

**STOP FORCING ILLINOIS' POOR TO PAY EXCESSIVE COURT FINES, FEES, AND COSTS*****EXECUTIVE SUMMARY***

**Excessive fines, fees, and costs.** In recent years, Illinois has shifted many of the administrative costs of its criminal justice system onto the backs of defendants, regardless of a defendant's poverty and inability to pay. Fines can reach amounts of \$25,000 or \$50,000; even routine misdemeanors can carry fines of \$2,500 or more. Drug fines can rise to \$500,000, while the possession of drug "paraphernalia" alone carries a minimum fine of \$750. Fines, fees, and costs can be cumulatively "stacked" against a defendant, resulting in total sums far exceeding that person's ability to pay—particularly if the defendant is unemployed, underemployed, or a working parent supporting a family on minimum wage.

**Crushing debt leads to revolving doors.** Faced with such overwhelming debt, defendants can find themselves trapped in an inescapable cycle. Unpaid fees can result in *additional* fines and fees, a prolonged probation period, and repeated court dates, which prevent the defendant from finding and keeping a job. Excessive fees are obstacles to successful reintegration as a productive citizen. Scholars estimate that nearly 40% of all crimes are directly attributable to poverty. The cost to the defendant and his or her family is compounded by the cost to taxpayers—incarceration of a single inmate can cost nearly \$30,000 a year.

**A lose-lose practice: "spending dollars to collect pennies."** This practice likely costs the government more than it gains in revenue. The system-wide administrative expense of imposing fines, fees, and costs on the poor (collection efforts, longer periods of court supervision and probation services, more people in jail for a longer time) may actually exceed the revenues collected. Many fees never are collected at all, and the hours that judges, lawyers, and court staff spend to litigate and collect fines and fees add up to a tremendous waste of government resources. As put by one judge, courts are "spending dollars to collect pennies."

**Dramatic shift to shunt costs onto defendants.** It wasn't always this way. On the contrary, the transfer of the costs of the criminal justice system to defendants is a relatively recent development, which was based in part on the theory that fines, fees, and costs could generate revenue for states and private debt collection agencies at the expense of politically weak and reviled persons—criminal defendants. According to one source, up to 85% of people leaving prison today owe some form of criminal justice debt, compared to 25% in 1991.

**Unconstitutional fines.** Illinois' current regime of fines, fees, and costs likely violates state and federal law. The Illinois Constitution contains a rehabilitation clause, which mandates that all criminal penalties must be determined "with the objective of restoring the offender to useful citizenship." Thus, the Illinois Constitution bans the imposition of any fine that does not serve the purpose of rehabilitating the defendant. Fines imposed to produce revenue are unconstitutional. Furthermore, under Illinois law, "there must be some relationship between the offense charged and the use to which the funds generated by the fee are put." Fines do not pass this test when the use of



the funds has no connection to the crime. Illinois' regime also raises a number of issues under the U.S. Constitution, including the Excessive Fines, Equal Protection, and Due Process Clauses of the Eighth and Fourteenth Amendments. For example, the Eighth Amendment prohibits fines that are grossly disproportional to the gravity of the offense and limits the government's power to collect fines that extract "large payments or forfeitures for the purpose of raising revenue."

**Constitutional right of free access to justice.** Illinois litigants also are entitled to a constitutional right of free access to justice. In the Illinois Constitution's Bill of Rights, the "Right to Remedy and Justice" provides that every person "shall obtain justice by law, *freely*, completely, and promptly." In keeping with this constitutional provision, an Illinois statute and Illinois Supreme Court rule already give indigent litigants the right to sue and defend in civil lawsuits without paying fees or costs. This waiver of fees and costs in civil cases is routinely and easily implemented by Illinois courts. This common-sense principle should be extended to indigent criminal defendants by adopting criminal-law equivalents to the existing civil-law statute and Supreme Court rule. Indigent criminal defendants should not have to "pay to play" for their day in court. The protections currently available to civil litigants are at least as necessary and appropriate for indigent criminal defendants.

**An unmanageable, disjointed system of fines, fees, and costs.** There are at least 90 different fines, fees, and costs imposed by Illinois criminal courts. There currently is no limit to the number of these that can be stacked together and imposed on a defendant for a single offense, nor is there any cap on the total amount that can be charged to a defendant, even if the defendant is impoverished. An arrestee, for the "privilege" of defending himself or herself against prosecution by the government, can be ordered to pay for a litany of "services" of the criminal justice system, including: court services, probation services, document storage, records automation (for prosecutors and public defenders), police operations, DNA identification, a medical costs fund for arrestees, drug lab analysis, emergency responder fees, electronic monitoring, medical testing, sheriff's fees, state police funds, and court system fees. Most of these fines, fees, and costs were created individually by piecemeal legislation over the years, leading to a disjointed, incoherent system that is complex, unwieldy, and difficult for courts and public servants to administer.

**Other states show the way.** Illinois would not be the first state to waive fees for impoverished defendants—Washington and Texas, for example, have laws providing for the waiver of burdensome fines, fees, and costs for indigent criminal defendants.

**Illinois judges' discretion to waive fines, fees, and costs.** Illinois law does not require trial courts to impose payment of fines, fees, and costs as a condition of probation or conditional discharge. Rather, it is within the trial court's *discretion* to require payment of fines, fees, and costs as a condition of release. Even payment of "mandatory" fines need not be a condition of probation or conditional discharge, in the judge's discretion. Importantly, if payment is not a condition of probation or conditional discharge, then the period of probation or conditional discharge cannot be extended based upon a failure to pay. Permitting indigent defendants to complete their probation or conditional discharge successfully without being held back by debts would allow those defendants to put their past offenses behind them, focus on successfully reintegrating into society, and become productive members of the community.



**Recommendations.**

*Judicial outreach and training.* Through judicial outreach and training, all Illinois judges should be made aware of the state and federal constitutional limitations on the imposition of fines, fees, and costs. They also should be advised of their authority to waive fines, fees, and costs as conditions of probation for indigent defendants (i.e., those defendants who qualify for a court-appointed attorney, receive public assistance, live in public housing, earn less than 250% of the federal poverty guidelines, are unable to pay the charges, or for whom paying the charges would result in a substantial hardship).

*Illinois statute.* The Illinois General Assembly should add a simple provision in the Code of Criminal Procedure requiring courts to waive fines, fees, and costs for indigent defendants. This new statutory provision should largely mirror the existing procedure for civil litigants, as set out in the Code of Civil Procedure at [735 ILCS 5/5-105](#). For the working poor and other individuals of modest means who do not qualify as “indigent,” a sliding scale should be established so that such individuals are not overburdened with fines, fees, and costs that are excessive given their income. Additionally, the 90 unique fines, fees, and costs in Illinois should be replaced by a streamlined and coherent regime, with clear guidance given to judges on when and how multiple charges can be imposed on a single defendant for the same offense.

*Illinois Supreme Court rule.* The Illinois Supreme Court should issue a rule clarifying that indigent criminal defendants shall not be required to pay court fines, fees, and costs, and establishing Illinois judicial procedures for determining indigency. This new rule largely should track the equivalent rule of civil procedure, Illinois Supreme Court [Rule 298](#). The court should have an independent duty to conduct an indigency determination *sua sponte*. To help the court, a criminal defendant could submit a short, simple form, similar in format and substance to the equivalent civil fee-waiver [form](#) currently [provided](#) by the Supreme Court, showing his or her basis for indigency.

**Reform is needed.** Imposing fines, fees, and costs on indigent and poor defendants amounts to a regressive tax on those least able to pay. It destroys lives and communities and contributes to the over-incarceration of the poor. It is neither right nor just to shunt the costs of administering our courts onto those who have a right to defend themselves but lack means. Such a system violates the U.S. and Illinois Constitutions, Illinois case law, and the core Illinois legal principle—consistent for nearly 200 years—that indigent litigants should not have to pay for their right to have their day in court. Illinois judges already have the authority, power, and responsibility to waive fines, fees, and costs as conditions of probation for indigent defendants. They should immediately use their discretion to do so.





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