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THE COUNCIL OF THE CITY OF NEW YORK

Briefing Paper of the Justice Division
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COMMITTEE ON THE JUSTICE SYSTEM
Hon. Rory Lancman, Chair

September 27, 2018

Oversight: Cost of Justice

I. Introduction

On September 27, 2018, the Committee on Justice System, chaired by Council Member Rory Lancman, will hold an oversight hearing on the cost of justice, examining the ways in which mandatory surcharges, fees, fines, and costs for mandated programming operate in New York City courts. The committee is expecting representatives from the Mayor's Office of Criminal Justice (MOCJ), district attorneys, indigent-defense providers, advocacy groups, and the public to testify.

II. Fines, Fees, and Surcharges in New York

New York State imposes a significant amount of legal financial obligations (LFOs) on justice-involved people. It has over 120 statutes spanning Criminal Procedure Law (CPL) and Penal Law, Vehicle and Traffic Law (VTL), Correction Law, Civil Rights Law, and Executive Law that include LFOs.¹ These LFOs take the form, or combination, of surcharges, fees, fines, penalties and assessments, and restitution.

A. Surcharges

A surcharge is a mandatory fee that a convicted person is charged, irrespective of their offense, to offset court costs for adjudicating the case. State law requires surcharge for felonies (\$300), misdemeanors (\$175), and violations (\$95).² It also requires a 5% surcharge on restitution, which an agency keeps for collecting the restitution.³ Usually, surcharges, like restitution, are collected before fines.⁴ A person can be incarcerated for up to 15 days for failure to pay a surcharge, although generally courts in the City enter civil judgement on a surcharge as a matter of course and do not issue a warrant if the surcharge is not paid by the allotted deadline.⁵

¹ Harris, A. Huebner, B., Martin, K., Pattillo, M., Bettit, B., Shannon, S... Fernandes, A. (2017) *Monetary sanctions in the criminal justice system: A review of law and policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas and Washington*. Houston, Tx: Laura and John Arnold Foundation, p. 143

² Penal Law (PL) § 60.35

³ PL § 60.27

⁴ Criminal Procedure Law (CPL) § 420.10(b)

⁵ CPL § 420.35(1)

Even during incarceration, a person can incur surcharges. Incarcerated individuals can be subject to up to \$100 in restitution for property damage, and a \$5 mandatory surcharge.⁶ When working in correctional facilities, the City of New York can keep up to \$1 per week.⁷ Unpaid surcharges are collected from incarcerated individuals “earnings” from facility jobs, as well as commissary donations from family and friends (“outside receipts.”)⁸

Surcharges are particularly onerous in cases involving driving. Vehicle and Traffic Law offenses have a \$55 surcharge.⁹ DWI felonies and misdemeanors have the aforementioned regular surcharge,¹⁰ along with an additional \$200 surcharge.¹¹ These are in conjunction with mandatory fines, and other assessments, that are discussed below.

New York City Courts generate about 18% of their revenue from surcharges.¹² Not including summonses, New York City Criminal Courts generated \$2.1 million from surcharges on violation pleas, and \$374,824 from surcharges on misdemeanor convictions. Driving while impaired or intoxicated offenses created another \$931,321 in surcharges, and \$1.7 million from Vehicle and Traffic Law offenses.¹³ As with all revenue from LFOs, the city keeps about 66%, with the remaining 34% going to the state.¹⁴

B. Fees

In addition to the mandatory surcharge, for each plea there is a \$25 crime victim assistance

⁶ New York Codes, Rules and Regulations § 253.7

⁷ Correction Law § 189

⁸ Collection & Repayment of Inmate Advances Obligations, New York State Department of Corrections and Community Supervision, *available at* <http://www.doccs.ny.gov/Directives/2788.pdf>

⁹ Vehicle & Traffic Law (VTL) § 1809(1)(c)

¹⁰ VTL § 1809.

¹¹ VTL § 1809-c, 1809-e(1)(b)

¹² It should be noted that all amounts from OCA are revenue collected, not amounts imposed. There is no published information on LFO amounts outstanding, or the number of civil judgments entered.

¹³ Lisa Lindsay and Justin Barry et al., 2016 Annual Report (2017), Criminal Court of the City of New York, *available at* <https://www.nycourts.gov/COURTS/nyc/criminal/2016-Annual-Report-Final.pdf>

¹⁴ *Id.*, p. 57

fee and a \$50 DNA database upkeep fee, payable even if a defendant’s DNA is already “on-file.”¹⁵ Including those, the baseline, mandatory surcharge for a felony is \$375, misdemeanor \$250, and violation \$120 (even though a violation is not a crime). Even if granted youthful offender status, the surcharges and fees (with the exception of the DNA database fee) still apply.¹⁶

There are also fees for particular offenses. A \$50 sex offender registration fee¹⁷, or \$100 to reinstitute a driver’s license after a suspension.¹⁸ Fees continue past the disposition of a case, including a \$10 “day reporting fee” while on work release.¹⁹ There is also an allowance for a \$30 monthly fee for adults on parole, conditional release, or post-release supervision,²⁰ as well as probation.²¹

By percentage, only a small amount of revenue comes from these fees – about 3% of criminal court revenue in New York City. In 2016, \$758,642 came from crime victim assistance fee (CVAF), with \$104,570 from the DNA database upkeep fee.²²

C. Fines

A fine is a penalty imposed as a sentence for illegality in addition to or in lieu of a jail sentence, and occur with regularity over New York law; over 80 New York statutes reference a fine.²³ For many offenses, the minimum fine is \$25, including unlawful possession of marijuana,²⁴ one of the most charged offenses in New York City. Another common charge – driving with a suspended license – carries a minimum fine of \$75.²⁵ These fines still carry their mandatory

¹⁵ P.L. § 60.35(1)(a)(i)-(iii)

¹⁶ P.L. § 60.35(10)

¹⁷ P.L. § 60.35(1)(a)(v)

¹⁸ VTL § 503(2)(h)

¹⁹ Supra 8

²⁰ Correction Law § 201

²¹ Executive Law § 257-c

²² Supra 13, p 56

²³ Supra 1, p. 143

²⁴ P.L. § 221.05

²⁵ VTL § 509

surcharges with them – meaning that a plea to PL 221.05 has a \$120 surcharge and a minimum \$25 fine, and a plea to VTL 509 has an \$88 surcharge and a \$75 fine.

Like surcharges, fines for driving offenses are particularly high. In addition, the violation for driving while impaired,²⁶ has a mandatory fine range of \$300 to \$500 for a first offense, and \$500 to \$750 for a second offense. That fine is in addition to the \$255 surcharge. A first offense for the misdemeanor of driving while intoxicated comes with a mandatory fine range of \$500 to \$1,000, also in addition to the surcharge of \$395.

Along with minimum fines and set ranges, there are statutory maximum fines as well. Other statutes cap fines, for example \$5,000 for a felony and \$1,000 for a class A misdemeanor.²⁷ In addition, statutes define fines for everything ranging from violations of civil rights,²⁸ public health laws,²⁹ to alcohol-related offenses where minors are involved.³⁰

About 53% of criminal court revenue in the city comes from fines. According to the 2016 OCA Annual Report, a large proportion of that comes from fines attached to summonses, some of which have since been sent to OATH court after the Criminal Justice Reform Act. However, a large amount still came from arrests that are processed through criminal courts, with revenue of \$3,005,004 in general fines, with an additional \$1,962,864 in fines specifically from driving while intoxicated offenses.³¹

D. Penalties and Assessments

In addition, especially when it comes to driving offenses, there are additional penalties and assessments. For any driving while intoxicated offense, there is a driver's responsibility

²⁶ VTL § 1192(1)

²⁷ PL Law § 80.00(1)(b))

²⁸ Civil Rights Law § 44-a)

²⁹ Environmental Conservation Law § 71-1711)

³⁰ VTL § 1194-a(2)), collected at supra 1, p, 145.

³¹ Supra 13, p. 56

assessment imposed by DMV, which is \$250 per year for three years (\$750 total).³² Any conviction that mandates an Ignition Interlock Device, a machine into which one is required to breathe before a car engine can start, includes fees for the installation and maintenance of the machine, which can cost thousands of dollars over the course of months.³³ In addition, there is a \$500 penalty for refusing a chemical test,³⁴ and \$750 for driving without having insurance (although this is not criminally charged often).³⁵

A Brennan Center for Justice (Brennan Center) study gives a particularly striking example. After refusing a chemical test, a defendant pled guilty to Driving While Intoxicated, a Class E felony. The sentence was 5 years of probation, and the installation of an Ignition Interlock Device. The sum of the LFOs total \$7,670, despite the fact the court granted him a public defender due to indigence.

Assessments, and other assorted costs, are also a factor in many court-ordered programs associated with conditions of release or pleas. Common program used in domestic violence cases are broadly called “Batterer Intervention Programs.” Conditional pleas, or requests for a limited order of protection, often require a justice-involved individual to complete an assessment and 16 hours of classes. The most common provider in Brooklyn, EAC Network, charges \$50 for a mandatory assessment and \$50 a per hour session.³⁶ For the average court-mandate, the program then costs \$1,350, again regardless of whether a public defender was assigned to the case. Advocates indicate that justice-involved individuals who don’t speak English, or have inconsistent

³² VTL § 1199 and 503(4).

³³ VTL § 1198

³⁴ VTL § 1194(2)

³⁵ VTL § 319(5)

³⁶ Available at https://eac-network.org/wp-content/uploads/2016/08/BIP_brochure_2016_Website.pdf. To make matters worse, the program does not accept cash or personal checks, meaning participants must either have a credit card or pay additional fees for money orders.

or no health insurance, are in particular danger of being non-complaint with mandated programming due to their economic status.

E. Restitution

As mentioned above, there is a 5% surcharge on mandated restitution, which in the city is collected by Safe Horizons. Justice-involved individuals who pay restitution do not have to pay the mandated surcharge, even if the amount of restitution is less than the surcharge.³⁷ While restitution is generally tied to the facts of a case, there are limits – statutes cap possible restitution at \$10,000 for misdemeanors and \$15,000 for felonies. In addition, there are state laws that allow for the NYPD to receive restitution of drugs for undercover operations, and the FDNY to receive restitution for the cleanup of arson sites, though neither are frequently used.³⁸

III. Nonpayment of LFOs

Justice-involved people with LFOs are at risk of re-arrest and re-incarceration. In many states, including New York, individuals who are unable to make payment to their LFOs can be re-arrested and re-incarcerated and receive additional prison time.³⁹ This is particularly concerning given that the U.S. Supreme Court declared that individuals cannot be imprisoned for their inability to pay monetary sanctions.⁴⁰ While there is a provision in the New York law that makes it possible for individuals to challenge incarceration based upon their inability to pay,⁴¹ there is no available

³⁷ PL § 60.35(6):

³⁸ P.L. § 60.27

³⁹ Alicia Bannon, Rebekah Deiller, and Mitali Nagrecha, *Criminal Justice Debt: A Barrier to Reentry* (2010), Brennan Justice Center, available

<https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>

⁴⁰ See *Tate v. Short* (1971), where the court found unconstitutional states that impose a fine as a sentence then automatically convert it into a jail time solely because the defendant is indigent and cannot afford to pay the fine in full. See also *Bearden v. Georgia* (1983), where the court found unconstitutional states that revoke a person's probation because of his inability to pay the fine. See also Targeted Fines and Fees Against Communities of Color Civil Rights and Constitutional Implications, U.S. Commission on Civil Rights, September 2017, available at https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf

⁴¹ Alan Rosenthal and Marsha Weisman, *Sentencing for Dollars: The Financial Consequences of A Criminal Conviction* (February 2017), Center for Community Alternatives, available at <http://www.communityalternatives.org/pdf/financial%20consequences.pdf>

data showing the number of people who have avoided incarceration as a result of the provision. New York, like many states, makes LFOs payment a condition for probation.⁴² Because justice-involved people are burdened with some form of LFOs in all stages of the criminal justice system, many are “induced to commit new crimes or simply abscond from supervision under the pressure of collection efforts.”⁴³

Unpaid LFOs can trigger a cascade of collateral consequences. Imprisonment for the non-payment of a surcharge, fee, fine or restitution is allowed under state law. For a felony, the maximum is one year, for a misdemeanor one third of the maximum term for the convicted charge, and for violations the maximum period is 15 days.⁴⁴ One can also be revoked from parole for non-payment, or have a period of parole extended.⁴⁵ Unpaid fines and restitution payments also create warrants, meaning that a defendant can be picked up multiple times by the warrant squad and spent a night in jail, simply because they cannot afford the fine or restitution. There are no published statistics on the amount of warrants issued, or jail alternatives imposed, for non-payment of LFOs.

For unpaid surcharges and fees, the state can enter civil judgement for the unpaid LFO plus 9% interest. According to the New York State Unified Court System, collection efforts can include garnishment of wages, liens and seizures of vehicles and other property, suspension of driver’s licenses, revocation and suspension of business permits, and potential investigation by the state’s Attorney General.⁴⁶ While payment may be deferred when an individual shows s/he is unable to pay their LFOs because s/he is indigent, their LFOs are still entered in an order and become a judgement.⁴⁷ Since these debt judgements are filed in the county clerk’s office, they also become

⁴² Supra 39, p. 21.

⁴³ Supra 41, p. 28.

⁴⁴ CPL § 420.10)

⁴⁵ Executive Law § 259-i(2), Executive Law § 259-i(3)).

⁴⁶ New York City Civil Court Collecting the Judgement, New York State Unified Court System, *available at* <https://www.nycourts.gov/courts/nyc/civil/collectingjudg.shtml>

⁴⁷ Supra 41, p. 23

public information to which credit agencies and prospective employers have access.⁴⁸ Like consumer debt, unpaid LFOs “can affect people’s credit score, which in turn hinders [their] ability to get loans, credit card, mortgages leases, or even to secure employment since many employers now ask for credit history prior to hiring.”⁴⁹ This creates significant barriers to reentry for justice-involved people. It limits their employment prospects and makes it nearly impossible for them to secure housing, which are necessary for successful reentry into the community.⁵⁰ As with warrants and jail alternatives, there are no published statistics the Committee is aware of on civil judgments entered by New York courts.

Nonpayment can also create additional LFOs. The loss of suspension of a driver’s license brings with it those additional penalties and assessments - \$70 as a suspension fee⁵¹, and \$100 for reissuance following a revocation.⁵²

The penalties for nonpayment are especially cruel for incarcerated individuals. New York DOCCS (Department of Corrections and Community Supervision) Directive Number 2788 establishes the procedure for the collection of monetary obligations of incarcerated individuals, including all LFOs, child support judgments, the \$40 an incarcerated individual is given upon release, and their subsequent work release room and board fees.⁵³ Academics have calculated the average prison wage in New York at \$1 a day, meaning an incarcerated individual could have

⁴⁸ Supra 39, p. 57, footnote 188

⁴⁹ Karin Martin and Kimberly Spencer-Suarez, *Criminal Justice Debt: Costs & Consequences* (2017), The Fortune Society, available at https://issuu.com/thefortunesociety/docs/cj_report

⁵⁰ Karin Martin, Sandra Smith, and Wendy Still, *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create* (January 2017), National Institute of Justice, *available at* <https://www.ncjrs.gov/pdffiles1/nij/249976.pdf>

⁵¹ VTL § 503(2)(j)

⁵² VTL § 503(2)(h).

⁵³ Supra 41, p. 19

100% of over a year's wages garnished to pay their LFOs.⁵⁴ This is in addition to the disciplinary surcharges and restitution discussed above.

These are not collected haphazardly. In fact, between 1995 and 2003, DOCCS collected more than \$22 million in court-ordered fees and nearly \$15 million in its own fees.⁵⁵ According to Anthony J. Annucci, the current Acting Commissioner of the DOCCS, the intent of these surcharges and fees was to generate revenue and deter prisoners' lawsuits.⁵⁶

IV. Material Impact of LFOs on Justice-Involved Population

One of the primary problems with LFOs is justice-involved individual's ability to pay. In sum, states that fail to provide viable alternatives to LFOs and meaningful payment plan options merely exacerbate poverty by trapping justice-involved individuals who are indigent into a cycle of debt.

Overreliance on LFOs coupled with abusive collection practices undermine the traditional function of courts while fostering (or exacerbating) cynicism and distrust toward the justice system among justice-involved individuals.⁵⁷ As previously discussed, many states, including New York, require courts to be involved in the collection of unpaid LFOs, essentially deputizing judges to act as collection agents rather than impartial jurists concerned with public safety and rehabilitation.⁵⁸ This has fostered and, in some cases, exacerbated cynicism and distrust toward the legal system among justice-involved persons. In one study, about 46% of justice-involved persons reported that LFOs achieve the goals of punishment, rehabilitation, and deterrence very poorly,⁵⁹ in part because

⁵⁴ Supra 1, p.149

⁵⁵ DOCCS Directive 2788, "Collection & Repayment of Inmate Advances and Obligations." (2004), *available at* <http://www.doocs.ny.gov/Directives/2788.pdf>

⁵⁶ Anthony J. Annucci, Anatomy of the Modern Prisoners' Rights Suit: New York's Expanded Son of Sam Law and Other Fiscal Measures to Deter Prisoners' Suits While Satisfying Debts, 24 PACE L. REV. 631, 635 (2005)

⁵⁷ Supra 1, p. 6.

⁵⁸ Supra 39, p. 30

⁵⁹ Supra 49, p. 4

many have served time in prison or jail, spent time under community supervision, assigned court-ordered punishments, or forced to enroll in rehabilitative programs or class.⁶⁰ Therefore, many justice-involved people find LFOs fundamentally unjust and unfair. However, a similar percentage of justice-involved people from the study reported that LFOs achieve the goal of repaying the community and compensating the victim very or somewhat well.⁶¹ This finding suggests LFOs as a form of restitution to the victim is acceptable to justice-involved individuals insofar as LFOs are not excessive and the crime had a clear victim.⁶² However, justice-involved people remain highly suspicious and distrustful of the justice system, as LFOs are imposed without taking their financial circumstances into account, so many have come to view the system as profit-driven.⁶³

LFOs disproportionately burden the justice-involved people who are economically disadvantaged. A vast majority of people involved in the criminal justice system are indigent and rely on court-appointed attorney.⁶⁴ Because of their economic circumstances, many of them do not have the resources to pay their LFOs. As a result, they are saddled with insurmountable criminal justice debt. In one national study, a majority of justice-involved New Yorkers reported having a monthly household income of less than \$1,000 and owing over \$500 in LFOs.⁶⁵ With large LFOs and low income, many of them are forced to make difficult trade-offs between paying their LFOs and other bills, such as medical bills, rent, food, childcare, and child support.⁶⁶ Even those who

⁶⁰ Supra 1, p. 42

⁶¹ Supra 49, p. 4

⁶² Supra 57, p. 42

⁶³ Id.

⁶⁴ Fine, Fees, and Bail Payments in the Criminal Justice System that Disproportionately Impact the Poor (2015), Council of Economic Adviser, *available at*

https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

⁶⁵ Supra 1, p. 12, 18

⁶⁶ Id., p. 27-30

rely on public benefits still find it hard to make ends meet, because having LFOs make it difficult to maintain public benefits, and the caps on public benefits constrain their ability to work.⁶⁷

For people coming out of a period of incarceration, the collateral consequences of LFOs are particularly severe. A study by the Brennan Center discusses an example of a single mother of two who plead guilty to a drug felony and was sentenced to seven years of incarceration followed by five years on post-release supervision. Her children are in the custody of her grandmother for her period of incarceration, and her grandmother has to apply for welfare (Temporary Assistance for Needy Families) as a result, which requires her grandmother to petition for child support. Along with the court order stemming from the child support order, and her parole supervision fee, she came out of incarceration owing \$33,657.⁶⁸

People of color, Blacks and Latinx specifically, from low-income communities are disproportionately harmed from the direct and collateral consequences of LFOs.⁶⁹ Over-policing of their communities has led to their overrepresentation in the criminal justice system.⁷⁰ This is highlighted in the Bronx Defenders' study examining marijuana enforcement in New York City. The study showed that vast majority of people arrested in the Bronx between April and June 2014 for low-level marijuana possession were Black and Latinx.⁷¹ Moreover, the direct costs associated with their involvement in the criminal justice system were exceedingly high. Of the 167 people who were arrested, 36 plead guilty at arraignment and were assessed at a total of \$5,360 in fines

⁶⁷ *Id.*, p. 31-32

⁶⁸ *Supra* 39, p. 18

⁶⁹ Targeted Fines and Fees Against Communities of Color Civil Rights and Constitutional Implications, U.S. Commission on Civil Rights, September 2017, *available at* https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf

⁷⁰ *Id.*

⁷¹ The Hidden Tax: Economic Costs of Marijuana Enforcement in the Bronx and New York City (2014), The Bronx Defenders, *available at* <https://www.bronxdefenders.org/wp-content/uploads/2014/12/The-Hidden-Tax-A-Bronx-Defenders-Report-Dec2014.pdf>

and court fees.⁷² The report estimated that fines and court fees cost Bronx residents who were arrested for marijuana possession about \$3.3 million.⁷³ The citywide estimate was higher, topping \$11.3 million.⁷⁴ The collateral costs associated with marijuana arrest are substantial. Justice-involved individuals from the study missed a total of at least 76 days of work because of their arrests and court appearances, losing, on average, \$128.13 per day, which, cumulatively, was greater than all court-related costs.⁷⁵

The direct and collateral costs of LFOs also burden family members and friends of justice-involved people. Family members and friends take on a significant role in helping their justice-involved people pay down their LFOs, even when many of them struggle financially.⁷⁶ They also support justice-involved persons in other ways “by providing otherwise unaffordable essentials, such as housing, childcare, food, transportation, etc., and on-going emotional support” to justice-involved persons, especially formerly incarcerated individuals who are going through the re-entry process.⁷⁷ This is also highlighted in the Bronx Defenders’ study on marijuana enforcement. About 30% of justice-involved individuals in the study “were accompanied to court by a parent, friend, spouse/partner, or child, 40% of whom missed work in order to [go] to court.”⁷⁸ The study shows that those who accompanied the justice-involved person to court missed a total of 17 days of work.⁷⁹ This illustrates that the burden of LFOs extends beyond justice-involved individuals, it burdens their family and friends, which adds an additional stressor and may strain relationships.⁸⁰

⁷² Id., p. 8

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id., p. 10

⁷⁶ Supra 1, p. 35; Supra 49, p. 8-9

⁷⁷ Supra 49, p. 8

⁷⁸ Supra 71, p. 11

⁷⁹ Id.

⁸⁰ Supra 57, p. 35; Supra 49, p. 8-9

V. Policy Reform Efforts

The quantity and severity of LFOs in New York State are relatively new. According to the Brennan Center, the state has “consistently increased the size and number of fees since the 1990s.”⁸¹ In many areas, the state is an outlier for its insistence on LFOs. In 12 of 15 states that were analyzed, community service was offered as an option to pay off at least some LFOs – New York was one of the three that did not.⁸² While community service is certainly punishment – and it can be difficult to impossible to complete for individuals with childcare responsibilities or who are homeless – the inability to impose it instead of a LFO illustrates the state’s reliance on mandated financial obligations without any regard to ability to pay.

While the most widespread change depends on reforms in Albany, the city is not powerless. Jurisdictions across the country are reforming their practices to lessen the burden of LFOs. San Francisco recently became the first jurisdiction in the country to stop charging any discretionary fees. While they are still required to impose California’s mandatory LFOs, there are no longer discretionary fees assessed for restitution, probation or pretrial services.⁸³ Seattle and Miami operate relicensing programs, where LFOs from driving with suspended license cases and outstanding DMV fees are combined into manageable monthly payments, often allowing temporary licenses to be issued while payment is ongoing.⁸⁴

Local prosecutors have a role to play in mitigating the imposition of LFOs on justice-involved people who are indigent. In 2017, the Cook County State’s Attorney (Chicago) stopped

⁸¹ Supra 39, p 12

⁸² Supra 39, p 17

⁸³ Joanna Weiss and Lisa Foster, San Francisco’s Justice System gets a Little more Just (June 2018), The Washington Post, available at https://www.washingtonpost.com/opinions/san-franciscos-justice-system-gets-a-little-more-just/2018/06/13/a4ca28a6-6f13-11e8-bf86-a2351b5ece99_story.html?noredirect=on&utm_term=.033e73588205

⁸⁴ Deborah Smith, Charles Campbell, and Blake Kavanagh, Trends in State Courts 2017 (2017), National Center for State Courts, available at <https://www.ncsc.org/~media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx>

prosecuting cases where licenses were suspended for “financial” reasons.⁸⁵ Prosecutors in the city can exercise similar discretion. While the Manhattan and Brooklyn DA have publicly declined to prosecute some low-level marijuana offenses, some are still prosecuted, as are theft of services, trespass, loitering, and petit larceny cases. Instead of offering violations that carry the \$120 surcharge, local prosecutors could offer more Adjournments in Contemplation of Dismissal, which carry no LFOs. Local prosecutors consider the defendant’s ability to pay when making ATI/ATD recommendations and work with courts and ATI/ATD providers to have participation fee waived for the defendant.

VI. Issues and Concerns

At today’s hearing, the committee would like to learn how much revenue the city generates from court fees and fines, what percentage covers court costs, and how the city can reform its fees and fines practices. In addition, the committee would like to explore the ways in which prosecutors alleviate the burden surcharges, fees, and fines place on indigent defendants.

⁸⁵ Andy Grimm, State’s Attorney Won’t Prosecute most “financial” traffic cases (June 2017), Chicago Sun Times, available at <https://chicago.suntimes.com/news/states-attorney-wont-prosecute-most-financial-traffic-cases/>