RESEARCH REPORT

BRENNAN CENTER FOR JUSTICE

The Steep Costs of Criminal Justice Fees and Fines

A Fiscal Analysis of Three States and Ten Counties

By Matthew Menendez, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison

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Brennan Center for Justice at New York University School of Law

Table of Contents

Executive Summary 5

I. Key Findings 9

II. Recommendations 11

III. County Fiscal Impacts 14

IV. Key Variations Among Jurisdictions 21

V. Statewide Analysis 23

VI. Conclusion 33

Appendix A: Fiscal Impact Analysis of Individual Jurisdictions 34

Appendix B: Methodology 54

Endnotes 59

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Executive Summary

The past decade has seen a troubling and well-documented increase in fees and fines imposed on defendants by criminal courts. Today, many states and localities rely on these fees and fines to fund their court systems or even basic government operations.

A wealth of evidence has already shown that this system works against the goal of rehabilitation and creates a major barrier to people reentering society after a conviction.[1] They are often unable to pay hundreds or thousands of dollars in accumulated court debt. When debt leads to incarceration or license suspension, it becomes even harder to find a job or housing or to pay child support. There's also little evidence that imposing onerous fees and fines improves public safety.

Now, this first-of-its-kind analysis shows that in addition to thwarting rehabilitation and failing to improve public safety, criminal-court fees and fines also fail at efficiently raising revenue.[2] The high costs of collection and enforcement are excluded from most assessments, meaning that actual revenues from fees and fines are far lower than what legislators expect. And because fees and fines are typically imposed without regard to a defendant's ability to pay, jurisdictions have billions of dollars in unpaid court debt on the books that they are unlikely to ever collect. This debt hangs over the heads of defendants and grows every year.

This study examines 10 counties across Texas, Florida, and New Mexico, as well as statewide data for those three states. The counties vary in their geographic, economic, political, and ethnic profiles, as well as in their practices for collecting and enforcing fees and fines.

Key Findings

- Fees and fines are an inefficient source of government revenue. The Texas and New Mexico counties studied here effectively spend more than 41 cents of every dollar of revenue they raise from fees and fines on in-court hearings and jail costs alone. That's 121 times what the Internal Revenue Service spends to collect taxes and many times what the states themselves spend to collect taxes. One New Mexico county spends at least $1.17 to collect every dollar of revenue it raises through fees and fines, meaning that it loses money through this system.

- Resources devoted to collecting and enforcing fees and fines could be better spent on efforts that actually improve public safety. Collection and enforcement efforts divert police, sheriff's deputies, and courts from their core responsibilities.

- Judges rarely hold hearings to establish defendants' ability to pay. As a result, the burden of fees and fines falls largely on the poor, much like a regressive tax, and billions of dollars go unpaid each year. These mounting balances underscore our finding that fees and fines are an unreliable source of government revenue.

- Jailing those unable to pay fees and fines is especially costly — sometimes as much as 115 percent of the amount collected — and generates no revenue. The practice is not just unconstitutional but also irrational.

- The true costs are likely even higher than the estimates presented here, because many of the costs of imposing, collecting, and enforcing criminal fees and fines could not be ascertained. No one fully tracks these costs, a task complicated by the fact that they are spread across agencies and levels of government. Among the costs that often go unmeasured are those of jailing, time spent by police and sheriffs on warrant enforcement or driver's license suspensions, and probation and parole resources devoted to fee and fine enforcement. This makes it all but impossible for policymakers and the public to evaluate these systems as sources of revenue.

Recommendations

- States and localities should pass legislation to eliminate court-imposed fees. Courts should be funded primarily by taxpayers, all of whom are served by the justice system.

- States should institute a sliding scale for assessing fines based on individuals' ability to pay. The purpose of fines is to punish those who violate the law and deter those who might otherwise do so. A $200 fine that is a minor inconvenience to one person may be an insurmountable debt to another.

- Courts should stop the practice of jailing for failure to pay, which harms rehabilitation efforts and makes little fiscal sense.

- States should eliminate driver's license suspension for nonpayment of criminal fees and fines. The practice makes it harder for poor people to pay their debts and harms individuals and their families. Lawmakers should follow the approach taken by Texas, where recent legislation will reinstate hundreds of thousands of licenses.[3]

- Courts and agencies should improve data automation practices so that affected individuals understand their outstanding court debts and policymakers can more thoroughly evaluate the efficacy of fees and fines as a source of revenue.

- States should pass laws purging old balances that are unlikely to be paid but continue to complicate the lives of millions, as some jurisdictions, including San Francisco, have done.[4] This would also ensure that individuals who have been free and clear of the criminal justice system for many years are not pulled back in simply on the basis of inability to pay.

What's the Difference Between Fees and Fines?

Fines, imposed upon conviction, are intended as both deterrence and punishment. In Texas, for example, a fine of up to $500 may be imposed for a low-level offense, such as a traffic violation; a fine of up to $2,000 may be imposed for more serious misdemeanors, such as harassment or minor drug possession; and a fine of up to $4,000 may be imposed for the most serious misdemeanors, such as unlawful carrying of a weapon and assault with injury.[5]

Fees, by contrast, are intended to raise revenue.[6] Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the "users" of the courts. They cover almost every part of the criminal justice process and can include court-appointed attorney fees, court clerk fees, filing clerk fees, DNA database fees, jury fees, crime lab analysis fees, late fees, installment fees, and various other surcharges.

The Growing Use of Fees and Fines — and the Damage They've Done

Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded. Our justice system increasingly relies on fees and fines charged to defendants in criminal cases to fund basic operations.[7]

For example, North Carolina collects 52 separate fees, disbursing them to four state agencies and 611 counties and municipalities. It uses fees to fund half of the state's judicial budget as well as jails, law enforcement, counties, and schools.[8] Using fee and fine revenues to fund the judiciary can create perverse incentives with the potential to distort the fair administration of justice. When criminal courts become responsible for their own financing, they may prioritize the imposition of significant fee and fine amounts and dedicate substantial staff to collecting these sums.

In Florida, a significant portion of the funds raised through fees and fines is allocated to the state's general coffers.[9] Colorado has used increased court fees to replace and update public buildings, including a judicial complex and a museum.[10] Florida and Kentucky increased court fees as a way to address state fiscal crises.[11] In Oklahoma, where a 1992 referendum made it nearly impossible for legislators to raise taxes, lawmakers have increasingly come to rely on fees and fines to fund the state budget.[12] Some fee and fine revenue has even been used for personal perks: fees and surcharges allocated to a judicial expense fund in Louisiana were found to have been spent on luxury goods, including supplemental health insurance for judges, two Ford Expeditions, a leather upholstery upgrade for a take-home vehicle, and a full-time private chef.[13]

This increase in fees and fines has exacted a steep human cost. Individual amounts may be small, but they can quickly add up, meaning indigent people may face hundreds or thousands of dollars in accumulated debt that they'e unable to pay. While "debtors' prisons" have been declared unconstitutional, many states still incarcerate people for failure to pay criminal justice debt. And even when failure to pay is not an explicit charge, jail sentences are handed down for failure to appear or failure to comply — infractions that often stem from failure to pay. In Socorro County, New Mexico, for example, one magistrate judge has adopted a "three strikes" policy. For each missed payment of outstanding court costs, the court's enforcement response progresses from a bench warrant, to a bench warrant with a bond, to a charge of failure to comply that carries a three-day jail sentence. Each day spent in jail may then be credited against the defendant's outstanding debts.[14] Under the guise of different charges, such a policy perpetuates the function of a debtors' prison.

In this way, criminal justice debt represents a significant barrier to a person's chances of successfully reentering society following a conviction. It also hurts the families of those who are incarcerated, depriving them of a wage earner while adding new court costs to the defendant's criminal debts. One study found that about half of families with convicted members cannot afford to pay fees and fines. Moreover, nearly two in three families who had a family member incarcerated were unable to meet their households' basic needs, such as food and housing.[15] States such as Florida that suspend driver's

licenses for unpaid fees and fines only exacerbate this economic distress, as those who lose their license may then lose their job as well as their ability to take family members to school or medical appointments and to drive themselves to court.

There is also evidence that fees and fines are assessed in a racially discriminatory way. A 2017 report by the U.S. Commission on Civil Rights found that municipalities that rely heavily on revenue from fees and fines have a higher than average share of African American and Latino residents.[16]

By now, these harms have been well documented. But there has been much less research conducted on the fiscal costs of fees and fines. This report aims to start filling that gap. Without an understanding of how much governments are spending to administer fees and fines, and how much in fees and fines is never collected, decision-makers can't accurately gauge the efficacy of these programs.

Report Terms

Assessment. As used in this report, assessment refers to the amount of the fee or fine imposed by a judge on a criminal defendant at sentencing. For many minor offenses, assessments are made at the conclusion of a simple hearing before a judge or magistrate in which the defendant makes a plea, the evidence is reviewed, and a decision is made by the judge or magistrate. More complex and serious criminal cases may involve separate appearances in court, including an arraignment in which the charges are read and a defendant's plea is accepted by the judge, a trial before the judge (and possibly a jury), and a sentencing hearing, at which point fees and fines may be imposed by the judge.

Criminal justice debt. Criminal justice debt is composed of legally binding financial obligations imposed on those convicted by criminal courts. While such debt may comprise fees, fines, and victim restitution — payments ordered to victims as compensation — this report deals only with fees and fines (see below), which are recognized as revenue on the balance sheets of courts and other public agencies. In contrast to private and many civil debts, criminal justice debt is enforced by the criminal justice system and can result in the issuance of arrest warrants for nonpayment, criminal court hearings, additional fines and court surcharges, detention in jail, inclusion on criminal records, and — in some states — loss of voting privileges.

Fines. Criminal fines are penalties imposed on defendants after conviction, intended as both deterrence and punishment. The amount of a fine is set by statute and based on the severity of the crime. For misdemeanors, fines may be relatively small. For felonies, fines are typically larger. Fines vary by jurisdiction and may be enhanced for repeat offenses. For example, each of the three states included in this study imposes fines as a penalty for drunk driving. For a first offense, New Mexico assesses a $300 fine, Florida assesses a $500 fine, and Texas may assess up to $2,000. In all three states, drunk driving is an enhanceable offense, meaning that the penalties, including fines, escalate depending on the number of prior offenses.[17]

Fees. Criminal fees, unlike fines, are intended to raise revenue. Often they are automatically imposed and bear no relation to the offense committed. In most cases, fees are intended to shift the costs of the criminal justice system from taxpayers to defendants, who are seen as the "users" of the courts. Cash-strapped state and local governments rely on criminal fees to raise revenue for other purposes as well, thereby avoiding the politically unpopular step of raising taxes. Most jurisdictions impose certain fees on every defendant convicted, regardless of the nature of the offense. For example, one convicted of a misdemeanor in Florida is charged a $20 court cost fee, a $3 Court Cost Clearing Trust Fund fee, a $60 Fine and Forfeiture Fund fee, a $20 Crime Stoppers Program fee, a $50 prosecution fee, a $50 crime compensation fee, and a $20 Crime Prevention Fund fee, and potentially others.[18] Other fees are offense-specific and imposed only on defendants convicted of certain offenses. For example, in New Mexico there are fees for defendants convicted of driving under the influence (DUI) or drug offenses.[19] While fees may be imposed by courts, parole and probation departments, and jails and prisons, this report focuses on fees imposed by criminal courts following conviction. In some jurisdictions, fees may be referred to by another name. For example, some of the fees imposed by courts in Texas are called "court costs."[20]

Revenue. Fees and fines both serve as sources of revenue for state and local governments. The permissible uses for this revenue are typically set by statute. Many fees are earmarked for specific purposes, such as programs that divert defendants from prison, courthouse maintenance, or traffic safety education. Much of the revenue from criminal justice fees and fines is used to fund the judiciary or routed to law enforcement. In some cases it goes to a state or locality's general fund, where it may be used for purposes wholly unrelated to law enforcement or the courts. Fine revenue is disbursed according to statute in each of the three states studied. In each state, most fine revenue goes into a general fund at the state or municipal level, though some is directed toward particular programs, such as road maintenance or schools.

While state statutes prescribe the distribution of funds collected through the criminal justice system, the allocation of revenue varies. For example, in New Orleans, the $11.5 million in criminal justice fees and fines collected in 2015 was distributed among eight agencies, providing funding for the municipal court, district court, public defenders, and traffic court.[21] In Allegan County, Michi-

gan, half of court-imposed fees went toward running the county courthouse, paying employee salaries, heating the court building, purchasing copy machines, and underwriting the cost of the county employee gym.[22]

Waivers. In some courts, judges have authority to reduce the amount of certain fees and fines imposed at conviction.[23] Amounts reduced without a quid pro quo (such as the performance of community service in lieu of payment or time spent in jail) often are referred to as waivers. This is the meaning of the term as employed in this report. The issuance of waivers varies considerably among jurisdictions and states.

Jail credits. Some states waive fees and fines in exchange for jail time, which are referred to as jail credits and are distinct from the kinds of credits through which people earn reductions to sentences. Though this alternative might be pitched as a benefit to those who want to discharge their debt in this manner, no one who has a choice and can make other payment arrangements would choose jail. Further, many defendants have no say in the matter. For example, one magistrate judge in Socorro County, New Mexico, jails individuals for missing three payments without making a court appearance, regardless of ability to pay.[24] Perversely, people can accumulate additional fees during their stay in jail, leaving them with more debt than when they entered.[25]

In some states, including Alabama, Michigan, and Texas, when people are picked up on a warrant for a failure to pay traffic tickets or fines, they may be jailed involuntarily to pay off delinquent criminal justice debt through credits issued for each day spent in jail.[26] These credits do not generate actual revenue but simply exchange jail time for debt reduction at a great cost to the government. Jailing also comes at great cost to the people affected and their families. The U.S. Supreme Court has held that imprisonment for unpaid fines or fees without a hearing to determine ability to pay is unconstitutional.[27] If courts find that a defendant is unable to pay, they are required to consider alternatives, such as deferrals, payment plans, community service, and waivers. Unfortunately, in practice, many courts fail to make these financial determinations.[28]

Community service credits. Most states offer some type of community service option as an alternative to payment, though these practices vary significantly within and across states.[29] Some states offer programs assigning people to pick up trash or maintain parks in lieu of a jail sentence or fine, while other states allow people to meet educational requirements to pay off their debt. Some types of community service require classes for certification (e.g., controlling traffic for the Department of Transportation), which can lead to employment opportunities after the debt is paid.[30]

In some states, community service is seldom available to defendants because judges feel pressure to raise revenue for their city or county.[31] For those who get the opportunity, community service hours are often paid at the federal minimum wage, only $7.25 an hour, making it unrealistic for people to devote the time necessary to work down their debt. This is even harder if they have jobs or are caring for family members.[32]

I. Key Findings

A. Fees and Fines Are Inefficient for Raising Revenue

The costs of fee and fine enforcement are huge. For example, in 2017 misdemeanor and traffic courts in Travis County, Texas, spent nearly $4.8 million on in-court proceedings and staff costs related to fee and fine compliance. In addition, the county spent more than $4.6 million on jailing those who failed to pay fees and fines and those allowed to earn jail credit against amounts owed.

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.[33] 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[34] — it would be even higher.[35]

Compare these collection costs to the cost of raising revenue through taxation. The Internal Revenue Service spends just $0.34 for every *hundred dollars* in taxes collected.[36] In other words, it costs jurisdictions, on average, *121 times more* to collect criminal fees and fines — even without including some of those costs — than it costs the IRS to gather taxes. Meanwhile, Texas spends around $0.31 for every *hundred dollars* in taxes collected.[37] New Mexico spends roughly $0.95. It's clear that general taxation is significantly more cost effective than criminal fees and fines at raising revenue.[38]

B. Collecting Fees and Fines Detracts from Public Safety Efforts

Fees and fines are most often evaluated by courts and criminal justice agencies, legislators, and policymakers on the basis of the revenue they generate, but they come at a great cost to the criminal justice system. When criminal courts impose fees and fines and then spend much of their resources collecting them, this leaves less to spend on true public safety needs. For example:

- When police and sheriff's deputies are serving warrants for failure to pay fees and fines, they are less readily available to respond to 911 calls.
- When courts schedule appearances for failure to pay, proceedings for more serious crimes can be delayed or rushed.
- When community corrections officers spend much of their time reminding their clients to pay unaffordable fees and fines, they have less time to work with people to help them break the cycle of repeated contact with the criminal justice system.
- When people who can't afford to pay fees and fines are jailed, they are exposed to the many harms of incarceration, while correctional authorities are burdened with providing jail space and services to people who pose no risk to public safety.

These are just a few examples; there are many more ways in which criminal justice agency efforts to coerce payment translates into less time spent on more valuable criminal justice work.

Put concretely and in dollar terms, almost every cent spent on fee and fine collection is wasted as compared to collecting tax revenue.[39] This is a fundamentally inefficient way to collect revenue to support courts and other criminal justice agencies, and it does not make fiscal or economic sense.

C. Almost No Time Is Spent in Court Determining Whether People Can Afford to Pay Fees and Fines

One reason that fees and fines are so inefficient as a revenue raiser is that each year millions of people are given sentences that include fines and fees they are simply unable to pay. From watching more than 1,000 court proceedings in seven jurisdictions, the authors found that judges rarely hold ability-to-pay hearings. While there are plainly up-front costs associated with such hearings, in the long run, jurisdictions would spend less money by holding them rather than trying to chase down debts that cannot be paid.

D. Jailing for Nonpayment Is Costly and Irrational

The Supreme Court has held that "punishing a person for his poverty" is unconstitutional. Still, states and localities continue to jail large numbers of indigent defendants as a sanction for unpaid criminal justice debt. Jailing people for nonpayment is by far the most expensive method of enforcing collections and generates little to no revenue — making it highly uneconomical. In counties where courts incarcerate for failure to pay, the authors found that the cost of incarceration dwarfs other collections costs. For example, in Bernalillo County, New Mexico, jail costs represent as much as 98 percent of the collection costs documented by the authors.[40]

Further, while the full costs are unknown, they are considerable — with many jails in Texas and New Mexico reporting costs per inmate per day clustering around $55 to $65 or higher — and the costs negate or reduce much

of the revenue that city, county, and state officials believe that criminal fees and fines produce.

Often when someone is unable or unwilling to pay a fee or fine, the court issues a warrant.[41] Frequently, indigent people do not appear on their court date, due to a transportation issue (they may have had their license suspended), or because they have to work, or because they fear arrest for nonpayment. In these instances, courts often issue a warrant for failure to appear, resulting in additional debt for the defendant and, in some jurisdictions, jail time.[42] Some defendents receive credit toward their debt at a state-determined per diem rate for the time they spend in custody; others incur additional debt in the form of jail fees; and some are released still owing the amount they owed before the warrant was issued.[43] Jailing is particularly counterproductive not only because incarceration is extremely costly to jurisdictions but also because it diminishes a person's ability to pay outstanding fees.

E. The Amount of Uncollected Debt Continues to Grow

A substantial portion of fees and fines is never collected and is likely uncollectable, meaning that these assessments are an unreliable source of government revenue that will always come up short.

No one knows how much is owed in total because few states and courts track this information — which is itself a problem requiring attention. But from 2012 to 2018, the states of Florida, New Mexico, and Texas amassed a total of almost $1.9 billion in uncollected debt.[44] And in each of the jurisdictions studied here, the amount of unpaid debt grew significantly over the period examined. Much of this debt is unlikely to ever be collected, as those with low incomes lack resources to draw on for payment.

This high level of uncollected debt demonstrates why fees and fines are such an unreliable way to raise revenue. It also hurts those who can't pay, putting them at risk of incarceration, loss of their ability to legally drive, voter disenfranchisement, and increased difficulty in getting a job. And courts keep track of debts in perpetuity, making it all but impossible for defendants to get out from under them.

F. Jurisdictions Do Not Track Costs Related to Collecting Fees and Fines

For the most part, jurisdictions do not know how much it costs them to collect fees and fines. Of the three states studied, only Texas systematically tracks some of the costs for court collection units. But even there, the picture is incomplete. No jurisdiction tracks any of the following: the court costs for fee and fine administration, the cost to public defender systems for dealing with their clients' fees and fines, the cost to parole and probation systems for fee and fine enforcement (whether they engage in collections or simply remind their charges constantly to pay their court debts), the cost to DMV offices processing license suspensions or state tax agencies processing offsets, and the cost to law enforcement for warrant enforcement or arrests for failure to pay or suspended driver's licenses.

Though Texas collects some data on the costs of jailing people who fail to pay fees and fines or are allowed to earn jail credit against amounts owed, most courts and other criminal justice agencies do not track and report such costs.

G. Fees and Fines Are a Regressive Tax on the Poor

Revelations that cities like Ferguson, Missouri, collect millions in fees from poor citizens sparked a national debate in 2014 about predatory and regressive policies targeting vulnerable communities.[45] The city relied on rising municipal court fines to make up 20 percent of its $12 million operating budget in fiscal year 2013.[46] But Ferguson is not alone. As detailed below, fee and fine assessments in each of the states studied amount to significant costs for the people who pass through the criminal justice system, many of whom are poor. Across the three states, billions of dollars are charged without regard to ability to pay. According to the Federal Reserve, many Americans are unable to pay an unexpected bill of $400.[47] The fees and fines charged in these three states may well be more than what the average defendant can afford (and the noticeable growth of unpaid fee and fine debt bears this out). This is particularly so where evidence exists that policing frequently has a disproportionate impact on marginalized communities.[48]

II. Recommendations

Courts rely excessively on criminal fee and fine practices that are costly and inefficient, unfairly burden the poor, and do little to deter crime or improve public safety. Reforms are urgently needed.

A. States and Localities Should Eliminate Court-Imposed Fees

Courts need to be funded adequately. But even under a conservative estimate of the costs of collection, fees are an inefficient source of revenue. In addition, they fall disproportionately on the poor and create perverse incentives. And they transfer the obligation of taxpayers to fund courts to defendants in the justice system, even though the system serves society as a whole. State legislators should allocate appropriate funding to courts from their general funds and repeal legislation requiring courts to raise their own revenue by imposing fees.

B. States Should Require Courts to Assess Fines Based on Ability to Pay

The purpose of fines is to deter people from violating the law and punish those who do. But a $200 fine may represent an insurmountable obstacle to one person and a minor inconvenience to another. Charging people amounts they cannot pay is draconian. State legislatures should statutorily scale fines according to a defendant's wealth and how much he or she earns in a day, adjusted for essential expenses and obligations such as child support. In addition to ending the disproportionate punishments given to the poor, sliding-scale fines would more effectively incentivize the wealthy to obey the law. Studies show that sliding-scale fines can increase both collection rates and total fine revenue.[49] Mandating that fines are calibrated according to ability to pay would also drastically reduce the resources allocated to collections — since fines that are manageable are more likely to be paid — and reduce the burden on indigent defendants, creating a more efficient and just system.

C. Courts Should Stop the Practice of Jailing for Failure to Pay

In the three states studied here, 46 percent of fees and fines were not paid.[50] Sometimes courts waive fees and fines for those unable to pay, and sometimes they offer credit for court-ordered community service. Too frequently, however, they jail people for nonpayment.[51] Incarceration as a penalty for unpaid debt not only is unconstitutional but, as a practical matter, makes little economic sense. It provides no revenue benefit and is costlier for courts and taxpayers than simply forgiving the debt.[52]

D. States Should Eliminate Driver's License Suspension for Nonpayment of Criminal Fees and Fines

This punishment, too, is counterproductive.[53] As with incarceration, suspending someone's driver's license makes it less likely that he or she will be able to pay the debt, as it is difficult to hold a job in most parts of the United States without access to a car. License suspension also hurts families that depend on their cars to buy groceries, transport their children to school, get medical care, and provide for other needs. Suspended license enforcement becomes a needless, costly priority for law enforcement personnel who could be deployed more effectively to prevent or respond to serious crime.

E. Courts and Agencies Should Improve Data Automation Practices

As the authors learned, many states and local jurisdictions are in the dark about the amount of criminal fees and fines that are unpaid and outstanding. In part this is the result of well-intentioned automation efforts that prioritize more recent and critical case data over older data. In other cases, as the authors found in some local courts, basic operating records and ledgers remain unautomated, making it hard to quickly collect information on caseloads, amounts owed, and amounts paid. Given the risk of arrest and other consequences for nonpayment of criminal fees and fines, courts are under an obligation to ensure that relevant data is easily retrievable and regularly updated to reflect actual amounts waived, credited, paid, and owed. Such efforts would serve policymakers as well, allowing them to more systematically assess the inefficiency of relying on fees and fines as a revenue stream.

F. States Should Pass Laws Requiring Purging of Old Balances That Are Unlikely to Be Paid

As detailed in this report, tremendous amounts of old fee and fine debt will never be collected but continue to burden millions of people. Jurisdictions are unlikely to receive revenue from arrears of any kind that go back many years, especially from those least able to pay. Financial professionals have long employed accounting methods such as "allowances for doubtful accounts" to identify uncollectible debts and assign them a value of zero for

purposes of preparing financial statements. Some jurisdictions, such as San Francisco, have adopted this kind of financial practice and wiped millions of dollars in uncollected debt off the books.[54] Courts should more widely adopt these practices in tracking and reporting outstanding balances of criminal fees and fines, recognizing that older debts have little prospect of ever being paid. States should require courts to report on uncollected fees and fines and issue periodic waivers or adjustments in cases where significant additional payment is unlikely. In addition to providing relief to the least well-off defendants, it would free public agencies from expending resources trying to chase down uncollectible debts.

Assessing Fines Based on Ability to Pay

>> **While sliding scales** for fines may seem radical, this approach has been successfully implemented in Europe as a default sanction for numerous crimes.[55] When it was introduced in West Germany in the 1970s as a replacement for incarceration, the number of short-term prison sentences dropped by 90 percent. Germany still uses these "day fines" as the only sanction imposed for three-quarters of all property crimes and two-thirds of all assaults.[56] Day fines have also worked in the United States. When a court in Staten Island, New York, replaced fixed fines with day fines in 1988, both collection rates and fine amounts increased.[57] In Maricopa County, Arizona, an experimental day fine program in the 1980s saw a 100 percent increase in the proportion of people fully paying off their court debt, and a drop in the recidivism rate from 17 to 11 percent.[58]

Disproportionate Policing in Marginalized Communities

>> **Research indicates** that economically disadvantaged communities and people of color are policed at greater rates than white, affluent areas are. This means that fees and fines are imposed on and collected more frequently from them, creating a cycle of debt and incarceration. The consequences for marginalized communities are particularly severe and regressive.

>> **Operating primarily** in low-income communities of color, the "broken windows" theory of policing has drastically increased the number of citations and arrests for low-level, nonviolent offenses.[59] The theory, introduced in 1982, held that cracking down on minor offenses would prevent major crime.[60] However, it resulted in criminalizing poor communities for activities that would go unchecked in white, wealthy areas. For example, in Newark, New Jersey, citations for low-level offenses — known as "blue summonses" — were regularly handed out, forcing residents to pay fines or make court appearances on violations such as loitering or drinking in public.[61] Although police officers were rewarded for distributing high numbers of citations, including through quotas instituted by police leadership, crime levels did not go down. Instead, this approach damaged the relationship between residents and the Newark Police Department. It also shifted law enforcement's focus to "convenient targets" rather than serious crime, leading to federal intervention and attempts at reform in recent years.[62]

>> **In Ferguson, Missouri,** police issued 32,975 arrest warrants for nonviolent offenses and collected $2.6 million in fees and fines in 2013.[63] These fines were mostly imposed for minor, nonviolent offenses such as traffic infractions, and data shows huge racial disparities in those citations. In Ferguson, 67 percent of the population is black, but 86 percent of traffic stops were of black drivers. Conversely, 29 percent of the population is white, but only about 12 percent of traffic stops involved white drivers.[64] A 2018 report from the Missouri attorney general examines the disparity, noting that in more than 1.5 million traffic stops in the state, black drivers were 91 percent more likely to be pulled over than white drivers.[65]

>> **Racial profiling** and bias continue to contribute to the over-policing of people of color. A comprehensive study of 20 million traffic stops in North Carolina found that black drivers were twice as likely to be pulled over as white drivers and four times as likely to be searched, even though whites drive more on average.[66] The study also indicated that racial minorities were less likely to be found with contraband, despite being more likely to be searched.[67] A 2013 Department of Justice study found that about 2 percent of white drivers are searched after being pulled over, versus 6 percent of black and 7 percent of Latino drivers.[68]

>> **Gentrification** and changing social dynamics in low-income neighborhoods are leading to an increased criminalization of people of color who have lived in those areas for decades.[69] The influx of wealth into these communities has created pressure for the perception of public safety and order. Higher rates of arrest and increased citations have been the result of increases in police presence rather than in offenses, and as resources are concentrated in these gentrifying areas, they are diverted from others.[70]

>> **In San Francisco,** an app called Open311 was launched in 2013 to make it easier to report loitering, vandalism, and other quality-of-life complaints.[71] Data gathered from the app shows a disproportionate increase in 311 calls and responses in gentrified areas of the city after the app was launched.[72] Approximately 11 percent of 311 calls in San Francisco were from the Mission District, a neighborhood whose population makes up about 5 percent of San Francisco's total. The community, with a significant Hispanic and Latino population, has seen increased gentrification in the last few decades.[73] More than 112,000 calls were reported from the Mission in 2013 compared with about 48,000 from the financial district.[74] The tension between newcomers and lifelong residents can be fatal: in 2014, 28-year-old Alejandro Nieto — the son of Latino immigrants who had lived in the neighborhood all his life — was anxiously pacing after a run-in with a dog when he was shot dead by officers responding to a 911 call from a new resident who reported that Nieto was "behaving suspiciously."[75]

III. County Fiscal Impacts

This basic fiscal analysis identifies the cost to courts and criminal justice agencies in target counties of assessing and collecting criminal fees and fines, then subtracts those costs from the revenues collected for each jurisdiction.[76] The remainder is the net gain in revenue.

Until now, the costs of assessing and collecting criminal justice fees and fines have gone largely unmeasured. To provide a clearer understanding of whether fees and fines are an efficient means of raising government revenue, both within each jurisdiction studied and on average, the authors gathered data from various stakeholders in the criminal justice system engaged in the collection of fees and fines in 10 counties. These included courts, prosecu-

FIGURE 1

Fiscal Analysis of Target Counties in Texas (2017), New Mexico (2016), and Florida (2017)

Thousands of dollars

	TEXAS				NEW MEXICO			FLORIDA			RANGE	
Total Fees and Fines Assessed	Travis	El Paso	Jim Hogg	Marion	Bernalillo	Santa Fe	Socorro	Leon	Miami-Dade	Madison	Low	High
Total Assessments	$38,006	$14,109	N/A	N/A	$4,170	$1,138	$207	$1,148	$10,143	$257	$207	$38,006
Waivers/Adjustments	$1,176	$308	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$308	$1,176
Community Service Credits	$561	$83	N/A	N/A	$84	$55	$2	$44	$12	$1	$1	$561
Jail Credits	$6,958	$3,140	N/A	N/A	$1,448	$214	$76	$0	$0	$0	$0	$6,958
Conversions to Liens	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$0	$0	$54	$0	$54
Other Credits	$0	$0	N/A	N/A	$661	$83	$10	$20	$0	$6	$0	$661
Total Adjustments	$8,694	$3,532	N/A	N/A	$2,193	$352	$88	$64	$12	$61	$12	$8,694
Net Amounts Owed	$29,312	$10,577	N/A	N/A	$1,977	$787	$120	$1,084	$10,131	$196	$120	$29,312
Revenue Collected												
Collections	$26,929	$8,132	$237	$366	$1,862	$724	$119	$858	$7,978	$174	$119	$26,929
Collections as a Percentage of Assessments	71%	58%	N/A	N/A	45%	64%	58%	75%	79%	68%	45%	79%
Cost to Levy and Collect												
In-Court Costs	$3,186	$68	$10	$29	$40	$54	$14	$31	$267	N/A	$10	$3,186
Collections Unit Costs	$1,610	$733	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$733	$1,610
Jail Costs	$4,627	$2,917	N/A	N/A	$2,138	$239	$81	N/A	N/A	N/A	$81	$4,627
Other Costs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$0	$0
Total Costs	$9,423	$3,718	$10	$29	$2,178	$294	$96	N/A	N/A	N/A	$10	$9,423
Costs as a Percentage of Collections	35%	46%	4%	8%	117%	41%	80%	N/A	N/A	N/A	4%	117%
Net Gain (Revenue Minus Cost)	$17,506	$4,414	$227	$336	-$316	$430	$24	N/A	N/A	N/A	-$316	$17,506

Sources: New Mexico Judicial Information Division; Texas Collection Improvement Program; Florida Court Clerks & Comptrollers; Brennan Center calculations.

tors, public defenders, probation/parole officers, and local jails. The authors had the most success obtaining data for courts, with jailing costs also available for some jurisdictions. With this data, the authors were able to quantify the costs associated with in-court proceedings dealing with fees and fines, court collection costs for some jurisdictions, and jailing costs for nonpayment in certain jurisdictions. For a variety of reasons, including local policies, the authors were unable to collect any information from law enforcement agencies.

Our fiscal analysis revealed that, across the counties studied, 66 percent of criminal justice debts assessed were eventually collected. In the most recent year examined, revenues ranged up to $27 million raised in these jurisdictions, with more populous and urban counties at the higher end. Costs associated with assessments and collections that could be documented were as much as $9.4 million, depending on the county.[77] As expected, costs were higher in counties where courts jailed for nonpayment. Costs associated with time spent on fees and fines in court proceedings were estimated to be relatively low, as little time was observed in courtrooms considering the amounts owed or the ability to pay.

The authors' estimates of collection and enforcement costs underestimate the full set of direct costs due to limited data availability in the jurisdictions studied; if data had been fully available, this study's cost estimates would have been higher.

- The authors observed court proceedings to estimate personnel costs for the judges, prosecutors, public defenders, and other staff involved in court proceedings in all but three jurisdictions, smaller counties in which court proceedings do not occur weekly. Personnel costs are therefore not included in estimates for those counties.

- Jail costs could be calculated for New Mexico and larger Texas counties. Florida jail data was not available. Florida does not jail for failure to pay but does incur costs for incarceration for driving with a license that has been suspended due to inability to pay fees and fines.

- The authors were not able to obtain the cost of court collections for a large portion of Texas counties.

- The authors were unable to obtain adequate survey responses from judges, court clerks and their staff, prosecutors, public defenders, and probation and parole staff to document time spent outside courtrooms on fee/fine enforcement and collection; and no cooperation was received from law enforcement agencies.

In addition to the basic fiscal analysis, the authors tallied uncollected court debts in most of the 10 jurisdictions to calculate the extent of accumulating unpaid fees and fines. Courts are rarely able to provide estimates of outstanding balances. The authors therefore examined how these debts accumulated by using several years of fee and fine assessments, credits, waivers, and collections data for each jurisdiction; calculating unpaid balances for each year; and totaling these amounts for the years examined.

Figure 2 illustrates how revenues compare across each county studied over a five-year period. While the trends vary among jurisdictions (see section IV), one major finding of this report is that across states, the amount of uncollected debt increases year over year.

FIGURE 2

Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
Florida						**5-Year Total**
Leon County						
Assessed	$3,661	$3,240	$2,673	$2,431	$1,148	$13,153
Collected	$2,065	$1,825	$1,953	$1,888	$858	$8,589
Credits/Waivers/Liens	$379	$217	$83	$259	$64	$1,002
Remaining Outstanding	$1,217	$1,198	$637	$283	$226	$3,562
Cumulative Unpaid Balance	$1,217	$2,415	$3,053	$3,336	$3,562	$3,562
Collection Rate	56%	56%	73%	78%	75%	65%
Miami-Dade County						
Assessed	$20,872	$14,384	$15,772	$12,178	$10,143	$73,348
Collected	$12,245	$9,353	$9,453	$8,297	$7,978	$47,326
Credits/Waivers/Liens	$28	$33	$43	$23	$12	$140
Remaining Outstanding	$8,598	$4,998	$6,276	$3,858	$2,153	$25,883
Cumulative Unpaid Balance	$8,598	$13,596	$19,872	$23,730	$25,883	$25,883
Collection Rate	59%	65%	60%	68%	79%	65%
Madison County						
Assessed	$288	$291	$224	$243	$257	$1,303
Collected	$124	$190	$187	$175	$174	$850
Credits/Waivers/Liens	$60	$38	$36	$74	$61	$268
Remaining Outstanding	$104	$63	$2	-$6	$22	$185
Cumulative Unpaid Balance	$104	$167	$169	$163	$185	$185
Collection Rate	43%	65%	83%	72%	68%	65%
New Mexico						**4-Year Total**
Bernalillo County						
Assessed	$5,371	$5,294	$4,558	$4,170	N/A	$19,393
Collected	$3,062	$2,704	$2,267	$1,862	N/A	$9,895
Credits/Waivers/Liens	$1,703	$2,077	$2,089	$2,193	N/A	$8,062
Remaining Outstanding	$606	$513	$203	$115	N/A	$1,437
Cumulative Unpaid Balance	$606	$1,119	$1,322	$1,437	N/A	$1,437
Collection Rate	57%	51%	50%	45%	N/A	51%
Santa Fe County						
Assessed	$987	$1,243	$1,370	$1,138	N/A	$4,738
Collected	$675	$843	$952	$724	N/A	$3,193
Credits/Waivers/Liens	$172	$143	$350	$352	N/A	$1,016
Remaining Outstanding	$141	$256	$69	$63	N/A	$528
Cumulative Unpaid Balance	$141	$397	$465	$528	N/A	$528
Collection Rate	68%	68%	69%	64%	N/A	67%

Continues>

FIGURE 2-CONTINUES

Summary of Collections and New Debt from Fees and Fines in Counties Studied, 2013–2017

Cumulative unpaid balances (net of waivers/credits) in thousands of dollars by fiscal year

	2013	2014	2015	2016	2017	
New Mexico						**4-Year Total**
Socorro County						
Assessed	$289	$281	$231	$207	N/A	$1,008
Collected	$156	$155	$140	$119	N/A	$569
Credits/Waivers/Liens	$105	$112	$102	$88	N/A	$406
Remaining Outstanding	$29	$14	-$10	$0	N/A	$33
Cumulative Unpaid Balance	$29	$43	$33	$33	N/A	$33
Collection Rate	54%	55%	60%	58%	N/A	56%
Texas						**5-Year Total**
El Paso County						
Assessed	$34,690	$34,568	$34,364	$31,272	$14,109	$149,003
Collected	$22,497	$19,075	$19,844	$19,083	$8,132	$88,631
Credits/Waivers/Liens	$11,267	$12,602	$10,587	$7,970	$3,532	$45,958
Remaining Outstanding	$926	$2,890	$3,933	$4,220	$2,445	$14,414
Cumulative Unpaid Balance	$926	$3,816	$7,749	$11,969	$14,414	$14,414
Collection Rate	65%	55%	58%	61%	58%	59%
Jim Hogg County						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	$206	$215	$196	$292	$237	$1,147
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
Marion County						
Assessed	N/A	N/A	N/A	N/A	N/A	N/A
Collected	$352	$287	$324	$394	$366	$1,722
Credits/Waivers/Liens	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding	N/A	N/A	N/A	N/A	N/A	N/A
Cumulative Unpaid Balance	N/A	N/A	N/A	N/A	N/A	N/A
Collection Rate	N/A	N/A	N/A	N/A	N/A	N/A
Travis County						
Assessed	$48,412	$51,563	$49,307	$41,497	$38,006	$228,784
Collected	$34,090	$36,619	$35,703	$29,164	$26,929	$162,505
Credits/Waivers/Liens	$11,882	$10,112	$9,827	$8,026	$8,694	$48,541
Remaining Outstanding	$2,440	$4,833	$3,777	$4,307	$2,382	$17,738
Cumulative Unpaid Balance	$2,440	$7,272	$11,049	$15,356	$17,738	$17,738
Collection Rate	70%	71%	72%	70%	71%	71%

FIGURE 3

Summary of Collections and New Debt from Fees and Fines in States Studied, 2012–2018

Thousands of dollars by fiscal year

	2012	2013	2014	2015	2016	2017	2018	
Florida								**7-Year Total**
Assessed	$489,689	$482,927	$461,447	$453,718	$484,594	$427,737	$441,829	$3,241,942
Collected	$158,353	$153,664	$158,921	$181,877	$182,065	$167,865	$172,217	$1,174,960
Credits/ Waivers/Liens	$144,993	$131,850	$90,252	$134,769	$164,812	$123,622	$141,872	$932,170
Remaining Outstanding	$186,343	$197,413	$212,275	$137,073	$137,717	$136,250	$127,740	$1,134,812
Cumulative Unpaid Balance	$186,343	$383,757	$596,032	$733,104	$870,821	$1,007,071	$1,134,812	$1,134,812
Collection Rate	32%	32%	34%	40%	38%	39%	39%	36%
New Mexico								**5-Year Total**
Assessed	$17,855	$23,806	$24,445	$23,699	$23,344	N/A	N/A	$113,149
Collected	$9,196	$14,474	$15,036	$14,521	$13,431	N/A	N/A	$66,659
Credits/ Waivers/Liens	$2,558	$5,398	$6,347	$6,420	$6,760	N/A	N/A	$27,483
Remaining Outstanding	$6,101	$3,933	$3,062	$2,759	$3,152	N/A	N/A	$19,007
Cumulative Unpaid Balance	$6,101	$10,034	$13,096	$15,855	$19,007	N/A	N/A	$19,007
Collection Rate	52%	61%	62%	61%	58%	N/A	N/A	59%
Texas								**7-Year Total**
Assessed	$1,142,695	$965,942	$932,339	$808,289	$786,583	$824,876	$769,166	$6,229,890
Collected	$585,584	$602,778	$581,181	$526,207	$525,762	$509,393	$480,884	$3,811,790
Credits/ Waivers/Liens	$384,010	$246,049	$236,683	$194,202	$205,294	$205,974	$204,143	$1,676,355
Remaining Outstanding	$173,101	$117,115	$114,475	$87,880	$55,527	$109,509	$84,139	$741,746
Cumulative Unpaid Balance	$173,101	$290,216	$404,691	$492,572	$548,098	$657,607	$741,746	$741,746
Collection Rate	51%	62%	62%	65%	67%	62%	63%	61%

Additional Research Needed

More research is needed to determine the many costs of imposing and collecting criminal fees and fines. The network of courts and criminal justice agencies involved in levying, processing, and collecting fees and fines is vast, and the full scope of practices and costs is not fully understood. Public personnel involved include judges, court clerks, and administrators; prosecutors and public defenders; police and sheriffs; and parole and probation officers. In some jurisdictions, this network includes DMV staff who process driver's license suspensions, state tax agency personnel who process requests to deduct amounts owed from tax refunds, police and sheriffs who make arrests for failure to pay or for driving with a suspended license, and correctional officers who incarcerate those with outstanding debt. In some places, this network also includes businesses, such as private collection agencies or private probation services. Despite numerous contacts, including visits, phone calls, and emailed surveys, much of the cost of this network remains for future and more intensive research to determine.

Further, juvenile justice, noncriminal traffic infractions, and restitution were beyond the scope of this analysis, though the costs of all three are considerable.

- The juvenile justice system operates separately from the adult criminal system. But it mirrors the adult system in certain respects, often including the imposition of considerable fees and fines. The authors did not include the juvenile justice system in this study.

- Traffic violations vary from state to state in terms of the range of penalties imposed and whether common types are regarded as infractions or criminal misdemeanors (or worse, felonies). For example, in Texas even seemingly minor "moving violations" that occur while a driver is operating a vehicle are classified by state law as misdemeanors, while this is not the case in Florida and New Mexico. In its analysis, this report focuses on criminal fees and fines imposed in misdemeanor cases in 10 local jurisdictions and both misdemeanor and felony cases statewide for Florida, New Mexico, and Texas. It does not include fees and fines associated with noncriminal traffic infractions.

- Restitution amounts imposed by the courts as recompense to crime victims are also not considered in this report.

- Finally, the authors did not attempt to quantify massive costs associated with collateral consequences for individuals, families, and communities faced with significant fee and fine charges they cannot afford to pay. Loss of income to those who are incarcerated or who lose their license, attendant loss of future earning potential and tax revenue, costs to families and communities disproportionately affected, and other costs were beyond this study's scope.

The costs of collection estimated by this study are therefore lower (and perhaps significantly so) than the full and true costs. Further study of the full costs of collection will help states, counties, and municipalities better understand the inefficiency of relying on fees and fines to generate revenue.

Cost Shifting Hides Some Costs of Debt Collection

Significant hidden costs are not reflected in court and other public safety budgets because of a tangled web of costs, functions, revenues, and records among state, county, and municipal governments. For example, if you commit a traffic infraction or misdemeanor in Socorro County, New Mexico, the sheriff's deputy who tickets or arrests you is paid by the county. The judge who hears your case in the municipal court is paid by the city, the attorney who prosecutes your case is paid by the district, and the lawyer who serves as your public defender — if you're entitled to one — is paid by the state.[78] This cost shifting across levels of government makes it difficult to quantify the total cost of enforcing fees and fines. It also complicates the task of understanding the incentives to impose fees in the first place.

While criminal fines and certain fees may appear as revenue sources in state budgets (often indistinct from noncriminal fee revenue), much of the cost of enforcing and collecting these fees is borne by counties and municipalities. Even when the costs are shouldered by the states, they are stretched across multiple agencies, making them difficult to aggregate.

These different jurisdictions may fund their justice systems using a combination of tax revenue, "fees for service," and money from state and federal programs, leading to webs of intergovernmental charges.

In some cases, cost shifting has led to conflicts between states and cities. For example, in Austin, Texas, the mayor accused the state of creating an unfunded mandate by requiring the city to collect fees without providing funding adequate to cover the cost of collections.[79] The typical speeding ticket in the city carried $103 in fees, $76 of which went to the state.[80]

Often, cost shifting takes place between municipalities and counties, further obscuring the costs of collecting fees and fines. For example, when municipal courts in Austin impose jail time for failure to pay fees and fines,

Consequences of Fees and Fines

>> **Criminal justice debt** creates a downward spiral of collateral consequences for those who cannot afford fee and fine payments. Shanetra Roach, a defendant in Austin, told the Brennan Center in 2018 that she received a speeding ticket in 2004. Her failure to pay triggered a driver's license surcharge of $250 per year for three years. When she could not afford these payments, her driver's license was suspended. In the 14 years since, she has been arrested three times, all on warrants derived from her inability to pay the initial ticket. The debt has grown to $1,800 in driver's license surcharge fees, and she is doing community service to satisfy $1,200 in outstanding court costs. This debt has prevented her from getting jobs that she is well qualified for. "It's a monkey on a person's back," she said. "It's pushing people further and further into a hole."[84]

>> **Some penalties** for failure to pay debts are imposed by statute, while others are imposed at the discretion of a judge or even a court clerk.[85] Common penalties include bench warrants, license suspension, disenfranchisement, and incarceration, and can result in lower credit scores, fueling a cycle that impedes reentry.

- **Bench warrants.** Bench warrants authorize an arrest. The arrest often occurs when the defendant encounters law enforcement in an unrelated incident, most commonly a traffic stop. The issuance of a bench warrant may trigger an additional fee that is added to the defendant's criminal justice debt.

- **License suspension.** In 43 states, driver's license suspensions are authorized or mandated for failure to pay.[86] License suspension can make finding or keeping a job hard, sometimes impossible. Driving on a suspended license can lead to additional fees and fines, along with incarceration.

- **Disenfranchisement.** In many states, disenfranchisement can be imposed on a discretionary basis or can even be a requirement of the criminal justice system. Thirty states continue to disenfranchise voters on the basis of wealth by requiring payment of all legal financial obligations for voting rights restoration, according to a new report from the Campaign Legal Center and the Civil Rights Clinic at Georgetown University Law Center.[87] This is effectively a modern-day poll tax, despite the 24th Amendment's promise of the right to vote without such a tax.[88]

- **Incarceration.** In almost all 50 states, a formerly incarcerated person may be reincarcerated if he or she is found to be willfully delinquent in payments. A 2016 report by the *Atlantic* found that "the determination of whether an individual is 'willfully' trying to make payments is very much up to judges; some judges decide that a former prisoner's inability to get a job can constitute a lack of willful attempts to pay fees and fines — resulting in them ending up back in jail and facing even more fines."[89] This often leads to disparate outcomes for those charged with the same offense in different counties, or even in different courtrooms in the same courthouse.

- **Lower credit scores.** Criminal justice debt can also damage credit, impairing an individual's ability to obtain a loan or a mortgage or to secure housing. Additionally, such debt on a credit report can provide employers a backdoor means of learning whether an applicant has a criminal history. And wage and tax garnishment can discourage individuals from participating in legitimate employment, pushing them toward the underground economy.[90]

defendants are confined in a Travis County facility.[81] Austin reimburses the county for jail costs but does not report those costs to the state office charged with compiling data on the costs of fee and fine compliance.[82]

The disconnect between the government agencies that benefit from fees and fines and those that bear the costs of enforcement is widened when people are jailed for failure to pay. Counties pay 85 percent of local jail costs, and costs per inmate can range from $55 to $180 per day.[83] This can create a cost spiral: As states prod courts to impose fees because of the revenue they generate, they shift significant collection costs to counties. In turn, counties ask courts to fund more of their operations through additional fees to offset the costs of collecting the fees the state imposed.

IV. Key Variations Among Jurisdictions

This section examines key variations in collections practices and demographics among the 10 jurisdictions studied. Appendix A provides a detailed fiscal analysis for criminal fees and fines imposed by misdemeanor courts in each of the 10 jurisdictions.

A. Collections Practices

This study covers 10 counties in three states: Florida, New Mexico, and Texas. Figure 4 summarizes the range of collections practices used in each of these states, the available alternatives to payment, and how the ability to pay fees and fines is determined.

To enforce payment of fees and fines, nonpayment carries an escalating series of penalties in most counties. These practices can carry high costs for defendants and can also have profound effects on the amount of net revenue collected in each county. For example:

- While the full costs of collecting criminal fees and fines could not be determined, documented collection costs are significantly higher in counties where courts jail for nonpayment than in counties where courts do not. Although Florida courts do not jail for failure to pay, they do jail many who are arrested for driving on a suspended license, which may be a consequence of failing to pay fees and fines. Counties studied in New Mexico and Texas, where courts jail for nonpayment, had lower collection rates — and higher collection costs — than counties studied in Florida, although Florida also imposes counterproductive license suspensions that likely do not improve collections and result in costly jailing for driving with a suspended license.

- Statewide warrant roundups occur in Texas and New Mexico but not in Florida. These warrant roundups are a partnership between state and local law enforcement aimed at clearing uncollected debt for low-level offenses. They usually involve a public information campaign regarding old warrants and checkpoints where law enforcement personnel run people's license plates and IDs to check for outstanding warrants.

In theory, defendants in each county in this analysis have the same alternatives to payment. In practice, there is wide variation both between and within states in how often these alternatives are offered to defendants. In most jurisdictions, decisions regarding waivers, community service credits, incarceration for nonpayment, and tailored determinations based on ability to pay are left to the discretion of individual judges.

FIGURE 4

Collections Practices Across Jurisdictions

	TEXAS	FLORIDA	NEW MEXICO
Enforcement			
Referrals to Private Collection Agencies	Yes	Yes	Yes*
License Suspensions for Failure to Pay	Yes	Yes	No
Vehicle Registration Holds for Failure to Pay	Yes	No	No
Arrest Warrants Issued for Failure to Pay	Yes	No	Yes
Arrest Warrants Issued for Failure to Appear	Yes	Yes	Yes
Statewide Warrant Roundup Program	Yes	No	Yes
Collections Courts	No	No	No
Online Payment Options	Yes	Yes	Yes
Wage Garnishment for Restitution	No	Yes	Yes
Bank Account Garnishment for Restitution	Yes	Yes	Yes
Property Liens for Restitution	Yes	Yes	Yes
Alternatives to Payment			
Jail Credits	Yes	Yes	Yes
Community Service	Yes	Yes	Yes
Waivers for Fines and Fees	Yes	Yes	Yes
Payment Plans/ Installment Payments	Yes	Yes	Yes
Ability to Pay			
Ability-to-Pay Hearings Before Issuing Warrants	Yes	N/A	Yes*
Ability-to-Pay Determinations at Sentencing	Yes	Yes	Yes*

* Practices occur in some, but not all, courts or counties.

Source: New Mexico Criminal Code; Florida Criminal Code; Texas Penal Code.

FIGURE 5

Variations in Demographics, 2016

	TEXAS				NEW MEXICO			FLORIDA		
	Travis	El Paso	Jim Hogg	Marion	Bernalillo	Santa Fe	Socorro	Leon	Miami-Dade	Madison
Demographics										
Population	1,176,584	834,825	5,262	10,140	674,855	147,514	17,098	285,890	2,702,602	18,518
Population Density (per sq. mi.)	1,188	824	5	27	581	77	3	429	1,423	27
Poverty Rate	12.2%	22.7%	27.9%	22.6%	16.2%	14.0%	25.4%	19.0%	18.2%	31.9%
Median Income	$68,350	$43,244	$31,403	$36,938	$50,386	$57,945	$34,008	$49,941	$46,338	$31,816
Unemployment Rate	3.2%	4.9%	9.6%	7.0%	5.8%	5.2%	7.3%	4.5%	5.1%	5.2%
Percentage of White (not Hispanic or Latino)	49%	12%	6%	71%	39%	43%	35%	57%	14%	54%
Percentage of Black or African American	8%	3%	0%	24%	3%	1%	0%	31%	18%	39%
Percentage of Hispanic or Latino (of any race)	34%	82%	94%	4%	50%	51%	50%	6%	67%	5%
Collections										
Assessments Per Capita	$32.30	$12.82	N/A	N/A	$6	$8	$12	$4	$4	$14
Collections Per Capita	$22.89	$7.78	$45	$36	$3	$5	$7	$3	$3	$9
Collection Rate	71%	61%	N/A	N/A	45%	64%	58%	75%	79%	68%

Sources: U.S. Census Bureau (2013–2017 ACS 5-year estimates, 2016 SAIPE); Bureau of Labor Statistics; Florida Court Clerks & Comptrollers; New Mexico Judicial Information Division; Texas Collection Improvement Program; Texas Office of Court Administration; Brennan Center calculations.

B. Demographics

The jurisdictions in this analysis represent a wide range of racial, ethnic, political, and economic diversity. A summary of the demographics of each county is shown in figure 5. These demographic differences highlight how the system of fines and fees plays out differently across communities. These are some results comparing 2016 data across our target counties:

- Collections per capita were highest in Texas, where they averaged $28 per person across four target counties. In Florida and New Mexico, collections per capita were much lower, each at $5.[91]

- Assessments per capita were generally higher in rural areas. In Florida, rural Madison County had the state's highest assessments per capita. Likewise, in New Mexico, another rural county, Socorro, had the state's highest assessments per capita.[92] Unfortunately, the authors were unable to compare rural counties in Texas because assessment per capita data for rural counties was unavailable.

- In all target counties across the three states, rural counties had higher collections per capita than other counties. Governments in rural areas are frequently poorly funded and may be more reliant on revenue generated from fees and fines. This may lead rural governments to prioritize generating this fee and fine revenue. For example, in Texas, Jim Hogg and Marion Counties — both rural — had higher collections per capita than urban El Paso and Travis Counties. Compared with El Paso and Travis, Marion and Jim Hogg have a larger proportion of residents that face financial burdens, indicated by the counties' lower median household incomes. In Florida, Madison County also had the highest collections per capita in 2016. Those in rural Madison County face more financial burdens than their urban counterparts in Miami-Dade and Leon Counties. Finally, New Mexico's rural Socorro County had the highest collections per capita in 2016. As in rural counties in Texas and Florida, the residents of Socorro are more financially burdened than their counterparts in the urban Santa Fe and Bernalillo Counties, also both in New Mexico.

V. Statewide Analysis

This section provides a set of statewide analyses of criminal fees and fines imposed by both misdemeanor and felony courts in Texas, Florida, and New Mexico. Figure 6 shows statewide totals for assessments, waivers, and collections for misdemeanor and felony courts in each of the three states studied, as well as some enforcement costs in Texas and New Mexico, including jail costs.

A. Texas

Between 2012 and 2018, Texas criminal courts imposed as much as $8.7 billion in fees and fines, which is a projected estimate for a state in which most, but not all, courts report to the state.[93] In an average year, the amount of these legal financial obligations could total $47 for every person in the state — a significant source of revenue both for the state's general revenue fund and for local court programs.[94] Rather than raise this revenue from general taxes, however, Texas criminal courts assess criminal defendants in cases ranging from minor traffic infractions to serious felonies.

While Texas lacks statewide data, its Office of Court Administration collects information from more than 70 counties and most cities with a population greater than 100,000; this represents about 72 percent of Texas by population.[95] The data suggests that the average amount of fees and fines charged to each defendant between 2012 and 2018 was $268.[96] However, the size of criminal fees and fines imposed varies tremendously by court and type of charge. Additional findings include:

- In general, district courts, which handle mainly felony cases, assessed an average of $957 per defendant between 2012 and 2018. These courts, however, administered just 3 percent of the cases in which fees and fines were imposed.
- For county courts, which tend to handle serious misdemeanors, the average assessment per person was $606. The county courts administered 7 percent of fee and fine cases.
- For justice of the peace courts (justice courts) and municipal courts, which tend to handle traffic cases and some misdemeanors, the average fee and fine amount assessed were $222 and $213, respectively. Together these courts hear 90 percent of cases in which fees and fines were assessed.[97] Overwhelmingly, the criminal cases handled by justice and municipal courts are traffic violations — 87 percent in the justice courts and 78 percent in the municipal courts.[98]

FIGURE 6

Statewide Fiscal Analysis for Texas (2017), New Mexico (2016), and Florida (2017)

Thousands of dollars

	TEXAS	NEW MEXICO	FLORIDA
Total Fees and Fines Assessed			
Total Assessments	$763,058	$23,344	$427,737
Waivers	-$46,091	N/A	-$9,173
Community Service Credits	-$10,722	-$603	-$4,055
Jail Credits	-$140,476	-$4,358	-$403
Conversions to Liens	N/A	N/A	-$109,993
Other Credits	$0	-$1,800	$0
Total Adjustments	-$197,289	-$6,760	-$123,622
Net Amounts Owed	$565,769	$16,584	$304,115
Revenue Collected			
Collections	$465,391	$13,431	$167,865
Collections as a Percentage of Assessments	61%	58%	39%
Costs			
Collections Unit Costs	$16,314	N/A	N/A
Jail Costs	$134,170	$5,267	N/A
Total Costs	$150,484	$5,267	N/A
Costs as a Percentage of Collections	32%	39%	N/A
Revenue Minus Cost			
Net Gain	**$314,906**	**$8,164**	**N/A**

Source: New Mexico Judicial Information Division; Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 7

Assessments, Cases, and Types of Cases by Type of Court, 2012-2018

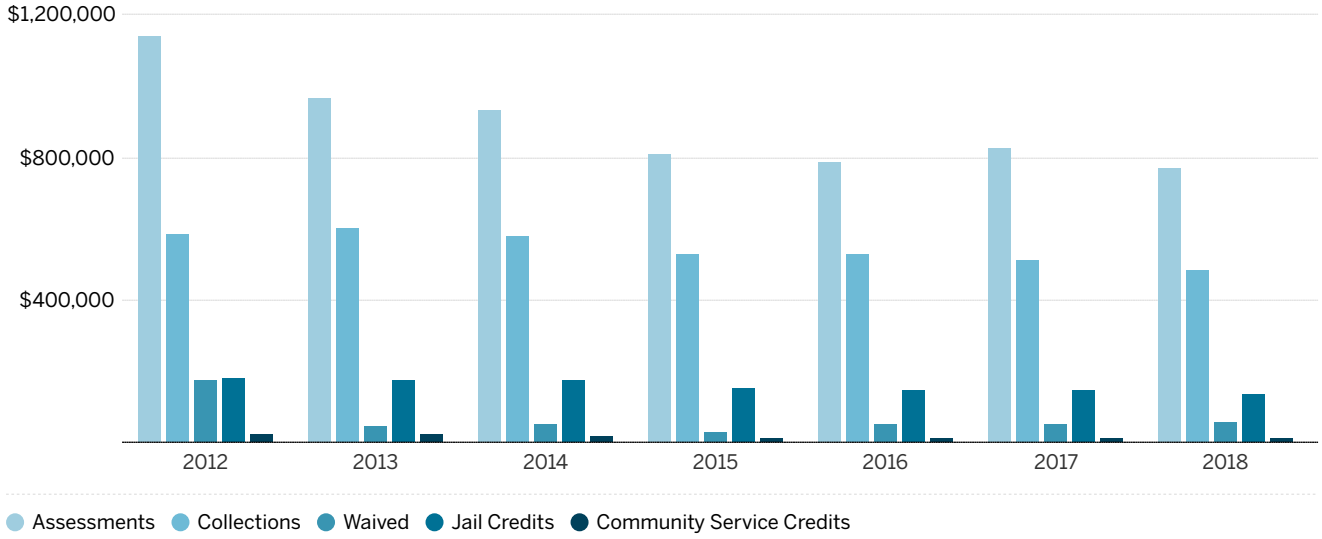
	AVERAGE ASSESSMENT	PERCENTAGE OF FEE/FINE CASES	COLLECTION RATE	MAIN TYPES OF CRIMINAL CASES
District Courts	$957	3%	33%	Serious Felonies
County Courts	$606	7%	49%	Serious Misdemeanors
Justice of the Peace Courts	$222	23%	82%	Traffic Cases
Municipal Courts	$213	67%	64%	Traffic Cases
All Courts	$268	100%	61%	-

Source: Texas Collection Improvement Program; Annual Statistical Report for the Texas Judiciary, Fiscal Year 2018.

FIGURE 8

Reported Texas Criminal Fee and Fine Assessments, Collections, Waivers, and Credits, 2012-2018

Thousands of dollars



Source: Texas Collection Improvement Program.

FIGURE 9

Average Texas Jail Credits and Cost of Incarceration, Associated with Jail Credits 2012–2017

	AVERAGE ANNUAL CREDITS	AVERAGE ANNUAL COST	PERCENTAGE OF TOTAL COST
District Courts	$5,129,365	$3,982,078	3%
County Courts	$37,811,999	$28,996,783	21%
Justice of the Peace Courts	$16,154,378	$13,443,971	10%
Municipal Courts	$109,324,473	$91,182,746	66%
Total	$168,420,216	$137,605,577	100%

Source: Texas Collection Improvement Program.

In an average year, Texas courts collect about 61 percent of the criminal fees and fines levied. That means 39 percent cannot be collected, and much of that will not ever be collected.

Between 2012 and 2018, Texas data indicates that 21 percent of fees and fines on average were credited.

- 14 percent of fees and fines was satisfied by time served in jail. This accounted for more than half of all amounts waived or credited.
- 6 percent was waived, usually for indigency or other hardship.
- 1 percent was satisfied by community service credits, usually given for some number of hours of work for a community nonprofit or other local organization.

Jail credits are an expensive proposition. For example, between 2012 and 2018, Texas criminal courts issued more than $1 billion in credits for jail time; this represents more than 10 million days of incarceration. Some of these credits were issued by courts to defendants already serving sentences for crimes. However, some credits were associated with jailing solely to satisfy outstanding court debts, a type of incarceration that serves no useful public safety purpose. Texas spent more than $825 million on these jail stays between 2012 and 2018, an average of more than $137 million a year.[99] There is no revenue associated with jail credits. For Texas courts and jurisdictions, jail credits only represent costs. For Texas courts reporting such costs, the average daily cost of jailing is $81.08.

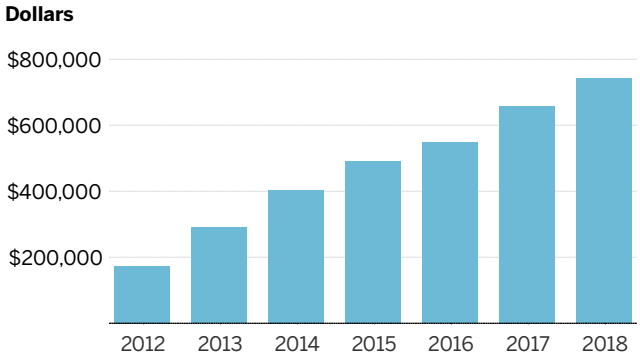
Not every case of jailing associated with the use of jail credits represents incarceration simply for the purpose of satisfying fees and fines; there may be other offenses involved beyond failure to pay. However, until recently, the use of both voluntary and involuntary jail stays to satisfy court debts was common. During the period studied, municipal courts, which handle traffic cases and low-level misdemeanors that do not typically involve jailing, granted the majority of jail credits statewide, suggesting that jail stays were used to satisfy fee and fine debt. In 2017 Texas passed legislation intended to limit involuntary jailing for nonpayment of fees and fines.[100] Data released by the Texas judiciary shows a decline in the number of people incarcerated for nonpayment from 523,059 in 2017 to 456,220 in 2018.[101] But this still represents the incarceration of nearly half a million people for inability to pay.

Significantly, despite the use of waivers and credits, there is also a growing balance of unpaid fee and fine debt in Texas. While there is no official accounting of total uncollected criminal fees and fines in the state, between 2012 and 2018 almost $742 million was not collected, credited, or waived, averaging $106 million in added debt per year. Without action by the Texas judiciary or legislature to remediate this debt, it will continue to grow.

One important consideration for the courts is that if fees and fines are not collected soon after they are imposed, the rate of collections falls to a comparative trickle, further highlighting that many of these debts are unlikely to be collected. For example, during 2016 courts took in 66 percent of their fee and fine collections in the first 30 days after imposition. After that, collections slowed to 5.5 percent in the next 30 days and continued to drop from there. This indicates that people who can pay these debts tend to pay them within the first 30 days; those who cannot will struggle to pay for a much longer period, and many older debts may never be paid.

FIGURE 10

Texas Growth of Uncollected Criminal Fees and Fines, 2012–2018



Source: Texas Collection Improvement Program.

FIGURE 11

Drop-Off in Collections Over Time in Texas, 2016

DAYS UNTIL COLLECTION	AMOUNT COLLECTED (IN MILLIONS)	PERCENTAGE COLLECTED
0 to 30 Days	$342.7	66%
31 to 60 Days	$285.6	6%
61 to 90 Days	$205.0	4%
91 to 120 Days	$160.8	3%
121 Days and Over	$115.6	22%

Source: Texas Collection Improvement Program.

Promising Reforms in Texas

>> **Over the past** several years, Texas has passed a series of reforms aimed at improving inefficient fee and fine collection practices that placed significant burdens on indigent defendants.

>> **Texas Senate Bill 1913** was passed in 2017 to alleviate criminal justice debt.[102] The law broadly requires judges to conduct ability-to-pay hearings, allows waivers or reductions of fees and fines, and offers alternatives to jail sentences.[103] This has led to a decline of 11.4 percent in arrest warrants, and data released in 2018 by the Texas Office of Court Administration shows a drop over a year in the number of people incarcerated for failure to pay fines from 523,059 to 456,220.[104]

>> **In 2019,** Texas built on Senate Bill 1913 and passed new legislation, Senate Bill 1637, to mitigate the burdens imposed on defendants facing unaffordable fees and fines.[105] The law changed the state's imposition and collection of fines and fees by requiring courts to administer ability-to-pay hearings upon notice to the court that defendants are unable to pay, though judges have the authority to waive the hearing if an inability to pay is already apparent.[106] If defendants are unable to pay, alternative options must be offered, including full or partial waivers of the fees and fines, deferred payment plans, or community service.[107] If community service is also shown to be an undue hardship (for reasons such as child-care responsibilities, health concerns, employment, or homelessness), then the fees and fines must be waived.[108] Under Senate Bill 1637, judges also have greater discretion to waive certain fees and are no longer required to issue warrants for failure to appear.[109] The bill came soon after a ruling by a federal judge in Texas in 2018 that it is unconstitutional to set bail without considering ability to pay.[110]

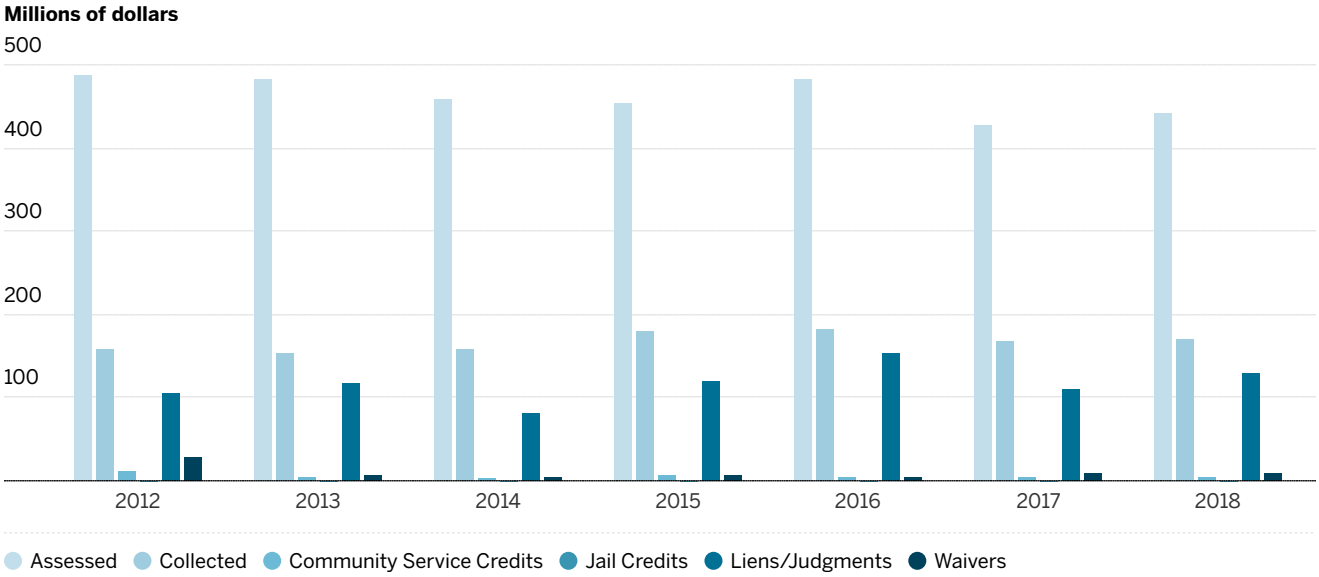
>> **Also in 2019,** lawmakers in Texas unanimously approved a bill to repeal the Driver Responsibility Program (DRP), limiting the practice of license suspensions for unpaid fines.[111] Under the DRP, which was enacted in 2003, drivers were penalized with hefty fines for traffic offenses ranging from speeding to driving without insurance, and if the surcharges were not paid within 105 days, their licenses were automatically suspended.[112] These fines recurred annually, and failure to pay or a failure to appear in court prevented drivers from renewing their licenses.[113] Some 1.8 million drivers with unpaid surcharges related to traffic violations have had their licenses suspended.[114]

>> **The DRP was created** to fund trauma centers in rural areas of the state that lacked access to emergency medical care due to underfunding.[115] However, most of the license suspensions under the DRP were not imposed for serious public safety violations, such as driving while intoxicated or speeding. Likewise, though the number of trauma centers in Texas has increased through DRP surcharges, less than 12 percent of the driving offenses generating these charges were of the type that send people to trauma centers.[116] In fact, the magnitude of license suspensions under the program has led to an increase in uninsured and unlicensed drivers.[117] Once the repeal of the DRP goes into effect, the decline in trauma center funding will be offset by an increase in minimum fines for traffic citations, from $30 to $50, and more than 1.5 million Texans will be eligible for license reinstatement.[118]

The full cost of collecting these debts is unknown, but it comes to at least 25 percent of revenue, based on incomplete reporting to the state, and an average of more than $120 million a year for incarceration of those with debt outstanding. The full cost is likely higher. Further, in 2015, the best recent year for compliance with cost-reporting requirements, Texas criminal courts spent $27.4 million in salaries, benefits, and other operating costs, and used 750 employees, for collection activities. Again, these costs understate what Texas spends on collection of criminal fees and fines. First, reporting is incomplete — many of the courts required to participate in data reporting for the state's Collection Improvement Program do not do so. Second, the program's reporting requirements cover only about 72 percent of the state's population. Third, these costs do not include expenses of other public employees involved in the collection of these debts (e.g., time spent by judges, public defenders, prosecutors, and other employees during court appearances; warrant service for nonpayment; and community corrections officers' time monitoring probationer and parolee compliance with fee and fine sanctions). Only with more complete reporting can the full cost to local, county, and state agencies be fully tallied.

FIGURE 12

Florida Criminal Fee and Fine Assessments, Collections, Waivers, and Credits, 2012–2018



Source: Annual Assessments and Collections Reports, Florida Court Clerks & Comptrollers Association.

B. Florida

Between 2012 and 2018, Florida criminal courts imposed $3.2 billion in fees and fines, an annual average of $22 for every person in the state.[119] This revenue is used to fund criminal justice and local court programs.[120] Rather than raise this revenue from taxes, Florida criminal courts assess these amounts on criminal defendants in cases ranging from traffic infractions to serious felonies. In fiscal year 2018 alone, these fees and fines totaled almost $442 million.[121]

In an average year, Florida courts collect only $168 million, or 36 percent of total criminal fees and fines assessed, meaning that nearly two-thirds, or $295 million, of court debts are simply not collected. On average, circuit courts collect just 27 percent of amounts assessed, while county courts collect 73 percent.

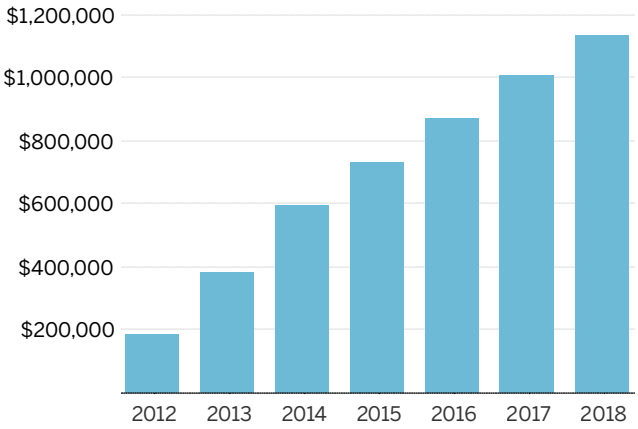
Florida courts appear to recognize that a significant portion of these debts cannot be collected. In fiscal year 2018, circuit courts treated 23 percent of criminal fees and fines assessed as "at risk" for collection because of indigency.[122] County courts considered 26 percent of assessments at risk for the same reason.[123]

However, courts only sparingly waive or offer credits against amounts owed. In the period studied, they waived just 2 percent of the total, credited 1 percent in exchange for community service, and credited less than 1 percent for jail time served. This totaled just $16 million a year on average.

By contrast, conversions to liens and civil judgments are used liberally by Florida courts. On average, 25 percent of fees and fines imposed are converted this way, even though Florida courts have low expectations for eventual payment. These civil conversions are used routinely by

FIGURE 13

Florida Growth of Uncollected Criminal Fees and Fines, 2012–2018



Source: Annual Assessments and Collections Reports, Florida Court Clerks & Comptrollers Association.

License Suspension Costs

>> **Forty-three states** use the threat of driver's license suspension to coerce the payment of amounts owed to courts.[127] Nationwide, more than 7 million people have had their driver's licenses suspended for failure to pay court or administrative debt, a number that could well be much higher because states do not uniformly report such data.[128] In Texas alone, 1.8 million people have had their driver's license suspended for failure to pay fines and fees.[129] In Florida, more than 1.1 million license suspension notices were issued in 2018, just for failure to pay court debts. As in most states, suspensions take place with no ability-to-pay determination, resulting in people losing their licenses with little opportunity to present their case.[130]

>> **Driver's license suspensions** impose a significant cost on those affected, as most Americans drive to work. Without a car, it's often hard to hold down a job. In a New Jersey study of suspended licenses, almost half of those affected lost their jobs and were unable to find another.[131] People face other hardships without a driver's license, including an inability to drive children to school or even to buy groceries. At a recent Texas Senate hearing on a surcharge program responsible for many driver's license suspensions for failure to pay, Sen. Don Huffines (R–Dallas) said the program led to a "permanent underclass" and split "society by those who can pay the fines and those who can't."[132]

>> **There are also significant costs** to state and local governments. Processing and executing license suspensions consumes staff time and other resources. Efforts to apprehend and punish those who drive without a valid license also impose a cost on police, courts, prosecutors, public defenders, and jails. While comprehensive data on these public costs is unavailable, examples in a few states suggest they may be substantial:

- In 2019, an Oregon legislative proposal to eliminate license suspension for failure to pay fines led the Oregon Department of Transportation to predict savings of almost $1 million by eliminating processing costs and the need to address drivers' questions about suspensions.[133]
- Colorado estimated its annual requirements for non-safety-related suspensions of driver's licenses under a new state code and found a cost of 18,646 man-hours to process and hold hearings involving 16,800 suspension cases — roughly nine full-time-equivalent employees.
- In Washington State, failure to pay a fine or appear in court on a moving violation currently results in driver's license suspension. In 2015 almost 38,000 cases of driving following such a suspension were prosecuted at a cost of $925 per case. More than 14,000 convictions were secured, many including jail time, at a net cost — less any fines revenue — of $182 per case. In total, the estimated cost to the state in 2015 alone was $37.5 million.[134] Additional fees imposed to offset these costs are expected to cover less than half the state's expenses: Washington forecasts revenue of $10.6 million in driver's license reinstatement fees and $4.7 million in hearing fees for 2019 through 2021.[135]

Reasons for Driver's License Suspension Notices in Florida (2018)

Delinquency on Child Support Payments	134,079
Failure to Pay Court Financial Obligations (Traffic, Misdemeanor, and Felony)	1,118,601
Other	387,446
Total Suspensions and Revocations	1,640,126

Source: Fines and Fees Justice Center.

circuit courts in felony cases, where they total 36 percent of assessed criminal fees and fines, and less so by county courts for misdemeanor cases, at 11 percent.

Besides indigency, another factor making criminal fees and fines difficult to collect is incarceration. In 2018 the circuit courts rated 55 percent of amounts imposed as at risk for collection purposes because the defendants were jailed or serving prison sentences.[124] The comparable figure for county courts was just 4.4 percent.[125] In total, for the factors the judiciary considers as impediments to collection, 86 percent of circuit court criminal assessments and 38 percent of county court assessments were rated "at risk" of non-collection in 2018.[126] In other words, of the $442 million assessed in 2018, two-thirds, or $295 million, was considered uncollectible by the courts.

With little use of waivers and credits, defendants in

Disenfranchisement in Florida

>> **In 2018, Florida voters** passed Amendment 4, a historic initiative restoring voting rights to the 1.4 million people in the state with past felony convictions.[136] Minorities, especially black and low-income people, were vastly overrepresented in this group. But in May 2019, Florida enacted a law requiring they pay all fees, fines, and restitution in order to be eligible to vote again.[137] The average income of the formerly incarcerated people who registered to vote between January and March of 2018 is nearly $15,000 below that of an average Florida voter.[138] Disenfranchisement for failure to pay court debts disproportionately removes the poor from voter rolls, depriving them of a voice in their government.

Florida face a growing balance of fee and fine debt. While the total amount of uncollected criminal fees and fines in the state is unknown, an average of more than $162 million a year was added to the balance between 2012 and 2018, for a total of more than $1.1 billion over the seven-year period. Without action by the Florida judiciary or legislature to remediate this debt, it almost certainly will continue to grow. While Florida courts appear to recognize that indigency poses a problem for collections, extremely low usage of indigency waivers and community service credits fuels spiraling uncollected court debt that serves neither the courts nor those held liable for unpaid amounts.

The cost to Florida of collecting criminal fees and fines is unknown. With no systematic collection and reporting of data, it is impossible to tally the costs for the courts, the law enforcement agencies that perform warrant service or enforcement of driver's license suspensions due to nonpayment, or probation and parole services that must remind their clients of payment requirements.

C. New Mexico

Between 2012 and 2016, New Mexico's district, magistrate, and metropolitan courts assessed an estimated $113 million in fees and fines. In an average year, this amounts to about $54 for every person in the state.[139] While data for county courts is unavailable, even this partial total is significant, coming to more than $23 million in 2016 alone.

- Magistrate courts, which handle mainly misdemeanor and traffic violations, assessed an average of $16,219,194 per year between 2012 and 2016. These courts handled, on average, 70 percent of the cases in which fees and fines were imposed.
- District courts are courts of general jurisdiction handling a wide range of cases. These courts assessed an average of $1,712,418 per year and administered 6 percent of fee and fine cases on average.
- The Bernalillo Metropolitan Court combines the county's municipal and magistrate courts in a single court serving New Mexico's most populous county. The court assessed an average of $4,698,242 per year and administered 24 percent of the state's fee and fine cases on average.

The authors observed the following yearly averages for 2012 through 2016:

- Of the $1.7 million assessed in district courts, $326,462 was converted into credits and only $298,000 was collected, leaving $1,088,111 uncollected.
- Magistrate courts had the highest amount of fee and fine activity. Of the approximately $16.2 million in fees and fines imposed, $3,332,494 in credits were awarded and $10,609,152 in fees and fines were collected, leaving $2,277,549 uncollected.
- The Bernalillo Metropolitan Court awarded $1,837,685 million in credits and collected $2,424,789 million in fees and fines, leaving $435,768 uncollected out of $4.7 million assessed.

On average, credits as a percentage of assessments was rather low for district and magistrate courts — at 19 percent and 21 percent, respectively — compared with 39 percent for the Bernalillo Metropolitan Court.

Jail credit was the most common type of credit applied by the magistrate and metropolitan courts. From 2012 to 2016, magistrate courts applied a total of $16.6 million credits, of which $11.3 million, or 68 percent, were jail credits. In the metropolitan court, there were $9.2 million credits, of which $6.5 million, or 71 percent, were jail credits. The amount of jail credits issued in district courts was relatively low from 2012 to 2016, totaling $9,709. Across the district, magistrate, and metropolitan courts from 2012 to 2016, a total of $17,835,136 in jail credits was issued. This corresponds to 300,502 days in jail — which cost a total of $21,814,692.[140]

Although credits and waivers are supposed to reduce the amount of debt owed, considerable amounts of uncollected fees and fines still accumulate each year. Figure 16 shows that uncollected fees and fines have piled up

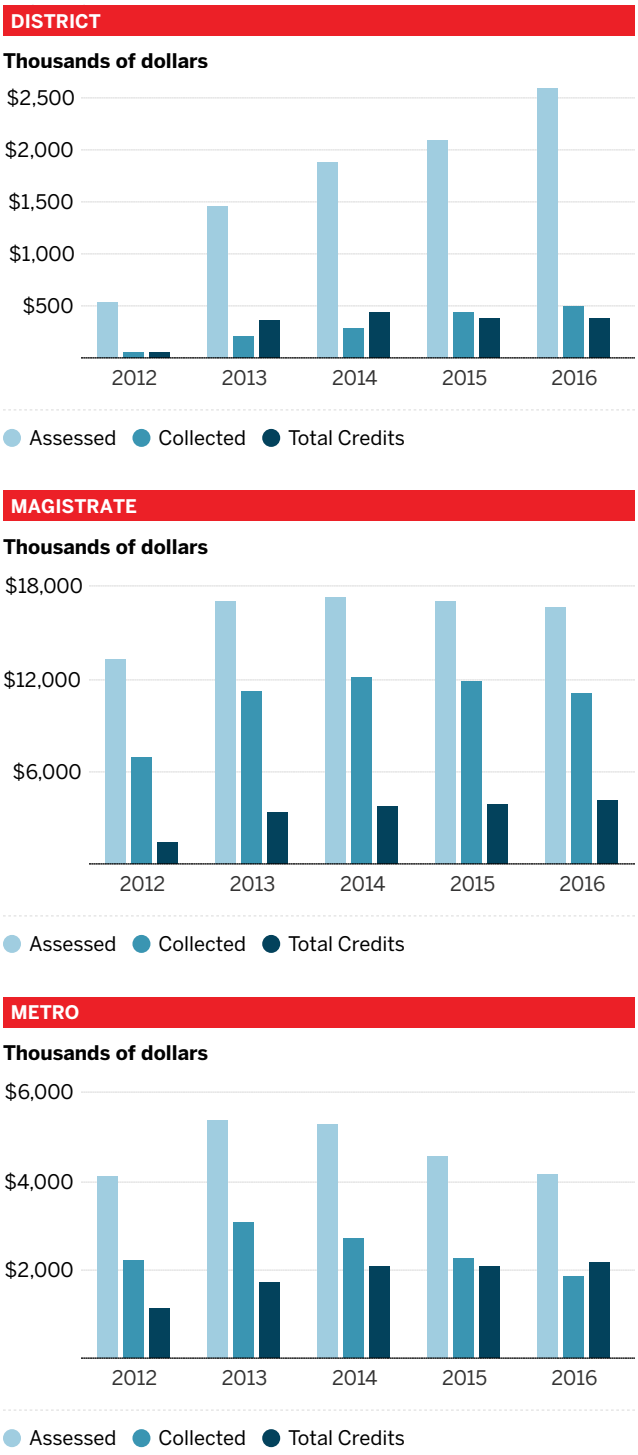
Reforms in New Mexico

>> **Bernalillo Metropolitan Court** has hosted "Safe Surrender" events for the past several years, inviting people to work with a judge to address their outstanding bench warrants and avoid the risk of arrest.[145] Prosecutors and defense attorneys are available at these one-day events for individual meetings ahead of appearances before a judge. New Mexico courts have promoted this opportunity — including through an active Twitter account — to encourage people to voluntarily appear and resolve pending issues.[146] The program does not provide a formal amnesty, but judges promise to resolve or at least offer new opportunities to settle amounts owed for every case.[147] People who appear on a traffic citation are almost guaranteed to have their cases resolved, while those appearing on warrants for public safety violations and other types of misdemeanors can expect to have an opportunity to set a future court date without being arrested.[148]

>> **In 2010, New Mexico defendants** spent a median of 147 days in jail while awaiting trial.[149] Judges often set the bail high to keep defendants in custody and avoid the risk of releasing dangerous people — though wealthier defendants or those using bail bond companies could still bail out.[150] In 2016 New Mexico voters approved Constitutional Amendment 1 to protect the right to pretrial release for non-dangerous defendants.[151] The new bail measures prohibit judges from jailing defendants simply because of financial inability to pay bail, and they allow a defendant to file a motion to request release on nonmonetary conditions.[152] Although the amendment also grants judges broad authority to deny bail to defendants charged with a felony who are deemed dangerous or flight risks, its provisions for reform are an important step in allowing future litigation against unfair monetary bail practices.[153] And though prosecutors have pushed back against the reforms, the New Mexico Supreme Court is committed to continuing on the path to bail reform and noted that crime rates appear to have dropped since the measure was implemented.[154]

FIGURE 14

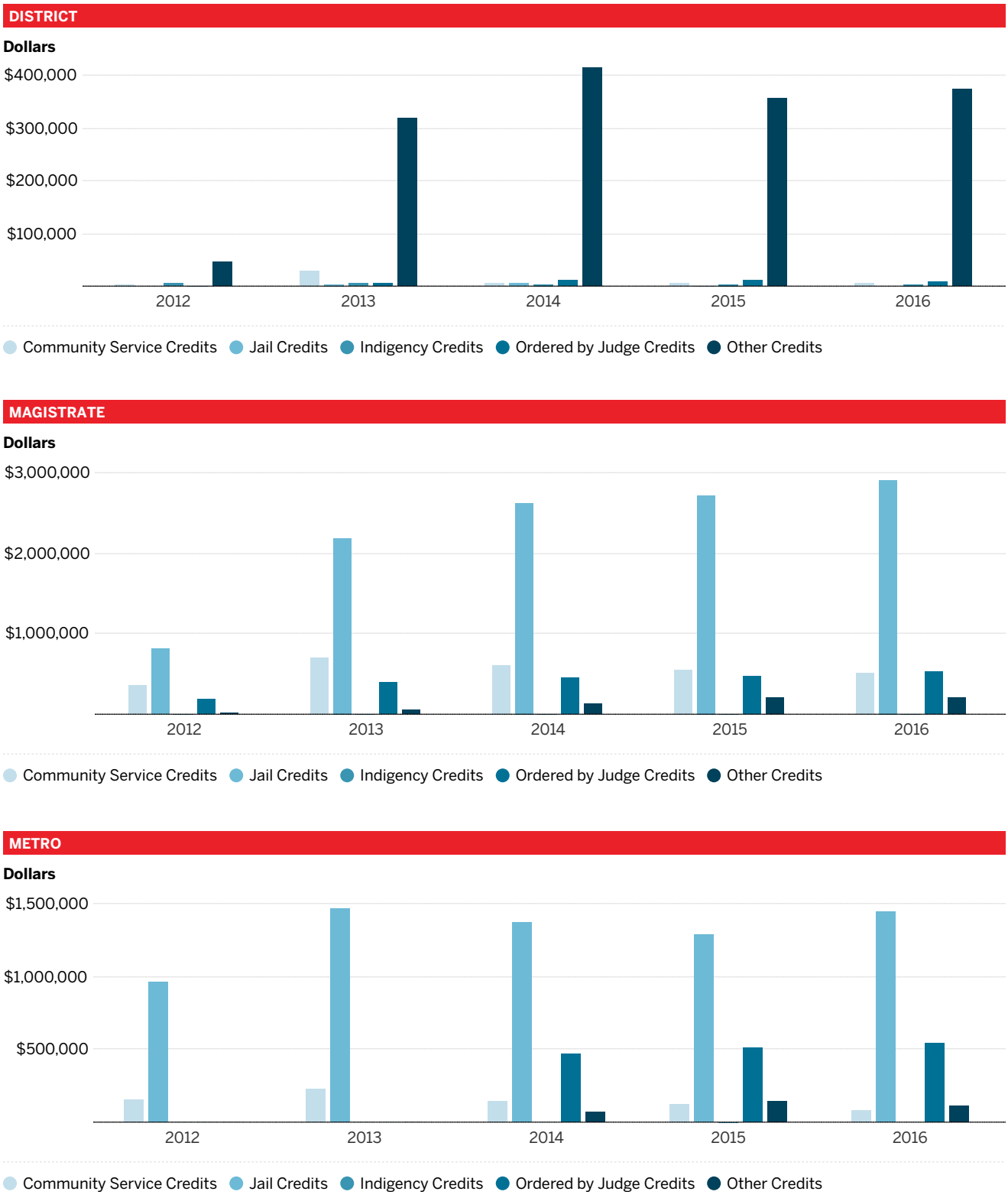
New Mexico Criminal Fee and Fine Assessments, Collections, and Credits, 2012–2016



Source: New Mexico Judicial Information Division.

FIGURE 15

Comparison of Credits in New Mexico, 2012–2016

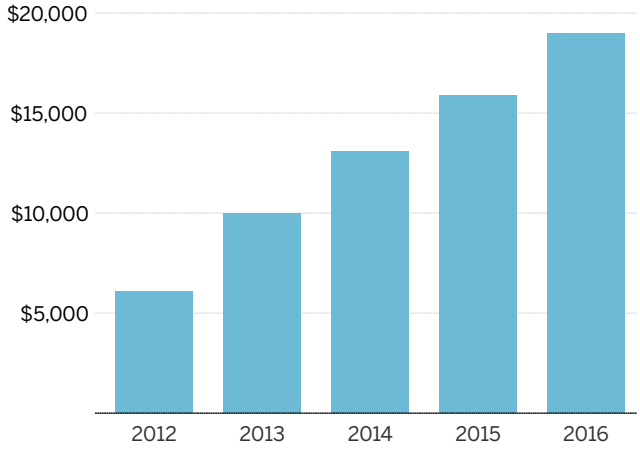


Source: New Mexico Judicial Information Division.

FIGURE 16

New Mexico Growth of Uncollected Fees and Fines, 2012–2016

Thousands of dollars



Source: New Mexico Judicial Information Division.

each year in New Mexico since 2012. The average increase was almost $4 million per year, with approximately $19 million uncollected in total.

The accumulation of uncollected debt is a problem for New Mexico. The rate of uncollected debt in counties throughout New Mexico correlates with the poverty rate within each county. This relationship underscores how fees and fines tend to be a serious problem for the communities that can least afford them. (The authors could not perform a similar analysis for Florida and Texas because of lack of available data. In Texas, revenue data for rural and less-populated counties is unavailable, which would bias the results. Likewise, for Florida, the authors did not have access to sufficient data at the county level.)

Not only do fees and fines appear to be an inefficient way to collect revenue, but they are also poorly targeted and perpetuate social and economic disparities for people who cannot afford to pay them. For example, Hidalgo, Luna, and Quay Counties have relatively high poverty rates as well as rather high amounts of uncollected fee and fine debt per capita between 2012 and 2016.[141]

- Hidalgo County, with a poverty rate of 24.8 percent, has $78.45 of uncollected fees and fines per person.[142]
- Luna County, with a poverty rate of 28.3 percent, has $47.96 of uncollected fees and fines per person.[143]
- Finally, Quay County, with a poverty rate of 23.9 percent, has $28.05 of uncollected fees and fines per person.[144]

By comparison, New Mexico has a statewide poverty rate of 19 percent and uncollected fees and fines of $9.30 per person.

VI. Conclusion

In recent years, states and municipalities have come to rely on criminal fees and fines, shifting the burden for funding courts, the criminal justice system — and, sometimes, general government operations — from the general public to defendants. But these fees and fines undermine rehabilitation and public safety by saddling people with debt just as they are reentering society. This report shows that they also fail at their primary objective: raising revenue.

The ten counties across Florida, New Mexico, and Texas studied here show that criminal fees and fines are an unreliable and inefficient revenue stream. They frequently burden the members of society who are least able to pay, and the costs of collection are many times greater than those of general taxation, effectively canceling out much of the revenue. Particularly costly is the practice of jailing defendants solely for their failure — or inability — to pay these debts.

While it is clear that fees and fines don't deliver, the full costs to jurisdictions certainly exceed those estimated here. Activities involved with fees and fines are spread across agencies and levels of government, and none of the agencies or jurisdictions studied here track the full scope of work involved in imposing and enforcing them. Only with a thorough accounting can jurisdictions appreciate just how inefficient fines and fees are as a source of revenue.

Appendix A: Fiscal Impact Analysis of Individual Jurisdictions

A. New Mexico

New Mexico has a population of 2 million, concentrated mostly in urban areas around Albuquerque, Las Cruces, Rio Rancho, and Santa Fe.[155] The state faces severe economic challenges, with a poverty rate of 20 percent, the second highest in the country.[156] A Republican governor was succeeded by a Democrat in early 2019, and New Mexico leans Democratic in national elections. The state's population is approximately 49 percent Hispanic or Latino, 37 percent white non-Hispanic, 10 percent Native American, and 2 percent black.[157]

Every New Mexico county except Bernalillo has three levels of criminal courts.[158] Municipal courts deal mostly with traffic violations, magistrate courts handle low-level misdemeanors and small claims such as debt collection and landlord-tenant disputes, and district courts oversee serious misdemeanors and felonies. In Bernalillo, the municipal and magistrate courts are combined into a single metropolitan court. Most fee and fine activity occurs in magistrate and municipal courts, but data for municipal courts is limited. Therefore, this report focuses on magistrate courts in Santa Fe and Socorro Counties and the Metropolitan Court in Bernalillo County.

When someone is unable to pay assessed fees and fines in New Mexico, a bench warrant is issued for that person's arrest and an additional $100 bench warrant fee is added to the court debts. This also triggers an automatic driver's license suspension. To reinstate the license, the defendant must pay $30 to the DMV. This means that, for each warrant issued by the court, most defendants actually owe $130.

Figure 17 provides an example of the fees and fines imposed on defendants in New Mexico.

FIGURE 17

Fees and Fines in New Mexico

Fines	Amount
Motor Vehicle Code Violation	Up to $300
Petty Misdemeanor	Up to $500
Misdemeanor	Up to $1,000
Universal Fees	
Domestic Violence Offender Treatment Fee	$5
Crime Victims Reparations Fee	$50
Magistrate Court Automation Fee	$10
Traffic Safety Fee	$3
Judicial Education Fee	$3
Jury and Witness Fee	$5
Brain Injury Services Fee	$5
Case-Specific Fees	
DUI Chemical Testing Fee	$85
DUI Community Program Fee	$75
Controlled Substances Testing Fee	$75
Public Defender Fee	$10
Mediation Fee	$5
Pre-prosecution Diversion Program Fee	$85/month
Misdemeanor Probation Fee	$15/month

Source: New Mexico Criminal Code.

1. Bernalillo County

Bernalillo County is home to New Mexico's largest city, Albuquerque. With nearly 675,000 residents, it is also the most populous county in the state.[159] Bernalillo's local government contains a mix of Democrats and

FIGURE 18

Bernalillo County Criminal Fee and Fine Fiscal Analysis, 2016

Thousands of dollars

Revenue Collected	
Assessments	$4,170
Credits	$2,193
Collections	$1,862
Percentage of Fees and Fines Collected	45%
Costs	
In-Court Costs	$40
Jail Costs	$2,138
Total Costs	$2,178
Cost as a Percentage of Collections	117%
Net Gain (+)/Loss (-)	**-$316**

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

Republicans, but like the state as a whole, the county leans Democratic in national elections.[160] Albuquerque was established as a Spanish colonial outpost, and the county's history is reflected in its demographics: It is 50 percent Hispanic or Latino, 39 percent white non-Hispanic, 4 percent Native American, and 3 percent black.[161] While Bernalillo is home to some of New Mexico's wealthiest citizens, mostly in northeastern Albuquerque and the adjacent suburbs, it also has some of its poorest. The poverty rate in the county is 19 percent, roughly equal to that of the state overall.[162]

Two courts with criminal jurisdiction operate in Bernalillo County — the Bernalillo Metropolitan Court and the Second Judicial District Court. The metropolitan court, which handles traffic and misdemeanor cases, generates the greatest fee and fine volume and is the focus of this analysis. The district court handles felonies.[163]

While the docket changes each day, custody and traffic arraignments occur daily. Once someone is arrested, court rules require arraignment within 24 hours.[164] After the judge arrives, each court appearance typically lasts between two and five minutes. Fees and fines are rarely mentioned, and no indigence determinations were observed in the courtroom. After appearing before the judge, the defendant meets with a clerk who explains the fee and fine obligations, how to convert them to community service hours, the date by which they must be paid, and any other requirements. One judge told the authors that access to community service conversions has greatly reduced the amount of paperwork for clerks and defendants and has reduced instances of people failing to pay.

If a person fails to make payments, the court issues a warrant. When that person next comes into contact with the justice system, as in a traffic stop, he or she is taken into custody. Typically, arraignment occurs the day following the arrest, at which point a jail credit is applied to this person's fees and fines, the outstanding amount is waived, and he or she is released.

Figure 18 shows the results of the Brennan Center's fiscal analysis for traffic and misdemeanor criminal fees and fines imposed by the Bernalillo Metropolitan Court for fiscal year 2016. The $2.2 million cost estimate for 2016 is conservative because of the difficulty of determining some collections and related law enforcement costs (e.g., for warrant service, arrest, and processing).

Key findings:

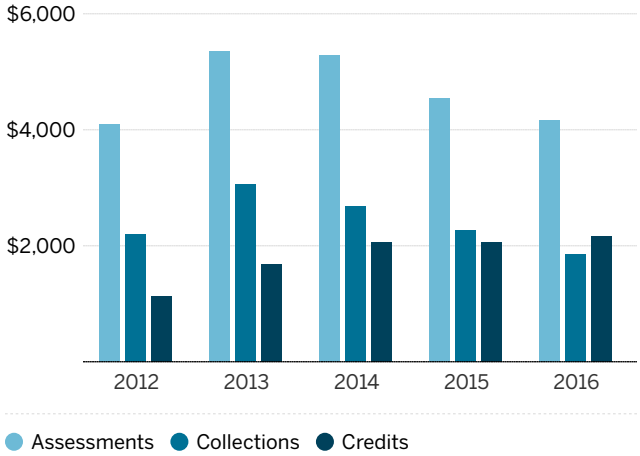
- Court and jail costs for imposing and collecting fees and fines from Bernalillo Metropolitan Court were $2.178 million in 2016, or 117 percent of what ultimately was collected.[165]

- In 2016 the Bernalillo Metropolitan Court assessed more than $4.1 million in criminal fees and fines. Nearly $2.2 million was written off, either through waivers or credits for time served in jail or community service. Of the remainder, close to $1.9 million

FIGURE 19

Bernalillo County Assessments, Collections, and Credits, 2012–2016

Thousands of dollars

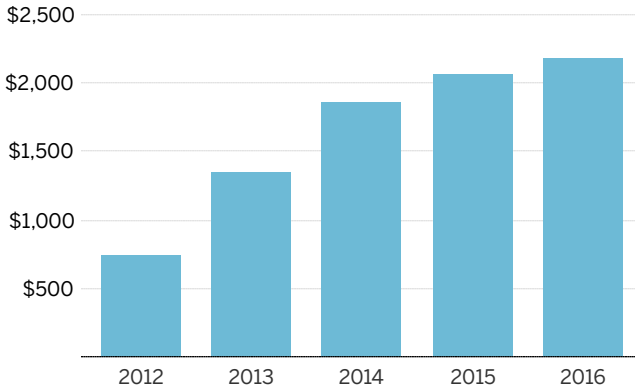


Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 20

Bernalillo County Growth of Uncollected Criminal Fees and Fines, 2012–2016

Thousands of dollars



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

was ultimately collected. However, more than $2.1 million was spent on collections activity; therefore, the collected amount reflects a net loss of $316,000.

- The authors estimate that approximately $40,000 was spent on the portion of court proceedings dealing with fees and fines.

- Bernalillo County expended an estimated $2.138 million for jailing due to unpaid fees and fines in 2016. In addition to being costly, jailing is an example of cost shifting from the state-funded Bernalillo Metropolitan Court to local county taxpayers.

Figure 19 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall short of the amounts assessed; on average, 9 percent of the fees and fines charged to defendants went uncollected and not credited or waived between 2012 and 2016. Further:

- Fee and fine assessments and revenues have fallen for Bernalillo County in recent years.

- Assessments have fallen faster than revenue, meaning that a larger portion of fees and fines are being collected each year.

Figure 20 depicts how uncollected amounts in Bernalillo County have grown since 2012.

New Mexico courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 20 shows only the amount of uncollected debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable.

Uncollected amounts rose between 2012 and 2016, although the rate of growth of uncollected criminal fees and fines appears to have slowed during this period. Much of this court-imposed debt will never be paid and will continue to pose challenges for the courts because of its uncollectibility. Tracking these uncollectible amounts imposes costs on the courts for information technology and personnel. More significantly, enforcing warrants and scheduling repeated hearings for failure to pay takes up valuable law enforcement and court time that would be better spent on serious criminal matters.

2. Santa Fe County

Bordering Bernalillo County is Santa Fe County, which contains New Mexico's capital city. It is smaller than Bernalillo in area, and its population of just under 150,000 makes it the third-most-populous county in New Mexico.[166] Like Bernalillo, its electorate leans Democratic.[167] The county is about 51 percent Hispanic or Latino, 43 percent white non-Hispanic, 2 percent Native American, and 1 percent black.[168] The area around the state capitol attracts many professional workers, and the county is wealthier than the rest of the state. The poverty rate is 14 percent, the lowest of the three New Mexico counties included in this report.[169]

FIGURE 21

Santa Fe County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	$1,138
Credits	$352
Collections	$724
Percentage of Fees and Fines Collected	64%
Costs	
In-Court Costs	$54
Jail Costs	$239
Total Costs	$294
Cost as a Percentage of Collections	41%
Net Gain (+)/Loss (-)	**$430**

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

Santa Fe County is home to the New Mexico Supreme Court, a court of appeals, a district court, a magistrate court, a municipal court, and a probate court. The district court has general jurisdiction over civil and criminal matters, and the magistrate court handles various low-level civil matters.

Arraignments of defendants held in custody take place via video feed to the county jail. One court employee told the Brennan Center in 2018 that seven people were in custody that day solely because of failure to pay fees and fines.

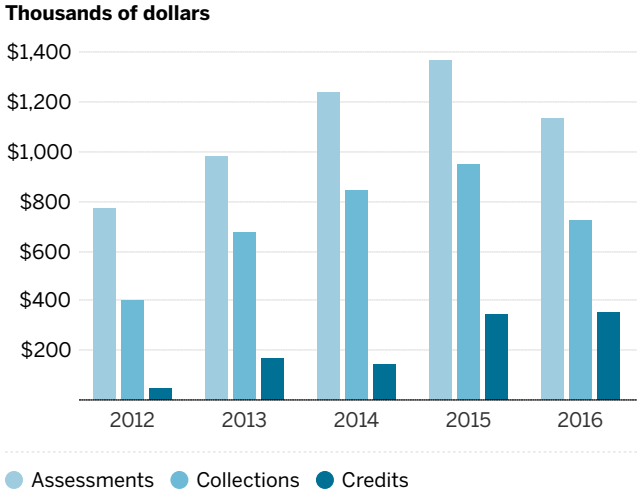
Defendants are able to pay fees and fines in three ways. They can pay the amount in full or through a payment plan, perform community service and reduce their debt at a rate equal to the federal minimum wage ($7.25 per hour), or serve jail time to earn a credit of $58 per day (equal to eight hours of the federal minimum wage).

Jail time is considered only if a person fails to make payments or complete community service. The court then sends a notice to appear for a hearing. If the person misses the hearing, the court will issue a warrant for arrest for failure to pay. One judge estimated that about half of the people who receive a notification return to court and the other half are taken into custody.[170]

Figure 21 represents the Brennan Center's fiscal analysis for misdemeanor criminal fees and fines for Santa Fe County

FIGURE 22

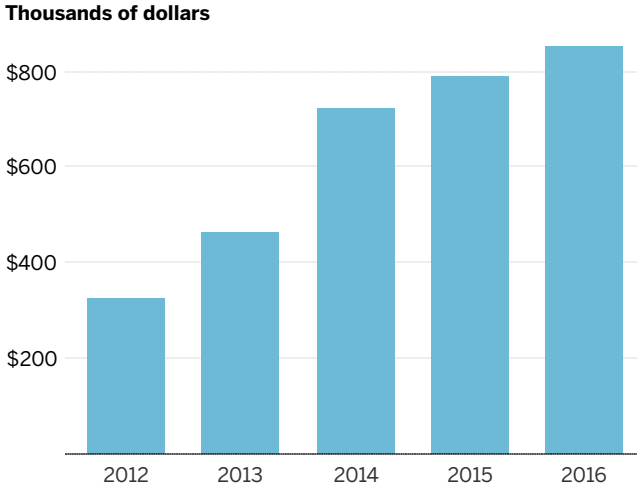
Santa Fe County Assessments, Credits, and Collections, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 23

Santa Fe County Growth of Uncollected Criminal Fees and Fines, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

for fiscal year 2016. The total collection cost estimate of $294,000 is a conservative one because of difficulties in determining some collections and related law enforcement costs (e.g., for warrant service, arrests, and processing).

Key findings:

- In 2016, the Santa Fe Magistrate Court assessed about $1.1 million in criminal fees and fines, of which $352,000 was written off through credits, such as community service and jail. Of the remaining $786,000, $724,000 was ultimately collected.
- At least $294,000 was spent on collections activity in court and jailing alone. The collected amount therefore reflects at most $430,000 in net gain, 38 percent of what was originally assessed.

Figure 22 shows how criminal fees and fines imposed, collected, and credited have changed over time in Santa Fe County.

As shown, criminal fees and fines collected do not approach the amounts assessed. On average, from 2012 to 2016, 17 percent went uncollected and was not credited or waived. Further:

- While fee and fine assessments and collections increased through 2015, both were lower in 2016, highlighting the unreliability of criminal fees and fines as a source of funding.
- Santa Fe County offered a lower amount of credits to defendants than Bernalillo County.

Figure 23 depicts how uncollected amounts in Santa Fe County have significantly grown since 2012.

Reliable estimates of the total amount of criminal fees and fines that remain uncollected are unavailable. Therefore, figure 23 shows only the amount of debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable: uncollected amounts rose by $528,367 between 2012 and 2016. Much of this court-imposed debt will never be paid.

3. Socorro County

With a population of just over 17,000, Socorro County is the smallest New Mexico county in this analysis.[171] Just over half of the residents in this rural county live in the town of Socorro, 75 miles south of Albuquerque. Much like the rest of the state, Socorro County leans Democratic in county and state elections.[172] The county's population is approximately 50 percent Hispanic or Latino, 35 percent white non-Hispanic, 10 percent Native American, and 1 percent black.[173] With a poverty rate of 25 percent, Socorro is one of the poorest counties in New Mexico and the poorest in this analysis.[174]

The staff of the Socorro Magistrate Court consists of one elected judge and five clerks. The judge was previously the county sheriff, a position he first held at the age of 25. While he has an extensive background in law enforcement, he does not have a law degree. During busi-

FIGURE 24

Socorro County Criminal Fee and Fine Fiscal Analysis, 2016

Thousands of dollars

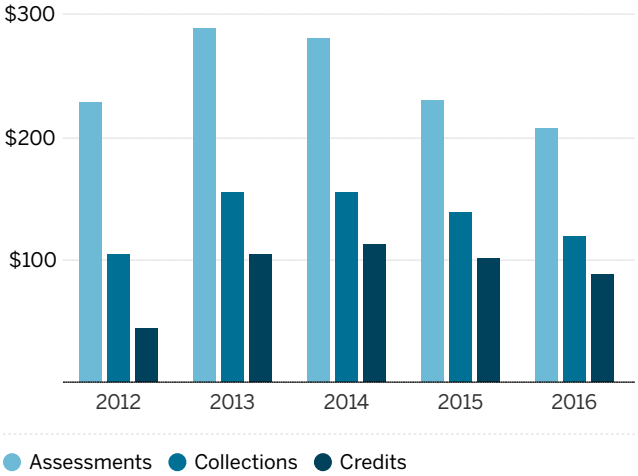
Revenue Collected	
Assessments	$207
Credits	$88
Collections	$119
Percentage of Fees and Fines Collected	58%
Costs	
In-Court Costs	$14
Jail Costs	$81
Total Costs	$96
Cost as a Percentage of Collections	80%
Net Gain (+)/Loss (-)	**$24**

Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 25

Socorro County Assessments, Credits, and Collections, 2012–2016

Thousands of dollars



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

ness hours, three clerks work at windows in the lobby. In the mornings, particularly before court starts at 9:00 a.m., the clerks are kept busy by defendants checking in and people making payments. When asked, one clerk said that her entire job revolves around court costs.

According to the clerks, nearly all defendants enter into payment plans to pay their fees and fines. It is rare for a defendant to pay in full at the time of assessment. The standard payment is $50 per month, although clerks have the discretion to lower this amount. Still, the clerks estimate that 60 to 70 percent of people miss payments and are issued bench warrants.

In the courtroom on a day when a Brennan Center staff member was present, the magistrate judge asked each defendant how much he or she would be able to pay. Some defendants expressed an inability to pay anything at all. Many stated that they were unemployed and had no income, and others said they earned no more than $40 per month. Still, community service was not initially offered as an option to most defendants. Rather, they were entered into payment plans, with some payments as low as $10 per month. The judge repeatedly instructed defendants to contact the court if they would be unable to make a payment deadline.

Community service was granted only to those defendants who specifically requested it. Of 24 cases observed in which costs were assessed, only three defendants did so. Two requests were granted and the third was denied, though that defendant's monthly payment was reduced. When conversions to community service were granted, community service hours were credited at the federal minimum wage of $7.25 per hour.

If a defendant misses a payment for a third time, the magistrate judge may charge the defendant with failure to comply and hold that person in jail. Jail time is credited against court fees at $58 per day. As the former county sheriff, the current judge is aware of the high daily cost of jailing and said that the county would "rather make money than lose money." Still, in the week observed by a Brennan Center staffer, he sentenced two defendants to jail time for "willfully refus[ing] to pay court costs or perform community service." One of them was sentenced to 10 days.

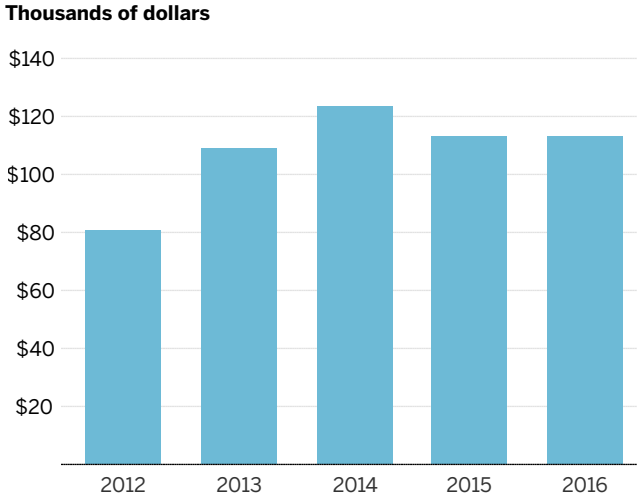
Two days per week are dedicated to bench trials and case management, meaning that state prosecutors, public defenders, and law enforcement officers appear in court. Two public defenders handle the bulk of these dockets. One public defender expressed concern about the length of time that cases "languish on" until defendants are able to pay off their debt and ultimately close their cases. She estimated that 10 percent of her clients complete community service and that 30 to 40 percent serve jail time for court costs.

For his part, the magistrate judge is under no illusions about the role of court costs in his courtroom. "This is a money-making machine," he said. "We collect $20,000 per month, easy. The state just wants to make money. It's tough on [the defendants], man."

Figure 24 represents the Brennan Center's fiscal analysis of misdemeanor criminal fees and fines for Socorro County for fiscal year 2016. The cost estimate of $96,000

FIGURE 26

Socorro County Growth of Uncollected Criminal Fees and Fines, 2012–2016



Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

is conservative, as many potential costs of collections and law enforcement could not be tallied.

Key findings:

- In 2016, the Socorro Magistrate Court assessed about $207,000 in criminal fees and fines.
- The magistrate court wrote off $88,000 through either waivers or credit given for jail time or community service. Virtually all of the remainder, $119,000, was collected.
- At least $96,000 was spent on jail costs and collections activity in court, so the collected amount reflects at most a net gain of $24,000, 11 percent of what was originally assessed.

Figure 25 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall far short of the amounts assessed. On average for 2012 to 2016, 9 percent went uncollected and was not waived or credited. Figure 26 depicts how uncollected amounts in Socorro County have grown significantly since 2012.

There are no reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 26 shows only the amount of debt that has accumulated since 2012. This represents just a small subset of the total not collected. Even so, these amounts are considerable.

- Uncollected amounts rose by about $33,000 between 2012 and 2016. Much of this court-imposed debt will never be paid.
- Growing balances of uncollected court debt strain the courts as well as local law enforcement. In fact, an officer in Socorro's police department told the authors that they stopped processing many warrants requested by the courts for nonpayment.[175]

B. Florida

Florida has a population of more than 20 million and a poverty rate of about 14 percent.[176] With more than 90 percent of its population living in cities, it is the most urban state included in this report. Florida has leaned slightly Republican in the most recent national and state elections.[177] Its population is approximately 54 percent white non-Hispanic, 26 percent Hispanic or Latino, and 17 percent black.[178]

COURT FEES AS FUNDING

Between 1996 and 2007, the Florida legislature added more than 20 new categories of legal financial obligations, including surcharges and fees, many of which were increased after their introduction.[179] Florida courts have increasingly come to rely on fees to finance core government functions and have removed exemptions for indigence.[180] This is still felt today: across the state, court clerks' offices are funded primarily through fines and fees.[181] As most court fees are statutorily imposed, Florida judges have little to no discretion to waive them, even for indigent defendants.

The shift toward reliance on court fee collections came with a 1998 amendment to the Florida Constitution. The amendment absolved counties and municipalities of fiscal responsibility for clerks of court, requiring that clerks draw on revenue collected from court-imposed fees.[182] In effect, this amendment made the fiscal viability of Florida clerks dependent on their ability to collect fees and fines. As one circuit court public defender described it, "Our clerks are underfunded, and this is their blood. It's pretty much their source of funding, so they're in a bind."[183] In fact, collections rates are baked in to their performance evaluations. When a county clerk of court drops below a specified collections rate, the office must submit a corrective action plan to the clerk of state and file it with the state legislature.[184]

This funding scheme has a distorting effect on court operations. In the observed counties, clerks of court reported employing substantial numbers of full-time staff whose sole mandate is to collect court-imposed fees.

One former public defender noted that clerks are not the only parties interested in maintaining this system, which she described as "a little unholy." Pieces of the collections pie also go to courts, public defenders, prosecutors, and even state general revenue.[185]

COLLECTIONS AGENCIES

Florida law requires clerks to refer court debts to collectors if not fully paid within 90 days. These firms are legally permitted to add surcharges of up to 40 percent.[186] One circuit public defender candidly described the collections agencies: "They're nasty as hell," he said. "They scare our clients to death."[187]

ABILITY TO PAY

The Florida Supreme Court has held that due process requires a judicial ability-to-pay determination when the state seeks to enforce collection and the defendant is subject to loss of liberty or property.[188] However, this principle is not always — and likely rarely — satisfied. Because an ability-to-pay inquiry is not required at the point when fines are imposed, clerks need to make these determinations during enforcement of collections. To compound the problem, this due process right may be lost with the use of collections agencies.[189] What is puzzling is that the vast majority of Floridians with court debts qualify for indigent defense. Presumably, the finding of indigency would indicate an inability to pay — yet this is not what happens for many.

Florida law authorizes, but does not require, judges to convert court debts to community service hours in cases of indigency.[190] These are typically credited at $7.25 per hour, the federal minimum wage. It is reported that clerks in some counties fail to notify defendants of this option or impose an additional processing fee for granting it.[191]

DRIVER'S LICENSE SUSPENSIONS

Driver's license suspension for failure to pay criminal fines and fees is a legally permitted and common practice in Florida, and one that is mandatory in noncriminal traffic cases.[192] In fact, in 2018 more than 1.1 million driver's license suspension notices were issued simply because of Floridians failing to meet court financial obligations.[193] Across Florida, more than 71 percent of driver's license suspension notices in 2018 were for failing to pay a court debt.[194] Licenses are often suspended automatically when cases are transferred to private collectors and are not restored until debts are paid in full. Suspensions disproportionately impact low-income defendants who are not able to pay their fees and fines upon assessment. In most cases, defendants are not afforded an ability-to-pay hearing prior to having their driver's license suspended.[195] While the language of the state law on license suspensions for criminal court debt permits discretion, it is the policy of the clerks of court to read it as mandatory, making suspensions automatic with failure to pay.[196]

Reinstating a driver's license, by contrast, is not automatic. A person must obtain an affidavit from the clerk stating that payments have been satisfied or converted to community service. The affidavit then has to be taken to the DMV as proof of payment to obtain reinstatement. The DMV also imposes reinstatement fees that can reportedly add hundreds of dollars in additional costs.[197] Further, many people must work with multiple agencies to reinstate a license, most commonly the court clerk, DMV, and Department of Revenue.[198]

Some counties, notably Leon County, now hold driver's license reinstatement clinics. By assembling all relevant agencies, attorneys, and judges in one place, such clinics aim to streamline the process of regaining valid driving licenses. Leon County's first clinic attracted more than 1,200 attendees. Most, however, were unable to have their licenses reinstated, primarily because of the number of agencies involved in the process and the money required.[199]

FIGURE 27

Fees and Fines in Florida

Fines	Amount
Second-Degree or Noncriminal Misdemeanor	$500
First-Degree Misdemeanor	$1,000
Third-Degree Felony	$5,000
First- or Second-Degree Felony	$10,000
Life Felony	$15,000
Drug Trafficking	$25,000–$750,000
Universal Fees	
Misdemeanor & Violation Court Cost Fee	$20
Court Cost Clearing Trust Fund	$3
Crimes Compensation Trust Fund	$50
Fine and Forfeiture Fund	$60
Operating Trust Fund of the Department of Law Enforcement	$100
Crime Stoppers Program Fee	$20
Costs Incurred by Law Enforcement	$50
Misdemeanor Prosecution Fee	$50
Felony Prosecution Fee	$100
Case-Specific Fees	
Determination of Indigent Status Fee	$50
Cost of Representation Fee	$50
Traffic Offense Surcharge	5%
Teen Court Cost Fee	$3

Source: Florida Criminal Code.

FIGURE 28

Leon County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

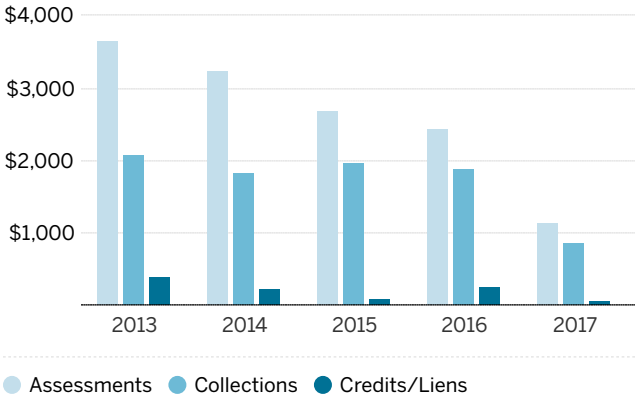
Revenue Collected	
Assessments	$1,148
Credits/Liens	$64
Collections	$858
Percentage of Fees and Fines Collected	75%
Costs	
In-Court Costs	$31
Cost as a Percentage of Collections	4%
Net Gain (+)/Loss (-)	**$827**

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

FIGURE 29

Leon County Assessments, Credits, and Collections, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

1. Leon County

Leon County sits on the Florida Panhandle and is home to Tallahassee, the state capital and a midsize city. The county population of approximately 285,000 is 57 percent white non-Hispanic, 31 percent black, and 6.1 percent Hispanic or Latino.[200] Approximately 19 percent of Leon County residents live in poverty, a rate slightly higher than for Florida overall.[201] The county has leaned Democratic in recent national and local elections.[202]

This research focused specifically on the Leon County Court, where five judges currently sit. The county court handles misdemeanor and criminal traffic cases. Like many lower-level criminal courts, the vast majority of the court's docket is composed of case management and first appearances.

Within the large court clerk payments office, clerks working from six windows report spending approximately half of their workday on matters related to court fees. A separate cashiering department with a large, full-time staff manages court fee collections.

For a week of proceedings observed by a Brennan Center staffer, a single judge presided over all criminal cases. Judges have no discretion to reduce statutorily imposed fees. Clerks stressed this point, and the observed judge emphasized his lack of discretion and his inability to defy or influence the legislature. Public defenders may request that non-mandatory fines be reduced or dismissed, but such motions appear to be rare.

For individuals offered plea deals, an assessment of court fees is included in the offer. In a few observed cases, this amount was found to be miscalculated and was later corrected by a clerk. For each plea entered, the judge asked how the defendant would like to pay the fees, often expressing sympathy as to the high amount. The overwhelming majority of defendants requested a payment plan. As of October 2018, 92 percent of defendants owing court fees in Leon County had entered into payment plans. The default payment for a criminal traffic offense is $50 per month. There is also a one-time fee to create a payment plan of $25, with a lower monthly alternative option.[203]

Clerks draft all initial payment plans. The judge informed nearly every defendant that the clerk would be flexible to accommodate their ability to pay, often explaining that there was no expectation that they forgo necessities in order to make payments, particularly if they have children. According to the court manager, "Since we're a self-funded office, it gets a little hairy. We have to collect the money, but we also want to be mindful of what our customers are able to do without raking them over the coals." Florida law requires clerks to offer "reasonable" payment plans, with a presumption that 2 percent of a person's monthly income is a reasonable amount. However, it is not clear that clerks abide by the standard, and the judge privately conceded that he does not conduct formal ability-to-pay hearings.[204]

Judges do have the discretion to grant community service in lieu of payments. In each case in which community service was granted, the defendant was given 30 to 45 days to complete the hours of service. Defendants who enter into payment plans also can later request to convert outstanding debts to community service. Clerks typically grant these requests. Still, waivers and community service credits are almost never used in Leon County. Overall, they satisfied just 3.3 percent of all assessments from 2013 to 2017.

The observed judge extensively warned defendants of the risks of missing payments or failing to complete community service hours, including the possibility of driver's license suspension and the addition of surcharges imposed by collections agencies — what he described in open court as a "parade of horribles." Judges have discretion to convert fines and fees to civil judgments, which prevents license suspensions and referrals to collection agencies. The judge exercised this discretion with some indigent defendants. Civil judgments accrue interest, however, and may harm an individual's credit score.

Figure 28 highlights the results of the Brennan Center's fiscal analysis for criminal misdemeanor and traffic criminal fees and fines for Leon County for fiscal year 2017. It includes a conservative estimate of the in-court costs of imposing and collecting fees and fines. It does not include costs associated with license suspension or other time spent on enforcement of fees and fines, because of the lack of available data. License suspension is the primary means of enforcement for unpaid fines and fees in Florida.

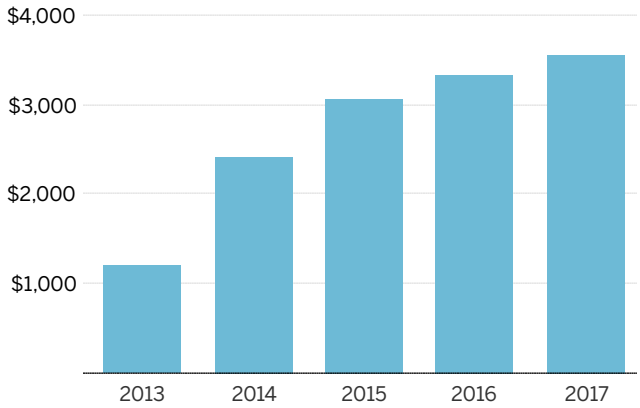
Key findings:

- In 2017, Leon County Court assessed about $1,148,000 in criminal fees and fines, of which $64,000 was waived either due to community service ($44,000) or for other reasons ($20,000). Of the remaining $1,084,000, $858,000 was ultimately collected. At least $31,000 was spent on collections activity, so the collected amount represents $827,000 in net gain, 72 percent of what was assessed.

FIGURE 30

Leon County Growth of Uncollected Criminal Fees and Fines, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

- In-court costs of collection were relatively low but included a fair amount of license suspensions. Seventeen percent of the 163 cases observed involved license suspension. The observed costs of license suspension fall primarily on defendants and law enforcement, rather than on the court, though the authors were unable to estimate costs for enforcement incurred outside the courtroom.

Figure 29 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fell far short of the amounts assessed. About 25 percent, on average, of the fees and fines charged to defendants from 2013 to 2017 went uncollected in Leon County. Assessments have dropped rapidly since 2013, perhaps putting even more pressure on court clerks. While collections held relatively steady through 2016, they dropped off dramatically in 2017.

Figure 30 depicts how uncollected amounts in Leon County have grown significantly since 2013.

Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 30 shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable. Despite rising collection rates, the balance of uncollected amounts rose by almost $3.6 million between 2013 and 2017. Much of this court-imposed debt will never be paid.

2. Miami-Dade County

Miami-Dade County is a large county at the southeastern tip of Florida. With a population of close to 2.7 million, it is the most populous county in Florida, and it contains Miami, the largest city included in this analysis. A diverse area with a large Cuban expatriate population, it is 67 percent Hispanic or Latino, 18 percent black, and 14 percent white non-Hispanic.[205] Miami-Dade County leans Democratic in national elections but elects both Democrats and Republicans at the state and local levels.[206] The county has a poverty rate of approximately 18 percent, just above that of the state as a whole.[207]

The county's court divisions include civil court, criminal court, juvenile services, probate and mental health court, small claims court, and traffic court. The Miami-Dade Criminal Court is composed of circuit criminal and county criminal courts. Generally, the county criminal court handles most misdemeanor and criminal traffic cases, while the circuit criminal court deals with felonies.

In traffic court proceedings observed by Brennan Center staff, the judge's goal was to move defendants through the process quickly so they could get back to work. Most defendants in court for criminal traffic arraignments were

there due to suspended licenses. In cases for which the defendant showed up, the judge often reduced a citation to a lesser offense. The judge was clearly concerned about the well-being of the defendants, at one point saying, "Knock it down to a parking ticket so he doesn't lose his license and his livelihood."[208]

The chief assistant public defender said that public defenders handle a vast number of license suspension cases, but Miami-Dade has no data on how many of these cases stem from failure to pay. Defendants who are not directed to a pretrial diversion program must pay a $50 public defender application fee if they need a public defender, as well as a $50 cost of defense fee.[209]

On the walls of Miami-Dade courtrooms are posters that detail the fines that a defendant might incur. For a DUI offense, there is a $500 fine plus a $622.25 surcharge. Criminal traffic fines vary according to the offense, with a $358 fine for driving without a valid license, a $476.25 fine for reckless driving, and a $411.25 fine for leaving the scene of an accident.

One judge explained various options defendants have regarding their traffic citations. For example, a defendant with many tickets or infractions may enter the Drive Legal Program, which, according to the judge, "helps close out cases, converts fines to community service, and is a good program for those with a financial situation." To participate, defendants must pay a program fee of $100. Another option is a pretrial diversion program, in which defendants pay a $200 fee for a four-hour class in order to dismiss a ticket. During the observed court sessions, most traffic arraignments resulted in pretrial diversion or admission to the Drive Legal Program. Miami-Dade courthouse officials are conscious of the financial burden that fees and fines impose on defendants and have sought to address the issue. Still, waivers and community service credits are almost never used in the county courts, satisfying less than 1 percent of all fees and fines assessed.

Figure 31 highlights the results of the Brennan Center's fiscal analysis for criminal fees and fines for Miami-Dade County for fiscal year 2017. The estimated in-court costs of imposing and collecting fees and fines are a small part of the total costs of fee and fine collection. Because license suspension is the primary means of enforcement for unpaid fines and fees in Florida, large costs of collection — such as DMV employee time, law enforcement time spent enforcing warrants, and costs of incarceration for those caught driving on a suspended license — were not measurable for this report and are not reflected in the costs listed in figure 31 or the discussion below.

Key findings:

- In 2017, the Miami-Dade County Court assessed more than $10 million in criminal fees and fines. About $12,000 was waived for community service. Just over $7.9 million was collected. At least $267,000 was spent on collections activity, so the collected amount represents $7.7 million in net gain, 79 percent of what was assessed.
- In-court costs of collection were relatively low but included a large proportion of license suspensions — 37 percent of the 49 cases observed. The costs of license suspension fall not just on the court but also on defendants, the DMV, and law enforcement.

FIGURE 31

Miami-Dade County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	$10,143
Credits/Liens	$12
Collections	$7,978
Percentage of Fees and Fines Collected	79%
Costs	
In-Court Costs	$267
Cost as a Percentage of Collections	3%
Net Gain (+)/Loss (-)	**$7,711**

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

Figure 32 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, criminal fees and fines collected fall short of the amounts assessed. A large portion (34 percent, on average) of the fees and fines charged to defendants went uncollected each year between 2013 and 2017. Further, while assessments have dropped steadily since 2013, collections have not. In fact, collection rates have increased dramatically, from 58 percent in 2013 to 79 percent in 2017.

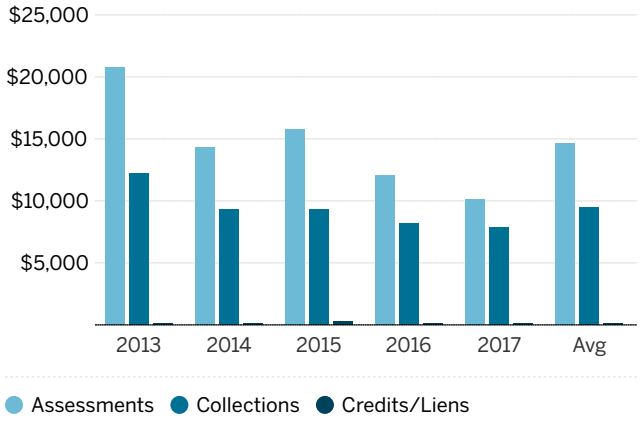
Figure 33 depicts how uncollected amounts in Miami-Dade County have significantly grown since 2013.

Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 33 shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable: uncollected amounts rose by almost $17.3 million between 2013 and 2017. Much of this court-imposed debt will never be paid.

FIGURE 32

Miami-Dade County Assessments, Credits, and Collections, 2013–2017

Thousands of dollars

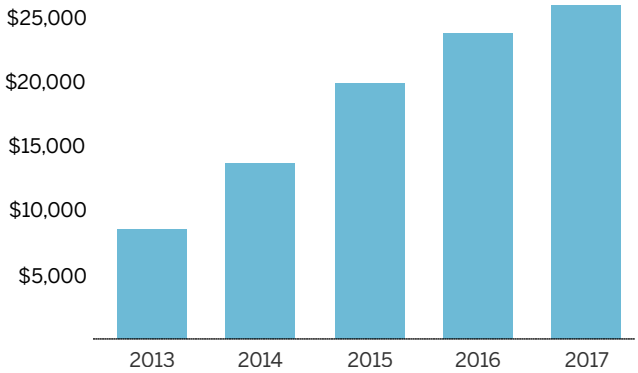


Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

FIGURE 33

Miami-Dade County Growth of Uncollected Criminal Fees and Fines, 2013-2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

3. Madison County

Madison County is a rural county on Florida's northern border with Georgia. It has a population of roughly 18,000 and is the poorest county in the state, with a poverty rate of more than 30 percent in 2016.[210] Madison is 54 percent white non-Hispanic, 39 percent black, and 6 percent Hispanic or Latino.[211] The county leans Republican in federal elections, and its voters are largely polarized along racial lines. In local races, voters elect both Democrats and Republicans.[212]

The Madison County courthouse is a small, historic building that serves as the centerpiece of the town of Madison. Beyond a one-block radius, the county's poverty becomes apparent.

The courthouse contains the clerk's office, the county judge's chambers, and two additional clerks' offices: one for misdemeanors, the other for felonies. Three clerks handle all criminal traffic and misdemeanor cases. Court for these dockets is held once every two weeks.

Approximately 100 criminal traffic and misdemeanor cases are handled in the county court per month, and a significant portion are related to failure to pay court-imposed fees. For September 2018, 17 people were scheduled to appear on charges related to failure to pay, with outstanding debts ranging from $200 to $400.[213] A clerk said this was typical, estimating that there are generally 20 such cases monthly. The clerk reported that more than half of the people who face court fees enter into payment plans. Although the county has a high rate of indigency, she said that she had never witnessed an ability-to-pay hearing.

In addition to these cases, the traffic clerk reported processing approximately 15 driver's license suspensions per month that result directly from failure to pay fees and fines.[214] The suspensions processed in September 2018 were triggered by payment deadlines that had passed two months prior, in July. The traffic clerk said she tries to allow people more time to pay before triggering the suspensions, suggesting that clerks have some discretion about when suspensions are issued.

The elected clerk of court is under no illusions about the ability of individuals within the jurisdiction to pay court debts. "Madison is a poor county," he said. "You can't squeeze much out of a stone."

Madison County stands out among Florida counties in that its courts do not rely as heavily on the collection of fees to support its operating costs. This is largely due to the highly active Madison County Sheriff's Office, whose

FIGURE 34

Madison County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	$257
Credits/Liens	$61
Collections	$174
Percentage of Fees and Fines Collected	68%

Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

deputies patrol the interstate running through the county and issue a comparatively large number of speeding tickets. (This practice has led to accusations of racial profiling against the Madison County Sheriff's Office.[215]) Most ticketed people do not contest such citations, resulting in a large source of income for Madison County.

As is true across Florida, fees are statutorily imposed. One public defender noted that it is rare for defendants to come away from a misdemeanor conviction in Madison County without at least $450 in fees.

Figure 34 highlights the results of the Brennan Center's fiscal analysis for criminal fees and fines for Madison County in 2017. It includes fee and fine amounts imposed by the Madison County Court as well as revenue collected; the authors were unable to obtain cost data for the court.

Key finding:

- In 2017, the Madison County Court assessed about $257,000 in criminal fees and fines. Of this amount, there was $61,000 in credits, of which 88 percent was reduced to a civil judgment or lien. Smaller portions were waived for community service or for other reasons. Some $174,000 was collected, 68 percent of what was assessed.

Figure 35 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, the criminal fees and fines collected fall well short of the amounts assessed. A large portion (30 percent, on average) of criminal fees and fines charged to defendants each year between 2013 and 2017 went uncollected. Further:

- Since 2013, roughly 1.2 percent of fees and fines assessed have been waived or satisfied through community service. Significant amounts of debt have been converted to liens in recent years.

- Unlike other Florida jurisdictions in this analysis, assessments have changed little in recent years. However, collection rates have varied widely, from 83 percent in 2015 down to as low as 43 percent in 2013, highlighting the unreliability of criminal fees and fines as a source of revenue.

Figure 36 depicts how uncollected amounts in Madison County have varied since 2013, while trending upward.

Florida courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Figure 36 therefore shows only the amount of uncollected debt that has accumulated since 2013. This represents just a small subset of the total not collected. Even so, these amounts are considerable. Uncollected debt rose by $80,000 between 2013 and 2017, and much of this court-imposed debt will never be paid.

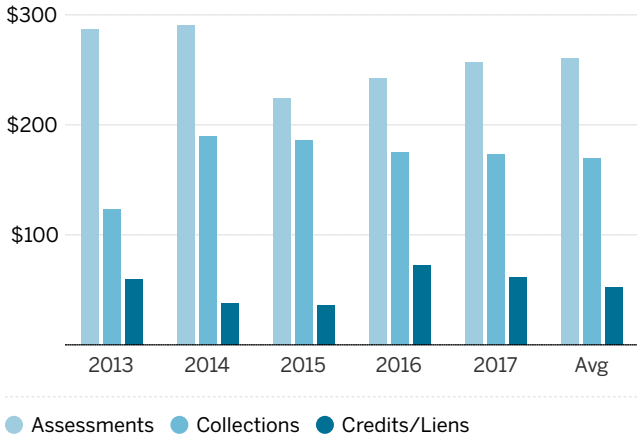
C. Texas

Texas has a population of just over 25 million, approximately 85 percent of which is urban. Its poverty rate is 17 percent, well above the 13.4 percent national rate.[216] The state has a Republican governor and has voted solidly Republican in national elections.[217] Its population is 44

FIGURE 35

Madison County Assessments, Credits, and Collections, 2013–2017

Thousands of dollars

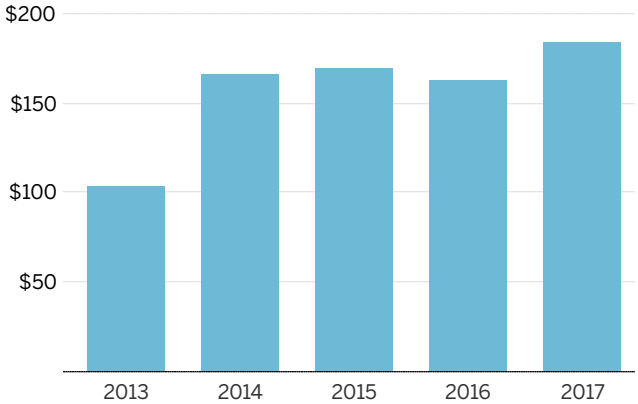


Source: New Mexico Administrative Office of the Courts; Brennan Center calculations.

FIGURE 36

Madison County Growth of Uncollected Criminal Fees and Fines, 2013–2017

Thousands of dollars



Source: Florida Court Clerks & Comptrollers; Brennan Center calculations.

percent white non-Hispanic, 38 percent Hispanic or Latino, and 12 percent black.[218] The counties examined here vary considerably in their demographics and follow diverse fee-and-fine practices.

In 2016, 95 percent of warrants issued in Texas were for unpaid fees and fines.[219] Texas has the nation's highest rate of incarceration for failure to pay, with a staggering 640,000 people jailed for this reason in 2016 alone.[220] This is done at great cost, and often in contradiction of state and federal law, which prohibits incarcerating people for fees and fines they are unable to pay. (The authors expect that this practice has diminished with changes to state law in June 2017, as discussed on page 26.)[221]

As of 2017, 1.8 million Texans' driver's licenses were suspended for failure to pay fees and fines.[222] Over a three-year period, more than 400,000 new criminal filings were related to driving on licenses suspended for nonpayment of traffic-related fines.[223]

FIGURE 37

Fees and Fines in Texas

Fines	Amount
Class A Misdemeanor	Up to $4,000
Class B Misdemeanor	Up to $2,000
Class C Misdemeanor	Up to $500
Universal Fees	
Services of Peace Officers	$0.15/mile traveled by officer
Jury Services Fee	$4
Court Clerk Services Fee	$40
Written Notice to Appear Issuance Fee	$5
Execution of Arrest Warrant Fee	$50
Court Technology Fee	$4
Juvenile Delinquency Prevention Fee	$50
Case-Specific Fees	
Bad Check Fee	$10–$500
Prosecutor Fee for Gambling Offense	$25
Class B Misdemeanor Court Cost Fee	$60
Driving While Intoxicated	$15
Taking and Approving a Bond	$10
Summoning a Jury	$8
Pretrial Intervention Program Fee	$60/month

Source: Texas Penal Code.

Texas's Office of Court Administration (OCA) maintained the Collection Improvement Program (CIP), which helped municipal and county courts collect fees and fines assessed to individuals convicted of misdemeanor or felony charges. CIP was canceled by action of the state legislature effective September 1, 2019.

Criminal courts in Texas are separated into four levels. District courts handle felonies and more serious misdemeanors, while less serious misdemeanors and traffic violations are split among county, municipal, and justice of the peace courts. Collection of legal debt is not always handled by the courts; probation and other collections offices bring in a large portion of fee and fine revenue.

Figure 37 illustrates the array of fees and fines an individual convicted of a misdemeanor in Texas may face.

1. Travis County

Travis County is a large county in central Texas that encompasses Austin, the state capital and county seat. Its population of 1.2 million is 49 percent white non-Hispanic, 34 percent Hispanic or Latino, and 9 percent black, making it less diverse than Texas as a whole.[224] The county votes Democratic in national elections, and relatively few local positions are held by Republicans.[225] The county has a larger proportion of wealthy residents than most of Texas. However, despite its high median income of $61,000, 13 percent of the county's residents live in poverty.[226]

FIGURE 38

Travis County Criminal Fee and Fine Fiscal Analysis, 2017

Thousand of dollars

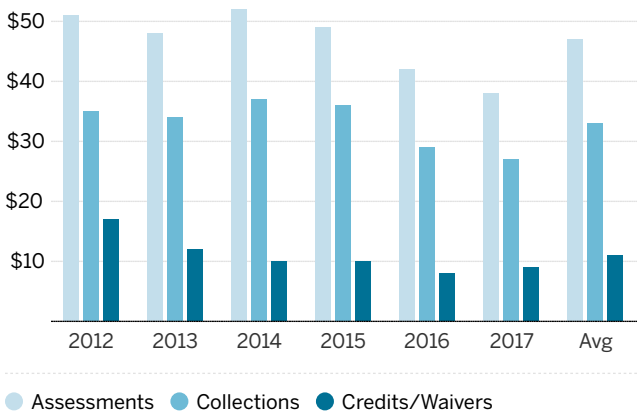
Revenue Collected	
Assessments	$38,006
Credits/Waivers	$8,694
Collections	$26,929
Percentage of Fees and Fines Collected	71%
Costs	
In-Court Costs	$3,186
Court Collections Costs	$1,610
Jail Costs	$4,627
Total Costs	$9,423
Cost as a Percentage of Collections	35%
Net Gain (+)/Loss (-)	**$17,506**

Source: Texas Collection Improvement Program; Brennan Center calculations. (Excludes waivers in June and August 2016 due to likely errors in reported assessments.)

FIGURE 39

Travis County Assessments, Credits, and Collections, 2012–2017

Millions of dollars

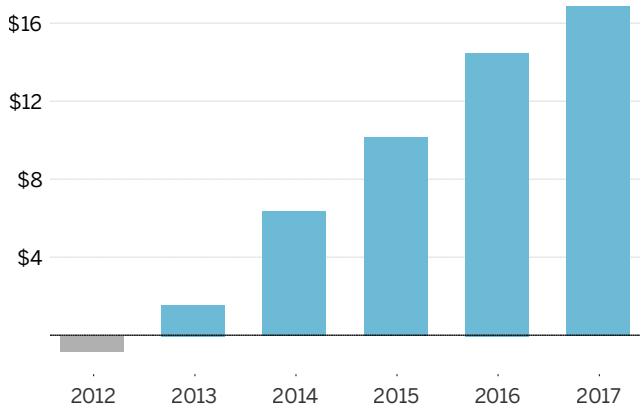


Source: Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 40

Travis County Growth of Uncollected Criminal Fees and Fines, 2012–2017

Millions of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

Within Austin, low-level criminal charges are divided among several courts. For this report, proceedings at the county and municipal court and the Downtown Austin Community Court (a special municipal court) were observed, and one justice of the peace was interviewed. Each of these courts applies its own policies and procedures to assess indigency.

COUNTY COURT

At the Blackwell-Thurman Justice Center in downtown Austin, county judges often conduct brief, informal ability-to-pay proceedings during plea hearings. Judges may ask defendants how much they can afford to pay, what their monthly income is, and whether they are responsible for dependents. One judge observed by the authors waived fees for defendants with income of less than 150 percent of the federal poverty level. The standard is 125 percent, but the judge recognizes that "people still struggle at 150 percent." A second judge was less inclined to waive fees, explaining, "I don't do it automatically. This is how we fund our department."[227]

The vast majority of fees and fines assessed result in payment plans or community service hours. Judges frequently impose costs in tandem with jail time so that fees and fines will be fully satisfied by the time the individual spends in jail.[228]

MUNICIPAL COURT

Municipal court judges rotate traffic, mitigation, and jury trial dockets. Criminal cases at the municipal court are limited to Class C misdemeanors, for which the maximum penalty is a fine.

Indigence determinations vary; one judge reported that he assesses individuals as indigent if their income is less than 200 percent of the federal poverty level. Individuals unable to pay fees and fines may make an additional appearance in mitigation, or "walk-in," court. Here, individuals can request an indigency hearing, adjustment of a payment plan, or conversion of costs to community service.

For nearly all defendants appearing in mitigation court, the presiding judge offers a choice between a payment plan and community service credited at $15 per hour. Most opt for community service. One single mother, referring to payments, explained, "It's really hard to do that with four kids." A number of those appearing in mitigation court have outstanding debts nearly a decade old.

JUSTICES OF THE PEACE

The jurisdictions of the five justices of the peace overlap with that of the municipal court, and they assess a substantial amount of fees and fines. Defendants may qualify for community service in lieu of payments, and if they can demonstrate that community service would also be onerous, the justices may waive outstanding debts.

One justice of the peace has adopted a discretionary practice of refraining from issuing warrants for arrests for failure to pay. Instead, the court issues letters to individuals requesting that they appear. The judge began doing this in the wake of the U.S. Justice Department's report on law enforcement practices in Ferguson, Missouri.[229]

DOWNTOWN AUSTIN COMMUNITY COURT

The jurisdiction of the Downtown Austin Community Court (DACC) encompasses the downtown Austin area. Homeless people make up the largest population served by this court, and many struggle with mental health issues. The court has a staff of 10 social workers who operate alongside the prosecutor and judge to provide restorative justice.[230]

DACC judges rely heavily on community service to satisfy fees and fines. Many defendants fail to complete their community service and cycle in and out of court. Jail credit is available for those arrested. Social workers may grant credit against fees and fines for a client who has completed activities such as showing up for a doctor's appointment or receiving a housing assessment.

Figure 38 highlights the results of the Brennan Center's fiscal analysis for traffic and misdemeanor criminal fees and fines in Travis County for fiscal year 2017. Its estimate of the in-court and jail costs of imposing and collecting fees and fines is a conservative one.

Key findings:

- In 2017, Travis County's county, municipal, and justice of the peace courts assessed approximately $38 million in criminal fees and fines. More than $8.6 million was written off through waivers, community service, or jail time.
- Collection costs related to fees and fines were $9.4 million in 2017, or 35 percent of what ultimately was collected.[231]
- The authors estimate that almost $3.2 million was spent on the portion of court proceedings dealing with fees and fines.
- Travis County spent an estimated $4.6 million for jailing due to unpaid fees and fines in 2017.

Figure 39 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, a good portion of assessed criminal fees and fines were collected. Still, each year an average of 6 percent of the fees and fines charged to defendants went uncollected. Further, the use of jail credits has fallen since 2010, reflecting growing pressure on the Austin Municipal Court to end jailing for unpaid debt.[232]

Figure 40 depicts how uncollected amounts in Travis County have significantly grown since 2012.

Texas courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Therefore, figure 40 shows only the amount of uncollected debt that has accumulated since 2012. During this period alone, the growth of these balances has been considerable:

- Uncollected balances net of credits for Travis County's county, justice of the peace, and municipal courts have grown by an estimated $17.7 million from 2012 to 2017.
- The use of credits, especially in later years — 2016 and 2017 — shows a willingness to correct uncollected balances. However, issuing credits can inflict extra costs. For example, the cost of jailing people for fees and fines was about $4.6 million in 2017.

2. El Paso County

El Paso County is the westernmost county in the state of Texas and shares a border with Ciudad Juárez in the Mexican state of Chihuahua. The county's population of more than 800,000 is largely binational and 82 percent Hispanic or Latino, 12 percent white non-Hispanic, and 3 percent black.[233] El Paso County has a strong Democratic tilt in national and local elections. The poverty rate is nearly 23 percent, significantly higher than that of the state overall.[234]

There are eight justice of the peace precincts in the city of El Paso; these were described to the authors as the "last outpost of cowboy justice." These courts handle both criminal and civil cases, while five municipal courts in the city have jurisdiction over traffic violations and Class C misdemeanors. The county courts at law handle more serious Class A and B misdemeanors.

FIGURE 41

El Paso County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

Revenue Collected	
Assessments	$14,109
Credits/Waivers	$3,532
Collections	$8,132
Percentage of Fees and Fines Collected	58%
Costs	
In-Court Costs	$68
Court Collections Costs	$733
Jail Costs	$2,917
Total Costs	$3,718
Cost as a Percentage of Collections	46%
Net Gain (+)/Loss (-)	**$4,414**

Source: Texas Collection Improvement Program; Brennan Center calculations.

For this report, the authors interviewed justice of the peace court staff, observed proceedings at the main El Paso Municipal Court branch, and collected data for all three levels of courts.

JUSTICE OF THE PEACE COURTS

Located across El Paso County, justices of the peace have jurisdiction over traffic and criminal cases carrying fines not exceeding $500. These courts handle a high volume of fees and fines. One judge sets up monthly payment plans on the basis of what defendants say they can afford per month. At another justice of the peace court, defendants who are unable to pay a fine in full are sent directly to Financial Recovery Services, a division of the county Budget and Fiscal Policy Department responsible for obtaining payments imposed during the judicial process.

EL PASO MUNICIPAL COURT

Three blocks from the county courthouse sits the municipal courthouse, handling mostly traffic offenses, such as driving without insurance or without a valid license. Indigency, failure to appear, and "show cause" hearings occur monthly or bimonthly. According to a court coordinator, many failure-to-appear charges are referred directly to the Texas Department of Public Safety, which may deny the renewal of a driver's license.[235]

In most cases, the judge informs the defendant of the fines incurred but does not address fees. Defendants may enter into payment plans or request community service in lieu of payments.

One judge reported that approximately 25 percent of municipal court cases deal with failure to pay. This judge considers a defendant's individual circumstances when addressing such cases. Recently the judge worked with a homeless person and a domestic violence survivor to craft manageable payment plans.

Figure 41 highlights the results of the Brennan Center's fiscal analysis for criminal fees and fines for El Paso County for fiscal year 2017. The estimate of the in-court and jail costs of imposing and collecting fees and fines is a conservative one.

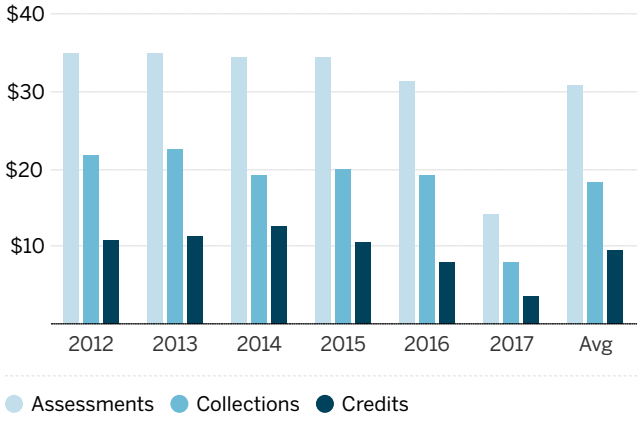
Key findings:

- In 2017, El Paso county, municipal, and justice of the peace courts assessed about $14 million in criminal fees and fines. More than $3.5 million was written off, either through waivers or through time served in jail or community service. Of the remaining $10.5 million, $8.1 million was ultimately collected.
- About $3.7 million was spent on collections activity in 2017 on in-court and jail costs alone. The $8.1 million in collections translates into about $4.4 million in net gain, just 31 percent of what was originally assessed.
- In-court costs, jail costs, and other collections costs for imposing and collecting fees and fines from these courts were just over $3.7 million in 2017, or 46 percent of what ultimately was collected.[236] Of that, most was for jailing for unpaid fees and fines.

FIGURE 42

El Paso County Assessments, Credits, and Collections, 2012–2017

Millions of dollars

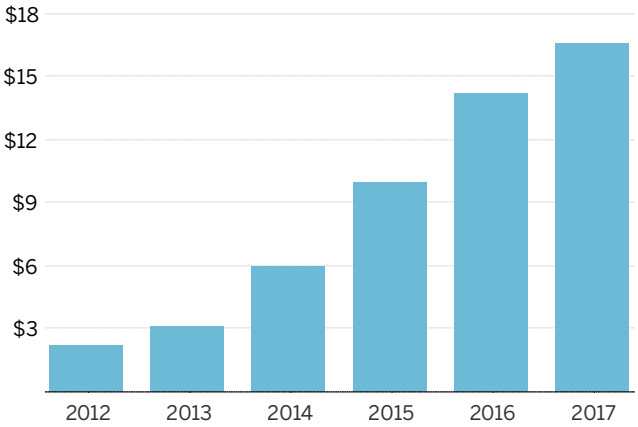


Source: Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 43

El Paso County Growth of Uncollected Criminal Fees and Fines, 2012–2017

Millions of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

- The authors estimate that approximately $68,000 was spent on the portion of court proceedings dealing with fees and fines, and that $733,000 was spent on the salaries, benefits, and operating expenses for collections staff.

Figure 42 shows how criminal fees and fines imposed, collected, and credited have changed over time.

As shown, on average, 10 percent of the fees and fines charged to defendants each year from 2012 to 2017 went uncollected. Further:

- Jail credits have consistently been the most-used form of credits within El Paso from 2012 to 2017.

- The use of jail credits has varied significantly since 2012, satisfying 26 percent of fees and fines in 2012, peaking at nearly 30 percent in 2014, and falling to 22 percent in 2017. The year with the second-lowest collections, 2016, saw the highest use of jailing.[237] This may indicate that fines were particularly ill-targeted that year, leading to higher incidences of failure to pay. As of 2017, community service credits were little used in El Paso, suggesting that people who are unable to pay either have costs waived or are jailed.

Figure 43 depicts how uncollected amounts in El Paso County have significantly grown since 2012.

Texas courts do not produce reliable estimates of the total amount of criminal fees and fines that remain uncollected. Figure 43 therefore shows only the amount of uncollected debt that has accumulated since 2012. During this period alone, the growth of this uncollected debt was considerable. Uncollected amounts grew by $14.4 million between 2012 and 2017. Much of this court-imposed debt will never be paid.

3. Jim Hogg County

Jim Hogg County is a small, rural county on the southern tip of Texas with a population of about 5,300. Like many of the counties on the border, it is largely Hispanic or Latino (94 percent).[238] About 6 percent is white non-Hispanic, and 1 percent is black.[239] It is a strongly Democratic county with a poverty rate of almost 30 percent, above that of the state overall. Jim Hogg County has a median household income of $34,769.[240]

Jim Hogg County has six courts in the county seat of Hebbronville: a district court, a county court, and four justice of the peace courts. The district court holds original jurisdiction over felony criminal cases. The county court has original jurisdiction over all criminal cases involving Class A and Class B misdemeanors. There are four justice of the peace precincts, all with original jurisdiction over lower-level Class C misdemeanor criminal cases.[241]

One judge told the authors that the justices perform many duties outside the scope of the justice of the peace court and are also on call 24/7, sharing one full-time clerk and one part-time clerk. According to the judge, they "prefer people out there working to support their families rather than arrested on [failure-to-pay] warrants." The judge said surcharges incurred on fines can lead to a vicious cycle: with costs increasing but wages remaining stagnant, "people get desperate."[242]

If a defendant does not pay fees and fines, the judge first sends a courtesy letter of notice. If there is no response, the court issues a show cause order, which allows the defendant to provide justification for the lack of payment. If the defendant again fails to respond, the judge then issues an arrest warrant if the individual resides in Jim Hogg County. For nonresidents, the failure-to-pay and failure-to-appear charges are entered into OmniBase, a service that administers the Texas Department of Public Safety's Failure to Appear Program.[243] Once a defendant is entered into this system, the defendant's license is put on hold. While the license is not immediately suspended, it cannot be renewed until the the fees and fines are paid.

Defendants have several options for paying. They can arrange a monthly payment plan, opt for community service for credit of $100 per eight-hour day, or be jailed for credit of $100 per day. The justice of the peace court offers at-clerk payment processing at the court, or defendants can use a third-party payment service, which charges a 3 to 5 percent processing fee. The judges offer ability-to-pay hearings, but most people opt out of them due to the amount of paperwork required.[244] According to the judge, about 75 percent of people pay their fines rather than opt for community service or jail.

County and district courts differ from justice of the peace court in their practices. Neither court offers

FIGURE 44

Jim Hogg County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

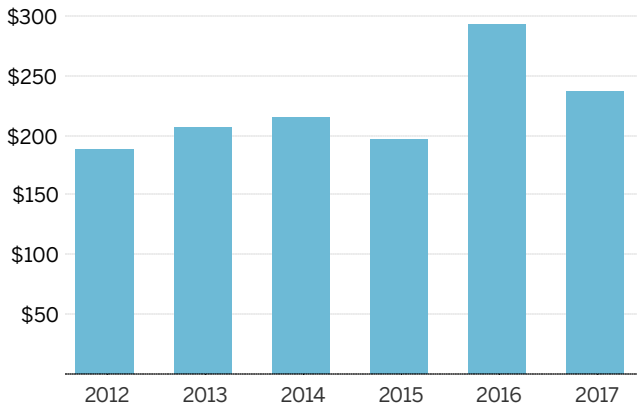
Revenue Collected	
Collections	$237
Costs	
Court Costs	$10
Cost as a Percentage of Collections	4%
Net Gain (+)/Loss (-)	**$227**

Source: Texas Office of Court Administration; Brennan Center calculations.

FIGURE 45

Jim Hogg County Collections, 2012–2017

Thousands of dollars

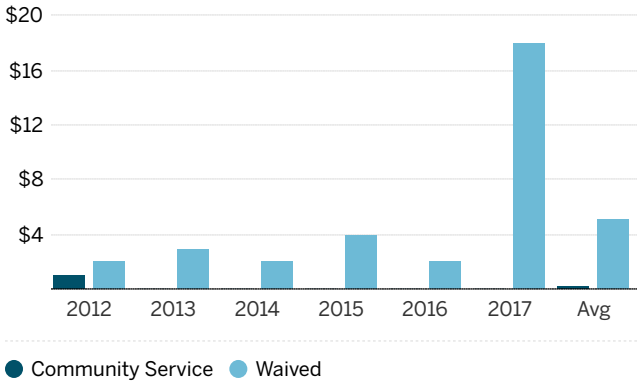


Source: Texas Collection Improvement Program; Brennan Center calculations.

FIGURE 46

Jim Hogg County Alternatives to Payment of Criminal Fees and Fines, 2012–2017

Number of cases



Source: Texas Office of Court Administration; Brennan Center calculations.

payment plans for amounts under $500; larger amounts can be split into two payments.[245] According to the person who serves as clerk to both the county and district courts, "a lot of indigency" and numerous "out of towners" mean that defaults are common, and so courts have little faith in payment plans. When a payment plan is allowed, it is structured such that defendants have 90 days to pay what can amount to staggering costs. According to the Jim Hogg County investigator, before a case is over, a defendant can easily owe more than $2,000 in fees and fines.

Figure 44 shows court costs and collections in Jim Hogg County's justice of the peace courts in 2017. The Texas Office of Court Administration collects little data on rural county courts, so the value of assessments, credits, and waivers in Jim Hogg County is not available.

Key findings:

- In 2017, the Jim Hogg justice of the peace courts collected about $237,000 in criminal fees and fines. Around $10,000 was spent on in-court collections activity, so net gain came to $227,000.[246]

- Clerks estimated that they spend, on average, 11 hours per week on issues related to fees and fines, at a total cost of $8,000 per year. The judge estimates that she spends, on average, four hours a week on issues related to fees and fines, at a cost of $2,200 per year.[247]

Figure 45 shows how the amount of criminal fees and fines collected has changed over time.

As shown, Jim Hogg County collections stayed fairly constant from 2012 to 2017, apart from an unexplained spike in 2016.

Figure 46 depicts the number of cases in which fines and fees were waived for indigence or satisfied through jail or community service credit. The dollar value of these waivers and credits was not reported.

As illustrated above, waivers, the main alternative to collection, rose significantly in 2017. Despite a recent spike in the number of fines and fees waived for indigence, collections have not declined dramatically, as demonstrated above in figure 45.

4. Marion County

Marion County is a rural county in eastern Texas with a population of just over 10,000. It is majority non-Hispanic white, at 71 percent, with a significant black minority of 24 percent and only a small Hispanic or Latino population, at almost 4 percent.[248] Marion County is primarily Republican. It has a poverty rate of nearly 23 percent, higher than that of the state overall.[249]

The Marion County courthouse sits in Jefferson and houses four courts: the district, county, municipal, and justice of the peace courts. There are two sitting district court judges, who handle felonies, and two justices of the peace, one of whom also serves as a municipal court judge. Only the two district court judges have law degrees. The staff includes one municipal clerk, two county clerks, one justice of the peace clerk, and two contracted public defenders, one of whom also serves as city prosecutor.[250]

FIGURE 47

Marion County Criminal Fee and Fine Fiscal Analysis, 2017

Thousands of dollars

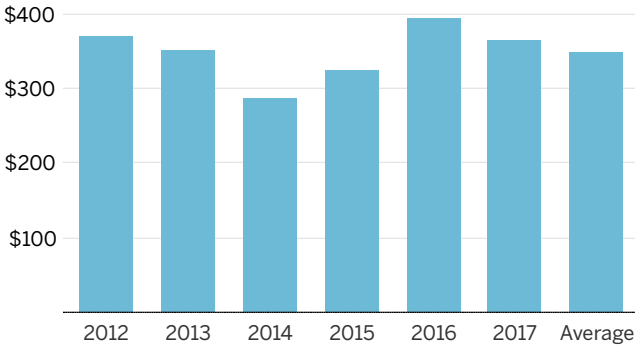
Revenue Collected	
Collections	$366
Costs	
Court Costs	$29
Cost as a Percentage of Collections	8%
Net Gain (+)/Loss (-)	**$336**

Source: Texas Office of Court Administration; Brennan Center calculations.

FIGURE 48

Marion County Collections, 2012–2017

Thousands of dollars



Source: Texas Collection Improvement Program; Brennan Center calculations.

JUSTICE OF THE PEACE

This court handles Class C misdemeanors, small claims, and civil suits. Most of its cases are traffic citations issued by highway patrol officers outside the town limits. The court holds hearings once every three to six months, with about 40 cases on the docket each time. Many cases are related to failure to pay, and most defendants fail to appear. If the defendant does not contact the clerk within 60 days of failure to appear, a collections company sends a pre-warrant notice. A show-cause hearing is scheduled, and if the defendant again does not show up, the clerk issues an arrest warrant.

The justice of the peace handles all ability-to-pay determinations. In applying for indigency, defendants must fill out an affidavit attesting to their inability to pay and submit supporting documentation, including their most recent bank statement, tax return, and utility bills. The justice of the peace reviews the application and either grants or denies indigency, which is solely within the judge's discretion.[251]

MUNICIPAL COURT

This court handles all traffic citations issued by city police. Hearings are scheduled once every month; a typical docket contains 30 to 40 cases. The municipal court clerk handles about 30 cases per week, roughly half of which are related to failure to pay court fees. When defendants plead guilty or no contest, they have 14 days to pay. If they plead not guilty, the case is scheduled for a subsequent hearing. Defendants who do not show up have 10 days to pay before an arrest warrant is issued. All defendants can enroll in a monthly payment plan or receive credits for community service ($10 per hour) or jail time ($100 per day). The average defendant will end up owing $250 to $500 in court fees and fines.[252]

COUNTY COURT

This court deals only with Class A and B misdemeanors; most of the cases are for driving while intoxicated or minor drug possession charges. Like the justice of the peace and municipal courts, there is no set schedule for county court. Instead, hearings are scheduled once every month, and the typical docket contains around 40 cases. The county clerk is responsible for collections from defendants not on probation; the probation office collects the money from those on probation at each monthly visit and then issues a check to the county at the end of each month. As of October 2018, there were 311 probationers and parolees, whom the county clerk described as the "vast majority" of defendants.[253]

Across these courts, several officials criticized the fee and fine process in Marion County. They noted that only a small percentage of the assessed fees and fines are eventually collected, largely due to residents' poverty.

Figure 47 highlights the results of the Brennan Center's fiscal analysis for criminal fees and fines for Marion County. Its conservative estimate of the in-court costs of imposing and collecting fees and fines is based on surveys of judges and clerks in these courts. The Texas Office of Court Administration collects little data on rural county courts, so the value of assessments, credits, and waivers in Marion County is not available.

Key findings:

- In 2017, Marion County's county, municipal, and justice of the peace courts collected about $366,000 in criminal fees and fines.[254] At least $29,000 was spent on court collections activity, so the net gain was no more than $336,000.

- In the county and justice of the peace courts, clerks spend 12 to 13 hours per week on fees and fines. In municipal court, they spend around five hours per week. This represents costs of approximately $24,600 per year.[255]

- The county court spends roughly five hours per week and the justice of the peace courts spend a half hour per week on fees and fines. This represents costs of approximately $4,900 per year.[256]

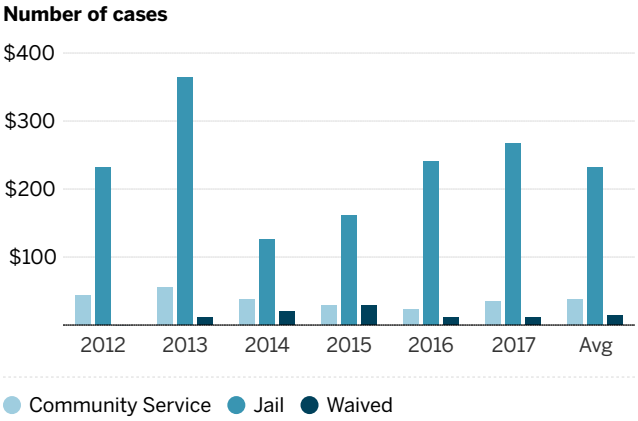
Figure 48 shows how the amount of criminal fees and fines collected has changed over time. Collections stayed relatively constant from 2012 to 2016 but decreased in 2017.

Figure 49 depicts the number of cases in which fines and fees were waived for indigence or satisfied through jail or community service credits. The dollar value of these waivers and credits was not reported.

As shown, 80 percent of the cases in which fees and fines were satisfied by a method other than payment were, in an average year, satisfied by jail credits. Also in an average year, fees and fines were waived for indigence in slightly more than 6 percent of cases satisfied by a method other than payment.

FIGURE 49

Marion County Alternatives to Payment of Criminal Fees and Fines, 2012–2017



Source: Texas Office of Court Administration; Brennan Center calculations.

The county court reported $261,000 in fees and fines outstanding as of October 2018.

Appendix B: Methodology

To obtain the data for the fiscal analysis, the authors conducted interviews and requested quantitative data from stakeholders in each of the selected counties. The information collected through interviews includes both qualitative data, relating to processes, policies, and practices, and quantitative data, including caseloads, hours worked, and time spent on fees and fines.

Once collected, this data was used to estimate costs by jurisdiction and arrayed with revenues in the broader fiscal analysis. Much of the cost data was calculated using salary data and time-use information collected through interviews, in addition to other factors, including criminal caseloads, employee compensation, and other input from state databases. Revenue data was calculated from reports that indicate the amounts of fees and fines collected, waived, and uncollected. Other criminal justice revenues and costs exist but were either beyond the scope of this study or unavailable. For example, this study did not consider the costs and revenues of bail and bond systems or restitution. The authors were also unable to estimate costs of warrant enforcement and driver's license suspensions by departments of motor vehicles.

Cost Data Collection

For most of the study's jurisdictions, the collected cost data includes time spent by court and other public employees in court proceedings ("in-court costs") dealing with criminal fee and fine matters. For some jurisdictions, the cost data also includes costs of time spent by court employees assessing and collecting criminal fines and court fees and detention costs of people jailed for failure to pay or failure to appear on fee/fine-only charges. Further, for some jurisdictions, the cost data includes estimates of jailing costs, derived from reported jailing costs and jail credits issued. Cost data was collected in the following ways:

Surveys

The authors attempted to collect quantitative cost information by administering surveys asking how court and other criminal justice personnel spend their time, and how much of that time is spent on assessing and collecting fees and fines. Surveys were emailed to judges, prosecutors, public defenders, court clerks, DMV employees who suspend licenses, police officers who arrest people for failure to pay, probation/parole officers who participate in collections, court budget/finance officers, and state tax agencies that collect fees and fines through offsets to tax refunds. Many surveys were distributed via statewide public agencies.

The authors distributed surveys to more than 3,000 members of the Texas justice system. In New Mexico, surveys went to more than 200 members of the state judiciary.

While some surveys were completed and returned by email, and others were completed online, there were not enough useable responses to incorporate the data into meaningful cost estimates.

Public Data

Quantitative public budget data was collected from courts and other agencies that make such data available online, including the following:

- Salaries and staffing for courts, prosecutors, public defenders, police/sheriff's departments, DMVs, and state tax agencies, with a goal of estimating the costs of assessing and collecting fees and fines and associated sanctions. Of these, the most heavily used salary and staffing data sets were online "sunshine" portals made available to the public by state agencies or news sites.

- Some daily jail cost data, collected from federal, state, or public advocacy organizations' online reports and obtained data (e.g., the Vera Institute's Price of Prisons Survey, reported rates paid by U.S. Marshals for detention in local jails, and Texas Collection Improvement Program data).

- Budget data, collected from municipal, county, and other agency budget documents.

Direct Data Requests

Where online public data and surveys proved inadequate, direct requests were made to agencies for quantitative budget data, such as salaries and staffing for courts and supporting agencies. For example, the Texas Office of Court Administration shared data from its Collection

Improvement Program, with reports of court collection costs for all 71 of the state's most heavily populated counties (except for Harris County). The New Mexico Administrative Office of the Courts supplied extensive criminal case data, including information on fees and fines, for the courts supported by the state (Bernalillo Metropolitan Court, magistrate courts, and district courts).

Court Watching

Over the course of this study, Brennan Center staff observed over 1,000 cases across 16 different courts in seven counties. The study sent project staff to nine of the study jurisdictions to observe court proceedings for up to a week. (Court watching was feasible only in seven of the counties because three largely rural counties only had part-time courts that were not in session during staff visits.) These court observations were used to gauge time spent on fee and fine matters for in-court cost estimates. Because of the low level of survey response from targeted jurisdictions, court watching was the primary tool for estimating the time courts spend on fees and fines (staff were not able to perform court watching in Jim Hogg, Marion, and Madison Counties). Court observations and interviews with judges, clerks, public defenders, and defendants were helpful in determining how processes and procedures, including ability-to-pay determinations and payment plans, vary from court to court.

Revenue Data Collection

Revenue data includes all criminal fines and court fees collected by local or state agencies in the jurisdictions, excluding restitution and child support payments, which were not relevant to this study.

Public Data

Some quantitative public data on criminal fee and fine revenue and collections was gleaned from state associations for court clerks. For example, in Florida, public quantitative data on fee and fine assessments and collections came from online reports prepared by the Florida Court Clerks & Comptrollers.

Direct Data Requests

Some data relating to assessments and revenues was collected directly from state agencies. This information was collected by contacting state-based judicial agencies, such as administrative offices of courts, and requesting that statistical data be provided for analysis. For example, the Texas Office of Court Administration shared data on court fee and fine collections for 71 of the state's most heavily populated counties. The New Mexico Administrative Office of the Courts supplied extensive criminal case data, including information on fee and fine assessments and collections for each of the courts funded by the state.

Supplemental Research

During site visits and interviews, and through other research, qualitative data was collected to illuminate how courts and supporting agencies operate when imposing and collecting criminal fees and fines.

Site Visits and In-Person Interviews

During site visits, interviews were held with court officials, prosecutors, public defenders, police officers and sheriffs, and probation/parole departments in many jurisdictions. While the interviews focused on collecting quantitative survey data, the visits were also used to document the process of criminal fee and fine assessment and collection in each jurisdiction. Many site visits also included court watching. In courts that were rarely were in session (thus preventing court watching), these visits and interviews were a primary data collection tool.

Phone Interviews

Additional interviews were conducted by phone with state judiciary and public defender agencies to supplement information collected by other means.

Surveys

The surveys provided space for notes and comments by respondents. These were reviewed and followed up on with additional questions when feasible.

Literature and Statistical Review

The authors analyzed reports and articles published by governmental, advocacy, and news organizations to document how criminal fees and fines are assessed and collected in each jurisdiction. They also compiled demographic information from public sources, such as the U.S. census, to provide context for each jurisdiction, including ethnic makeup, average income, and poverty level.

County Fiscal Analyses

Fiscal analysis traditionally involves a diverse array of analyses focused on budgets, costs, and revenues. When applied to a governmental project or activity, such analysis is often used to compare changes in costs and changes in revenues over a period of time. The result of this comparison is often the "net fiscal impact" or, in this context, "net gain." This is the type of analysis attempted for this report. It can indicate whether a governmental activity is a financially sensible one — and whether taxpayers should pay for if it fails to cover enough of its costs. While the revenue data collected for courts in each jurisdiction focuses on criminal misdemeanors, the data for the Bernalillo Metropolitan Court in Albuquerque includes both non-criminal traffic and misdemeanor criminal fees and fines.

Balance Sheet Approach

At its core, the fiscal analysis employed in this report makes use of a simple balance sheet approach. For the most recent fiscal year obtainable, the identified costs of levying and collecting criminal fees and fines are subtracted from the sums collected for each jurisdiction to obtain the "net gain" in revenue. In practice, this meant identifying and quantifying as much cost information related to fees and fines as possible and subtracting it from reported revenue collected from state court agencies and clerks' associations.

Additional Fiscal Analysis Measures

The authors also refer in the fiscal analysis to "percentage of fees and fines collected" and "cost per $100 of revenue collected." While "net gain" indicates the revenue (or loss) yielded by the activities associated with imposing and collecting criminal fees and fines, measuring "percentage of fees and fines collected" shows how much of what is assessed during a year is ultimately collected during that year, an indicator of how well fee and fine assessments and collections efforts are targeted.

"Cost per $100 of revenue collected" is a standard measure of the efficiency of revenue collection. For example, if the cost of collecting fees and fines is higher than the cost of collecting tax revenue, it is a less fiscally prudent means of funding court (or other government) operations.

County Unit of Analysis

The authors conducted this fiscal analysis by examining criminal fees and fines levied by courts, as well as costs, in 10 counties in Florida, Texas, and New Mexico. They were chosen to represent a cross section of geographic, economic, political, and demographic conditions found across the country. The authors examined criminal fees and fines levied by courts, whether these courts were state or locally funded. While the project presents a fiscal balance sheet for criminal fees and fines by county, depending on the jurisdiction, it may contain a mix of costs incurred by the cities, counties, and the respective states. Similarly, depending on the state, the revenue collected may represent a mixture of amounts ultimately transferred to the state and the locality or retained by the court for court operations. As a result, some of the costs and revenues in this report may be found on the various balance sheets of cities, counties, and states, rather than all in one place. The benefit of this report's approach is that it takes disparate information that is difficult for taxpayers, let alone government officials, to decipher and analyzes it in a way that sheds light on court-related fee and fine activity in each county.

Estimated Costs

In-Court Costs

Judges, court clerks, prosecutors, public defenders, and sometimes probation officers attend court proceedings at which criminal fees and fines are imposed. Because the authors found no courts or other agencies that record or track the cost of this employee time, the authors produced estimated costs in the following manner:

- **Time spent.** For each county, the authors gathered data on time spent by personnel on criminal fees and fines, as described before. This data was used to determine the average time spent on criminal fees and fines per case inside the courtroom. To build yearly estimates, this "time per case" measure was annualized using yearly caseload statistics. For cases related solely to fees and fines (such as failure to pay and failure to appear on a summons related to a fine-only case), the fraction of such cases observed during court watching was assumed to hold steady across the entire year.

- **Salaries and benefits.** The authors took salary and benefits information obtained as described above and used this data to construct an average hourly compensation cost for each type of personnel (e.g., judges, court clerks, prosecutors, public defenders, and probation/parole officers).[257]

- **Cost of time spent.** For in-court criminal cases, court watching was used to estimate time spent on fees and fines, and that time was assumed to be representative for the most recent year of the analysis. The average hourly compensation cost for each type of personnel was multiplied by the average number of hours per year spent in court proceedings while fee and fine matters were being handled to determine the cost of time spent on fees and fines. This information was used to project an annual estimate for the in-court cost of fees and fines in each jurisdiction. For this analysis, average hourly compensation includes an estimate of the cost of benefits, assumed at 40 percent for personnel in courts in New Mexico and Florida. The 40 percent rate documented for the New Mexico judiciary was substantially similar to the rate modeled for Florida court personnel using standard benefits rates and information. For Texas's decentralized court system, local county and municipal budgets available online were consulted to calculate both benefits rates and other direct cost information to supplement the compensation data. Court watching was performed in seven counties. In two additional jurisdictions, Jim Hogg and Marion Counties in Texas, courts

were not in session when the team attempted site visits, so informal estimates of time spent in court were based on interviews with judges or clerks. No court watching was performed in Madison County, Florida.

Court Collection Costs
Court personnel and sometimes staff from other agencies, such as parole/probation offices, state tax agencies, other public agencies, and private collection agencies, collect court-imposed criminal fees and fines. The authors focused on court collection costs reported by the courts or state judiciary agencies, as cost information for other forms of fee and fine collection proved difficult to obtain.

Jailing Costs
Sometimes courts order individuals to jail for nonpayment of fees and fines, and sometimes police arrest individuals on a warrant and have them jailed because of nonpayment. Defendants in some jurisdictions also may elect to earn credit against fees and fines owed by spending time in jail. Much of the jail costs determined by the authors is attributable to this involuntary and voluntary jailing for the purpose of earning "jail credits" against fees and fines. However, defendants in some jurisdictions jailed for other crimes may sometimes receive credits against fees and fines owed. The authors were unable to determine the portion of calculated jailing costs attributable to these cases. The authors were also unable to estimate jailing costs in Florida, because incarceration in target counties there takes place only as a result of license suspension, and the proportion of license suspensions resulting from unpaid fines and fees could not be obtained. Estimated jailing costs for New Mexico and Texas were calculated as follows:

- **New Mexico.** In Santa Fe and Socorro Counties, time spent in jail was estimated on the basis of the value of jail credits earned against fines and fees in magistrate courts, compiled by the state Administrative Office of the Courts (AOC). In Bernalillo County's Metropolitan Court, jail credit data compiled by AOC also was used. Jail credits were translated into time served using a daily jail credit of $58, equal to eight hours at the federal minimum wage, the amount typically awarded by judges in these jurisdictions. Jail costs were estimated based on the daily jail rate estimated for the Bernalillo Metropolitan Correctional Facility in the Vera Institute's Price of Jails report and the daily rate paid to other county jails by the U.S. Marshals Service. Where no Vera or U.S. Marshals daily jail rate was available for the county, an average of the U.S. Marshals rate for other counties was used.
- **Texas.** Jail credits reported to the Collection Improvement Program (CIP) was used to estimate jail costs. The jail credits reported in each county were divided by the reported jail credit rates for the courts in these counties to estimate total days of incarceration. For years in which the jail credit rates were not reported, an average rate was substituted. The total days of incarceration were then multiplied by the per diem cost of incarceration reported to CIP. When the per diem cost was not reported, the average per diem cost of incarceration was used in its place.

Uncollected Fees and Fines
Interviews with state judiciary and local court officials revealed, with rare exception, that little is known about outstanding balances of court-imposed fees and fines. While the authors were unable to estimate such balances, they obtained data on assessments, waivers, credits, and collections to calculate the accumulated balances of unpaid fees and fines for most study jurisdictions over a multiyear period. The uncollected balance remaining after waivers, credits, and collections were accounted for was calculated for each year. These amounts were then cumulatively summed. The total represents the accumulated unpaid balance over several years.

Statewide Analyses
Several years' worth of data on criminal fee and fine assessments, collections, waivers, credits, and other actions was obtained for felony and misdemeanor courts in Florida, New Mexico, and much of Texas. While little cost data was available, jailing costs associated with criminal fees and fines were estimated for Texas and New Mexico.

Texas
Comprehensive revenue data covering cities and counties representing 72 percent of Texas by population came from CIP. A statewide projection for fee and fine assessments was estimated. Several years of criminal fee and fine assessments, collections, waivers, and credits were analyzed based on the jurisdictions reporting to CIP.

Jail costs were analyzed using the data courts reported to CIP. Jail credits issued by the courts in each jurisdiction were divided by the reported jail credit rates for the courts in these counties to estimate total days of incarceration. For years in which the jail credit rates were not reported, an average rate was substituted. The total days of incarceration was then multiplied by the per diem cost of incarceration reported to CIP. When the per diem cost was not reported, the average per diem cost of incarceration was used in its place.

The growth in balances owed of unpaid criminal fee and fine debt was calculated by netting collections, waivers, credits, and liens from amounts assessed by the courts.

The collectibility of criminal fees and fines was analyzed using aging information reported by courts to CIP.

Florida

Several years of extensive criminal fee and fine data covering assessments, collections, waivers, and credits for the felony and misdemeanor courts in each of Florida's counties was obtained from reports formerly located on the website of the Florida Court Clerks & Comptrollers Association, which is charged with annual reporting to the state. (Except for the most recent annual report, this data was later removed from the Florida Court Clerks & Comptrollers Association website.) This data was analyzed to provide a comprehensive statewide view of fee and fine activity over several years. The growth in balances owed of unpaid criminal fee and fine debt was calculated by netting collections, waivers, credits, and liens from amounts assessed by the courts. No cost data was obtainable on a statewide basis for Florida.

New Mexico

Comprehensive data covering several years and criminal fee and fine assessments, collections, waivers, and credits was obtained from the state's Administrative Office of the Courts. This data covered all state-funded district and magistrate courts statewide as well as state-funded Bernalillo Metropolitan Court, which handles the bulk of the county's misdemeanor and felony criminal cases. The data does not include the activity of locally funded municipal or county courts.

While the data provided was transactional, case-related data, it was analyzed to determine totals for assessments, collections, waivers, and credits for the years 2012 through 2016.

The data also was used to calculate jail costs associated with criminal fees and fines. Jail credits were divided by a $58-per-day federal minimum wage, the valuation used by New Mexico courts for jail credits, to obtain days of incarceration. The results were then multiplied by a low ($64.22, cost for Santa Fe) and a high ($85.63, cost for Bernalillo) estimate of daily incarceration costs to simulate the range of possible incarceration costs.

Note on Rounding in Tables Appearing in Figures

Where numbers appearing in tables in some of the figures appearing in this report are rounded to thousands, some totals may not appear to add up due to rounding.

Challenges and Limitations

- **Surveys.** While the study was built around the use of survey data, few and often no survey responses were obtained from the study jurisdictions. This was despite the help of state administrative offices of courts and other agencies in distributing the surveys, survey redesign, and considerable follow-up by phone and email. The failure to obtain needed data by survey necessitated site visits and limited some of the cost data originally planned to be collected.

- **Court watching.** Court observations were made over a one-week period in most study jurisdictions. The authors assume that proceedings were typical and adequate for the construction of annual estimates. However, this method does not consider potential seasonal or caseload fluctuations that may occur over the year.

- **Budgets.** The authors originally anticipated finding useful cost data in court and other agency budgets, including salaries of court personnel, agency officials, and staff engaged in levying and collecting fees and fines. Little useful information was obtained in this manner, and agency budget/chief financial officer staff generally were not responsive to the authors' emails and surveys.

- **Criminal justice system data.** Sometimes extensive criminal justice system data was made available to the authors by state administrative offices of the courts, as in New Mexico and Texas. However, the nature of the data tracked, the multiple and disparate systems, and sometimes a lack of recordkeeping — all of which vary by state and jurisdiction — meant that some data was unobtainable. For example, the authors were unable to obtain municipal court data in New Mexico or data for courts in less populated counties in Texas. The authors also were unable to identify sources for balance information on outstanding criminal justice debt. In some localities, information is still tracked on paper, making data difficult to compile. In many jurisdictions, information such as the extent of jailing for failure to pay is not tabulated, existing simply as anecdotal information.

- **Procedural requirements for public release of data.** Some agencies and jurisdictions insisted that data requests be made through the procedural requirements of their respective state's freedom of information statutes. These generally proved to be fruitless inquiries, with no mechanism for person-to-person follow-up.

Endnotes

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254 The county court in Marion County does not report its collections each year. Q1 2018 data was provided by the court clerk and annualized.

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257 Our court watchers did not observe in every case all of the types of personnel that we expected to be present in courtrooms. For example, no public defenders were observed in courts in Travis County, Texas, and our cost estimates do not include them. Subsequent research found that there is no public defender system for the adult criminal courts in Travis County, although there is an assigned counsel system.

ABOUT THE AUTHORS

▶ **Matthew Menendez** is counsel in the Justice Program at the Brennan Center for Justice and previously worked for four years as counsel in the Fair Courts project in the Brennan Center's Democracy Program. Prior to joining the Brennan Center, Menendez was a litigator at Gibson, Dunn & Crutcher LLP in New York City. Menendez attended New York University School of Law as a Dean's Scholar and graduated in 2007, having served as notes editor of the *NYU Environmental Law Journal*. He received his BA in economics and political science from Swarthmore College in 1999. After graduating from Swarthmore, he worked in Washington, DC, as an aide to Senator John D. Rockefeller IV, where he concentrated on issues including the judiciary, energy, and the environment. Menendez is also an adjunct professor at NYU School of Law, where he teaches the Brennan Center Public Policy Advocacy Clinic.

▶ **Michael F. Crowley** is a senior fellow at the Brennan Center for Justice. Prior to joining the Brennan Center, Crowley was a criminal justice consultant and a senior justice policy analyst at the White House Office of Management and Budget, where he worked for both Republican and Democratic administrations during a tenure spanning more than 20 years. From 2003 to 2013, he was responsible for policy, budget, and legislative oversight of more than $3 billion in Department of Justice state and local grants, as well as research and statistics programs. Prior to that, he served on the staff of the U.S. Department of Labor's Bureau of Labor Statistics and the U.S. Department of the Treasury. Crowley is a graduate of the University of the Pacific and LBJ School of Public Affairs at the University of Texas at Austin.

▶ **Lauren-Brooke Eisen** is a senior fellow and the acting director of the Justice Program at the Brennan Center for Justice. With expertise in criminal law and practice, Eisen spearheads the program's creation of innovative policy proposals and legal recommendations. Previously she was a senior program associate at the Vera Institute of Justice in the Center on Sentencing and Corrections. Eisen also served as an assistant district attorney in New York City in the Sex Crimes and Special Victims Bureau, Criminal Court Bureau, and Appeals Bureau, where she prosecuted a wide variety of criminal cases. She has worked as a journalist in Laredo, Texas, covering crime and justice; served as an adjunct instructor at the John Jay College of Criminal Justice; and taught a seminar on mass incarceration at Yale College. She holds an AB from Princeton University and a JD from the Georgetown University Law Center.

▶ **Noah Atchison** is a data and policy specialist at Community Resources for Justice. He was previously a research and program associate in the Justice Program at the Brennan Center for Justice. Prior to joining the Brennan Center, he worked at the Federal Reserve Bank of New York and interned at the Fair Housing Council of Oregon. Atchison earned a BA in economics from Reed College.

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