



Court Costs, Fines, and Fees Policy Commitments

After releasing their joint *Statement on Excessive Court Fines, Fees, and Costs* in May 2016, Chicago Appleseed and Chicago Council of Lawyers convened a working group on court costs, fines, and fees to conduct further research and push for the recommended policy changes. For the past year and half, this working group has collected data on the impact of court costs, fines, and fees on people with low and moderate incomes in Illinois by conducting surveys of Cook County public defenders and people who have had court costs, fines and fees levied against them and by gathering information from county clerks’ offices. Simultaneously, the working group reviewed the important local and national policy and research scholarship that has emerged in the last few years, including the June 2016 Report of the Illinois Statutory Court Fee Task Force and its resulting legislation, HB4594/SB2590. Based on this Illinois impact data and policy research, the working group has developed the following Court Costs, Fines, and Fees Policy Commitments that build upon and complement its May 2016 Statement.

I. ILLINOIS MUST CREATE A UNIFORM AND CLEAR COURT COSTS, FINES, AND FEES SYSTEM THAT ACCOUNTS FOR ABILITY TO PAY AND ENSURES THAT PEOPLE WITH LOW AND MODERATE INCOMES ARE NOT UNDULY AND DISPROPORTIONATELY BURDENED DURING ASSESSMENT IMPOSITION.

Policy Commitment	Impact Data and Policy Recommendations Informing This Position
<p>Illinois’s court costs, fines and fees system must be simplified and clarified. Currently pending legislation, HB4594/SB2590, aims to achieve this goal by simplifying the system and capping the total amount of fees and costs that can be charged.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Chicago Appleseed Fund for Justice found that “Illinois’ current regime of fines, fees, and costs lacks coherency, uniformity, and consistency. Most fines, fees, and costs were created individually by piecemeal legislation over the years, leading to a system that is unwieldy, overly complex, and difficult for courts and public servants to administer.”¹ • The Illinois Statutory Court Fee Task Force explained that “over the years, more and more costs have been passed on to court patrons through an elaborate web of fees and fines that are next to impossible to decipher and severely lacking in uniformity and transparency.”² <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • Professor Traci R. Burch warns that state legislative systems with numerous and confusing court costs, fines, and fees can result in the arbitrary imposition of fines with wide variations between different counties.³
<p>Uniformity in all aspects of court costs, fine, and fees imposition and collection across all Illinois counties is necessary to reduce confusion and to help prevent disparate impact based on race.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • A person convicted of a DUI is charged on average \$1,742 in McLean County, but just \$344 in Macoupin County.⁴ • Data scientist Dan Kopf analyzed census data for 4,500 towns with populations of at least 5,000 to find the 100 towns with the greatest overreliance on fees and fines. Illinois has 9 of those 100 towns, making it one of 6 states that are home to 70% of those 100.⁵

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

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	<ul style="list-style-type: none"> • McHenry County (82% white, 2% African-American, 3% Latino) charges a 15% late fee and sends someone to collections if they have not paid fines and fees for 90 days.⁶ St. Clair County (63% white, 30% African-American, 4% Latino) charges defendants a 30% late fee for the state’s attorney when they are five days late, a 5% fee to city clerk at 30 days, 60 days, and 90 days, plus statutory interest.⁷ <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The U.S.C.C.R. Report discussed Kopf’s findings that “while the poor are not disproportionately represented in the top 50 towns that over-rely on fees and fines, African Americans are.” While the Report continues that this data is "rather shaky,” it is supported by a more recent study finding that “On average, monetary punishment increases by \$34,864 per 100,000 residents for every 1% increase in the black population.”⁸ • The Conference of State Court Administrators (“COSCA”) advises that court leaders should advocate for uniformity across their state.⁹
<p>In order to avoid constitutional problems, lawsuits, and unjust impact on people with low and moderate incomes, judges must be authorized to waive court costs,¹⁰ fines, and fees based on income. Judges must be trained to undertake an on-the-record inquiry into ability to pay before imposing court costs, fines, and fees. Bench cards should be provided to reduce implicit bias and to ensure that judges are <i>accurately</i> informed of which fees can and cannot be waived.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Of 81 Cook County Public Defenders surveyed, 81.5% said that judges never or rarely ask about a defendant’s ability to pay.¹¹ • Of the 305 court-involved people surveyed who answered the question of whether anyone asked them if they could pay court cost fines and fees, 56% (172) said no one asked them, and only 17% said the judge asked them about their ability to pay.¹² Illustrating variation by county, these numbers were better for Peoria: 41% of the 96 people answering said no one asked them, and 26% said the judge asked them. For Champaign, the numbers were worse: of 116 people answering, 71% said no one asked them if they could pay, and only 11% said that judge asked them. • An individual surveyed in Champaign shared that his probation was extended from 2 to 10 years for his inability to pay \$3,000.¹³ • A Peoria survey respondent stated, “It’s hard to make a decision between paying fines and staying out of jail, or paying bills and having somewhere to live.” • A Cook County Public Defender explained, “These costs are never waived or adjusted for low income/ indigent clients. Additionally, clients are required to come into court once a month or every two months to make payments on the court costs until they are paid in full, requiring clients to take days off of work, asking family members to take days off of work to bring them to court, etc.” • A mother of seven from Peoria who was convicted of a traffic violation and retail theft was ordered to pay \$2,186. She still owes \$1,512, paying \$35 a month. “I tried to gain a waiver for many years, and I was denied due to the money I owed. So I had to take out a loan to pay these fines.”

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

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	<p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • Many comprehensive policy studies of court costs, fines, and fees urge states to ensure that courts inquire into a defendant’s ability to pay and to provide for waivers for people unable to pay court costs, fines, and fees. The Brennan Center for Justice maintains, “The most effective way to break the cycle of debt and poverty that criminal justice debt perpetuates is to create exemptions for indigent people and effectively enforce them.”¹⁴ • The Brennan Center for Justice has found that the usage of bench cards can help combat implicit bias and avoid unnecessary jail usage (which is sometimes the consequence of excessive court costs, fines, and fees).¹⁵
<p>Low-income people must be able to obtain waivers to participate in rehabilitative programs so that they are not subjected to a different punishment because of their income and waivers should apply to service provider fees. Proposed Illinois legislation, HB4594/SB2590, would allow waivers for everything but “service provider costs” and fines. Service provider fees should be covered by alternative funding sources for indigent individuals. Barring that, court costs and fees based on “service providers costs” must be completely ineligible for interest charges and late fees.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • A Cook County Public Defender said that her clients are found to have violated domestic battery sentences because they could not pay for domestic violence or anger management classes and end up going to jail. • Another Public Defender stated, “Clients are jailed for non-payments of judgments entered against them. [Sherriff’s Work Alternative Program] fees preclude them from completing SWAP and they do jail time.” <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The COSCA advises that fees for services such as mediation or parenting classes are only appropriate when simple fee waivers are available.¹⁶ • The existence of unwaivable participation fees for these programs could result in what Harvard’s Criminal Justice Policy Program (“CJPP”) calls a “poverty penalty” which “exists when a poor person is punished more severely than a wealthier person for the same infraction as a direct consequence of her poverty.”¹⁷
<p>The courts should be funded as much as possible through general revenue and should not be seen as a funding source for other State entities and agencies.</p>	<p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • “[G]rowing evaluation evidence suggests that a policy that funds government through criminal justice fees and fines is often ineffective.”¹⁸ • The COSCA contends, “Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. . . . Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges.”¹⁹

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

II. COLLECTION OF MONETARY ASSESSMENTS SHOULD BE FAIR, CLEAR, UNIFORM ACROSS COUNTIES BUT ADJUSTED FOR INCOME, AND RELIANCE ON PRIVATE COLLECTION AGENCIES SHOULD BE ELIMINATED OR AT LEAST CAREFULLY OVERSEEN BY THE STATE.

<p>Late fees and interest must be reasonable, exempted for people with low and moderate incomes and uniform across the state. Court debt should not increase while a defendant is making payments. If late fees are used, all Illinois counties should adopt late-fee policies that allow individuals 90 days of no payment before their payments are considered late. To reduce the possibility of disparate impact based on race, Illinois should make late fee policies uniform among counties. The overall late fee should be 15% total, much less than the current system of 30% for the state’s attorney plus, 5%, (after 30 days), 10% (after 60 days) and 15% for the clerk’s office (after 90 days).</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • 37% of all court-involved people responding to a survey (95 of 254), and 41% of people with incomes less than \$15,000 (53 of 128), said that their court costs, fines, and fees increased for failure to pay. • A Champaign respondent said that because of late fees and interest, their assessment increased from \$5,000 to \$13,500. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The Brennan Center for Justice recommends, “States should eliminate ‘poverty penalties’ that impose additional costs on individuals who are unable to pay criminal justice debt all at once, such as payment plan fees, late fees, collection fees, and interest. These fees unfairly burden the poor and contribute to spiraling debt for many individuals.”²⁰ • Researchers from the University of Washington found, “[t]he fact that legal debt often grew despite regular payments led some to feel so frustrated that they eventually stopped paying.”²¹
<p>Fee schedules, including late fees and interest, should be transparent and easy to understand. Defendants must receive clear notice and communications about their legal financial obligations from the court clerks.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Individual impact surveys indicated that many defendants did not have a clear understanding of what court costs, fines, and fees were and what their specific obligations were. • In Champaign, one person surveyed paid his restitution in full, believing that he had met his financial obligations. No one communicated with him about other outstanding fees until he was found to have violated his probation for nonpayment of 7-8% of what he originally owed. By the time he learned of his outstanding court fees, he had been reported to collections and charged additional nonpayment fees. He had no way to challenge the billing practices and lack of notice. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The COSCA recommends, “[f]ees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.”²² • A system of reminders for payments or pay or appear hearings, including automated or live phone calls, postcards text messages, or emails could significantly increase both collections rates and decrease consequences for nonpayments.²³
<p>Discourage and reduce reliance on “pay or appear.” When court costs, fines, and fees are imposed, defendants should not be required to go to the courthouse to pay them. Defendants</p>	<p><u>Policy and research recommendations</u></p> <ul style="list-style-type: none"> • The COSCA explains, “For [people accused of low-level offenses], there are two paths to almost certain imprisonment related to court debt. The first is to fail to appear in court, resulting in an arrest warrant and added fees. The second is to fail to pay immediately upon conviction, resulting

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

<p>must be allowed to pay with credit cards and through payment methods such as via phone or online.</p>	<p>in a payment plan that may include added fees and a greater risk of non-compliance that can also lead to an arrest warrant.”²⁴ COSCA Principle 1.10 states in part that “judicial branch leaders should consider providing 24/7 access to online services, without any additional fees other than those reasonable and necessary to support such services.”</p> <ul style="list-style-type: none"> • The Brennan Center recommends that payment be allowed via phone, online systems, and defendants should not have to “pay or appear,” which can be disruptive. Defendants should be able to use credit cards rather than money orders or certified checks which can be expensive.²⁵
<p>Every Illinois county should have at least one amnesty period per year in which late fees are waived and defendants can pay the original costs of their court costs, fines, and fees.</p>	<p><u>Policy and research recommendations</u></p> <ul style="list-style-type: none"> • The CJPP recommends amnesty programs as a tool to “collect revenue that would have otherwise likely gone unclaimed while also allowing people to clear warrants and reestablish licenses.”²⁶
<p>Non-payment of court costs, fines, and fees should not be reported to credit agencies.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Of 143 court-involved people answering the question, 50% reported that court costs, fines, and fees have affected their credit score; for Peoria, this was 59% of the 76 people answering. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The Brennan Center for Justice recommends that “to the extent possible, [states] should not forward non-payment and lien information to credit rating agencies.”²⁷ It warns, “credit reports can also serve as a back-door way for employers to identify individuals with criminal records.”²⁸ This runs counter to current Illinois policy to reduce the reporting of criminal history to employers.
<p>State legislation should adopt clear and transparent guidelines for the collection of court costs, fines, and fees including either the prohibition of collection by private agencies or limitation of the profit and strategies (especially coercive ones) available to private collection agencies. Clear regulations would allow court clerks to collect fees themselves rather than relying on collection agencies to comply with calculated regulations. If private collection agencies are used, these agencies should be required to report on how fees are collected and allocated, and the amount of fees collected.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Many county collection contracts are held by a few agencies. For example, Credit Collection Partners purports to represent 55 of the 102 counties. • Private collection agencies in Illinois appear eager to avail themselves of the uniquely vulnerable position of people with criminal debt. In a recent interview with Collection Advisor magazine, Credit Collection Partner’s President, Rick Bonitzer, was asked what he thought to be the easiest type of government collections to collect. His response: “Court fines because they have already been adjudicated.” The interviewer, who also works in the collection industry, explained: “In the case of court fines and similar government debts that have been adjudicated and thus have already been through the court system, these types of debts in particular open up the consumer to several different types of consequences if they don’t pay. These include but are not limited to suspension of their driver’s license, warrants, levies and liens. Not paying back government debt tends to have much more severe consequences than those of private debts.”²⁹ • A review of many court clerk websites show that collection procedures and late fees are difficult to identify. Surveys of court-involved people also indicate that impacted people do not always understand the collection process to which they will be or are being subjected. • Collection procedures often seem to be left up to either the individual counties or, even more dangerously, the private collection firms with which they contract.

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

	<ul style="list-style-type: none"> • State court clerks have stated that they use or are tempted to use collection agencies because collection regulations are very complicated to understand they are afraid to violate the regulations. <p><u>Policy Research and Recommendations</u></p> <ul style="list-style-type: none"> • The U.S. Commission on Civil Rights recommends that states prohibit the use of private collection agencies for criminal debt.³⁰ • The Brennan Center for Justice explains, “[c]ollection fees that benefit private collection agencies are particularly troubling, because these agencies generally lack oversight and charge high fees.”³¹ • Professor Neil L. Sobol of Texas A&M University School of Law says “oversight and evaluation are essential” if private services are used for collection.³²
<p>Illinois should establish a system for registering complaints related to criminal justice debt collection. A complaint system, such as that available to consumers who have complaints against civil debt collectors under the Consumer Financial Protection Bureau, is especially important in light of the proliferation of private agency criminal debt collection.</p>	<p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • A debt collection complaint system is recommended by Professor Sobol.³³

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

III. ILLINOIS MUST NOT IMPOSE ADDITIONAL PUNISHMENTS SIMPLY BECAUSE A PERSON IS UNABLE TO PAY COURT COSTS, FINES, OR FEES.

<p>People should not be imprisoned or have significant freedoms taken away for inability to pay court costs, fines, and fees. Illinois statute requires that a judge make a finding of “intentional refusal to pay” or “a failure on [the defendant’s part] to make a good faith effort to pay” (as is required under 730 ILCS 5/5-9-3 for a judge to imprison someone for nonpayment). Criteria for this should be clear and this standard should be extended to anything that impinges upon a defendant’s freedom and ability to reenter society.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Of 258 court-involved individuals who responded, 29% said that they have been jailed for failure to pay court costs, fines, and fees. 15% of the people surveyed said that they skipped court dates because of their failure to pay court assessments. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • Inability to pay monetary assessments and uncertainty about what the consequences will be for nonpayment can cause defendants to “go on the run,” avoiding authorities all together which can compound legal consequences for defendants, causes expense for the judicial system, and does not result in payment of monetary assessments.³⁴
<p>People should not have an arrest warrant issued simply because they did not pay court costs, fines, and fees or did not appear at a “pay or appear” hearing (ending “pay or appear” would also address this).</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • A mother who was otherwise eligible for the Illinois prison nursery program was rendered ineligible for the program because she owed \$192.85 in parking tickets, was ordered to “pay or appear,” couldn’t do either because she was in jail, had a warrant issued for her arrest for failure to appear or pay, and was therefore not “minimum security.” Outstanding warrants can also make people ineligible for programs like work release. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • Researchers from the University of Washington explain, “[e]ven if it does not lead to arrest or incarceration, having a warrant issued—that is, being ‘wanted’ by the police—has important social and economic consequences for people with warrants and their families.”³⁵ Outstanding warrants make it harder for people to interact with police, go to work, access health care, and apply for state and federal benefits.³⁶ Outstanding warrants can also lead to more punitive future interactions with police such as negative findings in bail determinations.
<p>Courts must not extend a defendant’s probation or supervision to procure payment of court costs, fines, and fees. This practice is unjust and expensive, as probation can be extended for years. Courts should not find that people violated their probation or supervision or revoke probation or supervision simply because of unpaid court costs, fines and fees. Further, courts should allow a defendant’s supervision or expansion to be terminated even if he or she has outstanding court costs, fines, or fees. State</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Almost 1 in 3 of the 254 people (30%) answering this question said that their probation was extended because they owed court costs, fines, and fees. 34% of people had their supervision terminated unsuccessfully because of court costs, fines and fees; this can prevent individuals for being eligible for certain programs if they encounter law enforcement again. • 31% of 253 respondents reported that their non-payment resulted in a supervision violation. • Cook County Public Defenders report that extension and violations of probation for nonpayment occur frequently at a devastating cost to defendants. Violations of probation for nonpayment can end up imposing felony convictions on people originally convicted only of misdemeanors.

Court Costs, Fines, and Fees Policy Commitments of Chicago Applesseed Fund for Justice & Chicago Council of Lawyers

Attorneys should support these policy goals. Judges should exercise their power under 730 ILCS 5/5-9-2 to revoke fines when good cause for nonpayment is shown.

- Many Cook County Public Defenders say that judges will extend probations multiple times or even “indefinitely for payment, essentially setting up for failure. Making clients come to court weekly or biweekly, rendering them unable to gain employment or comply.”
- Cook County Public Defender explains, “Certain judges demand that all fees while on probation are to be paid prior to termination. This also happens in traffic court. This sometimes takes years at \$5 [per] payment. Every month. Eventually [the] client will miss a court date and warrant is issued.” This is true even though other judges will terminate probation despite remaining unpaid court costs.
- An African-American woman living in Champaign with 4 kids on an income of less than \$15,000 reported that “[The judge] sentenced me to 2 yrs. probation but it turned out to 10 yrs. for court cost and fines. The public defender asked for a waiver, but it was not granted.”

Policy and Research Recommendations

- The CJPP advises: “Probation should never be imposed or extended solely as a way to collect debts. States should conserve resources—allowing probation officers to spend their time with probationers who need their attention and reducing the number of persons arrested and hauled into court for technical violations arising out of an inability to pay criminal justice debt.”³⁷
- Violations of probation can have devastating impact on families, rendering people ineligible for federal benefits like TANF and food stamps.³⁸

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

IV. THE STATE MUST REMOVE THE BARRIERS TO REENTRY THAT MONETARY ASSESSMENTS PRESENT TO PEOPLE AND FAMILIES WITH LOW AND MODERATE INCOMES.

<p>Illinois must recognize that using court costs, fines, and fees as a funding source has significant negative impact on families.</p>	<p><u>Illinois impact data</u> Of 253 individuals surveyed, 60% live with dependent children. Of 253 individuals surveyed, 60% live with dependent children. The survey data indicated that the need to pay court assessment had a significant impact on individuals' households and family:</p> <ul style="list-style-type: none"> • 62% had to borrow money from friends/family to pay; • 18% indicated they had to choose between paying child support and court costs, fees and fines; • 26% indicated they had to choose between paying medical bills and court costs, fees and fines; • 48% indicated they had to choose between paying rent/mortgage and court costs, fees and fines; • 56% indicated they had to choose between paying for groceries and court costs, fees and fines; • 47% indicated they had to choose between paying utilities and court costs, fees and fines; • 19% indicated they had to choose between paying for prescriptions and court costs, fees and fines; • 17% indicated they had to choose between paying for childcare and court costs, fees and fines; • 25% indicated they had to choose between paying school/job training for themselves and court costs, fees and fines; • 51% of respondents were female (and generally tend to be the caregivers).
<p>Illinois must allow defendants people to seal and expunge their records regardless of outstanding court costs, fines and fees if the defendant is unable to pay.</p>	<p><u>Illinois impact data</u></p> <ul style="list-style-type: none"> • One survey respondent explained, “Court costs, fees and fines have allowed my record to be explored by potential employers as well as a continuous burden to pay immediately or be further penalized.” • In Peoria, many individuals had their motions to seal and expunge their criminal records objected to only because they owed court costs, fines, and fees in that case, or even in other cases. One person owed as little as \$155. Another individual owed almost \$2,500 in court costs, fines, and fees despite never having been convicted only of possession of cannabis, forgery, and prostitution. <p><u>Policy Recommendations</u></p> <ul style="list-style-type: none"> • The Harvard Policy explains that requiring full payment of court costs, fines, and fees for expungement and charging additional fees for expungement are “poverty traps” that courts should avoid.³⁹ Full payment should only be required after a determination of intentional refusal to pay.
<p>People convicted of charges that are not driving-related should not have their driver’s licenses suspended for inability to pay court costs fines and fees.⁴⁰</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • Of 197 court-involved people who responded, 34% reported having their driver’s license suspended for failure to pay court costs, fines, or fees. 45% of people with incomes less than

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

	<p>\$15,000 (42 of 93), said that they had their licenses suspended for failure to pay court costs, fines, and fees.</p> <ul style="list-style-type: none"> • A Chicago woman has gone into debt and been without a driver's license for ten years because she owes \$1,200. • One woman reported that her court assessments, “[p]ut me in debt, haven’t had a license in over 10 years.” <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The U.S.C.C.R. reports, “[s]everal studies have found that failure to pay court fines and fees is the primary reason for driver’s license suspensions.”⁴¹ • A DOJ Dear Colleague letter issued in 2016, and rescinded in 2017, advised, “[i]f a defendant’s driver’s license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay.” • The Brennan Center for Justice explains that driver’s license suspensions can lead to a cycle of re-incarceration: “If people with suspended licenses continue driving – as they often must to work – they face new and often severe criminal penalties for driving with a suspended license.”⁴² The Brennan Center advises that if this practice does continue it should be limited to people who could have paid and willfully failed to do so.⁴³
<p>Unpaid court costs, fines, and fees should not prevent people from obtaining professional licenses in order to return to work.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • 51 court-involved people surveyed reported that they had problems obtaining a professional license because of unpaid legal debt. <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • The CJPP explains, “[t]he suspension of a driver’s or professional license is one of the most pervasive poverty traps for poor people assessed a fine that they cannot afford to pay.”⁴⁴
<p>Illinois should establish a mechanism for people to apply for retroactive waiver of fees – or another mechanism to apply to get fees waived.</p>	<p><u>Illinois Impact Data</u></p> <ul style="list-style-type: none"> • After Illinois adopted 730 ILCS 5/5-9-3, allowing for a 30% late fee for the State’s Attorney and the use of private collection agencies, Illinois counties began aggressively collecting debt, even decades old debt.⁴⁵ <p><u>Policy and Research Recommendations</u></p> <ul style="list-style-type: none"> • While many policy and research papers discuss the harmful effects of court costs, fines, and fees on low- and moderate-income people and their families, most policy solutions are forward-looking and provide no relief for families currently saddled with crippling legal debt.⁴⁶ A mechanism of relief for these families would help make Illinois a leader in this area of criminal and racial justice.

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

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- ¹ Chicago Appleseed Fund for Justice, *Statement on Excessive Court Fines, Fees, and Costs* 11 (May 2016), available at <http://www.chicagoappleseed.org/wp-content/uploads/2016/05/Collaboration-for-Justice-Policy-Brief-Fines-Fees-and-Costs-May-2016.pdf>.
- ² Illinois Statutory Court Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings* (“Illinois Task Force Report”) 9 (June 2016), available at http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf.
- ³ Traci R. Burch, *Fixing the Broken System of Financial Sanctions*, 10 CRIMINOLOGY AND PUBLIC POLICY 541, available at, <http://criminology.fsu.edu/wp-content/uploads/volume-10-issue-31.pdf>
- ⁴ Illinois Task Force Report at 28-29.
- ⁵ Dan Kopf, *The Fining of Black America*, PRICEONOMICS (June 24, 2016) <https://priceonomics.com/the-fining-of-black-america/> (“The best indicator that a government will levy an excessive amount of fines is if its citizens are Black.”)
- ⁶ McHenry County Circuit Clerk website at <https://www.co.mchenry.il.us/county-government/departments-a-i/circuit-clerk/court-information/collections>
- ⁷ This information was reported by St. Clair County and its collection agency, Joseph E. Meyers & Associates, to a member of the Working Group on Court Costs, Fines, and Fees during the summer of 2016.
- ⁸ UNITED STATES COMMISSION ON CIVIL RIGHTS, TARGETED FINES AND FEES AGAINST LOW-INCOME PEOPLE OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS (“U.S.C.C.R. Report”) 186 (September 2017), available at http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf; Kasey Henricks and Daina Cheyenne Harvey, *Not One but Many: Monetary Punishment and the Fergusons of America*, 32 Sociological Forum 930, 940 (July 2017).
- ⁹ Conference of State Court Administrators 13, *supra* at 2.
- ¹⁰ There is already some statutory *authorization* for this, in the criminal code but the *guidance* is all but non-existent. For example, a statute about penalties for nonpayment begins “Unless a court ordered payment schedule is implemented or fee requirements are waived pursuant to a court order” (705 ILCS 105/27.5), but there is no guidance about the acceptable (or desirable) reasons for such waivers. In our analysis of the presence of the word “waive[rs],” only one usage explicitly directed the waiver to be about the defendant’s socioeconomic situation: “The Court may only waive probation fees based on an offender’s ability to pay” (730 ILCS 5/5-6-3(i))
- ¹¹ Members of the Working Group on Court Costs, Fines, and Fees asked Cook County Public Defenders to complete this survey at their training sessions in late August 2017.
- ¹² These surveys were convenience samplings conducted with the help of community partners and Illinois residents. Members of the Working Group on Court Costs, Fines, and Fees distributed individual impact surveys to clients at record sealing and expungement summits held by Cabrini Green Legal Aid on October 22, 2016 in Champaign and April 29, 2017 in Peoria. Cabrini Green Legal Aid outreach workers also administered surveys throughout the Chicago area. About 125 people were surveyed in Champaign, about 83 in Peoria, and about 100 in the Chicago area.
- ¹³ It should be noted that this was self-reported anonymously.
- ¹⁴ ROOPAL PATEL AND MEGHNA PHILIP, BRENNAN CENTER FOR JUSTICE, CRIMINAL JUSTICE DEBT: A TOOLKIT FOR ACTION (“Brennan Toolkit”) 3 (2012), available at <https://www.brennancenter.org/sites/default/files/legacy/publications/Criminal%20Justice%20Debt%20Background%20for%20web.pdf>. See also Department of Justice’s March 14, 2016, *Dear Colleague Letter* at 3, available at <https://www.justice.gov/opa/file/832541/download> (explaining that to comply with the Fourteenth Amendment’s constitutional guarantee that people not be punished for their poverty, “state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment. Courts have an affirmative duty to conduct these inquiries and should do so sua sponte); The U.S.C.C.R. Report at 75; Mitali Nagrecha, *Brennan Center for Justice’s Evaluating the Reentry Hurdles of Fees and Fines Debt: A Checklist for State Reentry Taskforces* (March 20, 2010), available at <https://www.brennancenter.org/analysis/evaluating-reentry-hurdles-fees-and-fines-debt-checklist-state-reentry-taskforces> (“State law should exempt the indigent from paying court fees.”); Chicago Appleseed Statement at 10; Douglas N. Evans, *The Debt Penalty: Exposing the Financial Barriers to Offender Reintegration* 15 (John Jay College of Criminal Justice, August 2014), available at <https://jrec.files.wordpress.com/2014/08/debtpenalty.pdf>
- ¹⁵ Jessica Eaglin and Danyelle Solomon, *Brennan Center for Justice, Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice* 38 (2015) (explaining that research-based bench cards can help judges overcome implicit bias and distracting circumstances, such as heavy caseloads and reduced funding, in making important determinations). See also Conference of Chief Justices, Resolution 3, available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02012017-Encouraging-Education-Use-Bench-Card-Lawful-Collection.ashx> (The Conference of Chief Justices (CCJ) adopted a resolution encouraging that judges be educated on

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

and instructed to use the bench card on lawful collection of court-imposed legal financial obligations developed by the National Task Force on Court Fines, Fees, and Bail Practices (“NTF”) established by the CCJ and the Conference of State Court Administrators (“COSCA”). In February 2018, this National Task Force issued 34 Principles on Fines, Fees, and Bail Practices (“COSCA Principles”), available at <http://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees-Fees.ashx>

¹⁶ Carl Reynolds and Jeff Hall, Conference of State Court Administrators, 2011-2012 Policy Paper Courts Are Not Revenue Centers (“COSCA Policy Paper”) 8, available at <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx>

¹⁷ CRIMINAL JUSTICE POLICY PROGRAM AT HARVARD LAW SCHOOL, *CONFRONTING CRIMINAL JUSTICE DEBT: A GUIDE FOR POLICY REFORM* (“CJPP Guide”) 15 (2016).

¹⁸ Fines, Fees, and Bail Payments in the Criminal Justice System that Disproportionately Impact the Poor,

Council of Economic Advisors Issue Brief at 4 (December 2015), available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (“As States have increasingly relied on fees and fines that do not take into account ability to pay, they have faced very low rates of collection on debt. For example, Florida and Maryland collected 14 percent and 17 percent of certain types of fees assessed, respectively.”).

¹⁹ *Id.* at 7. See also CJPP Guide at 12. (“Funding courts out of general revenue reflects the important principle that courts are an equal branch of government and essential to the common welfare, not a user-pays service provider.”).

²⁰ Alicia Banon, Mitali Nagrecha, and Rebekah Diller, Criminal Justice Debt: A Barrier to Reentry 32 (Brennan Center for Justice 2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>

²¹ Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 THE AMERICAN JOURNAL OF SOCIOLOGY 1753, 1780.

²² COSCA Policy Paper 10, *supra* at n. 2.

²³ *Id.* at 16.

²⁴ *Id.*

²⁵ Brennan Toolkit at 34-35; see also U.S.C.C.R. Report at 76 (“Options for payment plans and to pay without having to appear in court should also be available to remove barriers to payment when an individual has the ability to pay.”).

²⁶ CJPP Guide at 23.

²⁷ Mitali Nagrecha, Brennan Center for Justice, *Evaluating the Reentry Hurdles of Fees and Fines Debt: A Checklist for State Reentry Taskforces* (“Brennan Checklist”) (March 20, 2010), available at <https://www.brennancenter.org/analysis/evaluating-reentry-hurdles-fees-and-fines-debt-checklist-state-reentry-taskforces>

²⁸ ALICIA BANON, MITALI NAGRECHA, AND REBEKAH DILLER, CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (“Brennan Barrier to Reentry”) 27 (Brennan Center for Justice 2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>

²⁹ Nick Jarman, *Secrets of Government Collections from an Industry Leader*, COLLECTION ADVISOR (May 4, 2017), available at <https://collectionadvisor.com/collection-industry-advisor/141-nick-jarman-columns/1133-secrets-of-government-collections-from-an-industry-leader>

³⁰ News release: The United States Commission on Civil Rights Releases its Report, *Targeted Fines and Fees against Low-Income People of Color: Civil Rights and Constitutional Implications* (September 21, 2017), available at <http://www.usccr.gov/press/2017/09-21-PR.pdf>; “U.S.C.C.R. Report at 75.

³¹ Brennan Barrier to Reentry at 32. In 2009, the Shriver Center reported that the Illinois statute allowing the collection of late fees by private companies, 730 ILCS 5/5-9-3, was drafted by a debt collection agency. MARIE CLAIRE TRAN-LEUNG, SHRIVER CENTER, DEBT ARISING FROM ILLINOIS’S CRIMINAL JUSTICE SYSTEM: MAKING SENSE OF THE AD HOC ACCUMULATION OF FINANCIAL OBLIGATIONS 37 (November 2009), available at <http://www.povertylaw.org/files/docs/debt-report.pdf>.

³² Neil L. Sobol, Charging the Poor: Criminal Justice Debt & Modern-Day Debtors’ Prison, 75 Maryland Law Review 486, 538.

³³ *Id.*

³⁴ See Alexes Harris, Heather Evans, and Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 THE AMERICAN JOURNAL OF SOCIOLOGY 1753, 1782-83.

³⁵ *Id.* at 1760-61.

³⁶ *Id.*

³⁷ Harvard Guide for Policy Reform at 17.

³⁸ Brennan Barrier to Reentry 28.

³⁹ CJPP Guide at 22-23.

Court Costs, Fines, and Fees Policy Commitments of Chicago Appleseed Fund for Justice & Chicago Council of Lawyers

⁴⁰ Another option are provisional driver's licenses for work, school, childcare, and doctors appointments. The state could charge \$25 a month which would be applied to existing monetary sanctions to get to work or transport children or other family members. *See* COSCA Policy Paper 23. But this could be abused or misinterpreted and used to increase financial obligations or stress.

⁴¹ USCCR Report at 36.

⁴² Brennan Barrier to Reentry 24.

⁴³ *See also* USCCR Report at 75 ("States should not suspend a driver's license for failure to pay fines and fees without determining whether a person has the ability to pay.")

⁴⁴ CJPP Guide at 15.

⁴⁵ *See e.g.*, Molly Parker, Cash-strapped counties stepping up efforts to collect unpaid court fines - - some decades old, THE SOUTHERN (Nov. 15, 2015), *available at* http://thesouthern.com/news/local/cash-strapped-counties-stepping-up-efforts-to-collect-unpaid-court/article_cbcedbf9-448a-5e88-b16b-ccc7230c0e35.html (describing how Credit Collection Partners was helping Alexander, Perry, Johnson, Saline, Franklin, White, Gallatin, Wayne, Edwards, Wabash, Hamilton and Marion counties collect debt with the 30% late fee even if court costs, fines, and fees were imposed 40 years ago); Huey Freeman, *Collection Firm Helps Macon County Recoup \$320,00 in Late Fines, Fees*, HERALD & REVIEW (Jan. 29, 2013), *available at* http://herald-review.com/news/local/collection-firm-helps-macon-co-recoup-in-late-fines-fees/article_f7c155c6-69c3-11e2-9e16-0019bb2963f4.html (describing how the private collection firm Pioneer Credit Recovery planned to collection debt from as far back as 1993 and perhaps later in return for retaining the 30% late fee).

⁴⁶ The CJPP recommends a statute of limitations on criminal debt, pointing to the federal system of waiving outstanding debt after 20 years of imposition or release from prison. Harvard Guide for Policy Reform at 18. While this would certainly be an improvement over the current system in Illinois, it would not provide relief for families who cannot wait or to families in the future who have changed circumstances.