

TO: ZACHARY Q. JACKSON, INDIANA STATE BUDGET DIRECTOR
FROM: JACOB ALDER, TAX ANALYST
DATE: APRIL 19, 2022
RE: LEGAL FINANCIAL OBLIGATIONS

Across the United States at all levels of jurisdictions, the justice system makes extensive use of monetary penalties. This quality disproportionately impacts low-income populations and has a profound impact on rates of recidivism and rehabilitation. This memorandum summarizes current issues related to increased reliance on fines, fees, and bond—collectively legal financial obligations (LFOs), especially at the level of the local justice system, i.e., state, county, and city. I walk through five contours of the discussion: (1) Economic efficiency, (2) Equity, (3) Transparency, (4) Collectability, and (5) Adequacy. I introduce the memo with a brief historical review and conclude with an economist’s perspective.

HISTORY

The U.S. justice system comprises various jurisdictions: city, county, state, and federal (or tribal), as well as an independent military system. The tiered network of judiciary (courts), corrections (prison and jail), and enforcement (policing) traces its origins back to pre-colonial America (Korobkin, 1997). For example, the Puritans, notorious for their exacting religious obedience, established dozens of monetary punishments crimes.¹ As these traditions (and laws) have evolved, they have continued to enforce punishments using monetary consequences. Judicial scholar Peter Edelman writes that at all jurisdictional levels in America, poverty is consistently criminalized (Edelman, 2019).

U.S. governments at all levels have used monetary punishments to both punish criminals as well as to finance the operations. In recent years, number of incarcerated people and those liable for court-mandated LFOs, has steadily increased. By any metric, the U.S. incarcerates a staggering number of people, more than any other country in the world. Those fined and detained are disproportionately from low-income and minority populations (Harper et al., 2021). Given that such a large number of those imprisoned are indebted and impoverished, many are unable to pay their mandated fees. Consequently, the justice system chronically suffers from a lack of funding (Copp and Bales, 2018).

CURRENT DEBATE

Contemporary scholars and activists alike criticize the justice system for its swelling costs and discriminatory tendencies. A primary criticism from both sides of the debate centers on the role criminal LFOs play in both minor and serious offenses. Due to legal loopholes, thousands find themselves jailed each year for failure to pay a wide variety of fees on time or in full amount (Bing et al., 2022)(see Table 1). Thus, in an effort to establish greater sentencing consistency, judiciary boards across the U.S. at both the state and federal levels have crafted guidelines and minimum

¹ For example, a 5 pound fine for any “GODSPELLER” who interrupted a preacher during his sermon. New England Historical Society: “Way More Than the Scarlet Letter: Puritan Punishments: Connecticut.” Web. Accessed April 18, 2022. <https://www.newenglandhistoricalsociety.com/way-more-than-the-scarlet-letter-puritan-punishments/>

recommendations for LFOs. These pre-established recommendations often leave little room for poor defendants who would otherwise need legal counsel to represent their case: pay the fine, hire an attorney, or serve the thirty-day sentence. Many must take the last option without the funds to pay bail. The responsibility then shifts to the state who ultimately foots the bill of incarceration.

ECONOMIC EFFICIENCY

While crime rates have declined since the early 1990s, prison and jail incarceration rates have increased steadily since the 1970s. Lofstrom and Raphael argue that the growth in criminal justice populations since the 1990s has exacerbated “socioeconomic inequality in the United States without generating much benefit in terms of lower crime rates” (Lofstrom and Raphael, 2016). Other scholars indicate that LFOs increase household debt and limit labor force participation (Harper et al., 2021).

EQUITY

Fines and fees at the local level have the objective of discouraging all criminal behavior. Yet, the application is far less objective. LFOs embed racial discrimination into the justice system. The pre-established fine and fee structures further disadvantage those who have less access to credit markets, less income, and less wealth (Bing et al., 2022). For example, in the following illustrative table, adapted from Bing et al., 2022, Black workers, who are on average more likely to earn low- and minimum-wage income for work will consequently have to work more hours to pay a minor violation (e.g. stop sign).

Table 1. Relative Cost of a \$286.00 Stop Sign Violation

Income Level	Hourly Wage	Labor Hours Needed to Pay Ticket	Percent of All Workers at or Below Wage	Percent of Black Workers at or Below Wage
High Income	\$60.00	4.8 hours	95	95
Moderate Income	\$25.00	11.4 hours	60	80
Low Income	\$15.00	19.1 hours	30	50
Minimum Wage	\$10.00-\$7.25	28.6-39.4 hours	10	20

Source: Adapted from (Bing et al., 2022), based on Current Population Survey microdata. Author’s notes: wage tabulated for workers ages sixteen and older. Wages rounded for ease of interpretation.

TRANSPARENCY

Too often, the legal system hides the LFOs from public view; a defendant will often not know the cost of an infraction, even if minor until a judge orders the sentence. Especially at local levels of judicial governance, LFOs lack transparency. On the other hand, user-funded fees lack transparency on the data collection side, given that courts do not transmit data equally. This limits the ability researchers have to assess fee treatment and effectivity (Mai and Rafael, 2020). This bidirectional lack of transparency limits impairs the justice system as a fully equal system, despite the effort to standardize fee amounts and sentence minimums.

COLLECTABILITY

Given the disproportionate burden LFOs place on people with high debt or low income, or both, administrators frequently struggle to collect. The justice system chronically suffers from a lack of funding because impoverished defendants cannot pay their mandated LFOs (Copp and Bales,

2018). Oftentimes, Courts transfer LFOs to a third-party collection company to monitor the debt. This problem exacerbates an issue of converting interest on LFO debts into profits for a private company (Link et al., 2020).

ADEQUACY

Some scholars conclude that LFOs play an inadequate and uncompelling method of serving up justice. LFOs can quickly add up for whomever loses the case (Ruback, 2011). Many indigent clients have to take out PayDay loans in order to cover an LFO, which creates a vicious cycle of indebtedness. The judiciary has the ability to waive or reduce fees, but some research groups like the National Council of State Legislatures, identified that this constitutes a minority of judicial decisions in criminal proceedings.²

CONCLUDING PERSPECTIVE

LFOs represent an extreme version of user-funded services, where users are predominantly poor, black and brown people, and the service is receiving penalties in the justice system. Extensive research indicates the major challenges systematic racism poses to an equitable justice system. As (Bing et al., 2022) demonstrated, the effects of racism sweep wide and devastate the communities. Even comparatively small fines, like \$200, can unfavorably tip the balance for a family at the edge of stability. This review has explored many of the pernicious elements of LFOs as a method of serving justice in the United States.

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²National Council of State Legislatures. “Assessing Fines and Fees in the Criminal Justice System.” January 20, 2020. Web. Accessed 4/16, 2020. <https://www.ncsl.org/research/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system637605706.aspx>