13, 2021, <https://penntoday.upenn.edu/news/role-progressive-prosecutors-criminal-justice-reform-movement> [<https://perma.cc/ZGD9-V9US>]; and Mark Berman, “These Prosecutors Won Office Vowing to Fight the System. Now, the System Is Fighting Back,”

Washington Post, November 9, 2019, https://www.washingtonpost.com/national/these-prosecutors-won-office-vowing-to-fight-the-system-now-the-system-is-fighting-back/2019/11/05/20d863f6-afc1-11e9-a0c9-6d2d7818f3da_story.html.

479 Berman, "These Prosecutors Won Office Vowing to Fight the System."

480 Note, "The Paradox of 'Progressive Prosecution,'" *Harvard Law Review* 132 (2018): 748–70, 762, https://harvardlawreview.org/wp-content/uploads/2018/12/748-770_Online.pdf [<https://perma.cc/C8GK-YBB3>].

481 Eisen and Krinsky, "The Necessity of Performance Measures." For examples of more comprehensive police performance metrics evaluation systems, see Robert C. Davis et al., "Revisiting 'Measuring What Matters': Developing a Suite of Standardized Performance Measures for Policing," *Police Quarterly* 18, no. 4 (2015): 469–95, 478.

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ACKNOWLEDGMENTS

This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce overincarceration by changing the way America thinks about and uses jails. The Brennan Center extends a special thank-you to Bria Gillum and Patrick Griffin for their insight and guidance on the final product.

The authors thank Josephine Hahn and Noah Kim for their research support and Michael Waldman and John Kowal for their thoughtful reviews and feedback. We are also indebted to Lisa Foster, Joanna Weiss, and their colleagues at the Fines and Fees Justice Center and Ronal W. Serpas, professor of practice of criminology and justice at Loyola University New Orleans, who lent their expertise in reviewing sections of the report. A special thank you to Leily Arzy for research assistance and help on endnotes; Maris Mapolski for her excellent fact-checking; Zachary Laub for his deft hand in the editing and review process; and Elise Marton for meticulous copyediting. Thank you to the Justice Program’s Alia Nahra and the members of the Communications team — Lisa Benenson, Jessica Eckert, Matt Harwood, Alexandra Ringe, Janet Romero-Bahari, Derek Rosenfeld, and Alden Wallace — for ensuring the report’s successful launch.

Finally, we thank our former NYU School of Law clinic students Sarah Hardtke, Graham Horn, Myra Hyderand, and Francesca Merrick and former legal intern Saylor Soinski, who contributed essential research and drafting assistance.

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