

# Assessing Fines and Fees in the Criminal Justice System

BY ANNE TEIGEN

## Introduction

The monetary penalties and legal financial obligations associated with being involved in the criminal justice system—and their effect on low-income defendants—are causing growing concern among policymakers across the country.

Cities, states, courts and district attorney’s offices levy fines or fees on defendants at nearly every stage of the criminal justice system. Fines are monetary punishments for infractions, misdemeanors or felonies, and are intended to punish offenders and deter others from committing similar offenses. Fees, according to a [report](#) by the White House Council of Economic Advisors, are “itemized payments for court activities, supervision, or incarceration, charged to defendants.” These fees, like clerk or transcript fees, are intended to support operational costs in the criminal justice system. Collectively, fines, fees and surcharges are known as “legal financial obligations” or LFOs.

Stakeholders in justice systems around the country have argued that some LFOs are important to funding day-to-day court operations. Some believe that people convicted of crimes, rather than taxpayers, should bear responsibility for the increasing costs of running the justice system.

In recent years, however, it has been revealed that some jurisdictions, like [Ferguson, Mo.](#), used criminal justice fees as revenue generators. In addition, imposing excessive fines and fees can have a devastating effect on the lives of low-income offenders. For those who cannot afford it, the accumulation of fines and fees associated with infractions, traffic tickets and criminal convictions can initiate and perpetuate a cycle of poverty. The impartiality, fairness and equality of the justice system are called into question when punishment can be determined by financial status.

Recent legal developments have also prompted state policymakers to act. In *Timbs v. Indiana*, the U.S. Supreme Court ruled that the Eighth Amendment Excessive Fines Clause applies to states and lo-



cal governments. Writing for the court, Justice Ruth Bader Ginsburg acknowledged that being free from excessive fines and fees is a fundamental right. Additionally, all 50 state constitutions have excessive fines clauses that apply to states and local governments.

## How Much Can the Fees Add Up?

The amount of LFOs a person may have to pay varies by jurisdiction and level of offense. A [report](#) from the Vera Institute related that in Louisiana, judges have the authority to impose dozens of discretionary fees, including court costs that can be as high as \$2,500 in felony cases and \$500 for misdemeanor cases. State law in Louisiana requires courts to impose certain mandatory fees, like a \$45 fee to the public defender’s office and a \$50 to \$100 fee for each drug-relat-

ed probation sentence, which goes to support drug education and treatment. In New Orleans, 8,331 residents in 2015 were charged fines and fees averaging about \$460 per person.

Paying fines and fees, even in what seem to be lower amounts, can be difficult for poor and low-income individuals and families. [Researchers in Alabama](#) surveyed 980 residents from 41 counties about their experience with court debt, including 879 people who owed money themselves and 101 people who were paying debt for others. The survey found that:

- 83% gave up necessities like rent, food, medical bills, car payments and child support in order to pay down their court debt.
- 50% had been jailed for failure to pay court debt.
- 44% had used payday loans to cover court debt.
- 38% admitted to committing a crime to pay off court debt.
- 20% were turned down for a diversion program like drug court because they could not afford it.
- 66% received money or food assistance from a faith-based charity or church that they would not have had to request if it were not for their court debt.

## The Consequences of Not Paying Legal Financial Obligations

### DRIVER'S LICENSE SUSPENSION

In at least 26 states, nonpayment of certain fines and fees will result in a mandatory driver's license revocation. It can be harder for individuals to meet any financial obligations when they are unable to drive to work, a problem compounded in rural areas that lack public transportation. According to the [National Center of State Courts](#), one study in New Jersey found that almost 45% of suspended drivers lost their jobs after their license was suspended. The same number of drivers who lost their jobs could not find other employment while their license was suspended. Since most suspensions for nonpayment end only when the suspended driver pays the full amount of the fine, late fees and interest compound and a person can easily remain in debt indefinitely. And if a suspended driver continues to drive to work or school, this can lead to more criminal sanctions and incarceration.

There are efforts in a number of cities and states around the country to help those who have had their license suspended for not paying fees get back on their feet.

The municipal court in Phoenix has a [Compliance Assistance Program](#) that allows a person to enter a payment plan for all traffic and parking charges without having to see a judge. In [Spokane, Wash.](#), the city prosecutor has a relicensing program that provides eligible participants with the opportunity to waive collection fees, combine all traffic-fine payments into a manageable monthly amount, and have participating jurisdictions release holds on license reinstatement.

In 2019, [Montana](#) removed the suspension of a driver's license as a sentencing option for nonpayment of

### Examples of Fines and Fees Across the Nation

LFOs can come in many forms and can occur at many points in the criminal justice system. Here are just a few examples:

- Bond fees.
- Clerk filing fees.
- Jury fees.
- Crime lab analysis fees.
- Diversion program fees.
- Registration or application costs associated with obtaining a public defender.
- Fees for electronic monitoring and other pretrial supervision.
- Pre- and post-conviction supervision fees.
- Fees for required programs like drug, alcohol or anger management treatment.
- Evaluations for the court, such as competency and presentencing reports.
- Costs of incarceration, including pretrial room and board in a jail.
- Costs of prosecution.

LFOs. The state allows people who previously had their licenses suspended for nonpayment to petition the court for reinstatement without paying a reinstatement fee. Louisiana passed a similar provision. A [budget amendment in Virginia](#) lifted current driver's license suspensions for unpaid or delinquent court debt beginning July 2019 and lasting until June 2020. In [Maine](#), driver's licenses are still suspended for nonpayment of fines and fees, but the state created a restricted license in 2018, allowing those individuals to drive to work or school. More information on legislation related to driver's licensing can be found in [NCSL's Traffic Safety State Bill Tracking Database](#).

## ECONOMIC AND EMPLOYMENT CONSEQUENCES

Nonpayment of LFOs can affect a person's credit score. Some states, including Florida, Georgia and Illinois, allow at least some forms of criminal justice debt to be converted into civil judgments. This means the debt is filed with a county clerk and becomes public record available for credit reporting agencies.

The nonpayment of LFOs can also seriously limit a person's employment opportunities. For example, in [Chicago](#), people are denied employment in any city or school district job if they have outstanding fines and fees. Because many times a criminal case is not discharged until all financial obligations are paid, some people are barred from applying for jobs that require an occupational license, like cosmetology, for years or decades after the crime was committed. More information can be found at NCSL's [Occupational Licensing Legislation Database](#).

Some states are looking to mitigate these and other consequences by enacting legislation that requires offering a repayment plan. Arkansas, Florida, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Pennsylvania, South Carolina, Texas, Virginia and Washington all have statutes allowing repayment plans for some offenders. Other states, like [Nevada](#), are looking to give courts the power to order community service in lieu of all or part of any administrative fee in certain circumstances.

## INCARCERATION FOR NONPAYMENT

Although "debtors' prisons" are illegal in all 50 states, incarceration can be used to collect criminal justice debt, but only if the person has the means to pay the fines and willfully refuses to. In 1983, the Supreme Court ruled in [Bearden v. Georgia](#) that it is unconstitutional for courts to jail people for nonpayment if they are unable to do so. The court wrote that "depriv[ing] a probationer of his conditional freedom simply because, through no fault of his own he cannot pay a fine...would be contrary to the fundamental fairness required by the Fourteenth Amendment." The Bearden case requires a judge to first consider whether the defendant has the ability to pay or simply "willfully" refuses, and that the determination take place before someone is jailed for nonpayment of criminal justice debt.

Although unconstitutional, thousands of people each year end up in jail for their inability to pay LFOs. There is no national data on how many people are incarcerated for failure to pay fines and fees, but one study out of Huron County, [Ohio](#), found that failure to pay LFOs accounted for 20% of all jail bookings. This happens because judges sometimes issue warrants to arrest those who have not paid fines or defendants are jailed for their inability to pay before they get a hearing with a judge. Some states have a system that credits time spent in jail for debt; therefore, people can "choose" to serve time in jail to reduce their LFOs.

Payment of fines and fees can be a condition of probation or parole, and if the person does not pay, the court can revoke supervision and order incarceration.

Policymakers are examining ways to strengthen protections and ensure defendant's financial circumstances into account. California enacted AB 1421 in 2019, which prohibits revoking supervision, and thus sending a defendant back to jail, for failure of a person to pay fines, fees or assessments, unless the court has determined the defendant has willfully refused to pay. In 2017, Texas passed [SB 1913](#) and [HB 351](#), sweeping reforms related to a person's ability to pay. Key provisions include requiring judges to ask defendants about their ability to pay before imposing fines, providing alternatives like community service or job skills training, and prohibiting the issuance of warrants for failure to pay without scheduling a hearing.

Data from the [Texas Office of Court Administration](#) shows the number of people incarcerated for nonpayment of fines and fees dropped from about 620,000 to about 450,000 a year after the passage of these measures.

## RESOURCES

- [National Task Force on Fines, Fees and Bail Practices Principles](#)
- [The Fines and Fees Justice Center](#)
- [Criminal Justice Policy Program at Harvard Law School 50-State Criminal Justice Debt Reform Builder](#)
- [Confronting Criminal Justice Debt: A Guide for Policy Reform](#)
- [Resource Guide: Reforming the Assessment and Enforcement of Fines And Fees](#)

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