

Access to Justice Spotlight: Fines and Fees

October 2023



Background:

On April 20, 2023, the Department of Justice issued a [Dear Colleague Letter](#) (“Letter”) to state and local courts and juvenile justice agencies, clarifying legal obligations and highlighting important considerations related to legal system fines and fees (“fines and fees”). The Letter detailed seven constitutional principles relevant to the imposition and enforcement of fines and fees, and reminded courts that recipients of federal financial assistance, including court systems, must additionally comply with statutory prohibitions against discrimination. The Letter also touched on public policy and practical concerns raised by the imposition of fines and fees on individuals who cannot afford to pay. It encouraged courts and legislatures to decrease reliance on fines and fees as a source of revenue.

The Letter also previewed that the Office for Access to Justice (“ATJ”) would issue a report expanding upon the principles the Department set forth in the letter, “highlighting innovative work by states, municipalities, and court leaders in this area.”³ This report aims to assist jurisdictions that may wish to pivot from reliance on fines and fees by providing some ideas of where to begin.

Promising Practices:

Assessments

State and local jurisdictions continue to move in the direction of removing or eliminating budgetary line items that rely on collecting debt

Fines and fees on minors, probation/parole fees, public defense fees, diversionary fees and fees on the incarcerated are most frequently being eliminated entirely

Wasco Co, OR, the City of Seattle, San Francisco Co, CA, and Los Angeles, County have all passed legislation to remove general “administrative” fees that are discretionary

Assessing fees/fines on juveniles can be reasonably assumed to implicate Fourteenth Amendment concerns regarding ability to pay - eight states and multiple local governments and juvenile justice agencies have eliminated all juvenile fines and fees

Research has shown that the Sixth Amendment’s guarantee to right of counsel can be implicated and often violated by fees imposed for public defense and other investigatory costs yet are often automatically assessed

Movement to suspend probation costs for diversion docket participants or reallocate dollars interdepartmentally to cover costs of eliminating supervision fees entirely has been implemented in states like Oregon, Minnesota, Massachusetts, and Massachusetts

A growing number of states are dismissing both cases AND all costs simultaneously so as to not “erode trust” in the justice system.

Requiring Legislative Authorization and Imposing Caps

To prevent localities from creating new fees and fines, several states have created legislation not allowing

Additionally, other localities have moved to cap municipal fines/fees as well

Proportionate Alternatives to Fines

The use of community service in lieu of fines/fees presents opportunities for improvement including:

Ensuring there are not fees for participating in the program

Ensuring hourly rate is appropriate for current economics

Individual tailoring

Ability to Pay Determinations and Payment Options

Imposing a fee to use an indigent-based right to counsel is usually not free.

Research has shown that the Sixth Amendment's guarantee to right of counsel can be implicated and often violated by fees imposed for public defense and other investigatory costs

Meaningful ability to pay determination and sliding scales as a best practice

it is appropriate to presume that people who receive means-tested benefits such as food stamps and other public assistance, people who are unhoused or serving a term of confinement, and people below a certain income threshold cannot afford to pay fines and fees. Many jurisdictions already codify presumptions of indigence with regard to eligibility for a public defender

Jurisdictions should provide training for all those involved in setting fees on ability-to-pay policies and how they are implemented throughout the justice continuum

Timeliness of ability to pay hearings is important - Conducting them at sentencing when a fine/fee is first imposed versus at subsequent hearings conserves Court resources as does ensuring they are done properly considering ALL debt rather than just how the defendant spends their money.

Barriers Created by Fines and Fees Enforcement

Failure to pay-based incarceration

According to the Dear Colleagues letter, it is unconstitutional to incarcerate an individual for their inability to pay a justice-system fine or fee.

Incarcerating individuals for not paying their fines has a detrimental effect on their already unstable economic situation

Debt-based driving suspensions

Over the last five years, 28 states have adopted legislation to eliminate or circumscribe the use of driving penalties in conjunction with fines/fees arrears.

Imposing driver's license penalties disproportionately impacts low-income families - only about 11% of which have personal transportation

Not Extending Justice-System Involvement

Some jurisdictions have taken additional steps to ensure individuals who have committed the same offense are not subject to disparate penalties due solely to their financial circumstances.

Discharging Old Fines and Fees

Great opportunity for innovation exists as it pertains to creating amnesty initiatives where warrants can be removed without detention and fees waived

Other options for innovation include creating a statute of limitations for fines/fees, automatically clearing uncollectible debt, and creating programs for debt forgiveness

Reducing Existing Debt

Reducing debt has shown to both increase likelihood of recouping funds as well as easing the burden on low-income families.

Localities offer reduced debt during the season tax refunds are distributed as well as through successful participation in specialty dockets or diversion initiatives.

Resolving Conflicts of Interest

When fines and fees “are geared toward raising general revenue and not toward addressing public safety, they can erode trust in the justice system.”

A number of jurisdictions have taken steps to protect courts and criminal justice agencies from real and perceived conflicts of interest by uncoupling law enforcement and court budgets from revenue collected from fines and fees.

Other jurisdictions have taken measures to increase transparency with regard to municipal budgeting and any relationship between fines/fees and operating costs