

BRENNAN

CENTER

FOR JUSTICE

THE HIDDEN COSTS
OF FLORIDA'S
CRIMINAL JUSTICE FEES

Rebekah Diller

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EXECUTIVE SUMMARY

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

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

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

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

KEY FINDINGS

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

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

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

RECOMMENDATIONS

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

Immediate steps:

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

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

Longer-term reforms:

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

I. INTRODUCTION

Florida funds its criminal justice system, in part, with user fees from those who pass through the system. Reliance on these fees may help relieve government of tough budget choices, but it extracts a price. The price is particularly high when the “users” are criminal defendants who are likely to be indigent, and therefore unable to pay, and who may be facing multiple barriers to reentering society.

This report tracks Florida’s increasing dependence on criminal justice fees, examines methods used to collect those fees, and discusses the implications for those obligated to pay and for the public at large. As the economic downturn strains budgets for even the more well-off, and unemployment levels hover around 10 percent,¹ it is time to question whether relying on the collection of fees from those with very limited means is a sensible way to fund essential state functions.

It is time to question whether relying on the collection of fees from those with very limited means is a sensible way to fund essential state functions.

Florida’s increasing reliance on fee revenue coincides with rising concern about policies that affect the massive numbers of Floridians with criminal convictions and, in particular, those who have been incarcerated and are transitioning to life outside prison. Florida has the third-largest prison population of any state.²

Nearly 90 percent of the more than 100,000 people currently in Florida’s state prisons³ will be released, and, if past trends persist, nearly one-third will be re-incarcerated for a new crime.⁴ Those in Florida prisons – and in prisons throughout the country – are largely indigent and face considerable difficulties as they attempt to transition from prison back into the general population. On average, Florida state prison inmates read at a sixth grade level.⁵ Nearly 70 percent read below the level necessary to begin studying for a GED, ninth grade.⁶ Low education rates correlate to low incomes.⁷

Furthering inhibiting reentry prospects, a large portion of the prison population suffers from physical and mental illnesses that hinder their employment chances – and their ability to pay criminal justice debts – after release. More than 60 percent of state prison inmates in Florida have a history of substance abuse.⁸ Treatment for substance abuse is in short supply: as of 2007, only 27 of the 123 Florida Department of Corrections (“FDC”) facilities had treatment programs.⁹ Available treatment for mental illness is in similarly short supply.

Court-imposed fees and fines affect not only Floridians sentenced to state prison, but also those convicted of misdemeanors and criminal traffic violations, many of whom are sentenced to county or court probation on the condition that they pay legal financial obligations. It is hard to gather definitive statistics on this group, but it is clearly a significant number of people. In 2008, the Florida Department of Highway Safety and Motor Vehicles reported 247,115 convictions for criminal traffic violations.¹⁰ For most people, a traffic violation fine is a nuisance, but not a significant cost. For low-income individuals, however, one ticket for driving with a suspended license can trigger a vicious cycle of court-ordered fees, followed by failure to pay, which can lead to more fees, more unlicensed driving, and sometimes incarceration.

II. GROWING USE OF LEGAL FINANCIAL OBLIGATIONS

From 1996 through 2007, the Florida Legislature created or authorized more than 20 new categories of legal financial obligations (“LFOs”) – surcharges, fees, and other monetary obligations – related to criminal cases and violations. Many of these surcharges and fees have been increased during the last two years. These LFOs range from an application fee for the constitutionally required public defender – a fee that applies to those who have merely been charged with, and not yet convicted of, any crime – to a fee repaying the costs of one’s prosecution. These fees have been added continuously without any apparent consideration of their cumulative impacts on reentry or recidivism.

Legislative Action Expanding Court-Related Debt (1997-2009)¹¹

1996	<p>\$40 application fee for public defender created.¹²</p> <p>\$3 cost assessed against anyone convicted of a crime; funds used to pay for teen court.¹³</p> <p>Authorized counties to create \$20-\$50 court cost to fund local crime prevention.¹⁴</p> <p>Authorized local jails to charge inmates for subsistence costs.¹⁵</p>
1997	<p>\$135 court cost for driving under the influence created.¹⁶</p> <p>\$100 cost for controlled substance violation to fund crime labs created.¹⁷</p> <p>Additional surcharge of up to the amount of underlying fine for drug and alcohol offenses authorized to fund drug and alcohol treatment and education.¹⁸</p>
1998	<p>\$20 crime stoppers fund surcharge added.¹⁹</p>
1999	<p>None added.</p>
2000	<p>None added.</p>
2001	<p>\$201 surcharge imposed on assault, battery, domestic violence and other convictions to fund domestic violence programs.²⁰</p>
2002	<p>Mandated restitution in cases of theft of more than \$1000 from someone sixty-five or older.²¹</p> <p>\$135 court cost expanded to apply to those charged with “boating under the influence.”²²</p>
2003	<p>\$151 surcharge imposed on assault, battery, and other convictions to fund rape crisis centers.²³</p> <p>Eliminated ability of court to waive \$50 offender fee.²⁴</p> <p>Increased service charge for getting driver’s license reinstated after a period of revocation from \$25 to up to \$37.50.²⁵</p>
2004	<p>\$101 court cost added for crimes against minors.²⁶</p> <p>\$15 surcharge imposed for criminal traffic violations.²⁷</p> <p>Authorized counties to impose up to \$65 in court costs for all those convicted of crimes or criminal traffic offenses.²⁸</p> <p>\$40 fee imposed for contesting alleged violation of local ordinances in county court.²⁹</p> <p>Increased maximum service charge for getting driver’s license reinstated after a period of revocation to \$47.50 from \$37.50.³⁰</p>

2005	<p>\$10 fee added for alleged violation of local ordinances processed in county court, to be applied when not contesting violation.³¹</p> <p>Authorized certain local governments to impose non-waivable \$15 surcharge for criminal traffic violations.³²</p> <p>Authorized certain local governments to impose \$85 local surcharge for all offenses.³³</p>
2006	<p>Created discretionary restitution for damage or loss caused by a juvenile's offense.³⁴</p>
2007	<p>Mandatory restitution imposed for motor vehicle crashes that result in injury or death.³⁵</p> <p>\$3 surcharge imposed for all criminal traffic offenses and noncriminal traffic violations.³⁶</p>
2008	<p>Increased application fee for public defender to \$50 from \$40.³⁷</p> <p>Increased to \$60 from \$50 court cost for misdemeanors and criminal traffic offenses; to \$225 from \$200 court cost for felonies.³⁸</p> <p>Required costs of prosecution (minimum \$50 for misdemeanors, \$100 for felonies) to be imposed on convicted persons regardless of ability to pay.³⁹</p> <p>Set minimum recoupment fees for persons who use public defender at \$50 for misdemeanors, \$100 for felonies, and mandated recoupment notwithstanding defendant's present ability to pay.⁴⁰</p>
2009	<p>Increased court cost for crimes against minors to \$151 from \$101.⁴¹</p> <p>Increased authorization for local surcharge for criminal traffic violations to \$30 from \$15.⁴²</p> <p>Increased service charge for getting driver's license reinstated after revocation to \$60 from \$47.50.⁴³</p> <p>Made it mandatory for clerks to refer fees, service charges, fines, court costs, and certain liens that remain unpaid after 90 days to a private attorney or collection agent.⁴⁴</p>

A. Florida Law Produces a Confusing and Broad Range of LFOs

We provide a chart in the Appendix that shows the dizzying breadth of Florida's legally authorized, ever-expanding list of LFOs. As the chart makes clear, Florida imposes a vast number of LFOs on criminal defendants as they move through the criminal justice system. These LFOs generally fall into three distinct categories: fines, restitution, or "user fees." The last is the most rapidly expanding category and is used to generate revenue for the state.

Fines are imposed by the court as part of the judgment and sentence and are used to punish convicted offenders. Pursuant to statute, fines correlate, generally, to the severity of the crime involved. Historically, the bulk of the fines collected were deposited into accounts that circuit clerks used to finance their operations. But, recent legislative changes centralized oversight under the state's Justice Administrative Commission and created the general "Clerks of the Court Trust Fund."⁴⁵

Restitution requirements differ from fines in that they are intended to compensate for costs incurred as a result of the crime.⁴⁶ Restitution can total in the thousands of dollars and, for those against whom it is assessed, it is often the single, largest financial obligation. Payment of restitution typically becomes a condition of probation (or other supervision) and takes precedence over almost all other financial obligations. Full payment of restitution is also a prerequisite for the restoration of civil rights, which include the right to vote, serve on a jury, and obtain a wide range of occupational licenses that can lead to steady work.⁴⁷ The restitution requirement has proved a major impediment to the operation of what was intended to be an automatic

process to restore the civil rights of non-violent offenders: a 2007 Florida Department of Corrections analysis of 80,000 individual cases awaiting rights restoration showed that nearly 40 percent would be ineligible due to unpaid restitution.⁴⁸

“User fees” comprise the fastest growing and largest category of LFOs. Some are authorized by statute to finance specific court costs; others may be imposed by counties; still others are imposed for particular offenses and revenue is deposited in designated state trust funds. The state justifies these fees on the grounds that it needs the funds involved to adjudicate individuals’ cases and administer punishments; however, at times, the revenue collected goes toward unrelated state functions. Currently, Florida’s “user fees” include a fee to apply for one’s constitutionally mandated public defender, fees to reimburse the costs of one’s prosecution, fees for the costs of one’s public defense, and numerous other court costs. Fees authorized to recoup the costs of punishment include room and board costs, fees for medical care, probation supervision fees, substance abuse treatment costs, and the costs for other conditions of probation, such as electronic monitoring and urinalysis. In addition, many private companies that provide treatment services to probationers charge fees for their services, attendance at which is required as a condition of probation.

Currently, Florida’s “user fees” include a fee to apply for a constitutionally mandated public defender. Florida does not waive this fee for the indigent.

B. Florida Has Eliminated Exemptions Traditionally Granted to Those Who Cannot Afford to Pay

As the state has become more reliant on fees, it has eliminated most exemptions for those unable to pay. In recent years, the Legislature mandated that defendants pay the costs of their prosecution and public defense, regardless of their ability to pay.

The lack of exemptions for the indigent raises constitutional concerns. Florida’s Supreme Court has ruled that fees may be imposed initially, regardless of ability to pay, but that the state must make the determination of ability to pay prior to collection.⁴⁹ However, as a practical matter, fees are imposed at sentencing and collection typically commences without further opportunity for a judicial determination of ability to pay.

Nor does Florida waive the \$50 public defender application fee for the indigent.⁵⁰ This practice, too, raises serious constitutional concerns, is out of step with practice in other states, and violates American Bar Association guidelines.⁵¹ Although a number of other states charge application fees for public defenders, Florida is one of only two states of which we are aware (the other being North Carolina) that do not include an explicit waiver of the fee if a defendant is found to be indigent.⁵² Instead, if a defendant cannot pay the fee, the statute provides that the trial court will assess the fee as part of sentencing or as a condition of probation.⁵³

The United States Supreme Court has ruled that a public defender application fee can be constitutionally permissible, but only if the law establishing it is carefully designed to reach only those defendants who are able to pay the fee and not those who would suffer a “manifest hardship” as a result of it.⁵⁴ In 2004, Minnesota’s Supreme Court struck down a fee similar to Florida’s because it failed to include a waiver provision.⁵⁵

Yet, in Florida, the law remains on the books and provides no opportunity for waiver. Indeed, there was even talk in the Legislature in January 2010 of further raising the fee.

As a result of the lack of waivers for the indigent, communities invest significant resources pursuing debts that will never be collected. Statewide performance standards implicitly acknowledge as much, expecting that only 9 percent of the LFOs assessed in Circuit Criminal cases (those involving felonies) will be collected.⁵⁶ However, as described further *infra*, even when the money is never seen by the court system, collection efforts hobble the chance that persons with convictions can successfully reenter society and avoid reoffending.

Finally, even when the Legislature has authorized exemptions for those unable to pay, there is evidence that such exemptions are not enforced fully in practice. For example, individuals who are on probation or under other forms of supervision are required to pay a monthly fee – generally \$103.72 for probationers and \$124.71 for those in “community control” supervision.⁵⁷ The Department of Corrections is authorized to exempt, fully or partially, those who are unable to pay because of disability, inability to obtain a job or other reasons.⁵⁸ However, the general practice is to provide only partial exemptions by lowering the monthly rate to \$50 rather than providing full exemptions.⁵⁹

C. LFOs Sometimes Subsidize Other Government Functions, Including General Revenue

The Legislature has directed that some of the revenue collected through these LFOs be used to finance state functions related, in some way, to the underlying offense. However, it also created LFOs to cover state functions wholly unrelated to the underlying offense. In these instances, money is collected ostensibly to fund a particular government function but, in fact, used to subsidize another. This converts the charge into something that is closer to a tax than to a true “user fee.”

For example, the court imposes a \$135 fee on those who drive a boat under the influence, but not a single penny of this sum goes to the courts. Rather the legislature directs that the money be divided between an emergency medical services trust fund, the statewide crime lab system, and a brain and spinal cord injury rehabilitation trust fund.⁶⁰ The mandatory \$500 penalty imposed on those who solicit prostitution is another example. The \$500 collected for this offense is used for the “sole purpose of paying the administrative costs of treatment-based drug court programs.”⁶¹

To be sure, all of these programs are worthy. However, it is questionable whether criminal defendants are the optimal funding source for these programs when the law does not include exemptions for the indigent.

Some fees go directly to the state’s general revenue fund to subsidize the state’s overall budget. These include the fees paid to the Department of Corrections for supervision of persons on probation and other forms of supervision.⁶² Again, such fees function more like a tax than a user fee.

D. Increasing Pressure on Courts to Raise Funds

The rising number of LFOs corresponds to the court system's increasing reliance on LFOs to make ends meet. Florida has no personal income tax⁶³ and relies on the state sales tax⁶⁴ for more than three-quarters of its revenue.⁶⁵ From October 2007 to September 2008, court clerks collected \$885.5 million, of which \$180.2 million, or 20 percent, was collected from criminal cases in the circuit and county courts.⁶⁶

In 1998, Florida voters approved a state constitutional revision that shifted responsibility for funding the state court system from the counties to the state. "Revision 7" to Article V of the Florida Constitution explicitly requires that clerks' offices for county and circuit courts be funded by court fees and filing costs.⁶⁷ Until last year, clerks could draw directly on fee and fine revenue to fund their budgets directly.⁶⁸ But now, as a result of 2009 legislative changes designed to increase state oversight of clerk budgets, 90 percent of all court-related fines, fees, service charges, and costs collected by court clerks must be deposited into the Clerks of the Court Trust Fund within the state's Justice Administrative Commission. The remaining 10 percent of all court-related fines may be used by the clerk for operational needs and program enhancements.⁶⁹

However, increased state oversight is likely to result in increased pressure to collect. Under the amended provisions, each clerk of court must submit a budget request to the state Clerk of Court Operations Corporation ("CCOC") – a legislatively created entity that oversees clerk operations under state oversight.⁷⁰ Those budget requests must include a projection of all court-related fees that will be collected.⁷¹ 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.⁷²

The CCOC also sets performance standards to measure clerks' success in collecting fee revenue.⁷³ Collection rates in most civil cases are expected to be quite high, 90 percent.⁷⁴ However, expected collection rates for criminal cases are much lower. Misdemeanors are supposed to yield 40 percent collection rates. The expected rate for felony and juvenile cases is a mere 9 percent, an acknowledgement of how hard it is to collect from these groups.

The CCOC also examines the expenditures of clerks' offices but does not collect data on how much it costs to collect various fees. It would be particularly valuable to learn how much money clerks' offices spend to collect fees from juveniles and those convicted of felonies. There is a clear human toll exacted in connection with the imposition of debt on these groups and the collection rates are low; given this, data on *cost* of fee collection broken down by these categories would shed light on the question of whether it is cost-effective to collect from these groups at all.

Structural reliance on fees to fund court operations goes against best practices recommended by the American Bar Association, the National Center for State Courts, and other justice experts, who have cautioned against relying on fees to create self-supporting court operations. Chief among these concerns are the facts that dependence on court fees interferes with the judiciary's independent constitutional role, diverts the courts' attention from their essential functions, and threatens the impartiality of judges and other court personnel with personal or institutional, pecuniary incentives.⁷⁵

State Attorney Conditions Plea Bargains on Payment of Fees

The heavy reliance on fees also creates incentives for players in the justice system to take collection matters into their own hands.

In the Second Judicial Circuit, the state attorney's office has instituted a practice of collecting the costs of prosecution fee – typically \$50 for a misdemeanor and \$100 for a felony – directly from defendants as a condition of entering plea bargains, and then keeping the funds for itself. From the summer of 2008 onward, notes from staff meetings reveal that the state attorney advised staff to request the fee directly from defendants so that all the monies paid would go directly into the state attorney's office.⁷⁶

State law, however, provides that payments in any court case are to be collected and dispensed by the court clerk and then distributed according to priorities set by the Legislature.⁷⁷ For example, state law requires that the clerk “assign the first \$50 of any fees or costs paid by an indigent person” as payment of the public defender application fee, which funds indigent defense.⁷⁸ Thus, by bypassing the clerk's office, the state attorney was able to capture the first \$50 or \$100 collected from each defendant rather than dividing the revenue among other legislatively set priorities.

Additionally, when the state attorney's office was unable to collect fees up-front from defendants, prosecutors would request that the court order costs of prosecution fees be paid within a certain period of time regardless of the defendant's ability to pay.

Linking plea agreements to the defendant's payment of fees raises serious concerns about the use of prosecutorial discretion to raise funds rather than further justice and public safety. By October 2008, about three months after beginning this practice, the state attorney's office had directly collected \$24,903 from defendants solely from prosecution fees.⁷⁹ As this report goes to press, the practice is ongoing.

III. LFOs STRAIN INDIVIDUAL LIMITED BUDGETS

All of these obligations – which are imposed at various stages in the criminal justice process – constitute substantial burdens for individuals who are poor or unemployed. One reentry advocate who runs a residential program for former prisoners returning to the community reports that about 80 percent of his clients have legal financial obligations and estimates that they range from about \$100 to \$300 a month.⁸⁰ Another reentry advocate, who provides legal assistance to people who have been incarcerated, estimates that her clients who are on probation or other supervision owe about \$100 a month to supervision authorities, and are likely to face a host of additional monthly fees depending on their charges.⁸¹

Further research is needed to determine the precise average amount owed by individuals with criminal convictions. In an informal survey of 35 persons who emerged from prison in the spring of 2008, the Brennan Center found an average debt of \$772.23 (excluding the two highest and lowest amounts) and a median debt of \$498. These debts derived solely from the individuals' court cases and did not include additional supervision costs imposed upon release. Most individuals surveyed did not know the correct amount that they owed.⁸²

In a 2005 internal analysis, the Florida Department of Corrections found that 21.2 percent of defendants under the department's supervision owed restitution.⁸³ Of that group, the 22,379 individuals who were on probation, parole or other forms of community supervision, owed an average of \$17,872 in restitution.⁸⁴ However, the analysis cautioned, the number is distorted by the fact that 367 of those individuals owed hundreds of thousands, or even millions. Excluding the group with extraordinarily high restitution amounts, the average restitution debt owed by the remaining 22,012 individuals was \$8,195.⁸⁵ More than 40 percent of those who owed restitution owed less than \$500.⁸⁶ These figures were confined to restitution only and do not include court-ordered fines, fees and other surcharges that comprise an individual's total debt.

These debts are borne by individuals with limited financial means. According to FDC, the average monthly income for individuals on probation or under other forms of community supervision was \$1,411 in 2005, which would be \$1,559 in today's dollars, adjusted for inflation.⁸⁷ LFOs aside, this sum barely covers a person's basic housing, food, transportation, and health care needs, to say nothing of expenses for child care and other extra costs. A single adult in Leon County, requires \$1,530 per month to cover the most basic expenses.⁸⁸ Thus, probationers – who on average earn just \$30 more than the sum needed to cover basic monthly expenses – struggle to get by, even before paying a nickel toward LFOs. If an individual owed \$75 per month in LFOs – the amount typically demanded by the Leon County Collections Court from those with felony convictions⁸⁹ – that amount would lower the average probationer's income below the basic self-sufficiency level. For a Leon County adult, \$75 could cover one-third of monthly food and housing costs, or almost 60 percent of monthly healthcare expenses (*see Table 1*).⁹⁰ A slightly higher monthly LFO debt, for example \$100, would constitute 46 percent of monthly food expenses, 77 percent of monthly healthcare expenses, and 42 percent of monthly transportation expenses (*see Table 1*).⁹¹

Table 1: Leon County (Tallahassee) Household Expenses⁹²			
Budget Item	Monthly Cost for a Single Adult (no dependants)	\$75 as % of Monthly Cost	\$100 as % of Monthly Cost
Housing	\$618	12%	16%
Food	\$218	34%	46%
Transportation	\$236	32%	42%
Healthcare	\$130	58%	77%
Miscellaneous	\$120	63%	83%
Taxes	\$208	36%	48%
Monthly Total	\$1,530	5%	7%

Harold Branning's experience dramatizes the difficulties involved in LFO costs.⁹³ Branning discovered, on his release from prison in August of 2007, that he owed more than \$7000 in court fines, fees, and restitution. As a condition of probation, he was ordered to make monthly payments of about \$250, an amount that was later raised to \$391.

Branning says he was only able to make these payments with the help of House of Hope, a religious mission in Gainesville that provides job training and placement, community, and partially subsidized room and board to individuals recently released from prison. At House of Hope, Branning was fortunate to pay only \$50 a week for rent and only \$30 a week for food – significantly less than he would have paid on his own.

Still, Branning describes the debt as a source of great stress. Just after his release, his income from the mission was \$303 a week. After his probation fee (\$62.50 a week) and the fee for mandatory aftercare required as part of his probation (\$20 a week), he had only \$220 left to cover the rest of his living expenses. In keeping

The average income for individuals on probation barely covers the most basic expenses. Probationers struggle to get by, even before paying a nickel toward LFOs.

with House of Hope's mission, he tithed 10% of his weekly paycheck to those even poorer than himself and paid surcharges to cash his paycheck and purchase money orders for his required probation payments. After these payments, Branning was left with less than \$100 a week for basic expenses.

Branning was fortunate, however, in that he obtained a job with House of Hope's help and was therefore able to complete probation and make his payments. But, he explains that paying the debt was difficult given his income, saying "not everyone is able to excel like I did." Now he works at House of Hope and helps others with post-prison needs, worries, and debt.

Court fees are collected against the backdrop of other significant financial obligations faced by those re-entering society. In Florida, as in about half the states, child support payments continue to accrue while a non-custodial parent is incarcerated.⁹⁴ To modify a child support order in Florida, the non-custodial parent must show an involuntary change in circumstances that has resulted in his inability to make payments. Incarceration is not sufficient to modify child support orders, non-custodial parents in Florida's prison system emerge from prison with substantial child support debt. Studies on the national level have shown that child support obligations typically range from \$225 to \$300 per month for a formerly incarcerated person.⁹⁵

Bernard Brown's experience shows how burdensome the costs of electronic monitoring, drug testing, treatment programs and other conditions of supervision can be for those sentenced to probation or community supervision.⁹⁶ Brown was on conditional release supervision after being released from prison but then re-incarcerated for failing to pay \$312.41 in supervision fees.⁹⁷ Brown's court record shows that when he obtained full-time employment, he earned only \$1044 per month.⁹⁸ Brown's monthly expenses included \$335 for rent, \$200 for water, electricity and gas, \$246 for car payment and insurance, and \$21 to \$50 for medications, plus whatever he spent on food and gas. He also had to pay \$35 to \$225 in start-up fees for various court-ordered sex offender treatment programs, and \$25 to \$30 each week for program fees.⁹⁹ After his re-incarceration, Brown finally obtained relief from federal court by bringing a *habeas corpus* petition *pro*

se in federal court. The court took note of Brown's low income as compared to his expenses and sent the case back to the Florida Parole Commission with orders to grant Brown a new revocation hearing or to return him to conditional release supervision.¹⁰⁰

Financial burdens are particularly severe for individuals required to attend treatment classes for sex, drug, and juvenile offenses. While FDC offers limited financial assistance for drug and juvenile offenders who do not have the ability to pay, no such support is available for sex offender treatment. In the mid-nineties, the Legislature revised laws governing probation and parole for sex offenders to require successful completion of sex offender treatment at the probationer's own expense.¹⁰¹ Probationers and those under community control supervision who are required to attend sex offender treatment classes must, regardless of their income, pay out of pocket for this requirement.

The FDC contracts with private treatment statewide to provide services and fixes the amount the providers are permitted to charge for treatment. After an initial \$90 fee for an individual assessment, each class costs \$25, occurs once a week, and treatment on average lasts for two to three years.¹⁰² In addition, individuals are required to take a minimum of one "maintenance" polygraph test a year to assess whether they have violated their probation or post-prison release. Whether they pass the test or not, they must pay for the polygraph, which costs at least \$220.¹⁰³ When an offender is unable to pay the treatment provider, the treatment provider may eventually terminate the treatment as unsuccessful or the offender may cease showing up because he is unable to pay for sessions. Termination of treatment then can be a basis for a violation of probation or community release.

IV. COLLECTION OF LFOs

The process of collecting LFOs from individuals convicted of crimes varies from court to court. For some individuals sentenced to state prison, probation, or other supervision, the FDC may be responsible for collecting LFOs depending on the circuit court in which they were sentenced. In other circuits, courts require individuals to make payments directly to the clerk of court. Those convicted of misdemeanors and criminal traffic violations generally make payment directly to the clerk of the county court in which they were sentenced.

A. Collections by Court System

Under increasing pressure to collect fees and fines, circuit and county courts have created a range of collection procedures. A 2007 study by the Florida Office of Program Policy Analysis and Government Accountability ("OPPAGA") catalogued the mechanisms court clerks use to collect fines and fees. All clerks reported using payment plans permitting individuals to pay fees and fines over time.¹⁰⁴ Nine out of ten clerks reported using a private collection agency,¹⁰⁵ a practice that has become mandatory, statewide, for certain unpaid debts as a result of legislation passed in 2009. Other mechanisms include driver's license sanctions, liens, collection courts, electronic fund transfers, wage garnishment, bank account garnishment, web pay point, and clerks acting as collection agents.¹⁰⁶

In researching this report, it became clear that some counties engage in far more aggressive fee collection practices than other counties. An exhaustive description of collection methods in each county is beyond the scope of this report but we highlight here some of the more troubling collections practices we discovered.

Many of the worst impacts stem from the lack of exemptions for the indigent and the fact that judges lack discretion to waive fees. The United States Supreme Court has repeatedly confirmed that it is unconstitutional to incarcerate an individual for failure to pay an LFO unless he has the ability to pay and willfully fails to do so.¹⁰⁷ Building upon this reasoning, Florida's Supreme Court has held that due process principles require that there be a determination of ability to pay before the state may "enforce the collection of costs" because in instances where the defendant is unable to pay, a defendant could "suffer some loss of liberty or property."¹⁰⁸ However, notwithstanding the Florida Supreme Court's ruling, due process is not always forth-

coming. For those unable to pay, fees are not waived; instead payment plans are set up, but often without any judicial determination that an individual has the ability to make the scheduled payment plan amounts.

When individuals fail to pay, they can suffer a range of consequences including late fees, driver's license suspensions and sometimes arrest and short-term incarceration.

When individuals fail to make payments, they may suffer a range of consequences including late fees, driver's license suspensions and, sometimes, arrest and short-term incarceration if they fail to make court appear-

ances related to the debt. These incarcerations constitute a modern variation on debtors' prison: at root, individuals are incarcerated for their failure or inability to make payments (though the technical reason is failure to appear in court).

More troubling still, though much less common, some judges have incarcerated individuals directly for failing to pay LFOs. Regardless of how the incarceration comes about, at costs of up to \$100 a day in overcrowded local jails, incarceration of the poor for inability to pay LFOs is not only objectionable on moral grounds, but also a penny-wise, pound-foolish approach.

1. Payment Plans

Payment plans permit individuals who cannot pay their legal financial obligations in full to pay these obligations over a period of time. Typically, a court sends the case to the clerk to administer a payment plan. The judge can order enrollment in a payment plan if it has been determined that an individual is unable to pay his financial obligations in full at the time of sentencing.¹⁰⁹ In some counties, payments begin 30 days after a payment plan has been established.¹¹⁰

State law presumes that an individual is able to pay a monthly payment of one-twelfth of 2 percent of his annual net income, and provides that the court may review the reasonableness of a payment plan employing this presumption.¹¹¹ Yet in practice, this presumption is often ignored and payment levels are set at fixed amounts. In Leon County, for example, persons enrolled in the collections program are expected to pay \$75 a month in fees related to a felony and \$50 a month for misdemeanors.¹¹²

Payment plans, themselves, generate additional charges. State law authorizes clerks to charge debtors \$25 to enroll in the partial payment plan or an additional \$5 charge per month.¹¹³ Late payments made on a partial payment plan can result in an extra charge. In Leon and Orange Counties, for example, a \$10 surcharge is added to every delinquent monthly payment received by the court clerk.¹¹⁴ In Highlands County, the late fee is \$20.¹¹⁵

2. Collections Courts and Arrests for Failure to Pay or Appear

Some counties – including Highlands, Leon, Orange, Osceola, Sarasota and St. Lucie – have established specialized “collections courts” to handle payment plans. Collections court hearings are typically structured as “pay or appear” hearings. If a defendant is able to make his payments by the payment plan deadline, there is no requirement to appear in court. However, if he fails to make a payment, he must appear before the collections court and explain why, with the possibility of being held in civil contempt for failing to pay. If he does not appear at that collections court hearing, a “capias” or “writ of bodily attachment” – a type of warrant that results in arrest – will typically issue and his driver’s license will often be suspended.

These incarcerations constitute a modern variation on debtors’ prison: at root, individuals are incarcerated for their failure or inability to make payments (though the technical reason is failure to appear in court.)

The issuance of a capias writ compounds the debt owed and puts the defendant further behind in making his payments. For example, in Orange County, the issuance of a capias costs the defendant an additional \$70, with an additional \$140 charged to the defendant when he is booked and held in the Orange County jail.¹¹⁶ In St. Lucie County, an administrative fee of \$70 is assessed when a capias writ is executed, with an additional \$60 fee when the person is booked and held in the St. Lucie County Jail.¹¹⁷

Supporters of collections court programs argue that they promote judicial economy by consolidating financial obligations cases under one judge and that they are also a successful way to collect payments from offenders while giving them an opportunity to be heard.¹¹⁸ Many view the collections program in Orange County as a model for raising revenue. However, counties such as Palm Beach, Broward, and Miami-Dade have discontinued their collections court programs due to the operational costs. Miami-Dade County discontinued its collections court program in 2003 due to lack of funding, and collections in the county are now handled through private agencies.¹¹⁹ Broward County’s collection court program was shut down in 2006 after only a year in operation.¹²⁰ Broward’s Collection Court cost an estimated \$700,000 to run.¹²¹

Often missing in the discussion is the human and societal toll that aggressive debt collection by the courts can take. Collections court hearings take place in the middle of the week so those who are working have trouble attending. When an individual is arrested for failure to appear in court, he invariably misses work, making it harder to pay. Additionally, such arrests have the effect of not only draining the defendant monetarily and psychologically, but draining their families and communities as well. While in many cases individuals find

the money to pay “purge amounts” to get out of jail, this does not necessarily mean that they actually had the ability to pay those costs. In many instances, an individual’s friend, family member, or employer may have been the one to put up the money to get the person out of jail.

The following exchange from a hearing in Orange County’s Collections Court, illustrates some of these consequences.¹²²

Judge: “Mr. [A.], you have two cases remaining in collections court. \$55 a month. Can you pay today?”

Mr. A.: “No ma’am. I’m not currently working.”

Judge: “Why not?”

Mr. A.: “Because I lost my job.”

Judge: “How did you lose your job?”

Mr. A.: “When I went to jail about these writs.”

Judge: “Well ... and whose fault is that.”

Mr. A.: “Mine.”

Judge: “I’m gonna leave them at \$20 and \$35 each. I won’t make your first payment due until April 15th.”

Mr. A.: “Ok. How do I go about getting my [driver’s] license back.”

Judge: “\$256.”

Mr. A.: “Ok. Thank you.”

The use of driver’s license suspensions as a sanction only makes it harder for the debtor to get back on track and make payments. Another exchange, this one from Leon County’s Collections Court, reveals a typical pattern.¹²³

Mr. S.: “I’m not on the docket. I’m a walk-in because I’m trying to see if I can get my fees waived. Is there anything you can do?”

Judge: “I can’t waive fees.”

Mr. S.: “I understand, but ...”

Judge: “... What’s your name, so she can look you up in the computer.”

Mr. S.: “Michael [S.] And my license was revoked for five years. And I’m self employed. I deliver furniture. And there’s no way I can work delivering furniture with my license being revoked. And that’s the gist of why I can’t pay it.”

Judge: “Well, how are you supporting yourself now?”

Mr. S.: “My mom. I’ve been looking for a job, but everyone wants you to have a drivers’ license.”

Judge: “Well, day labor, work today, get paid today. Jump in the back of a truck.”

Mr. S.: “Sir?”

Judge: “Day labor. Able Body. Action Labor.”

Court clerk: “He’s got three cases. About \$900 dollars.”

Judge: “Well, let’s see.”

Court clerk: “No payments made since December.”

Judge: “If you want to do 12 days, that will wipe out what you owe. Then it would just be reduced to a civil judgment.”

Mr. S.: “12 days where?”

Judge: “In Leon County jail.”

Mr. S.: “Oooo ...”

Judge: “That way you don’t have to worry about missing payments. It’s not like you’re going to be missing work now.”

Mr. S.: “Can I do it weekends?”

Judge: “They don’t let you do ... don’t let you do weekends. Either that or find a way to get back on track.”

Mr. S.: “Can we find another way? I don’t want to get locked up.”

Judge: “All right, I’ll give you til April 1st. You got to make at least a \$50 payment, all right.”

Mr. S.: “Yes sir.”

Judge: “All right, good luck to you.”

The use of capiases to arrest those who fail to appear in collections courts, with minimal procedural protections, stands in marked contrast to the more protective standards applied to those who fail to pay other debt such as child support. In that analogous context, arrest warrants may only issue for failure to appear at a hearing related to child support debt if:

- the court has made an express finding that the alleged contemnor had notice of the hearing;
- a prior order directing payment of support was entered;
- that prior order included a finding that the alleged contemnor had the ability to make the payments ordered; and
- the alleged contemnor has failed to pay.¹²⁴

In addition, collections courts threaten to incarcerate those who have not paid without providing them with counsel. Because the collections proceedings are styled as civil, rather than criminal, defendants are not appointed a public defender. Collections court judges rarely incarcerate people who appear before them. Yet, those facing this threat should be guaranteed representation.

A Closer Look at Arrests in Leon County Collections Court

The Brennan Center analyzed the impact of the Leon County Collections Court policy of arresting persons who fail to appear at a hearing by reviewing one year's worth of arrest data. The data reveal that the policy results in a significant number of arrests – 838 for the year – that end up costing the court and county nearly as much as the amount raised from those arrested. It is important to note that this analysis did not address the separate implications of the amount of revenue raised by the collections court as a whole – which is significant – but rather focused instead on the amount raised and the costs incurred exclusively through collections court-related arrests.¹²⁵

A. The Process

At the sentencing and judgment phase of any Leon County criminal case, the judge imposes a series of statutorily mandated court costs and fines. Each person convicted of a crime is notified to pay costs and fines immediately. When individuals cannot pay, they are placed on a payment program, which, by statute, costs \$25 to initiate and requires payment of a designated amount each month, usually \$75 a month for felony convictions and \$50 a month for misdemeanor and traffic cases. The designation of these flat monthly amounts, based on the level of offense, is at odds with a state law on payment plans, which assumes that a person can pay roughly 2 percent of their annualized monthly income.¹²⁶ Defendants are notified that they may request an adjustment of their payment amounts from the clerk.

Defendants are also notified that failure to pay will result in a driver's license suspension and the issuance of an order requiring the individual to appear in Collections Court to explain why he "should not be held in contempt of court" for failure to pay court-ordered costs and fines. Defendants are notified that failure to appear for such a court hearing will result in the issuance of a warrant for arrest. Collections Court takes place at an inopportune time in the middle of work week: Tuesday afternoons at the Leon County courthouse.

B. Missed Payments

When someone misses a payment, the clerk will schedule their case for a Collections Court hearing as early as two weeks and as long as six weeks later and mail to the last known address the notice requiring the defendant to appear in Collections Court. In addition, the clerk issues a late notice, assesses a \$10 fine, and requests suspension of the individual's driver's license, all before the defendant appears in Collections Court or explains his failure to pay.

C. Failure to Appear at Collections Hearing After Missed Payment Triggers Arrest

If and when an individual misses a Collections Court date after being ordered to attend, a writ of bodily attachment or a "blue writ" – a type of warrant – issues for the person's arrest and an additional \$20 fee is assessed for its issuance.¹²⁷ When individuals are arrested, cash "purge" amounts – a payment to get out of jail immediately – are set at either the total amount owed or \$320 – whichever is less.¹²⁸ This purge amount, the payment of which means immediate freedom, is not tailored in any way to the individual's ability to pay, as it should be under principles governing civil contempt and constitutional safeguards against imprisonment for debt. If the defendant cannot pay the purge amount, he must spend time in jail until being brought before a judge, typically the following day at a "first appearance hearing" with other individuals arrested on "blue writs" and other offenses, either to work out another payment plan or ask for release on their own recognizance.

D. Practice Results in 838 Arrests and Over 20,000 Hours of Jail Time in One Year

We examined records for all individuals who were arrested and jailed solely for failure to appear at collections court between October 1, 2007 and September 30, 2008.¹²⁹ In that one-year period, 838 total arrests were made in Leon County solely for failure to appear at Collections Court after failing to pay court fees and fines or falling behind in a payment plan. Some of the individuals who were arrested had outstanding, unpaid fines or fees related to more than one specific charge or incident.¹³⁰

Most, or 650, of the arrests resulted in the defendant spending less than a full day in jail. Of those, 322 resulted in incarceration of ten or more hours. The remaining 188 arrests resulted in defendants spending a day or longer in jail, with 52 individuals spending between two and six days in jail, nine individuals spending nine days or longer in jail and one individual spending more than a month behind bars.¹³¹ The median length of stay was thirteen hours, thirty-four minutes, and fifty-two seconds. The average length of stay was twenty-four hours, fourteen minutes, and twelve seconds.

Additionally, some individuals were arrested more than once for failing to appear at Collections Court. There were 103 such individuals. Of those, 83 were arrested twice, 17 arrested three times, and three arrested more than three times.

The 838 total arrests led to 20,310 total hours¹³² or 846.25 total days spent behind bars.¹³³ Leon County spent approximately \$53.56 per day to incarcerate each individual between October of 2007 and September of 2008.¹³⁴ Using this per diem rate, the estimated cost to the county jail solely for jailing the individuals who missed Collections Court totaled \$45,325.¹³⁵

Beyond jail costs, there are the added costs of executing the warrant and holding first appearance hearings in court. It is unclear exactly how much it costs the Leon County Sheriff's Office to execute a warrant for failure to appear in Collections Court or how much it costs to bring each of the arrested individuals before a judge at first appearances.¹³⁶ Leon County charges individuals a \$20 surcharge for processing such a warrant.¹³⁷ If this \$20 fee can be considered a proxy for the cost of issuing and executing the warrant, the county court would have spent \$16,760 to process these individuals.¹³⁸

Therefore, not including any possible additional costs incurred in arresting individuals and bringing them before a judge, the cost to the system for this 12-month period of arresting individuals for failure to appear at Collections Courts was \$62,085.¹³⁹

These arrest-related costs are significant when compared to the amount collected from the arrested individuals. For the year ended September 30, 2008, the court collected \$80,450 in cash purges from individuals arrested on "blue writs," out of a total of \$347,084 owed in cash purges and bonds. The median bond or purge amount owed per case was \$320; the average \$282.

Five hundred and forty-two, or 65 percent, of the arrests resulted in the defendant ultimately being freed without paying any bond or purge amount at all. The remaining 296 arrests resulted in individuals paying bonds or purge amounts for 368 different cases (some individuals who were arrested owed money from more than one case). The median bond or purge amount paid was \$250. The average bond or purge amount paid was \$218.62.

When balanced against the cost of arrests, the use of arrests only netted the county at most an additional \$18,365; indeed, for reasons noted above, the net gain, if any, is likely to be much lower since these figures do not include the costs to the court system of holding constitutionally mandated first appearance hearings for those who have been arrested.¹⁴⁰

3. Other Ways in Which Failure to Pay LFOs Can Result in Jail Time

On a number of occasions, people have been jailed directly for failing to pay their court debt (as opposed to indirectly for failing to appear in court at a debt-related hearing). These debtors' prison instances are far less common than the failure to appear arrests but reveal how a lack of uniform guidance and rules creates opportunities for dramatic injustice. For example, during a five-month period this year, a Seminole County judge jailed more than 20 people for failing to pay court fees.¹⁴¹ All were released after their cases were appealed.¹⁴² In Highlands County several years ago, the public defender had to bring habeas corpus petitions to secure the release of several people incarcerated for failure to pay their court debt.¹⁴³ One man was sentenced to 179 days in jail for failing to pay debt that originally totaled less than \$750. He was released, but only after coming to the attention of the public defender and after spending four months in jail.¹⁴⁴ In 2005, a state appellate court overturned a Polk County collections program on due process grounds in part because individuals were arrested and incarcerated before any court had ever determined that they had the ability to pay the amount owed.¹⁴⁵

In other counties, payments are sometimes built into sentences as a condition of avoiding jail time. In Marion County, judges routinely sentence misdemeanants who have waived their right to counsel to suspended jail sentences that automatically go into effect if LFO payments are not made.¹⁴⁶ Such sentences deprive defendants of a chance to show that their failure to pay LFOs was not willful, as required by the Constitution.¹⁴⁷

In Alachua County, arrest warrants are regularly issued to people who have been convicted of minor offenses (such as drinking from an open container in public) and who subsequently fail to pay fines and court costs. Warrants issue automatically when failure to make a payment occurs without any prior hearing at which defendants have an opportunity to explain their failure to pay.¹⁴⁸

Hinging jail sentences on required payments of LFOs makes it nearly inevitable that indigent offenders will be unable to avoid jail time, since they cannot afford to pay the required amounts by the state-imposed deadline. When court costs, fees, and fines must be paid to avoid automatic time in jail, courts should be precluded from incarcerating individuals unless and until a determination of "willful refusal to pay" is made.¹⁴⁹

4. Overuse of Driver's License Suspensions Hinders Ability to Repay Debts

Suspension of an individual's driver's license is one of the most common penalties in Florida for failure to pay court-ordered legal financial obligations.¹⁵⁰ Court clerks routinely request that the Department of Highway Safety and Motor Vehicles suspend a person's driver's license for non-payment of court-assessed financial obligations, without any prior determination that the defendant had an ability to pay.¹⁵¹ The clerk is authorized under Florida law to charge the offender \$7 in order to file the request.¹⁵² State law provides that restoring a driver's license costs an additional \$60.¹⁵³

The use of driver's license suspensions causes hardship for those unable to pay and, ironically, further hinders their ability to pay their debt because they are unable to drive legally to work. A 2007 Milwaukee study,

for example, found that a valid driver's license was a more accurate predictor of sustained employment than a General Educational Development (GED) diploma among public assistance recipients.¹⁵⁴ The study also found that public assistance participants are twice as likely to be employed above the poverty level when they have a driver's license.¹⁵⁵

Moreover, due to the interaction with existing criminal sanctions for driving on a suspended license, the practical consequences of this enforcement mechanism are often harsher to individuals and more costly to the state than expected or intended. Under Florida law, a person commits a misdemeanor when he or she knowingly drives with a suspended license.¹⁵⁶ On the third or subsequent conviction, the person commits a felony – and is considered a “habitual traffic offender” – punishable by up to five years in prison and a \$5000 fine.¹⁵⁷ In 2008, the Legislature amended the law to exclude from this felony category persons whose driver's licenses were suspended for failure to pay LFOs and who have no prior “forcible felony conviction[s].”¹⁵⁸ Even under the new rule, however, these individuals still face significant jail time – up to one year – and steep fines of up to \$1000.¹⁵⁹

Suspension of a driver's license is one of the most common penalties in Florida for failure to pay LFOs. It causes hardship for those unable to pay and further hinders their ability to pay their debt because they are unable to drive legally to work.

In 2007, a year before the amendment, the Florida Office of Program Policy Analysis and Government Accountability found that nearly three-quarters of the 661 records they reviewed of persons incarcerated in state prison for the primary offense of driving on a suspended license “were in prison for the underlying offense of driving while their license had been suspended for failure to meet court-ordered financial obligations.”¹⁶⁰ The costs associated with these detentions are far from trivial. With average sentence lengths of 2.3 years,¹⁶¹ hundreds of individuals have lost their freedom for what is, at base, their inability to pay financial legal obligations. While the July 2008 amendment to the suspended license statute is certainly a step in the right direction, more reform is needed to address the costs and consequences of this practice. Although the amendment creates an exemption from the felony designation, individuals who lose their licenses due to LFOs, and are then convicted of driving with a suspended license, still face significant and costly jail terms.¹⁶²

5. Private Collections Agencies Add Up To 40 Percent Surcharge on Debt

The use of private collections agencies is an increasingly common collections method. In 2009, the Legislature required clerks to use collection agents for uncollected fees after 90 days.¹⁶³ Before forwarding the matter to a private attorney or collections agency, the clerk of the court must first attempt to collect the unpaid amount through “cost-effective” collections process established by the court.¹⁶⁴ Under Florida law, a private attorney or collections agent hired by the court clerk can add up to a 40 percent surcharge to the amounts it collects from delinquent payments.¹⁶⁵

In some places, this automatic transfer has severe unintended consequences. In Orange County, for example, the court clerk automatically suspended the driver's licenses in cases that were transferred to a private debt

collector. The clerk will only restore those licenses once full payment to the private debt collector has been made. This practice expands tremendously the number of those with license suspensions stemming from failure to pay their court debts. Previously, those making payments under a payment plan were able to avoid license suspensions. Now, the debtor must pay the collection agency in full before the clerk will restore a driver's license.

This full payment requirement is having severe consequences for those unable to pay. Sam, whose last name has been omitted at his request, had been making regular payments on his total debt of about \$4,000 in Orange County Collections Court.¹⁶⁶ When his debt was transferred to a collection agency, Alliance One, his license was immediately suspended and he was told it would only be restored when his total debt was

paid off. In addition, Sam says that the agency is incorrectly seeking an additional \$44,705 in restitution that was previously voided by the court. However, now that the matter is in private hands, Sam has been unable to appeal this error anywhere. In addition, he now faces a 30 percent surcharge on the inflated amount, bringing his debt to nearly \$64,000. In the meantime, restoration of his driver's license, which is key to his livelihood, hangs in the balance.

Under Florida law, a private attorney or collections agent hired by the court clerk can add up to a 40 percent surcharge to the amounts it collects from delinquent payments.

The 40 percent maximum surcharge added by private debt collectors is, by any measure, extreme. There are some counties, however, that do not allow the agent to charge the maximum. For example, in Pasco County, the authorized surcharge amount has been limited to 25 percent out of concern for overburdening offenders.¹⁶⁷ However, even this more limited surcharge amounts to a significant burden.

6. Additional Collection Mechanisms

In addition to the mechanisms discussed above, a court can enter judgment for court-imposed financial obligations in the form of a civil lien and can enforce the judgment in the same manner allowed in civil cases.¹⁶⁸ Civil restitution liens can also be imposed by court order for the payment of restitution, incarceration costs, or other correctional costs.¹⁶⁹ A lien can be entered in favor of crime victims, the state, its local subdivisions, or an aggrieved party and attaches against the real or personal property owned by a convicted offender.¹⁷⁰ A civil restitution lien continues for 20 years after the date of entry and carries a rate of interest determined by the Chief Financial Officer of Florida. That rate of interest is determined on the date of entry of the civil restitution lien and remains the same as long as the lien remains.¹⁷¹ Civil restitution liens do not preclude a court from imposing civil judgment liens for other costs, such as court costs, fines, and fees.¹⁷²

Less popular collection methods used by courts to collect financial obligations include wage and bank account garnishment, clerks acting as collection agents, electronic funds transfer, and conversion of financial obligations into community service.¹⁷³

Under Florida law, a judge is permitted to convert statutory financial obligations into court-imposed community service for those who cannot pay and, on paper, the community service option provides an escape hatch for the indigent.¹⁷⁴ However, it appears that in practice, courts seldom use it. In a report from court clerks, only 16 of 67 counties reported converting any mandatory LFOs imposed in felony cases to community service.¹⁷⁵ Of those 16 that did report using community service, 10 converted less than \$3000 of mandatory LFOs to community service in one year.¹⁷⁶

On paper, the community service option provides an escape hatch for the indigent. However, it appears that in practice, courts seldom use it.

B. Department of Corrections Collections

The Florida Department of Corrections collects from those under its supervision - persons on probation, parole or other community supervision - when the circuit in which they were sentenced so orders. In fiscal year 2008-2009, FDC collected \$25.05 million from supervision fees, \$52.1 million from restitution, fines and court costs, and \$18.7 million from subsistence and other court-ordered payments.¹⁷⁷

For those who are serving prison time, outstanding LFOs can be collected from inmate accounts if the attorney who prosecuted the action files a copy of judgment with the FDC.¹⁷⁸ If there is sufficient money in the inmate's account, an FDC officer can write a check directly from the account.¹⁷⁹ If there is not, the FDC partially pays the debt, and then allots any additional deposits to the debt until it is satisfied.¹⁸⁰

For those on probation, parole, or other community supervision, the collection process varies, depending on whether the sentencing court or Parole Commission has ordered a specific monthly payment amount or, as is more common, listed a total amount of fees, fines and restitution to be paid. If the sentencing court or Parole Commission has ordered a specific monthly payment amount, and the probationer fails to make that monthly payment, the probation officer must report the failure to pay to the court or commission.¹⁸¹ The Parole Commission, and some judges, permit officers to use a technical violation notification letter to report this type of violation in lieu of issuing a warrant for the probationer's arrest.¹⁸²

If the sentencing court does not specify a monthly payment amount, as is more common, FDC will arrive at a monthly payment amount by dividing the total dollar amount of all court-ordered fees, fines, and restitution by the number of months of probation or other supervision. FDC then adds a probation supervision fee - \$50 a month if an individual was declared indigent and/or had a public defender - plus a 4 percent surcharge.¹⁸³ Florida law requires the entire monthly payment to be applied first to the individual's restitution obligation until the full restitution debt is satisfied.¹⁸⁴

One problem with this method of calculating monthly payments is that it does not necessarily relate to the probationer's ability to pay, as required by state law.¹⁸⁵ As a result, persons on probation can be burdened with monthly payments beyond their means, as is illustrated by the story of Wayne B. Mr. B. reported to probation the day after his release from prison in March 2006 and learned that he owed a total of \$14,000

in debt, which he was ordered to pay off at \$388 per month as a condition of probation.¹⁸⁶ Mr. B. explained to his probation officer that he could not make payments at this amount, but he was told that the payments were set by dividing his total debt by the number of months of his probation term. Unable to find an attorney to assist him in his efforts to reduce his payments, Mr. B. filed *pro se* motions in his sentencing court requesting that his debt be converted into a civil lien (which would become a debt collectible through civil means) rather than a condition of his probation, violation of which could lead to re-incarceration. The Court denied those motions. When interviewed, Mr. B. feared that his probation term would be extended beyond the three years to which he was sentenced because of inability to make all his payments on time.

When a monthly payment amount is set by FDC and not the sentencing court, a missed monthly payment cannot trigger a violation of probation; instead, a violation may only occur if at the end of his probation term, a probationer has not paid off the total amount of court-ordered payments.¹⁸⁷ At that point, if a judge finds that the failure to pay was willful, he may either extend the supervision period or revoke probation and sentence the individual to additional prison time.¹⁸⁸ Revocation solely for failure to pay financial obligations is very rare. From January 1, 2007 through June 30, 2008, 19 persons had their probations revoked and were sentenced to prison for failure to pay fees or restitution only.¹⁸⁹ More commonly, failure to pay is included as an additional violation when other violations are alleged.¹⁹⁰

V. RECOMMENDATIONS

Florida's system for imposing and collecting fees involves multiple players at various levels of government. Many of the problems described in this report stem from the Legislature's decision not to exempt the indigent. As a result, collection efforts trigger additional hardships that, in turn, further undermine the ability of persons in debt to pay. At its worst, the process results in costly arrests and jail time unrelated to public safety. The Legislature, the court system, the clerks, the Florida Department of Corrections, and county commissions all have a role to play in moving toward reform. We outline below a number of recommendations to address the hidden costs – both human and financial – of Florida's criminal justice fee system.

Immediate steps:

- 1. The Legislature should exempt indigent defendants from LFOs.** An exemption system based on a rational determination of ability to pay would free officials from the burden of pursuing non-existent revenue and would relieve financial pressure on previously incarcerated individuals who are attempting to re-enter society. In light of the fact that performance standards expect only a 9 percent collection rate for felonies, an indigency exemption in felony cases would result in little lost revenue.
- 2. Payment plans should be tailored to an individual's ability to pay, as state law already requires.** At minimum, the courts should follow the state law that presumes a person is unable to pay more than 2 percent of average monthly income when setting payment plans. Similarly, the Department of Corrections should sync monthly payments to income and should fully exempt the indigent from monthly probation supervision fees, consistent with existing state law.
- 3. Florida's Supreme Court should adopt court rules to end the new debtors' prison.** In the absence of a prior finding that an individual can pay fees, courts should not authorize incarceration for failure to appear at LFO debt hearings. This would be consistent with the rules that apply to those who have failed to pay child support. The Court should also adopt rules to ensure that incarceration for contempt does not occur as a result of inability to pay.
- 4. Counties can save money by eliminating debt-related arrests for failure to appear and resulting incarceration in already overcrowded local jails.** In the absence of a statewide rule, counties with collections hearings can change local practices to eliminate these arrests and jail stays, which are unrelated to public safety and cost taxpayers money.
- 5. Florida should provide counsel in all collections or LFO-related collection contempt proceedings that may result in incarceration.** It should not be possible to end up in prison for LFO debt without having been represented by counsel.
- 6. Courts should offer community service programs that build job skills to all those who cannot viably afford to repay fees.** While state law authorizes community service as an alternative to payment for those unable to pay, very few courts actually provide this option.

7. **The performance standards used to evaluate court clerks should be based on collection costs as well as collection rates.** Current practice only looks at one side of the ledger – the revenue raised – without considering the expenses of collection. Performance standards should also include compliance with state law and constitutional requirements related to collection of fees.
8. **Court clerks should suspend driver’s licenses only in those cases in which an individual can afford to repay court debt but refuses to do so.** In addition, the Legislature should create a conditional driver’s license that permits driving to and from work for those whose licenses have been suspended.
9. **The Legislature should limit service charges by private debt collectors and ensure adequate oversight.** Once court debt is turned over to private firms for collection, the amount owed increases as surcharges are added, yet current oversight of collection practices is scant.

Longer-term reforms:

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

APPENDIX: LFOs ESTABLISHED BY FLORIDA LAW

Fines & Assessments with a Punitive Purpose					
A. Fines According to the Severity of the Crime					
Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes	Juveniles?
General fines for felonies, misdemeanors and non-criminal violations designated crimes	Up to \$500 to \$15,000, or higher under certain circumstances	Fla. Stat. § 775.083(1)	Discretionary	Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01.	No
Fine for crime that resulted in injury or death	Up to \$10,000	Fla. Stat. § 775.0835(1)	Discretionary. May be imposed only if defendant has “present ability to pay.”	Crimes Compensation Trust Fund.	No
B. Fines for Specific Crimes or Categories of Crimes					
Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes	Juveniles?
Driving Under the Influence	\$500 to \$5,000	Fla. Stat. § 316.193	Mandatory, within dollar range in statute.	Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01.	No
Boating Under the Influence	\$60 plus fines similar to those for DUI.	Fla. Stat. § 327.35(1), (9)	Mandatory	Brain and Spinal Cord Injury Rehabilitation Trust Fund, after 5% is deducted by the clerk for administrative costs.	No
Reckless Driving	\$30 to \$1,005	Fla. Stat. §§ 316.192(1)–(4)	Mandatory, within dollar range in statute	\$5 to Emergency Medical Services Trust Fund. \$1 from every civil penalty to Child Welfare Training Trust Fund; \$1 to Juvenile Justice Training Trust Fund; first \$300,000 collected to the Grants and Donations Trust Fund for foster care citizen review panels; then 20.6% to General Revenue Fund of the state; 7.2% for the Emergency Medical Services Trust Fund; 5.1% for the Additional Court Cost Clearing Trust Fund; 8.2% to the Brain and Spinal Cord Injury Rehabilitation Trust Fund; 2% to the Florida Endowment Foundation for Vocational Rehabilitation; 0.5% to the clerk of court for administrative costs. <i>See</i> Fla. Stat. §§ 142.03, 316.660, 318.21.	No
Drug Trafficking	\$25,000 to \$500,000	Fla. Stat. § 893.135(1)	Mandatory	Florida Drug, Device, and Cosmetic Trust Fund. Fla. Stat. § 499.066(4).	No
Drug Offense Within 1,000 Feet of Certain Facilities	\$500	Fla. Stat. § 893.13	Mandatory	Florida Drug, Device, and Cosmetic Trust Fund. Fla. Stat. § 499.066(4).	No
Aggravated White Collar Crime	Greater of \$500,000 or double the value of the pecuniary gain or loss	Fla. Stat. § 775.0844(7)	Discretionary	Unspecified but presumably goes to Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. §§ 142.01(1)(f),	No
Solicitation of Prostitution	\$500	Fla. Stat. § 796.07(6)	Mandatory	Circuit court administrator to pay administrative costs of certain treatment-based drug court programs.	No

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes	Juveniles?
Graffiti	\$250 to \$1,000	Fla. Stat. §§ 806.13(6)(a)–(c)	Discretionary. The court may decline to order fine if it finds person unable to pay	Unspecified but presumably goes to Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01(1)(f).	Yes
Supplemental Fine for Theft for Those Found Guilty of a Cluster of Theft, Dealing in Stolen Property, and Related Offenses	Up to twice the gross value gained or twice the gross loss caused, whichever is greater, plus the cost of investigation and prosecution	Fla. Stat. § 812.032	Discretionary. The state attorney has the discretion to file a motion calling for the fine.	Unspecified but presumably goes to Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01(1)(f).	No
Second Conviction of Theft From Merchant	\$50 to \$1,000	Fla. Stat. § 812.015(2)	Mandatory. However, the court may convert the fine into the number of hours of public service that would satisfy the fine at minimum wage.	Unspecified but presumably goes to Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01(1)(f).	No
Engaging in Continuing Criminal Enterprise	\$500,000	Fla. Stat. § 893.20(2)	Discretionary	Florida Drug, Device, and Cosmetic Trust Fund. Fla. Stat. § 499.066(4).	No
Money Laundering	First offense: a fine not exceeding \$250,000 or twice the value of the transaction, whichever is greater. Second or subsequent offense: a fine not exceeding \$500,000 or quintuple the value of the transaction, whichever is greater. A money launderer is also liable for a civil penalty of the value of the transaction or \$25,000, whichever is greater	Fla. Stat. §§ 896.101(6), (7)	Fine discretionary; civil penalty mandatory.	Unspecified but presumably goes to Fine & Forfeiture Fund of the circuit court. <i>See</i> Fla. Stat. § 142.01(1)(f).	No
Illegal Killing, Taking, Possessing, or Selling Wildlife or Game	\$250 for each violation	Fla. Stat. § 379.403	Mandatory	Paid to the Fish and Wildlife Conservation Commission's State Game Trust Fund.	No
Theft of any Commercially Farmed Animal, including any Aquaculture Species	\$10,000	Fla. Stat. § 812.014(2)(c)(7)	Mandatory	Unspecified by statute but presumably goes to Fine & Forfeiture Fund of the circuit court. (<i>See</i> Fla. Stat. § 142.01(1)(f)).	No

Penalties With a Restitution Purpose

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes	Juveniles?
Restitution	Damage or loss caused directly or indirectly by the defendant's offense and criminal episode.	Fla. Stat. § 775.089(1)(a)(1)–(1)(a)(2)	Discretionary. A court not ordering restitution must state in detail clear and compelling reasons if it decides not to order restitution.	The victim.	Yes
Civil Restitution Lien Against Offender's Current and Future Assets	Damages to victim and costs to state or local subdivisions for incarceration and correctional costs. Damages to the state for correctional costs are: for a capital or life felony, the offender is liable in the liquidated damage amount of \$250,000; for other offenses, a liquidated damage amount of \$50 per day of the sentence shall be assessed against the offender.	Fla. Stat. §§ 960.291–960.293.	Mandatory	Crime victims, the state, its local subdivisions, and other aggrieved parties.	No
Costs of initial Forensic Physical Examination for Sexual Offense	The amount that the Crime Victims' Services Office paid to the medical provider up to \$500.	Fla. Stat. § 960.28(5)	Mandatory	Crimes Compensation Trust Fund.	Yes
Theft from a Person 65 or Older of More Than \$1000	Amount of loss plus up to 500 hours of community service.	Fla. Stat. § 812.0145(1)	Mandatory	The victim.	No
Killing or Injury to a Horse or Cow	The greater of up to twice the gross fair market value or up to twice the gross loss caused plus attorney's fees and any related costs.	Fla. Stat. § 828.125(4)	Discretionary	Aggrieved party.	No

Assessments with a Public Cost Recovery Purpose – Court Costs

A. Fees Associated With Any Offense

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Offender Fee	\$3	Fla. Stat. § 938.01(1)	Mandatory	Additional Court Cost Clearing Trust Fund to be distributed as follows: 92% to Department of Law Enforcement Criminal Justice Standards and Training Trust Fund. 6.3% to Department of Law Enforcement Operating Trust Fund for the Criminal Justice Grant Program. 1.7% to Department of Children and Family Services Domestic Violence Trust Fund for the domestic violence program.
Offender Fee	\$50	Fla. Stat. § 938.03(1)	Mandatory	\$49 to the Crimes Compensation Trust Fund. \$1 retained by the clerk of the court. Fla. Stat. §§ 775.0835(2), 938.03(4)
Additional Court Cost on Criminal Fines	5% surcharge imposed on fines for criminal offenses and certain traffic infractions	Fla. Stat. § 938.04	Mandatory	Crimes Compensation Trust Fund.
Additional Court Costs for Felonies, Misdemeanors, and Criminal Traffic Offenses	\$60 (for criminal traffic offense or misdemeanor) to \$225 (for felony).	Fla. Stat. § 938.05	Mandatory	Fine and forfeiture fund to be used by the clerk for court-related functions.
Additional Cost for Crime Stoppers Programs	\$20	Fla. Stat. § 938.06	Mandatory	\$17 to Crime Stoppers Trust Fund (which funds programs in the circuit that set up tip lines and offer rewards for reporting crimes). \$3 to clerk of court as service charge.
Crime Prevention Cost	\$50 (for a felony) or \$20 (for any other offense)	Fla. Stat. § 775.083(2)	Mandatory	Crime prevention programs in the county, including safe neighborhood programs.
Offender Fee	\$2	Fla. Stat. § 938.15	Mandatory (if authorized by local government)	To the county for criminal justice education degree programs and training courses, including basic recruit training, for their respective officers and employing agency support personnel.
Costs for Teen Courts	Up to \$3	Fla. Stat. § 938.19(2)	Mandatory (if authorized by county)	To Teen court for operation and administration, less 5% retained by clerk for administrative costs.
Offender Fee	Up to \$65 and a lien against personal property.	Fla. Stat. § 939.185(1)(a)	Mandatory (if adopted by county)	25% to supplement state funding for the state courts system and county funding for local requirements; 25% to assist counties in providing legal aid programs; 25% to fund public law library; 25% to support teen court and other juvenile alternative programs.
Offender Fee	\$85 and a lien against personal property.	Fla. Stat. § 939.185(1)(b)	Mandatory (if adopted by county)	Fine & Forfeiture Fund of the circuit court.
County Court Fee	\$10 against the non-prevailing party if the defendant does not contest the violation in court, \$40 against the non-prevailing party if the defendant does contest the violation.	Fla. Stat. § 34.045(1)(b)–(1)(c)	Mandatory	The \$10 fee goes to the county or municipality. The \$40 contest fee is deposited in the Fine & Forfeiture Fund of the circuit court.

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Costs on Conviction	Costs of prosecution, including investigative costs incurred by law enforcement agencies, if requested by such agencies. Costs may include the salaries of permanent employees. Minimum cost for state prosecutor is no less than \$50 for misdemeanor or criminal traffic case and no less than \$100 for felony. Court “may set a higher amount upon a showing of sufficient proof of higher costs incurred.” Costs are imposed “notwithstanding the defendant’s present ability to pay.” Case law shows that as much as \$1,244 has been imposed as a total fee in this category. <i>Castrillon v. State</i> , 821 So. 2d 360, 361 (Fla. Dist. Ct. App. 2002).	Fla. Stat. § 938.27	Mandatory.	Returned to the investigative agency that incurred the expense; funds recovered for state agencies deposited in the agency operating trust fund; funds recovered by the Department of Law Enforcement deposited in the department’s Forfeiture and Investigative Support Trust Fund; funds recovered on behalf of state attorney to go to Grants and Donations Trust Fund.
Cost of Public Defender	A defendant who received the assistance of a public defender and was convicted “shall be liable for payment of . . . attorney’s fees and costs.” The minimum charge is \$50 for a misdemeanor or criminal traffic case and \$100 for a felony case, though “[t]he court may set a higher amount upon a showing of sufficient proof of higher fees or costs incurred” Case law shows that as much as \$1,000 has been imposed as a total fee in this category. <i>Castrillon v. State</i> , 821 So. 2d 360, 361 (Fla. Dist. Ct. App. 2002).	Fla. Stat. § 938.29(1)(a)	Mandatory, but, amount to be determined by court. The court is not required to examine the defendant’s ability to pay before imposing costs. <i>Cook v. State</i> , 896 So. 2d 870, 872–73 (Fla. Dist. Ct. App. 2005) (rejecting claim that courts must examine ability to pay costs before imposing them but not addressing determination of ability to pay when collecting costs).	Indigent Criminal Defense Fund.
Public Defender Application Fee	\$50	Fla. Stat. § 27.52(1)(b)–(1)(c)	Mandatory	98% to the Indigent Criminal Defense Trust Fund. 2% to the clerk.
B. Fees for Specific Crimes or Categories of Crimes				
Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Cost for Driving or Boating Under the Influence	\$135	Fla. Stat. § 938.07	Mandatory	\$25 to the Emergency Medical Services Trust Fund, \$50 to the Operating Trust Fund of the Department of Law Enforcement to be used for operational expenses in conducting the statewide criminal analysis laboratory system, and \$60 to the Brain and Spinal Cord Injury Rehabilitation Trust Fund.
Additional Costs Assessed in Domestic Violence Cases to Fund Domestic Violence Programs	\$201	Fla. Stat. § 938.08	Mandatory	\$85 to the Domestic Violence Trust Fund. \$115 to the governing board of the county to pay for costs of incarcerating persons for domestic violence and provide additional domestic violence training to law enforcement personnel. \$1 service charge to clerk’s office.
Additional Cost Assessed in Various Assault and Battery Offenses to Fund Rape Crisis Centers	\$151	Fla. Stat. § 938.085	Mandatory	\$150 to the Rape Crisis Program Trust Fund in the Department of Health. \$1 service charge to clerk’s office.

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Additional Court Cost Imposed for Crimes Against Minors and other Certain Crimes	\$151	Fla. Stat. § 938.10	Mandatory	\$50 to Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Office of the Statewide Guardian Ad Litem. \$100 for Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. \$1 service charge to clerk's office.
Misdemeanor Convictions Involving Drugs or Alcohol	\$15	Fla. Stat. § 938.13	Mandatory (if imposed by local government)	\$14 to County Alcohol and Other Drug Abuse Trust Fund for allocation to local substance abuse programs. \$1 service charge to clerk's office.
Costs Assessed in Certain Drug and Alcohol-Related Offenses for Alcohol and Drug Abuse Programs	Up to the amount of the fine authorized for the underlying alcohol or drug related offenses. For example, a cost of \$1,000 can be imposed on someone convicted of a second DUI.	Fla. Stat. § 938.21	Discretionary (within statutory limit)	County Alcohol and Other Drug Abuse trust fund for drug abuse treatment or education program. Fla. Stat. § 893.165.
Costs for Assistance Grants for Alcohol and Drug Abuse Programs	Up to amount of fine for certain alcohol and drug related offenses. For example, the assessment can be \$1,000 for a second DUI or \$5,000 for drug possession. See Fla. Stat. § 893.13 (6)(a) (drug possession is a third degree felony) ; § 775.083(1)(c) (third-degree felonies warrant a \$5,000 fine).	Fla. Stat. § 938.23	Discretionary (within statutory limit)	County Alcohol and Other Drug Abuse Trust Fund or the Department of Children and Family Services' Grants and Donations Trust Fund.
Fee Imposed for Conviction of Controlled Substance Offense	\$100 (plus an additional assessment if the court finds that the defendant has the ability to pay and will not be prevented by such payment from rehabilitation or from paying restitution).	Fla. Stat. § 938.25	Discretionary	Operating Trust Fund of the Department of Law Enforcement to be used by the statewide criminal analysis laboratory system.
Surcharge for Criminal Traffic Violations	Up to \$30	Fla. Stat. § 318.18(13)	Mandatory (if imposed by local government)	To fund state court facilities. Up to 25% may be used for local law libraries.
Surcharge for Criminal Traffic Violations	Up to \$15	Fla. Stat. § 318.18(14)	Mandatory (if imposed by local government)	To replace fine revenue deposited in the clerk's fine and forfeiture fund.
"Administrative fee" for noncriminal traffic violations.	\$12.50	Fla. Stat. § 318.18(18)	Mandatory	Fine & Forfeiture Fund of the circuit court.
Surcharge to Secure Payment of County Bonds Related to Criminal Traffic Violations	Up to the amount of the amount of the annual payment of the bonds divided by the number of traffic citations paid each year	Fla. Stat. § 318.18(13) (a)(3)	Mandatory (if imposed by local government)	To pay the debt service on the bonds or to fund state court facility construction projects.

Assessments with a Public Cost Recovery Purpose – Punishment

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Subsistence Costs at State Facilities	Unspecified. Statute allows for “all or a fair portion of the prisoner’s daily subsistence costs, based upon the inmate’s ability to pay, the liability or potential liability of the inmate to the victim or the guardian or the estate of the victim, and the needs of his or her dependents.”	Fla. Stat. § 944.485. Payment is a condition of parole. <i>Ivory v. Wainwright</i> , 393 So. 2d 542, 544 (Fla. 1980).	Mandatory. The charge is to be assessed by the Florida Parole and Probation Commission, <i>see Gerlock v. Fla. Parole & Prob. Comm’n</i> , 411 So. 2d 1386 (Fla. Dist. Ct. App. 1982), except for those inmates who have entered into a Mutual Participation agreement prior to Oct. 1, 1978 (allowing inmates to work at the prison).	To the correctional facility.
Subsistence Costs at Local Facilities	Unspecified. Statute permits local jails to charge “all or a fair portion of . . . daily subsistence costs.” A \$10 booking fee and \$2 daily subsistence fee have been upheld as permissible. <i>Solomos v. Jenne</i> , 776 So. 2d 953, 954 (Fla. Dist. Ct. App. 2000).	Fla. Stat. § 951.033	Discretionary (decision made by Chief Correctional Officer)	Detention facility.
Reimbursement for Medical Expenses	Costs of providing medical care, treatment, hospitalization, or transportation from the prisoner by deducting from the prisoner’s cash account and placing a lien against personal property.	Fla. Stat. § 951.032	Discretionary (decision made by Correctional Facility)	Detention facility.
Probation Costs	Total sum of “money equal to the total month or portion of a month of supervision times the court-ordered amount, but not to exceed the actual per diem cost of supervision.” Costs of supervision generally are \$103.72 for probationers and \$124.71 for those under community control. If an individual is declared indigent by the sentencing or releasing authority, either in open court or by having used the public defender, the rate will generally be established at \$50 per month.	Fla. Stat. § 948.09(1)(a) (1); Florida Department of Corrections correspondence	Discretionary (decision made by the Court)	General Revenue Fund.
Surcharge on collection of LFOs by Florida Department of Corrections	4% of total owed.	Fla. Stat. § 945.31	Discretionary (decision made by FDC)	Operating Trust Fund.
Additional Probation Surcharge for Felony Offenders.	\$2 per month.	Fla. Stat. § 948.09(1)(a)(2)	Mandatory (but, the FDC may exempt a person based on statutory factors)	Department of Corrections; to be used for correctional probation officers’ training and equipment.
Misdemeanor Probation Costs	Any person placed on misdemeanor probation by a county court must contribute no less than \$40 per month. It is a condition of probation.	Fla. Stat. § 948.09(1)(b)	\$40 minimum is mandatory. (However, a larger assessment is up to the discretion of the sentencing court. FDC may exempt a person based on statutory factors).	Court-approved public or private entity providing misdemeanor supervision.

Description	Amount	Source	Mandatory or Discretionary	Where the Money Goes
Electronic Monitoring Costs	Any person being electronically monitored must pay, as a condition of probation, a surcharge up to the full cost of the monitoring service, in addition to the cost of supervision as directed by a sentencing court.	Fla. Stat. § 948.09(2)	Discretionary. (Decision made by the sentencing court and there is no minimum. FDC may exempt a person based on statutory factors).	General Revenue Fund.
Costs for Out-of-State Parolees and Probationers	Each out-of-state probationer or parolee transferred to Florida must contribute at least \$30 per month	Fla. Stat. § 948.09(5)	Discretionary (FDC may exempt a person based on statutory factors).	Department of Corrections.
Urinalysis Costs	Offenders under any type of supervision to submit to and pay for urinalysis, as a condition of probation.	Fla. Stat. § 948.09(6)	Discretionary (decision made by the FDC).	Pays for urinalysis.
Residential Drug Punishment Center Costs	An offender ordered to probation at a community residential drug punishment center must pay a fee for room and board and residential supervision. The court may also require the offender to participate in and pay for substance abuse treatment or random drug testing.	Fla. Stat. § 948.034(1)(a)	Mandatory, if the court requires placement in residential center.	Not specified.
Residential Drug Treatment Fines	\$500 to \$10,000	Fla. Stat. § 948.034(1)(a)(1); Fla. Stat. § 775.083(1)(c)	Mandatory, if the court requires placement in residential center.	Fine and Forfeiture Fund of the circuit court.
DUI: Treatment Costs	The court must require a DUI offender to complete a substance abuse program; if the program recommends substance abuse treatment, the offender must pay reasonable costs for education, evaluation and treatment.	Fla. Stat. § 316.193(5)	Mandatory, if substance abuse program recommends treatment.	Service provider.
DUI: Punishment Costs	In DUI cases, the court must “as a condition of probation, order the impoundment or immobilization of the vehicle that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant’s name at the time of impoundment or immobilization.”	Fla. Stat. § 316.193(6)	Mandatory	Pays for impoundment and ignition interlock device.
Processing Fees For Inmate Banking Services	Up to \$6 per month	Fla. Admin. Code Ann. R.33-203.201(1)(h)	Mandatory, but waived for veterans of U.S. Armed Forces	Not specified.
Room & Board at Probation and Restitution Centers	Up to \$25 per day	Fla. Admin. Code Ann. R.33-504.101(5)(a)	Mandatory	Not specified.

ENDNOTES

- 1 U.S. BUREAU OF LABOR STATISTICS, *Regional and State Employment and Unemployment Summary* (Nov. 20, 2009) available at <http://www.bls.gov/news.release/laus.nr0.htm>.
- 2 See U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, PRISON INMATES AT MIDYEAR 2008 – STATISTICAL TABLES, 3 tbl. 2 (June 2008), available at <http://www.ojp.usdoj.gov/bjs/abstract/pim08st.htm>.
- 3 FLORIDA DEP'T OF CORR., END-OF-MONTH FLORIDA PRISON POPULATIONS BY FACILITY OCTOBER 2009, available at <http://www.dc.state.fl.us/pub/pop/facility/>.
- 4 Florida Performs, Re-offenders (Recidivism), at http://www.floridaperforms.com/Indicators.aspx?si=SI_003.
- 5 See GOVERNOR'S EX-OFFENDER TASK FORCE, FINAL REPORT TO THE GOVERNOR 12 (November 2006), available at <http://www.aecf.org/upload/PublicationFiles/Final%20Report%20of%20Florida%20Ex-Offender%20Task%20Force.pdf>.
- 6 *Id.*
- 7 See Caroline Wolf Harlow, Bureau of Justice Statistics Special Report: Office of Justice Programs, Educational and Correctional Populations 10, tbl. 14 (Jan. 2003), available at <http://www.ojp.gov/bjs/pub/pdf/ecp.pdf> (reporting that, in a 1997 national survey of inmates, 63.3% of state prison inmates without a high school diploma were making less than \$1,000 a month before they were arrested).
- 8 OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY (OPPAGA) REP. NO. 07-14, CORRECTIONS REHABILITATIVE PROGRAMS EFFECTIVE, BUT SERVE ONLY A PORTION OF THE ELIGIBLE POPULATION, 1 (Feb. 2007) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0714rpt.pdf>.
- 9 *Id.* at 2.
- 10 DEP'T OF HIGHWAY SAFETY AND MOTOR VEHICLES, 2008 FLORIDA UNIFORM TRAFFIC CITATIONS STATISTICS 11 (March 23, 2009), available at http://www.flhsmv.gov/reports/2008UTCStats/State_County_Totals.pdf.
- 11 The chart does not include fines that are assessed as substantive punishment for crimes and violations.
- 12 FLA. STAT. ANN. § 27.52(1)(c) (amended 2008).
- 13 *Id.* § 938.19(2).
- 14 *Id.* § 775.083(2) (amended 2003).
- 15 *Id.* § 951.033(2).
- 16 *Id.* § 938.07.
- 17 *Id.* § 938.25.
- 18 *Id.* § 938.21.
- 19 *Id.* § 938.06(1).
- 20 *Id.* § 938.08.
- 21 *Id.* § 812.0145(1).
- 22 *Id.* § 938.07.
- 23 *Id.* § 938.085.
- 24 *Id.* § 938.03(2).
- 25 *Id.* § 318.15(2) (amended 2004, 2009).
- 26 *Id.* § 938.10(1) (amended 2009).
- 27 *Id.* § 318.18(13) (amended 2007, 2009).
- 28 *Id.* § 939.185(1)(a).
- 29 *Id.* § 34.045(1)(b).

- 30 *Id.* § 318.15(2) (amended 2009).
- 31 *Id.* § 34.045(1)(c).
- 32 *Id.* § 318.18(14).
- 33 *Id.* § 939.185(1)(b).
- 34 *Id.* § 985.437(1).
- 35 *Id.* § 316.027(1)(c).
- 36 *Id.* § 318.18(17).
- 37 *Id.* § 27.52(1)(c).
- 38 *Id.* § 938.05(1).
- 39 *Id.* § 938.27(2)(a).
- 40 *Id.* § 938.29(b).
- 41 *Id.* § 938.10(1).
- 42 *Id.* § 318.18(13)(a)(1).
- 43 *Id.* § 318.15(2).
- 44 *Id.* § 28.246(6).
- 45 *Id.* § 142.01(2).
- 46 *Id.* § 960.29(3)(b) (describing restitution lien as “rest[ing] upon the principle of remediation and not punishment . . .”).
- 47 Fla. R. Exec. Clemency, R. 5(E), R. 9(3).
- 48 ACLU, State Legislative and Policy Reform to Advance the Voting Rights of Formerly Incarcerated Persons, (2007), *available at* <http://www.aclu.org/voting-rights/state-legislative-and-policy-reform-advance-voting-rights-formerly-incarcerated-person>.
- 49 *State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991) (citing *Bearden v. Georgia*, 461 U.S. 660 (1983)).
- 50 FLA. STAT. ANN. § 27.52(1)(b).
- 51 An American Bar Association guideline, adopted in 2004, states:
- An accused person should not be ordered to pay a contribution fee that the person is financially unable to afford. Whenever an order for a contribution fee is under consideration, the accused person or counsel should be given an opportunity to be heard and to present information, including witnesses, concerning whether the fee can be afforded. If a contribution fee is ordered prior to providing counsel to the accused person, the decision to require a contribution fee should be subject to review at the request of counsel and counsel should be given an opportunity to be heard and to present information, including witnesses, concerning whether the fee can be afforded.
- ABA, Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases, Guideline 2, *available at* <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/rec110.pdf>.
- 52 *See* THE SPANGENBERG GROUP, 2001 PUBLIC DEFENDER UP-FRONT APPLICATION FEES UPDATE 8 (Dec. 2001), *available at* <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf>. *See also* N.C.G.S.A. § 7A-455.1(b) (non-waivable North Carolina fee).
- 53 *See* FLA. STAT. ANN. §27.52(1)(b)(1).
- 54 *Fuller v. Oregon*, 417 U.S. 40, 53 (1974).
- 55 *State v. Tennin*, 674 N.W. 2d 403, 410–11 (Minn. 2004) (striking down a similar public defender fee on Sixth Amendment grounds because of the provision’s failure to include a waiver for indigency or hardship).
- 56 OPPAGA, Rep. No. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM’S COLLECTION PERFORMANCE STANDARDS, 2 exh. 1 (2007), *available at* www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf.

- 57 Interview with Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. (Oct. 30, 2008).
- 58 FLA. STAT. ANN. § 948.09(3).
- 59 Interview with Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. (Oct. 30, 2008).
- 60 *Id.*
- 61 FLA. STAT. ANN. § 796.07(6).
- 62 E-mail from Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. to Rebekah Diller, Brennan Center (Feb. 26, 2008).
- 63 State of Florida.com, Florida Tax Guide, <http://www.stateofflorida.com/Portal/DesktopDefault.aspx?tabid=29> (last visited March 17, 2008).
- 64 The state sales tax rate is 6 percent. *Id.*
- 65 Ebudget, Annual General Revenue Receipts by Source, *available at* http://www.ebudget.state.fl.us/reports/Preformatted/Annual_General_Revenue_Receipts_By_Source.pdf (last visited December 15, 2009).
- 66 FLORIDA ASSOC. OF COURT CLERKS AND COMPTROLLERS, PAYMENT OF COURT-RELATED FEES, CHARGES, COSTS, FINES, AND OTHER MONETARY PENALTIES ANNUAL REPORT, FY OCT. 1, 2007-SEPT. 30, 2008, at 3, 4, 7, *available at* http://www.flclerks.com/public_info.html (click on “2008 Documents” and then on “Assessments and Collections Report: Payment of Court-Related Fees, Charges, Costs, Fines, and Other Monetary Penalties-Annual Report 2007-2008”).
- 67 FLA CONST. art. V, § 14(b) states:
- All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.
- 68 Mark D. Killian, *Clerks Bills Refined*, FLA. BAR. NEWS, April 30, 2009 *available at* <http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/887ee144316fd4248525759e006b9c11?OpenDocument>.
- 69 FLA. STAT. ANN. § 28.37.
- 70 *Id.* § 28.36(1).
- 71 *Id.* § 28.36(2)–(3).
- 72 *Id.* § 28.36(2).
- 73 OPPAGA, Rep. No. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM’S COLLECTION PERFORMANCE STANDARDS I (2007), *available at* www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf.
- 74 Florida Clerks of the Circuit Court, FISCAL YEAR 2008-2009 CERTIFIED ARTICLE V BUDGETS FOR SUBMISSION TO THE FLORIDA LEGISLATURE, v (Oct. 15, 2008), *available at* <http://www.flccoc.org/reportsforms/legislative/FY0809CertifiedBudgetReport.pdf>.
- 75 Frances Kahn Zemans, *Court Funding: Prepared for the American Bar Association on Judicial Independence*, 7 (2003), *available at* www.abanet.org/jd/court/funding/pdf/court/funding.pdf-2003-09-09; *see also*, e.g., CONFERENCE OF STATE COURT ADMINISTRATORS, POSITION PAPER ON STATE JUDICIAL BRANCH BUDGETS IN TIMES OF FISCAL CRISIS 14 (2003), *available at* <http://cosca.ncsc.dni.us/WhitePapers/BudgetWhitePaper.pdf>; Robert Tobin, National Center for State Courts, *Funding the State Courts: Issues and Approaches* 50 (1996), *available at* <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/financial&CISOPTR=5> (stating that “[i]t is beyond dispute that [the concept of self-supporting courts] is not consistent with judicial ethics or the demands of due process”).

- 76 Staff Meeting Notes from 2nd Judicial Circuit State Attorney’s Office (Sept. 24, 2008) (on file with the Brennan Center) (“Starting today do not collect cash. It has been decided that this is not a good way of doing business. We can accept cashier checks, money orders and attorney trust fund checks for [Cost of Prosecution]”); Staff Meeting Notes from 2nd Judicial Circuit State Attorney’s Office (Aug. 13, 2008) (on file with the Brennan Center) (“[A Leon County SA] advised that his division is asking for [the Cost of Prosecution] fee up front. If it is not handled as a separate fee then it will get divided up between other costs owed by the defendant. This is a separate fee.”); Staff Meeting Notes from 2nd Judicial Circuit State Attorney’s Office (July 16, 2008) (on file with the Brennan Center) (“Reminder that we want to try to collect [the Cost of Prosecution] Fee at the time of plea if at all possible & otherwise to be paid within a certain period of time or days.”). *See also, e.g.*, Staff Meeting Notes from 2nd Judicial Circuit State Attorney’s Office (Sept. 17, 2008) (on file with the Brennan Center) (“When [Cost of Prosecutions] are collected please be sure that they do not end up in the case file . . . The receptionists at our front desk will also be able to collect [Cost of Prosecution] . . . When accepting COP the defendant needs a receipt . . . Do not refuse to take any [Cost of Prosecution.]”).
- 77 FLA. STAT. ANN. § 938.27(6) –(8) (West 2008) (detailing how it is only after the clerk of the court collects the fees that they are distributed among the appropriate agencies and specifying that costs “recovered on behalf of the state attorney . . . shall be deposited into the state attorney’s grants and donations trust fund to be used during the fiscal year . . . for actual expenses incurred”).
- 78 *Id.* § 27.52.
- 79 Staff Meeting Notes from 2nd Judicial Circuit State Attorney’s Office (October 1, 2008) (on file with the Brennan Center).
- 80 Telephone Interview with Tom Bakos, House of Hope of Alachua County, Gainesville, Florida (Jan. 11, 2010).
- 81 Telephone Interview with Brandi Rossi, Prisoner Reentry Supervisor, Jacksonville Area Legal Aid (Jan. 27, 2010).
- 82 On behalf of the Brennan Center, Florida Institutional Legal Services sent 250 surveys to individuals emerging from state prisons from February 1, 2008 to April 1, 2008 who originated in Clay, Duval, Leon, Miami-Dade, Polk and Union counties. Thirty-seven individuals responded. For 35 of those 37, the Brennan Center and Florida Institutional Legal Services were able to obtain court records listing total LFOs imposed. The median and mean amounts are derived from the court records for those 35 individuals.
- 83 FLORIDA DEP’T OF CORRS., PAYMENT OF RESTITUTION BY OFFENDERS 2 (Jan. 31, 2005) (on file with the Brennan Center).
- 84 *Id.* at 4.
- 85 *Id.*
- 86 *Id.*
- 87 FLORIDA DEP’T OF CORRS., PAYMENT OF RESTITUTION BY OFFENDERS 5 (Jan. 31, 2005) (on file with the Brennan Center). Income adjusted for inflation to 2009 dollars. U.S. Dep’t of Labor, Bureau of Gov’t Statistics Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Oct. 1, 2009).
- 88 THE CENTER FOR WOMEN’S WELFARE, UNIV. OF WASHINGTON, SELF SUFFICIENCY STANDARD FOR FLORIDA 2007, tbl. 37, *available at* <http://www.selfsufficiencystandard.org/docs/FL%202007%20All%20Families.xls>. Costs adjusted for inflation to 2009 dollars. U.S. Dep’t of Labor, Bureau of Gov’t Statistics Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Oct. 1, 2009).
- 89 This is the typical monthly payment amount set by Leon County’s Collections Court. *See infra*.
- 90 THE CENTER FOR WOMEN’S WELFARE, UNIV. OF WASHINGTON, SELF SUFFICIENCY STANDARD FOR FLORIDA 2007, tbl. 37, *available at* <http://www.selfsufficiencystandard.org/docs/FL%202007%20All%20Families.xls>. Costs adjusted for inflation to 2009 dollars. U.S. Dep’t of Labor, Bureau of Gov’t Statistics Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Oct. 1, 2009).
- 91 *Id.*
- 92 *Id.*
- 93 Telephone interviews with Harold Branning (Dec. 2, 2007 and Jan. 11, 2010).
- 94 *See Mascola v Lusskin*, 727 So.2d 328, 329 (Fla. Dist. Ct. App.1999); Jessica Pearson, *Building Debt While Doing Time: Child Support and Incarceration*, 43 JUDGES’ JOURNAL 5, 6 (2004), *available at* www.abanet.org/jd/publications/jjournal/2004winter/pearson.pdf.

- 95 Pearson, *supra* note 94 at 7; Vicki Turetsky, Center for Law and Social Policy, *Staying in Jobs and out of the Underground: Child Support Policies that Encourage Legitimate Work 2* (2007), available at http://www.clasp.org/publications/cs_brief_2.pdf; U.S. DEP'T OF HEALTH AND HUMAN SERVS., OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH AND HUMAN SERVS., INCARCERATION, REENTRY, AND CHILD SUPPORT ISSUES: NATIONAL AND STATE RESEARCH OVERVIEW (2006), available at http://www.acf.hhs.gov/programs/cse/pubs/2006/reports/incarceration_report.pdf.
- 96 See *Brown v. McNeil*, 591 F. Supp. 2d 1245 (M.D. Fla. 2008).
- 97 His conditional release was to last from 2002 to 2019. *Id.* at 1248.
- 98 *Id.* at 1251.
- 99 *Id.*
- 100 *Id.* at 1263.
- 101 FLA. STAT. ANN. § 948.30(1)(c).
- 102 Telephone Interview with Dr. Ted Shaw, Director, Intensive Treatment Modalities (ITM) of Florida (November 18, 2008).
- 103 *Id.*
- 104 OPPAGA, Rep. No. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM'S COLLECTION PERFORMANCE STANDARDS 4 (2007) available at www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf.
- 105 *Id.*
- 106 *Id.* at Ex. 4.
- 107 See *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983) (holding that depriving probationer of conditional freedom for failure to pay fines or restitution when nonpayment was not willful violates the Fourteenth Amendment); *Tate v. Short*, 401 U.S. 395, 398 (1971) (holding the Equal Protection Clause prohibits “imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.”); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970) (finding an Equal Protection clause violation “when the aggregate imprisonment exceeds the maximum period fixed by the statute and results directly from an involuntary nonpayment of a fine or court costs . . .”).
- 108 *State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991) (citing *Bearden*, 461 U.S. 660).
- 109 FLA. STAT. ANN. § 28.246 (West 2009).
- 110 See, e.g., Citrus County Clerk's Website, Frequently Asked Questions, <http://www.clerk.citrus.fl.us/nws/home.jsp?section=3&item=305> (last visited Dec. 15, 2009).
- 111 FLA. STAT. ANN. § 28.246(4) (West 2009).
- 112 Leon County Clerk of the Court, Notice of Court Costs and Fines (on file with the Brennan Center).
- 113 FLA. STAT. ANN. §§ 28.24(26)(b)–(26)(c).
- 114 Leon County Court of Clerks, Frequently Asked Questions, http://www.clerk.leon.fl.us/index.php?section=204&server=&page=clerk_services/faqs/index.php&division=collections (last visited Dec. 15, 2009) [hereinafter PAYMENT FAQ]; Amended Administrative Order Governing a Collections Court Program in Orange County, A.O. No. 07-99-26-4, at 3, Fla. 9th Jud. Cir. (Aug. 15, 2007), available at <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf>.
- 115 Order Establishing a Collections Court Program in Highlands County, A.O. No. 7-13-0, Fla. 10th Jud. Cir. (Dec 5, 2003), available at <http://www.jud10.org/AdministrativeOrders/orders/Section7/7-13.0.htm>
- 116 Fla. 9th Jud. Cir. Ct., A.O. No. 07-99-26-4 (Aug. 15, 2007), (“Amended Administrative Order Governing a Collections Court Program in Orange County”), available at <http://www.ninja9.org/adminorders/orders/07-99-26-4%20-%20amended%20order%20governing%20collections%20court.pdf>.
- 117 Fla. 19th Jud. Cir. Ct. A.O. 6-13 (Aug. 10, 2006) (“Administrative Order Establishing a Collections Court in St. Lucie County”), available at http://www.rjslawlibrary.org/orders/2006/06_13.pdf.

- 118 Jordana Mishory, *A Fine Fix: For Defendants Struggling to Pay Minor Fines, Broward's Collections Court Offers an Individualized Approach*, 47 BROWARD DAILY BUS. REV. 1 (2005).
- 119 *Id.*
- 120 *Id.*; Nikki Waller, *A Really Fine Office is Closing Its Doors*, MIAMI HERALD, Oct. 22, 2006.
- 121 Nikki Waller, *A Really Fine Office is Closing Its Doors*, MIAMI HERALD, Oct. 22, 2006.
- 122 Brennan Center Transcription of Orange County Collections Court hearing from February 20, 2008 (on file with Brennan Center).
- 123 Brennan Center Transcription of Leon County Collections Court hearing from February 20, 2008 (on file with Brennan Center).
- 124 See Fla. Fam. L. R. P. § 12.615(c).
- 125 The Leon County Clerk's Office argues that the requirement to appear in court and accompanying threat of arrest for failure to appear generates additional revenue. In response to a review of our analysis, the Clerk's Office stated:
- The Leon County Clerk's Office analyzed a population of defendants who had an "order date", i.e., a start date for the program of greater than 1/1/2004, and who received orders to show cause to appear before the collections court. This population was roughly 21,000 cases. This was not the entire population of cases started after 1/1/2004, only those that required court appearances. Collections before receiving the orders to show cause, but after receiving the notification referenced on page 1, for the 5 year period was about \$1.1 million dollars. However, payments after defendants received the orders to show cause jumped to \$5.3 million. Further, for the 5 year period, the approximate judicial and clerk cost for court totaled about \$50,000. Finally, the surcharges passed along to defendants equaled only about 13% of the total owed, compared to a 40% cost to defendants if collections agencies/law firms are used.
- Email from Gypsy Bailey, Office of the Clerk of Court, Leon County to Nancy Daniels, Public Defender, 2nd Judicial Circuit (March 9, 2009). The Brennan Center has not independently analyzed this data.
- 126 See FLA. STAT. ANN. § 28.246(4).
- 127 Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009). See also PAYMENT FAQ, *supra* note 114; FLA. STAT. § 938.30(2) (2004) (amended 2009) ("Any person failing to attend a hearing may be arrested on warrant or capias which may be issued by the clerk upon order of the court.").
- 128 Email correspondence with Gypsy Bailey, Office of the Clerk of Court, Leon County (March 9, 2009). Although \$320 is supposed to be the cut-off for cash purge amounts, the data collected reveals that 32 of the individuals arrested on "blue writs" had cash purges or bonds set above \$320, the highest at \$384. Two of these 32 individuals paid these higher sums (\$350 and \$351, respectively).
- 129 John Tomasino, Administrative Director of the Leon County Office of the Public Defender, asked the Leon County Clerk of Court to pull case information from every "blue writ" arrest in the yearlong period between October 2007 and 2008. In order to maximize the accuracy of the data, Mr. Tomasino requested that none of the individuals in the data set were arrested or held pending any other concurrent charges unrelated to their "blue writ" arrests. While the system was set up to filter out such individuals, it is still possible that the program logic did not catch all such instances. The data received included names and case numbers, the date and exact times of admission and release from Leon County jail, total bond and/or cash purge owed, and the amount ultimately paid, if paid at all.
- 130 Of the 838 arrests, there were 1238 individual cases of unpaid fines.
- 131 See *State v. Thomas*, No. 2006ZT2412A1 (Fla. Leon County Ct. 2007) (Christopher Thomas was arrested on October 15, 2007 and released on November 27, 2007, totaling one month and twelve days. Mr. Thomas did not ultimately pay any bond or cash purge).
- 132 The total number of hours of incarceration was calculated by subtracting the release date and time by the time and date of entry for each individual arrest and adding up the total time spent in jail by all of the individuals.
- 133 The total number of days of incarceration was calculated by dividing the total number of hours of incarceration by 24, the total number of hours in a day.
- 134 Telephone interview with Major Scott Bakotic, Administration, Leon County Sheriffs Department (January 26, 2009). The cost per day per inmate in the Leon County Jail was calculated by first taking the FY2007 budget

- (\$26,027,595) and multiplying by 1/4 to determine the total budget (\$6,506,989) for three months (October – December 2007) and taking the FY2008 budget (\$28,493,362) and multiplying by 3/4 to determine the total budget (\$21,370,021.50) for nine months (January – September 2008). From those calculations, the total budget from October 1, 2007 to September 30, 2008 was calculated as \$27,876,919.50. Next, that number was divided by 365, the number of days in a year, to determine the daily budget (\$76,375). Finally, that number was divided by the number of prison beds (1426), to come up with the final cost per day per inmate of \$53.56.
- 135 The total cost to jail individuals for failure to appear at Collections Court was calculated by multiplying the cost per day per inmate (\$53.56) by the total days individuals spent behind bars for failure to appear at Collections Court (846.25).
- 136 Telephone interview with Lieutenant Tim Coughlin of Leon County Warrants and Civil Division (January 26, 2009) (stating that he had no way of estimating the cost to arrest any given individual and that the cost depends on the circumstances of the given arrest like the time, place, and number of officers on the scene).
- 137 Telephone interview with Jamey Maine, Deputy Clerk, Leon County (January 26, 2009).
- 138 For a similar use of the warrant fee methodology see RHODE ISLAND FAMILY LIFE CENTER, COURT DEBT AND RELATED INCARCERATION IN RHODE ISLAND FROM 2005 THROUGH 2007 (APR. 2008), available at <http://www.ri-familylifecenter.org/pagetool/reports/CourtDebt.pdf>.
- 139 The total cost to the county was calculated by adding the total jail cost to the total warrant cost.
- 140 The net was calculated by subtracting the estimated cost to the county and county jail from the total cash purges paid between October 1, 2007 and September 30, 2008.
- 141 Rene Stutzman, *Seminole Judge Jailing People for Court Debts*, Orlando Sentinel, Jan. 7, 2010.
- 142 *Id.*
- 143 See, e.g., Emergency Petition for Writ of Habeas Corpus, *Esquilin v. Benton*, No. (Fla. 10th Cir. Ct. for Highlands County, July 16, 2007) (No. 07000586GCS).
- 144 See docket information available through Highlands County Court Clerk's Office website under Rafael Esquilin, Case No. 07000586GCS. Docket information available at <http://courts.hcclerk.org/iquery/Default.aspx>.
- 145 *Akridge v. Crow*, 903 So. 2d 346, 352–53 (Fla. Dist. Ct. App. 2005).
- 146 See, e.g., Judgment and Sentence, *Florida v. Flores-Platon*, No. 42-2007-CT-010401 (Fla. Marion County Ct. Jan. 28, 2008) (staying execution of 60-day jail sentence pending compliance with payment of fines and obtaining valid driver's license); Judgment and Sentence, *Florida v. Barrett*, No. 42-2008-CT-000128 (Fla. Marion County Ct. Feb. 14, 2008) (staying execution of 30-day jail sentence pending compliance with payment of fines and obtaining valid driver's license).
- 147 In *Tate v. Short*, a defendant was incarcerated for failure to pay his traffic fines due to his indigency. The Supreme Court found that the state statutes that allowed him to be confined for failing to pay fines (because he could not afford them) were unconstitutional under the Equal Protection Clause. 401 U.S. 395, 397–99 (1971). In *Tate* and other cases, the Court has found that the Constitution bars the state from “imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.” *Id.* at 398 (quoting *Morris v. Schoonfield*, 399 U.S. 508, 509 (1970)). Florida courts have followed this reasoning as well, mandating an inquiry into the defendant's ability to pay before jailing a person for non-payment of fines under such suspended sentencing schemes. See *City of Orlando v. Cameron*, 264 So.2d 421, 423 (Fla. 1972).
- 148 See, e.g., docket entries related to *Florida v. Flarity*, No. 01-2007-MO-011893 (Fla. Alachua County Ct. 2008); *Florida v. Thomas*, No. 01-2007-MM-006823-A (Fla. Alachua County Ct. 2007).
- 149 See *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).
- 150 OPPAGA, Rep. No. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM'S COLLECTION PERFORMANCE STANDARDS 4 Exh. 4 (2007), available at www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf html (according to OPPAGA, 85% of county clerks use “Driver's License Sanctions” as a collection tool). See FLA. STAT. ANN. § 322.245(5)(a) (West 2008) (authorizing the clerk of courts to notify the Florida Department of Motor Vehicles if “a person licensed to operate a motor vehicle in [Florida] . . . has failed to pay financial obligations for any criminal offense other than [certain traffic misdemeanors and traffic felonies]” and requiring the DMV to suspend the person's driver's license upon receipt of such notification).

- 151 FLA. STAT. ANN. § 322.245(5) (West 2008).
- 152 *Id.* § 28.24(8).
- 153 *Id.* § 318.15(2).
- 154 John Pawasarat & Lois M. Quinn, Employment & Training Inst., Univ. of Wis. Milwaukee, The EARN (Early Assessment & Retention Network) Model for Effectively Targeting WIA & TANF Res. to Participants (2007), available at <http://www4.uwm.edu/eti/2007/EARNModel.pdf> [hereinafter *Employment Report*]. See also Margy Waller, Jennifer Doleac & Ilsa Flanagan, Brookings Institution, *Driver's License Suspension Policies*, 2 (2005) available at http://www.aecf.org/upload/publicationfiles/license_all_reports.pdf (finding that their surveys of residents in 10 of 14 local communities visited and researched were consistent with “other research finding a strong correlation between car ownership and employment”).
- 155 *Employment Report*, *supra* note 154, at 3.
- 156 FLA. STAT. ANN. §§ 322.34(2)(a) – (2)(b) (West 2008).
- 157 *Id.* § 322.34(2)(c).
- 158 *Id.* § 322.34(10)(a) – (10)(b). In such cases, a person now commits a misdemeanor in the second degree for driving with a suspended license, and a misdemeanor in the first degree, for the second and subsequent convictions. Despite this exception, the Florida code’s definition of “Forcible Felony” is broad, citing crimes from treason and murder to “any other felony, which involves the use or threat of physical force or violence against any individual.” *Id.* § 776.08.
- 159 *Id.* §§ 775.082, 775.083.
- 160 OPPAGA, Rep. No. 08-12, SEVERAL ALTERNATIVES COULD BE USED TO REDUCE INCREASING IMPRISONMENT OF PERSONS DRIVING WITH SUSPENDED LICENSES, 3 (2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0812rpt.pdf>. OPPAGA found that as of November 2007, there were 1662 individuals in state prison for the primary offense of driving on a suspended or revoked license. Of those 1662, the OPPAGA received driving records for 904 (or 54%) individuals. Of those 904 driving records, 661 had their license suspended for failure to meet court-ordered financial obligations, including child support, “failure to pay traffic summons, parking tickets, or other court fines or fees, including non-waivable court costs in criminal cases.” *Id.* at 4 Exh. 3.
- 161 *Id.* at 3.
- 162 FLA. STAT. ANN. §§ 775.082, 775.083 (West 2009).
- 163 *Id.* § 28.246(6).
- 164 *Id.*
- 165 *Id.* § 28.246(6).
- 166 Telephone interview with Sam (Oct. 30, 2009) (last name withheld at his request).
- 167 Lenny Savino, *Law Firm Hired by Counties Had Legal Troubles*, TAMPA TRIB. (Apr. 9, 2006).
- 168 FLA. STAT. ANN. § 938.30(6) (West 2004) (“If judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment thereon and issue any writ necessary to enforce the judgment in the manner allowed in civil cases. Any judgment issued under this section constitutes a civil lien against the judgment debtor’s presently owned or after-acquired property, when recorded pursuant to s. 55.10.”).
- 169 *Id.* §§ 960.291– 960.293.
- 170 *Id.* § 960.291(1).
- 171 *Id.* §§ 55.03, 960.294 (describing process for determining rates of interest for judgments and the effect of civil restitution liens).
- 172 *Id.* § 960.295(2).
- 173 OPPAGA, Rep. No. 07-21, CLERKS OF COURT GENERALLY ARE MEETING THE SYSTEM’S COLLECTION PERFORMANCE STANDARDS (2007) available at www.oppaga.state.fl.us/reports/pdf/0721rpt.pdf.

- 174 FLA. STAT. ANN. § 938.30(2) (stating that “[t]he judge may convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person’s inability to pay”).
- 175 See FLA. CLERKS OF THE CIRCUIT COURT, ANNUAL REPORT: PAYMENT OF COURT-RELATED FEES, CHARGES, COSTS, FINES AND OTHER MONETARY PENALTIES, FY OCT 1, 2007– SEPT. 30, 2008, *available at* http://www.flclerks.com/Pub_info/2008_Pub_info/Assessment_Collections_Report_2008.xls. (circuit criminal mandatory tab).
- 176 *Id.*
- 177 FLORIDA DEP’T OF CORR. ANNUAL REPORT 2008-09, Budget Summary, *available at* <http://www.dc.state.fl.us/pub/annual/0809/budget.html>.
- 178 33 FL ADC 33-203.201(10).
- 179 *Id.*
- 180 33 FL ADC 33-203.201(10)(e).
- 181 E-mail from Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. to Rebekah Diller, Brennan Center (Jan. 14, 2008).
- 182 *Id.*
- 183 Memorandum from the Florida Dep’t of Corrs., Payment of Restitution by Offenders 1-2 (January 31, 2005) (on file with the Brennan Center).
- 184 FL. STAT. ANN. § 948.09(7).
- 185 FLA. STAT. ANN. § 948.09(1)(a)(1) (“The rules shall incorporate provisions by which the offender’s ability to pay is linked to an established written payment plan.”).
- 186 Telephone interview with Wayne B. (Oct. 12, 2007).
- 187 See *Llumbet v. State*, 698 So.2d 381, 383 (Fla. Dist. Ct. App. 1997).
- 188 See *Bearden v. Georgia*, 461 U.S. 660, 672 (1983) (holding that a court cannot jail an indigent probationer for failure to pay fine unless inquiry reveals willful failure to pay).
- 189 E-mail from Shari Britton, Chief, Bureau of Probation & Parole Field Services, Florida Dept. of Corrs. to Karensa Pate, Correctional Programs Consultant, Florida Dept. of Corrs., (Oct. 22, 2008).
- 190 In fiscal 2006-2007, there were 147,887 total violations of probation and other supervision. Of that number, 100,430 were technical violations, of which 18,706 included failure to pay LFOs as one of the technical violations. Email from Kristine Dougherty, Bureau of Research & Data Analysis, Florida Dep’t. of Corrs. to Rebekah Diller, Brennan Center (Jan. 11, 2008). Not all violations of probation resulted in revocation.

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