

New York County District Attorney's Office Written Testimony of Karen Friedman-Agnifilo, Chief Assistant District Attorney

New York City Council Committee on the Justice System "Cost of Justice" September 27, 2018

I thank the Committee on the Justice System for the opportunity to submit written testimony regarding the "Cost of Justice," a topic of critical importance to promoting fairness in the criminal justice system. As you know, the surcharges and fines that are imposed on defendants by the court system are promulgated in statute, and this Office has no ability to waive monetary requirements mandated by law.

As outlined in New York State Penal Law § 60.35, defendants who enter a guilty plea must pay a mandatory surcharge and crime victim assistance fee, which can range from \$120 for violations and infractions, to \$200 for misdemeanors, and \$325 for felonies. When defendants cannot afford these fees, their attorneys can enter a judgement with the court on their behalf.

To put these costs into context, in 2017, this Office disposed of 72,196 cases. 40,357 of these cases resulted in a guilty plea or trial conviction, and therefore included a mandatory surcharge for defendants. Approximately a quarter of those who entered a guilty plea (10,614 individuals) pled to Disorderly Conduct (PL §240.20). An additional 19,337 cases were disposed of with an Adjournment in Contemplation of Dismissal (ACD), which does not require a surcharge or a crime victim assistance fee.

In addition to surcharges, New York law requires defendants convicted of certain offenses to pay a fine, including all New York State Vehicular Traffic Law (VTL) offenses. In 2017, 6,926 VTL cases were disposed of by either a guilty plea or trial conviction.

With regard to program-based dispositions, this Office strongly supports the use of diversion programs and is in favor of New York State reducing overly burdensome programming fees for individuals who are indigent and unable to pay. Although the majority of court-imposed programs are funded through State, City and private sources, some defendants are referred to programs that require an additional fee, which is not statutorily required. For example, the PAC Batterers Intervention Program and STOP DWI require participants to pay a fee.

As a part of my Office's Criminal Justice Investment Initiative, we have already invested \$19 million in programs such as Project Reset and Manhattan HOPE, and others that will start in early 2019, including an Abusive Partner Intervention Program for domestic violence offenders and the Manhattan Criminal Court Resource Center, a sentencing alternative targeting misdemeanor defendants who present with underlying and unmet needs. All programs funded through the Criminal Justice Investment Initiative are free of charge to participants and help address the criminogenic needs of justice involved individuals to promote safer communities.

In addition to these initiatives, we created the capacity within our Office to assess the collateral consequences of a criminal conviction on a case-by-case basis. The newly created Collateral Consequences Counsel, a first-of-its-kind for a prosecutor's office, helps ensure that our staff are consistently factoring in collateral consequences into their decision-making when handling any case that may result in a criminal conviction.

Thank you for the opportunity to submit this testimony.



To: New York City Council Committee on Justice System

Date: September 27th, 2018

Re: Testimony regarding Oversight -- Cost of Justice hearing

The Drug Policy Alliance appreciates the opportunity to submit testimony to the New York City Council's Committee on Justice System. The Drug Policy Alliance is the nation's leading organization working to advance policies and attitudes to best reduce the harms of both drug use and drug prohibition and to promote the sovereignty of individuals over their minds and bodies.

Individuals in heavily policed communities of color are more likely to carry the economic tolls associated with interactions with law enforcement and the court system. Bail, court fees and fines create undue hardships for low-income defendants, and can lead to cycles of incarceration unrelated to criminal acts. Policy solutions intended to reduce the harms of incarceration, such as probation and mandatory treatment, burden impacted individuals who can't afford to pay for mandated services. In this way, New York City courts are criminalizing poverty while profiting from the funds received.

Since criminal courts partner with outside businesses to provide services that the court mandates individuals to participate in, the profits garnered from criminalization is not limited to the public sector. Over-policed, low-income communities are functioning as source of revenue for both the government and commercial sector. Using criminalized communities as a source of income is morally and ethically reprehensible and can no longer occur in a city that extols progressive values while continuing practices that deepen the already cavernous divide between the New York's rich and the poor.

The police killings of Michael Brown, Philando Castille and a spate of other killings of unarmed Black people nationally led to investigations into patterns of systemically unconstitutional and racially disproportionate policing practices. It was determined that a number of jurisdictions levied excessive monetary penalties for traffic citations, misdemeanors, and low-level violations against a base of defendants largely comprised of people of color.¹

This pattern of using low-income communities of color as a source of income for the city's coffers is also apparent in New York, where increased revenue derived from criminal court fines and summons is considered a milestone in the criminal court annual report. In 2016, New York's Criminal Court filed 296,290 summons, generating more than \$10 million in revenue. That same year, the criminal court generated more than \$15 million in revenue from fines. Cumulatively, in 2016 New York City collected nearly \$30 million in revenue generated from an amalgamation of fees associated with the criminal legal system--and this does not include the additional \$7.5 million garnered from bail.

Mandatory surcharges, which are separate and distinct from any fines imposed by the court, have also increased. In 1982, surcharges for a misdemeanor or felony offense were \$25 and \$75, respectively; presently, misdemeanor surcharges are \$175 while felony surcharges are \$300—and those who fail to pay the surcharge can be imprisoned for up to 15 days.⁴

As researcher and Queens College professor Harry Levine noted in previous testimony to City Council⁵, "The court's data shows that in 1993 New York City had similar numbers of felony arrests, misdemeanor arrests, and criminal court summonses (125,000 to 160,000 a year). In the [subsequent] twenty years, felony arrests declined by 30 percent, misdemeanor arrests increased by 83 percent, but the number of criminal court summonses more than tripled. By 2012, there were twice as many criminal court summonses as misdemeanor arrests, and nearly six times as many summonses as felony arrests (88,000 felony arrests, 236,000 misdemeanor arrests, and 510,370 criminal court summons)."

Additionally, years of reporting on the use of summons reveal that it is largely Black and Latino New Yorkers who are saddled with "quality of life" violations that they must rectify in court. Yet failure to pay the summons can lead to a warrant and possible arrest. A 2014 investigation conducted by NPR found that in New York City there are 1.2 million outstanding warrants at that time, many related to unpaid court fines and fees. ⁶

Summons have largely been held a up as an alternative to arrest for low-level offenses – the belief being that a fine is less onerous than jail time. Increasingly, New York City policymakers have proposed more ticketable offenses – the most recent example being the use of summons for public use of marijuana. Broadening the categories of ticketable offenses does not address the way in which racially biased policing practices harm New Yorkers of color – it only further incentivizes the use of a revenue generating strategy under the guise of progress. Often, decision makers charged with considering a defendant's capacity to reasonably pay do not offer alternative restitution models, waivers, or payment plans for indigent clients. NYC Criminal Courts administrators are transparent regarding the use of fines to cover the cost of court administration – fines generate 47 percent of criminal court revenue. When the Criminal Court uses the profits of criminalization for general operating cost, it in turn creates a conflict of interest between the goals of public safety and profit generation.

New York has been lauded as one of the largest cities to decrease incarceration, shrink the probation population, and maintain public safety. However, there are still a number of New Yorkers under community supervision. As of June 2018, more than 19,000 New York adults and 1,000 young people are supervised by the department of probation; of the 19,000 adults on probation, 51.3 percent are Black and 28 percent are Latinx.

Although the only probation fee statutorily required in New York State is for supervision related to a DWI, there are a wide range of costs associated with court-mandated classes and other mandatory requirements that individuals on probation are financially responsible for. The cost levied upon New Yorkers on probation is not well documented by the city. A 2010 report conducted by the Brennan Center noted that New York, like 15 other states studied, fails to measure the impact of criminal justice debt and related collections practices on people who have had contact with the justice system, their families, and their communities. Further, despite the fact that criminal legal fees are used a revenue-generating mechanism, there is no statewide or citywide mechanism tracking the cost of collecting unpaid debt from defendants.

Defendants required to attend court-ordered classes or mandatory treatment for substance use are required to pay for the services through their insurance or cover the fees out-of-pocket. A defendant can request financial support or reduced-cost services, but the criminal court is not obligated to financially support individuals who are not seeking these services voluntarily. If a defendant or a person on probation is sentenced to court-ordered treatment, but lack the insurance to cover the cost, they are still legally required to attend. Individuals who are Medicaid recipients are able to manage the cost of treatment and accompanying testing, but individuals with private insurance must cover the cost of copayments and additional fees themselves.

Defendants ordered to attend classes and treatment related to their offense are responsible for paying for services offered. The most recent investigation into court-ordered classes, which occurred in 2001, indicated that NYC courts sent 3,000 people a year to one-day anger management course that cost \$95 each. There is

no evidence on the effectiveness of these courses and this data is dated. This reveal two problems, New York City should better track and publicize the number of people ordered to attend mandatory classes and assess the effectiveness of these mandatory courses. Treatment for substance use disorder, which is often mandated as an alternative to incarceration, is not provided or paid for by the criminal court and the cost is carried by the defendant.

The New York City Council has the power to determine the appropriate fine for certain offenses. Recently, City Council's downgraded numerous "quality of life" offenses from the status of misdemeanor to violations in an effort to reduce the toll of incarceration on communities and New York City's budget. While the status change is beneficial in keeping residents out of jail, individuals who violate are still subject to fines that can steadily increase if they fail to pay or are otherwise unable. The New York City Council can and should lower the cost of fines so that low-income New Yorkers can reasonably pay without incurring hardship — fines should serve as deterrent not a source of revenue and should be treated as such. Additionally, considering the ways in which law enforcement interacts with low income communities, Council should act to ensure that individuals are not charged escalating fines due to repeat violations. If a defendant is unable to pay, they should be offered alternative payment options instead of being charged what amounts to interest.

Considering the breadth of fees levied against low-income individuals who come in contact the with criminal legal system and the impact of debt, the U.S Commission on Civil Rights released a report with a range of solution to lessen the burden of targeted fines and fees against communities of color. New York City should incorporate these recommendations when applicable and consider further innovative debt relief strategies for justice involved individuals.

The Drug Policy Alliance supports the recommendations in the U.S. Commission on Civil Rights Report and suggests the following actions:

- Judges and prosecutors must take an active role in alleviating the burden of fines and fees on low-income communities of color by using discretion when imposing financial penalties. New York State law requires judges consider whether the amount of the fine is disproportionate to the conduct in which the defendant engage and the defendant's economic circumstances including the ability to pay when determining the fine. By following state law, judges and prosecutors can lessen the burden of legal debt.¹⁰
- Considering that criminal surcharges are used for the purpose of revenue-generation and do nothing to benefit public safety—and disproportionately impact poor and minority communities and exist as a "substitute taxation system"--their use should be eliminated via state and local legislative reform. In the interim, judges should use discretion to assess a defendant's ability to pay a surcharge and low-income defendants should be able to request a surcharge waiver or payment alternative.
- Improve criminal court transparency: State and local legislation determine the fines imposed by the
 court or probation services. While the revenue generated from fines and fees is published by the
 New York City Comptroller's office, demographic information regarding race and income level is not
 a part of that data set. Future data reports regarding the impact of fines and fees should include this
 relevant information so NYC can assess disparate impact.
- Transparency related to fees attached to mandatory treatment: New York City criminal courts and drug courts should document the number of uninsured defendants mandated to attend treatment.
- New York City should institute clear and effective procedures to provide notice to individuals of their rights when charged fines and fees, including the right to request appointed counsel, to an ability-to-pay determination, to fine and fee alternatives, and to legal processes such as compliance hearings.
- The New York City Council should intervene to lower fines for "quality of life" offense which disproportionately impact communities of color. Additionally, considering the ways in which law

enforcement interacts with low income communities, offenders should not be charged more in fines due to repeat violations. If a defendant is unable to pay, they should be offered alternative payment options instead of being charged what amounts to interest.

¹ "Investigation of the Ferguson Police Department," United States Department of Justice - Civil Rights Division (2015). https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

^{2 &}quot;Criminal Court of the City of New York Annual Report." Office of the Chief Clerk of New York City Criminal Court (2017).

³ Ibid

⁴ Rosenbaum, Marsha and Alan Rosenthal. "Sentencing for Dollars: The Financial Consequences of a Criminal Conviction." Brennan Center for Justice (2007). www.brennancenter.org/publication/sentencing-dollars-financial-consequences-criminal-conviction.

⁵ Levine, Harry. "Examining the Operation of New York City's Summons Courts." Testimony submitted at Hearings of the New York City Council Committee on Courts and Legal Services and Committee on Public Safety, December 15, 2014. http://marijuana-arrests.com/docs/Testimony_NYC_Criminal_Court_Summons_System___Dec_15_2014.pdf.

⁶ Shapiro, Joseph. "As Court Fees Rise, The Poor Are Paying The Price." WBUR, May 19, 2014. www.wbur.org/npr/312158516/increasing-court-fees-punish-the-poor.

⁷ Harris, Alexes, Beth Huebner, Karin Martin, et al. "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." Laura and John Arnold Foundation (2017).

⁸ Bannan, Alicia Mitali Nagrecha, Rebekah Diler. "Criminal Justice Debt Barriers to Reentry." Brennan Center for Justice (2010).

⁹ "Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications." U.S Commission on Civil Rights (2017).

¹⁰ NY Penal Law S. 80.00.

THE BRONX FREEDOM FUND

To: Committee on the Justice System

FROM: Elena Weissmann, Director, The Bronx Freedom Fund

SUBJECT: Oversight hearing - Cost of Justice

DATE: 27 September 2018

Councilmember Lancman and members of the Committee, thank you for the opportunity to testify. My name is Elena Weissmann, and I am the Director of The Bronx Freedom Fund, a community bail fund which for over ten years has provided bail assistance to New Yorkers who would otherwise be incarcerated for their poverty. Today I'd like to discuss the "cost of justice" for our clients and their loved ones, all of whom are directly impacted by a system that criminalizes poverty.

We commend the City for taking strides to end unnecessary and unjust incarceration and urge you to ensure that its administrative reforms halt the practice of extracting wealth from New York City's most vulnerable and impoverished communities. The City's recent steps to make all phone calls from New York City jails free for incarcerated people and to regulate the exploitative bail bonds industry are powerful statements against the financial burden borne by those incarcerated pretrial. We implore the Council to use the same moral reasoning for other modes of wealth extraction: online and credit card bail payments, cash transfers to commissary accounts, and posting \$1 bails. For those 88 percent of New Yorkers who cannot afford to purchase their freedom when bail is set, accessing these services are particularly critical.

We are encouraged by the recent implementation of the long-promised online bail system, which allows those with loved ones outside of New York or without the flexibility to spend a day waiting at the jail to access their freedom. However, there is an extremely high non-refundable fee of 2.49 percent tacked onto all payments. The existing bail structure already extracts wealth from communities of color and attaches a price tag to freedom, and this policy makes it even more burdensome. An added non-refundable fee of \$125 for a \$5,000 bail payment could mean the difference between incarceration and freedom, especially when only 12 percent of New Yorkers can afford their bail whatsoever.

The issue of non-refundable fees is exacerbated when it comes to paying bail with a credit card. Although this option was created to make posting bail for a loved one less onerous and expand access to pretrial liberty, the City charges a non-refundable fee of 7% when someone posts a credit card bail payment at a jail, leaving it unattainable for low-income New Yorkers. With bail payments averaging around \$2,500, that means an additional non-refundable \$238 is diverted from payments for rent, school supplies, food, and other necessities. This is a needless and unfair financial burden placed on New Yorkers trying to pay for the freedom of their legally innocent loved ones. We urge the City to consider shouldering these costs to ensure equitable access to the system for all New Yorkers.

The City also charges fees to deposit money online to an incarcerated person's commissary account, extending the cost of incarceration to their loved ones on the outside. The cost for incarcerated people to purchase necessities like food and toiletries is already incredibly high, and charging an additional 20% fee on a \$20 deposit makes these purchases even more unattainable. With most of those in New York City jails detained pretrial, legally innocent, this practice is especially unjust.

One of the most particularly outlandish fee structures imposed by the courts is the \$1 bail system. We receive referrals every day for individuals who are trapped in jail by a single dollar. These

THE BRONX FREEDOM FUND

individuals often do not even know that they could be released, and even if they do, they might not have funds in their commissary to self-pay it or anyone on the outside who can make the trip to a jail. Even for those with the necessary commissary funds, the Department of Correction automatically docks outstanding fines and fees from one's commissary before it can be used for bail. The \$1 bail system underscores the need for systemic bail reform that halts the practice of incarcerating people based on their financial access, and we urge the City to explore creative solutions in the meantime.

Absent systemic reforms that would end the criminalization of poverty altogether, a system that grants accommodations to low-income New Yorkers is imperative. The New York courts system has an existing metric for determining indigency; this calculus should be extended to the collateral costs of fighting a criminal case. When individuals are deemed indigent and granted a public defender, they should also have the fees waived from online and credit card bail payments, money transfers, and \$1 bail. Such individuals should have the fees presumptively waived, unless, as with other waivers, a prosecutor requests an indigency hearing and demonstrates a capacity to pay. Access to cash, however small the sum may seem, should not determine a person's liberty. New York City Council already demonstrated its leadership in this field when it made phone calls from NYC jails free and called out the bail bonds industry for exploiting those ensnared in the courts system. This proposal comes on the heels of those changes and is part of a trend towards a system that humanizes instead of criminalizes.

This conversation must be underscored by an acknowledgment of the broader costs borne by individuals trapped in pretrial detention, their loved ones, and our communities writ large. The bail system is the fuel for mass incarceration and it's what makes these "costs of justice" so pronounced. When people are incarcerated on bail they cannot afford, they risk losing their housing, livelihood, and even custody of their children. Their loved ones lose hours of work, childcare, and other responsibilities when they spend time and money going to visit them in a facility, attempt to post bail, or deposit money in their accounts. With the exorbitant fees required for online money transfers and bail payments, many people are turned away from these options even when they are a possibility. New Yorkers already pay \$116 million each year to incarcerate thousands of people for their inability to post bail, and we shoulder an even broader cost in lost wages, shelter costs, and moral capital when these individuals are locked up.

Our work as a community bail fund is a temporary stopgap measure, focused on harm reduction before we reach meaningful reform. These proposed changes will further mitigate the harm of a system that allows wealth-based detention while we focus our long-term energies on fighting for systemic change.

URBAN JUSTICE CENTER



CORRECTIONS ACCOUNTABILITY PROJECT

New York City Council Committee on Justice System Rory I. Lancman, Chair

"The Cost of Justice"

September 27, 2018 10:00 A.M. New York, New York

Bianca Tylek, Director Corrections Accountability Project Urban Justice Center Good morning. My name is Bianca Tylek and I am the Director of the Corrections Accountability Project at the Urban Justice Center. We are a non-profit, criminal justice advocacy organization committed to eliminating the influence of commercial interests on the criminal legal system and ending the exploitation of those it touches.

I want to thank Chair Lancman and fellow members of the Committee on the Justice System for the opportunity to speak to you today as part of the hearing on "The Cost of Justice."

In plain terms, the cost of "justice" is high. From arrest to release, wealth is extracted from people targeted by our criminal legal system at every step of the process, at times by the city itself and at others by the private companies it contracts with.

From the onset, when merely charged with a crime, we detain people and allow our money bail system to put a price tag on their freedom, creating an exploitative opportunity for profit-driven bail bonds companies that barter with people's lives. And even if one has the means to pay their bail, the city's new online payment system charges a processing fee. But of course, many are not able to raise either their bail or that bondsmen premium and end up spending their pre-trial days in jail.

Once incarcerated, there are a litany of costs that kick in. Securus is waiting to take advantage of an incarcerated person's need to communicate with loved ones and support networks during some of the most vulnerable moments of their life. Despite recent legislation that will make calls free, we have recently learned that these companies are ratcheting up related services that may not be covered by the new law. For example, we were recently made aware that Securus is charging community members to listen to a voicemail from their incarcerated loved ones. Listening to a five second voicemail costs \$3.93.

But, as you know, it does not stop there. Securus' subsidiary, JPay, manages the majority of money transfers for incarcerated people with enough means to access commissary. Preying on poverty, JPay's rate schedule charges higher rates for deposit of smaller amounts. The only other vendor option, Western Union, does the same, charging \$3.95 for a \$10 money transfer. And before an incarcerated person can even use those funds, their accounts are garnished for a range of court-related and carceral fees, including disciplinary tickets received while incarcerated.

It's worth noting that JPay is the same company that also manages the payment processing for New York State parole fees, collecting \$1.99 every time someone on parole pays their \$30 monthly parole supervision fee. Securus and its subsidiary, JPay, have become so entrenched in our criminal legal system in New York City and at the New York State level. We should have real fears about

how much of our power and our resources we are handing over to these companies and what will come next.

In New York State, JPay has introduced "free" tablets that enable them to charge as much as \$46 for a music album or \$8.99 for a 30 minute video call. And they've done more in other jurisdictions across the country. We must be vigilant about what engaging with these companies brings, and use all of our energy to excise their role from our system.

We might say that the cost of justice is high, but this clearly is not justice that we are talking about. Our criminal legal system is being used as a vehicle to extract resources from already economically-distressed communities. Meaningful change is not possible before we root out the industry that is reliant on mass incarceration and mass surveillance.

Testimony of Lori Zeno

Executive Director,
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Debtors Prison was outlawed in this country centuries ago, and the United States Supreme Court ruled in Bearden v. Georgia, 1983 that people CANNOT be sent to jail simply because they are too poor to pay fines and fees.

However, in Queens Criminal and Supreme Court, our clients choose on a daily basis CAN I PAY OR DO I HAVE TO STAY in jail!

Pre-trial offers are made by the prosecutors that often include conditions of our clients completing some type of program. These can

include "anger management", batterer's intervention, sex offender, parenting, DWI and other mental health programs.

ALL OF THESE PROGRAMS come with fees. Registration fees between \$35 and \$65, Intake fees that average \$70 or more and then Session fees (individual or group) ranging from \$25 to \$50 per session. Some programs are for 12 weeks and some programs are up to 24 or 36 weeks.

Some programs have monitoring devices that cost between \$10 and \$25 per day.

QLA represents close to \$30,000 people a year, and they are ALL INDIGENT. People who are homeless, people who

cannot afford food or medicine. THEY CANNOT AFFORD TO PAY THESE COSTS.

And, it should be pointed out, that MANY of these "programs" ALREADY RECEIVE NYC, NYS OR FEDERAL FUNDING to serve these communities.

Some clients say no, and then the plea offer changes to "time" in jail. Some clients say "yes" because they want to get out of jail. They hope they can pay. BUT WHEN THEY DON'T, they are back in court for violating their "plea agreement", AND BACK IN JAIL THEY GO!

Sometimes, there is not program involved. But, there is still a condition that the client pay a fine as well as "court

costs" and "surcharges". And, again, when they don't pay, they are back in court. They go straight to jail for non-payment of the fine, for as many as 15 days.

Crime is a massive business, and everyone in the system benefits, except for the people who are most likely to face being arrested. These people tend to be people of color, African American or Latino. They tend to be high school drop outs, people with mental illness, substance abuse problems. People who are already poor and marginalized within our society.

Others, who commit the exact same crime, but CAN PAY, benefit.

And, "court costs", meaning what: salaries for court personnel, heat, electricity, phones, the gym for the court officers to use during lunch.....

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