2017 Trends in State Courts

Fines, Fees, and Bail Practices: Challenges and Opportunities
The Role of Courts in Eliminating the Racial Impact of Criminal Justice Debt

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Over the past two years, the harms associated with criminal justice debt have gained widespread attention, which has sparked promising momentum for reforms. Central to understanding those harms is identifying the racially disparate effects of practices in jurisdictions around the country—courts should champion reforms to eliminate those disparities.

Courts across the country have been galvanized to confront a deeply rooted challenge to the administration of justice: fees and fines attached to criminal convictions, which are imposed or enforced in ways that contradict the values of the legal system. In recent years, a growing wave of actors throughout the justice system, and across civil society, have come to appreciate the severe harms associated with criminal justice debt. These harms can take many forms. Jailing people due to their inability to pay a financial obligation transgresses the longstanding principle that debtors’ prisons have no place in America. Relying on criminal justice debt to fund court operations can generate perverse incentives and distort the administration of justice. Enforcing debt through onerous tools, like driver’s license revocation, can trap individuals in a vicious cycle of poverty. And saddling formerly incarcerated individuals with mountains of debt impedes their ability to reintegrate successfully into their communities. These concerns impact broad swaths of the country and undermine the essential mission of courts. But the negative impacts of these practices are not evenly distributed.
Time and again, across the country, these policies and practices have impacted black and Latino individuals and communities most harshly. Indeed, it is no surprise that for many Americans the most salient example of the impact of fees and fines is the discriminatory system exposed in the Justice Department’s investigation of Ferguson, Missouri. That investigation revealed the stark racial disparities that characterize criminal justice debt; it also shined a light on the systems of racial injustice that created those outcomes, depicting a legal system that relied on stereotyping and bias to target black residents as sources of revenue. Ferguson triggered a national reform movement aimed at criminal justice debt. The growing movement for reform must devote special attention to reforming policies that exacerbate or reinforce racial disparities in the criminal justice system.

Judges and court administrators can play a leading role in finding solutions to the deeply entrenched racial disparities related to criminal justice debt. Chief judges and justices throughout the country have taken action to change practices in their home jurisdictions and can be uniquely powerful messengers in urging legislators and other policymakers to pursue reform. Judges and court administrators have also engaged with the National Task Force on Fines, Fees and Bail Practices to seek models for reform and promote best practices. As this work continues to take shape, it is critical that judges and court administrators craft reforms that are informed by racial justice imperatives and take direct steps to stamp out discriminatory practices.

**Trends in the U.S.**

**Atlanta Municipal Court’s Warrant Amnesty Program**

For six weeks in the spring of 2016, the Municipal Court of Atlanta offered amnesty to individuals with outstanding warrants issued before January 1, 2015 for failing to appear in court. Warrants were canceled and the contempt fees waived, allowing individuals to resolve their outstanding cases.


**Milwaukee Municipal Court’s Warrant Withdrawal Wednesdays**

For three Wednesdays in November 2016, the City of Milwaukee Municipal Court served 2,400 defendants, representing a total of 15,397 cases. More than 1,500 defendants had warrants withdrawn; 1,048 had driver’s license suspensions vacated; and more than 500 defendants had payment installment plans approved. Municipal court judges posted a video on Facebook to promote the program.

The Prevalence of Racial Disparities

To cure the harms associated with criminal justice debt, courts must diagnose the problem—including harmful racial disparities. Ferguson is a good starting place, not because it was the first jurisdiction whose practices resulted in stark racial disparities (it was not) but because the Justice Department’s investigation unearthed such a telling tale of abuse. That report revealed officials throughout the system who undertook practices motivated by a desire to raise municipal revenue. In 2013 the municipal court in Ferguson—a city of 21,135 people—issued 32,975 arrest warrants for nonviolent offenses, mostly driving violations. Those practices, though pervasive, did not impact all residents equally.

Justice Department investigators determined that “Ferguson’s approach to law enforcement both reflects and reinforces racial bias, including stereotyping” (DOJ, 2015: 4). Indeed, after conducting statistical analysis of numerous indicators of police-civilian interactions, the report concluded that “African Americans experience disparate impact in nearly every aspect of Ferguson’s law enforcement system.” They were overrepresented by significant margins in rates of traffic stops, arrests, and citations and much more likely than whites to receive citations for discretion-heavy violations, like “Manner of Walking” charges, that fueled the municipality’s reliance on court-related revenue (DOJ, 2015: 62).

The impacts of this system were not merely statistical. As the Justice Department reported, police and court officials often treated black Ferguson residents in a degrading or hostile manner. In combination, these practices spawned “great distrust of Ferguson law enforcement, especially among African Americans,” a dynamic that “made policing in Ferguson less effective, more difficult, and more likely to discriminate” (DOJ, 2015: 79).

The dynamics in Ferguson provide a glaring example of how enforcement of court debt can metastasize, but those dynamics are not unique to Ferguson. A recent report on traffic courts in California, for example, found that African-Americans disproportionately experience onerous financial obligations, often enforced through driver’s license suspension—a sanction that does nothing for public safety when used to enforce debt but that can knock people living on the economic margins into poverty. One recent study examined national data to determine what factors correspond to the heaviest reliance on municipal fines and concluded that “the cities most likely to exploit residents for fine revenue are those with the most African Americans” (Kopf, 2016).

The impact of criminal justice debt often extends beyond individuals in the criminal justice system to their families or communities. This means that racially disparate application of fees and fines will have a concentrated effect on communities of color. A 2015 report explored the effects of criminal justice debt on the families and friends of individuals upon whom courts have imposed that debt. It found that “it is not just the individual who is being punished [but] also the incarcerated individual’s friends and family who become, in effect, a parallel welfare state” (Nagrecha, Katzenstein, and Davis, 2015). The racial impact of fees and fines, in other words, snowballs within a community. When the most onerous practices are concentrated disproportionately among racial minorities, their communities suffer the consequences of lost wealth and increased exposure to the criminal justice system.

The Linkage Between Criminal Justice Debt and Race

The racially disparate consequences of criminal justice debt reflect many causes. Often, inherently harmful policies—like revenue structures that encourage aggressive reliance on criminal justice debt—are amplified by racial bias laced throughout the criminal justice system.
Ferguson, again, is instructive. The discriminatory practices detailed in the Justice Department’s investigation took root because of a long history of residential segregation and discrimination in access to education, homeownership, and other opportunities. In 2014, one scholar analyzed the decades of discriminatory policies and practices that created the racial and wealth disparities that enabled Ferguson’s legal authorities to target black residents for predatory practices. “A century of evidence demonstrates that St. Louis was segregated by interlocking and racially explicit public policies of zoning, public housing, and suburban finance, and by publicly endorsed segregation policies of the real estate, banking, and insurance industries” (Rothstein, 2014: 30). Entrenched inequality can structure the relationship between communities, police, and the broader legal system. Intensive residential segregation, often accompanied by patterns of concentrated poverty, may create disparate policing practices, and in places like Ferguson, that means predominately black communities subject to policing practices designed to aggressively enforce low-level (and fee-generating) offenses. When these dynamics lead law enforcement to target communities in ways that do not serve public safety, public trust erodes. This can spark a vicious cycle of exposure to the criminal justice system and increasing risk of poverty.

Race matters in shaping who is exposed to criminal justice debt, and those effects are amplified by the significant racial wealth gap, which makes it more likely that excessive fees and fines will knock African-Americans into a tailspin of debt and further encounters with the criminal justice system. In 2014 the Pew Research Center found that the average wealth of white households was 13 times greater than the average wealth of black households. This wealth gap can have significant consequences for how criminal justice debt impacts individuals. Those with means will be able to disentangle themselves from ongoing financial obligations in criminal cases.

For those in poverty, court debt can quickly spiral: It can result in long-term payment plans, often with high interest rates, that mean impoverished people pay more in absolute terms; poor people may incur penalty fees or other court costs that flow from missed payments; and, in some instances, those who are unable to pay face incarceration, which in turn can further destabilize individuals by jeopardizing employment, housing, or health care.

Though neutral on their face, these wealth-related disparities will exacerbate the racial impact of criminal justice debt. Numerous studies have shown the hugely disproportionate impact of the criminal justice system on African-Americans. A landmark study by sociologists Bruce Western and Becky Pettit found that black men are eight times more likely to be incarcerated than whites, a disparity that outstrips the significant racial gaps along metrics like employment and infant mortality. This disproportionate exposure to the prison system carries significant economic consequences (in addition to the profound noneconomic consequences), including increased debt burdens. As one leading expert on criminal justice debt has written, “solely because racialized communities are the disproportionate focus on the criminal justice system, [monetary sanctions] are imposed in a disparate way on people of color and thus are implicated in perpetuating racial and ethnic inequality” (Harris, 2016: 156).

![Median Net Worth of U.S. Households (in 2014 dollars)](image)

Note: Chart scale is logarithmic. Each gridline is 10x greater than the gridline below it. Source: Adapted from Pew Research Center (2016).
Solutions for Courts

Countering the racial disparities connected to criminal justice debt should be an imperative for all courts. Judicial systems can reinforce harmful practices, but they can also be drivers of meaningful reform. Of course, many reforms aimed broadly at the pathologies of criminal justice debt will ease the racial impact as well. For example, significantly reducing the number of financial penalties or “user-pay” fees that shift the expense of the court system to criminal defendants would generally reduce the exposure of communities of color to criminal justice debt. Similarly, ensuring meaningful ability-to-pay hearings before debt is imposed or enforced would disrupt the cycle of debt and incarceration that often ensnares poor people moving through the legal system. Some reforms, however, should be specifically prioritized for ameliorating racial disparities.

Ensuring robust collection of data is an important place to start. Data on the operation of criminal justice debt is, in general, harder to obtain than it should be. Courts and other justice stakeholders should develop robust mechanisms for tracking, among other things, what financial obligations are being imposed and by which actors; how those debts are enforced and how much is collected; how revenue collected by courts is distributed; and how often people are incarcerated for those debts. To the maximum extent possible, that data should include information about the race of defendants. This is the only way for courts and other actors to reliably detect which practices may result in unjust disparities so that appropriate remedies can be devised. Courts should play an especially active role in reviewing their own practices and in monitoring potential disparities driven by other criminal justice actors (like police or private debt collectors) and in identifying systemic remedies for those disparities. Taking data collection seriously is a crucial first step.

Racial disparities cannot be effectively eliminated if they are not measured. Actively seeking to identify and cure race disparities will also improve the courts’ legitimacy in the eyes of communities who believe that the legal system fails to afford them equal status.

Training is also critical. Courts should ensure that actors throughout the judicial system undergo training designed to eliminate racial bias. This should include training on implicit bias and on the dynamics of race and poverty that can create discriminatory impacts. Courts should also focus training on areas where facially neutral practices may have a disparate effect. For example, it is crucial in all instances that courts conduct meaningful ability-to-pay determinations. Adhering to best practices in that area would safeguard against injustice for all individuals coming before the courts. It would also help counteract disparities at a crucial point in the system. Courts, meanwhile, should not just train internally but encourage all the actors who interact with the judicial system, including prosecutors, defense attorneys, and court clerks, to undergo similar training.
Courts should also play an active role in minimizing the application of practices that function as poverty penalties or poverty traps. (For a discussion of how policies can function as poverty penalties and poverty traps, see Criminal Justice Policy Program, 2016.) Chief judges should systematically examine legal authorities to determine where judges maintain discretion to avoid dispositions that exacerbate poverty and then issue rules or guidance to ensure that trial judges use that discretion expansively. Among other things, chief judicial officers should issue policies or provide guidance advising trial judges to waive untenable financial obligations and avoid sanctions, like suspension of driver’s licenses, that can ensnare individuals in poverty. Where existing law mandates outcomes that penalize or entrench poverty, chief judges should educate lawmakers on the counterproductive effects of a legal system whose impacts depend on a person’s wealth, especially given the well-established links between poverty and race.

Finally, courts should engage other stakeholders consistently to ensure that the highest values of the legal system are upheld. This means sending a clear message to legislators that judicial processes should not be funded on the backs of (predominately poor) people who move through the legal system. And it means insisting that decision makers throughout the system confront the well-established racial disparities that too often characterize criminal justice debt.

References


Conclusion

The increased national attention on the harms associated with criminal justice debt is a promising development. Many judicial leaders have already taken a leading role in supporting reform. As courts and others work to bring about change, it is imperative that the racially discriminatory impact of fees and fines guide the reform agenda. Those disparities are not incidental, and changes that do not address them directly may fail to cure them. The sound administration of justice—and the legitimacy of the courts in all communities they serve—depends on a zealous effort to eliminate racial disparities in this consequential area.