

**AIRise**

**Impaired  
Driving Solutions**

# **Carrying the Weight**

The Impact of Fines & Fees on Participants

# Feel Good Stories

“... (the treatment court program) is almost entirely funded by its typically impoverished participants with the help from Community Corrections, which likewise is almost entirely funded by fees from typically impoverished probationers.”

“If program user fees aren’t collected,” the judge told the finance committee, there is no money for even office supplies.’ The judge noted that the court levies requirements on participants to include payment of program user fees. The program user fee is \$25 a month for the duration the individual’s participation in the Drug Court program, which takes two years to complete successfully.”

*From two separate articles found in local newspapers in different parts of the country touting the program.*

# Feel Good Stories

“Participants who are unable to meet payments are put on notice but given leniency if they have been laid off or are suffering other financial hardships.”

“The program costs an estimated \$550 a month.”

“At any given time, there are 300 people in the program, which lasts three to five years...”

That equates to \$19,800-\$33,000 in costs for a successful graduate to complete the program.

*An additional article from a prominent city touting the program.*

# Cringe

“Like many parents or guardians with children who get involved in the juvenile justice system, Dempsey was liable for fees and costs related to his son’s case.”

“Between the required counseling appointments, classes and court hearings, over one six-month period Dempsey drove his son to and from related obligations five nights a week, right at 5 p.m. He lost a couple of jobs for leaving work an hour early.” After missing a court hearing for which he wasn’t notified, they actually jailed Dempsey overnight, even though he paid the missing costs. ““The juvenile justice system has nothing to do with the juvenile,’ he said. ‘It has everything to do with getting money off of the parent.’”

*Article highlighting the impact of a parent with a child in a juvenile treatment court.*

# Carrying the Weight



**Treatment courts are often targeted by opponents for the perceived or real attempt to support the system on the backs of participants**

1. What Research/Policy Analysis Tells Us About Fines & Fees in the Criminal Justice System
2. Research on the Impact of Fines & Fees on Participants in Treatment Courts
3. Applying the Adult DC Best Practice Standards
4. Recent Developments/Guidance
5. Strategies to Reduce the Negative Impact on Participant Outcomes

# Presentation Summary



# What Does Research/Policy Analysis on CJ Fines/Fees Tell Us?

- A. “*Held*: The Eighth Amendment’s Due Process Clause is an incorporated protection applicable to the States under the Fourteenth Amendment’s Due Process Clause.”
- B. Fines and fees are typically assessed without considering a defendant’s ability to pay; they place a disproportionate burden on poor individuals, and they serve as a regressive form of punishment.

Sources:

A. SCOTUS: 2019 *Timbs v. Indiana*

B. US Council of Economic Advisors Issue Brief: Fines, Fees, and Bail. 2015

# What Does Research/Policy Analysis on CJ Fines/Fees Tell Us?

“Fees imposed should never be greater than an individual’s ability to pay...”. “No law or rule should limit or prohibit a judge’s ability to waive or reduce any fee, and a full waiver of fees should be readily accessible to people for whom payment would cause a substantial hardship.”

Sources: ABA (2018) Ten Guidelines on Court Fines and Fees

# The Impact of Court Debt

Some people who owe financial sanctions “remain trapped in the criminal legal system, and are exposed to greater debt, harsh punishments, longer involvement in the system, financial tumult, barriers to obtaining wealth and stability, and the near-constant threat of incarceration.”

Sources: Paying on Probation. Criminal Justice Policy Program. Harvard Law School. 2020

# The Impact of Court Debt

- A. Resources devoted to collecting and enforcing fees and fines could be better spent on efforts that actually improve public safety.
- B. Indebtedness has serious effects on health.

Sources:

A. The Steep Costs of Criminal Justice Fees and Fines. Brennan Center for Justice at NY University School of Law (2019)

B. Turunen & Hiilamo. (2014). Health Effects of Indebtedness: a systematic review

# Drug Court Research

## A PROMISING PRACTICE

### PARTICIPANTS ARE REQUIRED TO PAY COURT FEES. THIS RESEARCH FOUND

- “Programs that required court fees had 208% higher cost savings than programs that did not.” (Cost savings refer to outcome costs)
- “Court fees are one way that Drug Court programs create an institutionalized, sustainable source of program funding.”
- **“These fees must be proportional to a participant’s ability to pay and should not create a barrier to success or a disincentive to participate in the program.”**

Carey, Mackin, & Finigan, (2012) What Works? The Ten Key Components of Drug Courts: Research-Based Best Practices, Drug Court Review 8(1)

# Activity

## WHAT'S REQUIRED OF YOUR PARTICIPANTS?

- Write down all of the fines and fees required of your participants: court costs/fines, program fees, supervision fees, UA testing fees, technology fees, treatment costs...
- What does that equate to as a monthly responsibility?

Activity

# Report Out



# The Impact of Fines and Fees

## PROGRAM SUSTAINABILITY

- How much revenue is the program making from fees?
- Is it a reliable way to sustain your program?

## ACCOUNTABILITY AND RESPONSIBILITY

- What financial expectations do we have of our participants outside of fines and fees?
- What do we hope for our participants?
- How do fines and fees support program and participant goals?

# Drug Court Research

(Ho, 2018)



THIS RESEARCH SOUGHT TO ANSWER THE FOLLOWING QUESTIONS

1. Are there disparities in who gets into treatment courts?
2. Are there disparities in treatment court graduation rates across different demographic characteristics?
3. What treatment court practices are associated with reduced disparities in graduation rates between demographic groups?

Ho, Carey, & Malsch. (2018).

**Racial and Gender Disparities in Treatment Courts: Do They Exist and Is There Anything We Can Do to Change Them?** Journal for Advancing Justice (Vol. I)

# Drug Court Research

(Ho, 2018) continued



THIS RESEARCH FOUND THAT TWO PRACTICES WERE RELATED TO GREATER DISPARITIES.

In order to graduate, participants must have a job or be in school.

**88%**

**Increase in Disparity**

Participants are required to pay court fees.

**197%**

**Increase in Disparity**

Ho, Carey, & Malsch. (2018).

**Racial and Gender Disparities in Treatment Courts: Do They Exist and Is There Anything We Can Do to Change Them?** Journal for Advancing Justice (Vol. I)

## STANDARD II

# Equity and Inclusion



### H. FINES, FEES, AND COSTS

“Conditions that require participants to pay fines, fees, treatment charges, or other costs can **disproportionately burden members of some cultural groups**. Such conditions are imposed **only for persons who can meet the obligations** without experiencing financial, familial, emotional, or other distress. Monetary conditions, if required, are **imposed on a sliding scale** in accordance with participants’ demonstrable ability to pay and at amounts that are **unlikely to impose undue stress on participants that may impede treatment progress.**”

## STANDARD IV

# Incentives, Sanctions & Service Adjustments



### I. PHASE PROMOTION

“Phase promotion is predicated on the achievement of **realistic** and defined behavioral objectives...”

### G. JAIL SANCTIONS

“Treatment courts are significantly more effective and cost-effective when they **use jail sanctions sparingly.**”

## STANDARD IV

# Incentives, Sanctions & Service Adjustments



- **J. Program Discharge:** “Before discharging a participant unsatisfactorily, the judge should find by clear and convincing evidence that one or more of the following criteria have been met:
  - Poses a serious and imminent risk to public safety
  - Voluntarily withdraws
  - Unwilling or refuses treatment and/or services

# State Guidelines on Fines/ Fees in Treatment Courts

## CO PROBLEM SOLVING COURTS BEST PRACTICES MANUAL

- 1.7: “...but no one who is otherwise eligible shall be denied participation in the treatment court solely because of inability to pay. Subsidies and payment plans will be used to facilitate participation.”

## PA SUPREME COURT ACCREDITATION PROGRAM ADULT | DUI

- Attachment #4: 7.3: “The court ensures that no one is denied participation in drug courts solely because of an inability to pay fees, fines, or restitution.”

# State Guidelines on Fines/ Fees in Treatment Courts

## NC MINIMUM STANDARDS FOR DRUG TREATMENT COURTS

- 9.8(2): “No program fees shall be charged by Drug Treatment Courts to participants.”

## MO TREATMENT COURT STANDARDS

- 6-16: “All programs shall have a policy for indigent participants.”
- “Participants shall not be prevented from entering a program, progressing in a program or commencement from a program due to their inability to pay treatment court fees.”
- “Participants shall not be subject to jail sanctions for inability to pay fees.”

# Treatment Court Specific Guidelines

## PAYMENT ALTERNATIVES

- Reduction of fees as an incentive for positive behavior.
- Community Service in lieu of fees/fines.
- Participant payments directly to a treatment provider agency can be deducted from any court fine/fee balance.
- Provide credit towards fines/fees through participation in other court-approved instructional, educational or developmental programs.
- Treatment Court judge has the authority to waive/cancel/reduce fines/fees.

Sources: Statewide Problem-Solving Court Publications (Standards, Guidelines, Manuals, and Court Rules) found on State Judiciary websites.

# DOJ Guidance: Letters 2023 & 2024



Associate Attorney General

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

April 20, 2023

Dear Colleague:

The U.S. Department of Justice (Department) is committed to working with state and local courts and juvenile justice agencies to ensure that their assessment of fines and fees is constitutional and nondiscriminatory. To advance that goal, the Department has revised and updated a letter it previously issued in 2016 that focused on the assessment of fines and fees against adults, as well as a 2017 advisory addressing the assessment of fines and fees against juveniles. The letter, issued today by the Civil Rights Division, Office of Justice Programs, and Office for Access to Justice, addresses in detail the assessment of fines and fees against both adults and juveniles. The letter includes an updated discussion of the relevant case law on the assessments of fines and fees, cautions against discriminatory enforcement of fines and fees, and details the obligations of federal funding recipients to comply with federal statutory prohibitions against discrimination in the imposition and collection of fines and fees.

The letter outlines circumstances where unjust imposition and enforcement of fines and fees violate the civil rights of adults and youth accused of felonies, misdemeanors, juvenile offenses, quasi-criminal ordinance violations, and civil infractions, as well as circumstances that raise significant public policy concerns. In particular, the letter outlines the below seven constitutional principles:

- (1) The Eighth Amendment prohibits the imposition of fines and fees that are grossly disproportionate to the severity of the offense;
- (2) The Fourteenth Amendment prohibits incarceration for nonpayment of fines and fees without first conducting an ability-to-pay determination and establishing that the failure to pay is willful;
- (3) The Fourteenth Amendment requires the consideration of alternatives before incarcerating individuals who are unable to pay fines and fees;
- (4) The Fourteenth Amendment prohibits the imposition of fines and fees that create conflicts of interest;
- (5) The Fourteenth Amendment prohibits conditioning access to the judicial process on the payment of fees by individuals who are unable to pay;
- (6) The Sixth and Fourteenth Amendments require due process protections, such as access to counsel in appropriate cases, as well as notice, when imposing and enforcing fines and fees; and
- (7) The Fourteenth Amendment prohibits the imposition of fines and fees in a manner that intentionally discriminates against a protected class.

In addition to constitutional responsibilities and related public policy concerns, the letter outlines the obligations of recipients of federal financial assistance (including courts) under Title VI of the Civil

Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), and other statutes with nondiscrimination provisions. Collectively, these statutes, and their implementing regulations, prohibit recipients of federal financial assistance from discriminating on the basis of race, color, national origin, religion, and sex. For example, under Title VI and the Safe Streets Act, which both prohibit national origin discrimination, state court systems and other federal funding recipients are required to take reasonable steps to provide meaningful access to people who have limited proficiency in English.

As noted in the letter, imposition of fines and fees that do not comply with constitutional and statutory requirements, or that fail to take account of other public policy concerns, may erode trust between local governments and their constituents, increase recidivism, undermine rehabilitation and successful reentry, and generate little or no net revenue. The letter further notes that the detrimental effects of unjust fines and fees (including escalating debt, being subjected to changes in immigration status, and loss of one's employment, driver's license, voting rights, or home, among others) fall disproportionately on low-income communities and people of color, who are overrepresented in the criminal legal system and may already face economic obstacles arising from discrimination, bias, or systemic inequities. Moreover, the letter emphasizes the negative impact of imposing fines and fees on youth, which may also fall on families in low-income communities and people of color, because youth are unlikely to be able to afford to pay fines or fees without familial support.

The letter also identifies best practices and recommendations that courts can consider and adopt related to each principle. The letter acknowledges that many states, municipalities, and court leaders have adopted innovative approaches to reduce their reliance on fines and fees. The Department's Office for Access to Justice is developing a best practices guide, which will highlight work and efforts by states, municipalities, and court leaders in this area.

The Department remains committed to collaborating with court leaders and stakeholders in the criminal legal system to develop and share solutions. The Department is open to serve as a resource, collaborate and promote solutions, and provide grant funding and technical assistance to state, county, local, and tribal courts to improve the functioning and fairness of the justice system.

To that end, in the coming weeks, the Department's Office of Justice Programs, Bureau of Justice Assistance will release a [solicitation](#) ("The Price of Justice: Rethinking the Consequences of Fines and Fees") seeking a training and technical assistance provider to work with a select number of jurisdictions interested in understanding and reforming their fines and fees policies and practices, and ultimately seeking to reduce the use of unjust fines and fees and redirect the resources used in these systems into activities with a greater return on public safety. The Department of Justice supports wide dissemination of the letter.

Sincerely,

Vanita Gupta  
Associate Attorney General

# DOJ: Office for Access to Justice

## CONSTITUTIONAL PRINCIPLES RELEVANT TO THE ASSESSMENT AND ENFORCEMENT OF FINES AND FEES

1. The 8<sup>th</sup> Amendment prohibits the imposition of fines & fees that are grossly disproportionate to the severity of the offense.
2. The 14<sup>th</sup> Amendment prohibits incarceration for nonpayment of fines & fees without first conducting an ability-to-pay determination & establishing that the failure to pay is willful.
3. The 14<sup>th</sup> Amendment requires the consideration of alternatives before incarcerating individuals who are unable to pay fines & fees.
4. The 14<sup>th</sup> Amendment prohibits the imposition of fines & fees that create conflicts of interest.
5. The 14<sup>th</sup> Amendment prohibits conditioning access to the judicial process on the payment of fees by individuals who are unable to pay.
6. The 6<sup>th</sup> & 14<sup>th</sup> Amendments require due process protections, such as access to counsel in appropriate cases, as well as notice, when imposing & enforcing fines & fees.
7. The 14<sup>th</sup> Amendment prohibits the imposition of fines & fees in a manner that intentionally discriminates against a protected class.

# DOJ/OAJ Guidance

- “Eliminating the unjust imposition of fines and fees is one of the most expeditious ways for jurisdictions to support the success of youth and low-income individuals, honor constitutional and statutory obligations, reduce racial disparities in the administration of justice, and ensure greater justice for all.”

# New Mexico

- Recent survey showed 80% of justice-involved respondents reported forgoing basic needs such as food and rent to pay off court debt.
- A 2021 study in Bernalillo County showed that only 4% of people were able to pay their fines and fees in full, while 73% satisfied a portion by serving jail time.

# New Mexico

Press Release: New Mexico Gov. Lujan Grisham Signs  
Groundbreaking Fee Elimination Bill Into Law

April 6, 2023

# New Mexico

- Law eliminated post-adjudication and bench warrant fees.
- Also, expand definitions for community service to encourage participation in academics, vocational training, and recovery treatment, as well as reduce costly jail stays related to debt.
- Separate law eliminated the suspension of driver's licenses for missed court hearings and overdue fines and fees – 24<sup>th</sup> state to do so.

# Other States

- In the last two years, 15 states have passed legislation limiting or eliminating certain fees for adults and juveniles.
- CO eliminated nearly all fees in juvenile justice system.
- NJ eliminated all punitive fines for juveniles.
- DE enacted legislation prohibiting suspension of DLs for nonpayment, eliminated several court fees, prohibited charging interest fees on late payments, and eliminated fees charged for public defenders.

# A List of Actions To Consider



- Advocate for changes to fee/fine requirements based on statute.
- Reduce reliance on participant payments to fund program operations.
- Institute “Ability-to-Pay Determinations”.
- Allow flexible payment plans or create other mechanisms to pay off debts.

# A List of Actions To Consider



- Prohibit warrants and jail time for unpaid fees.
- Adopt practices that can help minimize failures to pay or appear in court.
- Collect & analyze data related to outcomes (retention, rates of graduation, and recidivism) based on demographics & financial factors (fees/fines imposed, payments made, and participant ability to pay factors).



# Resources

National Task Force On Fines, Fees,  
And Bail Practices Resource Center

National Center For State Courts

DOJ, Office of the Associate Attorney General

©All Rise 2024

The following presentation may not be copied in whole or in part without the written permission of the author of the National Association of Drug Court Professionals. Written permission will generally be given upon request.