



AT FORDHAM LAW SCHOOL

Illinois Statutory Court Fee Task Force
Administrative Office of the Illinois Courts
222 North LaSalle Street, 13th Floor
Chicago, IL 60601

August 26, 2022

Dear Chairman Flaum and Members of the Supreme Court Statutory Court Fees Task Force:

Thank you for your leadership on the Report on Implementation of 2016 Task Force Recommendations and Additional Proposed Measures for Addressing Barriers to Access to Justice and Excessive Financial Burdens Associated with Fees and Costs in Illinois Court Proceedings. We appreciate the opportunity to provide written comments on the draft report for the August 30, 2022 public hearing of the Supreme Court Statutory Court Fee Task Force.

The National Center for Access to Justice at Fordham Law School (NCAJ) is a national nonpartisan, nonprofit organization that seeks to ensure that everyone—regardless of race, language, income level, geography, or disability—has access to justice, which we define as a meaningful opportunity to be heard in court, assert one’s rights, and obtain the law’s protection. Using data, research and policy analysis, NCAJ studies how the legal system too often fails to deliver the equal justice it promises. We then use those findings to develop and drive policy solutions to these complex, pressing problems.

NCAJ’s flagship project, the [Justice Index](#), provides a snapshot of the degree to which each state in the nation has adopted policies that help to ensure access to justice for all litigants, including people in the courts without lawyers, people with language limitations, and people with disabilities. Recognizing that fines and fees are often engines of economic and racial inequity, in 2020 NCAJ added a new category to the Index: the [Fines and Fees Justice Index](#). Working closely with a team of experts from around the country, NCAJ identified 17 unique rights-protective policies—best practices—that states should adopt to curb reliance on excessive fines and fees, including the abolition of fees, the creation of standards to determine a person’s inability to pay fines and fees, and the elimination of conflicts of interest in the expenditure of fines and fees revenue. We then researched policies in all 50 states to examine whether the states had adopted these best practices as law, and ranked the states accordingly.

In short, Illinois did not fare well on the Fines and Fees Justice Index. It received just 34 out of a possible 100 points, tying with California for 18th in the nation.¹ Thanks in large part to the state’s 2019 adoption of the Criminal and Traffic Assessment Act (CTAA), there are some policy areas in which Illinois excels on the Index, including by codifying clear standards for determining ability to pay and providing judges with discretion to waive, modify or convert assessments to community service when people cannot pay.² It is, therefore, critical to make the CTAA permanent, as the Task Force has recommended.

But there are a number of areas in which Illinois can and must improve. The Justice Index shows that when states seek to improve their policies on fines and fees, they need not reinvent the wheel. Illinois can improve by looking to policies other states have already adopted to ensure greater access to justice. In reading the draft report and comparing Illinois’ policies to those in other states, we have identified four key areas where Illinois can improve:

- 1) Abolishing assessments, including but not limited to those in juvenile court proceedings;
- 2) Eliminating conflicts of interest by funding courts and law enforcement through the general budget instead of fines and fees revenues;
- 3) Ending the use of private debt collection agencies to collect court fines and fees; and
- 4) Collecting and reporting data on fines and fees.

1) Illinois should abolish assessments, including but not limited to those in juvenile court proceedings

We applaud the Task Force for recommending “that legislation be enacted abolishing assessments and fines in juvenile delinquency cases.” As the Task Force rightly recognized, a growing body of research shows that fines and fees in juvenile delinquency cases can undermine rehabilitation, increase recidivism, and further destabilize families that are already struggling to make ends meet. For that reason, New York State does not impose juvenile court fines and fees, and there is growing momentum across the United States to eliminate such costs in other states.³ In 2021, for example, New Mexico passed legislation abolishing all juvenile court fines and fees.⁴ Oregon similarly eliminated all juvenile court fines and fees as of January 1, 2022 (with the limited exception of payment for medical treatment while a child is in a juvenile detention facility).⁵ Illinois can and should follow suit, abolishing juvenile court fines and assessments—without the carveout the Task Force report recommends for “preserving juveniles’ liability for restitution and for assessments in traffic cases.”

The abolition of juvenile court fines and assessments is a necessary—but not sufficient—step toward ending the harms of Illinois’ criminal court assessment policies. Fees and assessments, as contrasted with fines, serve as revenue generators with no goal of deterring crime. Further, because fees and assessments disproportionately impact low-income communities, these costs

¹ See National Center for Access to Justice, *Fines and Fees*, <https://ncaj.org/state-rankings/2020/fines-and-fees> (last visited Aug. 23, 2022).

² See 725 Ill. Comp. Stat. 5/124A-20(c); 705 Ill. Comp. Stat. 135/5-10(b); 725 Ill. Comp. Stat. 5/124A-20.

³ See N.Y. Penal Law § 60.02.

⁴ H.B. 183, 55th Leg., 1st Sess. (NM 2021).

⁵ See Or. Rev. Stat. § 419C.457; Or. Rev. Stat. § 419C.540(9).

function in effect as regressive taxes, forcing those who directly interact with the court system to pay for a system that serves all of society.⁶ Although fees are not intended to be punitive, they can create insurmountable financial burdens for people who have even a minor brush with the courts. A study in 2018 by the Illinois Criminal Justice Information Authority, for example, found that 72 percent of people who owed fines, fees and assessments had to forego groceries to pay them. Sixty-two percent fell behind on utility bills and mortgage or rent payments.⁷

Recognizing the harms of fees and assessments, states and locales are taking steps to eliminate all criminal court fees. In 2018, for example, San Francisco became the first county in the country to eliminate all locally controlled criminal court fees.⁸ A bill introduced in 2021 in New York State, the End Predatory Court Fees Act, would make New York the first state in the nation to eliminate all criminal court fees.⁹ We commend the Task Force for recommending “that defendants sentenced to the Department of Corrections earn a reduction in the amount of assessments (i.e., court costs and fees) and fines tied to the length of their prison sentence.” That provision would go a long way to undoing the harms of excessive fines and fees policies, but the state could go a step further and become a model for other states by abolishing all criminal court fees outright as well.

Short of that, the Task Force should recommend the elimination of one of the most pernicious fees: counsel fees. In the United States, people accused of a crime who cannot afford representation have a constitutional right to an attorney appointed to represent them at government expense. In Illinois, however, the state may charge a person up to \$500 for state-appointed counsel in a misdemeanor case, \$5,000 for a felony, and \$2,500 for an appeal of any criminal conviction.¹⁰ The process is not uniform across the state, but in some counties, before appointing counsel, judges must inform people that they may have to pay all or part of the costs for the attorney.¹¹ By definition, people who qualify for appointed counsel are indigent. These fees can dissuade people from exercising their constitutional right to have appointed counsel. When people do exercise their constitutional right to counsel, these fees saddle people with years or sometimes lifelong debt that can ruin credit, keep people in cycles of poverty and court entanglement, and even lead to incarceration. For those reasons, eight states—California, Delaware, Hawaii, Mississippi, Nebraska, New York, Pennsylvania, and Rhode Island—do not charge these fees, providing a roadmap for Illinois to follow.¹² We, therefore, urge the Task

⁶ See, e.g., U.S. Comm'n on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications* (Sept. 2017), https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf.

⁷ Lily Gleicher and Caitlin Delong, *The Cost of Justice: The Impact of Criminal Justice Financial Obligations on Individuals and Families* (Aug. 1, 2018), <https://icjia.illinois.gov/researchhub/articles/the-cost-of-justice-the-impact-of-criminal-justice-financial-obligations-on-individuals-and-families>.

⁸ Press Release, San Francisco Treasurer & Tax Collector,

⁹ S.B. S3979C, 2021-22 Leg. (N.Y. 2021).

¹⁰ 725 ILCS 5/113-3.1.

¹¹ Sixth Amendment Center, The Right to Counsel in Illinois: Evaluation of Adult Criminal Trial-Level Indigent Defense Services, 115 (Sept. 2021), https://sixthamendment.org/6AC/6AC_ilinois_report_2021.pdf.

¹² Marea Beeman, et. al., *At What Cost? Findings from an Examination Into the Imposition of Public Defense System Fees*, National Legal Aid & Defender Assoc. (Jul. 2022),

https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf?v=2.0. See also *Fines and Fees*, National Center for Access to Justice, <https://ncaj.org/state-rankings/2020/fines-and-fees> (last visited Aug. 26, 2022).

Force to add to its report a recommendation that, along with juvenile fines and fees, Illinois should eliminate counsel fees.

Recommendations: The Task Force should 1) amend its recommendations on the abolition of juvenile court fines and fees, eliminating the carve-out for “preserving juveniles’ liability for restitution and for assessments in traffic cases”; 2) recommend the elimination of all criminal court imposed fees and assessments; and 3) short of that, add a new recommendation that would expressly eliminate fees for appointed counsel.

2) The Task Force should advocate unequivocally for the funding of courts and law enforcement from the general budget, removing the conflict of interest that arises when courts and police rely on revenue from fines and fees to fund their own budgets

As the U.S. Department of Justice laid out clearly in its investigation of Ferguson, Missouri, when courts and law enforcement agencies rely on revenue from fines and fees to fund their own budgets, it creates perverse incentives to issue more tickets, make more arrests, and impose ever-increasing legal financial obligations on residents.¹³ Judges should never have to consider their own budgets and salaries when deciding whether to impose fines, fees and assessments. The Task Force’s report put it simply and eloquently: “Access to justice is a fundamental right that should be provided and protected by the State. The justice system benefits all of the state’s residents, not just those who come in contact with it. It should, therefore, be funded by all of the residents.”

Here again, Illinois need not reinvent the wheel to eliminate the conflict of interest that arises when courts and law enforcement budgets depend on revenue from fines, fees and assessments. Alaska, New York, South Dakota, and Utah all provide blueprints for reform.¹⁴ They each ensure that revenues from fines and fees go into the general budget, and that the state and localities are responsible for funding court and law enforcement operations.¹⁵

Recommendation: The Task Force should recommend that the General Assembly, judiciary, counties, circuit court clerks, and the bar work cooperatively towards a system that fully funds the judiciary and law enforcement from the general budget, reducing the conflict of interest that arises when courts and law enforcement depend on revenues from fines and fees for their own budgets.

¹³ See U.S. Dep’t of Justice Civil Rights Div., *Investigation of the Ferguson Police Department* (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf. See also Dick Carpenter, Kyle Sweetland and Jennifer McDonald, The Price of Taxation by Citation: Case Studies of Three Georgia Cities that Rely Heavily on Fines and Fees, Institute for Justice, October 2019, <https://ij.org/wp-content/uploads/2019/10/Taxation-by-Citation-FINAL-USE.pdf>.

¹⁴ See *Fines and Fees*, National Center for Access to Justice, <https://ncaj.org/state-rankings/2020/fines-and-fees> (last visited Aug. 26, 2022).

¹⁵ See Alaska Stat. § 22.15.250; N.Y. Penal Law § 80.00; S.D. Codified Laws § 16-2-30; Utah Code § 78A-5-110(4)(b). See also 50-State Criminal Justice Debt Reform Builder, "Revenue Flow," (Criminal Justice Policy Program at Harvard Law School), <https://cjdebtreform.org/data-explorer/revenue-flow>.

3) The Task Force should recommend that Illinois stop using private debt collectors to collect unpaid court debt

If people cannot or do not pay court fines, fees, and assessments, Illinois charges high interest rates that can further trap people in years-long cycles of poverty and incarceration. The law provides that “the clerk of the circuit court may add to any unpaid fees and costs under this Section a delinquency amount equal to 5% of the unpaid fees that remain unpaid after 30 days, 10% of the unpaid fees that remain unpaid after 60 days, and 15% of the unpaid fees that remain unpaid after 90 days.”¹⁶ We commend the Task Force for recommending the repeal of this statute and the portions of 725 ILCS 5/124A-10 that similarly impose high interest on unpaid court fines and fees debts. We urge the Task Force to add an additional element, barring the use of private collection firms to collect these unpaid court debts.

As the Task Force reported, “many State’s Attorney’s offices have outsourced this function to private companies in exchange for the 30% collection fee.” Collections firms are typically paid based on the amount of unpaid debt they are able to recover. As is true in the private sphere, this can incentivize predatory and misleading collections tactics by firms looking to maximize their profits. Companies’ incentives to use predatory tactics to collect unpaid fines, fees, and assessments from those who allegedly owe court debts are at odds with the responsibility of courts to ensure that people are clearly and consistently informed of their rights, can contest the claims against them, and have the opportunity to seek payment amounts or plans that are commensurate with their ability to pay.

For these reasons, one in four states has barred the use of private collection firms to collect unpaid court debts.¹⁷ Iowa provides perhaps the clearest roadmap for Illinois to follow. A recent bill requires that as of January 1, 2021, the Iowa department of revenue—not private collection firms—must be responsible for collecting unpaid court debts.¹⁸

Recommendation: In addition to the repeal of 705 ILCS 105/27.1b(y-5) and the portions of 725 ILCS 5/124A-10 that similarly impose high interest on unpaid amounts of court fines and fees, the Task Force should bar State’s Attorney’s offices from outsourcing the collection function to private collections firms.

4) The Task Force should recommend the collection and reporting of essential data on fines and fees

A growing body of research confirms that low-income communities and communities of color shoulder a disproportionate burden from fines and fees but a dearth of data makes it hard to pinpoint which specific policies and practices are most harmful.¹⁹ Data collection and reporting

¹⁶ 705 ILCS 105/27.1b(y-5).

¹⁷ See National Center for Access to Justice, *Fines and Fees*, Choose a Benchmark Filter: Privatized Debt Collection, <https://ncaj.org/state-rankings/2020/fines-and-fees> (last visited Aug. 23, 2022).

¹⁸ See S.F. 457 (IA 2020).

¹⁹ See, e.g., U.S. Comm’n on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications* (Sept. 2017),

https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf; Cortney Sanders and Michael Leachman, *Step One to an Antiracist State Revenue Policy: Eliminate Criminal Justice Fees and Reform Fines*, Ctr.

can help policymakers and the public alike to understand whether there are particular fines and assessments that disproportionately impact communities of color more than others, whether the practices in particular counties or cities are especially harmful (or helpful), whether revenue collection from fines and fees is an efficient way to fund government, and more. Such data is critical to crafting impactful policy solutions.

The CTAA required circuit clerks in Illinois to file a report for calendar year 2019 with detailed data regarding, among other things, the number of various types of criminal and traffic cases filed, the number and amount of assessments imposed and collected, the number and amount of fines imposed and collected, the number of assessment waiver applications granted at each waiver level, and the amount of assessments waived.²⁰ Although the CTAA did not require it, the circuit courts filed similar reports in 2020 and 2021 pursuant to a Supreme Court order. We commend the Task Force report for recommending the continuation of these reports, as well as an expansion to include data on the number of waiver applications filed. We urge the Task Force to recommend the collection and public reporting of data that also addresses the specific impact of fines and fees on marginalized communities.

Recommendation: The Task Force should recommend the continuation of CTAA required data as well as data on the number of waiver applications filed and granted, but with a breakdown in each category according to race, ethnicity, age, gender, and income level of the people impacted. The Task Force should also recommend that the state collect and report data on the number of people incarcerated for failure to pay or failure to appear in cases related to non-payment of fines and fees.

Conclusion

The Supreme Court Statutory Court Fees Task Force has undertaken the vital role of addressing fines and fees policies in Illinois with a goal of expanding access to justice. The recommendations in the draft report, if adopted, would go a long way to making Illinois' policies and practices fairer and more just. We submit that the additional recommendations we have made, guided by reforms that other states and localities have already undertaken, represent best policies that should also be adopted to increase access to justice in Illinois.

Sincerely,



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On Budget and Policy Priorities (Sept. 17, 2021), <https://www.cbpp.org/research/state-budget-and-tax/step-one-to-an-antiracist-state-revenue-policy-eliminate-criminal>; Lara Bliss, *The Disparate Financial Impact of the American Justice System*, Bloomberg (Aug. 11, 2020), <https://www.bloomberg.com/news/articles/2020-08-11/seattle-fines-and-fees-hit-black-residents-harder>.

²⁰ 705 ILCS 135/1-10.