

Criminal Customers

**The Criminalization of Poverty and the
Systemic Exploitation of the Working
Class**

I. Introduction

Going to court is a stressful and frequently expensive ordeal. Most court appearances result in a monetary retribution, whether to an adversary or the state, and usually come with fine print. Financial obligation to another always comes with strings attached. For those unable to immediately meet their fiduciary duty, penalties can be severe. Inability to pay a fee often results in the tacking on of another fee, for being unable to pay the initial fine. With all these fines being imposed, one may feel as though being poor is a disadvantage in the justice system. The possibility of going to jail for not having money has many people feeling criminalized, without committing a crime. Detention for nonpayment of court-imposed monetary sanctions is frequent in many states, and individuals who have failed to timely meet payments fill prison cells across the nation. When one considers the barrier of re-entry to the public a prison term and debt has on the neediest Americans, it is clear to see why the practice of municipal financial penalties is a serious problem in our country. The deadly War on Crime has taken many forms, and various methods have been used to “crackdown on crime” such as targeting drugs, jaywalking, and the sale of individual cigarettes as was the case in the death of New Yorker Eric Garner.¹ The latest crime fighting model has been a crackdown on the lowest earning Americans, and where they live. By simply imposing substantial legal debt on the dangerous and unsavory, local governments can tax these individuals into prison, thus creating a safer environment for law-abiding Americans. Right?

¹ Torie Atkinson, A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors’ Prisons, Harvard Law School (2015). <http://harvardcrcl.org/wp-content/uploads/2016/07/Municipal-Fines.pdf>.

II. Ferguson, Missouri: When the Justice System Does Not Provide Justice

The city of Ferguson, Missouri was recently the latest battleground of race and class warfare, as an investigation into the city's police department detailed several practices by the municipality's police force and court systems used to punish and imprison black and poor members of the community. The trends in Ferguson's municipal court are not dissimilar from those in the courthouses of New Jersey. Seventy-two percent of the city's prison population was detained to await a trial or hearing in state and municipal court.² In the state of New Jersey, 73% of the prison population is in state custody awaiting a trial or sentencing (66% for state court, 7% for municipal hearings).³ Of arrests made by the Ferguson Police Department for outstanding municipal warrants, 96% of those arrested were black.⁴ In New Jersey, blacks and Hispanics make up 71% of the of the prison population⁵ despite representing less than 35% of the state's total population.⁶ Both feature jurisdictional control to detain or arrest individuals in default of debt to the court. In N.J. alone, almost 90% of prisoners are male, and almost half the prison population is younger than 30.⁷ In 2012, there were six million case filings in municipals courts in the state. Of criminal cases filed, 52% were on backlog (cases not resolved within 60 days), compared with 39% of traffic cases that took a similar time to complete. The total percentage of

² Investigation of the Ferguson Police Department, U.S. Dept. of Justice (2015).

https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf.

³ Marie VanNostrand, Identifying Opportunities to Safely and Responsibly Reduce the Jail Population, New Jersey State Jail Population Analysis, (2013).

https://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf.

⁴ See Ferguson, *supra* at 2

⁵ See VanNostrand, *supra* at 3

⁶ U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

⁷ See VanNostrand, *supra* at 3.

cases not resolved in 60 days was 41%.⁸ It is estimated that 80-90% of those charged with criminal offenses qualify for indigent defense, despite poverty only affecting 15.5% of Americans, and 10.8% of New Jerseyans.⁹ Across the country, 27% of blacks fall below the poverty threshold, compared to 24.3% of Hispanics, and 12.7 % of whites. In New Jersey, blacks account for 20% of the state's impoverished people, Hispanics for 20.4%, and whites as 8.2%.¹⁰

The reality of Ferguson's discrimination was not fully realized until a thorough investigation conducted by the U.S Dept. of Justice. The findings in the report showed substantial amounts of evidence the city's law enforcement practices primary focus was on revenue, and not public safety needs.¹¹ The emphasis placed on revenue led to unconstitutional policing practices and court procedures that may amount to a violation of due process and an obvious infliction of harm on community members.¹² These practices contributed to the perpetuation of racial stereotypes and "racial bias." Court fees are a form of discrimination against the poor because multiple exorbitant fees create a debtor's prison for working class individuals who are unable to pay the fees. The fees create pseudo-debtor's prison that enables courts to become a financial parasite on these individuals.

Municipal practices highlighted in the report were noted to be used as a harsh response to missed court appearances and required fine payments.¹³ The city's assessment procedures did not "adequately provide for a defendant to seek a fine reduction on account of financial

⁸ *Id.*

⁹ Alicia Bannon, Mitali Nagrecha & Rebekah Diller, Criminal Justice Debt: A Barrier To Reentry, Brennan Center for Justice (2010). <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>.

¹⁰ U.S. Census Bureau, 2011-2015 ACS 5-Year Estimates, Percent of People below Poverty Level in the Past 12 Months – State – County, GCT1701

¹¹ See Ferguson, *supra* at 2

¹² *Id.*

¹³ *Id.*

incapacity or to seek alternatives to payment such as community service.”¹⁴ Courts targeting working class people with fines and fees for misdemeanors has awoken the sleeping beast that is debtors’ prisons.¹⁵ Court imposed financial obligations have pervasive effects on individuals with a low-income who are unable to pay off their debt.¹⁶ Consequences of defaulting on a payment may result in license suspension, additional fees, court-ordered community service, or jail time.¹⁷ In the city of Ferguson, it was commonplace to issue arrest warrants to debtors’ in default, or those who miss a court appearance.¹⁸ While some of these consequences sound more severe than others, even a “light punishment” such as suspension of a license may have compounded effects.¹⁹ A working class man who has his license suspended may be unable to get to work, thus earning no income and making payment of his court-imposed debt even more difficult. All of his self-sufficiency is at risk because of suspended license. Consequences on minors can be worse. Not only are the children of the working class at an economic disadvantage, those that are arrested are likely to be trapped in a “cycle of poverty” by the court-imposed monetary sanctions against them.²⁰ Whereas one may think that the knowledge or previous experience with courts fees and penalties may dissuade individuals from committing crimes that result in monetary sanctions, it is often one slip up that results in years of systemic

¹⁴ *Id.*

¹⁵ See Bannon, *supra* at 9. See also Joseph Shapiro, AA's Court Fees Rise, The Poor Are Paying the Price, NPR New Investigations (2014). <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

¹⁶ State v. Steele, No A-1232-12T3, Docket No. A-38-12 (S.C.N.J.)

¹⁷ Jessica Feierman with Naomi Goldstein, Emily Haney-Caron & Jaymes Fairfax Columbo , Debtors’ Prison for Kids: The High Cost of Fines and Fees in the Juvenile Justice System, Juvenile Law Center (2016). <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

¹⁸ See Ferguson, *supra* at 2

¹⁹ Jessica Eaglin, Driver’s License Suspension Perpetuate the Challenge of Criminal Justice Debt, Brennan Center for Justice (2015). <https://www.brennancenter.org/blog/drivers-license-suspensions-perpetuate-challenges-criminal-justice-debt>. See also, Indigent Defense Resource Guide, <http://www.ncsc.org/Topics/Access-and-Fairness/Indigent-Defense/-Guide.aspx>.

²⁰ See Feierman, *supra* at 17.

oppression.²¹ Unfortunately for those of a protected class that is disparately affected, legal protections are yet to catch up with modern civil rights discretions. Most research concerning court fines has been administrative or process-based, and concerning only the disproportionate impact on the poor, and not people of color.²²

Now that we have identified the segments of the population most vulnerable to economic abuse at the hands of the justice system, this paper will next outline the purpose of court-imposed fees, their statutory framework and place in the justice system, and provide examples to realize the pervasive effects of state-imposed debt on impoverished individuals. Generally, New Jersey court-imposed financial obligations unfairly target the lowest earning people in the state, who are often people of color, with a discriminatorily oppressive form of revenue generation. New Jersey courts will be shown to engage in a revenue practice that draws exorbitant funding from the lowest earning residents, guilty of petty or otherwise more serious crimes, by restricting the self-sufficiency, mobility, and inclusivity efforts of the working class in order to further physically isolate the poor.

III. Resource Mining: A Systematic Analysis of the Criminalization of Poverty

Taxpayers in America love to save their money wherever they can, and externalizing costs is the preferred method. Assessing the costs of the judicial system on those who actually use its “services” has opened an untapped resource pool to the revenue stream. Court costs have

²¹ Alex Piquero & Wesley Jennings, Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders, JLC Debtors’ Prison Criminology Report (2016). <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-criminology-study.pdf>.

²² See Feierman, *supra* at 17. See also, Sally T. Hillsman & Judith A. Green, The Use of Fines as an Intermediate Sanction, Vera Inst. For Just., 3-4 (1991) https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-use-of-fines-as-an-intermediate-sanction/legacy_downloads/1565.pdf.

always been an important part of the revenue stream, such as the following table of fees for criminal proceedings in N.J. municipal courts:

Violation/Filing	Amount
Criminal offense or traffic ordinance violation	Up to \$33.00
For every violation of any statute or ordinance	\$2.00
For every individual traffic ordinance offense	\$0.50
For certificate of judgment	\$4.00
For certified copy of paper filed with the court as a public record:	
First page	\$4.00
Each additional page	\$1.00

N.J.S.A. 22A:3-4

For an individual found guilty of four traffic violations, the court may fine that person \$47, before producing any certified copies of the public record. As an increasing amount of criminal defendants became indigent and incapable of paying for legal defense,²³ inadequate access to proper representation resulted in many working class defendants accepting plea bargains, filling the prisons and funding services for the court.²⁴ As public defender,²⁵ city,²⁶ and county²⁷

²³ See Eaglin, *supra* at 19.

²⁴ Kala Kachmar, Exclusive: Inside the municipal court cash machine, Asbury Park Press (2017). <http://www.app.com/story/news/investigations/watchdog/investigations/2016/11/27/exclusive-inside-municipal-court-cash-machine/91233216/>.

²⁵ Jason Boyle, Gideon in the Garden State: New Jersey's Support for Public Defenders, Rutgers The State University of New Jersey (2013) (citing Ian Millhiser, Public Defenders Hit Up To Six Times Harder Than Prosecutors By Sequester, ThinkProgress (2013) <https://thinkprogress.org/public-defenders-hit-up-to-six-times-harder-than-prosecutors-by-sequester-191f658dfe3b>). See also, Barton, Benjamin H., Against Civil Gideon (and for pro se Court Reform), Florida Law Review (2010).

²⁶ Proposed Newark Budget 2016, at 13. - <http://www.ci.newark.nj.us/wp-content/uploads/2016/05/2016-Proposed-Budget.pdf>

²⁷ 2017 Ocean County Budget, <http://www.co.ocean.nj.us/WebContentFiles//2b34caa0-eb1b-4e21-a5e3-a4e31554e432.pdf>.

budgets became streamlined, the justice system has had to become creative in funding the courts and the associated costs.²⁸

New Jersey courts and policymakers know or should know that the method of locking up unemployed, uneducated, and financially needy as a way of reducing crime and generating revenue is unconstitutional.²⁹ Fines range from as high as \$500.00³⁰ for petty disorderly persons offenses, to \$200,000.00³¹ for convictions of the first degree. Juveniles who become participants of supervisory treatment are subject to the terms of the courts deferred disposition and are required to pay a \$50.00 fine to fund their treatment.³² Fines of \$75.00 can be attached to disorderly offenses and are used to fund the Safe Neighborhoods Services Fund.³³ Consequences of nonpayment or incomplete payment of fees may result in suspension of the resident's driver's license, community service, or even jail time.³⁴ Each day of imprisonment can amount to as much as a reduction of \$50 from the total, but an order to participate in community service or labor assistance will "reduce the amount owed by the person in default."³⁵ The majority of the

²⁸ Rebekah Diller, Court Fees As Revenue?, Brennan Center For Justice (2008)

<https://www.brennancenter.org/analysis/court-fees-revenue>. See also Kate Carlton Greer, Over The Years, Court Fines, Fees Have Replaced General Revenue Funds, KGOU (2015) <http://kgou.org/post/over-years-court-fines-fees-have-replaced-general-revenue-funds>. See also Kachmar, *supra*, at 25.

²⁹ § 22:27. Vacating all financial obligations due the municipal court, 17 N.J. Prac., Municipal Court Practice § 22:27 (3d ed.) See also, Bearden v. Georgia, 461 U.S. 660, 671 (1983) (The due process and equal protection principles of the Fourteenth Amendment prohibit "punishing a person for his poverty").

³⁰ N.J.S.A. 2C:43-3(d)

³¹ N.J.S.A. 2C:43-3(a)

³² N.J.S.A. 2C:43-3.1(2)(d)

³³ N.J.S.A. 2C:43-3.2-a.(1)

³⁴ N.J.S.A. 2C:46-2(2)

³⁵ *Id* (See also State v. De Bonis 58 N.J. 182 at 142. saying "we are clear that in our state a fine is intended to punish, and that imprisonment upon nonpayment, far from being a collection device, is substituted punishment designed to achieve the punitive end which hthe fine was imposed to achieve but failed to collect)

nation's prisoners do not have a high school diploma and have below-average literacy levels.³⁶ Sixty percent of all former inmates remain unemployed for a year after release from prison.³⁷

As tragic as it is frequent, poor children suffer greatly from the criminalization of their upbringing. For those who cross paths with the justice system, the consequences of being charged can be a one way ticket to a revolving door of recidivism. Juvenile delinquents may be placed into care of the state because of the family's financial inability to afford court fees.³⁸ Cases may stay open longer than a case on a similar track would have and the youth have remained in placement of the state for an extended period of time.³⁹ There are additional fees for juveniles that require special or remedial education in prison.⁴⁰ Fees for special education or other forms of mental health care are especially lucrative, as N.J. youth with mental health needs recidivate at a higher rate than youth without the same needs.⁴¹

A. Legal fines against New Jersey defendants are often attached to crimes and misdemeanors that are levied against citizens in poverty in an effort to draw funding from people called into court.

The imposition of fines has always been present in the American justice system as a means of retribution and deterrence.⁴² Court fees are “appealing because they are easy to administer and generate revenue.”⁴³ Charging defendants who are actually effected by the judicial system is a form of systemic discrimination against the poorest defendants. Imposition

³⁶ Karen Dolan with Jodi L. Carr, The Poor Get Prison – The Alarming Spread of the Criminalization of Poverty, Inst. For Policy Studies (2016).

³⁷ *Id.*

³⁸ See Feierman, *supra* at 17.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Chris Christie, Kim Guadagno, Gary M. Lanigan, James T. Plousis, & Kevin M. Brown, Release Outcome 2011: A Three-Year Follow-Up, Department of Corrections, State of New Jersey (2016) http://www.state.nj.us/corrections/pdf/offender_statistics/2016/Release_Outcome_Report_2011.pdf.

⁴² See Hillsman, *supra* at 22

⁴³ See Atkinson, *supra* at 1

of fines began to fall out of favor as courts adopted model penal codes and sentencing guidelines promulgated under the Johnson and Carter administrations.⁴⁴ Towards the end of the century, legal scholars and researchers promulgated the American Law Institute's Model Penal Code (1962), the National Council on Crime and Delinquency Model Sentencing Act (1977), and the American Bar Association Standards Relating to Sentencing Alternatives and Procedures (1978) favoring sentencing and alternative forms of punishment to defendants. These Acts and regulations were evidence that justice is often improperly administered through monetary sanctions; the rich are undeterred, and fines are unenforceable against those who cannot afford them.⁴⁵ As fines ebbed, incarceration flowed. In 1986, during a time when crime rates soared,⁴⁶ municipal and state courts imposed fines in 86% of cases. By the next year, all but two of the states had laws authorizing correctional fees to be assessed to defendants.⁴⁷ As recently as 2004, a survey of prisoners found that two-thirds had court-imposed monetary sanctions attached to their sentences.⁴⁸ It is now estimated that 80-85% of inmates leave prisons with some form of legal financial obligation debt.⁴⁹

Today, legal financial burdens are numerous and broad, thriving throughout a justice system committed to charging the most heinous of crimes, pettiest offense, and most forgettable traffic violations.⁵⁰ A 20 year old N.J. college student found himself before a judge ordered to

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ David P. Farrington, Darrick Jolliffe, Cross-National Comparisons of Crime Rates in Four Countries, 1981-1999, 33 *Crime & Just.* 377, 378 (2006)

⁴⁷ See Atkinson, *supra* at 1 (citing Lauren-Brooke Eisen, Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause, 15 *LOY. J. PUB. INT. L.* 319, 320 (2014)).

⁴⁸ Alexes Harris, Heather Evans, & Katherine Beckett, Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States, Univ. of Washington (2010) (54% of New Jersey inmates surveyed reported LFOs).

⁴⁹ See Dolan, *supra* at 36.

⁵⁰ See Hillsman, *supra* at 22. See also De Bonis, Tate, Shanks, *infra*

pay \$206⁵¹ for tossing a cigarette butt out of his car window, and \$33 in miscellaneous court fees.⁵² Unable to afford the ticket, the part-time cook asked to be placed on a payment plan as an indigent defendant. Mr. Kneisser was denied approval for a payment plan and was immediately handcuffed and sentenced to five nights in prison.⁵³

This method of debt collection is startling when one considers that interrupting individuals trying to argue their case has been called a “substantial deficiency” in the justice system.⁵⁴ The case is currently on the docket of the state’s District Court, receiving recognition from the ACLU as a worthy cause, alleging that the actions taken by the court are unconstitutional and motivated solely in the interest of generating revenue.⁵⁵ Surely, the judge’s refusal to hear an explanation for financial incapacity is consistent with the findings in Ferguson. Drivers have been vulnerable in New Jersey for years and traffic violations paid a total of \$405,000,000.00 to the state last year.⁵⁶ Chasing down drivers as a form of revenue is a longstanding practice in the state. In 1976, a working class New Brunswick man was caught driving on a suspended license. His driver’s license was suspended due to a prior unrelated vehicle charge that he was unable to pay in full at the time.⁵⁷ His application for a payment plan was denied and he was sentenced to pay \$705 with an additional \$25 court fee. Clearly unable to make the payment, the man was sentenced to serve 146 nights in jail.⁵⁸

⁵¹ N.J.S.A. 39:4-64

⁵² *Kneisser v. McInerney et al.*, No. 1:15-cv-07043 (D.C. N.J. 2015)

https://www.aclu-nj.org/files/7514/7758/1848/2016_10_27_Kneisser_Complaint.pdf

⁵³ *Id.*

⁵⁴ See Ferguson, *supra* at 2.

⁵⁵ *Id.* (see also U.S.C.A. Const. Amend. 14.) (See also *Bearden v. Georgia*, 103 S.Ct. 2064 (1983)

⁵⁶ Laura Herzog, We paid \$405M in tickets last year, NJ Advance Media. (2016).

http://www.nj.com/news/index.ssf/2016/05/where_your_ticket_payment_money_goes_funds_new_jer.html.

⁵⁷ *State v. De Bonis*, 58 N.J. 182 (1971), See also N.J.S.A. 39:3-40, 39:3-34, 39:3-29.

⁵⁸ *Id.*

The practice of suspending licenses in the state of New Jersey also serves the needs of generating revenue. The state has suspended licenses and assessed fines to driver's for out of state traffic violations,⁵⁹ and for refusing to take a chemicals test, a fine that cannot be avoided once administration of the test has been initiated, which is never at the behest of the accused.⁶⁰ Surcharges for motor vehicle violations are so important to the state, payment options for traffic violations are available online, free to be paid by anyone who possesses the requisite complaint number, a credit or debit card, and can afford the penalty, the fees associated with the state drivers points system, the convenience fee, and an administrative processing fee.⁶¹ Residents must be prudent to double-check their bank account before paying, because in the event a payment is reversed by the credit-card company or bank, the driver's license is suspended upon reversal of payment, and an additional fee of \$25 for not having enough money to pay a fee applies.⁶² The New Brunswick man successfully appealed his case, and in doing so, state courts have distinguished the man's case, providing that any individual seeking reconsideration of a court ruling should not risk a greater penalty than that initially imposed, such as imprisonment in the case of unpaid fees.⁶³

B. New Jersey's method of generating revenue for court-appointed programs and general court funding is impermissible under the constitution as discriminatory against the lower class, and has a disparate impact on black Americans.

⁵⁹ Matter of Kovalsky, 195 N.J. Super. 91 (App. Div. 1984)

⁶⁰ In re Christensen, 95 B.R. 886 (Bankr. D.N.J. 1988)

⁶¹ N.J.S.A. § 17:29A-35. See also, New Jersey Court, njmcdirect.com.

⁶² N.J.S.A. 39:5-36.1

⁶³ See De Bonis, *supra* at 57.

In N.J., fines are intended to punish individuals who violate municipal law, and punishment substitution in the form of imprisonment is constitutionally protected.⁶⁴ In 1983, The Supreme Court held that it is unconstitutional under the 14th Amendment for a sentencing court to revoke probation from an individual who fails to pay a fine and make restitution unless it can be shown that the individual is financially able to pay the fine “and that alternative forms of punishment would be inadequate to meet the State’s interest in punishment and deterrence.”⁶⁵ New Jersey makes a legitimate attempt to protect poor people’s right to liberty by providing payment plans⁶⁶ or alternative options⁶⁷, however, court imposed obligations are often insurmountable for those with low-income jobs.⁶⁸ Sending individuals to jail for the inability to pay their fine is outright prohibited constitutionally.⁶⁹ Indigent defendants in New Jersey are granted appointed representation and can avoid filing fees through a court rules order.⁷⁰

Converting a monetary sanction to an incarceration term because of one’s ability to pay their penalty is not permitted under the Constitution, but the courts are not powerless to collect what is owed to them.⁷¹ Monetary sanctions in excess of \$4,000 will likely take months, if not years, for an individual without a license to pay back in full. Between 2006 and 2013, 42% of N.J. residents who had their license suspended lost their jobs, and of the 45% who were able to

⁶⁴ *Id.* See also U.S.C.A. Const. Amend. 14. See also *State v. Lavelle*, 54 N.J. 315 (1969) (*stating* “it would not be correct to say that the purpose of imprisonment for nonpayment of a fine is to ‘compel’ payment.” “The fine is liquidated by the imprisonment”).

⁶⁵ See *Bearden* at 29. See also *Williams v. Illinois*, 399 U.S., at 244-245, 90 S.Ct., at 2024

⁶⁶ *Id.* See also *State v. O’Toole*, 162 N.J.Super. 339 (App.Div. 1978) (concluding no method other than payment of a fine could achieve the intended punitive end of a fine only statute).

⁶⁷ *Id.* See also *Tate v. Short*, 401 U.S. 395 (1971) (‘fines only’ policy for traffic related offenses served to fund Texas state’s revenue but failed to meet such purpose by imprisoning indigent defendants, thus costing the state more money).

⁶⁸ *Id.*

⁶⁹ See *Tate*, *supra* at 67

⁷⁰ R. 2:7-1.

⁷¹ *Id.* citing *Williams*, at 244-245, 90 S.Ct., at 2024

find work, 88% accepted it with a reduced salary.⁷² The total number of people at any given time in N.J. on a suspended license is approximately 300,000, or about 5% of the state's population.⁷³ Of those 300,000, about half have had their license suspended for reasons other than operation of a motor vehicle.⁷⁴ Forty-three percent of drivers in the state reside in urban areas, while the remaining 38% and 19% have homes in suburban, and rural areas, respectively. Sixty-three percent of suspended drivers live in urban areas such as the greater Newark area spreading across Essex and Hudson County, and 43% of all suspended drivers live in lower income zip codes.⁷⁵ For residents of urban, lower-income areas, having a license and vehicle may be unduly costly. Urban areas have more parking restrictions and feature a more significant law enforcement presence.⁷⁶ For low-income individuals living near the concentrated epicenter of the city, forgetting to move a car out of a street cleaning area has a well-worn path to spending years in debt and possible prison time.

A person in default on a payment of \$500 for their first offense of driving without a license has likely lost some percentage, if not all of their weekly income, due to their inability to commute to and from work.⁷⁷ Debtors in the state are allowed to participate in a payment plan to the state and are "encouraged" to pay on time due to the possible recall of a debtor for if a payment is missed.⁷⁸ Those who miss a payment may have their financial penalty reconsidered and face imprisonment.⁷⁹ Why do the courts adamantly stick to their payment schedules in the

⁷² See Atkinson, *supra* at 1.

⁷³ Jon A. Carnegie, Driver's License Suspensions, Impacts and Fairness Study, <http://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf>

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ National Conference of State Legislatures, Driving While Revoked, Suspended or Otherwise Unlicensed: Penalties by State. <http://www.ncsl.org/research/transportation/driving-while-revoked-suspended-or-otherwise-unli.aspx> (citing N.J.S.A. 39:3-40).

⁷⁸ *Id.*

⁷⁹ *Id.*

face of a state incarceration rate as high as ~280 prisoners per 100,000 people in the state?⁸⁰ For Mr. Kneisser in the Jackson township courthouse, Ocean County is expecting over 6% of its \$400,000,000+ FY2017 budget to come from court-generated revenue stream.⁸¹ Allowing the defendant to pay on a payment plan would have removed a \$200 gift to the county's coffers, and opened the possibility that the court would have to issue an arrest warrant to collect from the indigent defendant. Just in case anything was lost in translation, the Court Administrator in Ocean County later told Mr. Kneisser's father that the court attempts to collect penalties and fines as fast as possible in order to avoid other methods of debt collection, like issuing arrest warrants or mandating community service. It is after all, "all about collection."⁸²

These financial obligations are where courts have chosen to attach responsibility for the funding of neighborhood safety programs,⁸³ new body armor for Newark police,⁸⁴ and "bellhop fees" for traveling judges.⁸⁵ Placing the financial burden of courthouse's administrative fees and programs upon the individuals subjected to judicial determination creates a self-sufficient model. But allowing courts to fund themselves with money collected from the public, the justice system adopted an "economic posture" towards crime. Accruing funding from defendants means that the courts budget is now for sale to the court's involuntary customers.⁸⁶ It is difficult to precisely determine the extent of how oppressive financial obligations to courts can be, but for individuals who are unable to fulfill their duty to the court, the oppression may be permanent.

⁸⁰ Data Source: Bureau of Justice Statistics, Corrections Statistics Analysis Tool. (Graph: Peter Wagner, May 2014) <https://www.prisonpolicy.org/graphs/incsize/NJ.html>.

⁸¹ See 2017 Ocean County Budget, *supra* at 27.

⁸² See Kneisser, *supra* at 52.

⁸³ State v. Carter, No. A-4589-05T4, 2008 WL 382703, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2008) (Affirming costs of \$250 to Safe Neighborhood Services Fund and Law Enforcement Officers Training and Equipment Fund against teen after denial from entry into Pretrial Intervention Program for deliberately committing violence against someone).

⁸⁴ See Proposed Budget Newark 2016, *supra* at 26

⁸⁵ NJ Directives Dir. 4-91. http://www.judiciary.state.nj.us/directive/personnel/dir_4_91.pdf.

⁸⁶ See Dolan, *supra* at 36.

For the black community in New Jersey, the effects of court related fees are pervasive. The unpunished shootings of black men by police officers has led to a justifiable mistrust for the justice system in communities across the country.⁸⁷ In 2015, approximately 1,000 black men and women were killed by police officers in the line of duty.⁸⁸ Twelve of those officers were brought up on charges questioning their use of force; none were convicted of murder or manslaughter.⁸⁹ The police have consistently received unwavering support for their actions through judicial determinations⁹⁰ as well as financial support for their own defense.

Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

N.J. Stat. Ann. § 40A:14-155.

African-Americans that are unfortunate enough to be penalized by the courts so often find themselves funding the defense of the very people who symbolize a threat to their community.⁹¹

In the state's prisons, black or Hispanic people report in as 71% of the prison population. There is very little retribution or justice for poor blacks in New Jersey.

⁸⁷ In re: Freddie Gray, Jr., CAE13-29811. See also, HEAD OF THE CIVIL RIGHTS DIVISION VANITA GUPTA DELIVERS REMARKS AT THE HOWARD UNIVERSITY SCHOOL OF LAW ANNUAL WILEY A. BRANTON SYMPOSIUM, 2016 WL 5957506.

⁸⁸ Celisa Calacal, This is how many people police have killed so far in 2016, (2016). <https://thinkprogress.org/this-is-how-many-people-police-have-killed-so-far-in-2016-7f1aec6b7098>.

⁸⁹ *Id.*

⁹⁰ N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 116 A.3d 570 (App. Div.), *leave to appeal granted*, 223 N.J. 553, 127 A.3d 699 (2015) (documents relating to police shooting of suspect were exempt from disclosure under Public Records Act), See also,

⁹¹ See In re: Freddie Gray, *supra*, at 87. See also Ferguson, *supra* at 2.

The top five revenue generating towns in N.J. for the year 2015 were Asbury Park (\$1.4M), Freehold Township (\$1.1M), Belmar (\$1M), Tom's River (\$949,563), and Point Pleasant Beach (\$929,669).⁹² Shore town revenue saw the largest increase in revenue from 2010-2015, but of note is that only Asbury Park, the highest gross earning jurisdiction, had a double-digit percentage of people living below the poverty line; 29.3% of Asbury Park locals live below the poverty line.⁹³ But New Jersey is geographically diverse with its poverty. The southern, rural, 96.5% white, county of Cumberland is home to the highest percent of people below the poverty line in the state at 17.9%.⁹⁴ Hudson County follows Cumberland with 17.5% of residents below the poverty line, but is much more diverse, as 42.2% of residents identify as Hispanic or Latino, and 13.2% as black, and 13.4% Asian.⁹⁵ The rates of nonfatal violent victimization (such as robbery, aggravated or simple assault, and rape) by income and poverty level have consistently been shown to correlate with each other, decreasing as the households spending power increases.⁹⁶ Those that fall below the poverty line are twice as likely to exhibit violent victimization as those clearing the poverty level by 200%.⁹⁷ This is hardly news to residents of the low-income cities of Newark and Camden, the reluctant hometowns of 50% of the state's murder cases.⁹⁸

New Jersey's prison population is symbolic of its racial and class tensions. A high percentage of black prisoners coming from some of the biggest "problem" cities in the state signifies that there is an innate failure to overcome race and class issues. Newark, N.J. in

⁹² See Kachmar, *supra* at 26.

⁹³ See ACS *supra*, at 10.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Erika Harrell, Lynn Langton, Marcus Berzofsky, Lance Couzens and Hope Smiley-McDonald, Household Poverty and NonFatal Violent Victimization, (2008-2012) <https://www.bjs.gov/content/pub/pdf/hpnnv0812.pdf>

⁹⁷ Figure 3, *Id.*

⁹⁸ U.S. Census Bureau, *supra* at 6 (Newark 52.4% black, Camden 48.1% black).

particular has been identified as one of the most hypersegregated cities in the country. Hypersegregation, as explained by Rima Wilkes & John Iceland,⁹⁹ is the high levels of isolation suffered by black Americans. The five components of hypersegregation are evenness, exposure, concentration, clustering, and centralization.¹⁰⁰ Hypersegregation is summed up as the extreme isolation of blacks from white people by measuring the racial identity of neighborhoods, the probability of interaction across groups, amount of physical space occupied by the minority group, the physical distance from the center of the urban area, and the degree to which the areas where minorities live are adjoining one another. Newark city was among the highest hypersegregated cities because the neighborhoods throughout the city are primarily occupied by black residents, and there is very little opportunity for them to interact with the white residents living beyond the boundaries of the city.¹⁰¹ The reason for the high isolation and low exposure to whites is because most of the city's poor residents are forced to live in the heart of the city, where small, affordable apartments are for rent, or available through a lottery to those qualifying for Low-Income Housing Tax Credits.¹⁰² Newark is located in Essex County, but the Greater Newark Area extends to Hudson County, concentrating diverse populations into one physical area, split between two of the five counties with the highest percentage of residents below the poverty level.¹⁰³

Juvenile defendants in the state face a bevy of monetary sanctions, regardless of their family's income status. While the juvenile justice system is recognized to be predicated on a rehabilitation-first philosophy, New Jersey consistently attempts to cash in on the youth in the

⁹⁹ Rima Wilkes & John Iceland, Hypersegregation in the Twenty-first Century, BB.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² James A. Long, Note, The Low-Income Housing Tax Credit In New Jersey (2010).

¹⁰³ See U.S. Census, *supra* at, 6. See also Richard Briffault, Our Localism, (1990) (describing how municipalities write zoning laws to isolate and secluded the poor from the rich).

state.¹⁰⁴ A high school student in Freehold Township, a white collar and economically attractive town in New Jersey hosted a party for his friends and furnished it with his parent's alcohol.¹⁰⁵ After being charged with a fine of no less than \$500,¹⁰⁶ agreed to a plea bargain for deferred disposition.¹⁰⁷ Deferred disposition applies to any juvenile who commits an act which would constitute a crime, disorderly or petty disorderly persons offense, or a violation of an ordinance or regulation if committed by an adult¹⁰⁸ and may take the form of probation, placement into child services, license suspension, or incarceration.¹⁰⁹ Attaching the same penalties schedule to misdemeanors and crimes committed by juveniles as to adults assumes that the deterrence alone will be enough to prevent juvenile entry into the grasp of the justice system. However, this has shown to be false and as a result, there is a high likely rate of recidivism by juvenile offenders.¹¹⁰ In addition to any judicially determined penalties, mandatory diversionary programs payments may be imposed.¹¹¹ Upon successful completion of probation, the court ordered his fine to be paid, the ruling was thrown out in recognition of fulfillment of probationary terms and payments. In the likely event that the teenager seeks to wipe his record clean, only after reimbursing any legal financial obligations, he may submit an application and the accompanying \$30 fee for expungement.¹¹² This final fee may sound nominal, but for some low-income individuals, this final fee may be the difference between finding work and remaining unemployed.

¹⁰⁴ Bazemore, G. (1992). On mission statements and reform in juvenile justice: The case for the balanced approach. Federal Probation.

¹⁰⁵ State in Interest of M.L., 436 N.J.Super. 636 (2013) (holding that upon completion of a deferred disposition, mandatory fine penalty of possession charge was dismissed).

¹⁰⁶ N.J.S.A. 2C:35-15 (drug and alcohol related mandatory penalties are fixed at a \$500.00 minimum and \$3,000.00 maximum).

¹⁰⁷ See Interest of M.L., *supra* at 105.

¹⁰⁸ N.J.S.A. 2A:4A-23

¹⁰⁹ N.J.S.A. 2A:4A-43. See also In re State ex rel. S.A.J., 2007 WL 2265517 (App.Div. 2007), also State in Interest of M.C., 384 N.J.Super. 116 (App.Div. 2006), also <http://debtorsprison.jlc.org/#!/map>

¹¹⁰ See Piquero, *supra*, at 21

¹¹¹ N.J.S.A. 2A:4A-71.1(a).

¹¹² N.J.S.A. §2 C:52-29.

C. Despite legal and constitutional safeguards, innocent defendants may find themselves incarcerated for periods of time due to their financial status, reputation, or where they reside.

Once the justice system has the accused in a courtroom, the threat of a debtors' prison becomes all too literal. To protect the liberty of all defendants on the presumption of innocence, the right of the individual to post a bond for bail before trial is a fundamental one."¹¹³ The presumption of innocence is granted as a right in America, but when those that have accused you of something have the power to drain your financial resources, the threat to one's liberty is great.¹¹⁴ Courts are permitted to determine that no amount of bail bond posting will assure a defendants appearance, and as such may deny bail, but this has been deemed permissible upon factors determining bail scheduling.¹¹⁵ In 1972, New Jersey's Supreme Court enumerated a list of factors ordered to be considered when posting a bond:

(1) the seriousness of the crime charged against the defendant, the apparent likelihood of conviction and the extent of the punishment prescribed by the Legislature[,] (2) the defendant's criminal record, if any, and previous record on bail if any; (3) his reputation, and mental condition; (4) the length of his residence in the community; (5) his family ties and relationships; (6) his employment status, record of employment and his financial condition; (7) the identity of responsible members of the community who would vouch for defendant's reliability; (8) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear.

State v. Johnson, 61 N.J. 351, 364–65, 294 A.2d 245, 252–53 (1972)

¹¹³ State v. Johnson, 61 N.J. 351, 355, 294 A.2d 245 (1972).

¹¹⁴ State v. Wright, 410 N.J. Super. 142, 151, 980 A.2d 17, 22 (Law. Div. 2009)

¹¹⁵ State v. Steele, 430 N.J. Super. 24, 61 A.3d 174 (App. Div. 2013)

As recently as January of 2017, new guidelines for bail eligibility have been promulgated to reduce the prison population. For those charged with 1st or 2nd degree crimes, convicted of 2 or more offenses, or “any other crime for which the prosecutor believes there is a serious risk that the eligible defendant will not appear in court as required,” a prosecutor may file a motion with the court seeking pretrial detention for the defendant.¹¹⁶ A hearing on the motion is required to be heard no later than the eligible defendant’s first appearance in court, unless either party seeks a continuance.¹¹⁷ A continuance may not last more than five days, excluding any intermediate Saturday, Sunday, or legal holiday.¹¹⁸ The prosecution may be able to incarcerate accused defendants for such periods of time based on a showing that the defendant is a flight risk, poses a threat to any other person or the community, or the defendant will attempt to obstruct justice and that no amount of monetary bail will reasonably assure the defendant’s appearance in court when required.¹¹⁹ The consideration of all these factors has a high potential for abuse when the goal of a municipality is to increase revenue.

The seriousness of the crime charged against the defendant has sentencing guidelines and is fairly easily ascertainable, but the practice of charging an individual with many crime and fines for one offense occurs¹²⁰ and is potential for abuse. Criminal records require consideration for the flight risk of the defendant, but may also discriminate against the individual for his past. The consideration of threat to the community can be a particularly difficult judgment call individuals with a checkered past that have made recent steps to reintegrate into the community. The consideration of risk to the community has high potential for discriminatory abuse by state officials. Hypersegregation and a low-income makes it difficult for individuals to move out of

¹¹⁶ N.J.S.A. 2A:162-19

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Ferguson, *supra* at 2.

their neighborhood, and away from high-crime areas¹²¹ Internal consequences of legal debt are great as well. Studies have shown that individuals faced with insurmountable debt and the stress of making timely payments while working at a low-income job have reported feelings of “shame and emotional distress, increased likelihood of losing transportation housing, work, and good health.”¹²² These mental health stressors combined with the actual incarceration or economic oppression carried out against poor and minority persons contributes to the “‘accumulation of disadvantage’ in the reproduction, reinforcement, and perpetuation of inequality.”¹²³

IV. Recommendations: Recognizing Statistical Trends and Proper Punitive Actions

The ACLU reports that 1 in every 15 black men have been in jail at some point in their life.¹²⁴ Other statistics suggest that one in every three black men will be in jail at some point, and are four times as likely to experience the use of force by a police officer.¹²⁵ Seventy-one percent of New Jersey prisoners are black or Hispanic.¹²⁶ More than 50% of employers in the state admitted they would feel uncomfortable hiring a recently released criminal.¹²⁷ Administrative fees are attached to everything from traffic tickets, bail proceedings, and even incurred upon release from prison.¹²⁸ There is a fee associated with ending healthcare coverage at the end of an imprisonment term as well.¹²⁹ Nearly 65% of those incarcerated in the US did

¹²¹ See Wilkes, *supra*, at 94.

¹²² See Harvard, *supra*, at 1.

¹²³ See Harris, *supra*, at 44.

¹²⁴ See Dolan, *supra*, at 36.

¹²⁵ *Id.*

¹²⁶ See VanNostrand, *supra*, at 3.

¹²⁷ *Id.*

¹²⁸ N.J. Stat. Ann. § 30:7E-2(a), see also <https://www.healthcare.gov/incarcerated-people/>

¹²⁹ *Id.*

not receive a high school diploma and will never work in the highest paying jobs because of this.¹³⁰

Courts should be cognizant that the criminal justice system has many types of crimes that specifically target and punish actions that occur in areas of concentrated poverty. An individual raised in a low-income household, with low-income neighbors, poor access to adequate education resources, and limited job opportunities, is more likely to be charged with a crime solely because of these external factors. Living in an urban area means that the likelihood of being in poverty is higher, and so is the overall presence of police in one's life. Less educational achievement implies that an individual will be limited in the employment world, and will have a lower income because of this. Lower income, means living in less economically desirable places, such as inner cities or rural areas. These destinations are often packed with low-income or public housing, which statistics show it is more probable than not that a former convict occupies that area.¹³¹ The higher concentration of criminals, the more likely crimes are to be committed.¹³² More opportunities to commit more crimes, such as grand theft auto, burglary, or vandalism, means a higher probability of being present during the commission of one.¹³³ Parking on the wrong side of the street is punishable by fines and penalties in urban areas, but in rural areas such violations may not even be codified.¹³⁴

Municipal court practices and incarceration trends laid out in this paper indicate that unnecessarily high penalties and fees are charged against indigent defendants with the purpose of generating revenue by economically oppressing working class individuals and contributing to

¹³⁰ See VanNostrand, *supra*, at 3. <https://www.justice.gov/crt/file/832461/download>

¹³¹ Bruce Western & Becky Pettit, *Incarceration & social inequality*, The MIT Press (2010) http://www.mitpressjournals.org/doi/abs/10.1162/DAED_a_00019.

¹³² See Carnegie, *supra* at 73.

¹³³ *Id.*

¹³⁴ *Id.*

and exacerbating stereotypical racial biases. State prison populations of 80-90% indigent defendants indicate a calculated and efficient revenue procurement. The costs of prisons are covered by both the taxpayers and those in the criminal justice system, and policies favorable to taxpayers will be favored at every opportunity. With prisons nearly full of the poor, imposing legal financial obligations on 54% of those already in the system is a good start to ensuring recidivism and revenue. The statistics, trends, and rulings highlighted in this paper clearly show that imposing financial debt on lowest earning citizens is an unconstitutionally aggressive form of revenue collection. As such, recommendations are made as follows:

1. Municipal courts should practice more thorough judicial oversight in the day-to-day functions of the courthouse.¹³⁵ Judges frequently delegate several important processes out to the clerks of the court, such as indigency inquiries, determining bond amounts, and issuing arrest warrants.¹³⁶ In doing so, there is great potential for abuse, as these officers of the court are not responsible for upholding the law to as high a degree as a judge is. Previously set fine amounts and schedules should be reviewed and adjusted according to an expert committee's determination of financial penalty would serve as adequate deterrence and retribution.¹³⁷ Fines should be proportionate to the poverty level in the state.
2. "Develop effective ability-to-pay assessment system and improve data collection regarding imposed fines."¹³⁸ Greater consideration by judges and prosecutors should be given to a defendant's financial capacity, and documentation of all fines owed to all

¹³⁵ Dear Colleague Letter Regarding Law Enforcement Fees and Fines, U.S. Department of Justice (2016)

<https://www.justice.gov/crt/file/832461/download>.

¹³⁶ *Id.*

¹³⁷ See Ferguson, *supra* at 2.

¹³⁸ *Id.*

courts, including other jurisdictions, should be provided to the court. Fees and fines should be tracked and throughout the duration of one's case.¹³⁹

3. Review of necessity of all fines by an expert committee, and modification of those which have a high likelihood of being abused, or fines which punish defendants for being punished. An example of such a fine is the \$30 administrative fee for expungement applications by juveniles.¹⁴⁰ In an attempt to leave the debtors' prison, the defendant is subjected to a final fee as a parting gift. Such a practice is unnecessarily burdensome and petty.
4. Community-oriented policing methods are to be implemented and followed. Parking restrictions in urban areas shall be stated clearly enough as to be understood by individuals who do not hold a high school diploma. A more effective and efficient notice and warning system shall be promulgated to provide adequate time and preparation to defendants to fulfill their obligations.
5. The issuance of bench and arrest warrants as a means of debt collection should be abolished. Only after an assessment of reasonable late fees, expanded options for payment, negotiable and modifiable payment plans have been discussed, and further review of the crime and costs shall a bench warrant be issued.¹⁴¹ Upon appearance in court, the defendant shall be subjected to further negotiations and conditions of repayment. Only clear willful intent to refusal payment despite ability should justify incarceration.

¹³⁹ *Id.*

¹⁴⁰ N.J.S.A. §2 C:52-29.

¹⁴¹ See Ferguson, *supra* at 2.