

**Written Statement of Lauren-Brooke Eisen  
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**Submitted to Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security**

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Mr. Chairman, Ranking Member, and Members of the Subcommittee:

My name is Lauren-Brooke Eisen, and I am the Director of the Justice Program of the Brennan Center for Justice at NYU School of Law. Thank you for the opportunity to comment on how court-imposed fees and fines unjustly burden vulnerable communities.

The Center's Justice Program has been a national leader in studying, drawing attention to, and attempting to thwart the devastating effects of mass incarceration. Mass incarceration represents one of this nation's greatest moral and racial injustices ever. The United States currently incarcerates 2.2 million people, a 500 percent increase over the past 40 years. And we disproportionately imprison Latino and Black Americans, who make up nearly 60 percent of our incarcerated population yet constitute only about 32 percent of the entire U.S. population. We also subject 5 million people to state supervision imposed by probation or parole. And we see 12 million admissions each year through our nation's vast network of county and city jails.

We have also studied how our nation's criminal legal system extracts wealth from poor communities and communities of color. Fees and fines are a harmful byproduct of the American criminal legal system. Courts rely excessively on criminal fee and fine practices. Fees and fines are costly and inefficient; unfairly and disproportionately burden the poor and people of color (as well as the families of justice-involved individuals who often absorb the costs of these debts);<sup>2</sup> and do little to deter crime or improve public safety. Fees and fines have over time increased

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<sup>1</sup> The Brennan Center is a nonpartisan law and policy institute that seeks to secure our nation's promise of "equal justice for all" by creating a rational, effective, and fair criminal justice system. The Center's Justice Program works to advance sentencing and corrections reforms at all levels of government, and it focuses on reducing our nation's reliance on incarceration and the broader carceral system. My testimony does not purport to convey the views, if any, of the New York University School of Law.

<sup>2</sup> U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications*, Sept. 2017, 3, [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf).

dramatically, reflecting a shift away from reliance on general tax revenue to a user-funded fee and fine system.<sup>3</sup> After spending many years investigating and researching the impact of these court-imposed fees and fines on justice-involved individuals, the Brennan Center’s Justice Program has recommended several policy changes regarding how many courts and jurisdictions levy and collect these dollars. I present three basic, fundamental recommendations here.

First, states and localities should eliminate court-imposed fees. Every single American taxpayer benefits from a well-supported criminal justice system, so taxpayers, it follows, should fund our courts. Balancing our judiciary’s checkbook on the backs of our polity’s most disempowered members has no place in the United States. Second, states should require courts to levy fines based on ability to pay. Realizing this would mitigate the disproportionate punishments meted out to poor. Third, states should pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions. Keeping old debts on the books risks trapping people indefinitely within the criminal justice system—even after they have served their time—all over unpaid debt.

## **I. The Federal Government Should Encourage States and Localities to Eliminate Court-Imposed Fees.**

Courts impose fees to raise state revenues.<sup>4</sup> It should come, then, as hardly surprising that fees often are automatically (and thus arbitrarily) imposed and bear no relation to the charge. Georgia, as one example, levies fees against people in the criminal-legal system that it uses to pay for a state police motorcycle unit, a brain and spinal injury trust fund, and a supplemental police retirement fund.<sup>5</sup> Indeed, as one article recently indicated, 34 states can suspend, revoke, or ban from renewal a person’s driver’s license all because of debts a person accrued from entanglement with our criminal legal system.<sup>6</sup> Although some states, like New York, Arkansas, and Washington, this year passed legislation to curtail unnecessary license suspensions, over half the states still suspend driver’s licenses for reasons having nothing to do with safety or crime deterrence.<sup>7</sup> This sort of regressive punishment, among other things, unduly impedes the ability of the justice-involved to work and thus pay their court-sanctioned debt, trapping them in an inescapable web of poverty.

Courts also impose fees for myriad administrative costs. By way of example, criminal defendants are routinely charged for a determination of whether they qualify for a public defender. Courts are increasingly depending on user-funded fees to fund their judicial systems, in addition to

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<sup>3</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>4</sup> Fees are different from fines. While courts impose fees to raise revenues, they levy fines upon conviction to, at least in theory, deter and punish people. Joseph Shapiro, “As Court Fees Rise, the Poor Are Paying the Price,” NPR, May 19, 2014. <https://www.npr.org/2014/08/25/343143937/in-ferguson-court-fines-and-fees-fuel-anger>.

<sup>5</sup> Mike Maciag, “Addicted to Fines,” *Governing*, Aug. 2019. <https://www.governing.com/archive/gov-addicted-to-fines.html>.

<sup>6</sup> Caroline Greer, “States Should Not Suspend Driver’s Licenses When People Can’t Pay Fines and Fees,” *Reason Foundation*, July 22, 2021. <https://reason.org/commentary/states-should-not-suspend-drivers-licenses-when-people-cant-pay-fines-and-fees/>.

<sup>7</sup> Caroline Greer, “States Should Not Suspend Driver’s Licenses When People Can’t Pay Fines and Fees,” *Reason Foundation*, July 22, 2021. <https://reason.org/commentary/states-should-not-suspend-drivers-licenses-when-people-cant-pay-fines-and-fees/>.

government agencies across their states. In fact, since 2010, 48 states have increased criminal and civil court fees.<sup>8</sup>

Original Brennan Center research has found that even under a conservative estimate of the fiscal costs of collecting court-imposed fees, these dollars are an inefficient source of revenue.<sup>9</sup> And significantly, these court fees fall disproportionately on the poor, which can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public. Women, in addition, tend to bear the brunt of these fees. One study found that 50 percent of the family members primarily responsible for paying court-related costs were mothers, and 10 percent were grandmothers.<sup>10</sup> There is already a significant pay gap between men and women, particularly for women of color, making this burden insurmountable for some.<sup>11</sup>

Courts, all told, should be funded by the taxpayers, as we all benefit from a well-supported criminal justice system. Making courts and other justice system agencies the collections agents for fees and fines diverts them from addressing true public safety needs. State legislators, as a result, should allocate appropriate funding to courts from their general funds and repeal legislation requiring courts to raise their own revenue by imposing fees. The federal government can help actualize this by incentivizing state policymakers to eliminate their use of criminal court-imposed fees by either restricting federal grant dollars to jurisdictions that fail to eliminate this practice or through incentive grants that rewards jurisdictions for moving away from relying on court-imposed fees.

## **II. The Federal Government Should Encourage States to Require Courts to Assess Fines Based on Ability to Pay.**

Intended as both deterrence and punishment, fines are, by contrast, penalties imposed on defendants after conviction. How much a fine is depends on state statute and severity of the crime. Charging individuals amounts they cannot afford to pay is both inefficient and cruel. In fact, the Brennan Center recently found that some Texas and New Mexico counties spent more than 41 cents to collect a dollar.<sup>12</sup> In other words, that is 121 times what it costs the IRS to collect tax

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<sup>8</sup> 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>.

<sup>9</sup> Matthew Menendez et. al., "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>10</sup> Saneta deVuono-powell et. al, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, 2015, 14. <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

<sup>11</sup> U.S. Bureau of Labor Statistics, "Highlights of women's earnings in 2019," U.S. Department of Labor, Dec. 2020. <https://www.bls.gov/opub/reports/womens-earnings/2019/home.htm> (finding that the women's-to-men's earnings ratio has hovered between 80-to-83 percent since 2004); National Women's Law Center, "The Wage Gap: The Who, How, Why, and What to Do," Oct. 2020. <https://nwlc.org/wp-content/uploads/2019/09/Wage-Gap-Who-how.pdf> (reporting the gender-wage gap persists at even higher levels for women of color: Black women make 63 cents to the dollar, Latina women earn 55 cents to the dollar, and Native American women take home 60 cents to the dollar as compared to their white, non-Hispanic male counterparts).

<sup>12</sup> Matthew Menendez et. al., "The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties," *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

revenue, and many times more than what it costs these states to collect taxes.<sup>13</sup> As we noted, “almost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue. This is a fundamentally inefficient way to collect revenue to support courts and other criminal justice agencies, and it does not make fiscal or economic sense.”<sup>14</sup>

State legislatures should statutorily scale fines based on a defendant’s wealth and daily earnings, adjusted for essential expenses and obligations such as child support. Studies show that sliding-scale fines can increase both collection rates and total fine revenue.<sup>15</sup> For example, West Germany in the 1970s calibrated fines based on ability to pay as a replacement to incarceration, and the number of short-term prison sentences dropped by 90 percent.<sup>16</sup> Day fines can also work here. In 1988, a criminal court in Staten Island, New York replaced fixed fines with day fines, and both collection rates and fine amounts increased.<sup>17</sup>

Imposing high fees on people without means to pay them is an ultimately fruitless endeavor with severe ramifications and little reward. Using a sliding-scale system can meaningfully mitigate this harm while increasing collection rates and ultimately, revenue. Recognizing the pitfalls of hard-to-collect legal fees, the Department of Justice created the Price of Justice grant in 2015. This program incentivized jurisdictions to identify best practices for coordinated and appropriate justice-system responses to individuals’ inability to pay fines and fees.<sup>18</sup> Grants such as these encourage evidence-based improvements to the criminal legal system and support localities implementing sliding-scale programs. The federal government should therefore continue building upon the Obama Administration’s efforts by funding similar initiatives focused on fees and fines.

### **III. The Federal Government Should Encourage States to Pass Laws Requiring Courts to Purge Old Balances that are Unlikely to be Paid.**

Brennan Center original research has observed that significant amounts of old fee and fine debt will never be collected but continue to burden millions of people.<sup>19</sup> This makes little sense. The

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<sup>13</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>14</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>15</sup> Bureau of Justice Assistance, *How to Use Structured Fines (Day Fines) as an Intermediate Sanction*, U.S. Department of Justice. <https://www.ojp.gov/pdffiles/156242.pdf> (results from other U.S. pilot programs in Connecticut, Iowa, and Oregon have brought both increased revenues and positive responses from judges, prosecutors, and attorneys).

<sup>16</sup> Bureau of Justice Assistance, *How to Use Structured Fines (Day Fines) as an Intermediate Sanction*, U.S. Department of Justice. <https://www.ojp.gov/pdffiles/156242.pdf>.

<sup>17</sup> Judith Greene, “The Staten Island Day Fine Experiment,” Vera Institute of Justice, Aug. 1990. [https://www.vera.org/downloads/Publications/the-staten-island-day-fines-experiment/legacy\\_downloads/Staten\\_Island\\_day\\_fines.pdf](https://www.vera.org/downloads/Publications/the-staten-island-day-fines-experiment/legacy_downloads/Staten_Island_day_fines.pdf).

<sup>18</sup> Bureau of Justice Assistance, “The Price of Justice: Rethinking the Consequences of Justice Fines and Fees: FY 2016 Competitive Grant Announcement,” U.S. Department of Justice, 2015. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jrpriceofjustice.pdf>.

<sup>19</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

Brennan Center documented \$1.9 billion in unpaid criminal fee and fine debt in Texas, New Mexico, and Florida just between 2012 and 2018.<sup>20</sup> And even more recently, the Fines and Fees Justice Center documented that at least \$27.6 billion of fines and fees is owed across the nation, a number that understates the total amount of debt owed due to not every state providing data.<sup>21</sup> Unpaid criminal fee and fine debt is a growing burden, both for the courts and for the lives of people unable to pay.

Clearing out old debt would, moreover, free public agencies from the burden of using resources trying to chase down uncollectible debts. For example, in September 2020, California Governor Newsom moved toward permanently ending the collection of certain administrative fees and discharging all previous related debt by signing the Families Over Fees Act.<sup>22</sup> This legislation expands on previous action in San Francisco, which became the first city and county to eliminate such fees in 2018. As a result, the San Francisco Superior Court said it eliminated more than \$32.7 million in outstanding debt, owed by over 21,000 people.<sup>23</sup>

In sum, keeping old debts on the books risks trapping people indefinitely within the criminal justice system—even after they’ve done their time—all over these dollars. Indeed, saddling justice-involved with old debt increases their likelihood of re-incarceration, jeopardizes their ability to retain a driver’s license, threatens their chances of finding employment, creates a hurdle to exiting probation, and in some states, may even result in the loss of voting privileges, which is the bedrock of citizenship in this nation. The federal government should thus encourage states to take action.

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The Brennan Center thanks the Subcommittee on Crime, Terrorism, and Homeland Security for holding this critical hearing to consider this critical matter. We know that our nation’s justice system fails to live up to the American ideals of equality, fairness, and redemption—and the role of fees and fines is plainly harmful, not to mention inefficient. I thus urge the Subcommittee—and Congress broadly speaking—to look for ways in the coming months to incentivize states to reduce the burden and unfairness of court-imposed fees and fines on the most marginalized people in our communities. Because the cost of collection is so high. Because the impact on communities nationwide is so devastating. Because elimination of these hidden costs of incarceration is so important—so vital—to creating a truly inclusive, egalitarian democracy.

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<sup>20</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>21</sup> Matthew Menendez et. al., “The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties,” *Brennan Center for Justice*, 2019, 9. [https://www.brennancenter.org/sites/default/files/2020-07/2019\\_10\\_Fees%26Fines\\_Final.pdf](https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf).

<sup>22</sup> The Financial Justice Project, “Gov. Newsom signs Families Over Fees Act, making California the first state in nation to repeal criminal administrative fees and debt,” Office of the Treasurer and Tax Collector, City and County of San Francisco, Sept. 25, 2020. <https://sfgov.org/financialjustice/newsletters/governor-newsom-signs-families-over-fees-act>.

<sup>23</sup> The Financial Justice Project, “Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government,” Office of the Treasurer and Tax Collector, City and County of San Francisco, April 2019. [https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019\\_1.pdf](https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf).