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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. 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). Nearly 1.2 million people are serving sentences in state and federal prisons, and 10.3 million are admitted to local jails every year. Mass incarceration — a term now entrenched in the popular lexicon — is proving remarkably resistant to well-intentioned reforms.

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. 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. 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. 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 disproportionally 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.

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. 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. 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. Signed by President Lyndon B. Johnson, the measure sought to “improve methods of law enforcement, court administration, and prison operation.” 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. 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. 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. A major goal of this funding was putting police in schools; by 2014 more than two-thirds of schools had a police presence. The law also incentivized states to adopt tough “truth in sentencing” laws with grants to build or expand correctional facilities. In some states, this effectively doubled the time people could expect to spend in prison. 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. 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.

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. 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. Close to 30 percent of Alabama’s corrections budget was supplanted by ARRA funds in 2010. 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. To help rationalize this new funding, some law enforcement organizations stoked public fears — even in places where crime did not rise.

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. Oklahoma County commissioners gave 72 percent of their CARES Act funds to the County Jail Trust. Chicago spent 60 percent of its discretionary CARES Act funding on its police department.

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. The USDA Community Facilities Direct Loan & Grant Program provides “funding to develop essential community facilities in rural areas.” 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.
I. User-Funded Justice

Police, prosecutors, and judges exercise immense discretion to choose which crimes to investigate, prosecute, and punish. 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.

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.

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. 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. 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. 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. And this burden, unmistakably, falls too often on the poorest, most disenfranchised communities, further exacerbating social inequality and dislocation. 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. 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. 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
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. 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. 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. 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. 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. 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.

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.

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. For example, Massachusetts raised more than $12 million in state forfeiture revenue in 2018, all of which went to law enforcement agencies. 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. 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. Massachusetts added nearly $25 million more in forfeiture revenue in 2018 using this program alone.

Given these high rewards, scholarly and legislative attention is increasingly focused on the potential for abuse. 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. 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. States with the highest asset forfeiture revenue rates vary in their crime rates. In 2018, attempts to recover the seized cash, the police file a petition in opposition, claiming that the cash was “abandoned.”

As absurd as these scenarios sound, they are real examples of a ubiquitous practice: civil asset forfeiture. 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. Recovery of seized cash or property is a 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. Even if ultimately successful, the process can take decades. 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. With civil asset forfeiture, by contrast, police can seize property from anyone on a mere suspicion of its connection to an alleged crime. 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. 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. It is unsurprising that few impacted people attempt recovery; only 22 percent of seizures are ever contested.

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

Continued on next page
Civil Asset Forfeiture Rates, 2018

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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). Recent research demonstrates that the elimination of civil asset forfeiture in New Mexico in 2015 did not lead to increases in crime.

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. Minor offenses can also be a pretext to seize major assets like people’s houses. 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. 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. Between 2011 and 2013, half of all cash seizures in Philadelphia were estimated to have involved sums of less than $192. Meanwhile, hiring an attorney to recover seized cash or property in a relatively simple state forfeiture case can cost upwards of $3,000.

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 Administration (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.” 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. 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.

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. 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. 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. 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. 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.

Studies have shown that some police departments increase forfeiture activity in times of fiscal distress or when they anticipate budget cuts. 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...
It’s kind of like pennies from heaven — it gets you a toy or something that you need.”

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.

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.

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.

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. When seizing property, officers are sometimes counseled not to bother with jewelry (too hard to turn into cash) and computers (low value) 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.”

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.”

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Figure 2: Percentage of Funds Forfeited to Law Enforcement, 2020
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 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 threat to�

Racial Disparities in Asset Forfeiture

Multiple studies make it clear that the practice of civil asset forfeiture disproportionately targets communities of color.110 A 2017 Nevada study, for example, found that forfeitures often involved small cash sums taken from minority or low-income neighborhoods.102 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.

Revenue Generation for Government

Despite the difference in purpose between fines and fees, both tempt government with a similar potential revenue stream.108 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.\textsuperscript{127}

While fines and fees make up a small portion of most jurisdictions’ revenues, some local governments, mostly in small towns and cities with smaller taxes bases, have grown dependent on this income, with some relying on it to maintain their solvency.\textsuperscript{128} 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.\textsuperscript{129} A 2021 \textit{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.\textsuperscript{130} 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.\textsuperscript{131} Another analysis found five municipal governments, three of which were in Louisiana, that received more income from fine revenue than from taxes in 2013.\textsuperscript{132} 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.\textsuperscript{133}

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.\textsuperscript{134} 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.\textsuperscript{135} In 2015, $5 million in fines funded 99 percent of the traffic court budget in New Orleans.\textsuperscript{136} 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.\textsuperscript{137}

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.\textsuperscript{138}

**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.\textsuperscript{139} 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.\textsuperscript{140}

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.\textsuperscript{141} 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 and fees — little has changed since then.\textsuperscript{142} 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.\textsuperscript{143}

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.\textsuperscript{144} 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.\textsuperscript{145} 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.”\textsuperscript{146} 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.\textsuperscript{147} 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.”

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. In fact, Ferguson officials let municipal judges know that they considered revenue generation the court’s “primary purpose.” 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. 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.”

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. 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.

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. 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.

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.

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. 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.”

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.

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. 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. 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. Between January and February 2021, three Fenton police officers issued more than 900 citations. 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.

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.

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. 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...
even staff coffee.\textsuperscript{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.\textsuperscript{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.\textsuperscript{161} Several other courts have similarly ruled that judges must be sufficiently separated from the fiscal outcomes of their decisions.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{170} The Lee County, Alabama, District Attorney’s Office garnished the stimulus payments of incarcerated individuals convicted of crimes there.\textsuperscript{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.\textsuperscript{172} Similar stimulus garnishments have been reported in California, Michigan, New York, Oregon, Ohio, and Washington State.\textsuperscript{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.\textsuperscript{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.\textsuperscript{175} An estimated 11 million people have a suspended license due to unpaid debt.\textsuperscript{176} Serious consequences can result from driving with a suspended license. In Florida, a third such conviction can be charged as a felony.\textsuperscript{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.\textsuperscript{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.\textsuperscript{179} The government not only fails to collect potential fine and fee revenue but also must bear the cost of incarcerating the person.\textsuperscript{180}
Like many other aspects of the criminal legal system, this method of revenue generation takes a disproportionate toll on people of color. 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.

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.

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. 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.

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. 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). Most people on this type of supervision are on probation, a court-ordered period of correctional supervision in the community.

Those on probation must comply with state-imposed terms, such as routinely reporting to a supervision offi-
cation can result in being written up for a technical viola-
tion, 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 under-funding, 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.

Brennan Center for Justice

Revenue Over Public Safety
The companies also increase revenue for jurisdictions by more politically popular programs without raising taxes. Private probation allows lawmakers to shift spending to malfeasance, and possibly unconstitutional behavior. Probation companies despite evidence of coercion, shift supervision conditions to increase company profits. Probation sentences, increase fines, and require 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. 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 companies collected $98.6 million in fines and fees for the courts in Georgia with which they held contracts. 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. 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. 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. 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. 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.

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. 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...
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.

GPS monitoring comes with rules including curfews, areas that may not be entered (“exclusion zones”), and requirements for charging the monitoring devices. 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.

In one county in California, young people on monitors were required to abide by 50 restrictions, including avoiding “any social activity.” 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.

Additionally, because of their size, monitors are difficult to wear discreetly, exposing people to social exclusion and causing physical pain. 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. A 2019 study found that many incarcerated Black people viewed electronic monitoring as so punitive that they preferred to remain imprisoned. 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.”

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. 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. 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. 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. 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.” 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.

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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 entrepreneurial 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**

<table>
<thead>
<tr>
<th>STATE</th>
<th>JAIL POPULATION*</th>
<th>NUMBER HELD FOR OTHER AUTHORITIES**</th>
<th>PERCENTAGE HELD FOR OTHER AUTHORITIES**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky</td>
<td>26,190</td>
<td>12,720</td>
<td>49%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>14,340</td>
<td>6,800</td>
<td>47%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>32,560</td>
<td>12,040</td>
<td>37%</td>
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<td>South Carolina</td>
<td>11,470</td>
<td>1,060</td>
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*Budget of Justice Statistics data is reported for all locally operated jails in 45 states and the District of Columbia.

**Source:** Bureau of Justice Statistics (2019).

Continued on next page
**Jail Beds for Rent, 2019**

<table>
<thead>
<tr>
<th>STATE</th>
<th>JAIL POPULATION*</th>
<th>NUMBER HELD FOR OTHER AUTHORITIES**</th>
<th>PERCENTAGE HELD FOR OTHER AUTHORITIES**</th>
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<tr>
<td>Arizona</td>
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</tbody>
</table>

*Source: Bureau of Justice Statistics (2019).*

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**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. Largely due to New York State’s bail reforms, Dutchess County’s jail population decreased by 44 percent between March 2019 and February 2020. 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. In Virginia, Chesterfield County attributed its declining jail population to the success of rehabilitative programs and the rise of court-initiated alternatives to incarceration.

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.

Considering such trends, some sheriffs have jumped into action, renting out excess bed space to help support basic system operations. Jails across the country now take in people from overcrowded state prisons or congested, dilapidated, or decommissioned jails in neighboring counties. 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.

Because the interjurisdictional exchange in custody and detention beds is such a valuable potential source of revenue, most county jails participate in it. 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.

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. 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. 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. 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. 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.
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. 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.

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.” 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. 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.

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.

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

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.

In particular, the promise of trade in people under federal jurisdiction has spurred some counties to build facilities solely intended to serve that market. 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. 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.

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. 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. 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. This arrangement has reportedly produced millions of dollars for the county’s general fund.

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...
their overflow populations, demand could suddenly collapse. 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.

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. 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. 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 allegations of abuse and dismal conditions generated public pressure to end the arrangement. Bondholders and investors will likely be left empty-handed: 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. 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

1. U.S. Immigration and Customs Enforcement
ICE modifies a detention contract with the municipality of Eloy, AZ, to add facilities for immigrant families.

2. Eloy, AZ
Eloy subcontracts with CoreCivic to establish a 2,400-bed detention facility in Texas.

3. CoreCivic
CoreCivic pays Eloy $438,000 annually for serving as intermediary.

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 II, 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 II, 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 II facilities that receive a flat rate rather than a per diem rate, but uses less than half of their capacity. In 5 of those II 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.295 CompStat is now widely used: by 2014, 43 of the 50 most populous cities in the United States were using some form of it.296 Departments that use CompStat share its data at regular group meetings, where managers review crime and clearance rate statistics, including those for individual officers.297 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.298
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. 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. These organizations often see their members’ fortunes — and their own — as dependent on punitive policies, and they push back against reforms. 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. They spend millions each year lobbying for pro-incarceration policies, such as reclassifying crimes to higher grades of severity. 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. 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. 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. In total, from 2000 to 2010, CCPOA contributed just under $32.5 million to campaign committees, political parties, candidates, and ballot measures.

>> Opposition to prison closures. Corrections unions have also opposed prison closures across the nation, claiming that shuttering prisons jeopardizes officer safety. 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. 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.” 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. 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.

>> 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. Similarly, in 2020, CCPOA spent $1 million to support Los Angeles County District Attorney Jackie Lacey in her unsuccessful bid for reelection. 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.
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. 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. 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.’”

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, 1,660 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. Similarly, despite a prohibition in California state law, Los Angeles has had a recurring issue with police quotas that has cost the city millions. 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. 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.

To be sure, traffic enforcement may result in public safety benefits and address civilian concerns. Millions of auto accidents occur every year, and one study found that increased traffic enforcement leads to fewer crashes and related injuries. 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. 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. 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.

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. 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. 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. Police unions, moreover, often attempt to resolve issues with arbitration instead of public-facing lawsuits, preventing transparency and hindering systemic reform.

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.” In 2011 Phillipsburg, New Jersey, implemented a system assigning more than eight tickets or arrests) than the quality of their work.”

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. 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.

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.

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.”

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.” 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.” 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).

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. 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**

<table>
<thead>
<tr>
<th>Pre-lawsuit</th>
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*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.\textsuperscript{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.\textsuperscript{343} Consequences included negative evaluations, unwarranted transfers, denial of sick time, required job counseling, and disparaging comments.\textsuperscript{344} Whittier paid $3 million to settle the case in 2020.\textsuperscript{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.\textsuperscript{346} Officers may rush into making arrests.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{350}

Regardless of whether crime rates are increasing or decreasing, police departments use them to ask for more funding.\textsuperscript{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.\textsuperscript{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 whether they objectively had a reason.\textsuperscript{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.\textsuperscript{354}

When police departments push officers to dole out excessive traffic tickets or municipal violations, minority communities are often hit hardest.\textsuperscript{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.\textsuperscript{356} Without community support and communication, police have a difficult time conducting effective investigations.\textsuperscript{357}

### Prosecutor Performance Metrics

Prosecutors wield virtually unfettered discretion over whom to charge, when, and with what criminal offense.\textsuperscript{358} For many years, line prosecutors were often evaluated according to metrics that incentivize increased enforcement, such as numbers of indictments, trials, and convictions.\textsuperscript{359} And lead prosecutors, who are for the most part elected, often seek community approval by offering up these same faulty metrics.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{364}
State and local prosecutors are similarly pushed to focus on convictions and lengthy sentences. 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. 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.

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. 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. 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. 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.

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. Traditionally, chief prosecutors have run for election or reelection by emphasizing their reputations and track records for incarceration rather than rehabilitation. 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.” 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.

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. Punitive 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.

Prosecutors do not focus on conviction rates only to win votes or soothe the 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. 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.

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. Local prosecutors have rarely been asked to internalize the costs of the prison terms for which they argue. 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. 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. 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.
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 outsize 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.”

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. In rare bipartisan accord, politicians on both sides of the aisle have raised concerns about abuse of civil asset forfeiture. More than two-thirds of states have enacted laws to rein in the practice since 2014. 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.

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.

Maine, Nebraska, New Mexico, and North Carolina have gone as far as legislatively or judicially eliminating civil asset forfeiture in most or all circumstances. 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. 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. 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.

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.

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.

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.”
- 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. 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. 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. 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. 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.”

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. 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. 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. 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. 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.” In 2020 the Common Council of Buffalo, New York, voted to repeal 15 vehicle and traffic fees. 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. Other jurisdictions have focused primarily on forgiving or reducing old debts. 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. Also in 2021, Dane County, Wisconsin, canceled old fines and fees owed to the county jail, totaling nearly $150,000. 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. 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.

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.

**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. 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. 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. And certain conditions that indicate indigence, such as disability, incarceration, or eligibility for government benefits, should trigger a presumption of hardship.

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. 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. In addition, 11 states have codified standards that all courts are required to use to determine ability to pay.
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. 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. Jurisdictions should consider eliminating all outstanding fine debts; as a general rule, fines should be considered uncollectible two years after they are imposed. Notably, studies have found that considering an individual’s ability to pay and adjusting fine amounts accordingly yield much higher rates of collection.

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. 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. 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.

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. 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.

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. 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. People who have finished their term of incarceration should be empowered to participate in their communities by exercising their right to vote.

- **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. 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.

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. In 2021 Oregon repealed a statutory requirement that individuals on community supervision pay supervision fees. St. Paul, Minnesota, eliminated II fees in early 2020, including a $300 probation supervision fee and the $16 daily fee for home electronic monitoring. And in 2021 Baltimore...
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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. 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. 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,
reduce 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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. \textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{457} Bail reform measures can significantly reduce pretrial populations, as demonstrated most recently in New Jersey and New York.\textsuperscript{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. 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. 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. 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. 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.

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. 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.

Reform IGSA contracting practices.

The federal government should institute more robust rules governing IGSAAs. 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. 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 IGSAAs, 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. Acquiring space this way is fast and easy; ICE need not negotiate any new terms, rates, or conditions. Instead, the agency is merely added — often using boilerplate language in a short addendum — to an existing USMS contract. 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 IGSAAs 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 IGSAAs with ICE.

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. 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. 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.

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. 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. For example, Florida’s state 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. 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. Indeed, a new wave of prosecutors has attempted to implement positive policy changes. 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. 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.

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. And diversifying the performance criteria that police and prosecutors are evaluated on can help decrease the pressure put on any single factor.

Reimagining goals and performance metrics allows law enforcement leaders to create clear priorities and incentives to move practices toward a redefined vision. 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.

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. 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. Finally, statutes should expressly prohibit policing for financial gain, in which increased enforcement is meant to address budget concerns. 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.” 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. 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 problem-solving team to develop responses to public safety issues, including non–law enforcement responses.\textsuperscript{496} The team includes community leaders, public health and public works officials, and community organizations.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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. 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. 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.

- **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.
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


5 See also First Step Act of 2018.

6 Heather Schoenfeld, Building the Prison State: Race and the Politics of Mass Incarceration (Chicago: University of Chicago Press, 2018), 211–16 (arguing that the constituencies that helped grow and sustain mass incarceration are not likely to relinquish their stake in it because they believe the business of mass incarceration “sustains livelihoods, grows careers and supports communities”).


9 See, for example, the Violent Crime Control and Law Enforcement Act of 1994; and U.S. Department of Justice, Bureau of Justice Assistance, Report to Congress: Violent Offender Incarceration, 6.


22 Travis, Western, and Redburn, The Growth of Incarceration in the United States, 81.


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https://www.nytimes.com/2009/02/06/us/politics/06cops.html


39  Makowsky, A Proposal to End Regressive Taxation. 6


41  Randy Travis, “Driving Over the Holidays? Here Are the GA Cities that Rely the Most on Ticket Money,” FOX5 Atlanta, November 25, 2019, https://www.fox5atlanta.com/news/driving-over-the-holidays-here-are-the-ga-cities-that-rely-the-most-on-ticket-money [https://perma.cc/L54V-4343] (finding that Darien, Georgia, with a budget of $4.1 million, collected about $1.9 million from fines and fees alone).


45  Alicia Bannon, Rebekah Diller, and Mitali Nagrecha, Criminal Justice Debt: A Barrier to Reentry, Brennan Center for Justice, 2010, 27, https://www.brennancenter.org/sites/default/files/2019-08/Report_CriminalJustice-Debt-%20A-Banner-Reentry.pdf [https://perma.cc/VM4H-LA30] (describing how “from seeking and maintaining employment and housing, to obtaining public benefits, to meeting financial obligations such as child support, to exercising the right to vote, criminal justice debt is a barrier to individuals seeking to rebuild their lives.”)


47  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.”).

who assert that ‘law abiding citizens don’t carry this much cash,’ even of individuals being relieved of their cash by law enforcement officers only probable cause to seize cash, sometimes the existence of the property as probable cause—claiming, for example, that an amount of cash in the possession of a particular person must be drug money, even in the absence of drugs or other evidence of criminal activity. David Pimentel, “Civil Asset Forfeiture Abuses: Can State Legislation Solve the Problem?”, George Mason Law Review 25, no. 1 (2017): 174–219, 212–13. https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=1340&context=faculty_scholarship

54 Many places used a “preponderance of the evidence” standard, meaning that property may be seized if it is more likely than not connected to a crime. However, in practice, the standard of proof often used for civil forfeiture is lower: probable cause. Probable cause can usually be established simply by filing a complaint. Courts also allow police to use hearsay, circumstantial evidence, and information from informants, even if incorrect. Sometimes police may use the mere existence of the property as probable cause—claiming, for example, that an amount of cash in the possession of a particular person must be drug money, even in the absence of drugs or other evidence of criminal activity. David Pimentel, “Civil Asset Forfeiture Abuses: Can State Legislation Solve the Problem?”, George Mason Law Review 25, no. 1 (2017): 174–219, 212–13. https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=1340&context=faculty_scholarship

55 Doyle, Crime and Forfeiture (explaining some of the absurd case names in forfeiture proceedings, such as United States v. One Pearl Necklace, Nebraska v. One 1970 2-Door Sedan Rambler, or State of Texas v. $6,037).

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/KA4E-KUSS].


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/Y7NG-VZV2] (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 months Ms. Young was prohibited from living in her home and was without her vehicle).


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

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-afms/file/794696/download [https://perma.cc/T8SQ-AZPP].


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/A2YZ-G4HP] (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 [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. Brennan Center for Justice Revenue Over Public Safety 47

(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.


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/philly-civil-forfeiture-program-settlement-consent-decree-larry-krasner-seth-williams-mayor-kenney-20180918.html [https://perma.cc/7TV4-WZ2B].


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.”
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).


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


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


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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-TV4C). 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.”).


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 Dimed 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=beil] (https://perma.cc/6Q72-1WJD) (explaining “dis 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/M051-HFX3) (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/C58S-HHRD).


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).


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.”


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 revenue 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://nsc-contentcdn.dls.org.org/digital/collection/financial/id/198/ [https://perma.cc/2ZSU-B3HW] (“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 Anreeta 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/pdfs/files/Digitization/125084NCJRS.pdf [https://perma.cc/8J86-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/8BFX-8DYU] (“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.”).


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


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 Sanctions in the Criminal Justice System,” American Economic Review 99, no. 1 (March 2009): 509–27, 510, https://static1.squarespace.com/5329e895e4b09fd4786211a3/t/53eb74ace4b085c1278e6dd5/140793724895/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.”).

135 Policy 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 Sanctions in the Criminal Justice System,” American Economic Review 99, no. 1 (March 2009): 509–27, 510, https://static1.squarespace.com/5329e895e4b09fd4786211a3/t/53eb74ace4b085c1278e6dd5/140793724895/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.”).
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/K23B-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/10.1177/1078037187197775 [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).


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%20Costs%20of%20Florida%27s-Criminal%20Justice%20Fees.pdf [https://perma.cc/H6SH-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 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.’”).


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/2WW2-ZWN]. 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.”).


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 39 percent of property crime offenders were fined, typically with community service or treatment conditions attached.”); and Diller, The Hidden Costs of Florida’s Criminal
Pagedale residents could be ticketed and fined for: having


148 Revenue Over Public Safety

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Justice, accessed November 16, 2021, ![image](https://arresttrends.vera.org/)

149 “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.)

150 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.”).


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).


154 Daryl James, “How Louisiana Perfected the Speed Trap,” Reason, July 19, 2021, ![image](https://reason.com/2021/07/19/how-louisiana-perfected-the-speed-trap/)


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, ![image](https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor).

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).


161 Cain v. White, 937 F.3d 446. See also “Litigation: Cain v. New Orleans,” Fines and Fees Justice Center, August 23, 2019, ![image](https://finesandfeesjusticecenter.org/articles/cain-v-new-orleans/)

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, ![image](https://www.vea.org/downloads/publications/paid-in-full-report.pdf).

163 Joseph Shapiro, “As Court Fees Rise, the Poor Are Paying the Price,” NPR, May 19, 2014, ![image](https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor).
would personally benefit as a result of exercising that power. . . . See, e.g., Connolly 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 tempting 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 currying 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 an average 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, 33; 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.brennanco.org/sites/default/files/2020-09/EconomicimpactReport.pdf [https://perma.cc/44LY-P866] (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 Sew 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, $2.7 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://finessandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BHI.pdf [https://perma.cc/669E-T4WA]. Many who owe fines or fines turn to family members and friends for financial support in the face of mounting court debt. Further depleting the family resources are 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 Fines 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.’ ”).


168 Fair and Just Prosecution, “Fines, Fees, and the Poverty Penalty,” Tides Center, 2017, 2–3, https://fairandjustprosecution.org/wp-content/uploads/2017/11/FJPBFines_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/L9D9-UMBP] (In a survey of almost 1,000 Alabamians who had been justice-involved or had helped pay another’s court debts, 94% expressed concern. . . . “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.


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

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

175 Shapiro, “As Court Fees Rise.”


180 Fowler et al., Pay or Stay.


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


190 CSG, “Confined and Costly.”


193 See, for example, Ga. Comp. R. & Regs 503-1 (2021) (establishing the County and Municipal Probation Advisory Council of Georgia, to “promulgate rules and regulations regarding contracts or agreements for the provision of probation services” as well as establish and maintain standards for those services).

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201  Human Rights Watch, Profiting from Probation, 20–21, 43; and Deposition of Mark Contestable at 27, Jacob Martin Glover v. Sentinel Offender Services, Inc., No. 2012-cv-0811 (Superior Court of Columbia County, Georgia, 2013).

202  Human Rights Watch, Profiting from Probation, 34–35.

203  Human Rights Watch, Profiting from Probation, 49–53.


205  Human Rights Watch, Profiting from Probation, 51.


208  Human Rights Watch, Profiting from Probation, 43.

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.


212  Florida House Bill 310 and Senate Bill 367 (2015). Among other limitations, the bills curtailed private companies’ ability to threaten people on probation with jail and limited the fees they could collect from people who were on probation because of their inability to pay the original fines and fees owed to the court. Lorelei Laird, “Private Probation Company Pulls Out of Georgia, Saying It Can No Longer Make a Profit,” ABA Journal, April 17, 2017, https://www.abajournal.com/news/article/private-probation_company_pulls_out_of Georgia_saying_it_can_no_longer_make [https://perma.cc/NBRW-9GX8].


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


225 Kofman, “Digital Jail.”


227 Kofman, “Digital Jail.” Not only does electronic monitoring create real hurdles for wearers, but it also can give the appearance that people are in violation when they are not. Electronic monitoring devices in California were found to die early, crack, and misreport locations by as much as three miles. This means even those who follow the onerous rules for electronic monitoring may be accused of rule-breaking and incarcerated. Paige St. John, “Parolee GPS Ankle Monitors: Major Flaws Found in Vendor’s System,” Los Angeles Times, March 31, 2017, https://www.latimes.com/local/lanow/la-xpm-local-news-2017-mar-31-la-me-i-major-flaws-found-in-parolee-gps-monitoring-devices-20130331-story.html.

228 Kofman, “Digital Jail.”


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-XAMZ]; and Zeng and Minton, Jail Inmates in 2019, 13.


239 See characterization by Justice Andrew Mead of the Supreme Judicial Court of Maine, in dissent. He noted that Somerset County, Maine, had intentionally overbuilt its jail in order to recoup construction costs by using its surplus capacity to house federal detainees, calling it a “quasi-private-prison scheme that is income-generating for the county.” See Somerset Cnty, v. Dep’t. of Corr., 133 A.3d 1006, 1008 (Me. 2016).


245 From the pandemic’s onset in March 2020 to May 2020, the average daily jail population in Orange County’s jails declined to 2,826, under half of the average daily population preceding the pandemic. By December 2020, the jails’ population had rebounded to 3,628, still well below the maximum capacity of 6,159. For more details on population changes, see Orange County Sheriff’s Department, “Orange County Jail COVID-19 Numbers Increase, Mitigation Efforts Continue,” press release, December 10, 2020, [https://www.ocsheriff.gov/sites/ocsdf/files/2020-12/20-12-10%20COVID19%20OC%20Jails_0.pdf](https://www.ocsheriff.gov/sites/ocsdf/files/2020-12/20-12-10%20COVID19%20OC%20Jails_0.pdf); and Littman, “Jails, Sheriffs, and Carceral Policymaking,” 861, 893.

246 For example, in 2017 La Plata County, Colorado, committed to more than doubling the number of beds it rents to the state Department of Corrections, increasing the annual profits from that program from $369,000 to $553,000 as a “temporary patch to boost county income.” “La Plata County Sheriff to Rent Jail Beds to Boost Revenue,” *Durango Herald*, January 8, 2017, [https://www.durangoherald.com/articles/la-plata-county-sheriff-to-rent-jail-beds-to-boost-revenue/](https://www.durangoherald.com/articles/la-plata-county-sheriff-to-rent-jail-beds-to-boost-revenue/). For discussions about the economic incentives driving the jail-bed market, see Kang-Brown and Subramanian, *Out of Sight*, 13–15, 21–23; Mai et al., *Broken Ground*, 35–37; and Littman, “Jails, Sheriffs, and Carceral Policymaking,” 861, 893.

247 For example, in 2019 Louisiana’s state department of corrections sent more than half of its state-sentenced population to local jails. Carson, *Prisoners in 2019*, 26. The exchange of people also occurs between county jails, as in Pender County, North Carolina, where the old jail is so congested that the county boards people in neighboring New Hanover, Brunswick, Sampson, and Onslow Counties at an annual cost of $525,000. Johanna F. Still, “Pender County’s Jail is Overcrowded and Aging, There Are No Plans to Replace It,” *Port City Daily*, July 29, 2018, [https://portcitydaily.com/local-news/2018/07/29/pender-countys-jail-is-overcrowded-and-aging-there-are-no-plans-to-replace-it/](https://portcitydaily.com/local-news/2018/07/29/pender-countys-jail-is-overcrowded-and-aging-there-are-no-plans-to-replace-it/).

248 See generally Albert, *State Prisoners in County Jails*.


264 See Mai et al., Broken Ground, 20—21 (discussing how in at least 20 percent of the counties examined, “stakeholders made public arguments in support of jail expansion based on the possibility of additional revenue”).


272 Bergen Capital, $33,000,000 Glades Correctional Development Corporation First Mortgage Revenue Bonds, March 14, 2006, https://emma.msrb.org/MS245069-MS220377-MD428886.pdf [https://perma.cc/7CE8-5JRB].


275 In 2021 ICE had contracts or agreements in place with a total of 233 over-72-hour detention facilities, with space in 133 of these facilities (about 57 percent) acquired through IGSA. After IGSA, detention space was most commonly acquired through ICE joining, or “riding,” U.S. Marshals Service contracts and agreements (36 percent of facilities), and least frequently through contracts (6 percent). U.S. Government Accountability Office, Immigration Detention: Actions Needed, 11. See also Jameson, “ICE Detention Through U.S. Marshals Agreements,” 281 (detailing how the largest share of ICE detainees are held through IGSA).


278 Pursuant to 8 U.S.C. § 1103(a)(11)(A) (2018), DHS may enter into agreements with state or local governments for “housing, care, and security of persons detained by the Service pursuant to federal law.” ICE has no legal requirement to solicit competing bids for an IGSA because the provision serves as an exception to the Competition in Contracting Act requirement for full and open competition. Another method for avoiding open government laws is to use riders on existing contracts. See Government Accountability Office, Immigration Detention: Actions Needed, 13.

279 ICE can acquire beds in one to two weeks through riders; or in two to weeks months using IGSAs. In contrast, procurement


For a description of these programs, see USMS, FY 2022 Performance Budget, 6–7 (reporting that the USMS has 22 active Cooperative Agreement Program agreements).


Rose, “Beyond the Border.”


See generally Ossei-Owusu, “Police Quotas.”


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


[300] The initiative passed with more than 70 percent of the vote. Eisen, Inside Private Prisons, 102–03. People with two or more previous serious or violent felony convictions on their records were sentenced to 25 years to life behind bars after any new felony conviction, not just a serious or violent felony. Proposition 184 (Cal. 1994).


314 Bureau of Justice Assistance, CompStat: Its Origins, Evolution, and Future, 2 (“The most widely recognized element of CompStat is its regularly occurring meetings where department executives and officers discuss and analyze crime problems and the strategies used to address those problems.”).

315 John A. Ettorre and Eli B. Silverman, The Crime Numbers Game: Management by Manipulation (Boca Raton, FL: CRC Press, Taylor & Francis Group, 2012), 191–92 (“Police managers have been quick to jump on the Compstat bandwagon because of these apparent crime control properties. To the extent that may be true, we applaud Compstat as an innovation; however, its adoption is often coupled with little or no understanding of its dysfunctional consequences.”).


Residents are concerned about traffic issues: a 2021 analysis of millions of 911 calls for service to nine U.S. agencies found the most common calls (nearly 17 percent) were for traffic-related events. Cynthia Lum et al., “Can We Really Defund the Police? A Nine-Agency Study of Police Response to Calls for Service,” Police Quarterly, July 22, 2021, 11. https://doi.org/10.1177/10944281211035002.


For example, in Fraternal Order of Police, Lodge J 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 15 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.

Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing.”

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.’”).


Ossei-Owusu, “Race and the Tragedy of Quota-Based Policing.”


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.”


Rocha, “Whittier Police Officers Sue.”


Ossei-Owusu, “Police Quotas,” 577.

Ossei-Owusu, “Police Quotas,” 578, n.297; and Eternio and Silverman, The Crime Numbers Game, 11 (“False arrests have been identified as the result of arrests quotas or, for traffic officers, ticket quotas.”).

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 Unfair?,” California Law Review 106, no. 1 (2018): 45–90, 53, https://29qish1lqx5q2k5d7b491joo-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/02Baude-33.pdf [https://perma.cc/35FJ-E6EN].

Barry L. Lovejoy, “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.


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-L52P] (“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 unchecked racial bias. The ability of the police to manipulate recorded crime is now recognized and identified in the literature.

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.opp.gov/pdfs/files/1nij/grants/240335.pdf [https://perma.cc/ZG4Z-PB46].


364 See Medwed, “The Zeal Deal,” 152.


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 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.


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 Businesses Influence the Price of Prisons* (New York: Common Cause, 2021), 7, 2010–2015, Vera Institute of Justice, [https://www Vera.org/downloads/publications/ the-price-of-prisons-2015-state-spending-trends.pdf](https://www. Vera.org/downloads/publications/ the-price-of-prisons-2015-state-spending-trends.pdf) [https://perma.cc/W6ZA-PRX6].


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-d4c5-11eb-9129-e96c9e843c6_story.html](https://www.washingtonpost.com/local/virginia-politics/virginia-prosecutors-diversion-funding/2021/07/06/4a17691c-d4c5-11eb-9129-e96c9e843c6_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.”).


380 Peter Wagner and Bernadette Rabuy, “*Following the Money of Mass Incarceration,*” *Prison Policy Initiative*, January 25, 2017, [https://perma.cc/SQA5-KGZM](https://perma.cc/SQA5-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).


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) (L. Thomas concurring).

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-forfeiture [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/JP36-3G2D].


388 Pimentel, “Civil Asset Forfeiture Abuses,” 190–91, 195–204. L.D. 1521, H.P. 1125, 130Th Leg., 1St Special Sess. (Me. 2021); L.B. 1105, 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].

389 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.

390 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.

391 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.

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 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.
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.”


406 Board of Supervisors of Contra Costa County, Cal., Resolution No. 2019/522 (September 17, 2019), http://44.166.146.245/docs/2019/BOS/20190917_1234_3824_BQ_Criminal%20Justice%20Adult%20Fees.pdf [https://perma.cc/VL37-4PCU].


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: A Guide to Pay,” Iowa Law Review 103, no. 1 (2017): 53–112, 56–57, 105–6; https://ir.i law.uiowa.edu/assets/Uploads/ILR-103-1-Colgan.pdf [https://perma.cc/EG9Z-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://laws.justia.com/ laws/oklahoma/2020/title/12/section/22-991Av2 [https://perma.cc/3NT7-QHEQ]. 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 Pinsky, “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].

Establishing a Day-Fines Pilot
First Steps Toward More Equitable Fines
Housing and Urban Development’s “very low-income” limit or similar experiencing homelessness; full-time students; or those whose 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 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.”


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

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


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.


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

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


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


438 Prather, “Ramsey County Eliminates Nearly $700,000.”


441 Office of Los Angeles County Supervisor Hilda Solis, “LA County to Eliminate Criminal Justice Fees,” press release, February 18, 2020, https://hildalsolis.org/la-county-to-eliminate-criminal-
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/.


454 Littman, “Jails, Sheriffs, and Carceral Policymaking,” 84 (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/.


463  Secor, Altman, and Cullen, A Better Way, 10–11.


467  At the end of fiscal year 2019, 17 percent of people in ICE detention were held under such agreements. See Accountability Office. Immigration Detention: Actions Needed, 1.


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 Cajon 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”).


However, in drafting new laws curtailing localities from participating in the custody bed market through IGSSAs, 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/dataset/opinions/2021/10/05/20-56172.pdf [https://perma.cc/6CL7-DTSY].

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 IGSSAs 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-corrupts-california-state-wants-out/2589589001/ [https://perma.cc/Y9JF-ZEAS].


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.


“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.”


69 Brennan Center for Justice Revenue Over Public Safety
Berman, “These Prosecutors Won Office Vowing to Fight the System.”


494 International Association of Chiefs of Police, “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” April 2016, https://www.theiacp.org/sites/default/files/all/ij/?article=227%20context=facpubs [https://perma.cc/7P8M-CHEA].


496 Jeffrey Hastings, “Manchester Announces Collaborative Initiative with Other Agencies;” Bedford, NH, Patch, September 15,


Miller, “Ending Prosecutor’s Moral Hazard.”

Eisen and Chettiar, Criminal Justice: An Election Agenda, 25.

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