
COURT COSTS, FINES, AND FEES ARE BAD POLICY

RECOMMENDATIONS FOR
ILLINOIS LEGISLATORS

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INTRODUCTION

This report explores the rise of monetary sanctions as common practice in the criminal legal system and evaluates their utility as policy tools. The phrase “monetary sanctions” is an umbrella terms that describes a broad range of fines, fees, and court costs—elsewhere referred to as “legal financial obligations” (LFO’s) or, when not paid in full, “criminal justice debt”—which have theoretically distinct but often muddled legal definitions.

Historically, “fines” and “fees” were posited to serve different roles under the law—fines were explicitly part of a convicted person’s punishment and were intended to serve a retributive and deterrent purpose. Fees, by contrast, were intended to raise revenue for the state (Menendez et al., 2019). However, recent court rulings in Illinois and nationally have challenged this dichotomy. In Illinois, a 2009 ruling held that “a charge labeled a fee by the legislature may be a fine, notwithstanding the words actually used by the legislature” and concluded in that case that “the charges imposed herein do not seek to compensate the state for any costs incurred as the result of prosecuting the defendant” as a “fee” is supposed to do (Friedman & Pattillo, 2019, p. 176; *People v. Graves*, 2009). At the national level, in response to the *Timbs v. Indiana* U.S. Supreme Court ruling finding that the Eighth Amendment’s “excessive fines” clause does apply to the states, legal scholars and advocates argue that it should also be possible to challenge the validity of charges currently categorized as “fees” under the eighth amendment (Colgan, 2018). Thus, for a number of reasons, it is helpful to use the broader category of “monetary sanctions” to discuss court costs, fines, and fees, and the criminal justice debt they create, as the intended legal distinctions

between “fines” and “fees” are not consistently meaningful in practice. Today, monetary sanctions are broadly applied in all fifty states and their use continues to rise; 48 states have instituted additional monetary sanctions in the past ten years (Bastien, 2017).

In Illinois, before the passage of the Criminal and Traffic Assessments Act (CTAA) in 2019, there were over 90 different fines and fees on the books; the majority of these remain in place and there is still no limit to the amount of monetary sanctions that can be combined on a single case (*Statement on Excessive Court Fines, Fees, and Costs*, 2016). Meanwhile, advocates have become increasingly vocal about the social harms created by the overuse of monetary sanctions in the criminal justice system—particularly the disproportionate impact they have on Black communities—and have worked with policymakers to implement reforms to mitigate these harms (Beckett & Harris, 2011; *Confronting Criminal Justice Debt*, 2016; Harris, 2016; Henricks & Harvey, 2017). Further, new empirical research has shed light on the high financial costs of administering fines and fees, finding that on top of the social harms of monetary sanctions, they also fail tests of cost-effectiveness as revenue-raising tools (Menendez et al., 2019).

The first section of this policy brief provides an overview of the history of court costs, fines, and fees, and the institutional motives underlying their use; describes the scope of such policies in Illinois and nationally; and reviews the growing body of evidence that, by every reasonable metric, monetary sanctions are ineffective at best and harmful at worst (Beckett & Harris, 2011; Harris, 2016). The second section reviews the kinds of reforms that have been suggested and implemented over the past decade and evaluates the existing evidence on their impact. The final section consists of evidence-based recommendations for policy change in Illinois, building on the successes of advocates and policymakers across the country and in the state to date.

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PART I:

HISTORY + SCOPE OF MONETARY SANCTIONS

WHEN AND HOW DID COURT COSTS, FINES, AND FEES AND CRIMINAL JUSTICE DEBT ARISE?

The present-day impact of court costs, fines, and fees (hereafter “monetary sanctions”) must be evaluated in light of their historical legacy as policy tools. As U.S. Supreme Court Justice Ruth Bader Ginsburg affirmed in a recent Supreme Court decision, the prominent use of fines by state governments can be traced to the Reconstruction era (*Timbs v. Indiana*, 2019). After the Civil War and the abolition of slavery, Justice Ginsburg writes, laws known as “Black Codes” were enacted in Southern states as part of efforts to “maintain the prewar racial hierarchy” (*Timbs v. Indiana*, 2019, p. 5). These laws included unreasonable fines for a wide range of vague offenses (including “vagrancy”) which were intended to be enforced on Black citizens. The revenue raised from such fees was often used to fund social services (most of which Black citizens could not access), and to grow the budgets of the very law enforcement agencies and court systems responsible for enforcing these unjust laws. Furthermore, Black people who could not afford to pay these fines were incarcerated and forced to perform involuntary labor (Henricks & Harvey, 2017).

Further evidence of the historically racist use of monetary sanctions lies in the fact that, though fines and fees were created to target Black Americans, they were never favored policy tools for other racial groups or the general population. As recently as the 1970s, major legal organizations (including the American Bar Association) advocated for incarceration over the use of fines and fees, on the basis that monetary sanctions were “ineffective at impacting the behavior of the rich, for whom fines are too low to have much deterrent value, and essentially unenforceable against the poor, who cannot pay them” (Atkinson, 2015, p. 93).

However, in the 1980s, with the rise of the now-debunked “broken windows” theory of policing criminologists began advocating for the increased use of monetary sanctions—to the extent that they became “the preferred sanction . . . for low-level municipal ordinance violations and petty misdemeanors” (Atkinson, 2015, p. 194). The policy shift toward monetary sanctions occurred as part of a “tough on crime” era, with heightened law enforcement in poor communities and communities of color, and occurred alongside deregulation, which reduced taxes on corporations and wealthy individuals, undercutting the tax base in many jurisdictions and reinforcing a profit motive in the criminal legal system (Atkinson, 2015; Ritchie, 2019; *Targeted Fines and Fees Against Low-Income Communities of Color*, 2017). The confluence of these political shifts helps contextualize the rapid rise in the use of monetary sanctions and the resultant mounting levels of criminal justice debt in the U.S. today.

This history illuminates the fundamental contradiction at the core of policies that impose monetary sanctions: the claim that economic punishment functions as a deterrent for law-breakers has little empirical backing (*Five Things About Deterrence*, 2016), but there is clear evidence that, for hundreds of years, monetary sanctions have been used to balance budgets at the expense of the most marginalized U.S. citizens, often wielded as tools of racist subjugation. It is necessary to consider this legacy of fines and fees when evaluating their utility as policy tools, particularly because monetary sanctions continue to disproportionately impact Black communities, communities of color, and low-income people today.

The present-day impact of these policies reached the public eye most dramatically in 2015, when the police murder of Michael Brown and resultant Black Lives Matter protests in Ferguson, Missouri spurred a Department of Justice investigation (*Investigation of the Ferguson Police Department*, 2015).

The investigation unearthed a scheme between the mayor's office and the police department to fine Black and lower-income residents of Ferguson at exorbitant rates for relatively minor infractions in order to raise funds for the city (Henricks & Harvey, 2017). As sociologists Henricks & Harvey (2017) explain:

Black residents comprised two-thirds of Ferguson's population but accounted for 90% of all citations and 92% of all warrants. Money from fines and fees was the city's second largest source of local revenue (behind sales taxes, ahead of property taxes), and it was being spent in ways indistinguishable from other tax dollars (p. 932).

In Ferguson, monetary sanctions in the civil and criminal legal systems were being used as a form of regressive taxation, disproportionately on Black and lower-income residents. As a growing number of scholars have argued, (Fernandes et al., 2019; Harris, 2016; Henricks & Harvey, 2017), what happened in Ferguson is not an isolated incident—it is just the incident that initially garnered public attention and outrage. In Henricks & Harvey's regression analysis, they find a robust, statistically significant relationship between the share of Black residents in a jurisdiction and that jurisdiction's use of monetary sanctions, reporting that a 1% increase in the Black population is associated with an increase of over \$34,000 in the annual revenue collected from fines and fees (as a rate per 100,000 residents), holding other community characteristics constant (p. 940). Based on a related regression model, the authors postulate increased spending on policing as a possible mechanism for this relationship. This rigorous analysis reinforces suggestive correlations reported on by the U.S. Commission on Civil Rights, among others (Bastien, 2017; Kopf, 2016; *Targeted Fines and Fees Against Low-Income Communities of Color*, 2017).

Using monetary sanctions to reinforce anti-Black racism and extract wealth from Black communities has occurred historically in jurisdictions across the U.S. and continues in the present day. Effective reforms will keep this history in mind as a means to predict and mitigate racist abuses that could reformulate themselves under new regulatory mechanisms.

WHAT IS THE CURRENT SCOPE OF MONETARY SANCTIONS IN U.S. CRIMINAL COURTS, AND HOW DO THEY RELATE TO OTHER LEGAL STRUCTURES?

Fines and fees exist in both the civil and criminal court systems, where they are imposed on both juveniles and adults for a wide range of charges (Harris, 2016). Some laws make fines and fees mandatory, while others leave the decision to impose monetary sanctions to the judge's discretion; some laws give a clear indication of the amount of the fine or fee to be imposed, while some offer a discretionary range for the judge to select from. In Illinois, before recent reform legislation, researchers found over 90 distinct fines, fees, and costs that may be imposed by the criminal courts, and no limit to the number of costs that can be imposed for a single offense (*Statement on Excessive Court Fines, Fees, and Costs*, 2016, p. 2); the vast majority of these 90 monetary sanctions remain in effect today, even after the passage of the Criminal and Traffic Assessments Act (CTAA) (*Statement on Excessive Court Fines, Fees, and Costs*, 2016, p. 2). As Freidman & Pattillo (2019) describe, assessments in Illinois are largely tied to drug-related and traffic offenses, with "interest and penalties...levied against those who do not pay their fines or fees within the specified period" (p. 176). As noted previously, the network of monetary sanctions in Illinois (as in many states) is so convoluted that there is not a clear legal distinction between the definition of a "fine" versus a "fee," and this confusion extends to Illinois courts' judges and clerks actually imposing and collecting monetary sanctions (Friedman & Pattillo, 2019).

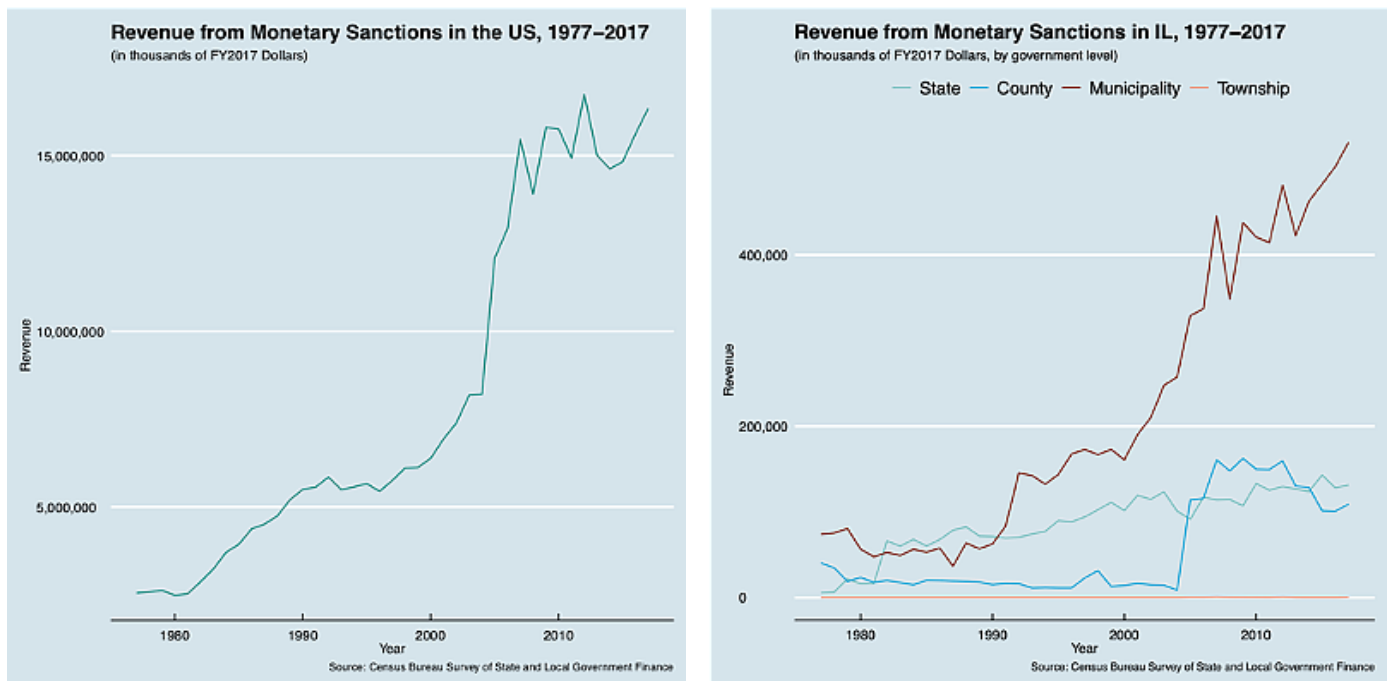
By any measure, the use of monetary sanctions has accelerated in recent decades: since 2010, 48 states have passed legislation creating new fines and fees (Bastien, 2017), and the revenue collected by U.S. state and local governments from monetary sanctions has been on the rise since the 1980s (Beckett & Harris, 2011; Henricks & Harvey, 2017; Singla et al., 2019).

Historically, monetary sanctions made up a negligible share of local budgets, but between 2002 and 2012, funding from monetary sanctions rose from around 0% to around 2.24% of city revenue on average (Singla et al., 2019). In 2017, jurisdictions across the U.S. cumulatively collected approximately \$16.3-billion in fines and fees revenue, according to the author’s analysis of U.S. Census Bureau data (*Annual Survey of State and Local Government Finances*, 2017; Pierson et al., 2015). Trends in Illinois are no exception (*Annual Survey of State and Local Government Finances*, 2017; Pierson et al., 2015), with the level of monetary sanctions collected in 2017 reaching approximately \$783-million across all levels of government (including state, counties, municipalities, townships, special districts, and school districts). As revenues from monetary sanctions have increased, debt has piled up for vulnerable shares of the population—one study found that up to 85% of people leaving prison owe some amount of criminal justice debt (*Who Pays?*, 2015) after having been incapacitated and unable to earn money while incarcerated.

BEHIND THE SCENES, WHAT INSTITUTIONAL IMPERATIVES HAVE DRIVEN THE INCREASED USE OF MONETARY SANCTIONS?

The use of monetary sanctions is typically justified by appeals to three main goals—punishment, raising revenue to recoup system costs of prosecution and incarceration, and fairness. But these appeals do not provide a clear explanation for the trend of rapidly increasing collection of monetary sanctions revenue over the last two decades. To disentangle the more likely motivations behind these increases, we will first consider two intuitive explanations related to the purported primary goals of monetary sanctions, finding that these explanations do not align with actual trends in revenue collection. Then, we will explore underlying institutional motivations that give a clearer picture of the use of monetary sanctions today.

FIGURE 1: REVENUE FROM MONETARY SANCTIONS IN THE U.S. AND IN ILLINOIS (1977-2017)



THIS DATA WAS PULLED FROM THE CENSUS BUREAU SURVEY OF STATE & LOCAL GOVERNMENT FINANCE, SPECIFICALLY CODE U30, LABELED “FINES & FORFEITS,” DEFINED AS “RECEIPTS FROM PENALTIES IMPOSED FOR VIOLATIONS OF LAW; CIVIL PENALTIES (E.G., FOR VIOLATING COURT ORDERS); COURT FEES IF LEVIED UPON CONVICTION OF A CRIME OR VIOLATION; COURT-ORDERED RESTITUTIONS TO CRIME VICTIMS WHERE GOVERNMENT ACTUALLY COLLECTS THE MONIES; AND FORFEITS OF DEPOSITS HELD FOR PERFORMANCE GUARANTEES OR AGAINST LOSS OR DAMAGE (SUCH AS FORFEITED BAIL AND COLLATERAL)” (*ANNUAL SURVEY OF STATE AND LOCAL GOVERNMENT FINANCES*, 2017).

CHALLENGING INTUITIVE EXPLANATIONS

We consider the primary purported goals of monetary sanctions: punishment and revenue generation to recoup the costs of arrests, prosecution, and incarceration (Beckett & Harris, 2011; Friedman & Pattillo, 2019). *Note: All dollar amounts are reported in 2017 constant dollars.*

PUNISHMENT

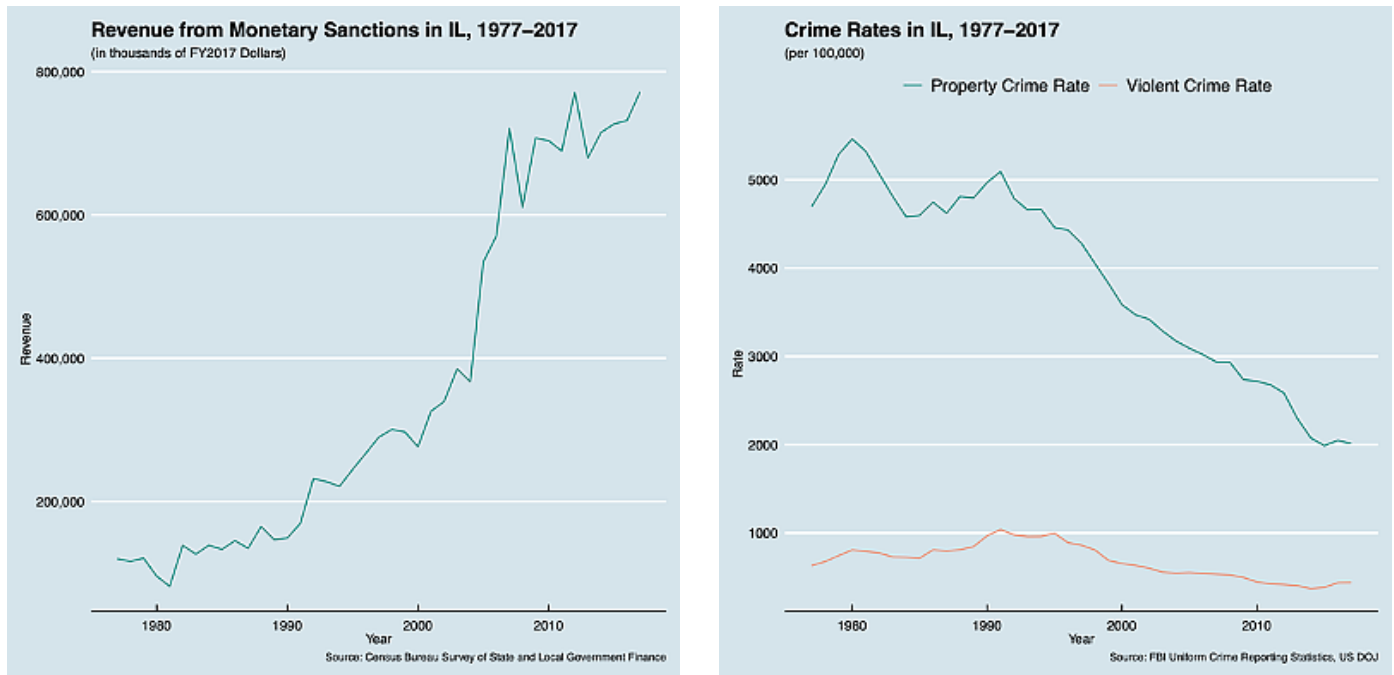
Looking merely at the increasing sums of monetary sanctions revenue collected over the past forty years, one might infer that there are simply more people to punish, perhaps due to spiking crime. However, the opposite is true—many kinds of crime have been on the decline over this same period of time that fine and fee revenue has been rising, in Illinois and nationally (Annual Survey of State and Local Government Finances, 2017; *Uniform Crime Reporting Statistics*, n.d.; Gramlich, 2019; Pierson et al., 2015). What’s more, these crime rates were already declining by the time monetary sanctions revenue spiked significantly. In Illinois, revenue spiked after 2004—at which point both property

crime and violent crime rates had been declining steadily for at least a decade—before reaching an all-time high of \$772-million in revenue from state, county, municipal, and township governments in 2017. This early 2000’s spike mirrors national trends. *Note: The trends in monetary sanctions revenue depicted in Figure 2 are robust across raw and per-capita metrics.*

BUDGETARY NEEDS

Alternatively, one might hypothesize that rising monetary sanctions revenue is related to an increased need for revenue, due to the rise of mass incarceration in the U.S. (Wagner & Sawyer, 2018). Perhaps growing numbers of people being arrested, prosecuted, and incarcerated has led to increased costs for court systems and state and local governments running jails and prisons, amplifying the need for funding through monetary sanctions. Certainly, the criminal justice system has expanded dramatically in recent decades, to the point where U.S. jurisdictions now spend over \$100-billion on policing every year and another \$80-billion on incarceration (*Rethinking the Blues*, 2012).

FIGURE 2: REVENUE FROM MONETARY SANCTIONS AND CRIME RATES IN ILLINOIS (1977-2017)



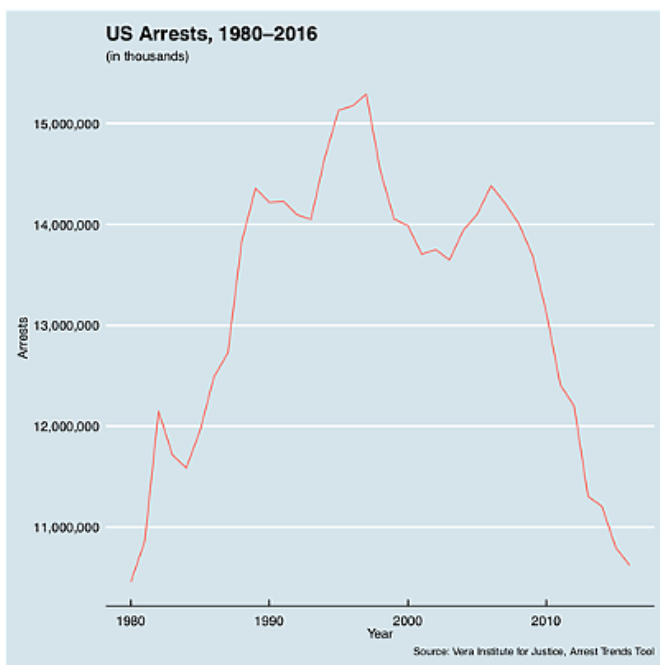
CUMULATIVE REVENUE FROM ILLINOIS STATE, COUNTY, MUNICIPAL, AND TOWNSHIP GOVERNMENTS VS. PROPERTY AND VIOLENT CRIME RATES IN IL, 1977-2017.

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So, is this high level of spending driving the increased use of monetary sanctions? Both by extrapolation from rigorous localized analyses and a broader temporal analysis of general trends, the answer appears to be no. One study, using a stratified random sample of California cities, found that “cities’ reliance on fines and forfeitures is not associated with budgetary need or public safety service provision, but is associated with the race of the population” (Singla et al., 2019, p. 1132). If we assume that this relationship can be extrapolated to other states, this finding presents challenges for the intuitive explanation that budgetary needs have driven the use of monetary sanctions.

In fact, an analysis of trends in arrests and incarceration—nationwide and in Illinois—seems to support the extrapolation of Singla’s (et al.) California-based results, in that the timing of surges in monetary sanctions revenue does not align with the timing of growing arrest numbers and incarcerated populations. While the collection of monetary sanctions has increased in most years from 1977 to 2017 in the U.S. overall (Henricks & Harvey, 2017), with the most rapid increases occurring after 2004, the number of arrests in the U.S. had already peaked in 1997, with 15.3-million arrests (Parsons, 2019).

FIGURE 3: U.S. ARRESTS (1980-2016)



By the time U.S. monetary sanctions revenue reached its all-time high of \$16.7-billion in 2012, arrests had been declining consistently since 2006 (Parsons, 2019). Keeping with this nationwide trend, a 2015 report from the Illinois State Commission on Criminal Justice and Sentencing Reform found that arrests for property, drug, and violent crimes in Illinois have been declining since 1999 (*Illinois Prison Overview*, 2015). By contrast, monetary sanctions revenue in Illinois began rising quickly after 2006, spiking years after the number of arrests began to decline. To underscore these contradictions, recall that 48 states have added new fines and fees since 2010 (Bastien, 2017), at which point arrests were already falling quickly nationwide and in Illinois.

Much like these arrest figures, trends in U.S. and Illinois incarcerated populations also contradict the notion that a growing criminal legal system motivated the increased use of monetary sanctions. The U.S. incarcerated population reached its peak in 2008, and jail and prison populations have declined since then, reaching a two-decade low in 2016 (Gramlich, 2018; Hinds et al., 2018). But the amount of monetary sanctions revenue collected continued to climb until 2012, when it reached an all-time high of \$16.7-billion, falling for two years before climbing back to \$16.3-billion between 2015 and 2017—even as the incarcerated population continued to shrink. In Illinois, the prison population peaked in 2013 (*CY19 Department Data Fact Sheet*, 2019) and the total number of people incarcerated in state prisons and local jails had largely leveled off or decreased as of 2015 (“Illinois Profile,” 2018). However, the collection of monetary sanctions revenue, while more volatile in recent years, has continued to climb overall, reaching an all-time raw and per-capita high of \$772-million, approximately \$60 per resident, in 2017 (*Annual Survey of State and Local Government Finances, 2017; Uniform Crime Reporting Statistics*, n.d.; Pierson et al., 2015).

If the increased imposition and collection of monetary sanctions were primarily a reaction to growing numbers of arrests or growing jail and prison populations, it makes little sense that revenue would spike and then continue to rise precipitously while arrest numbers and prison populations were falling.

Therefore, it is important not to fall back on the intuitive logic that the use of monetary sanctions increased by necessity, to fulfill the purported goals of punishing people and raising revenue to support the criminal legal system; given the mismatch between the trends in crime rates, arrests, and incarceration levels and the timeline of monetary sanction revenue collection, a rigorous analysis must explore the other factors that have shaped the use of these policy tools.

UNDERLYING INSTITUTIONAL MOTIVATIONS

Given the paradoxical collection of ever-higher amounts of monetary sanctions revenue in recent years, even as crime rates, arrests, and incarcerated populations have fallen, it is imperative to ask why legislatures and court systems have doubled down on their reliance upon monetary sanctions as a policy tool, if not in response to the need to punish or to keep up with the costs of processing more people through the system. The literature on monetary sanctions points to the salience of three phenomena: deliberate policy platforms that invest heavily in policing and prosecutors; the inadequate funding of court systems; and targeted monetary sanctions in Black and Hispanic communities.

DELIBERATE INVESTMENT IN POLICING AND PUNISHMENT

Through the War on Drugs of the 1970s and 1980s, the rise of the “broken windows” theory of policing, and the “tough-on-crime” policies of the 1990s, both the federal government and many state and local jurisdictions have invested heavily in policing, prosecution, and incarceration (Hamaji et al., 2017; Pfaff, 2017; *The Growth of Incarceration in the United States*, 2014). As Henricks & Harvey found, “Between the early 1980s and late 1990s...annual budgets for policing, adjudication, and corrections grew nearly fourfold from \$35- to \$130-billion” (p. 935). These new policies expanded the criminal legal system and functioned to criminalize poverty, addressing imposed social inequities through punishment and incarceration targeted at Black and Brown communities,

while divesting from social services that address people’s basic needs (Atkinson, 2015; Friedman & Pattillo, 2019; Harris, 2016; Henricks & Harvey, 2017; Ritchie, 2019). This policy platform of cutting taxes for the wealthy and corporations (Ingraham, 2019), divesting public funds from social services (leading to privatization of basic services like education, healthcare, and housing), all the while investing in the policing and carceral powers of state and local governments, has been labelled “neoliberalism” (Henricks & Harvey, 2017; Ritchie, 2019).

In considering the advent of neoliberal policies, it is crucial to observe that this expansion of jails, prisons, and court systems, and the accompanying “law and order” policies, were not natural or inevitable processes in response to crime but, instead, deliberate political choices. As geographer Ruth Wilson Gilmore has demonstrated, by the time prison construction began to accelerate in earnest in the 1980s, crime rates had already begun to decrease (Gilmore, 2007). Likewise, as we saw in the previous section, by the time monetary sanctions revenue started to rise to the high levels of recent years, crime, arrests, and in some cases incarceration levels were already falling. Thus, in exploring the institutional drivers of increased monetary sanctions imposition and collection, one must also consider the cascade of factors that led to the reliance on policies that attempt to raise revenue at the expense of marginalized communities (Fernandes et al., 2019; Hamaji et al., 2017; Henricks & Harvey, 2017).

Empirical analyses highlight two core components of neoliberal policymaking that are closely associated with the rise in monetary sanctions revenue collection: investments in policing and the empowerment of prosecutors. Consider first increased investments in policing; Henricks & Harvey, in their regression analysis, found that for a 1% increase in police spending over time, an increase of \$344 of monetary sanctions revenue were collected (as a rate per 100,000 residents), holding other factors constant (Henricks & Harvey, 2017). The mechanisms of this relationship are not entirely clear, but it is notable that the relationship exists.

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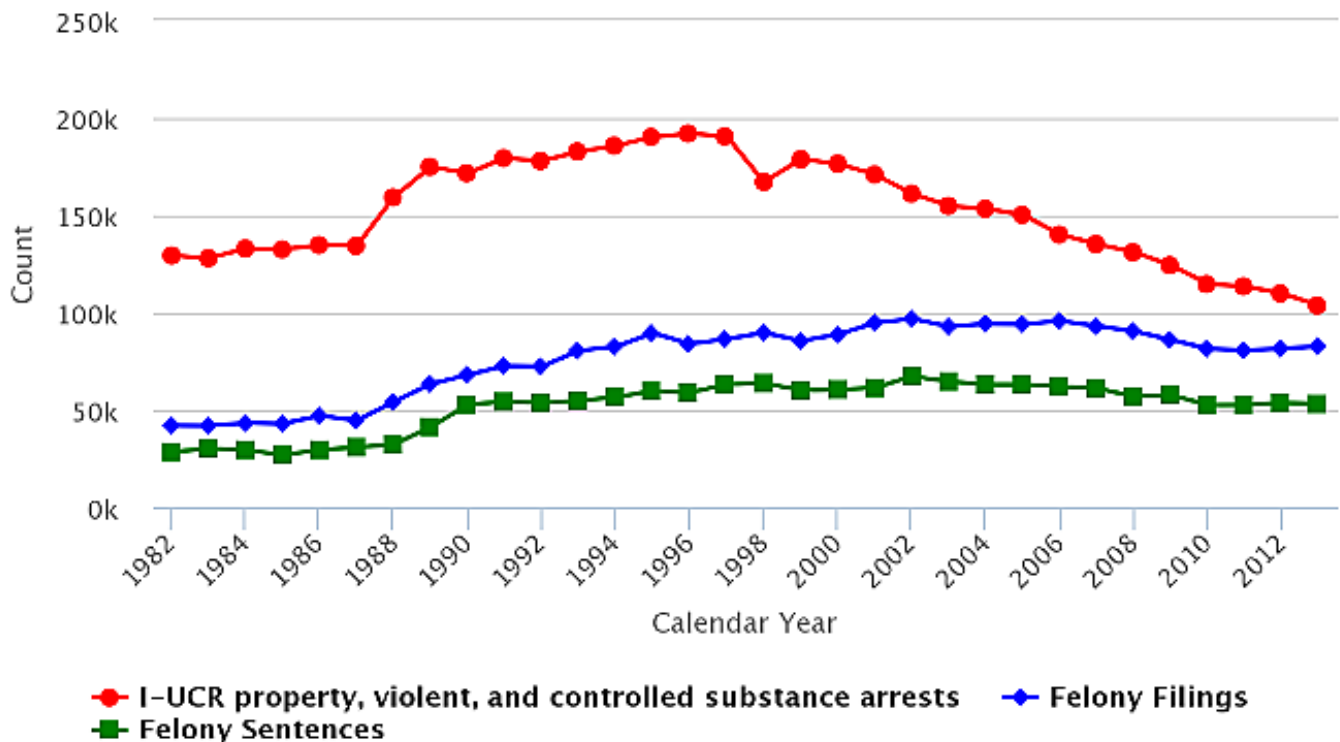
Second, as John Pfaff has argued, the rise in the number and aggression of prosecutors alongside increased political power of district attorneys during the 1980s and 1990s led to a huge rise in the number of felony convictions in the U.S., particularly through the use of plea deals (Pfaff, 2017). As Pfaff demonstrates, prosecutors regularly rely on plea deals to convict more defendants by escalating charges, which therefore threatens severer, disproportionate penalties if they exercise their right to trial and lose. In recent years, 97% of criminal cases at the federal level and 94% at the state level end in plea deals rather than going to trial (Goode, 2012; *Confronting Criminal Justice Debt*, 2016). The upsurge in plea deal convictions has increased the use of incarceration and the opportunity to collect fees from people upon conviction—even when those people might have been found innocent, had their cases gone to trial (Pfaff, 2017).

As a recent report from the National Association of Criminal Defense Lawyers articulates:

Guilty pleas have replaced trials for a very simple reason: individuals who choose to exercise their Sixth Amendment right to trial face exponentially higher sentences if they invoke the right to trial and lose. Faced with this choice, individuals almost uniformly surrender the right to trial...For most...the right to a trial is a choice in name only. [T]he pressures defendants face in the plea-bargaining process are so strong even innocent people can be convinced to plead guilty to crimes they did not commit... [casting] doubt on the assumption that defendants who plead guilty do so voluntarily (p. 5-6).

The data on arrests and felony sentencing in Illinois reflect trends toward increased use of plea deals. The Commission's data reveals that arrests, felony charges, and felony sentences generally rose together between 1982 and 1997, but by the year 2000, arrests were falling sharply as felony filings and sentences continued to rise and then level off.

FIGURE 4: ILLINOIS ARRESTS, FELONY FILINGS, AND FELONY SENTENCES



ISCCJSR ANALYSIS OF IL ARRESTS, FELONY FILINGS, & FELONY SENTENCES, 1982-2013.
SOURCE FOR GRAPHIC: "ILLINOIS PRISON OVERVIEW" BY ISCCJSR.

Notably, the inflection point of this ratio of arrests to felony sentences—around the year 2000—tracks much more closely with the early 2000's spike in monetary sanctions revenue than the trends we explored in the previous section (crime rates, arrests, and incarcerated populations). Exploring this relationship more rigorously, following the work of criminologist John Pfaff and others, is a worthwhile project for future empirical work.

INADEQUATE COURT FUNDING

As described in the previous section, policies under neoliberalism invested in the most punitive aspects of the criminal legal system while cutting personal and corporate income taxes and property taxes and divesting from sorely needed public services—all in the name of individuals' "personal responsibility" for their socioeconomic outcomes (Friedman & Pattillo, 2019; Henricks & Harvey, 2017; Ritchie, 2019). This phenomenon has been tracked at the national level; as Henricks & Harvey (2017) note:

Whereas the property tax and government transfers historically constituted the two largest revenue sources for local government, they dwindled from 76.6% to 66.7% between 1977 and 2012 (p. 934).

Such reductions in state funding for essential public services are also implicated in state court funding crises, acknowledged in recent years by the American Bar Association as a "problem of severe court system underfunding" nationwide (*Funding Justice*, 2013; "TIPS Toolkit for Fair Court Funding," 2016). Further, in 2018, the National Task Force on Fines, Fees, and Bail Practices, convened by the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), released a set of recommendations that included: "Courts should be entirely and sufficiently funded from general governmental revenue sources," and that "core court functions should not be supported by revenues generated from [monetary sanctions]," drawing a direct link between the use of monetary sanctions and the practice of underfunding court systems ("Principles on Fines, Fees, and Bail Practices," 2018, p. 3).

In states like Illinois, where court system funding is derived from both state and local funding sources ("State and Local Funding for the Illinois Courts," n.d.), state-level funding cuts can lead to serious problems for court systems, while also driving inequities in the quality of services provided across court jurisdictions, depending on each jurisdiction's capacity to raise local revenue (*Funding Crisis in the Illinois Courts*, 2013). According to the Illinois State Bar Association, Illinois courts have been significantly underfunded for the past two decades, with funding dropping 22% between 2001 and 2013 as expenses continued to rise (*Funding Crisis in the Illinois Courts*, 2013). In fact, when Illinois courts received a funding increase in 2019, it marked the first budget increase in six years, and the first time in almost three decades that the state allocated resources to "fully reimburse counties for salaries and probation services," according to a court official (Anzel, 2019). The insufficient funding from state sources can put pressure on local jurisdictions to raise additional revenue, at times in the form of monetary sanctions.

Such funding gaps have been cited by system actors and outside observers alike as potential drivers of the use of monetary sanctions; the rhetoric of court funding needs is a consistent part of the policy debate around the use of court costs, fines, and fees in Illinois and elsewhere (Friedman & Pattillo, 2019). That said, while there is some truth to the problem of court underfunding, there are several paradoxes that raise questions about the rhetoric of court underfunding as a justification for the continued use of fines and fees. First, as we have seen, arrests and incarcerations are down in recent years, raising questions about why court costs are not also decreasing. Second, as explored further in the next section, monetary sanctions are an incredibly inefficient source of revenue, as millions-of-dollars of uncollected criminal justice debt remains every year (Brown et al., 2019; Friedman & Pattillo, 2019; Menendez et al., 2019). Third, in Illinois and many other states, revenue from monetary sanctions is used to fund a wide range of government services other than the courts—often including law enforcement agencies, whose

powerful lobbies tend to support monetary sanctions (Keeshan & Sarkauskas, 2020)—calling into question the connection between the need for court funding and the reliance on monetary sanctions (*Confronting Criminal Justice Debt*, 2016; Friedman & Pattillo, 2019). Finally, as we will explore in the next section, the presence of communities of color may be a determining factor in whether jurisdictions experiencing budgetary pressures turn to the use of monetary sanctions, as opposed to alternative funding mechanisms.

TARGETING BLACK AND HISPANIC COMMUNITIES

In the wake of the murder of Michael Brown and the subsequent Department of Justice investigation in Ferguson, Missouri, the aggressive use of monetary sanctions against Black communities was brought to light by advocates and researchers. In the years since, a number of researchers have addressed the question of whether Ferguson officials' use of monetary sanctions was an outlier or indicative of a broader trend. The evidence points to a clear conclusion: there are many "Fergusons," or jurisdictions where officials use monetary sanctions to raise revenue from predominantly Black and Brown communities (Fernandes et al., 2019; Harris, 2016; Henricks & Harvey, 2017; Kopf, 2016; Miller et al., 2018; Singla et al., 2019; Su, 2019).

As noted earlier, Henricks & Harvey found that a 1% increase in Black population share is associated with an increase of over \$34,000 in the annual revenue collected from fines and fees (as a rate per 100,000 residents), holding other community characteristics constant (Henricks & Harvey, 2017, p. 940). In addition, Dan Kopf, in a study cited heavily by the U.S. Commission on Civil Rights in their 2017 report, "Targeted Fines and Fees Against Communities of Color," observes a correlation between the share of Black residents and the reliance on monetary sanctions revenue in a jurisdiction, concluding that "among the fifty cities with the highest proportion of revenues from fines, the median size of African American population—on a percentage basis—is more than five-times greater than the national median" (Kopf, 2016). This correlation does not disappear when controlling for poverty rates.

Further, one study of California jurisdictions found that areas with higher rates of Hispanic residents raised higher levels of revenue from traffic fines, holding other factors constant (Su, 2019). Another rigorous study of California jurisdictions found no statistically significant relationship between cities' budgetary needs and their use of monetary sanctions, but did find a statistically significant relationship between use of monetary sanctions and the presence of communities of color. This association suggests that a legacy of racially-biased policymaking may determine which jurisdictions respond to court and other funding needs by turning to fines and fees (Singla et al., 2019).

Understanding how monetary sanctions are targeted at people and communities of color is crucial to answering the question, "why monetary sanctions?" As Friedman & Pattillo put it, "rather than funding the court system...with increasingly unpopular tax increases, the system of monetary sanctions directly charges those who are being criminally prosecuted, and who are thus in the weakest social and often financial position to protest" (pg. 178)—and as we know, people of color are overrepresented at every stage of criminal prosecution (Singla et al., 2019). This perspective will be helpful in understanding the persistence of monetary sanctions despite their extreme inefficiency as a source of revenue in Part II.

The findings discussed here do not suggest that racial breakdown is the only factor determining a jurisdiction's reliance on monetary sanctions; other policies governing the extent criminal legal system and court funding structures are also important, as articulated in the previous two sections. The evidence does, however, demonstrate the persistent legacy of fines and fees as racist policy tools and caution against a class-reductionist or "colorblind" approach to reforming monetary sanctions (Henricks, 2019; Zhen, 2019). Fines and fees are often targeted specifically at low-income Black and Brown communities in ways that will continue if not explicitly addressed (Henricks, 2019).

This conversation will continue in Part III, which explores the strengths and drawbacks of various reforms.

PART II: REVIEWING THE EVIDENCE

To this point, we have established that the history of monetary sanctions is tied up in unjust racist practices; that the use of monetary sanctions has accelerated in recent decades, even as crime, arrests, and incarceration have fallen; and that monetary sanctions disproportionately penalize Black, Brown, and low-income communities.

We have not yet asked the broader question of how monetary sanctions function writ large. Overall, are monetary sanctions good policy?

We will explore this question in the next three sections, first by examining the explicit goals of court costs, fines, and fees, and then by examining their unintended consequences, to understand whether the net impact of these monetary sanctions serves the broader goal of the legal system—public safety.

WHAT ARE THE EXPLICIT RATIONALES FOR IMPOSING MONETARY SANCTIONS?

Monetary sanctions are, in theory and in practice, intended to serve two main goals: punishment and revenue-raising (*Confronting Criminal Justice Debt*, 2016; Friedman & Pattillo, 2019; Menendez et al., 2019). Historically, fines were intended as part of a legal punishment for lawbreaking on the theories of deterrence and retribution, which postulate that significant repercussions will deter wrongdoing and that the legal system should cause pain to law-breakers (Marsh & Gerrick, 2016; Menendez et al., 2019). Fees were intended explicitly as revenue-raising tools for state and local governments. While the legal distinctions between fines and fees are no longer practically existent (as previously noted herein), both the rationales of punishment and revenue-raising are still used to justify the imposition of monetary sanctions (Beckett & Harris, 2011; Pattillo & Kirk, 2020a). Further, in legislative and political debates, fines and fees are often justified with

appeals to fairness; understanding these justifications is important to understanding the need for reform, and composing viable reform strategies (Marsh & Gerrick, 2016; Sweetland et al., 2018).

The following section explores the intended functions of monetary sanctions in turn and evaluates whether they succeed in accomplishing these goals. Interrogating the legitimacy of these policy goals *per se* is beyond the scope of this report, but there is growing legal and sociological literature exploring these questions (Harris, 2016; Pattillo & Kirk, 2020a; Zhen, 2019).

DO MONEY SANCTIONS ACCOMPLISH THEIR INTENDED GOALS?

PUNISHMENT

Punishment is typically posited by criminologists to serve two main goals: deterrence of future crime and retribution for law-breakers (Menendez et al., 2019; Pattillo & Kirk, 2020a). This section explores each of these goals in turn.

Are monetary sanctions effective deterrents of crime? One way to approach this question is to ask, first, whether monetary punishment is more or less effective at deterring crime than its alternatives. Based on the findings of criminologists who have studied the theory of punishment as deterrence, there is some evidence that the *swiftness and certainty* of punishment deters crime, but little support for the notion that the *nature or severity* of the punishment deters crime (Beckett & Harris, 2011; *Five Things About Deterrence*, 2016; Nagin, 2013; Sered, 2019). Monetary sanctions are attached to a broad range of crimes (Menendez et al., 2019), but generally speaking, it is no more certain that fines or fees will be imposed on an individual accused of criminal behavior than punishment of any other nature. Even standing alone, without comparison to

to other punishments, monetary sanctions are not known for their consistency and certainty of application; because they are imposed upon conviction, they are not imposed swiftly after an alleged crime is committed (Beckett & Harris, 2011). Further, the imposition and amounts of fines and fees are often left solely to a judge's discretion, meaning there is no guarantee what level of monetary sanctions, if any, will be levied *before* a person is convicted of a crime. Thus, there is no reason to think that monetary sanctions are an exception to the flawed theory of deterrence via increasingly harsh punishment, or that they are more effective at deterring crime than any other legal consequence.

We can also ask whether monetary sanctions are an effective form of retribution. The answer largely depends on the financial situation of the person being punished. For a wealthy person, a fine of several hundred dollars may be a minor inconvenience, failing to adequately punish them for their transgression. Meanwhile, that same amount may cause a lower-income person to spiral into a web of collateral consequences—a punishment far out of proportion with the offense they have been convicted of, as we'll see in later sections (Atkinson, 2015; Menendez et al., 2019; Pattillo & Kirk, 2020a). Monetary sanctions are an inconsistent, and thus unreliable, form of punishment that is at times inconsequential and at times far too severe, depending on the wealth of the person being punished and not the severity of the offense

REVENUE-RAISING

Monetary sanctions are, at times, explicitly intended to raise funds for the government actors responsible for trying criminal cases; the private collections and probation agencies those governments may retain to enforce criminal justice debt; and in some cases, the law enforcement personnel and carceral institutions that are involved in arresting and detaining people. However, recent evidence demonstrates clearly that monetary sanctions fail to achieve this goal—they are, at best, an incredibly inefficient source of revenue and, at worst, a revenue drain, imposing massive hardships on lower-income defendants while failing to efficiently fund court

systems (Beckett & Harris, 2011; Harris, 2016; Menendez et al., 2019).

To understand why monetary sanctions might fail to raise revenue, we must acknowledge the important fact that low-income individuals are far more likely to be swept into the criminal justice system, at every level, from enforcement to incarceration. For one thing—due in part to the influence of the now-debunked “broken windows” theory of policing, which posited that heavy enforcement of lower-level “quality of life” crimes could deter more serious criminal activity (Atkinson, 2015, p. 199)—there has been increased police presence in lower-income communities over the past four decades. Thus, inevitably, lower-income people (particularly from Black and Brown communities) are disproportionately likely to come into contact with law enforcement in the U.S., whether or not they are engaged in criminal activity (Singla et al., 2019). Strikingly, estimates suggest that up to 40% of all crimes are directly attributable to poverty—a trend that illustrates the way our society has criminalized poverty by enforcing harsh punishments on those who break the law in an effort to feed or otherwise support themselves and their families (Ritchie, 2019; *Who Pays?*, 2015). Given the disproportionate enforcement of certain laws in poor communities and the criminalization of poverty that has drawn low-income people into the criminal legal system for attempting to meet their basic needs, a disproportionate share of monetary sanctions are imposed on people who cannot afford to pay them, leading to huge sums of outstanding criminal justice debt in jurisdictions across the U.S. (Brown et al., 2019; Gleicher & DeLong, 2018; Henricks & Harvey, 2017).

Despite these outstanding levels of criminal justice debt, as we explored in Part I, huge amounts of revenue from monetary sanctions are collected by state and local governments every year, which would seem to suggest that fines and fees represent a positive revenue stream, uncollected debt notwithstanding (Pierson et al., 2015; Singla et al., 2019). But there is no widespread practice of tracking or calculating the *cost* of collecting monetary sanctions or criminal justice debt, in any U.S. jurisdiction. As a result, any claim that a court

system relies on revenue from monetary sanctions to function requires an assumption that monetary sanctions are a cost-free, positive revenue stream—an assumption that flies in the face of best practices for evaluating the efficiency of taxation and other state and local revenue streams. It is impossible to decisively state that court costs, fines, and fees are a net positive revenue stream without actively tracking the costs of collecting that revenue; given the high numbers of indigent people upon whom monetary sanctions are imposed, it would not be difficult to imagine that collection costs could exceed revenue in some jurisdictions, and that actualized revenue could be incredibly inefficient as compared to other revenue sources, even where net positive revenue was collected (Bastien, 2017; Brown et al., 2019; Friedman & Pattillo, 2019; Menendez et al., 2019).

Recent evidence from the Brennan Center for Justice estimates the cost of collecting monetary sanctions and criminal justice debt through an analysis of observational data collected in ten U.S. counties, with results that support the above hypothesis (Menendez et al., 2019). In addition to examining how court system budgets appear to rely on fine and fee revenue, the research team computed the cost of collecting monetary sanctions in terms of full-time employee hours spent processing criminal justice debt cases. Menendez (et al.) conclude:

On average, the jurisdictions in this report spent more than \$0.41 for every dollar they collected over the period studied. Because of a lack of available data, this figure counts only in-court and jail costs. If all costs were measured—including the sizable cost to law enforcement for warrant enforcement and arrests, the cost to Department of Motor Vehicles (DMV) offices for processing suspended licenses, and the cost to parole and probation officers for fee and fine compliance—it would be even higher (p. 9).

The authors proceed to compare the efficiency of revenue from criminal justice debt to the efficiency of IRS collection of tax revenue, noting that on average, the IRS spend \$0.34 for every *one-hundred-dollars* they collect—in other words, on average,

revenue from criminal justice debt costs 121-times *more* to collect than revenue from federal taxation (Menendez et al., 2019). Of the states included in the study, none spent more than \$1 per every \$100 of state-level tax revenue, indicating that even by the states' standards, monetary sanctions revenue is hugely expensive to collect.

Further, of the seven counties for which sufficient data could be collected to subtract collection costs from revenue, six collected some net positive amount, while one was left with a net loss (Menendez et al., 2019, p. 14). However, in four of the six counties with net gains from criminal justice debt, the cost of collection ranged between 35-80% of the total amount collected—exponentially higher than the cost of taxation (between \$0.35 and \$.95 per \$100 of revenue in those states). Also important to bear in mind is the authors' caution that their estimation of collection costs was inherently conservative due to the lack of available data; as more data is collected and analyzed, the net amount left after calculating the costs of collection can only decrease.

Preliminary evidence from Illinois suggests that, like the counties studied in the Brennan Center report, Illinois counties also spend a disproportionate amount of time attempting to collect on monetary sanctions, leaving huge sums of uncollected criminal justice debt on a regular basis (Friedman & Pattillo, 2019). As the Illinois Statutory Court Fee Task Force reported in 2016: “A relatively small percentage of assessments imposed in criminal cases is ever collected. Compared to any revenue that they generate, the administrative burden that such assessments impose on court clerks is substantial because criminal cases are not closed if assessments have not been paid” (*Illinois Court Assessments*, 2016).

Illinois-specific data collection and analysis efforts are underway and need further support to move forward, as will be discussed in Part III.

FAIRNESS

Legislators and advocates who justify monetary sanctions as important to the fairness of the criminal

legal system often raise three core arguments: first, that monetary sanctions ensure “everyone is treated the same” when they break the law; second, that funds raised by fines and fees can go toward restitution for victims, to repay victims or their families for the impact of a crime; and third, that people convicted of crimes are “users” of the criminal justice system, and thus should be personally responsible for the cost of trying and convicting themselves. This section considers each of these three rationales in turn.

CLAIM 1: "EVERYONE IS TREATED THE SAME."

In the context of criminal court proceedings, such fairness is more complex than it appears on the surface. While, in a way, fines and fees mean everyone is treated the same in that everyone is assessed the same monetary cost (or a cost in the same discretionary range), this kind of “equal treatment” does not consider the underlying inequities in U.S. society that mean a certain dollar amount has very different consequences for individuals in different financial situations (Friedman & Pattillo, 2019; Pattillo & Kirk, 2020a). For example, a wealthy person might pay a \$750 bill without trouble and walk away without any further accountability, while a lower-income person might be caught up in a maze of collateral consequences due to an inability to pay. In theory, “ability to pay” provisions in state laws offer some protection to indigent defendants, by providing an opportunity for the judge to determine whether a defendant is capable of paying; but, as we’ll see in Part III, these provisions are deeply flawed in practice, and are not adequate to protect millions of Americans from being burdened with huge amounts of criminal justice debt every year.

What’s more, even before monetary sanctions can be imposed, we know that the processes driving people into the justice system are highly inequitable, criminalizing poverty and targeting people of color (Singla et al., 2019). As we saw in the previous section, these sources of racial bias are borne out in data on the use of monetary sanctions—jurisdictions with more Black and Brown residents rely more heavily on monetary sanctions revenue, putting the burden of criminal justice debt primarily

on lower-income Black people and people of color (Bastien, 2017; Henricks & Harvey, 2017; Kopf, 2016; Su, 2019; *Targeted Fines and Fees Against Low-Income Communities of Color*, 2017).

Given the influence of structural racism and the criminalization of poverty in determining who is drawn into the justice system and who is found guilty, we cannot expect that everyone who commits a crime has an “equal” chance of being assessed court fines and fees (Singla et al., 2019). In other words, we cannot assume that everyone will be treated “the same” by the justice system in response to their actions. This imbalance presents serious challenges for the argument that monetary sanctions are a force for fairness through “treating everyone equally” in the criminal justice system.

CLAIM 2: "FUNDS FROM FINES AND FEES GO TOWARDS VICTIMS' RESTITUTION."

Second, there is the rationale that monetary sanctions provide an important source of funding for victims’ restitution, to ensure victims of crime are fairly compensated for the harms done to them. Broadly, it is true that in many states, fines levied against offenders go into victim’s compensation funds, alongside annual funding from the federal government (Evans, 2014). That said, the victim’s compensation system is deeply flawed, with onerous eligibility and application requirements that prevent most victims from ever receiving compensation; hundreds-of-thousands (if not millions) of dollars in federal and state victims compensation funds are not disbursed every year while thousands of victims try and fail to receive support (Evans, 2014; Van Brocklin, 2018). That is to say, there are many issues with the compensation of victims in the U.S. and changes to the use of monetary sanctions represent only one small piece of that equation.

In some states, monetary restitution is a different legal process altogether from the imposition of monetary sanctions for various offenses. Under Illinois law, for instance, offender fines do not fund victim’s compensation directly (Evans, 2014, p. 24), but there is a separate law that gives courts the right to require people convicted of a crime to pay

restitution to victims (730 ILCS 5/5-5-6). So, while it is true that in some states, court-imposed fines and fees fund victims' restitution, there is no semblance of a one-to-one relationship between those two things; states can collect monetary sanctions and fail to compensate victims and they can also compensate victims without the use of monetary sanctions. Thus, the argument that eliminating fines and fees means eliminating restitution funds does not stand up to scrutiny, particularly in Illinois.

CLAIM 3: “MONETARY SANCTIONS ARE USER FEES - PEOPLE SHOULD BE PERSONALLY RESPONSIBLE FOR THE COST OF PROCESSING THEIR CASES.”

Finally, let us consider the third rationale—that people convicted of crimes are “users” of the criminal justice system and should pay “user fees” to support its operations. The first piece of this argument has been roundly criticized for an intentional misconstruction of the purpose of the criminal justice system—the U.S. legal system is not a private “service” that individual “users” or “consumers” pay to receive, but a public service that is intended to secure the safety of communities and broader society (Beckett & Harris, 2011; *Confronting Criminal Justice Debt*, 2016; *Statement on Excessive Court Fines, Fees, and Costs*, 2016; Friedman & Pattillo, 2019). When someone commits a crime and is prosecuted, it is not because they have opted to receive a service, but because our society has decided that this is the best way to secure public safety in the event of an individual's alleged misconduct. To hold individuals accountable for funding a social good runs counter to the stated purpose of the legal system (Friedman & Pattillo, 2019).

The second half of this argument—that fees from convicted people are going to fund the parts of the system whose resources those people have supposedly “used”—is only sometimes true; regardless, there are problems with the argument that fines and fees promote fairness. First, consider a case where it is true that fees go to fund court functions directly.

As many advocates and legal experts have argued, this dynamic creates a clear conflict of interest: having court fees fund the courts directly creates perverse incentives for judges to assess more and larger fees to fund their own salaries and those of their colleagues (Colgan, 2017; *Confronting Criminal Justice Debt*, 2016; Wool et al., 2019). This underlying conflict of interest can escalate into more extreme forms of corruption; unfortunately, there are a host of examples of abuse of these funding mechanisms to pay for perks and luxury items for judges (*Confronting Criminal Justice Debt*, 2016; Menendez et al., 2019). So, the idea that “user fees” reimburse court and related personnel for their labor introduces a direct conflict of interest, undercutting the goal of fair treatment by the legal system (Colgan, 2017).

Second, consider the situation in which the statement above is untrue: monetary sanctions revenue *does not* directly fund the courts but instead goes into general funds for government services beyond courts in many states and jurisdictions (*Confronting Criminal Justice Debt*, 2016; Menendez et al., 2019; Wool et al., 2019). As we saw in the example of Ferguson, Missouri, this dynamic is still not immune from corruption; branches of government can collude to impose unjust fines and fees as a regressive tax to support a wide range of government functions. In Illinois, money collected from monetary sanctions in the criminal legal system is re-appropriated to support the state's general operations “every year and often multiple times a year,” through legislation like Public Act 100-0023 in 2017, which transferred over \$7-million from special funds that receive monetary sanctions revenue to the state's general revenue fund (Friedman & Pattillo, 2019, p. 185). Thus, as Friedman & Pattillo (2019) conclude, “The value of monetary sanctions to states lies not just in funding the criminal justice system, which legislators recognize is underfunded, but also to run the state's general operations” (p. 185).

Clearly, the shift from direct legal system funding to more general purpose funding runs counter to the

“user fee” model—if monetary sanctions revenue were intended merely to recoup the costs of arresting, prosecuting, and incarcerating people, it is unclear why it would be transferred away from special funds to general purpose funds. In this way, the “fairness” rationale falls apart again, and there must be a new justification for effectively taxing people convicted of crimes to fund state and local governments.

So, either: monetary sanctions fund the very agencies that impose them, creating a conflict of interest that undermines the expectation of fair treatment under the law, or monetary sanctions fund unrelated government functions and general funds, failing to tie the “user fee” to the “service” for which it supposedly pays and raising questions about the “fairness” of forcing convicted persons to fund general government services. In combination with the *prima facie* logical inconsistency of the idea that individuals are “users” of the criminal legal system, the implementation of monetary sanctions thoroughly undermines the argument that monetary sanctions are a force for fairness in the legal system.

At the outset of this section, we posed a simple question: do monetary sanctions accomplish their stated goals of punishing people for breaking the law; raising revenue for court systems; and ensuring fairness under the law?

The evidence is clear: monetary sanctions accomplish none of these goals (Beckett & Harris, 2011).

There is no reason to believe that punishing people with large monetary sanctions will deter crime better than any alternative consequences; worse yet, monetary sanctions do not consistently serve the goal of retribution because wealthy offenders are far less impacted by fines and fees, while lower-income people are punished far out of proportion with their purported wrongdoings. Further, monetary sanctions fail to raise revenue as intended because they are so often assessed to indigent people,

resulting in millions-of-dollars of outstanding criminal justice debt and hours continually wasted by courts and clerk’s offices attempting to collect nonexistent assets, quietly undercutting the net revenue derived from fines and fees that *are* paid. Finally, monetary sanctions do not support fairness under the law, for a number of reasons: they have vastly disproportionate consequences for people with different incomes; they exacerbate the racial and socioeconomic disparities that determine who is caught up in the justice system to begin with; they do not consistently or reliably provide victims with restitution; and they either create conflicts of interest for court personnel, or fund government functions that are far removed from the original crime committed, acting as a targeted, regressive tax that circumvents the political process.

WHAT ARE THE COLLATERAL CONSEQUENCES OF MONETARY SANCTIONS?

In addition to falling short of their intended goals, monetary sanctions have a host of purportedly unintended consequences that are deeply harmful for the millions of Americans they impact (Fredericksen & Lassiter, 2016; Harris, 2016).

Unlike civil legal costs, monetary sanctions in the criminal legal system come with a host of escalated enforcement mechanisms when not immediately paid in full (Bastien, 2017, 2017; Menendez et al., 2019; Wool et al., 2019). Because a person can end up with hundreds- or thousands-of-dollars of debt—while recent data suggests that some large share of U.S. adults (~20% to 40%) cannot even afford a \$400 emergency expense—many people cannot pay immediately (*Report on the Economic Well-Being of U.S. Households in 2018*, 2019). Further, many people assessed debt serve time in prison, and as noted previously, up to 85% of incarcerated people leave prison with criminal justice debt, after having been unable to work or earn any reasonable wage for an extended period of time (Who Pays?, 2015).

Recent reports by advocates and policy research organizations have highlighted the web of collateral consequences that follow from the imposition of monetary sanctions in the criminal legal system (Brown et al., 2019; Colgan, 2017; *Confronting Criminal Justice Debt*, 2016; Fernandes et al., 2019; Gleicher & DeLong, 2018; Harris, 2016; Menendez et al., 2019; Shafroth, 2018). There are different collateral consequences for outstanding criminal justice debt across states and jurisdictions, but some combination of these repercussions exists in every U.S. state (*Confronting Criminal Justice Debt*, 2016). Given the constitutional violations associated with monetary sanctions and their collateral consequences (discussed further in the next section), many of these policies have resulted in costly lawsuits, forcing states to implement reforms (Bastien, 2017; Colgan, 2018; Fernandes et al., 2019). Thoughtful policymakers will be proactive in identifying and eradicating the unconstitutional practices at play in their states, to reduce the need for this kind of intervention.

The collateral consequences of monetary sanctions fall into four general categories: direct restrictions of civil rights, poverty penalties, poverty traps, and systemic corruption.

DIRECT RESTRICTIONS OF CIVIL RIGHTS

In some 30 states, people lose their voting rights while they owe any criminal justice debt, whether explicitly (in 9 states) or indirectly through requirements like the completion of all parole or probation conditions before voting rights are restored, when paying off debt can be a condition of parole (Fredericksen & Lassiter, 2016, p. 14).

Further, in all 50 states, effectively, it is possible to incarcerate someone for failure to pay criminal justice debt. Typically, this occurs through indirect means like arresting someone for a parole or probation violation or holding them in contempt of court for failure to pay, because *Bearden v. Georgia* made explicit debtors' prisons illegal in the U.S. in 1986 (*In for a Penny*, 2010).

Incarceration exacerbates many of the consequences listed in this section, making it impossible to earn money to pay off debts or fulfill other responsibilities and obligations, potentially making it more likely that someone will recidivate and directly undermining public safety (Harris, 2016; Menendez et al., 2019; *Statement on Excessive Court Fines, Fees, and Costs*, 2016).

POVERTY PENALTIES

Poverty penalties exist when a poor person is punished more severely than a wealthier person for the same infraction as a direct consequence of poverty (*Confronting Criminal Justice Debt*, 2016). Poverty penalties are additional punishments for lower-income people, over and above the disproportionate impact resulting from heightened enforcement in low-income communities and the criminalization of poverty; these penalties occur as a direct result of people's inability to pay initial monetary sanctions they are assessed by the court.

As the Harvard Law School (HLS) Criminal Justice Policy Program's report, "Confronting Criminal Justice Debt: A Guide for Policy Reform" articulates, common examples of poverty penalties include:

...late fees, which can vary from a fixed amount to a percentage of the debt owed; costs of collection; interest charges; fees to enter installment plans; the issuance of arrest warrants (with associated fees); fines for contempt of court; jailing for contempt of court; and the imposition or extension of probation (with associated fees) until the debt is paid in full. These penalties amount to additional punishment due to a defendant's poverty (p. 15).

Extreme late fees, incarceration for supposedly "willful" nonpayment, the extension of probation, and other related poverty penalties exist and are actively enforced and collected on across Illinois counties (Friedman & Pattillo, 2019, pp. 187-190). Poverty penalties can also take other forms, including barring people from opting for programming-based alternatives to incarceration.

In Cook County, Illinois, a Chicago Appleseed survey of public defenders found that some respondents' clients were prevented from participating in anger management or drug treatment programs as an alternative to incarceration if they could not pay the associated fees.

Further, some argue that the fees associated with Sixth Amendment rights to legal counsel and a trial by jury in almost every state represent a poverty penalty, given the extremely high rates of defendants who forego legal assistance due to cost and/or plead guilty because they fear the consequences of a trial with limited legal support (*Confronting Criminal Justice Debt*, 2016).

Criminal justice debt can also extend to an individual's family or community, who may offer support to the individual to avoid poverty penalties (Katzenstein & Waller, 2015; Page et al., 2019). Families of juveniles assessed monetary sanctions are also, and especially, drawn into this dynamic as they may owe criminal justice debt due to a minor's inability to pay fees and fines themselves (Bastien, 2017).

POVERTY TRAPS

The term "poverty trap" describes a policy that keeps someone in poverty by inhibiting their ability to make a living or meet basic needs and obligations (*Confronting Criminal Justice Debt*, 2016, p. 15). These policies are especially harmful to people returning from incarceration, whose experience reentering civil society with a criminal record will likely be difficult enough without the added barriers to housing, employment, childcare, and even public benefits (like healthcare) that can result from criminal justice debt-related poverty traps.

Some consequences of poverty trap policies across the U.S. include:

- **Revocation or suspension of drivers' licenses, vehicle registration, or professional licenses** due to outstanding criminal justice debt.

These sanctions can have cascading negative effects, such as lost employment and thus lost income, and can result in difficulty securing childcare due to a lack of mobility, which can make finding and retaining gainful employment even more difficult or impossible. A disproportionate share of drivers' license suspensions qualify as poverty traps, rather than common sense interventions; as the HLS Guide states, "nearly 40% of license suspensions nationwide stem from unpaid fines, missed child support payments, and drug offenses—not from unsafe or intoxicated driving or failing to obtain automotive insurance" (*Confronting Criminal Justice Debt*, 2016, pp. 15–16).

- **Denial of public benefits** in states where outstanding criminal justice debt is disqualifying. (Menendez et al., 2019). This kind of policy can also extend to employment opportunities; in Chicago, for example, it is not possible to be hired by the city government if you owe debt of any kind to the city and are not compliance with a regular payment plan, which inhibits a job-seeking person hoping to earn the income to pay off debts from gaining employment.
- **Wage or bank account garnishments** by the court. In some states, it is legal for the court to directly receive a person's wages or take funds from their bank accounts while that person owes outstanding criminal justice debt, preventing the person from prioritizing other bills and costs of living (Menendez et al., 2019).
- **Access to shelter and food is threatened** when people have to choose between the loss of their freedom, their mobility, or their employment via arrest or license suspension if they fail to make a criminal justice debt payment, and meeting their basic needs. Stories abound about individuals forced to make impossible choices between buying food for their families or making a payment on mounting criminal justice debt (*Confronting Criminal Justice Debt*, 2016; Fernandes et al., 2019; Gleicher & DeLong, 2018; Harris, 2016; Menendez et al., 2019; Wool et al., 2019).

COURT COSTS, FINES, AND FEES ARE BAD POLICY

- **Prolonged parole or probation supervision** in states where paying off criminal justice debt is a condition of parole, which can lead to re-arrest or additional financial or criminal charges for parole violations for those unable to pay off their debt quickly (Bastien, 2017; Menendez et al., 2019; Friedman & Patillo, 2019).
- **Financial and employment barriers** can arise from court debt. Criminal justice debt can lower a person’s credit score (Marsh & Gerrick, 2016; Menendez et al., 2019). A lower credit score can make it difficult or impossible for someone to find housing, particularly someone returning from a period of incarceration, and can make it possible for an employer to learn of someone’s history of incarceration in some states, making employment more difficult. Such poverty penalties make reentry after incarceration disproportionately difficult for lower-income people, who, as we know, make up the majority (80%) of the incarcerated population (Friedman & Pattillo, 2019; Who Pays?, 2015).
- **Barriers to expungement** exist in some jurisdictions, which have fees for expunging juvenile criminal records or make repaying criminal justice debt a condition of record expungement. These fees and requirements

make it more difficult for young people to reintegrate into society after a conviction and/or time incarcerated, potentially endangering employment opportunities that would make it possible for someone to pay off their debts (Bastien, 2017; Menendez et al., 2019).

SYSTEMIC CORRUPTION

Beyond these individual- and community-level consequences, monetary sanctions can also distort the incentives of the justice system. There are particularly egregious examples of this distortion—like the collusion of the City and the police department in Ferguson, Missouri, or the story of Louisiana judges placing revenue from monetary sanctions into a fund to purchase luxury items, including “supplemental health insurance for judges, two Ford Expeditions, a leather vehicle seat upgrade for a take-home vehicle, and a full time private chef” (*Confronting Criminal Justice Debt*, 2016, p. 7)—and more commonplace examples.

Generally, the goal of raising revenue on the backs of people convicted of crimes departs from the core purpose of the judiciary, creating numerous opportunities for sentences based on monetary incentives instead of fairness or public safety. This kind of corruption does grave harm to public trust in government, which in turn is harmful to public safety (*Statement on Excessive Court Fines, Fees, and Costs*, 2016).

FIGURE 5: COLLATERAL CONSEQUENCES IN ILLINOIS

RESTRICTIONS OF CIVIL RIGHTS	
DIRECT DISENFRANCHISEMENT	NOT PRESENT IN ILLINOIS
INDIRECT DISENFRANCHISEMENT	NOT PRESENT IN ILLINOIS
PROBATION OR PAROLE CONDITIONS	
ARREST WARRANTS AND INCARCERATION	PRESENT IN ILLINOIS
“CONTEMPT OF COURT” OR “PROBATION VIOLATION” FOR FAILURE TO PAY	
POVERTY PENALTIES	
LATE FEES	PRESENT IN ILLINOIS
INSTALLMENT PLAN FEES	PRESENT IN ILLINOIS
EXTENSION OF PROBATION SUPERVISION	PRESENT IN ILLINOIS
REFERRAL TO PRIVATE PROBATION COMPANIES	NOT PRESENT IN ILLINOIS
REFERRAL TO PRIVATE COLLECTIONS AGENCIES	PRESENT IN ILLINOIS
POVERTY TRAPS	
DRIVER’S LICENSE REVOCATION FOR NON-PAYMENT	PRESENT IN ILLINOIS
VEHICLE REGISTRATION HOLDS FOR FAILURE TO PAY	PRESENT IN ILLINOIS
GARNISHMENT	NOT PRESENT IN ILLINOIS
WAGES OR BANK ACCOUNTS	
PROPERTY LIENS	PRESENT IN ILLINOIS
SYSTEMIC CORRUPTION	
FUNDING THE COURT SYSTEM DIRECTLY	PRESENT IN ILLINOIS
FUNDING TO OTHER GOVERNMENT AGENCIES VIA TRANSFERS TO GENERAL FUND	PRESENT IN ILLINOIS

COLLATERAL CONSEQUENCES VARY BY STATE, DEPENDING ON THE ENFORCEMENT MECHANISMS AND PENALTIES THE STATE LAW ALLOWS. THE COLLATERAL CONSEQUENCES LISTED IN FIGURE 5 OCCUR IN ILLINOIS, THOUGH COMPREHENSIVE DATA DOCUMENTING THE EXTENT OF THESE ISSUES DOES NOT YET EXIST.

Overall, the many collateral consequences associated with monetary sanctions disproportionately punish vulnerable people and their communities while failing to hold the wealthy accountable. As a result, these policy tools make reentry harder for those leaving incarceration, increasing the risk of recidivism (Harris, 2016; Pattillo & Kirk, 2020a, 2020b) while also undermining public trust in government to hold everyone accountable and ensure public safety (*Statement on Excessive Court Fines, Fees, and Costs*, 2016).

GIVEN THIS RANGE OF NEGATIVE CONSEQUENCES, ARE MONETARY SANCTIONS EVEN CONSTITUTIONAL?

Many advocates and legal experts have pointed out the constitutional violations associated with the excessive use of monetary sanctions, primarily violations of due process and equal protection under the Fourth, Sixth, and Fourteenth Amendments (Atkinson, 2015; Colgan, 2017; Fernandes et al., 2019; Harris, 2016). In theory, *Bearden v. Georgia* officially made debtors' prisons illegal in 1986 (*In for a Penny*, 2010). In the words of one legal scholar (Atkinson, 2015):

'Bearden' established that sentencing courts must inquire into a defendant's reasons for not paying a fine or fee before sentencing him to jail time. Failure to do so punished the poor merely for being poor. A defendant faced with the prospect of jail for nonpayment of a fine may be jailed only if she willfully refuses to pay the fines or fees (p. 213).

However, many states perform inadequate ability-to-pay determinations, allowing judges to use unreasonable standards to assess that someone was "unwilling" to pay—judgements that are often shaped by racist or classist biases (Atkinson, 2015; Friedman & Pattillo, 2019; Harris et al., 2011; Zhen, 2019). As a result, many people today are still unconstitutionally incarcerated or otherwise punished for failing to pay criminal justice debt (*Confronting Criminal Justice Debt*, 2016; Fernandes et al., 2019; Harris, 2016). In some cases, this practice occurs through the mechanism of a probation or

parole violation, or a person being held in contempt of court for failing to pay off a debt—"violators" are rearrested for violating the condition of probation or parole or for contempt of court, not explicitly for inability to pay (Fernandes et al., 2019; Menendez et al., 2019). This makes it extremely difficult to estimate the exact number of individuals who are incarcerated for failing to pay off their debt. Other constitutional challenges to monetary sanctions have arisen through the U.S. Supreme Court's ruling in *Timbs v. Indiana*, which declared that the excessive fines clause of the Eighth Amendment does apply to the states (Colgan, 2018; Wool et al., 2019); litigation in the lower courts continues, but already advocates are exploring ways to use this precedent to argue against the excessive use of monetary sanctions (Colgan, 2018; *Confronting Criminal Justice Debt*, 2016; Harris, 2016).

As we have detailed at length elsewhere (see *Statement on Excessive Court Fines, Fees, and Costs*, 2016), there are significant conflicts between the core tenets of the Illinois constitution—which has always centered free access to justice—and the use of monetary sanctions in the criminal legal system. Illinois law makes clear provisions for the waiver of civil fees and fines for indigent people, but the only analogous protections that exist in the criminal court system were implemented under the Criminal and Traffic Assessment Act (705 ILCS 135/).

The CTAA is piece of legislation that Chicago Appleseed and coalition partners worked to pass in 2019. In addition to repealing a number of excessive fees that existed in Illinois, the CTAA implemented a pilot fee waiver program for people with income-levels within 400% of the federal poverty guidelines. However, excessive fines still continue to affect Illinoisans meeting the applicable criteria and cannot be waived under the CTAA.

At the time of publication - July 2020 - nearly all Illinois statutes set to sunset in 2021, including the waiver pilot program, are expected to be extended until 2022 by an act of the legislature due to the COVID-19 pandemic. Extension beyond 2022 will require legislative approval specific to this law. For further context on the CTAA's initial implementation and next steps to prolong its use, see section III.B below.

CONSIDERING THESE EVALUATIVE FRAMEWORKS, ARE MONETARY SANCTIONS "GOOD POLICY"?

In theory, the legal system aims, above all, to promote public safety by consistently and efficiently carrying out justice for those who are wronged and deterring wrongdoing to begin with. It also aims to do so efficiently, covering itself in a way that minimizes the cost to taxpayers while maximizing public safety.

As a policy tool to carry out the system's purported goals, monetary sanctions fail on all counts. There is no evidence to suggest monetary sanctions serve as an effective deterrent to those who would commit crimes; from what we can tell, they are an incredibly inefficient way to raise revenues (and as more data has been made available, the revealed costs of enforcing criminal justice debt have continued to rise); and they do not serve the purpose of ensuring the legal system is fair to all citizens.

Worse yet, monetary sanctions have a host of collateral consequences that create corrupt incentives for system actors, erode communities' trust in the legal system, exacerbate cycles of poverty, make re-entry even harder for returning citizens, and undermine public safety for us all (Fernandes et al., 2019). Finally, many of the consequences of monetary sanctions effectively result in modern-day debtors' prisons (Fernandes et al., 2019; *In for a Penny*, 2010), which are illegal in the U.S. and highly unpopular among voters (Sweetland et al., 2018), suggesting a clear clash between stated values and actual practices.

Any policy that fails to fulfill its intended purpose – while causing unintended harm and effectively violating the U.S. constitution – can safely be labeled a bad policy.

The next practical question is to ask whether these particular bad policies (those imposing monetary sanctions) are better or worse than the alternative.

That is, could the resources currently spent enforcing monetary sanctions better serve the goal of public safety, if spent differently?

By all indications, the answer to this question is yes (Beckett & Harris, 2011; Harris, 2016; Menendez et al., 2019; Pattillo & Kirk, 2020a). Preliminary research examining the relationship between violent crime clearance rates and government dependence on fine and fee revenue suggests that jurisdictions where police departments spend a disproportionate amount of their time issuing and collecting on fees and fines solve fewer violent crimes (Goldstein et al., 2018).

As the authors of the Brennan Center report, "The Steep Costs of Criminal Justice Fees and Fines" note, this same effect ripples throughout the legal system:

- If police and sheriff's deputies are serving warrants for failure to pay criminal justice debt, they're not solving more serious crimes or responding to 911 calls.
- If court and clerk personnel are busy scheduling failure to pay appearances, they're not processing more serious cases, extending the time to trial for defendants and the closure of crime victims and their families.
- If community corrections and parole officers are reminding their clients to pay their outstanding fines and fees, they're not focused on helping them avoid recidivism.
- If local jails fill up with people who have been rearrested for the failure to pay off their debt, taxpayers are spending hundreds of dollars a day to incarcerate someone who, in the eyes of the law, poses no present threat to public safety (Menendez et al., 2019).

In these cascading ways, the enforcement of laws surrounding monetary sanctions undermines public safety and uses government funds inefficiently, distorting the purpose of the criminal justice system at the taxpayers' expense, while effectively imposing regressive taxes on lower-income communities, especially communities of color.

PART III: ROADMAP FOR REFORM

Fortunately, as the failures and harms of monetary sanctions have been brought to light over recent years, coalitions of organizers, advocates, researchers, policymakers, and other government actors have collaborated to create a path away from monetary sanctions and toward more effective policies (Fernandes et al., 2019; Harris, 2016; *Ten Guidelines on Court Fines and Fees*, 2018). For instance, the American Bar Association released a set of guidelines in 2018, “for reform on the federal, state, and local levels,” in response to the work of legal advocates, researchers, and community organizations documenting the harms of monetary sanctions (Fernandes et al., 2019, p. 403; *Ten Guidelines on Court Fines and Fees*, 2018).

Suggested reforms from various organizations range from well-established incremental approaches to bolder, comprehensive proposals.

To date, these have been largely spearheaded by local and county governments - but with promising state-level efforts emerging, including here in Illinois.

Some advocates, like those at the Harvard Law School Criminal Justice Policy Program, recommend focusing at the state level, where policy change will have the broadest impact and where local reforms might be challenged, anyway (*Confronting Criminal Justice Debt*, 2016). However, the examples set by local jurisdictions (including in San Francisco, New Orleans, and elsewhere) have paved the way for promising reforms that can be scaled up and implemented elsewhere (Brown et al., 2019; Wool et al., 2019).

All of these approaches to reform have potential benefits and potential drawbacks, laid out in this section, which concludes with final recommendations to state and local policymakers in Illinois.

BENEFITS AND CHALLENGES OF REFORMS IMPLEMENTED IN OTHER JURISDICTIONS

The long list of reforms presented by advocates, academics, organizers, and government reformers run the gamut, targeting different levels and branches of government. Some are already common practice in certain states, while others represent newer approaches. This section reviews the most commonly recommended reforms, from the most established incremental alternatives to monetary sanctions, to the newer, more forward-looking approaches being tested by some jurisdictions.

The long list of reforms presented by advocates, academics, organizers, and government reformers run the gamut, targeting different levels and branches of government. Some are already common practices in certain states; some have yet to be widely implemented in the U.S., but have shown success elsewhere. This section reviews the most commonly recommended reforms, from the most established incremental alternatives to monetary sanctions, to the newer, more forward-looking approaches being piloted by some jurisdictions.

MITIGATION MECHANISMS

Policies in this category are already used broadly across the U.S. to collect monetary sanctions revenue from those who cannot afford to pay the full amount they are assessed up front, or to offer alternative ways for people to discharge their debt. However, the most common “alternative” pathways to discharge debt all have the potential to contribute to the cascade of collateral consequences listed in the previous section. This section will describe the status quo options available to U.S. citizens, and the next section will identify reforms that attempt to build on these existing mechanisms.

PAYMENT PLANS | Many jurisdictions offer payment plans that allow people to pay off their criminal justice debt in installments (*Confronting Criminal Justice Debt*, 2016). On its face, this approach is mutually beneficial - it allows courts to collect revenue from those who can't afford to pay all at once, and allows a person to gradually discharge their debt. However, in practice, payment plans often have strings attached and act as poverty penalties, by requiring entry fees, imposing late fees and charging interest, and generally preventing people from getting out of debt (Bastien, 2017; *Confronting Criminal Justice Debt*, 2016; Pattillo & Kirk, 2020b; Shafroth, 2018). "Further, many jurisdictions (including in Illinois) outsource collection of criminal justice debt to private collections agencies, adding a private company's profit motive to the collections process and further distorting the goals of the justice system" (Friedman & Pattillo, 2019; *Confronting Criminal Justice Debt*, 2016)."

COMMUNITY SERVICE | Another common alternative for those who cannot afford to pay off their monetary sanctions balance is sentencing to community service (Zatz et al., 2019). In a best-case scenario, this option allows people to contribute to a meaningful community or personal project while eliminating their debt; there are examples of counties that have offered credit for workforce development or drug treatment programs (Bastien, 2017). However, such programs are *not* the norm, and in both theory and practice, there are many problems with this "alternative" to payment in full (Zatz et al., 2019).

Many community service options are not rehabilitative, and force people into unpleasant tasks that other workers would resist. Some such jobs are dangerous, and fail to provide protections like worker's compensation should someone be injured on the job (*Confronting Criminal Justice Debt*, 2016, p. 21). Often these programs fail offer transportation, even for those with suspended drivers' licenses due to the very criminal justice debt they are "working off," and some require defendants to pay fees to participate, acting as a hidden poverty penalty (*Confronting Criminal Justice Debt*, 2016).

Further, the hourly rate at which people receive credit toward their debt for community service is typically lower than minimum wage, which is unfair in and of itself, and can also extend the amount of time needed to "work off" one's debt (*Confronting Criminal Justice Debt*, 2016; Zhen, 2019). This undue burden can prevent people from finding gainful employment, taking care of children, and fulfilling other responsibilities (Marsh & Gerrick, 2016; Pattillo & Kirk, 2020b). In addition, especially considering the disproportionate impact of criminal justice debt on Black people, sentencing people to work to pay off a debt has harmful historical parallels with the use of the "Black codes" to force Black people into unpaid labor after the practice of enslavement was technically abolished (Zhen, 2019). (There is a clear connection here to the 13th Amendment carve-out making enslavement legal if someone has been convicted of a crime, which particularly affects people who are incarcerated and unpaid or underpaid for their labor; these issues are discussed at length elsewhere (Alexander, 2010)).

With such programs, great care would have to be taken to address each of these possible issues for an "alternative program" to represent an improvement over other forms of debt repayment. Based on an in-depth empirical study in LA county, Zatz et al. recommend that so-called "community service" programs should not be used unless they are "transform[ed from] punitive mandatory community service into meaningful economic opportunity through decent, paid jobs" (Zatz et al., 2019, p. 4).

JAIL CREDITS | Some states offer jail credits - spending time in jail in exchange for discharging debt - as an option for those who cannot afford to pay up front. While this option aims to fulfill the goal of punishing people, as shown, harsher punishment *is not* a deterrent except to the extent that it is certain to occur - which is not typically the case for those who break most laws.

What's more, jail credits have a host of negative consequences - from the point of view of the government, it costs a huge amount of money to incarcerate someone, turning criminal justice debt that was intended to serve as positive revenue

(whether or not it would ever have been collected) into a cost to the taxpayer; from the point of view of the person jailed, jail time represents a harsh interruption into their daily life and responsibilities, in a dangerous and traumatizing environment (Wool et al., 2019). Jail credits also highlight the lack of fairness in the use of monetary sanctions - no wealthy person with the ability to pay off their debt at once would be subject to this punishment, resulting in both a poverty penalty and a poverty trap that disrupt earning potential (Confronting Criminal Justice Debt, 2016).

Finally, recall that debtors' prisons are illegal and unconstitutional in the U.S.—by law, no one should be incarcerated simply because they can't afford to pay off a debt.

ABILITY TO PAY DETERMINATIONS | One common state-level reform has been the passage of legislation requiring that “ability to pay” determinations be conducted before monetary sanctions are assessed, to protect indigent people from criminal justice debt (Fernandes et al., 2019). Though ability to pay (ATP) determinations now technically exist in many states—including Illinois—and are intended to occur *before* someone can be assessed unaffordable monetary sanctions in the first place, many issues arise with the implementation of these determinations (Confronting Criminal Justice Debt, 2016, p. 26; Fernandes et al., 2019, p. 403; Zhen, 2019).

For one thing, ATP statutes in some states refer to “indigence” as the standard for whether someone is “unable” to pay the sanctions they’ve been assessed, as opposed to merely being “unwilling” to pay. Because there is no objective standard of “indigence” or “ability” to pay, a judge’s determination of “ability” versus “will” is subjective and can be swayed by racist or classist biases (Bastien, 2017; Confronting Criminal Justice Debt, 2016; Harris et al., 2011; Shafroth, 2018; Zhen, 2019). On the other hand, some states have an explicit definition of indigence (e.g. 200% of the Federal poverty guidelines), but require onerous documentation for defendants to prove they are

unable to pay; demonstrating income level can be especially difficult for part-time or seasonal workers, which can lead to disproportionate punishment for those groups (Bastien, 2017; Zhen, 2019). Some states do not hold ATP determinations as separate hearings, but build them into other proceedings, like plea bargaining. Because an estimated “90 to 95% of state and federal criminal cases are adjudicated through plea bargaining” (Confronting Criminal Justice Debt, 2016, p. 20), there are opportunities in many jurisdictions for prosecutors and judges to require monetary sanctions payment as a condition of a plea deal, adding further harm to the unjust coercion of guilty pleas (Pfaff, 2017).

Issues with the implementation of ATP determinations are concerning enough on their own - but worse yet, even in states with ATP legislation in place, there is no guarantee that ATP determinations will occur at all.

A recent paper focusing on Illinois courts found that, in over 240-hours of courtroom observation, ATP hearings very rarely happened; even questions about individuals’ ability to pay for monetary fines assessed were rare, despite the fact that the majority of individuals had low levels of income (Pattillo & Kirk, 2020b).

Reformers have suggested several ways to address these significant challenges. One recommendation is for states to establish common definitions of key terms, particularly “indigence” and “willful nonpayment,” and disseminate these definitions to judges statewide, to reduce the potential for bias to inform judicial decision-making (Confronting Criminal Justice Debt, 2016). Another suggestion is that states’ executive and judicial branches work to clarify that ability to pay proceedings must be separate from other hearings, occur before monetary sanctions have been imposed, and guarantee defendants free access to a public defender to represent them during the hearing (Bastien, 2017; Confronting Criminal Justice Debt, 2016; Fernandes et al., 2019; Friedman & Pattillo, 2019; Shafroth, 2018).

Finally, some have recommended that courts allow a signed affidavit testifying to a defendant's financial circumstances to suffice as proof of their indigence, rather than imposing onerous paperwork requirements (Zhen, 2019).

Even if all these changes were made, fundamental problems with the use of ATP determinations remain. In effect, ATP proceedings take as a default assumption that defendants are able to pay, and put the burden of proof on the defendant to argue that they are *unable* to pay (Zhen, 2019). Given the statistics demonstrating that over 80% of currently incarcerated people are considered indigent (Friedman & Pattillo, 2019, p. 174; *Who Pays?*, 2015); that a large share of Americans do not have the means to cover a \$400 emergency expense (*Report on the Economic Well-Being of U.S. Households in 2018*, 2019); and that the imposition of monetary sanctions has climbed quickly in recent decades (*Annual Survey of State and Local Government Finances*, 2017; Pierson et al., 2015), this baseline assumption is deeply flawed. Further, these reforms do not change the fact that lower-income people and people of color are—due to racist enforcement patterns and the criminalization of poverty—more likely to be swept into the criminal justice system at every stage (*Confronting Criminal Justice Debt*, 2016; Singla et al., 2019), and thus are disproportionately burdened with criminal justice debt as compared to wealthy and White people.

The ATP reforms described in this section attempt to offer people the bare minimum of constitutional protection that the criminal legal system currently fails to provide. Unfortunately, even if implemented flawlessly, these commonly recommended reforms would not meaningfully address the wide range of inequities resulting from the use of monetary sanctions.

INCREMENTAL REFORMS

The reforms in this section have been proposed by a range of advocates, academics, and reformers working within government. Because they are incremental in nature, these reforms are best applied in conjunction with one-another; alone, they

do not address the wide range of inefficiencies and negative consequences associated with monetary sanctions. Further, these reforms are incomplete in that they do not fully address the root problems with using monetary sanctions as a policy tool.

CHANGES IN STATE AND LOCAL LAW | In some states, the law still allows for jailing people who are unable to pay fines and fees, or mandating incarceration without an ability to pay determination—both of which have been facially unconstitutional since *Bearden v. Georgia* made debtor's prisons illegal in the U.S. (*Confronting Criminal Justice Debt*, 2016). Such statutes should be amended or repealed as quickly as possible. Other recommendations include forming commissions to review existing laws imposing fines and fees, to determine the constitutionality and impact of each in turn, given the swift proliferation of new fines and fees with little oversight in recent decades; such commissions have been established in Illinois and Massachusetts, with some success (*Confronting Criminal Justice Debt*, 2016).

IMPROVE TRANSPARENCY | Increased transparency would clarify the impact of monetary sanctions and reduce collateral consequences. Part of the difficulty of reforming policies governing monetary sanctions is that jurisdictions collect data on the amount of fines and fees assessed, but do not tally the cost of imposing and collecting criminal justice debt, or collect comprehensive statistics on the adverse impact of criminal justice debt on individuals and communities. These gaps in data make it impossible to use precise techniques to evaluate the efficacy of monetary sanctions. Further, poor data collection practices have an adverse effect on people assessed monetary sanctions; it can be difficult for people to know how much they owe and access their balance over time.

To address gaps in information collection, data collection practices should be implemented to fully understand the cost of enforcing criminal justice debt. These practices should include fiscal impact statements based on research like the "Steep Costs" report to encourage consideration of the costs of imposing fines and fees

(Menendez et al., 2019); expanding public records laws to include revenue and collection of debt (*Confronting Criminal Justice Debt*, 2016); and issuing rules requiring that warrants for arrest list reasons for issuance, providing more detail than “failure to appear” or “parole violation,” to clarify whether someone was arrested and/or jailed for failure to pay criminal justice debt (*Confronting Criminal Justice Debt*, 2016). criminal justice debt information so that people can access their debt balance remotely and understand the origin of each charge (Menendez et al., 2019).

To address gaps in information dissemination, “know your rights” information should be distributed to the public regarding criminal justice debt enforcement (*Confronting Criminal Justice Debt*, 2016); jurisdictions should require that criminal justice debt statements be issued to people with outstanding debt; and jurisdictions should improve automation of criminal justice debt information so that people can access their debt balance remotely and understand the origin of each charge (Menendez et al., 2019).

MITIGATE COLLATERAL CONSEQUENCES | These reform recommendations focus on reducing or eliminating the collateral consequences associated with criminal justice debt established in the previous section:

Direct Restrictions of Civil Rights

States should repeal laws that explicitly deny people with criminal justice debt the right to vote, and ensure that the indirect mechanisms that disenfranchise people in 21 states – like making repaying criminal justice debt a condition of parole, and preventing those on parole from voting – are eliminated (Fredericksen & Lassiter, 2016). Further, it should not be possible to arrest people for parole violation or contempt of court counts that result from outstanding criminal justice debt; this indirect enforcement mechanism violates the spirit of the *Bearden v. Georgia* decision. One reform that some have suggested (Marsh & Gerrick, 2016) is to convert criminal justice debt into civil debt after some period of time, to spare people from severe consequences like arrest, incarceration, and

disenfranchisement. While this approach mitigates such direct violations of people’s civil rights, and might work as a stop-gap measure, it is not a holistic solution, because it does not eliminate the other types of collateral consequences we have explored; poverty penalties, poverty traps, and corrupted systemic incentives would still occur under this reform. In Illinois, for instance, criminal debt can already be converted to civil debt in some cases, but even then, individuals are still subjected to negative and disproportionate consequences, including the efforts of collections agencies, harm to credit scores, tax refund interception, and wage garnishment as long as that debt remains (Friedman & Pattillo, 2019, p. 187).

Poverty Penalties

Eliminating poverty penalties would mean making payment plans free by eliminating entry fees, late fees, and the accumulation of interest. It would also mean taking some of the steps articulated above, and not holding people in contempt of court for missing a payment – which can lead to arrest and thus result in additional penalties based on someone’s poverty (*Confronting Criminal Justice Debt*, 2016; Fernandes et al., 2019).

Poverty Traps

There are clear steps to eliminate each of the poverty traps explored in the previous section, including but not limited to:

- Eliminate fees for juvenile record expungement, and eliminate requirements that criminal justice debt be paid in full before someone’s record can be expunged (Bastien, 2017).
- Eliminate requirements that someone pay off their criminal justice debt as a condition of parole or probation (*Confronting Criminal Justice Debt*, 2016).
- Reduce or eliminate wage garnishment and asset seizure as a result of criminal justice debt (Shafroth, 2018; *Confronting Criminal Justice Debt*, 2016).
- End driver’s and professional license suspension – and the suspension of car registration – as punishment for non-payment of criminal justice debt (Menendez et al., 2019).

- Reverse the practices of broken-windows policing, both by addressing police department and sheriff's office enforcement patterns, and by removing low-level offenses like jaywalking, manner of walking, and failure to appear from municipal codes (Atkinson, 2015).
- Establish reasonable time limits and statutes of limitations on collection of government debts (*Confronting Criminal Justice Debt*, 2016; Shafroth, 2018).

Systemic Corruption

Other approaches to reform take aim at the distorted incentives that monetary sanctions can introduce into the criminal legal system. Jurisdictions across the U.S. have taken a range of approaches (often after lawsuits challenging their unconstitutional practices) to reducing the conflicts of interest and other perverse incentives.

Conflicts of Interest in Funding Streams

As previously described, revenues from fines, fees, and court costs can go directly to courts, or to other government functions, like law enforcement, or to general operating budgets (Friedman & Pattillo, 2019; Henricks & Harvey, 2017). Either way, these destinations create a conflict of interest in those assessing fines and fees (judges), and enforcing them (police), to increase the revenue coming in. This conflict can extend to other branches of local governments, too, with the collusion between police and city government in Ferguson, MO as a prominent example.

One reformist solution to the issue of funds directed to local governments' general operating funds is to cap the percentage of revenue for local governments that can come from monetary sanctions; this approach has been attempted in Missouri, Oklahoma, Virginia, and Florida (*Confronting Criminal Justice Debt*, 2016). However, critics have pointed out that the level of these caps in practice can be problematic—during the abusive period uncovered in Ferguson, MO, the percentage of revenue collected from

fine and fee revenue was already near the level of the cap later imposed by the Federal government (Colgan, 2017; Henricks & Harvey, 2017; Zhen, 2019).

Other policy suggestions include eliminating funds that go directly from monetary sanctions to law enforcement agencies, to remove the incentive to draw more people into the justice system, which is unfair in that it does not serve public safety and also in that it puts a financial strain on the government agencies responsible for detaining and incarcerating those people (Henricks & Harvey, 2017).

Private Profit Motives

When private companies engaged by courts are incentivized by profit to extract as much revenue from people holding criminal justice debt as possible, the collateral consequences of such debt are exacerbated (Menendez et al., 2019). Recommendations to address this dynamic include eliminating the role of private companies in probation and debt collection altogether, or as a stop-gap measure, changing the incentive structures in place—for example, by paying probation companies not based on the number of people *on probation at a given time*, which incentivizes keeping people on probation, but with payment based on the number of people who *successfully transition off probation* (Bastien, 2017).

For clarity: Illinois does not currently have private probation, but partnering with such companies is sometimes suggested in response to budgetary pressures, so it's important to be cognizant of the problems with such contractors.

IMPLEMENT SLIDING-SCALES | One solution that has been touted by some reformers involves shifting from imposing fines and fees of a certain amount (or in a certain discretionary range) to implementing a sliding scale system, where the amount of the fine is tied to both the severity of the offense and the convicted person's income, in an effort to ensure that fines and fees are equally burdensome regardless of a person's income (Colgan, 2017; Menendez et al., 2019).

In many countries in Europe and Latin America, sliding-scale penalties called “day-fines” are imposed, where the total amount of a fine is equal to a day’s wages for the individual; pilots of these kinds of monetary sanctions have been piloted in several jurisdictions in the U.S., but have never caught on broadly (Colgan, 2017; Menendez et al., 2019, p. 12; Zhen, 2019, p. 215).

While proponents see sliding-scale sanctions as a viable option that could increase revenue from monetary sanctions, while reducing collateral consequences (Colgan, 2017; Menendez et al., 2019), other reformers have pointed out that the inequities described elsewhere in this report would remain intact or even be reinforced through the use of sliding-scale sanctions (Pattillo & Kirk, 2020a; Zhen, 2019). Lower-income people and people of color are still disproportionately represented at all levels of the criminal legal system, so the net impact of sliding-scale fines and fees would still be to regressively tax marginalized groups, even if adjusted sanctions might lead to lower levels of criminal justice debt overall (Singla et al., 2019; Zhen, 2019). Further, as noted previously, it can be very difficult to demonstrate income level to a satisfactory degree of detail—many states have onerous ability to pay determination processes that require a great deal of paperwork to prove income level, which is difficult or impossible for some people to produce, particularly part-time and seasonal workers (Zhen, 2019).

Even if states implementing sliding-scale sanctions could be counted on to take signed affidavits as proof of income level, rather than requiring detailed documentation, there is still the question of the additional up-front cost of setting up a new sliding-scale sanction process, and then the continuous cost of officially determining and calculating people’s income, which might make jurisdictions hesitant to implement this model (Pattillo & Kirk, 2020a; Zhen, 2019); in the past, states have turned away from promising relief efforts for just those reasons (Arizona Judiciary Pilot Collections Project, 2011). Based on observational data and interviews in Illinois courts,

Pattillo & Kirk argue convincingly that there are flaws in the arguments of proponents of sliding-scale fines (Pattillo & Kirk, 2020a). In their words:

Colgan argues for “graduated” economic sanctions along the lines of “day fines” in Europe, and McLean similarly argues for setting a penalty such “that it could reasonably be expected to be paid . . . while permitting an individual to maintain some minimal level of economic subsistence.” For many people we interviewed, that amount is likely to be \$0 (p. 77).

The draw-backs to the use of sliding-scale fines and fees are significant; they promise to create additional bureaucratic work without meaningfully addressing racial and class bias in the administration of monetary sanctions. As a result, this option does not provide a promising alternative to the status quo.

PROMISING NEW APPROACHES

Some of the reforms discussed in the previous section address many of the negative consequences of monetary sanctions. Particularly in the short term, rolling back the use of incarceration, disenfranchisement, and driver’s license suspensions for holders of criminal justice debt would make a huge impact on the lives of millions of people, and improve public safety.

However, they are largely piecemeal approaches, and without a more holistic response, many elements of the patchwork web of monetary sanctions that currently exist will remain intact across state and local jurisdictions in the U.S.

The promising emerging approaches discussed in this section address the root problems with the use of monetary sanctions, and are broken into two sections—short-term steps to prepare jurisdictions for lasting change, and longer-term goals to transition away from the negative impacts of monetary sanctions entirely.

SHORT - TERM

These short-term measures all work toward the goal of eliminating the presumption that people entering the criminal legal system will be able to pay the monetary sanctions they are assessed. The assumption has been empirically false for decades and it must be excised from the criminal legal system in order to increase the system's integrity and make good on its promise of fairness (Pattillo & Kirk, 2020a).

DEBT FORGIVENESS | Many advocates and researchers have called for the forgiveness of criminal justice debt (Bastien, 2017; Henricks & Harvey, 2017; Menendez et al., 2019; Zhen, 2019).

Multiple local jurisdictions in the U.S. have begun to forgive large sums in recognition of: (a) the disproportionate and inequitable impact of that debt on people of color and the poor; (b) the extremely low-likelihood that the debt would ever be collected in full; and (c) the high cost of continuing to attempt to collect the debt, compared to its extremely low projected realizable value (Bastien, 2017; Brown et al., 2019).

In San Francisco County, CA, an unprecedented collaboration between community organizations, the San Francisco Superior Court, the Chief of Probation, the local District Attorney and Public Defender, the Sheriff, and the San Francisco Mayor's Office led to the passage of legislation that forgave \$32.7-million in outstanding criminal justice debt and eliminated the laws responsible for creating the majority of that debt (Brown et al., 2019, p. 12). The Mayor's Budget Office calculated that the benefits of the decision far outweighed the costs (Brown et al., 2019).

There are challenges that stand in the way of jurisdictions arriving at the conclusion that forgiving outstanding debt is a reasonable decision. To use San Francisco as an example: in their report, San Francisco County leaders cite the process of understanding budget impact across government silos as a key barrier to success (Brown et al., 2019, pp. 11-13).

As Brown et al. articulate:

Because the revenue from some of these fees is collected by the San Francisco Superior Court and transferred to the city and county, identifying where the revenue hit the city's books was at times complicated. [The policy team] worked closely with the Financial Justice Project, the Public Defender's Office, the Adult Probation Department, and the Controller's Office to determine how much revenue was collected and budgeted, and worked with departments to determine alternative funding sources (p. 11).

Part of the problem is that, when court systems are already under-funded, eliminating a potential source of revenue - even one that is unlikely to materialize - seems like an insurmountable challenge. But, just as monetary sanctions revenue can "hit the...books" at different places across government departments and levels, costs can also be invisibly distributed such that the collection of criminal justice debt yields a net negative impact, as the Brennan Center's research team found in their recent study (Menendez et al., 2019).

As just one example, if the court is holding large numbers of "failure to pay" court appearances, but not recording the cost of those hearings to compare against the revenue eventually collected from the people assessed monetary sanctions, which will eventually represent positive revenue for the court or for another agency, they cannot hope to monitor the economic efficiency of monetary sanctions.

Given the disproportionately harmful and discriminatory impact of outstanding criminal justice debt on people's lives, and the clear evidence that monetary sanctions are at best a highly inefficient source of revenue, and at worst yield net losses as a result of uncounted collection costs, jurisdictions should strongly consider forgiving outstanding criminal justice debt altogether (Brown et al., 2019; Menendez et al., 2019). Such decisions are most effective as

part of a broader process of eliminating fines and fees that are currently on the books, as we saw in San Francisco County, but this kind of collaboration can take a long time, and short-term relief for unfairly debt-burdened people is a powerful first step.

BROADENING WAIVERS | Another promising approach involves the use of waivers, approved by a judge, to excuse a person from paying some or all of the monetary sanctions they have been assessed - without requiring alternative forms of punishment (like jail time or community service). Advocates have called for the expansion of existing waivers - which are used in a number of states, though with much variation in their application (*Statement on Excessive Court Fines, Fees, and Costs*, 2016) - and the creation of new ones to include fines and fees assessed for more offense categories and for people with a wider range of income.

Waivers represent a strong short-term step to provide material relief for impacted people, while also enabling the collection of data to demonstrate the true net impact of assessing and attempting to collect monetary sanctions. Like debt forgiveness, waiver legislation is also most powerful when accompanied by a review of monetary sanctions laws on the books, and the repeal of excessive and unreasonable fines and fees.

That said, there are drawbacks to relying on waivers that are approved or denied based on a judge's discretion. The politics of a given county can affect whether judges and prosecutors actively make people eligible for the waiver aware of their right to a waiver, even if state-wide legislation is passed (as demonstrated in surveys conducted by Chicago Appleseed in several Illinois counties). Further, individual biases against people of color and lower-income people may affect whether judges grant waivers in one case versus another. For long-term impact, it is important that waivers are part of a broader reform strategy.

L O N G - T E R M

In addition to the promising forms of short-term relief described above, it is also important to pursue

reform strategies that get at the root structures of the court system's current commitment to monetary sanctions. In the absence of such structural change, any short-term measures might be wiped out with a change in administration or with the next period of economic recession, as local governments seek to increase revenue, without considering the disproportionate impact of monetary sanctions on marginalized communities.

The strategies described here envision court systems nationwide that are not reliant on inequitable, regressive taxation to support themselves, and can engage in a restorative way with communities that have been and continue to be harmed by the current structure of monetary sanctions in the U.S.

FULLY FUNDED COURT SYSTEMS | As the Vera Institute for Justice has argued at length in a series of reports based on their work to reduce the use of monetary sanctions and money bail in New Orleans, a key step in moving away from monetary sanctions is for states and localities to fully fund their court systems (Wool et al., 2019). In *Paid in Full*, authors Wool et al. offer a "blueprint for reform," which suggests that the City of New Orleans make a one-time payment to complete the courts' budget, so that the court can comfortably cease reliance on monetary sanctions (and bail revenue) for one budget cycle, after which the cost-savings passed onto the jail (which has fewer people to incarcerate, both pretrial and for failure to pay monetary sanctions) and law enforcement agencies (which spend less time arresting people for failure to pay) will be tabulated and returned to the courts. The courts would also save time and money that would have been spent holding hearings and issuing warrants for failure to pay. The Vera Institute argues that, based on their research - which includes detailed empirical analysis of government agency budgets (Wool et al., 2019, p. 50) - a one-time stimulus to the courts' budget would demonstrate how much additional funding is truly needed, after cost-savings from reduced use of monetary sanctions are accounted for and distributed.

Whether through a one-time stimulus to the court system's budget, or through more gradual increases in funding, in concert with other efforts to reduce use of monetary sanctions, fully funding courts without the perceived need for monetary sanctions revenue is crucial to moving away from the use of harmful fines and fees (*Principles on Fines, Fees, and Bail Practices*, 2018; *Ten Guidelines*, 2018). While there will be practical challenges - particularly in states like Illinois, where state funding for courts was cut and has remained low since the Great Recession (*Funding Crisis in the Illinois Courts*, 2013) - reformers and policymakers must focus on the integrity of the courts, and the centrality of justice system integrity to public safety.

The legal system is entrusted with protecting all people and upholding public safety as a public good; forcing a subset of the population to pay for the operation of the courts is fundamentally unfair and undermines both justice and public safety.

ELIMINATING MOST FINES & FEES | As advocates and reformers have argued, states should move away from the use of fines, fees, and court costs to fund the criminal justice system altogether.

Monetary sanctions do not accomplish their intended goals; they have a host of deeply harmful collateral consequences; and they have an violent history of enforcing racist oppression - which persists through the racist and classist impact of monetary sanctions today.

While this abolitionist approach may sound radical, it has gained accepted as a reasonable shift, having been championed by legal scholars - including Alexes Harris, the author of the authoritative book on the subject of monetary sanctions (Harris, 2016), and colleague Katherine Beckett (Beckett & Harris, 2011) - and recommended in the recent draft of the Model Penal Code (Second) of Sentencing (Pattillo & Kirk, 2020a; Zhen, 2019).

There are those who will argue that monetary sanctions are a necessary protection against harmful behavior, and an important way to recoup the state's costs, as did former Illinois Governor Bruce

Rauner in 2016 when he vetoed a bill to protect incarcerated people from being sued by the state to recoup outstanding criminal justice debt (Friedman & Pattillo, 2019). Rauner argued that "eliminating the authority to sue meant that the state would forgo any possibility of recovering costs from wealthy defendants" who have flouted the law (Friedman & Pattillo, 2019, p. 174). However, this rationale fails to accurately balance the modest value of punishing the negligible number of Rauner's hypothetical "millionaires" who get a speeding ticket, with the deep and widespread harm of monetary sanction (Friedman & Pattillo, 2019).

If politicians are so concerned that the uber-wealthy pay their share and are accountable for their impact on society, they have the option of raising property taxes back to mid-20th century levels or implementing graduated income taxes, as current Illinois Governor J.B. Pritzker has proposed. But monetary sanctions do not provide a direct or consistent mechanism for extracting revenue from the wealthy. Besides this obvious inconsistency, when the wealthy are assessed monetary sanctions, they are not adequately held accountable for wrongdoing, given that they can typically pay their fines and fees and move on with their lives, unlike their lower-income counterparts, who often end up mired in debt and a downward spiral of collateral consequences. Eliminating the use of monetary sanctions in the U.S. criminal court systems should be reformers' long-term focus.

REPARATIONS & REDRESS | While eliminating the use of monetary sanctions going forward is crucial, so too is confronting the racialized impact that fines and fees have had and continue to have on marginalized groups, particularly Black Americans (Fernandes et al., 2019; Harris, 2016; Henricks & Harvey, 2017; Kopf, 2016). As scholars and advocates have argued, reparations to people unjustly burdened by criminal justice debt would have the dual impact of compensating those who have suffered from the collateral consequences of monetary sanctions, while changing the economic calculus for jurisdictions who use monetary sanctions, in favor of the elimination of fines and fees (Zhen, 2019).

WHAT IS THE REFORM LANDSCAPE IN ILLINOIS?

In 2019, Chicago Appleseed and a broader coalition of organizations and reformers worked to pass legislation (the Criminal and Traffic Assessment Act (CTAA), 705 ILCS 135/) that repealed a number of fees and implemented a criminal court fee waiver.

Under the CTAA, Illinoisans whose income is below 200% of federal poverty guidelines are eligible for a full waiver of monetary sanctions they are assessed, while those who make up to 400% of the poverty level are eligible for a sliding scale reduction in the percent of their fines and fees they must pay.

While analysis of implementation data is still underway ("CTAA Reports," 2020), anecdotal evidence suggests that there has been no notable loss of funding for circuit courts in Illinois, with some counties actually collecting more revenue than they had before the waiver, by focusing on revenue that actually stands a chance of being collected, from non-indigent people (Cousins, 2020). This initial data should support the use of the fee waiver as a short-term measure, as broader structural changes are explored, planned and implemented.

There have also been implementation challenges for the fee waiver, with public defenders in multiple counties reporting that judges whose personal views are unsupportive of the use of fee waivers either fail to make defendants and convicted persons aware that the waiver exists, or refuse to accept waivers outright. Such challenges underscore the urgency of broader systemic reform, in addition to the strengthening of interim relief measures like fee waivers.

The 2019 waiver legislation is scheduled to sunset in 2022, removing even the barest protection from indigent and other non-wealthy convicted persons. The coalition of community organizations and advocates that supported the passage of the original legislation is collaborating again to institutionalize the waiver legislation after its sunset date passes.

These efforts represent a key step toward a fairer and more just criminal legal system in Illinois, departing from unconstitutional imposition of criminal justice debt and revenue raising at the expense of marginalized communities.

In addition to supporting this upcoming legislation, the evidence on promising reforms to the use of monetary sanctions points to a number of other recommendations for policymakers in Illinois.

RECOMMENDATIONS FOR ILLINOIS LEGISLATORS

EXTEND THE SUNSET DATE OF THE CRIMINAL AND TRAFFIC ASSESSMENT ACT

While the broader network of fines, fees, and court costs across Illinois is reviewed and evaluated, counties should actively promote the use of the fee waiver that the 2019 CTAA legislation implemented, and legislators should extend the legislation past the sunset date of the pilot program in 2022.

SUPPORT EFFORTS TO ESTABLISH A COMMITTEE FOR DATA COLLECTION

Such a committee would implement data collection strategies and analyses regarding the implementation of monetary sanctions to deepen our understanding of the true financial cost of imposing and collecting monetary sanctions.

THE STATE OF ILLINOIS SHOULD FULLY FUND THE COURT SYSTEM

A well-funded court system would reverse the trend of underfunding that has adversely affected the courts for decades.

ELIMINATE OUTSTANDING CRIMINAL JUSTICE DEBT

Outstanding criminal justice debt that is unlikely to be collected should be forgiven, while county and state government units collaborate to understand and repeal excessive costs, fines, and fees.

REMOVE COLLATERAL CONSEQUENCES OF MONETARY SANCTIONS IN ILLINOIS

As quickly as possible, these efforts - which should be in conjunction with broader reform - should focus on ending the following practices as related to

unpaid criminal justice debt: drivers' license suspensions; holds on vehicle registrations; the extension of probation; the practice of arrest and incarceration related to unpaid debt; and the addition of collections and interest fees to sums of outstanding criminal justice debt.

ILLINOIS COURTS MUST IMPROVE ABILITY TO PAY HEARINGS

In the short term, Illinois courts must improve the robustness of ability to pay hearings to prevent more monetary sanctions from being imposed on already marginalized Illinoisans. This process should include ensuring that indigent defendants have free access to quality legal counsel.

END MONETARY SANCTIONS AS PUNISHMENT AND REVENUE COLLECTION

In the long term, Illinois should eliminate monetary sanctions as a form of punishment and revenue collection, recalling that monetary sanctions are not an effective punishment, and that the courts serve the broad purpose of public safety, and should not be financially supported only by those processed through the system.

REPARATIONS AND REDRESS

Finally, the State of Illinois should explore the best way to make reparations and amends - in particular to Black communities - for the wealth that has been disproportionately and systematically extracted through the use of unfair and unjust monetary sanctions, in centuries past and continuing through the present day.

REFERENCES

- Albright, A. (2019). If You Give a Judge a Risk Score: Evidence from Kentucky Bail Decisions. *Harvard John M. Olin Fellow's Discussion Paper*. Retrievable: https://thelittledataset.com/about_files/albright_judge_score.pdf
- Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press."
- Annual Survey of State and Local Government Finances. (2017). U.S. Census Bureau. Retrievable: <https://www.census.gov/programs-surveys/gov-finances.html>
- Anzel, R. (2019, September 6). More high court funds will benefit local services. *Chicago Law Bulletin*. Retrievable: <https://www.chicagolawbulletin.com/capitol-news-supreme-court-budget-20190906>
- Atkinson, T. (2015). A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons. *Harvard Civil Rights - Civil Liberties Law Review*, 51(1, 2016). Retrievable: <https://ssrn.com/abstract=2597908>
- Bastien, A. (2017). Ending the Debt Trap: Strategies to Stop the Abuse of Court-Imposed Fines and Fees. *Policy Link*. Retrievable: <https://www.policylink.org/sites/default/files/ending-the-debt-trap-03-28-17.pdf>
- Beckett, K., & Harris, A. (2011). On cash and conviction: Monetary sanctions as misguided policy. *Criminology & Public Policy*, 10(3). Retrievable: <https://doi.org/10.1111/j.1745-9133.2011.00726.x>
- Brown, C., Mandel, D., & Stuhldreher, A. (2019). *Criminal Justice Administrative Fees: High Pain for People, Low Gain for Government—A Call to Action for California Counties*. *Financial Justice Project*, Office of the Treasurer & Tax Collector, City and County of San Francisco. https://sftreasurer.org/sites/default/files/2019-09/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019.pdf
- Circuit Court Civil, Criminal, and Traffic Assessment Reports. (2020, February 29). Retrievable at Illinois Courts Website: <http://illinoiscourts.gov/CircuitCourt/CTAA/CTAA.asp>
- Colgan, B. A. (2017). Fines, Fees, and Forfeitures. *Criminology, Criminal Justice, Law & Society*, 18(3), 22–40.
- Colgan, B. A. (2018). The Excessive Fines Clause: Challenging the Modern Debtors' Prison. *UCLA Law Review*, 65. <https://www.uclalawreview.org/excessive-fines-clause-challenging-modern-debtors-prison/>
- Confronting Criminal Justice Debt: A Guide for Policy Reform* (No. 3: Confronting Criminal Justice Debt: A Comprehensive Project for Reform). (2016). Criminal Justice Policy Program at Harvard Law School. Retrievable: <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform.pdf>

COURT COSTS, FINES, AND FEES ARE BAD POLICY

- Cousins, S. (2020, February 7). County seeing large boost in court fee income. *The Telegraph*. Retrievable: <https://www.thetelegraph.com/news/article/County-seeing-large-boost-in-court-fee-income-15039352.php>
- CY19 Department Data Fact Sheet: Adult Inmate Population*. (2019). Illinois Department of Corrections (IDOC). <https://www2.illinois.gov/idoc/reportsandstatistics/Documents/CY19%20Department%20Data%20Fact%20Sheet.pdf>
- Evans, D. N. (2014). *Compensating Victims of Crime*. Research & Evaluation Center, John Jay College of Criminal Justice, City University of New York. Retrievable: https://johnjayrec.nyc/wp-content/uploads/2014/06/jf_johnjay3.pdf
- Fernandes, A. D., Cadigan, M., Edwards, F., & Harris, A. (2019). Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform. *Annual Review of Law and Social Science*, 15, 397–413. Retrievable: <https://doi.org/10.1146/annurev-lawsocsci-101518-042816>
- Five Things About Deterrence*. (2016). National Institute of Justice. Retrievable: <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>
- Fredericksen, A., & Lassiter, L. (2016). *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting*. Alliance for a Just Society. Retrievable: <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>
- Friedman, B., & Pattillo, M. (2019). Statutory Inequality: The Logics of Monetary Sanctions in State Law. *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 5(1), 174–196. Retrievable: <https://doi.org/10.7758/RSF.2019.5.1.08>
- Funding Justice: Strategies and Messages for Restoring Court Funding*. (2013). American Bar Association, Justice at Stake, & National Center for State Courts. Retrievable: <https://www.americanbar.org/content/dam/aba/administrative/tips/Court%20Funding/Funding%20Justice.pdf>
- Gilmore, R. W. (2007). *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California (First)*. UC Press. Retrievable: <https://www.ucpress.edu/book/9780520242012/golden-gulag>
- Gleicher, L., & DeLong, C. (2018). *The cost of justice: The impact of criminal justice financial obligations on individuals and families*. Illinois Criminal Justice Information Authority. Retrievable: <https://icjia.illinois.gov/researchhub/articles/the-cost-of-justice-the-impact-of-criminal-justice-financial-obligations-on-individuals-and-families>
- Goldstein, R., Sances, M., & You, H. Y. (2018). Exploitative Revenues, Law Enforcement, and the Quality of Government Service. *Urban Affairs Review*, 00(0), 1–27.
- Goode, E. (2012, March 22). Stronger Hand for Judges in the ‘Bazaar’ of Plea Deals. *New York Times*. Retrievable: <https://www.nytimes.com/2012/03/23/us/stronger-hand-for-judges-after-rulings-on-plea-deals.html#:~:text=In%20that%20world%2C%2097%20percent,dramas%2C%20almost%20never%20take%20place.>
- Gramlich, J. (2018, May 2). America’s incarceration rate is at a two-decade low. Pew Research Center. Retrievable: <https://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/>
- Gramlich, J. (2019, October 17). 5 facts about crime in the U.S. *Pew Research Center*. Retrievable: <https://www.pewresearch.org/fact-tank/2019/10/17/facts-about-crime-in-the-u-s/>
- Hamaji, K., Rao, K., Stahly-Butts, M., Bonsu, J., Carruthers, C., Berry, R., & McCampbell, D. (2017). *Freedom to Thrive: Reimagining Safety & Security in our Communities*. Center for Popular Democracy. Retrievable: <https://populardemocracy.org/news/publications/freedom-thrive-reimagining-safety-security-our-communities>
- Harris, A. (2016). *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* (1st Ed.). Russell Sage Foundation. Retrievable: <https://www.russellsage.org/publications/pound-flesh>
- Harris, A., Evans, H., & Beckett, K. (2011). Courtesy Stigma and Monetary Sanctions: Toward a Socio-cultural Theory of Punishment. *American Sociological Review*, 76, 234–264.
- Henricks, K. (2019). Power to the Paperwork? Mandatory Financial Sanctions and the Bureaucratic Means to Racially Unequal Ends. *American Behavioral Scientist*, 00(0), 1–23. Retrievable: <https://doi.org/10.1177/0002764219859620>
- Henricks, K., & Harvey, D. C. (2017). Not One but Many: Monetary Punishment and the Fergusons of America. *Sociological Forum*, 32(S1), 930–951.
- Hinds, O., Kang-Brown, J., & Lu, O. (2018). *People in Prison in 2017* (Vera Evidence Brief). Vera Institute of Justice. Retrievable: <https://www.prisnpolicy.org/scans/vera/people-in-prison-2017.pdf>

COURT COSTS, FINES, AND FEES ARE BAD POLICY

- Illinois Court Assessments—Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings.* (2016). Statutory Court Fee Task Force. Retrieval: https://courts.illinois.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf
- Illinois Prison Overview.* (2015). Illinois State Commission on Criminal Justice and Sentencing Reform. Retrieval: <http://www.icjia.state.il.us/cjreform2015/research/illinois-prison-overview.html>
- Illinois Profile. (2018). *Prison Policy Initiative.* Retrieval: <https://www.prisonpolicy.org/profiles/IL.html>
- In for a Penny: The Rise of America's New Debtors' Prisons* (p. 92). (2010). American Civil Liberties Union (ACLU). Retrieval: <https://www.aclu.org/report/penny-rise-americas-new-debtors-prisons>
- Ingraham, C. (2019, October 8). *For the first time in history, U.S. billionaires paid a lower tax rate than the working class last year.* *Washington Post.* Retrieval: <https://www.washingtonpost.com/business/2019/10/08/first-time-history-us-billionaires-paid-lower-tax-rate-than-working-class-last-year/>
- Investigation of the Ferguson Police Department.* (2015). United States Department of Justice, Civil Rights Division. Retrieval: https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
- The People of the State of Illinois v. Graves, No. 106541 (Illinois Supreme Court September 24, 2009). Retrieval: <https://www.courtlistener.com/opinion/2161709/people-v-graves/>
- Katzenstein, M. F., & Waller, M. R. (2015). Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources. *Perspectives on Politics*, 13, 638–656.
- Keeshan, C., & Sarkauskas, S. (2020, February 21). *Police leaders say a new state law is leading to less training for officers.* *The Daily Herald.* Retrieval: <https://www.dailyherald.com/news/20200221/police-leaders-say-a-new-state-law-is-leading-to-less-training-for-officers>
- Kopf, D. (2016, June 24). The Fining of Black America. *Priceonomics.com.* Retrieval: <https://priceonomics.com/the-fining-of-black-america/>
- Marsh, A., & Gerrick, E. (2016). Why Motive Matters: Designing Effective Policy Responses to Modern Debtors' Prisons. *Yale Law & Policy Review*, 34(1), 93–129.
- Menendez, M., Crowley, M. F., Eisen, L.-B., & Atchison, N. (2019). *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties.* Brennan Center for Justice at NYU School of Law. Retrieval: https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf
- Menendez, M., Crowley, M. F., Eisen, L.-B., & Atchison, N. (2019). *The Steep Costs of Criminal Justice Fees and Fines: A Fiscal Analysis of Three States and Ten Counties.* Brennan Center for Justice at NYU School of Law. Retrieval: https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf
- Miller, R. J., Kern, L. J., & Williams, A. (2018). The Front End of the Carceral State: Police Stops, Court Fines, and the Racialization of Due Process. *Social Service Review*, 290–303.
- Nagin, D. S. (2013). Deterrence in the Twenty-First Century. *Crime and Justice*, 42(1), 199–263.
- National Task Force on Fines, Fees, and Bail Practices. (2018). *Principles on Fines, Fees, and Bail Practices* (p. 7). Conference of Chief Justices & Conference of State Court Administrators. Retrieval: https://www.ncsc.org/_data/assets/pdf_file/0020/14195/principles-1-17-19.pdf
- Page, J., Piehowski, V., & Soss, J. (2019). A debt of care: Commercial bail and the gendered logic of criminal justice predation. *RSF: The Russell Sage Foundation Journal of the Social Sciences*, 5(1), 150–172.
- Parsons, J. (2019). *Visualizing Arrest Trends.* Vera Institute of Justice. Retrieval: <https://www.vera.org/projects/visualizing-arrest-trends>
- Pattillo, M., & Kirk, G. (2020a). Pay Unto Caesar: Breaches of Justice in the Monetary Sanctions Regime. *UCLA Criminal Justice Law Review*, 4(1), 49–77.
- Pattillo, M., & Kirk, G. (2020b). Layaway Freedom: Coercive Financialization in the Criminal Justice System. *Under Review for Publication.*
- Pfaff, J. (2017). *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (1st Edition). Basic Books.
- Pierson, K., Hand, M. L., & Thompson, F. (2015). The Government Finance Database: A Common Resource for Quantitative Research in Public Financial Analysis. *PLoS One*, 10(6), 22. Retrieval: <https://doi.org/10.1371/journal.pone.0130119>

COURT COSTS, FINES, AND FEES ARE BAD POLICY

- The People of the State of Illinois v. Graves, No. 106541 (Illinois Supreme Court September 24, 2009). Retrieval: <https://www.courtlistener.com/opinion/2161709/people-v-graves/>
- Report on the Economic Well-Being of U.S. Households in 2018.* (2019). Federal Reserve Board Division of Consumer and Community Affairs. Retrieval: <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>
- Report on the Funding Crisis in the Illinois Courts.* (2013). Illinois State Bar Association, Special Committee on Fair and Impartial Courts. Retrieval: <https://www.isba.org/sites/default/files/committees/Report%20on%20the%20Funding%20Crisis%20in%20the%20Illinois%20Courts.pdf>
- Report on the Results of the Arizona Judiciary Pilot Collections Project.* (2011). Arizona Supreme Court. Retrieval: <https://finesandfeesjusticecenter.org/articles/report-arizona-judiciary-pilot-collections/>
- Rethinking the Blues: How We Police in the U.S. and at What Cost.* (2012). Justice Policy Institute. Retrieval: http://www.justicepolicy.org/uploads/justicepolicy/documents/rethinkingtheblues_final.pdf
- Ritchie, A. (2019). *Epicenter: Chicago—Reclaiming a City from Neoliberalism.* Political Research Associates. Retrieval: <https://www.politicalresearch.org/2019/06/05/epicenter-chicago-reclaiming-a-city-from-neoliberalism>
- Sered, D. (2019). *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair.* The New Press.
- Shafroth, A. (2018). *Criminal Justice Debt in the South: A Primer for the Southern Partnership to Reduce Debt* (p. 27). National Consumer Law Center. Retrieval: <https://www.nclc.org/images/pdf/criminal-justice/white-paper-criminal-justice-debt-in-the-south-dec2018.pdf>
- Simonite, T. (2019, September 5). *Algorithms Should've Made Courts More Fair. What Went Wrong?* *Wired*. Retrieval: <https://www.wired.com/story/algorithms-shouldve-made-courts-more-fair-what-went-wrong/>
- Singla, A., Kirschner, C., & Stone, S. B. (2019). *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments.* 56(4), 1132-1167. Retrieval: <https://doi.org/10.1177/1078087419834632>
- State and Local Funding for the Illinois Courts.* (n.d.). Retrieval at Illinois Courts Website: <http://www.illinoiscourts.gov/General/Funding.asp>
- Statement on Excessive Court Fines, Fees, and Costs.* (2016). Chicago Appleseed Fund for Justice. Retrieval: <http://www.chicagoappleseed.org/wp-content/uploads/2016/05/Collaboration-for-Justice-Policy-Brief-Fines-Fees-and-Costs-May-2016.pdf>
- Stevenson, M. (2018). *Assessing Risk Assessment in Action.* *Minnesota Law Review*, 103(303), 303-384.
- Su, M. (2019). *Taxation by Citation? Exploring Local Governments' Revenue Motive for Traffic Fines.* *Public Administration Review*, 80(1). Retrieval: <https://doi.org/10.1111/puar.13125>
- Sweetland, J., Gibbons, C., & Busso, D. (2018). *Framing Advocacy on Fines and Fees Reform.* FrameWorks Institute. Retrieval: <https://www.frameworksinstitute.org/assets/files/PDF/fines-and-fees-reform-framebrief-2018.pdf>
- Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications.* (2017). [Briefing Report]. United States Commission on Civil Rights. Retrieval: https://www.usccr.gov/pubs/docs/Statutory_Enforcement_Report2017.pdf
- Ten guidelines on court fines and fees.* (2018). American Bar Association, Working Group on Building Public Trust in the American Justice System. Retrieval: <https://www.americanbar.org/content/dam/aba/images/abnews/2018-AM-Resolutions/114.pdf>
- The Growth of Incarceration in the United States: Exploring Causes and Consequences.* (2014). [Consensus Study Report]. National Research Council. Retrieval: <https://doi.org/10.17226/18613>
- Timbs v. Indiana Certiorari to the Supreme Court of Indiana, No. 17-1091 (Supreme Court of the United States February 20, 2019). Retrieval: https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf
- TIPS Toolkit for Fair Court Funding. (2016, June 1). *American Bar Association.* Retrieval: https://www.americanbar.org/groups/tort_trial_insurance_practice/court_funding1/
- Uniform Crime Reporting Statistics.* (n.d.). United States Department of Justice, Federal Bureau of Investigation. Retrieval: <https://ucrdatatool.gov/>
- Van Brocklin, E. (2018, February 12). *States Set Aside Millions of Dollars for Crime Victims. But Some Gun Violence Survivors Don't Get the Funds They Desperately Need.* *The Trace.* Retrieval: <https://www.thetrace.org/2018/02/gun-violence-victims-of-crime-compensation/>
-

COURT COSTS, FINES, AND FEES ARE BAD POLICY

Wagner, P., & Sawyer, W. (2018, June). *States of Incarceration: The Global Context 2018*. Prison Policy Initiative: Publications. Retrievable: <https://www.prisonpolicy.org/global/2018.html>

Who Pays? The True Cost of Incarceration on Families. (2015). Ella Baker Center for Human Rights. Retrievable: <https://ellabakercenter.org/sites/default/files/media/Who-Pays-FINAL-2.pdf>

Wool, J., Shih, A., & Chang, M. (2019). *Paid in Full: A Plan to End Money Injustice in New Orleans*. Vera Institute of Justice. Retrievable: <https://www.vera.org/downloads/publications/paid-in-full-report.pdf>

Zatz, N., Herrera, L., Koonse, T., & Sonsteng-Person, M. (2019). *Work, Pay, or Go to Jail: Court-Ordered Community Service in Los Angeles*. UCLA Labor Center & UCLA School of Law. Retrievable: https://www.labor.ucla.edu/wp-content/uploads/2019/10/UCLA_CommunityServiceReport_Final_1016.pdf

Zhen, T. (2019). (Color)Blind Reform: How Ability-to-Pay Determinations are Inadequate to Transform a Racialized System of Penal Debt. N.Y.U. *Review of Law & Social Change: Legal Scholarship for Systemic Change*, 43(1). Retrievable: <https://socialchangenyu.com/review/colorblind-reform-how-ability-to-pay-determinations-are-inadequate-to-transform-a-racialized-system-of-penal-debt/>

APPENDIX I: **UNDERSTANDING COURT COSTS, FINES, AND FEES IN ILLINOIS**
INFORMATION SHEET FOR LEGISLATORS - CHICAGO APPLESEED (JUNE 2020)

UNDERSTANDING COURT COSTS + FEES IN ILLINOIS

JUNE 2020

ILLINOIS HAS AT LEAST 90 DISTINCT FINES, FEES, AND COSTS THAT ARE IMPOSED ON DEFENDANTS BY THE CRIMINAL COURTS, AND NO LIMIT TO THE NUMBER OF COSTS FOR A SINGLE OFFENSE.

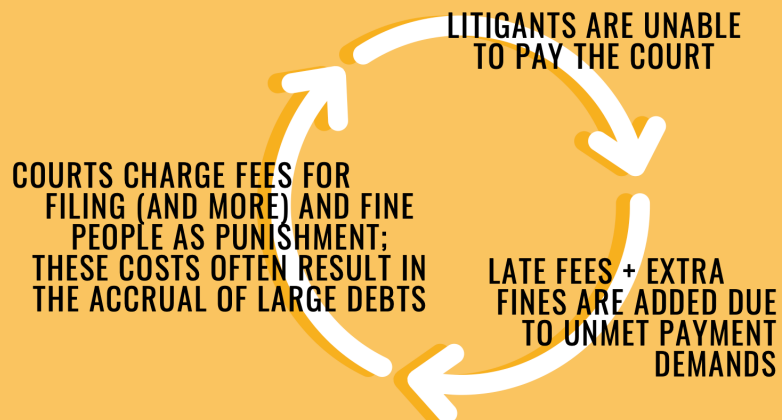
THE RISE IN COURT FINES, FEES, AND COSTS IS DEEPLY CONNECTED TO OVER-INCARCERATION AND MEASURES TO REDUCE PUBLIC FUNDING FOR ESSENTIAL SERVICES.

REDUCING THE NUMBER OF FINES, FEES, AND COURT COSTS WOULD LEAD TO ADMINISTRATIVE SAVINGS AND MORE EFFICIENT PROCESSING OF OTHER KINDS OF CASES.

COURT DEBT PUNISHMENT CYCLE

These fines, fees, and costs support a system where our poorest community members are subject to repeated court appearances and, potentially, additional jail time.

Once caught in the cycle, it can be very difficult for defendants to emerge from the criminal legal system, regardless of their original crime of conviction.



TAKE ACTION

Extend Fee Waiver Pilot:

While we determine the effects of fines and fees conclusively, we should increase compliance with constitutional mandates by only assessing fines and fees to those who can actually afford them.

Support Efforts to Improve Illinois' System of Monetary Sanctions:

Monetary sanctions are ineffective and harmful. There are more efficient, equitable ways to fund our courts that do not undermine public safety or community and family wellbeing in the way regressive court debts have.

Support Committee for Data Collection:

Illinois needs to generate conclusive data about the impact of fines & fees on agency budgets and the lives of Illinoisians.

MYTHS: COURT FINES + FEES IN ILLINOIS

JUNE 2020

Several myths dominate public policy conversations around court costs, administrative fees, and fines.

MYTH 1:

"COURTS WILL FAIL WITHOUT FUNDING FROM FINES + FEES."

As we gather more empirical evidence, we learn just how high the costs of collection and administration are for the courts.

FACT: COLLECTING FINES AND FEES CAN ACTUALLY END UP COSTING THE COURT.

There are significant time requirements and labor costs for the court in assessing and collecting fines and fees.

MYTH 2:

"FINES AND COURT FEES SUPPORT PUBLIC SAFETY."

Court debts are devastating and primarily harm lower-income communities, Black and Brown families, and individuals newly released from incarceration - hurting marginalized communities most and undermining public trust in the legal system, which actually worsens public safety.

FACT: COURT DEBTS DO NOT "DETER" CRIME.

Instead, they can make finding housing and sustainable employment more difficult, which could actually increase someone's likelihood to eventually recidivate.

MYTH 3:

"COURT COSTS ARE FAIR (THE SAME FOR EVERYONE)."

Wealthy people pay their fines or fees and are done with their system involvement, suffering no significant consequences to their lives or livelihood, while lower-income people face severe long-term socioeconomic consequences.

FACT: UNDER THE OLD SYSTEM, FINES + FEES FOR THE SAME OFFENSE VARIED WIDELY ACROSS COUNTIES + COURTROOMS.

The new system creates clearer standards but does not erase the fact that the impact of a \$300 fine or fee for a doctor is not equivalent to the impact of a \$300 fine or fee for a home healthcare worker.

MYTH 4:

"FINES ARE A SOURCE OF RESTITUTION FOR CRIME VICTIMS."

Fines and fees create new victims of the criminal legal system itself. People who cannot pay get trapped in a cycle of unconstitutional punishments that go far beyond what is appropriate for the alleged offense committed.

FACT: THERE ARE WAYS TO COMPENSATE VICTIMS UNRELATED TO CURRENT COLLECTION PRACTICES.

Illinois has other legal + financial means to compensate victims, so eliminating fines and fees need not change victims restitution practices.

COURT COSTS, FINES, AND FEES ARE BAD POLICY
RECOMMENDATIONS FOR ILLINOIS LEGISLATORS - JULY 2020

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Collaboration for Justice
