

Jailing Debtors

Should people be jailed for unpaid fines?

The United States outlawed the practice of imprisoning people for failure or inability to pay their debts more than two centuries ago, and several Supreme Court rulings have supported that prohibition.

Yet local courts are jailing people for debts stemming from minor infractions such as unpaid parking tickets without regard to their ability to pay. Moreover, to cover rising administrative expenses, many courts are making defendants pay for public defenders, probation supervisors and jail cells — costs that traditionally have been a state responsibility — and people unable to pay are locked up. Local officials say defendants who use the criminal justice system should shoulder its costs. But the Department of Justice is urging the adoption of a more equitable punishment system, and civil rights advocates charge that jailing debtors criminalizes poverty, disproportionately affects minorities and leads to a modern form of debtors' prisons. Meanwhile, reformists are advocating an overhaul of the bail system, which can leave people without money behind bars while awaiting trial.



Kareem Chappelle was unable to post \$600 for bail in November 2015 when he turned himself in after missing a court date stemming from a charge of possessing a small amount of crack cocaine. Chappelle was jailed for more than a month and lost his home, car and job. "It just didn't seem fair," said Chappelle.

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EXECUTIVE EDITOR: Thomas J. Billitteri
tjb@sagepub.com

ASSISTANT MANAGING EDITORS: Kenneth Fireman, kenneth.fireman@sagepub.com,
Kathy Koch, kathy.koch@sagepub.com,
Chuck McCutcheon,
chuck.mccutcheon@sagepub.com,
Scott Rohrer, scott.rohrer@sagepub.com

SENIOR CONTRIBUTING EDITOR:
Thomas J. Colin
tom.colin@sagepub.com

CONTRIBUTING WRITERS: Brian Beary,
Marcia Clemmitt, Sarah Glazer, Kenneth Jost,
Reed Karaim, Peter Katel, Barbara Mantel,
Tom Price

SENIOR PROJECT EDITOR: Olu B. Davis

EDITORIAL ASSISTANT: Anika Reed

FACT CHECKERS: Eva P. Dasher,
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Jailing Debtors

BY CHRISTINA HOAG

THE ISSUES

Stephen Papa paid a heavy price for drunkenly climbing onto the roof of a building in Grand Rapids, Mich. An Iraq War veteran who was living on friends' couches at the time, Papa was arrested and ordered to pay \$2,600 in fines for trespassing, court costs and restitution.

At a court hearing a month later to pay the first installment of \$50, he had just \$25. But he told the judge, he had a new job that paid \$12 an hour at a steel plant. The judge said he should have tried harder to come up with the \$50 and sentenced him to 22 days in jail.

"I tried telling the judge, throwing me in jail is going to do you no good," Papa said. "You're not going to get your fines like you want, and I'm going to lose my job, and you're really not going to get your fines if I don't have a job. . . . It just baffled me."

When he got out of jail, he had indeed lost his job. He found another, as a security guard, but it paid \$4 an hour less.¹

In what civil rights advocates say is a modern-day "debtors' prison" system, poor people nationwide are being jailed over nonpayment of fines and fees stemming from minor offenses such as traffic violations and misdemeanors and then are often charged interest and additional fees to cover their time in jail. The situation creates a mounting pile of debt, and some offenders lose their jobs for missing work while jailed, spiraling deeper into poverty. Civil rights activists say the practice, which disproportionately affects minorities, is effectively creating

a two-tier system of justice — one for those who can afford fines and fees and one for those who cannot. "People are being jailed for their poverty," says Nusrat Choudhury, a staff attorney for the Racial Justice Program of the American Civil Liberties Union (ACLU). "They are being criminalized for being poor."

But many local judges and officials say fines hold people accountable for their transgressions. If scofflaws do not obey court orders to pay, judges must impose a harsher punishment, such as jail, they say.

In addition, these judges and officials



Mayor James Knowles of Ferguson, Mo., speaks to the media after a Department of Justice report detailed how the city's police department and municipal court targeted African-Americans with large fines and traffic tickets to raise revenue for the city. The Justice Department investigated the city following the fatal shooting of Michael Brown, a black teenager, by a white police officer, and subsequent riots.

Getty Images/Michael Thomas

say, in an era of tax-cutting and tight budgets the fines and fees are needed to cover the growing cost of administering local criminal justice systems. The higher costs are the result of get-tough-on-crime policies adopted in the 1980s that lengthened prison sentences for certain felonies and treated minor offenses more harshly. Annual criminal justice expenses jumped 70 percent from 1993 to 2012, to more than \$270 billion, according to a 2016 White House report, and the incarcerated population rose 220 percent — to 2.2 million — between 1980 and 2014.²

"Legislatures have not funded criminal justice systems to the extent needed to handle the huge increase in the number of people cycling in and out of the justice system," says Lauren-Brooke Eisen, a senior counsel at the Brennan Center for Justice in New York City, which studies the legal aspects of public policy.

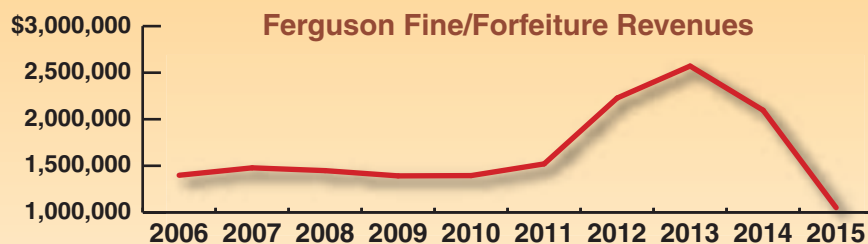
To remedy the situation, many jurisdictions have passed the increased costs — for everything from courthouse overhead to jail operations to

public defender salaries — on to the offenders by increasing fines and tacking on late fees and user fees. The practice is widespread: In 2014, 44 states charged offenders for probation and parole supervision, up from 26 in 1990.³ Since 1996, Florida has added 20 new categories of justice system fees.⁴

For municipal governments, making offenders pay is both economic and politically palatable. Some officials say those who commit crimes should pay for them. "The only reason that the court is in operation and doing business at that point in time is because that

Court Revenues Fall in Ferguson

Revenue from court fines and forfeitures dropped by half in Ferguson, Mo., after a 2015 federal probe found that the city was using law enforcement to raise money to fund its court system and that the practice disproportionately targeted African-Americans. Racial tension had erupted in Ferguson after the 2014 shooting of unarmed black teenager Michael Brown by a white police officer.



Source: "2015 Comprehensive Annual Financial Report," City of Ferguson, December 2015, p. 70, <http://tinyurl.com/hfamddh>

defendant has come in and is a user of those services," said Mike Day, administrator of the Allegan County Circuit Court in Michigan. "They don't necessarily see themselves as a customer because, obviously, they're not choosing to be there. But in reality they are."⁵

Such policies disproportionately affect the poor and minorities, who are the majority of people involved in the criminal justice system, says Todd Clear, a criminal justice professor at Rutgers University in New Jersey. While blacks and Hispanics account for only 30 percent of the population, they constitute more than 50 percent of the incarcerated population, and 80 percent of felony defendants are indigent.⁶

"It's a distortion of justice," Clear says. "The criminal justice system isn't just for offenders. We all rely on it as a fair system." Moreover, defendants who later are found innocent may lose their jobs due to time lost while in jail, and — depending on the jurisdiction — some may be charged for room and board while they were in jail awaiting trial.

In 2015, the U.S. Department of Justice highlighted the use of fines and fees to generate municipal revenue when it investigated Ferguson, Mo., following

riots over the fatal shooting of Michael Brown, a black teenager, by a white police officer the previous August. The 105-page report detailed how Ferguson officials imposed large fines and traffic tickets, and targeted black residents.⁷ It cited the case of a woman who was fined \$151 for a parking violation in 2007. After becoming homeless, she missed several court hearings, and her fines grew. She was arrested twice for failing to show up for court hearings and spent six days in jail. By December 2014, she had paid a total of \$550 and still owed \$541 for that single parking ticket received seven years earlier.⁸

Attorneys for civil rights groups maintain these policies are illegal and have successfully sued numerous cities and counties, arguing that jailing poor people for failing to pay fines violates their 14th Amendment right to equal protection under the law. The attorneys also cite case law: Three Supreme Court decisions, the most recent in 1983, said people cannot be jailed because of an inability to pay, and that courts must determine a person's capacity to pay before imposing a fine, the ACLU's Choudhury says. However, people can be jailed if they have the

means to pay but refuse to do so, the justices said.⁹

Judges say it can be difficult to determine whether a defendant is truly destitute. Superior Court Judge Robert Swisher in Benton County, Wash., said he makes judgments based on how people present themselves in court. "They come in wearing expensive jackets or maybe a thousand dollars' worth of tattoos on their arms, and they say, 'I'm just living on handouts.'" If defendants say the jacket or tattoos were a gift, he said, he tells them they should have asked for the cash to pay their court fees instead.¹⁰

Bail reform has emerged as a related issue. Often, poor people awaiting trial cannot afford to post even small amounts of bail, an amount of money held in abeyance by the court to ensure the defendant shows up for court, says Cherise Fanno Burdeen, CEO of the Pretrial Justice Institute, a Maryland-based nonprofit that advocates eliminating the bail system. As a result, people are being held in jail for minor offenses because of their inability to pay, she says. According to one study, more than 450,000 people being held in the nation's jails are awaiting trial.¹¹

But the bail-bond industry says that on the whole, the system works, which is why it has been used for centuries. "We can't throw out the whole bail system," says Jeffrey Clayton, policy director for the American Bail Coalition, an industry advocacy group based in Greenville, S.C.

A Texas case in July 2015 highlighted how the bail system can affect poor people. Sandra Bland, a 28-year-old black woman arrested following an altercation with a police officer during a traffic stop, spent three days in a Texas jail after she could not raise the \$515 for a bail bond. She was found hanging in her cell, her death ruled a suicide.¹²

Earlier this year, the Justice Department sent a nine-page memo to federal, state and local courts reminding them

about the Supreme Court rulings that jailing people for inability to pay is unconstitutional.¹³ The memo said judges must consider a person's ability to pay before setting fines and bail amounts. Activists say the federal government's interest bodes well for policy change, although the Justice Department cannot monitor compliance in every court.

"It's a huge step forward," says Choudhury.

Counties and cities have instituted judicial system reforms in several states — including Washington, Colorado, Louisiana and Alabama — following lawsuits by civil rights groups. In Colorado and Missouri, for instance, legislatures are vigorously debating whether to limit fines and fees. Bills to reform the cash bail system are pending in Congress, while some states are implementing pretrial supervision programs aimed at replacing bail.

As local officials, legislators and civil rights advocates debate the issue, here are some of the questions they are considering:

Should people be jailed for failing to pay fines?

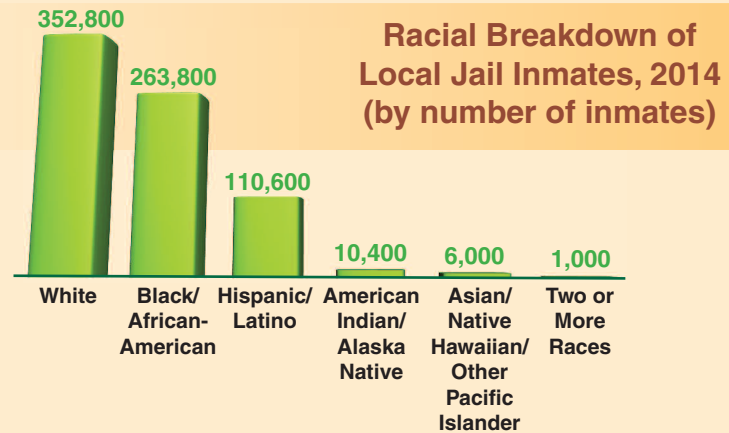
When police pulled over Ashlee Lucero in Mountain View, Colo., in September 2014, she was cited for having defective tires and fined \$80.

But that wasn't all she owed. A judge also ordered her to pay \$130 in court costs and service fees. Unable to afford the total amount, Lucero made a \$55 payment and was told to pay the rest by February. In December, she was summoned to court again but figured she didn't have to go because she already had a court date for payment. The following month, she was arrested for contempt of traffic court and spent a night in jail. A year later, she was still paying off her court debt.¹⁴

Advocates for the poor say stories like Lucero's are common across the country: Poor people end up in jail because they cannot afford to pay fines. Many judges say they allow poor-

Inmate Count Disproportionately Minority

Minorities accounted for about 40 percent of the U.S. population but made up 53 percent of local jail inmates in 2014, the most recent count. Experts say bail policies often disproportionately affect minorities and the poor.



Source: "Jail Inmates at Midyear 2014," Bureau of Justice Statistics, p. 3, June 2015, <http://tinyurl.com/jjvsbuy>

er people to pay fines in installments, but if defendants do not obey, judges have little choice but to impose a harsher punishment, which usually means jail.

"If I've got someone standing in front of me for something that's labeled a misdemeanor, and they've failed to follow through with court orders on that, am I supposed to tell the rest of the world, the rest of the law-abiding citizens, that they're chumps and fools for having respected the law and respected the court's orders?" asked Michigan Chief Judge Raymond Voet of Ionia County District Court.¹⁵

In Colorado, Presiding Judge Richard Weinberg of the Aurora Municipal Court told legislators a proposed ban on jailing the indigent "allows any person to ignore their responsibility for their criminal acts" and discriminates against people who do pay.¹⁶

But civil rights groups say courts ignoring Supreme Court rulings that it is unconstitutional to jail people because of an inability to pay. But Eisen of the Brennan Center points out that

determining financial status usually requires extra hearings, which pose an additional burden on already overloaded court dockets and public defenders. "In practicality, that doesn't happen," she says.

Some judges also fail to consider that jail is expensive, she and others say. Housing an inmate typically costs \$60 to \$80 per day, and numerous jurisdictions try to pass that cost on to offenders as daily "room and board" fees, adding to their debt, Eisen says. On top of that, jailed offenders often lose their jobs since they cannot work, which can spiral into loss of housing, child custody and other penalties, she adds. As a result, people who are truly destitute end up paying far more than people who can afford to pay, says Chris Albin-Lackey, a senior researcher at Human Rights Watch, a human rights nonprofit based in New York.

But judges say they do not jail people lightly. In Kansas City, Mo., for instance, Municipal Court Presiding Judge Anne J. LaBella said, "We do not jail people for money. Kansas City

spends more than \$1 million annually on indigent legal defense and \$90,000 to provide free community service for the indigent. We are a national model for Drug, Mental Health and Veteran's Treatment Courts, which focus on treatment and rehabilitation rather than incarceration." ¹⁷

Incarceration is necessary when people fail to pay their fines even after being put on "probation" and allowed to pay fines in installments, she said. "Without any possibility of jail time, probation is impossible," she stated. ¹⁸

For instance, Benton County, Wash., allowed offenders to choose between paying off their debt by performing manual labor in a work crew for \$70 a day in credits or by serving jail time for \$50 a day in credit. "Our function is to modify behavior, and currently we view this policy as a means of doing that," said District Judge Robert Ingvalson. ²⁰ After the ACLU sued, charging that the system discriminated against poor people, the county ended the practice in June. ²¹

Virginia uses another alternative method — suspending driver's licenses

to a year in prison and ordered to pay \$1,000 in court costs: \$500 for his public defender and \$500 for the operational costs of running the Allegan County courthouse, including salaries, utilities and even the county employees' fitness center. ²³

With the ACLU's help, Cunningham challenged the court costs, and the Michigan Supreme Court eventually ruled that such fees were not authorized under state law. Cunningham's victory was short-lived, however. The state Legislature, pressed by local governments, adopted a law authorizing counties to recoup costs by charging fees to offenders. ²⁴

Similarly, offenders nationwide are being charged to utilize the criminal justice system. In addition to room and board for jail cells, defendants are paying fees for things such as drug testing and the rental of electronic ankle bracelets. "It's become a very popular mechanism for funding courts and other programs," says Micah West, a staff attorney with the Southern Poverty Law Center, a civil rights organization based in Montgomery, Ala. "Fines are punishment, but fees are just about revenue generation."

Local officials say the fees are needed to pay for administering criminal justice and that those who use the system should shoulder that expense, just as is done for other legal services, such as recording a deed or filing a lawsuit.

"If they don't want to pay a fee, don't commit a crime," said Day, the Michigan court administrator whose county collected \$315,000 in fees from 2014 to 2015. "Why should taxpayers of the state of Michigan have to foot the entire bill of the court system?" ²⁵

Government experts say such reasoning is flawed on several levels. Not all people charged with a crime are later found guilty, they point out, yet the innocent often end up paying such fees. And criminal justice is a general government responsibility, such as

**"If they don't want to pay a fee, don't commit a crime.
Why should taxpayers of the state of Michigan have to
foot the entire bill of the court system?"**

— Mike Day,

Administrator,

Allegan County Circuit Court, Allegan, Mich.

Critics, including some county sheriffs, question whether failing to pay a fine merits a jail sentence. "These inmates really don't belong there because their offenses are not that serious," said Peg Ackerman, a lobbyist for the County Sheriffs of Colorado, a sheriffs' association. ¹⁹

Civil rights advocates say courts could lower or waive fines or impose community service, but such programs cost money and do not produce revenue, so courts may feel pressured to impose fines. "There's a very real economic difficulty in funding courts," says Albin-Lackey. Fines are "a politically expedient solution."

Some jurisdictions have devised alternative penalties that legal experts say are equally discriminatory against poor people.

of those who fail to pay court fines. Some 940,000 Virginians have had their licenses suspended even though their offenses often are unrelated to traffic violations, according to a lawsuit filed against the state in July by the Legal Aid Justice Center. ²² Critics of the policy say a suspended license can prevent people from getting to work, reducing their chances of paying off the fines. It also can lead to people driving with a suspended license to avoid losing their jobs, which can result in jail time if caught, the suit said.

***Should offenders be charged for
use of the criminal justice system?***

When Fred Cunningham pleaded guilty to a prescription drug fraud charge in Michigan, he was sentenced

public education, that should be borne by all because it benefits society as a whole, says John D. Donahue, a senior lecturer in public policy at Harvard University's John F. Kennedy School of Government. "It's a collective undertaking. It's not like delivering water or sewage services," he says.

In April, Alameda County, Calif., which includes Oakland, became the state's first county to stop charging fees to juvenile offenders' families, a practice that had put 2,900 families in debt. The fees, some of which totaled thousands of dollars and netted the county \$168,000 last year, included \$25.29 per night in Juvenile Hall, \$15 per day for electronic ankle monitoring, \$90 a month for probation supervision and \$250 for a probation investigation, among others.²⁶

"The families we work with are some of the poorest in the county, and yet they were asked to foot the bill for the juvenile justice system," said Kate Weisburd, youth defender clinic director at the East Bay Community Law Center. "It undermines family stability at a time when stability is needed most."²⁷

Some of the most problematic practices arising from fees have resulted from the use of private companies to supervise offenders who are put on so-called probation while paying off court fines, analysts say. The companies, which do not charge the counties for the service, make money by charging offenders a fee.

In Clanton, Ala., offenders under supervision typically were required to pay a \$10 setup fee and then \$140 per month, \$100 of which went toward their fine. The rest went to the company, Judicial Corrections Services.²⁸ When people fell behind on their payments, the company continued to collect its own fee, thus increasing the amount of the debt while lengthening the offender's probationary term because the money he was paying did not go toward paying the fine. Offenders were threatened with jail if they did not pay.

The Southern Poverty Law Center sued Clanton and Judicial Corrections Services, alleging that the company was "extorting" supervisees. In a settlement, Clanton canceled the contract. Another 54 municipalities and counties across the state also canceled their contracts after the Southern Poverty Law Center sent them a letter warning them the company's practices were illegal.²⁹

Private companies often fail to properly monitor their supervisees, says Dolan of the Institute for Policy Studies. "It's in their interest to keep you caught in the system," she says.

Rozzie Scott went to jail because he could not pay \$50 for an "extension fee" after telling Judge Robert Black he couldn't pay \$450 in fines and court costs for shoplifting \$5 worth of food.³¹ After the Southern Poverty Law Center sued the court on the grounds that Scott's right to equal protection was being violated, Black stopped the practice. However, he said, the fees had defrayed the costs of holding extra court hearings when people returned to court to request a deadline extension on their court fines. The fees had covered a 20- to



Mark Silverstein, legal director of the American Civil Liberties Union of Colorado, announces a settlement with Colorado Springs over what an ACLU suit called its "debtors' prison practices." The city agreed to compensate dozens of people jailed because they couldn't pay fines for minor offenses like panhandling and jaywalking. A 1971 Supreme Court ruling banned such sentences, but they still persist in some city-level courts, he says.

Still, private probation companies remain attractive to counties because debt collection is expensive, Albin-Lackey of Human Rights Watch says. Two Florida counties, in fact, canceled their own debt collection efforts after determining the net gain wasn't worth the expense: Leon County voided 8,000 outstanding arrest warrants and Orange County canceled outstanding nonpayment warrants for homeless people.³⁰

Some courts, however, send people to jail for nonpayment. In Bogalusa, La.,

30-percent budget shortfall in the court's operating costs.

Moreover, Black said, "It is the court's understanding that the collection of these or similar costs is utilized by other courts in Louisiana."³²

Should inability to pay bail lead to pretrial detention?

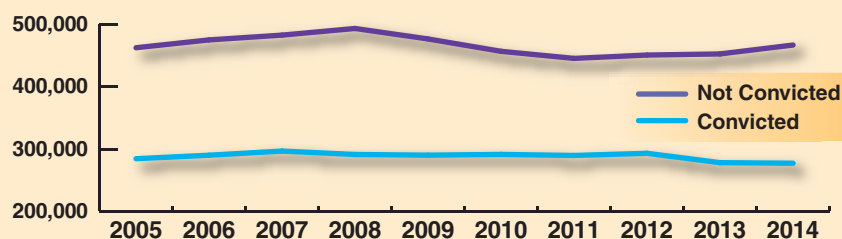
Tyrone Tomlin was faced with a choice after a judge set his bail at \$1,500 on a misdemeanor charge of possessing drug paraphernalia — a

AP Photo/The Gazette/Mark Reis

Most Jail Inmates Not Convicted

About 60 percent of the nation's local jail population is made up of inmates who have not been convicted of a crime. Some can't afford to post bail so they are detained while awaiting a hearing or trial.

Number of Inmates in Local Jails



Source: "Jail Inmates at Midyear 2014," Bureau of Justice Statistics, p. 3, June 2015, <http://tinyurl.com/jjvsbuy>

straw that a clerk had handed him when he bought a soda. Tomlin, who had had numerous previous drug convictions, was arrested after police saw him on a New York City street with friends and suspected them of using drugs — plastic straws being commonly used to package heroin.

Because he couldn't afford bail, Tomlin had to choose between pleading guilty and serving a 30-day sentence or maintaining his innocence and going to jail until his case was resolved. Tomlin pleaded not guilty and was sent to New York's Rikers Island, where he was beaten by other inmates while awaiting trial. At a court hearing three weeks later his case was dismissed after the straw tested negative for drug residue.

He had spent three weeks in jail, endured a beating and lost income for nothing. "I'm not no prince but I got a raw deal," Tomlin said.³³

About 60 percent of the nation's 644,500 jail inmates are being held while awaiting trial.³⁴ After arrest, defendants go before a judge to have charges against them formally presented, to state whether they are guilty or not and to determine whether they should be jailed pending resolution of their case. The judge decides whether

they can go free after posting bail, or on their own recognizance, meaning they simply promise to show up for court. While some pretrial detainees — typically those charged with severe crimes or deemed likely to flee — are denied bail, the majority are granted bail. If they cannot afford to post bail, they must stay in jail.

If the defendants eventually are acquitted, they may or may not have to pay for their room and board while they were in jail awaiting trial, depending on the practices of the jurisdiction, experts say.

Under the bail system, defendants can either pay the bail themselves or engage a bail bond agent by paying 10 percent of the bail amount, while the bondsman guarantees the rest. If the defendant flees, the bail agent pays the balance. If the defendant returns to court, the agent keeps the defendant's 10 percent as his agent fee. Defendants who later are found not guilty do not get their 10 percent back.

Activists say the money bail system is unfair to the poor and needs to be reformed: While both are presumed innocent, wealthier people can buy their freedom pending trial, whereas poor people cannot. Indigent people charged with petty, nonviolent offenses

are particularly affected, the activists say, because they cannot come up with even the paltry amounts to get bailed out of jail.

"Is this jaywalker a menace to society? These aren't people who are flight risks, yet they are locked up because they can't afford bail," says Karen Dolan, a fellow at the Institute for Policy Studies, a progressive think tank in Washington, D.C.

The bail bond industry opposes one alternative recommended by reformers: replacing the bail system with pretrial supervision programs, which assign risk scores to defendants based on their criminal history and other factors and require defendants to check in with authorities periodically, depending on their score.

Cash bonds are necessary, the industry contends, to ensure that defendants return to court. "Bail works," says the American Bail Coalition's Clayton.

He cites a 2004 study in the *University of Chicago Journal of Law and Economics*, which found that defendants released on bond are 28 percent less likely to fail to appear than those released on their own recognizance. And if defendants fail to appear, they are 53 percent less likely to remain at large for extended periods.

Defendants can ask a judge to reduce bail if they feel the amount is unreasonable, and bail makes the defendant feel emotionally beholden to show up because family and friends usually pay the bond, Clayton notes. "In the vast, vast majority of cases, defendants don't post their own bail," he says.

But the bail system creates some insidious consequences for the poor, reformists say. When people cannot make bail, says Fanno Burdeen of the Pretrial Justice Institute, they are more inclined to take a prosecutor's deal to plead guilty in return for probation or a limited jail term, thus giving themselves unwarranted criminal records simply because they cannot pay fines or court costs, which can be as little as \$100.

In Tomlin's case, he was never able to make bail on any of his 41 arrests on misdemeanor charges. For two-thirds of the charges, he took plea deals either at arraignment to avoid going to jail or within two weeks in order to get out of jail.³⁵

Pretrial detention reforms are underway in several jurisdictions, including establishment of community bail funds that post bail for poor people, provided by nonprofit organizations and private donors. The Brooklyn, N.Y., Community Bail Fund reported a 97 percent court attendance rate for clients, 62 percent of whom had their charges dismissed. By contrast, 90 percent of those who don't make bail in New York City plead guilty.³⁶

Other jurisdictions, including some New York City boroughs and the state of New Jersey, are enacting pretrial supervision programs, says Greg Berman, executive director of the Center for Court Innovation in New York, which is running a pretrial program.

The programs are expensive, however. New Jersey's program will cost about \$50 million a year, largely for extra staff to monitor defendants, although officials expect that lower jail costs will offset the cost.³⁷

Clayton notes that bail bond agents essentially do the same job of keeping track of defendants, especially ones deemed at high risk for committing crimes or fleeing, at no charge to taxpayers.

Both jail and pretrial supervision are costly, said Charlotte McPherson, manager of Pretrial Services for Kentucky, which replaced bail with pretrial supervision four years ago. Some of the supervision expense is passed on to defendants: High-risk defendants, for instance, must pay for their own drug testing and ankle bracelets while under supervision, costs that sometimes exceed what they would have paid in bail, she noted.³⁸

Clayton says the industry recognizes that some genuinely destitute defendants deserve bail. He favors developing a system in which the courts contribute



AFP/Getty Images/Kena Betancur

A demonstrator carries a photograph of Sandra Bland during a memorial in New York City on Aug. 9, 2015, for Michael Brown, the Ferguson, Mo., teenager shot and killed by a policeman. Bland was arrested following an altercation with a police officer in Texas during a traffic stop and was jailed after she could not pay the \$515 bail. She hanged herself in her cell three days later.

a portion of high bail amounts to a bail fund for the poor. But, he notes, the nation's 15,000 bail agents play a vital role to ensure that defendants face justice as well as pursuing fugitives and monitoring people who are at a high risk of committing more crimes while free on bail.

"Allowing violent persons to walk out of jail on low bonds or on a simple promise to return for their court dates is dangerous," he says. ■

BACKGROUND

Early History

Debtors have been subject to cruel treatment throughout history. Debt slavery, for instance, in which those owing money became slaves to their creditors, who could sell them to recoup their debt, existed as far back as 3000 B.C.³⁹ The earliest written Roman laws — the Twelve Tables, dating to the 5th century B.C. — codified the practice

of nexum, or debt bondage, in which borrowers volunteered themselves as collateral for loans, effectively ending debt slavery. If borrowers defaulted, they worked off the debt.⁴⁰

Nexum caused great social and political turmoil, however, because the contract heavily favored the creditor, often requiring the debt to be paid up to nine times over, resulting in a lifetime of hardship and penury for the debtor.⁴¹ By the 4th century B.C., Rome had outlawed debt bondage in favor of a system of using property as loan security, although debt bondage in different forms continued elsewhere for centuries.⁴²

In the Middle Ages, Europe began incarcerating people until their debts were paid, which resulted in long, indefinite sentences, as well as asset seizures. A creditor could obtain a court judgment, allowing bailiffs to go to the debtor's home and remove property. The system led to widespread abuse because bailiffs would confiscate more than was necessary to pay the debt and often took items for themselves or demanded deeds to the property.⁴³

JAILING DEBTORS

In 1542, under King Henry VIII, England's first bankruptcy law allowed merchants and traders to seize debtors' assets. The king's daughter, Elizabeth, who became queen in 1558, adopted a law in 1570 that served as the precursor to bankruptcy laws adopted in the 19th century. It stipulated that creditors could seize assets, sell them and divide the proceeds among themselves. It also allowed for debtors' ears to be cut off.⁴⁴

Imprisonment, however, became the primary way to deal with debtors. By the 18th century, defaulters constituted the bulk of the incarcerated population,

such luminaries as Daniel Defoe, author of *Robinson Crusoe*, artist William Hogarth and John Dickens, the father of novelist Charles Dickens.⁴⁶

Charles had been forced to leave school at age 12 to work in a boot-black factory to help support his parents and their four youngest children, all living in prison due to his father's debts. The experience ignited Dickens' lifelong compassion for the poor, and he later set one of his books, *Little Dorrit* (1857), in London's Marshalsea Prison for Debt, where his family had been inmates.⁴⁷

Delinquent payers in England could also be sentenced to live "within

People could remain in prison for years, often over trivial amounts. Debts could also accrue during incarceration. The prisons, which were privately run, charged for room and board. For inmates who still had access to money or who had wealthy benefactors, living conditions were passable — they were allowed visitors and could buy better food and drink, and could even pay to live outside the prison, but nearby.

But the indigent had to beg for alms from passersby through windows and grates, or they simply starved. After a 1729-30 parliamentary investigation of prison conditions for poor inmates, several wardens were prosecuted for murder.⁴⁹

U.S. Debt Law

In the wake of the parliamentary investigation, James Oglethorpe, a British philanthropist and member of Parliament, in 1732 came up with a special purpose for settling Georgia, the last of Britain's 13 colonies in North America. He proposed that debtors in London's overcrowded jails be shipped to the settlement for a fresh start. However, in an era when debt was considered a moral weakness, the plan met resistance in Parliament, and when the first batch of 114 colonists was dispatched in 1732, they were not debtors but "the deserving poor" — hard workers who deserved a helping hand — whose mission was to manufacture goods to export to England.⁵⁰

However, Colonial America followed the English practice of imprisoning people for owing minute amounts. Defaulters included such illustrious names as Robert Morris, who helped finance the American Revolution and signed the Declaration of Independence.⁵¹

Debt threatened to undermine the stability of the newly formed United

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Getty Images/UiG/Education Images

Residents of Worsham, Va., who didn't pay their taxes might find themselves in the old debtors' prison, built in 1787. Colonial America followed the English practice of imprisoning people for owing minute amounts. Defaulters included such illustrious names as Robert Morris, who helped finance the American Revolution and signed the Declaration of Independence.

with several prisons designated solely for the bankrupt. In 1776, English and Welsh prisons housed 2,437 debtors. Often when a primary wage-earner was imprisoned, his family fell into poverty and was forced into prison as well. Each debtor imprisoned in 1776 had an average of two dependents, usually a wife and child, incarcerated with him.⁴⁵

Debtors were not all working-class people. Some in the middle or upper classes ended up in prison after living beyond their means. They included

the extent of the rules" or "in the verge of the court," which meant they could be arrested if they stepped outside a prescribed area except on Sundays. In Henry Fielding's 1751 novel *Amelia*, a footman tells Capt. Booth that his wife fell gravely ill while in a shop. When Booth rushes to the shop, just outside the verge, he's promptly arrested.⁴⁸

The only way out of debtors' prison was to pay off the debt, often with the help of family or friends, or to reach an agreement with the creditor.

Chronology

Ancient History-1820s

Debtors' prisons are widespread.

Roman Empire

Creditors are allowed to enslave defaulting debtors; later, those who have worked off their debt are freed.

Middle Ages

European laws allow creditors to seize property to pay a debt.

1798

Declaration of Independence signer Robert Morris, known as the "Financier of the American Revolution," enters Philadelphia's Prune Street Debtors' Prison; he is released in 1801.

1808

Revolutionary War Gen. Henry Lee III, father of Confederate Army Gen. Robert E. Lee, writes *Memoirs of the War in the Southern Department of the United States* during his year in a debtors' prison.

1824

Famed English novelist Charles Dickens goes to work in a factory at age 12 after his parents are jailed for debts to a baker. He later sets his novel *Little Dorrit* in a debtors' prison.

1833-1898 U.S.

outlaws federal debtors' prisons.

1833

The United States eliminates debtors' prisons under federal law. Many states follow suit.

1898

Congress passes first modern bankruptcy law, giving companies protection from creditors.

1900s Bankruptcy

laws provide relief to debtors and set creditor guidelines.

1938

Amid the Great Depression, Congress passes the Bankruptcy Act, expanding debtors' use of voluntary declarations of bankruptcy.

1970

U.S. Supreme Court rules that extending a prison term because a person is too poor to pay fines violates the 14th Amendment's right to equal protection.

1971

Supreme Court declares it unconstitutional to convert a fine into a jail term because the defendant cannot pay.

1978

In a sweeping overhaul, Congress passes Bankruptcy Reform Act, creating bankruptcy courts and different types of bankruptcy.

1983

Supreme Court rules that the 14th Amendment bars courts from revoking probation for the failure to pay a fine without ascertaining a person's ability to pay.

1990s-Present

As incarceration rates and court costs rise, jailing people for unpaid fines surges.

1997

Former football star O.J. Simpson, who was acquitted of killing his wife Nicole Brown Simpson and her friend Ron Goldman in a sensational 1995 trial, moves to Florida after a civil jury awards \$33.5 million to the Brown and Goldman families in a wrongful-death suit stemming from the case; under state bankruptcy laws, many of his assets are protected from seizure.

2005

Congress limits individual bankruptcy to once every eight years to rein in debtors taking advantage of earlier changes designed to help them.

2009

After receiving complaints, the American Civil Liberties Union (ACLU) starts investigating the practice of jailing people who cannot afford to pay fines.

2010

Judicial Correction Services, a for-profit probation service company, makes *Inc.* magazine's list of "fastest-growing private companies in America" for the third year in a row.

2015

The Bowdon, Ga., Municipal Court closes for a month after a judge is found to be threatening defendants with jail for traffic violations if they do not pay fines; it reopens with lower fines and a community service alternative to jail.

2016

National court organizations establish a task force to investigate court fines and fees (February). . . . ACLU wins a settlement in Colorado Springs, Colo., to stop city from jailing people for failure to pay fines (May). . . . Benton County, Wash., agrees to overhaul its system of mandating jail or manual labor for people who cannot afford fines (June).

Luxury Lockups Welcome Nonviolent Inmates

"We cater to good people who make bad choices."

Personal TVs, phones and mini-refrigerators may be standard at many hotels, but some Southern California jails also provide them as amenities — for a price.

In a twist on the practice of jails charging inmates for room and board, about a dozen suburban police departments in Los Angeles and Orange counties offer "pay to stay" programs where nonviolent offenders can pay fees ranging from \$85 to \$150 a day to serve their sentences in relative comfort instead of enduring noisy, overcrowded and sometimes violent jails run by Los Angeles County.

Municipal officials say the programs help offset the costs of public safety. The city of Glendale, on the outskirts of Los Angeles, took \$63,377 in 2014 from 268 inmates who each paid \$85 a day.¹ Offenders "should pay their own way. I don't feel that burden should be placed on the taxpayers," Jail Administrator Juan Lopez said.²

But critics of such programs denounce them as "jail for the rich," and argue that while they are legal, they unfairly treat people based on their economic status. "What a slap in the face for the concept of equal justice for all," said Peter Eliasberg, legal director for the American Civil Liberties Union of Southern California. "If it's a public service, that should be offered to everyone, regardless of their ability to pay."³

Pay-to-stay programs appear limited to Southern California, where they have existed since the 1990s, with their prime customers being celebrities seeking to avoid the Los Angeles County jails. Inmates must have a judge's approval to enter the programs, and they do not have to live in the small municipality where the lockups, usually far more comfortable than the LA county jails, are located. For instance, in 1998, actor Christian Slater served 59 days of a 90-day sentence in a facility in La Verne, in the

hinterlands of Los Angeles County, for battery and drug violations. And rapper and music producer Dr. Dre, whose real name is Andre Young, served five months in the Pasadena lockup on a 1994 probation violation after pleading no contest to DUI. Similarly, actors Kiefer Sutherland and Gary Collins served out their DUI sentences in Glendale in 2007 and 2008, respectively.⁴

Seal Beach, a seaside city in Orange County, reaps about \$500,000 a year from a 30-bed detention facility that opened in 2013.⁵ It even ran a newspaper advertisement to drum up customers for the premium plan, which costs \$100 a night, with work release \$20 a day extra: "Why spend your jail sentence of 365 days or less at county? We offer the following amenities: Work Release/Flat Screen TVs/Computer/Media RM/Clean Facility/New Beds," said the facility's ad in *LA Weekly*.⁶

Seal Beach charges \$150 for the first night, \$100 for each night thereafter and \$20 a day extra for work release.⁷

Other departments tout smaller pay-to-stay programs on their websites. The Burbank Police Department offers its "relatively small, clean, new and local jail" for \$100 a night and boasts a photo of a spotless cell corridor. To qualify, inmates must test negative for TB and have medical insurance.⁸ Conditions in the pay-to-stay jails resemble a modest motel with basic furnishings.

Some Southern California residents even choose to serve sentences imposed in other states in California so they can be closer to home. Police departments typically restrict participants to first-time offenders convicted of nonviolent and minor crimes. Other occupants are people, including law enforcement informants, whose safety may be threatened in the county jail.

The programs have encountered problems through the years. Seal Beach closed its jail for eight months in 2007 and 2008 after three employees of the private company that ran the facility,

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States when in 1786, during a time of economic turmoil, farmers from Massachusetts to South Carolina rebelled against attempts by officials to collect debts and unpaid taxes. By 1787, militias had put down the uprisings, known as Shays' Rebellion after Daniel Shays, a Continental Army captain turned farmer. Congress then voted to cut taxes and issued a moratorium on debt collection.⁵²

In 1830, the Prison Discipline Society of Boston reported that 30 people were imprisoned in Philadelphia for owing less than \$1, equivalent to about \$25

today, while one-third of the jail's 817 debtors owed \$5 or less.⁵³ With opposition to imprisonment and calls for debt law reform mounting, the U.S. government in 1833 eliminated federal debtors' prisons, and most states followed suit in the 1830s and 1840s. England, meanwhile, abolished debtors' prisons in 1869.⁵⁴

Accompanying these moves was a shift in how the law treated debt. Instead of viewing debt as a crime, laws began to view bankruptcy as a way to keep creditors at bay while allowing a person to recover from debt. In 1841, the first law was enacted to

permit voluntary bankruptcy, which became a central feature of all subsequent bankruptcy laws. But the law was widely regarded as a failure because creditors struggled to recoup debts, and it was repealed in 1843.⁵⁵

Following the Civil War, which left the South in financial ruin, a new federal bankruptcy law in 1867 allowed for both voluntary and involuntary bankruptcy declarations by companies and individuals.⁵⁶ But a decade later it, too, was repealed after pressure from creditors, who complained it incurred too many fees and produced small dividends and long delays.⁵⁷

Texas-based Corrections Systems, were charged with stealing a Sony PlayStation from an inmate and another was charged with conspiring with a former inmate to kill a Newport Beach couple and steal their yacht.⁹

Some crime victims argue that deluxe detention does not sufficiently punish criminals. Chiho Hayakawa, whose daughter died in a 2010 drunk-driving crash, said she was shocked to learn that the man responsible served his two-year jail sentence in a cell that cost him \$72,000, and said he had paid his way out of a harsher punishment.¹⁰

Police emphasize that while inmates may receive certain privileges, such as being able to bring and store food from home in refrigerators and watch satellite TV from couches in lounge areas, they are still in jail. Inmates sleep in locked cells, their movements in the jail are restricted and lights are out at 10 p.m.

"We cater to good people who make bad choices," said Seal Beach Detention Center Sgt. Steve Bowles.¹¹

— Christina Hoag

¹ Veronica Rocha, "Glendale jail finds many inmates willing to pay its \$85-a-day rate," *Los Angeles Times*, April 7, 2013, <http://tinyurl.com/z45ym4l>.

² *Ibid.*

³ Mary Harris and Hetty Chang, "Pay-to-Stay Jail Programs Offer Upgraded Cells For a Price," NBC Los Angeles, May 1, 2015, <http://tinyurl.com/oa2nxvk>.

⁴ Matt Clarke, "Celebrity Justice: Prison Lifestyles of the Rich and Famous," *Prison Legal News*, July 15, 2010, <http://tinyurl.com/hfr5t4a>.

⁵ Chris Peters, "Report: Kings D Slava Voynov serving time in 'pay-to-stay' jail," CBS Sports, July 29, 2015, <http://tinyurl.com/z6pn4bk>.

⁶ Ron Rohky, "Inmates Can Pay for Luxury Cells in Seal Beach Jail," NBC Los Angeles, Aug. 1 2013, <http://tinyurl.com/hvukujo>.

⁷ Alyssa Duranty, "Would you pay to stay here? For some who can shell out, jail comes with satellite TV, a gym, yoga," *The Orange County Register*, March 12, 2015, <http://tinyurl.com/jh6vvbo>.



Getty Images/Bruce Bennett

Slava Voynov of the Los Angeles Kings spent time in Seal Beach's luxury "pay-to-stay" detention center after pleading no contest to a misdemeanor domestic violence charge.

⁸ "Pay to Stay Program," Burbank Police, undated, <http://tinyurl.com/zux9kyt>.

⁹ Scott Martindale, "Seal Beach Jail Shut Down," *The Orange County Register*, June 2, 2007, <http://tinyurl.com/hqmbx5q>; Jorge Barrientos, "Seal Beach Jail re-opens after 8-month shutdown," *The Orange County Register*, Feb. 28, 2008, <http://tinyurl.com/jns84th8>.

¹⁰ Harris and Chang, *op. cit.*

¹¹ Alyssa Duranty, "Would you pay to stay here? For some who can shell out, jail comes with satellite TV, a gym, yoga," *The Orange County Register*, May 2, 2015, <http://tinyurl.com/jh6vvbo>.

Bankruptcy laws got a fresh look after the Panic of 1893, sparked by the failure of a major railway company, the Reading Railroad. The stock market plunged, hundreds of banks closed as people withdrew savings, thousands of businesses collapsed and unemployment reached 4 million.⁵⁸

In the aftermath, Congress adopted the Bankruptcy Act of 1898, which became the template for 20th-century bankruptcy laws. The law stipulated that a court-appointed trustee would oversee each bankruptcy. However, the process was cumbersome, with trustees required to file multiple lawsuits in dif-

ferent courts and await their adjudication before finalizing a single liquidation or reorganization.⁵⁹

Modern Bankruptcy

After a flurry of amendments to bankruptcy laws, the next major overhaul came in 1938, in response to the Great Depression, which began when the overheated stock market crashed in October 1929, wiping out millions of investments. By 1933, nearly half of the nation's banks had collapsed and more than 13 million people were

unemployed — 25 percent of the workforce.⁶⁰

The Chandler Act divided bankruptcies into "chapters" covering different types of defaults, including real property and corporate reorganizations, laying the groundwork for current bankruptcy law.⁶¹

Congress adopted the next major bankruptcy reform in 1978 after nearly a decade of study. It was unique in legal history in that it did not come about in response to an economic crisis. In addition to streamlining bankruptcy administration, the law aimed to allow the debtor to shed all debt,

Community Courts Offer Services to Offenders

"This is a more rational, humane and effective response."

Every Monday, a mission of justice takes its place among the bibliophiles at the Spokane, Wash., Public Library. A conference room becomes a courtroom with a table, flanked by a couple of flags, serving as the judge's bench. In an adjoining room, defendants awaiting hearings can sign up for drug counseling, help finding housing and other social services, and get a free lunch.¹

The program is a so-called community court, designed to handle nonviolent misdemeanors — such as vandalism, trespassing, failure to pay a debt or public intoxication — by holding offenders accountable through community service in lieu of fines or jail sentences. At the same time, the court offers aid to reduce the likelihood of recidivism.

"It's awesome. It's been a blessing for me," said Aubrey Schults of Spokane, who was referred to community court after being jailed on failure-to-appear warrants stemming from a charge of not paying a \$10 taxi fare. Through community court, she received housing, was eligible to have missing teeth replaced and avoided a 60-day jail term by completing drug and mental health treatment.²

"There's a tendency for judges to resort to short-term jail or fines for minor offending," says Greg Berman, director of the Center for Court Innovation, a New York City-based nonprofit at the forefront of the community court movement. "This is a more rational, humane and effective response."

Community courts, which started in New York City in 1993,

have gained traction in recent years as cities have sought to find cheaper alternatives to overcrowded jails and relieve clogged court systems.³ Such alternatives often rely on the theory of "restorative justice," a nonpunitive system that promotes conciliation and mediation over harsh punishment.⁴

Ten cities — including Chicago, Cleveland, Dallas, Honolulu and Las Vegas — each received a \$200,000 grant this year from the U.S. Department of Justice's Bureau of Justice Assistance to start or expand community court programs.⁵

Judges have long had the option of using community service for low-level lawbreaking, but courts have underutilized it because it can prove problematic for some offenders due to child care needs, transportation costs and lost wages, notes Nusrat Choudhury, a staff attorney with the American Civil Liberties Union's Racial Justice Program. "It can become long and onerous."

Community service programs also cost money to run and — unlike fines — do not generate revenue, says Chris Albin-Lackey, a senior researcher with Human Rights Watch in New York City. "There's also the issue of how do you credit the value of someone's time," he says.

Often the community service assignment has nothing to do with the offense, and offenders are required to start service 30 days from sentencing — conditions critics say lessen the impact of accountability.

except for child support and alimony, by filing for bankruptcy. This change led to a huge increase in filings by individuals in subsequent years.⁶²

The law also authorized states to opt out of federal exemptions in favor of their own. This led to several states, most notably Florida, becoming "debtors' paradises." Under Florida law, creditors cannot seize a debtor's primary home, regardless of the value of the property, which can include up to 160 acres. Nor can creditors confiscate financial assets, including wages deposited in bank accounts, annuities, pension plans, individual retirement accounts, life insurance policies or profit-sharing proceeds.⁶³ Creditors can go after cars, boats, jewelry and other personal property, however. Many wealthy individuals have taken advantage of Florida's generous laws to live comfortably in beachfront man-

sions despite owing millions of dollars to out-of-state creditors.⁶⁴

In 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act, largely due to concern over the abuse of bankruptcy filings to avoid paying debt and lobbying by the credit card industry. The new law raised the bar on individual bankruptcy filings by mandating that wealthier people file for Chapter 13 reorganization and pay off debts over a five-year period, and made all household income subject to confiscation by creditors, not just that of the indebted party. The debtor also must complete a personal financial management course.⁶⁵

Criminal Justice Debt

While bankruptcy laws governed the discharge of commercial

debt, another type of debt emerged in the latter half of the 20th century called criminal justice debt, or legal financial obligations resulting from the failure to pay fines levied as punishment for crimes and related court costs.

In 1965 California was one of the first states to impose legal financial obligations by ordering defendants to reimburse victims for losses they suffered due to crime.⁶⁶ Subsequently, two cases from Illinois and Texas involving people jailed because they could not pay fines and court costs ended up in the U.S. Supreme Court. In 1970 and 1971, the justices ruled that a maximum prison term could not be extended because the defendant had not paid court costs or fines. The justices also said judges cannot jail indigents in lieu of paying fines but that they can devise alternative punishment. In both cases, the court concluded that

Community courts seek to make community service more meaningful as a punishment, Berman says, with judges trying to link the offense and the assignment: For example, if someone urinates in a public park, he or she is ordered to pick up litter in the park where the offense occurred. Offenders also must start the service within 24 hours of a judge's order. The idea is to emphasize the link between the transgression and the penalty, as well as the sense of collective benefit, Berman notes.

"It's about treating the offenders as a member of the community, not as an outcast," he says.

Community courts have proven particularly successful in processing cases speedily, getting people to complete their sentences and helping localities clean up problem-plagued areas. In the five years after New York City's Midtown Community Court opened, 75 percent of defendants completed their sentences, compared with 50 percent for traditional court, and the Midtown neighborhood saw 24 percent fewer arrests for illegal street peddling and 56 percent fewer prostitution arrests.⁶

But community courts have been less successful in reducing recidivism rates, which are either equal to or slightly less than in traditional courts, according to a 2011 Center for Court Innovation study.⁷ Even so, proponents say, community courts help hold people accountable for their transgressions while not sticking

them with criminal records for petty offenses. In San Diego, a community court program allows offenders to clear their record if they complete two days of community service and pay a \$120 administrative fee.⁸

One program participant, Leonel Lopez, spent two days planting trees to clear his arrest for public intoxication, for which he otherwise would have had to pay a hefty fine and been stuck with a criminal record.

"This is the better path to take," he said.⁹

— Christina Hoag

¹ Shawn Vestal, "Spokane Community Court offers chronic offenders another chance," *The Spokesman*, March 23, 2014, <http://tinyurl.com/zl7vym7>.

² *Ibid.*

³ "Community Courts," Center for Court Innovation, undated, <http://tinyurl.com/zrpxmhak>.

⁴ See Christina L. Lyons, "Restorative Justice," *CQ Researcher*, Feb. 5, 2016, pp. 121-144.

⁵ "Bureau of Justice Assistance Awards \$2 Million to Implement and Enhance Community Courts," U.S. Dept. of Justice, April 13, 2016, <http://tinyurl.com/hmm7ln>.

⁶ Brian Gilbert and Katy Welter, "Community Courts in Cook County," Chicago Appleseed Fund for Justice, February 2013, <http://tinyurl.com/jusrs7w>.

⁷ *Ibid.*

⁸ David Garrick, "'Community court' expanding," *The San Diego Union-Tribune*, April 15, 2015, <http://tinyurl.com/hcdcdmz>.

⁹ *Ibid.*

the states had violated the 14th Amendment guarantee of equal protection under the law.⁶⁷

In 1983, the U.S. Supreme Court expanded its rulings on debt penalization. In *Bearden v. Georgia*, the justices ruled that revoking probation to send an indigent person to jail for failure to pay fines also violated the 14th Amendment. The court said judges must determine whether the nonpayment was "willful" by considering the defendant's ability to pay. The ruling left it up to the lower courts to decide how to determine the ability to pay.⁶⁸

The decision came just as the states and Congress were adopting get-tough-on-crime policies in response to soaring drug trafficking and use. The crack-down, in turn, raised the costs of running increasingly burdened courthouses, jails, prisons and probation and parole programs. From 1980 to 2010,

criminal justice costs skyrocketed from \$6 billion to \$67 billion, according to the U.S. Bureau of Justice.⁶⁹

Faced with rising costs, cities started turning to offenders to pay for administering the justice system by raising fees and fines and broadening the scope of such fees to include a variety of services previously funded by the state. In 1984, Michigan passed the nation's first law allowing inmates to be charged for incarceration costs, and by 1990, offender fees were paying more than 50 percent of the costs of Texas' probation agencies.⁷⁰

In 1991, 25 percent of prison inmates said they owed court-imposed costs, restitution to victims, fines and fees, according to a U.S. Department of Justice survey. In 2004, when the last such survey was taken, 66 percent of inmates owed the system money.⁷¹

The practice continued to grow and expanded sharply after the 2007-09 re-

cession, triggered by a housing crisis caused by widespread mortgage defaults. Local tax revenues plunged, leaving governments more strapped for cash than ever. After governments began cutting funds for judicial administration, cities and counties started raising fees and fines on defendants, including for room and board in jails and public defender services.

"The rise seems to correspond with a decrease in funding since the economic recession," says the ACLU's Choudhury.

The practice ran amok in some cities.

In 2015, in the wake of the riots the previous summer in Ferguson, Mo., the U.S. Department of Justice released a scathing report detailing how the city targeted its citizens for tickets so it could levy fines and fees to fund its budget, and how local judges threatened people with jail if they did not

pay up. In 2013, the Ferguson Municipal Court issued 32,975 arrest warrants for nonviolent offenses, mostly driving infractions, in a city of 21,000 people.⁷² In one case, a police officer wrote 14 tickets stemming from a single traffic stop.⁷³ Ferguson also showed how fees and fines affect races disproportionately. The city's population is 67 percent African-American, but 86 percent of drivers pulled over by police in 2013 were black.⁷⁴

CURRENT SITUATION

Reform Gains Steam

Instead of making headlines for jailing indigent people for failing to pay court fines and fees, Biloxi, Miss., wants

out and other cities can use it.”⁷⁶ The city has agreed to hold ability-to-pay hearings; provide a public defender for poor defendants, who will receive a card notifying them of options such as community service; and discontinue the use of private probation companies and additional fees for payment plans.⁷⁷

Municipal courts elsewhere also are changing their practices as a result of civil rights lawsuits. In May, Colorado Springs, Colo., agreed — as part of damages in connection with an ACLU suit — to stop jailing poor people for unpaid fines, and said it would pay \$125 for each day spent in jail by about 800 people, who were found by an ACLU investigation to be too poor to pay their fines.⁷⁸

In response to another ACLU suit and one filed by defense attorney, Troy Hendricks of DeKalb County, Ga., in January abolished its Recorder's Court, which meted out excessive traffic fines and fees and jailed people for nonpayment. Now offenders have six weeks to pay off fines, which have been lowered, and can work off fines through community service at a rate of \$8 an hour. The county also discontinued its use of private probation companies.⁷⁹

“When lawsuits are filed, judges are backing off,” says West of the Southern Poverty Law Center. “It is so unconstitutional, and the case law is pretty clear.”

The Justice Department is raising awareness about the unconstitutionality of jailing people for inability to pay. Such practices “can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents,” said the memo to the nation's presiding judges, sent from the department's Civil Rights Division.⁸⁰ The department also held a two-day symposium on fines, fees and bail in December.

Meanwhile, two national court organizations — the Conference of Chief Justices, comprising top judges from each state, and the Conference of State Court Administrators, which represents

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Courtesy Lawyers' Committee for Civil Rights Under Law/Lee Robertson

Lee Robertson, an Arkansas man with pancreatic cancer, began writing bad checks to stores when chemotherapy made it impossible for him to work. After several arrests, he was jailed in the city of Sherwood for 90 days when he was unable to pay off some \$3,000 in court fines. The Arkansas Civil Liberties Union and the Lawyers' Committee for Civil Rights Under Law launched a federal class action civil rights suit against the city for running what they call a “modern-day debtors’ prison.”

The report sparked public outrage and increased attention on how widespread practices had become across the country. Civil rights organizations have filed numerous lawsuits and succeeded in overturning the practices in some jurisdictions, but some states, including Michigan, have passed laws permitting them. ■

to be known as a groundbreaker for its procedures for handling poor offenders, laid out in March to settle an ACLU lawsuit.⁷⁵

“As soon as the suit was filed we . . . said, ‘Let’s take this as an opportunity to do the right thing, work together on model procedures,’ ” said Biloxi City Attorney Gerald Blessey. “We get this worked

At Issue:

Should municipal courts face limits on fines and fees?



ERIC SCHMITT
MISSOURI STATE SENATOR, REPUBLICAN
NOMINEE FOR MISSOURI TREASURER

WRITTEN FOR *CQ RESEARCHER*, SEPTEMBER 2016

for years, anger and distrust have percolated across many Missouri communities, some of which led to the unrest that erupted two years ago in Ferguson. One of the root causes is that many municipal governments no longer exist to serve their citizens. They instead view residents only as ATMs to fund boondoggles. Officials also have abused police forces by forcing them to write specific numbers of traffic tickets and meet quotas for fines to generate revenue.

To protect Missourians from municipal government abuses, I've advanced historic social justice reforms by changing the way local governments interact with citizens. In 2015, I led the effort in passing Senate Bill 5, which limits the amount of revenue cities can raise from traffic-ticket fines. Many cities in St. Louis County were funding more than half of their annual budgets with ticket money. These "taxation by citation" schemes disproportionately hurt poor residents.

Our reform also requires municipal courts to maintain certain procedures, in which the main goal is to eliminate debtors' prisons and give residents a sense of accountability from the courts. Municipal courts no longer can jail people for minor traffic violations and must offer alternative-payment plans and community service options.

Unconscionably, some local bureaucrats are challenging Senate Bill 5 to keep their taxation-by-citation schemes alive. Moreover, these officials are using tax dollars generated from these schemes to pay their legal bills. I'm hopeful that the Missouri Supreme Court will uphold our reform.

This year, I sponsored Senate Bill 572, which further reforms municipal court operations, updates standards and outlines municipal disincorporation procedures should they become necessary. To ensure that bureaucrats are not using voluminous ordinance books to find new ways to take money from residents, we added other ordinance violations to the discussion.

We also passed Senate Bill 765 prohibiting abusive traffic ticket quotas. The mayor of Edmundson became the unwitting poster bureaucrat for our reform: He brazenly "suggested" in a letter to officers that they write more tickets to raise revenue for the city and preserve their salaries. The letter was enclosed with their paychecks.

All of these reforms will help restore trust between residents and local governments and law enforcement. We must continue to build trust. These social justice reforms are helping to jumpstart that process.



MEGHAN DOLLAR
LEGISLATIVE AND POLICY ADVOCATE,
COLORADO MUNICIPAL LEAGUE

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in Colorado, legislation was enacted recently that eliminates a municipal court's ability to jail someone for failing to appear in court to pay a fine or tell a judge why he or she cannot pay. The Colorado Municipal League opposed this legislation on behalf of the 175 cities with municipal courts. Our biggest concern was that the legislation perpetuates a false premise that municipal courts jail the poor without taking into account someone's ability to pay a fine.

Municipal judges have no interest in jailing the poor and disadvantaged when the appropriate sentence is a fine or a deferred sentence for first-time offenders. In fact, municipal judges encourage defendants to set up payment plans, take time to find employment, get necessary treatment or do what needs to be done to overcome the obstacles to payment. If a person cannot pay, courts regularly give alternative sentences such as community service.

Now that this legislation has become law, municipal courts are prohibited from issuing warrants when defendants fail to appear in court for a hearing on their ability to pay an outstanding judgment. Therefore, the law makes municipal court fines unenforceable. Municipalities are concerned that defendants will pay fines only if they voluntarily appear at their hearings.

Under the new law, the only remedy allowed for a court to compel payment is the contempt-of-court process. The Municipal League and its members have concerns about this, mainly because it assumes that courts want to impose a jail sentence for failure to pay a fine.

Before this legislation, the contempt procedure was little used because in cases where defendants have the ability to pay, the courts wanted to compel payment rather than go through a procedure that allows jail time. Our municipal courts believe that a potential 90-day sentence is inappropriate in cases where the offense is minor or a person has no criminal history.

Municipal courts vacated thousands of arrest warrants in response to the new law. The Colorado Municipal League and our members do not expect this to be the last salvo launched at municipal courts. Organizations such as the American Civil Liberties Union may still initiate new legislation to reduce fines and perhaps eliminate jail altogether. But we will continue to vigorously oppose state intrusions into the lawful operations of municipal courts.

Continued from p. 760

court management — formed a panel in February to investigate the issue and recommend solutions.⁸¹ The National Task Force on Fines, Fees and Bail Practices began meeting in March.⁸²

In several state legislatures, local officials are contesting various bills that seek to restrict fines, fees and jail sentences because their municipalities would lose revenue. In Missouri, 12 cities sued the state over a

Circuit judge struck down part of the law, ruling that it violated local control rules.⁸⁷ State Attorney General Chris Koster vowed to appeal the decision.⁸⁸

Civil rights advocates say the financial ramifications of reform are proving to be a huge hurdle around the country. “So many local courts rely on fines and fees,” says Dolan of the Institute for Policy Studies. “We’ve seen such a reluctance to give it up.”

Restricting municipal courts from imposing jail time on scofflaws — indigent or otherwise — is still under debate. Some say ignoring a court summons must have consequences.

“If you get a speeding ticket or whatever, a minor infraction, and you don’t appear in court, there doesn’t appear to me to be any penalty for that, so why would you ever appear in court?” asked Missouri Republican state Sen. Jay Wasson.⁸⁹



Getty Images/Ilya S. Savenok

Reality TV star Beth Chapman, president of the Professional Bail Agents Association, canceled her popular CMT television show about chasing bail jumpers so she could devote more time to fighting what she calls “social justice lackeys,” whose efforts to change the bail system are designed, she contends, “to make it easier for the bad guys to get out of jail.”

Still, the question of how to pay for reforms remains a key issue, as does determining what constitutes appropriate punishment. Thus, wide-scale change faces an uphill struggle. In Biloxi, the new procedures, which include hiring a full-time public defender to represent the indigent in ability-to-pay hearings and a court clerk to collect fines, will cost an estimated \$350,000 annually.⁸³ Georgia’s DeKalb County (Decatur and part of Atlanta) will lose about \$7 million a year after lowering fines and abolishing fees.⁸⁴

2015 court-reform law, which stemmed from the Ferguson riots that exposed city officials’ discriminatory ticketing and fining practices. The law had capped the amount of revenue St. Louis County municipalities can receive from fines and fees at 12.5 percent of their annual budgets and other municipalities, 20 percent.⁸⁵

One of the plaintiffs, Mayor Viola Murphy of Cool Valley, said municipal revenue plunged after the law was enacted, and the town did not have enough money to apply for a matching grant for new sidewalks.⁸⁶ The cities won in March, when a Cole County

Bail Reform

As with fines and fees, bail reform is gathering steam through lawsuits.

Since January 2015, Equal Justice Under Law, a Washington, D.C.-based organization that advocates pretrial supervision over cash bail, has filed 17 lawsuits to restrict money bail in cities in eight states. The group has recently taken on large jurisdictions: It sued San Francisco last October and Harris County, Texas, which includes Houston, in May.⁹⁰

Harris County has already begun making changes, including revamping a risk assessment test that determines whether defendants are likely to commit a crime if released. It also has hired seven additional pretrial supervisors to oversee released defendants and is implementing a pilot program to provide attorneys for defendants at bail hearings.⁹¹

The onslaught of lawsuits has galvanized the commercial bail industry. In January, the president of the Pro-

professional Bail Agents Association, reality TV star Beth Chapman, created media buzz when she showed up at a court hearing on an Equal Justice Under Law lawsuit against San Francisco.⁹² Chapman this year canceled her popular CMT television show “Dog and Beth: On the Hunt,” which features her husband, son and herself pursuing bail jumpers, so she could devote more time to fighting “social justice lackeys,” whose “only goal,” she said, “is to make it easier for the bad guys to get out of jail.”⁹³

The California Bail Agents Association has intervened in the San Francisco case, while the American Bail Coalition has retained national litigation lawyers to help counter the suits, according to a statement.⁹⁴ Meanwhile, Democratic California state Assemblyman Rob Bonta said he plans to introduce a bill to reform the state’s cash bail system in December.⁹⁵

However, industry leaders note, no federal court has ruled yet on reformists’ key legal argument that bail is unconstitutional. That may come soon: The city of Calhoun, Ga., has appealed to the 11th Circuit Court of Appeals a lower-court ruling upholding the argument that money bail violates the 14th Amendment.⁹⁶

Fanno Burdeen of the PreTrial Justice Institute says despite the industry’s efforts public sentiment against money bail is growing, with New Jersey joining Kentucky, Oregon, Illinois, Wisconsin and Washington, D.C., in abolishing cash bail. “We’re reaching a tipping point,” she says.

Reforms to both bail and fee assessments are pending in Congress, but their progress has been limited due to lobbying by the bail industry and the lack of bipartisan support. In January, Rep. Mark Takano, a California Democrat, introduced the End to Debtors’ Prisons Act of 2016, which would cut off federal justice grants to jurisdictions that contract with private probation companies. The bill has five

Democratic co-sponsors but no Republicans have signed on.⁹⁷

The following month, another California Democrat, Rep. Ted W. Lieu, introduced the No Money Bail Act of 2016, which would prohibit cash bail in the federal court system and make states ineligible for Justice Department grants if they are still using cash bail three years after the law is enacted.⁹⁸ The American Bail Coalition, which has been lobbying against the bill, says the measure has stalled in the House Judiciary Committee.⁹⁹ ■

OUTLOOK

‘Real Opportunity’

Activists agree that getting communities to stop using fees and fines to generate revenue will hinge on getting states to properly fund local criminal justice systems. And that, in turn, will necessitate a turnaround in public and legislative opinion.

“It’s a political problem that will require a political solution,” says Albin-Lackey of Human Rights Watch. “As long as you have governments that are not willing to raise money from taxation, you’ll have fines and fees.”

But the ongoing debate on the larger issues of fairness in sentencing practices, mass incarceration and general criminal justice administration bodes well for reforming the fees and fines system, he adds. “It’s a moment of real opportunity,” Albin-Lackey says. “There’s a real focus on these issues.”

Civil rights and legal advocacy organizations say they plan to continue suing jurisdictions in hopes that other places will reform practices voluntarily to avoid costly lawsuits and negative publicity. “Nobody wants to be known as making money off poor people,” says Eisen of the Brennan Center.

Successful reforms being implemented by jurisdictions such as Biloxi will serve as models, they say. “Lawsuits are triggering comprehensive reform,” says the ACLU’s Choudhury.

Some activists say they are encouraged that the Obama Justice Department has taken a leadership role on the issue, and that court administrators have formed a task force to study practices. The activists note, however, that while both entities can make recommendations, neither has enforcement power over states. The department’s key role is to educate local officials and judges who may be unaware of the constitutional issues and legal precedents surrounding debt imprisonment, experts say, which could spur voluntary reforms.

“Everyone wants to do the right thing,” says Eisen.

However, some say it could take another Supreme Court ruling — perhaps outlawing fees for criminal justice services such as jail cells and the like — to force more-recalcitrant governments to change practices. The populist argument that offenders should fund the criminal justice system because they are the ones who use it is persuasive for many taxpayers and legislators.

Moreover, the people most affected by criminal justice debt tend to be those disenfranchised by the system at-large with few resources to contest sentences. The poor also lack access to policymakers.

“The people most afflicted by unfair laws, fees and fines are mostly poor, white and black . . . and have no political clout,” says Jamie Fellner, a senior adviser at Human Rights Watch. Thus, many jurisdictions are reluctant to give up a ready and politically expedient source of revenue, experts note.

Without significant reform, however, advocates warn that the U.S. criminal justice system is increasingly turning into a two-tier system — one for those with means and one without.

“Wealth determines whether you go free or not,” says Fellner. ■

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About the Author

Christina Hoag is a freelance journalist in Los Angeles. She previously worked for *The Miami Herald* and The Associated Press and was a correspondent in Latin America. She is the co-author of *Peace in the Hood: Working with Gang Members to End the Violence*.

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American Civil Liberties Union, 125 Broad St., 18th Floor, New York, NY 10004; 212-549-2500; www.aclu.org. Defends individuals' legal rights and freedoms.

American Probation and Parole Association, 1776 Avenue of the States, Lexington, KY 40511; 859-244-8203; www.appa-net.org. Industry association for agencies involved in probation and parole programs.

Brennan Center for Justice, New York University School of Law, 161 Avenue of the Americas, 12th Floor, New York, NY 10013; 646-292-8310; www.brennancenter.org. Nonpartisan institute that seeks to improve judicial fairness.

Human Rights Watch, 350 Fifth Ave., 34th floor, New York, NY 10118; 212-290-4700; www.hrw.org. Nonprofit that monitors human rights in 90 countries.

Institute for Policy Studies, 1301 Connecticut Ave., N.W., Suite 600, Washington, DC 20036; 202-234-9382; www.ips-dc.org. Researches social justice issues.

National Center for State Courts, 300 Newport Ave., Williamsburg, VA 23185; 800-616-6164; www.ncsc.org. Nonprofit focusing on judicial administration issues.

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