

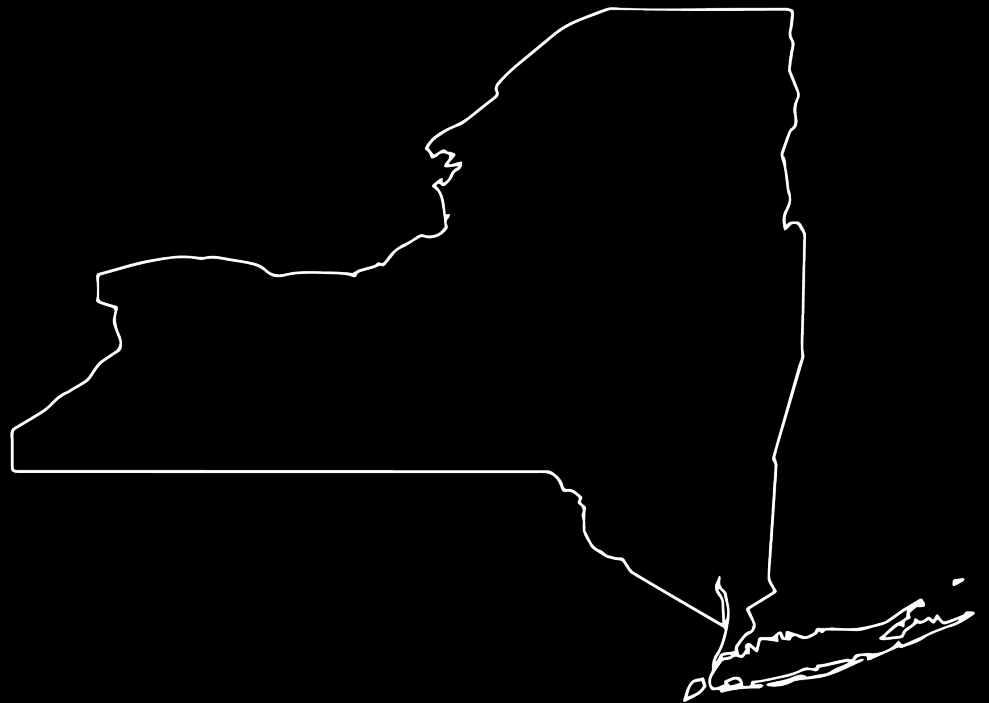
**NCAJ** National Center for  
Access to Justice

AT FORDHAM LAW SCHOOL

# INCREASING JUSTICE IN NEW YORK:

How New York Could Go from Failing to  
First in the Nation on the Fines and Fees  
Justice Index

By Lauren Jones



## **About the National Center for Access to Justice**

The National Center for Access to Justice (<https://ncaj.org>) works to advance the principle that everyone should have a meaningful opportunity to be heard, to secure their rights and to obtain the law's protection. We use research, data and analysis to expose how the justice system fails to live up to that ideal and, all too often, how it functions as a source of oppression. We identify and promote policies that can improve access to justice, and we measure existing laws and policies against those goals. Our flagship project, the Justice Index, ranks states on their adoption of selected best laws and policies. NCAJ makes its home at Fordham University School of Law, where it helps to guide the school's Access to Justice Initiative.

## **About the Fines and Fees Justice Index**

NCAJ is dedicated to reversing the trend in the 50 states of using the legal system to extract excessive revenue from vulnerable communities in the form of fines and fees. In recent years, state and local level governmental entities have imposed increasing sums of fines and fees as a means of funding the basic functions of police, prosecutors, defense counsel, the judiciary, and other components of government, both within the justice system and beyond. In 2021, NCAJ carried out a 50 state project to rank the states based on their adoption of best policies for curbing excessive reliance on fines and fees. NCAJ provides support to advocates and others who are using NCAJ's Fines and Fees Justice Index to understand and to seek to improve the policy landscape in their states.

## **About this Report**

In this report, NCAJ draws on the findings in the Justice Index to illuminate the fines and fees policy landscape in NY. On issue after issue, we show how New York can and should do better. Our analysis also shows how the End Predatory Court Fees Act, if adopted by the state's legislature, would improve New York's standing on fines and fees. In short, the Act would make New York first in the nation.

## **Acknowledgement**

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# I. New York is Failing on Fines, Fees, and Mandatory Surcharges

## The Stakes

Shortly before the pandemic hit, a judge in Westchester County sighed sadly as a man walked out of his courtroom. The man had driven four hours from his home in Massachusetts to the court just north of New York City. It was his third time appearing in court for a traffic violation a year earlier. The man had managed to scrape together \$200 but owed \$250 in outstanding fines, fees, and mandatory surcharges, and the law stipulated that the court could not accept a partial payment. The prosecutor said she was “tired of waiting.” Under the law, the judge could not waive or modify the costs. The judge suspended the man’s driver’s license for failure to pay. So the man left on foot to look for \$50 he did not have. If he could not come up with the money, he would be stranded in Westchester County, hours from his home, or forced to drive with a suspended license, for which he could incur even more fines and fees and risk jail time.

## The Problem

In June 2021 the Driver’s License Suspension Reform Act ended driver’s license suspensions for unpaid traffic tickets, but not for other violations. To this day, judges in New York are still authorized to suspend driver’s licenses for failure to pay fines, fees and surcharges associated with penal code violations, like disorderly conduct or trespassing. And they also impose harsh penalties when people cannot afford to pay fines, fees, and surcharges, including incarceration, ruined credit, and debt that hangs over people’s heads for years. Research shows that fines, fees, and their accompanying consequences fall most heavily on Black, brown and low-income communities.<sup>i</sup>

## The Justice Index Tool

That is why, in 2021, the National Center for Access to Justice (NCAJ) convened a task force of experts from around the country to identify best policies and practices to reign in these abuses. (See Appendix A for a list of the task force members.) In all, NCAJ identified 17 policies and practices that are critical to creating a fairer system that does not criminalize poverty and respects the rights of litigants. NCAJ researched state and local laws around the country, posted the policies online, and graded states according to how their policies measure up—creating the Fines and Fees Justice Index. The point is to make it easier for states to do better.

Visit the Justice Index at <https://ncaj.org/state-rankings/2020/fines-and-fees> to see how states compare. No state did well. Only one scored above 50. New York scored only 42.

## The Change Needed

Every day, stories like the one above repeat in courts across the country, including in New York. States impose *fin*es as punishment for a broad range of offenses, from violations to felonies. They also impose *fees*—for everything from appointed counsel to mandatory drug tests, daily incarceration costs to parole supervision—whose sole purpose is to raise revenue for local and state governments. And, many states suspend drivers’ licenses of those too poor to pay, or bar them from voting. No state is doing well when it comes to policies on fines and fees, but the laws and practices vary widely from place to place.

**New York State Fines and Fees Justice Index Score:**  
**42/100**

## New York Can Become a Model

In short, when it comes to fines and fees, New York and other states are failing. Out of a possible 100 points on NCAJ’s Justice Index, New York’s score was only 42. Now, however, the state has the opportunity to become a model for the nation. Analysis from NCAJ found that if New York passes the End Predatory Court Fees Act, a bill that is currently pending in the state legislature, it would become first in the nation on fines and fees policies.

## II. How Fines, Fees, and Mandatory Surcharges Work in New York

### Fines as Punishment

In New York State, even a minor brush with the criminal justice system can cost people hundreds or even thousands of dollars. New York imposes fines as a punishment for everything from municipal code violations to felonies. The rationale is that the fine will deter crime. Fines for felony convictions can be up to \$100,000.<sup>ii</sup>

### Fees to Raise Revenue

The state also imposes more than 30 fees and mandatory surcharges, without regard to any goal of deterring crime or increasing public safety. With fees and mandatory surcharges, New

York's explicit, sole intent is to raise revenue.<sup>iii</sup> These fees and surcharges can add up to hundreds or thousands of dollars in court ordered debt.

## **Two-Tiered Justice**

The use of fines, fees and surcharges creates a two-tiered system of justice. For people with means, paying these fines, fees, and surcharges is an inconvenience. For people with low incomes, however, mandatory surcharges might mean skipping meals or falling behind on rent. For others, who have no ability to pay at all, these fees, fines, and surcharges can create years-long—or even life-long—debt, poverty, and cycles of entanglement with the criminal justice system.

## **The Price of Being Too Poor to Pay**

Although New York's judges once had discretion to waive or modify fees and surcharges according to ability to pay, the New York legislature removed it in the 1990s during a wave of “tough on crime” policies.<sup>iv</sup> Now, the sentencing court has no ability to waive court fees or mandatory surcharges, even if the person has no money.<sup>v</sup> The penalties for “failing” to pay are steep. People can be held in jail for up to a year.<sup>vi</sup> Also, the judge may order a civil judgment, which can make it impossible to rent a home or get a loan.<sup>vii</sup> Judges can suspend a person's driver's license, making it difficult to find or keep a job.<sup>viii</sup> In short, these fines, fees and surcharges can trap people in life-long debt.

## **A High Cost with Little Benefit**

While the costs for people charged with fees and surcharges are high, the benefits to the state are relatively low. A study by the Vera Institute of Justice found that in the vast majority of New York's towns, villages, cities, and counties, revenues from fees accounted for less than one percent of the total budget.<sup>ix</sup> Studies in other states have found that the government spends at least 41 cents of every dollar raised through fines and fees revenue on court costs and jail expenses in collecting these debts.<sup>x</sup>

### III. New York is Failing on NCAJ’s Justice Index – *Only 42 of 100 Points*

Recognizing that fines, fees and surcharges harm millions of people across the United States every day—and that they are particularly harmful to Black, brown, and low-income communities—we sought to determine best policies and practices, and then rank the states on how they are faring. The goal was not to set out a utopian ideal, but rather to measure whether states are providing minimally adequate protections against abuse in the areas of fines and fees.

NCAJ brought together a task force of external experts from around the country. With their help, NCAJ identified 17 policies needed to rein in abuses of fines and fees, including those that penalize people for their poverty. The policies fell loosely into five broad categories:

1. **Abolition:** The abolition of particularly harmful practices, including the imposition of predatory user fees;
2. **Ability to Pay:** Steps to ensure that courts can—and do—consider a person’s ability to pay fines;
3. **Punitive Consequences:** Elimination of unreasonably punitive consequences for failure to pay, including driver’s license suspension and the loss of voting rights;
4. **Data:** Data collection and publication so that lawmakers and the public can understand the scope of the harms of fines and fees and who shoulders the burden most heavily; and
5. **COVID Adjustment:** Policies to mitigate the impact of fines and fees in light of the economic harms so many suffered during the COVID-19 pandemic.

NCAJ carried out research in all 50 states to determine whether they have these best policies in place, and ranked the states on a scale from 0 to 100 reflecting overall performance, according differing weights to the policy benchmarks based on their relative importance. A state meeting each of the 17 policy benchmarks would receive a score of 100; a state with none would earn a 0. NCAJ went to great lengths to give partial credit, assigning points to states that made some progress but did not meet the full benchmark. To learn more about the research and methodology, visit <https://ncaj.org/fines-and-fees-american-courts>.

New York received only 42 of a possible 100 points on the Justice Index, a failing score alongside all the states. It tied with Massachusetts for 5th, faring slightly worse than New Jersey, and slightly better than Utah:

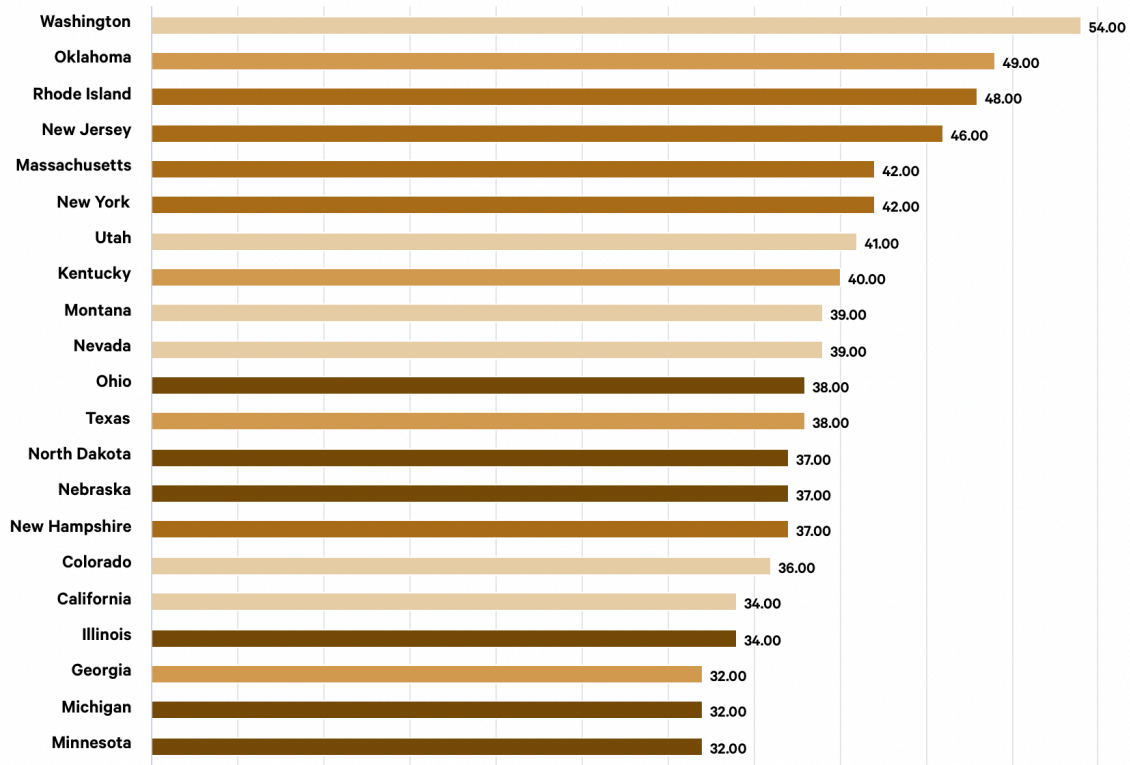


Figure 1: State Scores on the Fines and Fees Justice Index (Out of 100 Possible Points)

Overall, New York scored better than many states because it does not charge fees for appointed counsel in criminal cases or for hefty costs of incarceration. New York is also one of only four states that does not feed revenues from fines and fees directly into the coffers of law enforcement or court budgets, avoiding perverse incentives that can ratchet up fee amounts. Additionally, New York does not impose some of the punishments other states use for failure to pay fines and fees, including barring people from voting or preventing people from expunging criminal records if they have outstanding fines, fees, or surcharges. New York recently began collecting and publishing data about fines and fees, including providing a breakdown of fines and fees imposed by race, age, and gender.

That is the good news. The bad news is that, although New York does not charge a series of “user fees” like many other states, it essentially rolls those costs into large up-front mandatory surcharges that everyone must pay, from those charged with non-criminal violations to felonies. And while the money from those surcharges does not go to funding police departments or courts, it all goes into general funds, meaning that these surcharges are a pure



tax targeted at people who have a brush with the law. New York’s policies also fall far short when it comes to considering a person’s ability to pay. In New York, judges are prohibited from waiving or modifying mandatory surcharges even if the person has no ability to pay. Judges are not required to conduct an ability to pay hearing when they impose fines and fees, even though many states insist on it. Furthermore, judges are not required to find that a person’s failure to pay is willful before imposing sanctions. (See Appendix B for a full explanation of how New York falls on the 17 Fines and Fees Justice Index benchmarks.)

## **IV. New York Can Lead the Nation and Become a Model on Fines and Fees: The End Predatory Court Fees Act Creates an Opportunity**

The End Predatory Court Fees Act, A.2348-A / S.3979-A, a bill pending now, could propel New York to first on the Fines and Fees Justice Index, making it a model for the nation. In short, the proposed law would:

1. Make New York the first in the nation to eliminate all court surcharges and fees, as well as all probation and parole fees;
2. Abolish mandatory minimum fines, allowing judges to set fines according to people’s ability to pay;
3. Require courts to conduct an individualized assessment of a person’s ability to pay before imposing fines and allow people to apply for resentencing if they become unable to pay at a later date; and
4. End incarceration for failure to pay fines, fees, surcharges and assessments (although courts could still order incarceration for failure to appear in court), and end the practice of garnishing commissary from people who are incarcerated to pay these costs.

If passed, the End of Predatory Court Fees Act would improve New York’s score in the Fines and Fees Justice Index—and people’s lives. It could become the first state in the nation to abolish all court fees and surcharges, as well as all parole and probation fees. New York would still have more to do to end the criminalization of poverty, but the bill’s passage would bring the state closer to ending the two-tiered system of justice in which low-income people face high penalties and years (or even lifelong) consequences, while higher income people experience mere inconvenience for the exact same behavior. It would make New York a model for the nation.

# Appendices

## Appendix A: NCAJ's Task Force Members

1. Samuel Brooke, Deputy Legal Director, Economic Justice Project, Southern Poverty Law Center
2. Nusrat Choudhury, Legal Director, ACLU-Illinois
3. Beth Colgan, Professor of Law, UCLA Law School
4. Jessica Feierman, Senior Managing Director, Juvenile Law Center
5. Lisa Foster, Co-Director, Fines and Fees Justice Center
6. Sarah Geraghty, Managing Attorney, Impact Litigation, Southern Center for Human Rights
7. Beth Huebner, Professor, Department of Criminology and Criminal Justice, University of Missouri-St. Louis
8. Juliene James, Director of Criminal Justice, Arnold Ventures
9. Matt Menendez, Counsel, Brennan Center for Justice
10. Mitali Nagrecha, Director, National Criminal Justice Debt Initiative, Harvard Law School Criminal Justice Policy Program.
11. Adeola Ogunkeyede, Legal Director, Civil Rights and Racial Justice Program, Justice and Legal Aid Center
12. Ricard Pochkhanawala, formerly Research Attorney, Institute for Justice
13. Jeff Selbin, Clinical Professor of Law and Faculty Director, Policy Advocacy Clinic, UC Berkeley Law School
14. Abby Shafroth, Attorney, National Consumer Law Center
15. Anne Stuhldreher, Director, The Financial Justice Project, Office of the Treasurer for the City and County of San Francisco
16. Jo-Ann Wallace, President and CEO, National Legal Aid and Defender Association
17. Joanna Weiss, Co-Director, Fines and Fees Justice Center
18. Carson Whitelemons, Criminal Justice Manager, Arnold Ventures

## Appendix B: New York’s Score on Each Fines & Fees Justice Index Policy Benchmark

In this Appendix, we show how New York fared on each of the 17 benchmarks, and we describe how it could do better. For more details on the benchmarks, citations, and to see all the state rankings, visit <https://ncaj.org/state-rankings/2020/fines-and-fees>.

### Category 1: Abolition of Harmful Practices

#### New York Score: **10 out of 25 points**

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##### **Benchmark 1: Abolition of Fees**

##### **New York score: 4 out of 10 points**

Recognizing that fees serve no role in making communities safer or deterring crime, the Justice Index sets a goal of abolishing all fees. While New York has taken steps to abolish some of the most pernicious fees, to date it falls far short of abolishing all fees. It is one of only six states that does not charge fees for appointed counsel in criminal cases, and one of only five states that does not charge hefty incarceration fees (but New York does charge people a \$1 weekly fee while they are in prison). New York does, however, impose steep mandatory surcharges and fees for everything from violations to felony convictions, essentially rolling the multiple fees that other states charge into larger up-front surcharges. In all, New York has approximately 30 surcharges and fees, which range from a \$5 “crime victim assistance fee” for traffic violations to \$1,000 in sex offender victim fees.<sup>xi</sup>

**Recommendation:** New York should remove all fees and mandatory surcharges. The End Predatory Court Fees Act could make New York the first state in the country to end all court fees and surcharges, as well as probation and parole fees.

##### **Benchmark 2: Abolition of Juvenile Court Fines and Fees**

##### **New York score: 0 out of 6 points**

Juvenile court fines and fees, which require children or their families to pay when a child has contact with the juvenile courts, can create family instability and place financial stress on families that are already struggling to make ends meet. New Mexico is the first state that, to

date, has eliminated all juvenile fines and fees. Nevada has abolished all juvenile court fees but not fines, while New Jersey has abolished all juvenile court fines but not fees. New York, however, charges families juvenile court fines and fees.

**Recommendation:** As New Mexico has done, New York should abolish all juvenile court fines and fees.

### **Benchmark 3: Barring Conflicts of Interest Around Fines and Fees Revenue**

**New York score: 6 out of 6 points**

In many states, fines and fees pay for some or all of the police department or court system budgets. This use of the revenue creates perverse incentives, encouraging police to make more stops and arrests and court personnel to ratchet up punishments to pay their own salaries. New York is one of four states that ensure that no fines, fees, surcharges or assessments explicitly fund police departments or the courts. Revenue from fines and fees in New York, however, may fund police and courts indirectly when it goes to local governments. And local governments do use fines and fees to increase revenue. In 2009, in local courts across the state, half of speed violation charges (where the payments by law go to the state coffers) were pled down to charges whose revenue goes to the local government, such as parking violations or failure to obey a traffic signal.<sup>xii</sup>

**Recommendation:** New York should require all towns, villages, cities and counties to report to the state data on fines and fees, including where people plead to a charge whose revenue goes to the local budget instead of the state. The state should then publicize that data. This would allow policymakers and the public to identify locales that are using fines and fees to drive local revenue, which may in turn fund police departments and courts.

### **Benchmark 4: Private Collection of Fines and Fees Debt**

**New York score: 0 out of 3 points**

Debt collection agencies often add large surcharges to bills they are collecting. When states allow private agencies to collect fines and fees, those agencies profit while people who cannot

pay incur even more debt. Although nine states have barred private debt collection agencies from collecting fines and fees, New York still allows this practice. Furthermore, it does not have fair debt collection practice laws to reign in these abuses.

**Recommendation:** New York should bar private collection agencies from collecting fines and fees. Short of that, New York should create fair debt collection practices to ensure that private companies do not profit while people cannot afford to pay incur more and more debt.

## **Category 2: Consideration of a Person’s Ability to Pay**

**New York Score: 12 out of 46 points**

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### **Benchmark 5: Consideration of Ability to Pay at Sentencing**

**New York score: 2 out of 6 points**

One in four states, including Texas and Oklahoma, require courts to conduct ability to pay assessments every time they order a person to pay a fine, fee, assessment or surcharge. New York’s policies fall short. Although New York requires courts to conduct an ability to pay assessment when imposing fines in felony cases, it does not do so in misdemeanor or violation cases—or for fees or surcharges. Judges have no ability to waive or modify mandatory surcharges.

**Recommendation:** New York should require courts to conduct ability to pay assessments every time they order a person to pay a fine, fee, assessment or surcharge. The End Predatory Court Fees Act would require courts to conduct an ability to pay assessment before imposing fines.

### **Benchmark 6: Proof of Willful Failure to Pay Before Incarceration or Other Sanctions**

**New York score: 0 out of 10**

Twenty-one states, including Alabama, Texas, Kentucky and Tennessee, require courts to conduct a hearing and find that the person’s failure to pay was willful before ordering

incarceration or the imposition of other sanctions, such as the suspension of a driver’s license. New York, however, does not have this critical safeguard, meaning that people can be punished for “failing” to pay when they simply cannot afford to pay.

**Recommendation:** As the End Predatory Court Fees Act would do, New York should end incarceration for failure to pay fines, fees, or surcharges. New York should also require courts to find that a person’s failure to pay is willful before imposing any sanctions.

### **Benchmark 7: Ability to Pay Standards**

**New York score: 0 out of 5**

In 11 states, including Georgia and Mississippi, the state has codified substantive standards that all state and local courts are required to use, giving clear guidance to judges on how ability to pay should be determined. New York, however, has not provided any guidance on ability to pay standards.

**Recommendation:** New York should codify substantive standards that provide clear guidance to judges on how to determine ability to pay.

### **Benchmark 8: Standards that Trigger a Presumption of Indigence**

**New York score: 0 out of 5**

Nine states, including Florida, Georgia, and Mississippi, have codified standards that trigger a presumption that a person is indigent and, therefore, unable to pay fines, fees, costs, surcharges or assessments. In some states, the fact that a person is entitled to appointed counsel or receives public benefits is enough to trigger the presumption that they cannot pay fines and fees. In others, a certain income threshold triggers the presumption. New York, however, has no such presumption in place.

**Recommendation:** New York should codify standards that trigger a presumption of indigence for the purpose of assessing fines and fees. There should be such a presumption any time a person qualifies for appointed counsel.

### **Benchmark 9: Discretion to Modify or Waive Fines and Fees**

**New York score: 4 out of 8 points**

Fifteen states give judges the ability to waive or modify all fines, fees, surcharges and assessments according to the person’s ability to pay. In New York, however, the mandatory surcharges and many other costs are set by law, and judges have no discretion to waive or modify them, even if the person has no ability to pay.

**Recommendation:** As it did before the “tough on crime” policies of the 1990s, New York should once again give judges discretion to waive or modify all fines, fees, and surcharges according to the person’s ability to pay. It should also codify the circumstances under which judges must waive or modify fines, fees or surcharges. The End Predatory Court Fees Act would give judges the ability to modify or waive these costs.

### **Benchmark 10: Payment Plans**

**New York score: 0 out of 3 points**

Nebraska, Rhode Island, Tennessee and Virginia mandate that anyone can choose to pay fines and fees on a payment plan if they cannot afford to pay immediately, without incurring any additional fees or interest charges. New York, however, does not have this safeguard.

**Recommendation:** New York should mandate that anyone who cannot afford to pay fines, fees or surcharges immediately can elect to create a payment plan.

### **Benchmark 11: Individualized Fines**

**New York score: 0 out of 3 points**

To date, Oklahoma is the only state that has instituted individualized fines, sometimes referred to as “day fines,” meaning that fines are scaled according to the severity of the offense and the person’s income.

**Recommendation:** New York should follow Oklahoma’s lead and create day fines, which would scale fines so that the payment is a percentage of the person’s income, rather than a raw number that everyone pays equally.

### **Benchmark 12: Right to Counsel When Incarceration is Possible**

**New York score: 6 out of 6 points**

New York is one of 27 states that gives people the right to an attorney at court hearings where the person may face jail time for failure to pay a fine, fee, surcharge, or assessment.

**Recommendation:** New York provides a right to counsel when a person faces the possibility of incarceration for failure to pay fines, fees, or surcharges, but New York could become a model by eliminating incarceration altogether for failure to pay. The End Predatory Court Fees Act would end incarceration as a punishment for failure to pay fines, fees, surcharges, or restitution.



## Category 3: Collateral Consequences

**New York Score: 15 out of 18 points**

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### **Benchmark 13: Driver's License Suspension for Failure to Pay Fines and Fees**

**New York score: 3 out of 6 points**

Eighty-six percent of Americans drive to work. A driver's license is also necessary to take children to school, buy groceries, go to doctor's appointments, and meet many other basic needs. But courts often suspend driver's licenses for failure to pay fines and fees, forcing people to either lose their jobs and face other hardships or drive with a suspended license, risking further penalties and punishments. After landmark legislation in 2021, New York does not suspend driver's licenses for failure to pay traffic tickets, but a court can still suspend a person's driver's license for failure to pay fines, fees, and surcharges, as well as failure to appear at a court hearing.

**Recommendation:** New York should eliminate the practice of suspending drivers' licenses for failure to pay fines, fees, or surcharges, as well as failure to appear in court. The End Predatory Court Fees Act would end all drivers' license suspensions for failure to pay.

### **Benchmark 14: Voting Rights**

**New York score: 6 out of 6 points**

During the Jim Crow era, states passed laws designed to prevent Black people from voting, including poll taxes. There is no defensible good government nexus between money and voting. Today a form of poll tax still exists: 23 states block people from voting unless and until they pay all fines and fees. In New York, people do not lose the right to vote if they owe fines, fees, and surcharges.

**Recommendation:** No change. New York should continue its current policy.

## **Benchmark 15: Conditioning Expungement on the Payment of Fines and Fees**

**New York Score: 6 out of 6 points**

One in three people in the United States has a criminal record, which can interfere with a person's ability to find a job, rent or buy a home, enroll in higher education, access government benefits and more. Some criminal records can be sealed from public view or removed through expungement, making it easier for people to get back on their feet after a criminal conviction. In New York, people can apply for expungement if they have outstanding fines and fees.

**Recommendation:** New York should continue to allow people to expunge their records if they have outstanding fines, fees, and surcharges. As the End Predatory Court Fees Act would do, New York should also allow people to end parole early, even if they owe restitution or other payments.

## **Category 4: Data Transparency**

**New York Score: 3 out of 6 points**

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### **Benchmark 16: Collection and Publication of Data About Fines and Fees**

**New York score: 3 out of 6 points**

To understand the magnitude of the problem with fines and fees and to identify solutions, it is critical for states to collect and publicize data. New York Judiciary Law § 212 (2) (u-1) requires the Unified Court System to compile and publish data on violations and misdemeanors, including the fines, fees, and surcharges imposed in cases. The dataset also includes information broken down by race and ethnicity, age, and sex. Although not required to do so by law, the court system began compiling and publishing the same data for felonies. To date, however, New York does not collect and publish in one place all data on fines and fees revenue collected by the state and local governments. It also does not track the income levels of people subject to fines and fees, making it difficult to understand the scope of the problem for low-

income communities. Furthermore, New York does not publish data about the number of people held in jail for failure to pay.

**Recommendation:** New York should collect and report publicly in one place data on fines, fees, and surcharge revenues collected by the state and local governments. It should also collect and report data about fines and fees imposed, broken down by the income levels of those charged, as well as the number of people incarcerated for failure to pay.

## **Category 5: COVID-19 Response**

**New York Score: 2 out of 5 points**

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### **Benchmark 17: Temporary Measures to Mitigate the Impact of Fines and Fees During the COVID-19 Pandemic**

**New York score: 2 out of 5 points**

New York State did not adopt any statewide policies or practices to lessen the harms of fines and fees during the COVID-19 pandemic. Several major New York localities, however, did change their practices.

**Recommendations:** Recognizing that New Yorkers are reeling from the economic hardships of the COVID-19 pandemic, the state should modify and waive fines, fees, and surcharges according to ability to pay and allow people to apply for resentencing and adjustment of financial obligations if they lose their jobs or suffer change in their economic circumstances. The End Predatory Court Fees Act would require judges to consider ability to pay at sentencing and allow people who cannot pay to apply for resentencing, giving judges discretion to waive or modify the amount of fines, restitution or reparations people owe.

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<sup>i</sup> See, e.g., Chris Mai and Maria Raphael, *The High Price of Using Justice Fines and Fees to Fund Government in New York*, Vera Institute of Justice, December 2020, <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-new-york.pdf>.

<sup>ii</sup> N.Y. Penal Law § 80.00; N.Y. Penal Law § 80.05.

<sup>iii</sup> “Section 60.35 [the statute mandating surcharges] was originally enacted as part of a massive revenue-raising bill meant to avert the loss of an estimated \$100 million in State tax revenues.” *People v. Guerrero*, 12 NY3d 45, 49 (2009), citing Legislative Memo in Support, Bill Jacket, L 1982, ch 55, at 6.

<sup>iv</sup> *New York Should Re-Examine Mandatory Court Fees Imposed on Individuals Convicted of Criminal Offenses and Violations*, New York City Bar Association, May 2019, [https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-should-re-examine-mandatory-court-fees#\\_ftn9](https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/new-york-should-re-examine-mandatory-court-fees#_ftn9).

<sup>v</sup> N.Y. Crim. Proc. § 420.35(2).

<sup>vi</sup> If a person fails to pay a fine, restitution or reparation ordered by the court, they can be sentenced to up to one year in jail. N.Y. Crim. Proc. § 420.10. The court can order a person to spend up to 15 days in jail for failure to pay mandatory surcharges and fees. N.Y. Crim. Proc. § 420.35. Although by law the court must find that payment would “not work an unreasonable hardship on him or her or his or her immediate family,” before sentencing the person to jail, a study by the Fund for Modern Courts found that across New York State justice court judges are putting people in jail without conducting ability to pay assessments. *Fines and Fees and Jail Time in New York Town and Village Courts: The Unseen Violation of Constitutional and State Law*, The Fund for Modern Courts, Apr. 3, 2019, <http://moderncourts.org/wp-content/uploads/2019/04/Fines-and-Fees-and-Jail-Time-in-New-York-Town-and-Village-Justice-Courts-The-Unseen-Violation-of-Constitutional-and-State-Law.pdf>.

<sup>vii</sup> N.Y. Crim. Proc. §420.10(6).

<sup>viii</sup> N.Y. Veh. & Traf. §503(j-1)(i).

<sup>ix</sup> Mai and Raphael, *supra* note 1.

<sup>x</sup> *Id.*

<sup>xi</sup> N.Y. Veh. & Traf. Law §1809; N.Y. Penal Law §60.35(1)(b).

<sup>xii</sup> Mai and Raphael, *supra* note 1.