

University of Nevada, Reno

**Criminal Justice Fines:  
The Role of the Local Court and a Review of Reform Alternatives**

A thesis submitted in partial fulfillment of the  
requirements for the degree of Master of Judicial Studies

by

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## ABSTRACT

Local courts throughout the United States regularly assess fines in criminal and traffic cases when defendants plead guilty or are found guilty of violations. Fines serve as a form of punishment. They are also intended to deter future violations by individual violators and by the public in general. In many jurisdictions, collected fine revenue is transferred to a local governing body where it is used to fund local government operations.

Courts fulfill various roles in criminal and traffic cases where fines are assessed. They aim to do justice, follow legal and ethical requirements, collect fines, and distribute funds as required by law. These roles are well accepted. Until recently, this process has received relatively little criticism. Recent events, however, have prompted calls for reform. Most notably, the 2015 investigation of practices in Ferguson, Missouri, following the shooting of Michael Brown, highlighted serious systematic problems where a criminal justice community focused on funding local government services through fine revenue.

This paper examines the practice of assessing criminal justice fines in local courts and the goals associated with those assessments. The paper discusses the proper role of the court in that process. The paper also evaluates different reform alternatives available for states and communities that are willing to confront concerns that are present when local court fines are used to fund local government services. The paper suggests that some reform options would be beneficial for communities throughout the country and should be immediately implemented, some are ripe for further experimentation, and some are not viable at this time.

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*“Ferguson has allowed its focus on revenue generation to fundamentally compromise the role of Ferguson’s municipal court. The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct. Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City’s financial interests.”*

— U.S. Department of Justice<sup>1</sup>

## **Introduction**

Monetary fines have been utilized in western civilization as criminal penalties dating back to the early Greek, Roman, and Germanic civilizations.<sup>2</sup> Fines were regularly assessed in criminal cases in Colonial America and they have continued to be used since that time with frequency throughout the United States.<sup>3</sup> Financial penalties have similarly been associated with traffic offenses from the early days of the automobile.<sup>4</sup> Criminal justice fines remain a frequent sentencing requirement in the United States in matters ranging from minor traffic violations to serious felonies.<sup>5</sup>

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<sup>1</sup> Shaw, T. M., & United States. (2015, p. 5). *The Ferguson Report: Department of Justice Investigation of the Ferguson Police Department*.

<sup>2</sup> Harris, A. (2016, p. 18). *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation. Hillsman, S. T. (1990, p. 52). Fines and Day Fines. *Crime and Justice*, 12, 49-98.

<sup>3</sup> Beckett, K., & Harris, A. (2011, p. 511-12). On Cash and Conviction. *Criminology & Public Policy*, 10(3), 509-537. doi:10.1111/j.1745-9133.2011.00726.x. Harris (2016, pp. 18-19).

<sup>4</sup> Clinton, P. (2009, August 31). History of America's First Traffic Ticket. Retrieved November 1, 2018, from <http://www.policemag.com/blog/vehicles/story/2009/08/the-history-of-america-s-first-traffic-ticket.aspx>.

<sup>5</sup> Council of Economic Advisers. (2015). Fines, Fees, and Bail (Issue brief). Retrieved October 2, 2018, from [https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215\\_cea\\_fine\\_fee\\_bail\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf). Harris (2016, pp. 18-19).

Complaints about laws and criminal fines are not new in the United States.<sup>6</sup> However, the role of the court in assessing and collecting criminal fines has come under increased scrutiny in recent years.<sup>7</sup> Media, government, and public attention on this topic increased significantly following the 2014 shooting death of Michael Brown, an African American man, by a white police officer in Ferguson, Missouri.<sup>8</sup>

The United States Justice Department conducted an independent investigation of police and city practices following the shooting.<sup>9</sup> Investigators concluded that police and city officials had engaged in conduct that violated the Constitutional and statutory laws.<sup>10</sup> They further asserted that many of the troubling government practices were the result of the city focusing on

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<sup>6</sup> Jefferson, Thomas. (1804, 22 July). *Thomas Jefferson to Abigail Smith Adams, July 22, 1804* [Letter]. Retrieved from <https://founders.archives.gov/documents/Jefferson/99-01-02-0125>. Thomas Jefferson issued pardons and refunded fines to individuals convicted of violations of the Sedition Act, an early law in U.S. history. Criticizing the fines and law, he stated, “I discharged every person under punishment or prosecution under the sedition law because I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image.”

<sup>7</sup> Appleman, L. (2016). Nickel and Dime into Incarceration: Cash Register Justice in the Criminal System. *Boston College Law Review*, 57(5), 1483-1541. Retrieved November 11, 2017, from <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3536&context=bclr>.

Atkinson, T. (2015). A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons. *Harvard Civil Rights-Civil Liberties Law Review*, 51, 189-238. Retrieved November 11, 2017, from [http://harvardcrcl.org/wp-content/uploads/2009/06/HLC102\\_crop.pdf](http://harvardcrcl.org/wp-content/uploads/2009/06/HLC102_crop.pdf).

McGovern, G., & Greenberg, M. D. (2014). *Who Pays for Justice?* (Rep. No. RR-486-ICJ). Retrieved October 4, 2018, from RAND Corporation website: [https://www.rand.org/pubs/research\\_reports/RR486.html](https://www.rand.org/pubs/research_reports/RR486.html).

Sobol, N. L. (2016). Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons. *Maryland Law Review*, 75(2), 486-540.

<sup>8</sup> Ford, M. (2015, April 2). The Problem with Funding Government Through Fines. *The Atlantic*. Retrieved October 4, 2018, from <https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387/>.

Quinton, S. (2015, August 26). After Ferguson, States Struggle To Crack Down On Court Debt. *Stateline*. Retrieved October 4, 2018, from <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/08/26/after-ferguson-states-struggle-to-crack-down-on-court-debt>.

<sup>9</sup> Shaw & United States (2015, p. 1).

<sup>10</sup> Shaw & United States (2015, p. 1).

increasing fine revenue instead of prioritizing public safety.<sup>11</sup> The Justice Department report concluded that the Ferguson municipal court essentially functioned as a cog in a system set up to generate revenue for the city.<sup>12</sup> Notably, the city budgeted for annual increases in court fines, actively encouraged employees to reach fine revenue goals, and closely reviewed the amounts collected.<sup>13</sup> Investigators further asserted that city practices were directed at a specific ethnic group and that the local court in Ferguson used the threat of incarceration to exact fine and fee payments from those that were least able to pay.<sup>14</sup>

In the aftermath of the Ferguson investigation, the police chief, municipal court judge, the city manager, and other city employees resigned.<sup>15</sup> New practices were implemented in the court,<sup>16</sup> in the police department,<sup>17</sup> and elsewhere in the city to address the concerns highlighted in the Justice Department report.<sup>18</sup> The Missouri legislature also debated a number of reform measures intended to correct systemic problems that had been identified in Ferguson and

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<sup>11</sup> Shaw & United States (2015, p. 3).

<sup>12</sup> Shaw & United States (2015, pp. 5-6).

<sup>13</sup> Shaw & United States (2015, p. 3).

<sup>14</sup> Shaw & United States (2015, pp. 3-9).

<sup>15</sup> Ferguson Police Chief Resigns after Justice Department Report. (2015, March 11). *Chicago Tribune*. Retrieved October 4, 2018, from <http://www.chicagotribune.com/news/nationworld/chi-ferguson-police-chief-resigns-20150311-story.html>.

<sup>16</sup> Gorman, M. (2015, August 25). Ferguson Municipal Court Judge Brings Sweeping Changes to City Practices. *Newsweek*. Retrieved October 4, 2018, from <https://www.newsweek.com/ferguson-municipal-court-judge-brings-sweeping-changes-city-365645>.

<sup>17</sup> Walker, L. (2016, January 28). Ferguson, Missouri, Police Reforms Set. *Newsweek*. Retrieved October 4, 2018, from <https://www.newsweek.com/ferguson-missouri-michael-brown-police-shooting-reform-justice-department-420670>.

<sup>18</sup> Britt, S. (2018, March 15). Ferguson Accepts U.S. Government's Police Reform Plan. *Reuters*. Retrieved October 4, 2018, from <https://www.reuters.com/article/us-missouri-ferguson-plan/ferguson-accepts-u-s-governments-police-reform-plan-idUSKCN0WH30H>.



elsewhere in the state.<sup>19</sup> Legislation was later passed in that state that attempts to curb local governments from using law enforcement and courts as revenue generators.<sup>20</sup>

Concerns about courts and revenue generation have not been limited to Missouri.<sup>21</sup> News articles in different parts of the country have expressed concerns over courts that are “well-oiled money machines”<sup>22</sup> and towns that use court fines to “fill their coffers”.<sup>23</sup> In response, national, state, and local organizations have worked to educate the public, government officials, and judges about the proper role of courts and the appropriate use of court fines.<sup>24</sup> In light of the current debate in the United States on this issue, now is an optimal time for court and government leaders to take appropriate steps to improve their local criminal justice systems.

This paper builds on existing scholarship to review the role of the local court in assessing and collecting criminal justice fines. The paper discusses local government obligations with respect to fine revenue and explores concerns that are present when local fines directly fund local

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<sup>19</sup> Chokshi, N. (2015, May 16). Dozens of Ferguson-related Reforms Were Proposed in Missouri. Just One Passed. *The Washington Post*. Retrieved October 4, 2018, from [https://www.washingtonpost.com/blogs/govbeat/wp/2015/05/15/the-missouri-legislature-is-about-to-end-its-session-having-passed-almost-none-of-the-dozens-of-ferguson-related-bills-proposed/?utm\\_term=.a267271b4d61](https://www.washingtonpost.com/blogs/govbeat/wp/2015/05/15/the-missouri-legislature-is-about-to-end-its-session-having-passed-almost-none-of-the-dozens-of-ferguson-related-bills-proposed/?utm_term=.a267271b4d61).

<sup>20</sup> Peters, B. (2017, May 16). Missouri Supreme Court Upholds Most Provisions of Municipal Court Reform Law. *The Missouri Times*. Retrieved October 4, 2018, from <https://themissouritimes.com/40964/missouri-supreme-court-upholds-most-provisions-of-municipal-court-reform-law/>.

<sup>21</sup> Quinton (2015).

<sup>22</sup> L. S. (2015, March 13). Municipal Courts are Well-Oiled Money Machine. *St. Louis Post-Dispatch*. Retrieved October 4, 2018, from [https://www.stltoday.com/news/multimedia/municipal-courts-are-well-oiled-money-machine/image\\_525cbe8f-a680-53fa-8879-bf25a8d4d139.html](https://www.stltoday.com/news/multimedia/municipal-courts-are-well-oiled-money-machine/image_525cbe8f-a680-53fa-8879-bf25a8d4d139.html).

<sup>23</sup> Kuntz, K. (2015, May 7). In 5 Colorado Towns, Traffic Tickets Fill Coiffers. *Post Independent*. Retrieved October 4, 2018, from <https://www.postindependent.com/news/local/in-5-colorado-towns-traffic-tickets-fill-coiffers/>.

<sup>24</sup> Council of Economic Advisers (2015). Smith, D. W., Campbell, C. F., & Kavanagh, B. P. (Eds.). (2017). *Trends in State Courts 2017* (Rep.). Retrieved October 4, 2018, from National Center for State Courts website: <https://www.ncsc.org/~media/Microsites/Files/Trends2017/Trends-2017-Final-small.ashx>.

governments. The paper draws on reform efforts from a variety of jurisdictions that have taken different approaches to address these problems. Recommendations for additional research are also discussed.

This paper is divided into three sections. Section I begins by defining criminal justice fines for purposes of this paper. It examines the practice of assessing criminal justice fines and the goals associated with those assessments. Section I also discusses the role of the court in assessing, collecting, and disbursing collected fines.

Section II reviews concerns associated with directly funding local government through criminal justice fines collected by local courts. Section IIA discusses ethical obligations that judges have in spite of any direct or indirect pressure they may receive to make fine revenue generation a focus of their work. Section IIB describes practical concerns that jurisdictions experience when they rely on criminal fine revenue as a funding source for local government programs. Section IIC highlights research that has shown that funding local governments with local court fines repeatedly results in negative consequences for the poor and for certain ethnic groups.

Section III reviews reform efforts aimed at addressing problems associated with funding local government through criminal justice fines. First, the section suggests that completely eliminating court fines for criminal and traffic offenses is not a realistic solution to current problems. Next, the section reviews several reform options that could be implemented by most jurisdictions with relatively minimal effort. Finally, section III discusses a number of reform alternatives that would require significant resources and determination to implement. The paper notes that solutions that may be suitable for one jurisdiction may not be suitable in another jurisdiction.

## I. Criminal Justice Fines and The Role of The Local Court

### A. Defining Criminal Justice Fines

A great deal has been written in recent years about the fines, fees, and other monetary obligations that are regularly assessed to criminal defendants while they are in the criminal justice system.<sup>25</sup> The Model Penal Code refers to these obligations as economic sanctions and divides them into four general categories that are applicable for both felonies and misdemeanors: (1) victim restitution, (2) fines, (3) asset forfeitures, and (4) costs, fees, and assessments.<sup>26</sup> Each year millions of convicted defendants are ordered to pay monies that fall into one or more of these categories.<sup>27</sup> Collectively, these sanctions are commonly referred to as “court ordered debt” or “legal financial obligations”.<sup>28</sup>

This paper focuses specifically on fines that are assessed by courts in traffic and criminal cases. A fine is a financial obligation that a court orders a defendant to pay as a penalty for a violation of a criminal or traffic offense.<sup>29</sup> This paper does not address the related monetary sanctions of restitution, costs, fees, or asset forfeitures. However, the concerns raised in this

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<sup>25</sup> Appleman (2016). Atkinson (2015). Schwartztol, L., Steiker, C., Whiting, A., Kastner, A., Endik, R., Greenamyre, Z., . . . Jordan, A. (2016, September). *Confronting Criminal Justice Debt: A Guide for Policy Reform* (Rep.). Retrieved October 4, 2018, from Harvard Law School Criminal Justice Policy Program website: <http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>. Sobol (2016).

<sup>26</sup> *Model Penal Code: Sentencing*. (2017, § 6.04(A)–(D)). Philadelphia, PA: American Law Institute. Appleman (2016, p 1488).

<sup>27</sup> Appleman (2016, p 1487-89). Harris, A., Evans, H., & Beckett, K. (2010, p. 1771). Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States. *American Journal of Sociology*, 115(6), 1753-1799.

<sup>28</sup> Atkinson (2015, p. 190). Taylor, M. (2016, January 5). *Improving California's Criminal Fine and Fee System* (Rep.). Retrieved October 5, 2018, from Legislative Analyst's Office website: <https://lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf>.

<sup>29</sup> Taylor (2016, p. 5).

paper should also be examined from the context of those sanctions.<sup>30</sup> Decision-makers looking for solutions to resolve systemic concerns related to court fines would benefit from exploring alternatives to court fees and other monetary sanctions that are relied upon as funding sources for local governments.

## **B. The Purposes of Criminal Justice Fines**

Fines penalize or punish offenders for traffic and criminal offenses through their wallets.<sup>31</sup> Fines are also intended to serve as a deterrent to future illegal conduct.<sup>32</sup> This deterrence can be both specific and general in its application.<sup>33</sup> In addition to deterring a perpetrator from a future violation, it is hoped that the use of fines deters the general public from breaking a law.<sup>34</sup>

In instances where state law permits the use of discretion in setting the specific fine amount, courts are able to consider practical realities, such as the ability to pay a fine, along with the aims of punishment and deterrence.<sup>35</sup> Commentators note that the availability of fines as a penalty permits courts to pursue goals of punishment and deterrence without resorting to harsher penalties, such as incarceration.<sup>36</sup>

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<sup>30</sup> Appleman (2016). Atkinson (2015). Beckett & Harris (2011). Harris, Evans, & Beckett (2010). Schwartztol et al. (2016).

<sup>31</sup> *Model Penal Code: Sentencing*. (2017, § 6.04(B)). Beckett & Harris (2011). Taylor (2016, p. 18). Ruback, R. B. (2011). The Abolition of Fines and Fees: Not Proven and Not Compelling. *Criminology & Public Policy*, 10(3), 569-581.

<sup>32</sup> Atkinson (2015, p. 192). *Model Penal Code: Sentencing*. (2017, § 6.04(B)). Taylor (2016, p. 18).

<sup>33</sup> Atkinson (2015, p. 192). *Model Penal Code: Sentencing*. (2017, § 6.04(B)).

<sup>34</sup> Atkinson (2015, p. 192). *Model Penal Code: Sentencing*. (2017, § 6.04(B)).

<sup>35</sup> Bannon, A., Nagrecha, M., & Diller, R. (2010). *Criminal Justice Debt: A Barrier To Reentry* (Rep.). Retrieved November 5, 2018, from Brennan Center for Justice website: [https://www.brennancenter.org/sites/default/files/legacy/Fees and Fines FINAL.pdf](https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf). Harris, Evans, & Beckett (2010, p. 1755). Hillsman, (1990, p. 62). Schwartztol et al. (2016, pp. 24-25).

<sup>36</sup> Hillsman, (1990, pp. 50-52).

Revenue is an anticipated byproduct of assessing and collecting court ordered fines.<sup>37</sup> Lawmakers and members of the public generally believe that criminal offenders should help fund the criminal justice system along with other government services.<sup>38</sup> Fine revenue is considered an attractive alternative to raising taxes, especially when state and local governments are faced with fiscal challenges.<sup>39</sup> Collecting fines for the sake of raising revenue for the government, however, is not a permissible court sentencing goal.<sup>40</sup> The Model Penal Code “recommends that economic sanctions not be used to generate revenue unless there is an independent criminal-justice purpose that justifies the sanctions imposed.”<sup>41</sup>

### **C. The Role of the Local Court in Handling Criminal Justice Fines**

State and local laws authorize courts to assess fines in traffic and criminal cases.<sup>42</sup> In some instances specific fine assessments are mandatory.<sup>43</sup> In other cases, judges have discretion in setting fine amounts.<sup>44</sup>

In addition to imposing fines, most states require that courts collect the fines that they have ordered defendants to pay.<sup>45</sup> In some jurisdictions, this responsibility is transferred to other

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<sup>37</sup> *Model Penal Code: Sentencing*. (2017, § 6.04, p. 87-88).

<sup>38</sup> Burch, T. R. (2011). Fixing the Broken System of Financial Sanctions. *Criminology & Public Policy*, 10(3), 539-545.

<sup>39</sup> Burch (2011, p. 540).

<sup>40</sup> *Model Penal Code: Sentencing*. (2017, § 6.04, p. 90). Policing and Profit. (2015). Harvard Law Review, 128(6), 1723-1746. Reynolds, C., & Hall, J. (2012). *2011-2012 Policy Paper: Courts are Not Revenue Centers* (Working paper). Retrieved October 8, 2018, from Conference of State Court Administrators website: <https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf>.

<sup>41</sup> *Model Penal Code: Sentencing*. (2017, § 6.04, p. 90).

<sup>42</sup> Harris, Evans, & Beckett (2010). Ruback (2011, pp. 569-570).

<sup>43</sup> Ruback (2011, p. 569).

<sup>44</sup> Hillsman (1990, p. 62). Ruback (2011, p. 569).

<sup>45</sup> Hillsman (1990, p. 66). Pepin, A. W. (2015). *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations* (Working paper). Retrieved October 9, 2018, from Conference of State Court Administrators website:

government agencies or third parties.<sup>46</sup> Courts and agencies responsible for collecting court fines make payment arrangements with defendants and then follow up with them to confirm whether fine requirements are satisfied.<sup>47</sup>

In cases where only a fine is owed, the system runs smoothly when defendants promptly pay their court-ordered fines. In this best-case scenario, penological goals are promptly accomplished as the punishment and associated deterrent effect are experienced close in time to the conviction. The defendant's experience with the criminal justice system is relatively short-lived and the individual moves forward with life unburdened by long-term court obligations.

This best-case scenario, where fine obligations are quickly resolved, is infrequently the one that plays out in reality.<sup>48</sup> Defendants often have limited financial means and are unable to immediately pay a fine. In some instances, they prioritize other obligations over their court fine. Many courts make an effort to become aware of these circumstances from the outset, assess a defendant's ability to pay, set up payment plans, or review alternatives to fines, such as community service.<sup>49</sup>

Courts subsequently interact with defendants when there is non-compliance with requirements. Courts are encouraged to follow "best practices" during these interactions in order

[https://www.ncsc.org/~media/microsites/files/cosca/policy\\_papers/end-of-debtors-prisons-2016.ashx](https://www.ncsc.org/~media/microsites/files/cosca/policy_papers/end-of-debtors-prisons-2016.ashx).

<sup>46</sup> Pepin (2015, p. 19).

<sup>47</sup> Harris, Evans, & Beckett (2010). Pepin (2015).

<sup>48</sup> Atkinson (2015). Bannon, Nagrecha, & Diller (2010). *Criminal Justice Debt: A Barrier To Reentry*. Evans, D. (2014). *The Debt Penalty — Exposing the Financial Barriers to Offender Reintegration (Rep.)*. Retrieved October 9, 2018, from Research & Evaluation Center, John Jay College of Criminal Justice, City University of New York website: <https://jjrec.files.wordpress.com/2014/08/debtpenalty.pdf>. Gentzler, R. (2017, February). *The Cost Trap: How Excessive Fees Lock Oklahomans Into the Criminal Justice System without Boosting State Revenue* (Issue brief). Retrieved October 9, 2018, from Oklahoma Policy Institute website: <https://okpolicy.org/cost-trap-excessive-fees-lock-oklahomans-criminal-justice-system-without-boosting-state-revenue-executive-summary/>. Harris, Evans, & Beckett (2010).

<sup>49</sup> Pepin (2015).

to facilitate defendants' compliance with case requirements.<sup>50</sup> For example, courts in some jurisdictions have adopted the practice of utilizing state-approved "bench cards" when they address certain legal topics in court, including the collection of court fines and fees.<sup>51</sup> This tool reminds judges of legal requirements and aids judges in providing information to defendants.<sup>52</sup>

Courts in many jurisdictions issue bench warrants when defendants fail to appear for compliance hearings and have not completed their case requirements.<sup>53</sup> When defendants fail to complete payment requirements but show up for compliance hearings, courts consider requests to extend payment plans or consider alternatives to fine payments. In cases of hardship, state laws sometimes permit judges to adjust requirements or waive fines.<sup>54</sup> In some jurisdictions, laws permit courts to transfer cases with outstanding fines to other government agencies or third parties for collection.<sup>55</sup>

A number of states permit courts to consider the practice of converting unpaid fines and fees into a jail sentence.<sup>56</sup> This practice has received significant negative attention in academia and the media, with many associating it with the operation of debtors' prisons.<sup>57</sup> The United States Supreme Court has determined that court fines can only be converted to jail time after a court hearing has taken place where a judge considers whether the defendant has been afforded

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<sup>50</sup> Pepin (2015).

<sup>51</sup> Pepin (2015, p. 14).

<sup>52</sup> Pepin (2015, p. 14).

<sup>53</sup> Pepin (2015, p. 16).

<sup>54</sup> Pepin (2015, p. 24).

<sup>55</sup> Matthias, J. T., & Klaversma, L. (2009, p 18). *Current Practices in Collecting Fines and Fees in State Courts: A Handbook of Collection Issues and Solutions* (2nd ed.). National Center for State Courts. Utah Code Ann. § 77-32a-102 (LexisNexis 2018). Nev. Rev. Stat. Ann. § 176.064 (2)(c) (LexisNexis 2018).

<sup>56</sup> Appleman (2016, pp. 1489-1491). Pepin (2015).

<sup>57</sup> Pepin (2015). Sobol (2016). *The New Debtors Prisons; Criminal Justice* (2). (2013, November 16). *The Economist*. Retrieved October 9, 2018, from <https://www.economist.com/united-states/2013/11/16/the-new-debtors-prisons>.

all applicable rights, including the right to counsel.<sup>58</sup> The court must inquire about the defendant's failure to pay the fine, determine whether the defendant willfully refused to pay the fine, and consider whether appropriate fine alternatives, such as community service, were considered.<sup>59</sup>

Courts have the responsibility of accounting for collected funds and transferring collected funds to the appropriate state or local government entity.<sup>60</sup> Courts work with state and local finance departments and auditors to ensure that collected funds are processed and distributed in accordance with applicable laws.<sup>61</sup> Court administrators are employed in some jurisdictions to assist judges with these responsibilities.<sup>62</sup>

#### **D. Distribution, Use of Fine Revenue, and Reliance on Fine Revenue**

State laws establish how collected court fines are to be transferred to state or local government entities. In some instances, the process is relatively straightforward,<sup>63</sup> while in others, it is quite complex.<sup>64</sup> Some jurisdictions earmark fine revenue for specific purposes, such as the reduction of criminal justice costs.<sup>65</sup> In other jurisdictions, there are no express limitations and the revenue is used to fund various types of programs and services.

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<sup>58</sup> Pepin (2015, p. 4). *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).

<sup>59</sup> *Bearden*, 461 U.S. at 672. Hillsman (1990, pp. 71-73). Pepin (2015, p. 4).

<sup>60</sup> Hillsman (1990, p. 66).

<sup>61</sup> Hillsman (1990, p. 66).

<sup>62</sup> Hillsman (1990, p. 66). National Association for Court Management. (2016). *The Court Administrator* [Brochure]. Retrieved October 10, 2018, from [https://nacmnet.org/sites/default/files/publications/Guides/The\\_Court\\_Manual\\_Colorization\\_2016.pdf](https://nacmnet.org/sites/default/files/publications/Guides/The_Court_Manual_Colorization_2016.pdf).

<sup>63</sup> Nev. Rev. Stat. Ann. § 176.265, § 176.285 (LexisNexis 2018).

<sup>64</sup> *Overview of Criminal Fine and Fee System* (Rep.). (2017, February 27). Retrieved October 10, 2018, from California Legislative Analyst's Office website: <https://lao.ca.gov/handouts/crimjust/2017/Fine-and-Fee-Overview-022717.pdf>.

<sup>65</sup> Schwartz et al. (2016, p. 13).



The degree to which local governments and courts rely on fine revenue to fund operations and programs varies from jurisdiction to jurisdiction.<sup>66</sup> A number of reports that were published following the Ferguson investigation highlighted jurisdictions that heavily relied on fine revenue to fund their local government operations.<sup>67</sup> For example, in 2014, fines and fees made up the biggest revenue source for 14 cities in Missouri.<sup>68</sup> While many of the jurisdictions receiving media attention for funding operations through court fines have had small populations, jurisdictions with larger populations have also received public attention for emphasizing fine revenue as a funding source.<sup>69</sup>

Scholars have examined whether fiscal conditions at the local level impact the number of citations that law enforcement officers issue and the amount of fine revenue that courts collect.<sup>70</sup> Researchers examining these trends in a few regions observed that traffic ticket volume increased following periods of economic depression.<sup>71</sup> Anecdotal examples suggest that small to medium size jurisdictions are more susceptible to this trend as they have fewer revenue streams

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<sup>66</sup> Ford (2015). Gentzler (2017). Shaw, E. (2016, September 26). *Where Local Governments Are Paying the Bills With Police Fines* (Rep.). Retrieved October 10, 2018, from Sunlight Foundation website: <https://sunlightfoundation.com/2016/09/26/where-local-governments-are-paying-the-bills-with-police-fines/>.

<sup>67</sup> Jones, C. (2016, February 4). Utah Speed Trap Gives City 40 Percent of Revenue From Speeding Tickets. Retrieved October 11, 2018, from <https://kutv.com/news/local/utah-speed-trap-gives-city-40-percent-of-revenue-from-speeding-tickets>. *Public Safety - Municipal Courts* (Rep.). (2014, October). Retrieved October 11, 2018, from Better Together website: <https://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf>. Kuntz (2015).

<sup>68</sup> Better Together (2014, p. 7).

<sup>69</sup> Kalthoff, K. (2012, June 19). Dallas City Council Threatens to Replace Judges Over Low Citation Revenue. Retrieved October 11, 2018, from <https://www.nbcdfw.com/news/local/Dallas-City-Council-Threatens-to-Replace-Judges-Over-Low-Citation-Revenue-159657235.html>.

<sup>70</sup> Garrett, T. A., & Wagner, G. A. (2009). Red Ink in the Rearview Mirror: Local Fiscal Conditions and the Issuance of Traffic Tickets. *Journal of Law and Economics*, 52(1), 71-90.

<sup>71</sup> Garrett & Wagner (2009).

in comparison to larger jurisdictions.<sup>72</sup> Additional research examining historic patterns on a broader scale would aid in confirming the prevalence of this trend in the United States. This data may help persuade government leaders of the need to seriously consider reform in this area.

## **II. Funding Local Government with Fines Collected by Local Courts is Problematic**

The practice of courts assessing criminal fines, collecting fines, transferring fines to local government entities, and then having those same courts rely on local government entities to appoint judges, fund judicial salaries, and provide budgets for court operations is problematic. Where it exists, the practice can create ethical concerns for both judges and local government officials. Over time, local governments may become reliant on revenue from court fines, but the funds received by these towns and cities can vary significantly from year to year. The practice has also had a disparate impact on the poor and certain ethnic groups in many jurisdictions.

### **A. Ethical Concerns**

Judges throughout the United States are required to comply with judicial codes of conduct.<sup>73</sup> These ethical canons provide judges with guidance on matters of “judicial integrity and independence, judicial diligence and impartiality, permissible extra-judicial activities, and the avoidance of impropriety or even its appearance.”<sup>74</sup> In most jurisdictions, state judicial codes

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<sup>72</sup> Better Together (2014). Jones (2016). Kuntz (2015).

<sup>73</sup> Code of Conduct for United States Judges. Retrieved October 11, 2018, from <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>. National Center for State Courts. (n.d.). Ethics State Links. Retrieved October 11, 2018, from <https://www.ncsc.org/Topics/Judicial-Officers/Ethics/State-Links.aspx>. Administrative Office of the U.S. Courts. (n.d.).

<sup>74</sup> Administrative Office of the U.S. Courts. (n.d.). Ethics Policies. Retrieved October 11, 2018, from <http://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies>. *Model Code of Judicial Conduct* (2011 ed.). (2010, p. 1). Chicago, IL: American Bar Association.

mirror the American Bar Association Model Code of Judicial Conduct (hereinafter “Code of Judicial Conduct”).<sup>75</sup>

Numerous provisions in the Code of Judicial Conduct preclude judges from taking fine revenue generation into account as they fulfill their duties, both in general and when presiding over an individual case. Judges are charged with respecting and honoring their office.<sup>76</sup> They are directed to maintain and enhance confidence in the legal system.<sup>77</sup> The Code of Judicial Conduct demands that judges ensure that their conduct enhances public confidence in “their independence, impartiality, integrity, and competence.”<sup>78</sup>

Not only do these rules mandate that judges comply with the law, but they charge judges with promoting confidence in the judiciary.<sup>79</sup> The Code of Judicial Conduct explains that “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”<sup>80</sup> Accordingly, judges must maintain a high standard of conduct in both their work and in their personal lives.

The drafters of the Code of Judicial Conduct included a specific rule prohibiting judges from allowing external influences to impact their judicial conduct.<sup>81</sup> Judges are not permitted to

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<sup>75</sup> American Bar Association. (2018, August 14). Charts Comparing Individual Jurisdictional Judicial Conduct Rules to ABA Model Code of Judicial Conduct. Retrieved October 11, 2018, from [https://www.americanbar.org/groups/professional\\_responsibility/resources/judicial\\_ethics\\_regulation/aba\\_model\\_code\\_comparison/](https://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/aba_model_code_comparison/).

<sup>76</sup> *Model Code of Judicial Conduct* (2010, p. 1).

<sup>77</sup> *Model Code of Judicial Conduct* (2010, p. 1).

<sup>78</sup> *Model Code of Judicial Conduct* (2010, p. 1).

<sup>79</sup> *Model Code of Judicial Conduct* (2010, p. 15).

<sup>80</sup> *Model Code of Judicial Conduct* (2010, p. 15).

<sup>81</sup> *Model Code of Judicial Conduct* (2010, p. 19).

allow public clamor or fear of criticism to sway their decisions.<sup>82</sup> They are not permitted to allow political, financial, or other interests to influence their actions.<sup>83</sup> The Code of Judicial Conduct emphasizes that, “[a]n independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family.”<sup>84</sup>

These ethical requirements remind judges that a fair, impartial, and independent judiciary is a “cornerstone of our democratic system.”<sup>85</sup> They demand that judges act independently of outside influences and afford defendants “fair and impartial decision[s].”<sup>86</sup> They also help preserve the judiciary as a co-equal third branch of government.<sup>87</sup> Most states have mandatory judicial ethics education requirements to aid judges in understanding and complying with their obligations.<sup>88</sup>

Scholars and members of the public believe that most judges take their moral obligations seriously.<sup>89</sup> However, claims are periodically made that a judge has violated judicial ethical

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<sup>82</sup> *Model Code of Judicial Conduct* (2010, p. 19).

<sup>83</sup> *Model Code of Judicial Conduct* (2010, p. 19).

<sup>84</sup> *Model Code of Judicial Conduct* (2010, p. 19).

<sup>85</sup> Mendez, M., & Kaminski, A. (2013, May 3). Wisconsin Lawmakers Should Not Attack Judiciary. *Milwaukee Wisconsin Journal Sentinel*. Retrieved October 11, 2018, from <http://archive.jsonline.com/news/opinion/wisconsin-lawmakers-should-not-attack-judiciary-b9910652z1-207297321.html/>. *Preserving a Fair, Impartial and Independent Judiciary* (White paper). (2013). Retrieved October 11, 2018, from American Board of Trial Advocates website: <https://www.judges.org/wp-content/uploads/ABOTA-JudicialWhitePaper-final.pdf>.

<sup>86</sup> Timmons-Goodson, P. (2018, March 1). If a Nation Has No Independent Judiciary, Rights are Merely 'Empty Promises'. *ABA Journal*. Retrieved October 11, 2018, from [http://www.abajournal.com/news/article/empty\\_promises\\_a\\_nation\\_without\\_an\\_independent\\_judiciary](http://www.abajournal.com/news/article/empty_promises_a_nation_without_an_independent_judiciary).

<sup>87</sup> *Model Code of Judicial Conduct* (2010, p. 1). Timmons-Goodson (2018).

<sup>88</sup> National Center for State Courts. (n.d.). Judicial Administration: State Links. Retrieved October 12, 2018, from <https://www.ncsc.org/topics/judicial-officers/judicial-administration/state-links.aspx?cat=Judicial Education Programs>.

<sup>89</sup> Bybee, K. J. (2011, April 10). U.S. Public Perception of the Judiciary: Mixed Law and Politics. *Jurist - Forum*. Retrieved October 12, 2018, from

standards by making revenue generation a court goal and coordinating court actions with local government efforts. A Missouri judge described the current judicial environment as one where the great majority of courts operate above reproach, but cautioned that the “conditions and the incentives” exist such that “misconduct, corruption, and abuse [can] thrive.”<sup>90</sup>

Periodic news reports unflatteringly refer to “incestuous” relationships where “towns have the power to create new ordinances and raise fines, send their police officers to write tickets and appoint the judges who are held responsible for the court’s revenue.”<sup>91</sup> One judge observed that “local and state government officials [sometimes] give the impression that they look upon municipal courts as merely a convenient and reliable stream of revenue for the city rather than an essential part of local government.”<sup>92</sup> These reports paint unfavorable pictures of local courts and governments whose actions appear to be at odds with ethical requirements and community well-being.

These concerns made national headlines during the federal investigation of the Ferguson, Missouri city administration, police, and municipal court in 2015. Federal investigators concluded that Ferguson law enforcement and court activities were aimed at generating

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<https://www.jurist.org/commentary/2011/04/us-public-perception-of-the-judiciary-mixed-law-and-politics/>. Waldron, J. (2009, p. 4). Judges as Moral Reasoners. *International Journal of Constitutional Law*, 7(1), 2-24.

<sup>90</sup> DeMarce, K. A. (2017). How the Fines and Fees Issue Impacted the Missouri Courts. *Trends in State Courts 2017*. Retrieved October 12, 2018, from [https://www.ncsc.org/~media/Microsites/Files/Trends 2017/Trends-2017-Final-small.ashx](https://www.ncsc.org/~media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx).

<sup>91</sup> Kachmar, K., & Pugliese, N. (2018, July 17). Municipal Courts Need Radical Reform to Stop 'Never-ending' Fines, Suspensions, Report Says. *Ashbury Park Press*. Retrieved October 12, 2018, from <https://www.app.com/story/news/investigations/watchdog/government/2018/07/17/municipal-court-reform-nj-supreme-court-report/791420002/>.

<sup>92</sup> Holman, B. S. (2007, November 8). *"Hey, Judge, Can I Talk to You?": The Need for Judicial Independence in Municipal Courts*. Lecture presented at TCCA Affiliate Meeting in Texas, Dallas. Retrieved October 12, 2018, from <https://www.txmca.com/files/6014/4833/0362/HeyJudge-4.pdf>.

revenue.<sup>93</sup> The investigators concluded that the Ferguson municipal court's primary goal in processing cases was to collect revenue.<sup>94</sup> Investigators asserted that cases were not handled in accordance with constitutional requirements.<sup>95</sup> They also determined that the city and court practices "undermine[d] police legitimacy and community trust."<sup>96</sup>

According to the investigators, Ferguson city administrators made it clear to their appointed judge in the years leading up to the investigation that criminal fine revenue generation was a primary city priority.<sup>97</sup> The Ferguson report cited multiple examples of how the court acquiesced to this demand and assisted the city in raising revenue from fines.<sup>98</sup> The court established revenue goals, it created new court fees that were collected and passed along to the city, fines were increased for repeat offenders, and the actual revenue from fines increased over the years.<sup>99</sup> Federal investigators also referenced statements made by the Ferguson Municipal Court judge that suggested that there was joint cooperation among the police, the prosecutor, and the court to improve the collection of fines.<sup>100</sup>

Following the prompt resignation of the Ferguson Municipal Court judge after the Department Justice released its findings, the Missouri Supreme Court assigned a state court judge to handle the Ferguson municipal court docket and implement needed reforms.<sup>101</sup>

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<sup>93</sup> Shaw & United States (2015, p. 2).

<sup>94</sup> Shaw & United States (2015, pp. 5-7).

<sup>95</sup> Shaw & United States (2015, p. 5).

<sup>96</sup> Shaw & United States (2015, p. 27).

<sup>97</sup> Shaw & United States (2015, p. 24).

<sup>98</sup> Shaw & United States (2015, pp. 24-25).

<sup>99</sup> Shaw & United States (2015, pp. 24-25).

<sup>100</sup> Shaw & United States (2015, p. 24).

<sup>101</sup> Sneed, T. (2015, March 11). Ferguson Report Prompts Resignations, Court Takeover. *U.S. News & World Report*. Retrieved October 12, 2018, from <https://www.usnews.com/news/articles/2015/03/11/doj-ferguson-report-prompts-resignations-court-takeover>. Supreme Court of Missouri. (2015, March 9). *Supreme Court of Missouri Reassigns Ferguson Municipal Division Cases* [Press release]. Retrieved October 12, 2018, from

Missouri lawmakers subsequently debated a number of reform options to address the systemic concerns identified in Ferguson and other communities.<sup>102</sup> Limited legislative action, discussed in greater detail below, was taken to curb local government efforts to use local courts as revenue generators.<sup>103</sup>

While Ferguson remains the poster child for what can happen when revenue generation becomes the focus of law enforcement and court activities, anecdotal examples from other jurisdictions indicate that unethical behavior periodically takes place elsewhere. A New Jersey judge recently pleaded guilty to falsifying records that inappropriately routed over \$500,000 to the governing bodies that employed him.<sup>104</sup> A former judge in a small Texas town publicly stated that he made the decision to resign his position in 2014 because he would not go along with city plans to generate revenue from traffic citations issued mostly to non-residents.<sup>105</sup> In 2012, the city council in Dallas, Texas openly discussed replacing judges who did not generate sufficient revenue.<sup>106</sup> Numerous “debtor prison” lawsuits have also been filed in over a dozen states during the past decade related to the practice of courts converting fines and fees into jail time.<sup>107</sup>

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<https://www.courts.mo.gov/pressrel.nsf/fa1bcbaea6d7c117862567670079a321/7f70e2b78919dca486257e030077b4ec?OpenDocument>.

<sup>102</sup> Chokshi (2015, May 16).

<sup>103</sup> Chokshi (2015, May 16).

<sup>104</sup> Kachmar & Pugliese (2018).

<sup>105</sup> Mendoza, M. (2015, June 3). Texas Judge 'Pressured' to Resign, Disagreed with Ticket 'Quota System' Hurting Travelers. *MySanAntonio.com*. Retrieved October 12, 2018, from <https://www.mysanantonio.com/news/local/article/Texas-judge-pressured-to-resign-disagreed-with-6305130.php#photo-5325408>.

<sup>106</sup> Kalthoff (2012).

<sup>107</sup> American Civil Liberties Union. (n.d.). Ending Modern-Day Debtors' Prisons. Retrieved October 12, 2018, from <https://www.aclu.org/issues/smart-justice/sentencing-reform/ending-modern-day-debtors-prisons?redirect=issues/criminal-law-reform/ending-modern-day-debtors-prisons>.

Judges who do not comply with ethical requirements are subject to judicial discipline, including possible removal from office.<sup>108</sup> State judicial disciplinary bodies take reports of ethical violations seriously and investigate claims.<sup>109</sup> A review of judicial discipline proceedings from various jurisdictions indicates that several judges have been formally disciplined for actions and statements made related to court fines.

In 2002 an Ohio judge was publicly reprimanded for requesting that highway patrol officers maintain traffic ticket levels to help the court to be “financially self-sufficient” while local officials were considering a court construction project.<sup>110</sup> In that matter, the disciplinary board determined that the judge failed to “uphold the integrity and independence of the judiciary”.<sup>111</sup> They further determined that he violated the duty to “avoid impropriety and the appearance of impropriety.”<sup>112</sup>

In 1999 the Supreme Court of Washington affirmed a judicial commission censure order issued to a municipal court judge.<sup>113</sup> In that matter, the judge was suspended without pay for misconduct related to due process violations while taking guilty pleas and improper treatment of defendants ordered to pay fines.<sup>114</sup> In several instances, the judge threatened defendants with indefinite jail sentences as a result of to their failure to comply with fine payment requirements.<sup>115</sup> In a strongly worded concurring opinion, Justice J. Talmadge suggested that the violations partially stemmed from the involvement of city officials in the development of the

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<sup>108</sup> Gray, C. (2002). *A Study of State Judicial Discipline Sanctions* (pp. 1-179, Publication). Chicago, Illinois: American Judicature Society.

<sup>109</sup> Gray (2002, p. 3).

<sup>110</sup> Office of Disciplinary Counsel v. Kiacz, 94 Ohio St. 3d 409 (2002).

<sup>111</sup> Kiacz, 94 Ohio St. 3d at 410

<sup>112</sup> Kiacz, 94 Ohio St. 3d at 410

<sup>113</sup> In re Hammermaster, 139 Wn.2d 211 (1999).

<sup>114</sup> In re Hammermaster, 139 Wn.2d at 213-214.

<sup>115</sup> In re Hammermaster, 139 Wn.2d at 217-220.



judge's heavy-handed court-specific rules and the practice of local governments establishing local courts to "make money."<sup>116</sup> He concluded that the judicial code of ethics must be strictly enforced at the local court level and asserted that the judiciary could not "condone any derogation of the independence of the judicial branch of government by officials intent on revenue collection...."<sup>117</sup>

More recently, a judge in Alabama was publicly censured in 2016 for directing defendants with outstanding court fines "to either donate blood or go to jail."<sup>118</sup> The judicial censure noted that the judge's actions violated several ethical canons, including the duty to maintain the integrity and independence of the judiciary, the duty to avoid impropriety, and the duty to promote confidence in the judiciary.<sup>119</sup> While the judge acknowledged his misconduct, his attorney publicly stated that other judges should be concerned because the state court administrator "puts a great deal of pressure on them to collect ... court costs."<sup>120</sup>

Concerns about courts and the proper handling of criminal and traffic fine revenue have prompted debate and reform discussion throughout the United States. As discussed below, various steps can be taken within the judiciary and at the state and local levels of government to address these concerns. One legislator working for systemic reform concisely summarized the need to address these problems when he said, "[t]he concern is courts are supposed to be about justice."<sup>121</sup>

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<sup>116</sup> In re Hammermaster, 139 Wn.2d at 248-49.

<sup>117</sup> In re Hammermaster, 139 Wn.2d at 249-50.

<sup>118</sup> In the Matter of Marvin Wayne Wiggins, Court of the Judiciary Case No. 45, (2016).

<sup>119</sup> In the Matter of Marvin Wayne Wiggins, Court of the Judiciary Case No. 45, (2016).

<sup>120</sup> In the Matter of Marvin Wayne Wiggins, Court of the Judiciary Case No. 45, (2016).

<sup>121</sup> Kachmar, K. (2017, June 21). Reform Could End Courts as Money-makers. *Ashbury Park Press*. Retrieved October 12, 2018, from <https://www.app.com/story/news/investigations/watchdog/investigations/2017/06/21/nj-municipal-court-reform-discussion-trenton/414081001/>.

## B. Revenue Instability

Many cities, counties, and states have become reliant on criminal fine revenue to fund their programs and operations.<sup>122</sup> This is problematic for government entities because court collected revenue can vary significantly from year to year.<sup>123</sup> Unstable revenue streams create challenges for government officials who must pass balanced budgets and provide reliable services to their communities.<sup>124</sup> When revenue shortfalls occur it can bring programs and operations to a halt.<sup>125</sup>

A recent Nevada Supreme Court budget shortfall illustrates this problem.<sup>126</sup> In 2015, Nevada Supreme Court Chief Justice James W. Hardesty went before the Nevada legislature to explain that a decline in traffic tickets resulted in a \$700,000 shortfall in its budget.<sup>127</sup> Hardesty explained that approximately three-fifths of the Nevada Supreme Court's budget came from

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<sup>122</sup> Menendez, M. (2018, April 19). Fees and Fines Threaten Judicial Independence. *ABA Journal*. Retrieved from [http://www.abajournal.com/news/article/fees\\_and\\_fines\\_threaten\\_judicial\\_independence/](http://www.abajournal.com/news/article/fees_and_fines_threaten_judicial_independence/). Gentzler (2017).

<sup>123</sup> Ford (2015).

<sup>124</sup> National Conference of State Legislatures. (1999, April 12). State Balanced Budget Requirements. Retrieved October 12, 2018, from <http://www.ncsl.org/research/fiscal-policy/state-balanced-budget-requirements.aspx>. Menendez. (2018).

<sup>125</sup> Chokshi, N. (2015, March 23). The Chief Justice of Nevada's Supreme Court Says a Decline in Traffic Tickets is Starving His Budget. *The Washington Post*. Retrieved October 12, 2018, from [https://www.washingtonpost.com/blogs/govbeat/wp/2015/03/23/the-chief-justice-of-nevadas-supreme-court-says-a-decline-in-traffic-tickets-is-starving-his-budget/?noredirect=on&utm\\_term=.567b75d4a1f3](https://www.washingtonpost.com/blogs/govbeat/wp/2015/03/23/the-chief-justice-of-nevadas-supreme-court-says-a-decline-in-traffic-tickets-is-starving-his-budget/?noredirect=on&utm_term=.567b75d4a1f3). Whaley, S. (2015, March 22). Drop in Traffic Tickets has Supreme Court Near Broke, Chief Justice Says. *Las Vegas Review Journal*. Retrieved October 12, 2018, from <https://www.reviewjournal.com/local/local-nevada/drop-in-traffic-tickets-has-supreme-court-near-broke-chief-justice-says/>.

<sup>126</sup> Chokshi (2015, March 23); Waley (2015).

<sup>127</sup> Chokshi (2015, March 23); Waley (2015).

traffic tickets.<sup>128</sup> He noted that between 2010 and 2014 there had been a 21% drop in citations.<sup>129</sup>

In addition to asking the legislature to address the budget shortfall, Hardesty discussed the underlying problem.<sup>130</sup> He observed that, “[t]he court encourages the commission of crime so that we have adequate money to operate.”<sup>131</sup> He then stated, “I submit that at some point, maybe the legislature should revisit the manner by which the court is funded and the entire show should be in the state general fund.”<sup>132</sup>

Similar budget shortfalls impacting criminal justice systems have taken place in other jurisdictions. Following Hurricane Katrina, traffic fine revenue drastically dropped in New Orleans.<sup>133</sup> The city public defender budget, which was funded by traffic fines, evaporated and the number of public defenders was slashed from 35 to 10.<sup>134</sup> Not surprisingly, problems abounded in local criminal courts as there were insufficient attorneys to represent indigent defendants.<sup>135</sup>

In addition to revenue instability, researchers have concluded courts and local governments recover a relatively low percent of fines that are assessed.<sup>136</sup> They suggest that court tactics such as imprisonment for unpaid fines and social costs associated with criminal

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<sup>128</sup> Chokshi (2015, March 23); Waley (2015).

<sup>129</sup> Chokshi (2015, March 23).

<sup>130</sup> Chokshi (2015, March 23); Waley (2015).

<sup>131</sup> Chokshi (2015, March 23).

<sup>132</sup> Chokshi (2015, March 23).

<sup>133</sup> Bannon, A., Nagrecha, M., & Diller, R. (2010, p. 30). *The Hidden Costs of Criminal Justice Debt* (Rep.). Retrieved October 12, 2018, from Brennan Center for Justice at New York University School of Law website: [https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Criminal\\_Justice\\_Debt\\_report\\_V8.pdf](https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Criminal_Justice_Debt_report_V8.pdf).

<sup>134</sup> Bannon, Nagrecha, & Diller (2010, p. 30) *The Hidden Costs of Criminal Justice Debt*.

<sup>135</sup> Bannon, Nagrecha, & Diller (2010, p. 30) *The Hidden Costs of Criminal Justice Debt*.

<sup>136</sup> Bastien, A. (2017, March). *Ending the Debt Trap: Strategies to Stop the Abuse of Court-Imposed Fines and Fees* (Rep.). Retrieved October 12, 2018, from PolicyLink website: <http://www.policylink.org/sites/default/files/ending-the-debt-trap-03-28-17.pdf>.

finances can result in a net loss for local government.<sup>137</sup> For example, in New Orleans, researchers concluded that “the amount of revenue generated by fees, fines, and bail costs the city more than it collects.”<sup>138</sup>

### C. Disparate Impact on the Poor and Certain Ethnic Groups

Another major concern associated with funding local government programs through criminal fine revenue is the disproportionate impact that the practice can have on certain ethnic groups and low income populations.<sup>139</sup> Observers assert that the disparate impact is largely driven by law enforcement targeting certain ethnic groups or the poor for minor criminal violations because of bias or because they are simply an easy target.<sup>140</sup> Court fine assessment and collection practices, along with discretionary court rulings, have also been cited as contributing to certain groups being treated overly harsh by the criminal justice system.<sup>141</sup>

In recent years, national leaders have encouraged those that work in the field of criminal justice to engage in “open and honest discussion” and acknowledge “hard truths” about race, bias and past instances involving disparate treatment of certain groups.<sup>142</sup> In the wake of several officer-involved shootings of black men in different communities, former FBI director James B. Comey bluntly stated, “[a]t many points in American history, law enforcement enforced the

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<sup>137</sup> Bannon, A., Nagrecha, M., & Diller, R. (2010). *The Hidden Costs of Criminal Justice Debt*.

<sup>138</sup> Menendez. (2018). Laisne, M., Wool, J., & Henrichson, C. (2017, January). *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* (Rep.).

Retrieved October 12, 2018, from Vera Institute of Justice website: [https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy\\_downloads/past-due-costs-consequences-charging-for-justice-new-orleans.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/past-due-costs-consequences-charging-for-justice-new-orleans/legacy_downloads/past-due-costs-consequences-charging-for-justice-new-orleans.pdf).

<sup>139</sup> Schwartz et al. (2016, pp. 1-2). Shaw & United States (2015, pp. 7-9; 98-108).

<sup>140</sup> Schwartz et al. (2016, pp. 15-16). Shaw & United States (2015, pp. 7-9; 98-108).

<sup>141</sup> Shaw & United States (2015, pp. 106-109).

<sup>142</sup> Comey, J. B. (2015, February 12). *Hard Truths: Law Enforcement and Race*. Speech presented in Georgetown University, Washington, D.C. Retrieved October 13, 2018, from <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

status quo, a status quo that was often brutally unfair to disfavored groups.”<sup>143</sup> Acknowledging past inequitable treatment against different ethnic groups, he suggested that members of law enforcement need to remember this legacy not only to learn from past mistakes, but also to better understand groups who have not forgotten past mistakes.<sup>144</sup>

While concerns about criminal justice activities relative to specific groups are not new, they came to the forefront of the public’s attention in the aftermath of the Ferguson investigation. The Ferguson report asserted that both city law enforcement and the municipal court revenue generating practices were disproportionately aimed at African Americans in comparison to other ethnic groups.<sup>145</sup> The Ferguson report also highlighted disparities in the way that certain groups were treated from the time of the traffic stop or arrest and on into the court process.<sup>146</sup>

The Ferguson investigators concluded that African Americans were more likely to be searched at a traffic stop, more likely to have force used against them, more likely to receive multiple citations at traffic stops, and more likely to be cited with certain offenses in comparison to other ethnic groups in Ferguson.<sup>147</sup> The Ferguson report indicated that at court, African Americans were less likely to get their charges dismissed, more likely to have a warrant issued for their arrest, and more likely to get arrested because of an outstanding warrant.<sup>148</sup> The Department of Justice concluded that the discriminatory practices in Ferguson were unconstitutional and motivated, at least in part, by bias.<sup>149</sup>

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<sup>143</sup> Comey (2015).

<sup>144</sup> Comey (2015).

<sup>145</sup> Shaw & United States (2015, pp. 98-108).

<sup>146</sup> Shaw & United States (2015, pp. 98-108).

<sup>147</sup> Shaw & United States (2015, pp. 98-106).

<sup>148</sup> Shaw & United States (2015, pp. 106-09).

<sup>149</sup> Shaw & United States (2015, p. 110).

Problems identified in the Ferguson report regarding bias and the disparate treatment of the poor and certain ethnic groups in the criminal justice system have been identified in other jurisdictions.<sup>150</sup> One study suggested that the “best indicator that a government will levy an excessive amount of fines is if its citizens are Black.”<sup>151</sup> Another study in California compared the impact of traffic tickets on high and low-income families.<sup>152</sup> The study noted that wealthy offenders typically satisfied their obligations quickly, while financially challenged offenders often missed court dates and payment deadlines. The financially challenged often had to pay additional fees and faced additional consequences such as: “loss of driver license, job loss, wage garnishment, arrest, incarceration, and loss of vehicle to towing and impoundment.”<sup>153</sup> That study further concluded that these additional consequences were most prevalent in “Communities of Color.”<sup>154</sup>

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<sup>150</sup> Bender, A., Bingham, S., Castaldi, M., Piana, E. D., Desautels, M., Herald, M., . . . Zhen, T. (2015, April 20). *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (Rep.). Retrieved October 13, 2018, from Lawyers' Committee for Civil Rights website: <https://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf> . Bingham, S., Castaldi, M., Della-Piana, E., Desautels, M., Dozier, A., Haroontun, K., . . . Zhen, T. (2016, April). *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* (Rep.). Retrieved October 13, 2018, from Lawyers' Committee for Civil Rights website: [http://www.lccr.com/wp-content/uploads/Stopped\\_Fined\\_Arrested\\_BOTRCA.pdf](http://www.lccr.com/wp-content/uploads/Stopped_Fined_Arrested_BOTRCA.pdf). Choudhury, N. (2016, March 18). *Written Statement of the American Civil Liberties Union Before the United States Commission on Civil Rights*. Retrieved October 13, 2018, from American Civil Liberties Union website: [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_statement\\_usccr\\_03182016\\_municipal\\_courts\\_and\\_police\\_choudhury.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_statement_usccr_03182016_municipal_courts_and_police_choudhury.pdf). Harris (2016). Kopf, D. (2016, June 24). *The Fining of Black America*. *Priceonomics*. Retrieved October 13, 2018, from <https://priceonomics.com/the-fining-of-black-america/>.

<sup>151</sup> Kopf (2016).

<sup>152</sup> Bender, A., Calhoun, S., Case, A., Christensen, G., Della-Piano, E., Emanuel, N., . . . Zhen, T. (2017, May 4). *Paying More for Being Poor* (Rep.). Retrieved October 13, 2018, from Lawyers' Committee for Civil Rights website: <https://lccr.com/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017-5.4.17.pdf>.

<sup>153</sup> Bender et. al (2017, p. 3) *Paying More for Being Poor*.

<sup>154</sup> Bender et. al (2017 pp. 3, 9) *Paying More for Being Poor*.

Civil rights advocates, legal groups, the federal government, and judicial organizations have spoken out regarding disparate treatment in the criminal justice system and called for change. In 2016, the U.S. Department of Justice sent letters to state and local courts throughout the nation in an effort to prompt courts to re-evaluate their practices related to fines and ensure that they addressed both “public safety needs” and “the rights of participants in the justice system.”<sup>155</sup> The Justice Department also made grant funds and resources available to state and local jurisdictions to aid them in improving their fine and fee practices.<sup>156</sup>

The National Center for State Courts has brought attention to these issues in the judicial branch. This organization established a task force to assist courts in improving their fine, fee, and bail practices.<sup>157</sup> Among other recommendations, the task force recommended that courts acknowledge that their practices can have a disparate impact on different groups of people.<sup>158</sup> They have urged courts to “adopt policies and follow practices that promote fairness and equal treatment.”<sup>159</sup> They have also provided resources and recommendations to achieve those

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<sup>155</sup> Gupta, V., & Foster, L. (2016, March 14). Dear Colleague Letter [Letter]. U.S. Department of Justice, Washington, D.C.

<sup>156</sup> United States, Department of Justice. (2016, March 14). *Justice Department Announces Resources to Assist State and Local Reform of fine and Fee Practices* [Press release]. Retrieved October 13, 2018, from <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices>.

<sup>157</sup> National Task Force on Fines, Fees and Bail Practices. (2017, December). *Principles on Fines, Fees, and Bail Practices* (Rep.). Retrieved October 13, 2018, from National Center for State Courts website: [https://www.ncsc.org/~media/Files/PDF/Topics/Fines and Fees/Principles-Fines-Fees.ashx](https://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx).

<sup>158</sup> National Task Force on Fines, Fees and Bail Practices (2017).

<sup>159</sup> National Task Force on Fines, Fees and Bail Practices (2017).

goals.<sup>160</sup> Some courts and criminal justice partners have accepted this challenge and implemented various changes.<sup>161</sup>

### **III. Assessing the Viability of Criminal Justice Fine Reform Alternatives**

With many federal and state authorities supportive of efforts to address systemic concerns related to court fines, now is an optimal time for court and government leaders to evaluate and pursue appropriate reform. Leaders willing to take this challenge must assess a variety of potential reform alternatives and garner support to change the status quo. The task is further complicated by the fact that what may work well in one state, may not effectively address concerns in another state. This section reviews a variety of potential reform alternatives, assesses their viability, and makes suggestions for policymakers.

#### **A. Ending Criminal Justice Fines – A Non-Starter**

A straightforward option for addressing problems that arise when courts assess and collect fines and then transfer the revenue to local governments is to simply discontinue monetary sanctions. Proponents of this course of action believe that the criminal justice system and its participants would be better off if courts were not in the business of assessing and collecting fines. While these advocates raise valid concerns about the current monetary sanctions system, throwing out the system is not a viable solution at this time.

Those in favor of abolishing monetary sanctions in criminal and traffic matters believe that the move would be beneficial for several reasons.<sup>162</sup> They do not believe that fines are

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<sup>160</sup> National Task Force on Fines, Fees and Bail Practices (2017).

<sup>161</sup> Cassidy, Megan. “Alameda County Looks to Eliminate Fines, Fees for Defendants.” San Francisco Chronicle, 15 Sept. 2018, [www.sfchronicle.com/crime/article/Alameda-County-looks-to-eliminate-fines-fees-for-13233067.php](http://www.sfchronicle.com/crime/article/Alameda-County-looks-to-eliminate-fines-fees-for-13233067.php).

<sup>162</sup> Beckett & Harris (2011).



effective in accomplishing their intended penological purposes (*i.e.*, incapacitation, rehabilitation, deterrence, or retribution).<sup>163</sup> They assert that fine assessment and collection practices are often implemented in an unfair and unjust manner.<sup>164</sup> They claim that state and local efforts to assess and collect fines have proliferated in recent decades and that they do not actually result in a monetary benefit to the government.<sup>165</sup> They also point out that the current monetary sanction system creates ethical dilemmas for judges and other actors in the criminal justice system.<sup>166</sup> Proponents of abolishing fines also assert that fine obligations often make it difficult for offenders to rehabilitate and become productive members of society.<sup>167</sup>

While those in favor of eliminating fines identify a number of valid concerns associated with court monetary sanctions, it is unlikely that states will pursue such sweeping reform.<sup>168</sup> The current system has a long history in the United States and is supported by positive public perceptions about fines.<sup>169</sup> Studies “suggest that the public overwhelmingly supports the notion that offenders, particularly prisoners, should help pay for the cost of their punishment.”<sup>170</sup> Additionally, many believe that fines actually achieve penological aims of punishment and deterrence.<sup>171</sup>

Government reliance on fines as a revenue stream is another reason why eliminating the current monetary sanction system is not practical for most jurisdictions.<sup>172</sup> In large communities,

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<sup>163</sup> Beckett & Harris (2011, pp. 519-520).

<sup>164</sup> Beckett & Harris (2011, pp. 520-527).

<sup>165</sup> Beckett & Harris (2011, p. 527).

<sup>166</sup> Beckett & Harris (2011, p. 528).

<sup>167</sup> Beckett & Harris (2011, pp 511, 529).

<sup>168</sup> Burch (2011, p. 539). Ruback (2011, p. 569).

<sup>169</sup> Burch (2011, p. 539).

<sup>170</sup> Burch (2011, p. 539).

<sup>171</sup> O’Malley, P. (2011, p. 548). Politicizing the Case for Fines. *Criminology & Public Policy*, 10(3), 547-553.

<sup>172</sup> Burch (2011, p. 540).

court fine revenue is in the millions of dollars and makes up significant portions of local budgets.<sup>173</sup> Even in smaller areas, where collected revenue totals are much lower, some local governments heavily rely on this revenue source.<sup>174</sup> Without new, alternate revenue streams, criminal justice services in many of these communities would decline or be eliminated in the absence of fine revenue.<sup>175</sup>

Eliminating monetary fines for traffic and criminal cases would create new challenges for local governments and courts. Judges attempting to find an appropriate mid-level sanction would lose an arrow in their quiver of potential sanctions.<sup>176</sup> Defendants' assigned alternate sanctions could overwhelm community service programs. Costs required to operate correction facilities could also increase significantly due to higher numbers of incarcerated individuals.

Confronted by tradition, public support for fines, and related challenges, a political push for the abolition of criminal fines is unrealistic at this time. In fact, one scholar in favor of monetary sanction reform suggests that focusing on the goal of eliminating fines would be an unwise strategy as it would deter productive discussion on reform activities that are viable.<sup>177</sup> For these reasons, reform advocates should explore other alternatives to improve the criminal justice system.

#### **B. Small Steps: Training, Ethical Rules, Legal Prohibitions, and Court Administrators**

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<sup>173</sup> Burch (2011, p. 540).

<sup>174</sup> Jones (2016). Kuntz (2015).

<sup>175</sup> Field, D. (2017, May 20). Four Seasons Considering Future of Municipal Court as Revenue Dries. *Lake News Online*. Retrieved October 15, 2018, from <http://www.lakenewsonline.com/news/20170519/four-seasons-considering-future-of-municipal-court-as-revenue-dries>.

<sup>176</sup> Ruback (2011, pp. 569, 572)

<sup>177</sup> Ruback (2011, p. 569).

A number of reform efforts are feasible and would be helpful in addressing current systemic problems with criminal fines. This sub-section sets forth a number of small steps that court and government officials can take, without substantial cost, to address concerns with the ways that court fines are collected and disbursed. These steps include: the adoption of training requirements, reinforcement of ethics rules for government officials, legal prohibitions, and the use of court administrators.

### 1. **Training – A Good Place to Start**

Competence and fairness is promoted in court and government organizations when principled officials and employees are educated and skilled in their responsibilities.<sup>178</sup> Court and government officers and employees have an important obligation to carry out their responsibilities related to monetary sanctions and revenue. They should therefore be provided with specialized training in this area.

This training should be mandatory in jurisdictions where fines are collected by local courts and transferred directly to local government bodies for local use. Training can be accomplished through the enactment of state laws, court rules, and local policies.<sup>179</sup> Attendees at training sessions should gain an awareness of applicable laws, ethical requirements, and the consequences of failing to follow applicable laws and best practices.

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<sup>178</sup> Aldana, B. Z. (2017). Opening Statement. *Case In Point 2017-2018*, 1-43. Nevada Administrative Office of the Courts. (n.d.). Judicial Education Overview. Retrieved October 17, 2018, from [https://nvcourts.gov/AOC/Programs\\_and\\_Services/Judicial\\_Education/Overview/](https://nvcourts.gov/AOC/Programs_and_Services/Judicial_Education/Overview/). Supreme Court Justice Anthony Kennedy stated, “Judicial independence cannot exist unless you have skilled, educated, and principled judges.”

<sup>179</sup> Nevada Administrative Office of the Courts. (n.d.). State of Nevada Judicial Education Requirements. Retrieved October 17, 2018, from [https://nvcourts.gov/AOC/Programs\\_and\\_Services/Judicial\\_Education/Documents/Important\\_Documents/Judicial\\_Education\\_Requirements/](https://nvcourts.gov/AOC/Programs_and_Services/Judicial_Education/Documents/Important_Documents/Judicial_Education_Requirements/).

Training on this subject can take place at either the state or local level. Newly elected or appointed court and government officials are often already required to complete training when they start their new jobs.<sup>180</sup> Court and government workers similarly receive new employee training. These existing training sessions provide courts and local governments with an ideal opportunity to introduce best practices and mandatory requirements related to monetary sanctions and fine revenue. Some jurisdictions have already been proactive in implementing this type of training.<sup>181</sup>

Among other topics, instructors should address the different roles of the three branches of government, appropriate factors for setting court budgets, and permissible considerations for making judicial appointments. Judicial training should include a comprehensive review of best practices for handling court fine issues and ethical obligations. Instructors should also include simulation based training that provides participants with an opportunity to respond to mock scenarios involving criminal fine revenue and ethical issues.<sup>182</sup>

Refresher training on these topics should be provided on a regular basis to ensure ongoing compliance.<sup>183</sup> Many employees and officials can satisfy this training obligation as they complete their professional education requirements. For example, after attending an approved course on the proper handling of fines and fees, a judge should qualify to receive an ethics credit that would count toward any continuing judicial education requirements.

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<sup>180</sup> Nevada Administrative Office of the Courts (n.d.).

<sup>181</sup> Chapman, R. (2017). Providing For the Fair Administration of Justice Through Education. *The Recorder, the Journal of Texas Municipal Courts*, 26(4), 1-32. Retrieved October 17, 2018, from <http://www.tmcec.com/files/8715/0109/7072/Apr.pdf>.

<sup>182</sup> Simon, S. E., & Landsman, M. S. (1995). Judicial Ethics Simulation Based Training. *Law and Contemporary Problems*, 58, 323-336. Retrieved October 18, 2018, from [http://scholarship.law.umn.edu/faculty\\_articles/13](http://scholarship.law.umn.edu/faculty_articles/13).

<sup>183</sup> Rosenblum, E. F. (2007). Judicial Ethics for All: An Expansive Approach to Judicial Ethics Education. *The Justice System Journal*, 28(3), 394-404.

Where in-person training is logistically or financially challenging, officials at the state level should provide training through webinars or other distance learning platforms.<sup>184</sup> State administrators, ethics commissions, or professional education boards should be tasked with overseeing training and documenting completion. Employee training at the local level can be provided and monitored at that level.

## **2. Reinforcing Existing Ethics Laws**

In addition to educating officials and employees about best practices and existing legal requirements, lawmakers should strengthen state ethical requirements for these individuals related to the collection and use of court fine revenue. Judicial ethics rules, as discussed in section II.A, prohibit judges from making revenue generation their focus. Violation of these judicial rules can result in serious consequences for judges. State ethics laws in many states, however, do not clearly address whether government officials and employees are permitted to use their authority and influence to make court fine revenue generation a government priority.

Ethics laws exist for local government leaders and employees in most states.<sup>185</sup> These laws typically prohibit certain conduct, including: the receipt of gifts, using one's position for an unwarranted advantage, self-dealing, accepting compensation from private sources for public duties, using non-public information, suppressing public information, inappropriate use of government resources, attempting to influence a subordinate, using one's position to seek other

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<sup>184</sup> Ruano, T. (2013, October 9). Online Ethics Course for Judicial Candidates Launches. Retrieved October 18, 2018, from <http://www.courts.ca.gov/23733.htm>.

<sup>185</sup> National Conference of State Legislatures. (2017, December 8). State Ethics Commissions: Jurisdiction. Retrieved October 18, 2018, from <http://www.ncsl.org/research/ethics/50-state-chart-state-ethics-commissions-jurisdic.aspx>.

employment, accepting honoraria and entering into certain contracts.<sup>186</sup> Laws also address conflicts of interest, lobbyist activities, personal financial disclosures and campaign requirements.<sup>187</sup> Individuals found in violation of the ethics laws can face civil fines and varying degrees of sanctions ranging from required apologies and additional training requirements up to removal from office or termination of employment.<sup>188</sup>

Absent from many state ethics laws are requirements that officials and employees promote public confidence in government or avoid impropriety or the appearance of impropriety in fulfilling their duties. State ethics laws should be strengthened to prohibit public officers and employees from using their authority or position to suggest that judges, court staff, or law enforcement make fine revenue generation a focus of their work. Ethics laws could further prohibit public officers or employees from evaluating a judge or approving a court budget based on the amount of revenue collected from fines.

The Ferguson report found fault with city officials and administrators for placing pressure on court and law enforcement officials to raise revenue.<sup>189</sup> However, the bulk of the Ferguson Report focused on the wrongdoing of those that were pressured, not on those who provided the pressure.<sup>190</sup> Reinforcing existing ethics laws would provide valuable notice to government officials and employees about the necessity that court fine revenue be handled properly. Reinforcing existing ethics laws as proposed would also result in serious consequences for violations. Finally, the reform step would result in the availability of an independent forum

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<sup>186</sup> Nev. Rev. Stat. Ann. §§ 281A.400-430 (LexisNexis 2018). §§ 105.450-467 R.S.Mo. (LexisNexis 2018).

<sup>187</sup> Nev. Rev. Stat. Ann. §§281A.400-430 (LexisNexis 2018). 105.450-492 R.S.Mo. (LexisNexis 2018).

<sup>188</sup> Nev. Rev. Stat. Ann. § 281A.790 (LexisNexis 2018).

<sup>189</sup> Shaw & United States (2015, p. 3).

<sup>190</sup> Shaw & United States (2015).

where those confronted with unethical conduct in this area could seek assistance from state officials.

Proposed ethics reform would work hand-in-hand with the training requirements suggested above. Government officials and employees in many jurisdictions are provided with ethics guides or manuals when they start their jobs.<sup>191</sup> Many of these individuals are already required to file an acknowledgment form with their state ethics body confirming that they have been informed of ethics laws.<sup>192</sup>

### **3. Criminalizing Misconduct**

In addition to strengthening ethics laws, states should consider establishing criminal penalties for government officials and employees who pressure courts and law enforcement to operate as revenue generators. Lawmakers could enact legislation that prohibits local officials and management-level employees from suggesting or requiring that courts reach a revenue goal or that law enforcement entities issue a certain number of citations. Additionally, legislation could prohibit city officials from using fine revenue as a factor in making decisions about judicial budgets and employment.

The State of Texas has passed legislation that provides a roadmap for other states interested in this reform option. The Texas Transportation Code prohibits local governments from implementing traffic offense quotas for law enforcement officers.<sup>193</sup> Texas law also prevents judges from being evaluated, promoted, compensated, or disciplined based on the

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<sup>191</sup> Nev. Rev. Stat. Ann. § 281A.500 (LexisNexis 2018). Nevada Commission on Ethics. (2014, July). Ethics in Government Manual for Nevada Public Officers and Public Employees: NRS 281A. Retrieved October 19, 2018, from <http://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/Resources/EthicsManual2014.pdf>

<sup>192</sup> Nev. Rev. Stat. Ann. § 281A.500 (LexisNexis 2018).

<sup>193</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

amount of money that their court collects from traffic tickets.<sup>194</sup> The Texas Transportation Code further prohibits government officials from suggesting that judges collect a pre-determined amount of money.<sup>195</sup>

Texas lawmakers were careful to clarify that requests by local governments for court financial information would not violate the law.<sup>196</sup> These legislators were aware that local governments would need information about the costs necessary to operate local courts as part of their budget process. The Texas Transportation Code also specifies that public officials can request that courts provide an estimate of the amount of money that they anticipate that they will collect during the budget year.<sup>197</sup>

States considering this reform option should carefully consider the potential penalties they wish to see imposed for these violations. Violations of the Texas law are considered misconduct and can result in elected officials being removed from office.<sup>198</sup> Non-elected officials can be terminated from their employment for a violation.<sup>199</sup> In other states, misconduct by a public officer is a crime and can result in fines or jail time.<sup>200</sup>

Awareness of these Texas laws is promoted through law enforcement and judicial training programs.<sup>201</sup> News reports indicate that courts and government officials in Texas are

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<sup>194</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

<sup>195</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

<sup>196</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

<sup>197</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

<sup>198</sup> Tex. Transp. Code §720.002 (LexisNexis 2018).

<sup>199</sup> Tex. Transp. Code § 720.002 (LexisNexis 2018).

<sup>200</sup> Nev. Rev. Stat. Ann. §197.110 (LexisNexis 2018).

<sup>201</sup> Arlington Municipal Patrolman's Association. (2016, June 13). The More You Know. Retrieved October 22, 2018, from

[http://ampatx.com/index.cfm?zone=/unionactive/view\\_article.cfm&HomeID=581103](http://ampatx.com/index.cfm?zone=/unionactive/view_article.cfm&HomeID=581103). Holman (2007, p. 6). Texas Municipal Courts Education Center. (2016, December 6, p. 10). *Introduction to the Codes*. Retrieved October 22, 2018, from Texas Municipal Courts Education Center



familiar with these criminal laws and that reported violations are taken seriously. On several occasions, the Texas Department of Public Safety has investigated alleged violations related to traffic citation quotas.<sup>202</sup> In a separate instance, a judge for a small Texas town cited local non-compliance with the law as a reason he stepped down from his position.<sup>203</sup>

As discussed above, a primary problem highlighted in the Ferguson report was the pressure that elected city officials and management-level employees placed on law enforcement and the local court to generate court fine revenue. Had laws similar to the one in Texas, been in place in Missouri, they may have deterred inappropriate behavior and prompted officials to find alternate solutions to budget challenges. If misconduct persisted, media attention and criminal investigations might have helped bring the inappropriate activities to a halt before they spread throughout the municipality.

#### **4. Utilization of Court Administrators**

Another simple step that would aid courts and local governments in the proper fulfillment of their roles and responsibilities is the employment of court administrators. Many larger courts hire administrators that supervise court staff, fulfill administrative responsibilities, and provide leadership on important court-related issues.<sup>204</sup> However, in smaller courts, these functions are

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website: [https://www.tmcec.com/files/2715/1206/1501/00\\_-\\_Riedel\\_BINDER\\_Transportation\\_Code.pdf](https://www.tmcec.com/files/2715/1206/1501/00_-_Riedel_BINDER_Transportation_Code.pdf).

<sup>202</sup> Isaac, J. D. (2018, September 6). Rangers Confirm Citation quota Probe in Mount Enterprise. Retrieved October 22, 2018, from [https://www.news-journal.com/news/police/rangers-confirm-citation-quota-probe-in-mount-enterprise/article\\_b75ffd00-b208-11e8-a1ee-d3b0e5410e44.html](https://www.news-journal.com/news/police/rangers-confirm-citation-quota-probe-in-mount-enterprise/article_b75ffd00-b208-11e8-a1ee-d3b0e5410e44.html).  
Osborne, R. (2016, June 19). Arlington Police Officers Claim Ticket Quotas Used; Department Says Not So. Retrieved October 22, 2018, from <https://www.star-telegram.com/news/local/community/arlington/article84726237.html>.

<sup>203</sup> Mendoza (2015).

<sup>204</sup> National Association for Court Management. (2016). The Court Administrator -- Court Administration: A guide to the Profession. Retrieved October 22, 2018, from

typically handled by judges and court clerks.<sup>205</sup> Courts and local governments will both reap benefits if court administrators are employed to assist with collected fine revenue and court budgets.

The use of court administrators dates back to the 1970s.<sup>206</sup> Today, many court administrators have professional degrees and specialized training that aids them in handling their administrative duties. Judges that work with court administrators are able to focus more of their time on law-related duties and less time on administrative responsibilities. Where employed, court administrators alleviate the need for local judges to frequently interact with local government officials and employees on matters such as fine revenue, court budgets, human resource issues and other administrative matters.<sup>207</sup>

The presence of a court administrator does not remove the possibility of misconduct or ethically questionable behavior. However, the assistance of a court administrator adds a layer of separation between local judges and local officials that helps both branches of government fulfill their responsibilities and maintain their independence.<sup>208</sup> With court administrators responding to court financial inquiries, judges and officials are both insulated from interactions where inappropriate comments about fine revenue might be made and undue pressure might be exerted.

Financial limitations present obstacles for many smaller courts that might benefit from the assistance of a court coordinator. Courts with that challenge should consider partnering with a neighboring court to share the services and costs of a qualified court administrator. Even if a

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[https://nacmnet.org/sites/default/files/publications/Guides/The\\_Court\\_Manual\\_Colorization\\_2016.pdf](https://nacmnet.org/sites/default/files/publications/Guides/The_Court_Manual_Colorization_2016.pdf).

<sup>205</sup> Arizona Judicial Branch. (n.d.). Limited Jurisdiction Courts. Retrieved October 22, 2018, from <https://www.azcourts.gov/guidetoazcourts/Limited-Jurisdiction-Courts>.

<sup>206</sup> National Association for Court Management (2016).

<sup>207</sup> National Association for Court Management (2016).

<sup>208</sup> National Association for Court Management (2016).

court administrator only worked on a part-time basis, it would likely help prevent some of the problems that took place in Ferguson, Missouri.

### **C. Big Steps: Revenue Caps, Day Fines, Decriminalization, and Funding Changes**

States willing to pursue more challenging reform measures to improve the way that fine revenue is collected and disbursed have several options to consider. This section discusses the following alternatives: capping the amount of fine revenue that can be used by local government; implementing day fines; decriminalizing certain offenses; and, modifying the way local courts are funded. While these proposals have the potential to benefit criminal justice systems, they would each require significant political will and resources to implement. As discussed below, the extent to which each proposal might benefit a particular community will likely vary from jurisdiction to jurisdiction.

#### **1. Capping Contributions of Fine Revenue to Local Government**

Several states, including Missouri and Texas, have attempted to address the concern of law enforcement and courts being used as revenue generators by limiting the amount of funds that local governments can receive from local courts.<sup>209</sup> A few states have implemented variations of these laws. In Arkansas and Oklahoma, state officials can stop local police from engaging in traffic enforcement if they determine that the local government is receiving over a certain percent of its revenue from those activities.<sup>210</sup> Under Florida law, if the total traffic citation revenue is greater than thirty-three percent of the total expenditures for a local

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<sup>209</sup> Appleman (2016, pp. 11-12). § 479.359 R.S.Mo. (LexisNexis 2018). Tex. Transp. Code § 542.402 (LexisNexis 2018).

<sup>210</sup> Appleman (2016, p. 12). A.C.A. § 12-8-404 (LexisNexis 2018). 47 Okl. St. § 2-117 (D-E) (LexisNexis 2018).

government, the local government must submit a detailed report regarding its expenditures to a legislative auditing committee.<sup>211</sup>

The State of Missouri has had a revenue cap law for several decades. An examination of Missouri's experience with revenue caps helps illustrate the benefits and drawbacks of this reform option. Missouri's first revenue cap on court funds was known as Macks Creek law.<sup>212</sup> It was passed by the Missouri legislature in 1995. The law was prompted by complaints about the way that small towns like Macks Creek engaged in excessive and improper ticket writing to fund town services.<sup>213</sup> The law initially capped the amount of fine revenue that could be transferred from a court to a local government at forty-five (45) percent of the total revenue collected.<sup>214</sup> Although the law remained in place for many years, the law was not closely monitored and did not provide regulators with adequate enforcement tools.<sup>215</sup>

Deficiencies in Macks law were evident following the Ferguson investigation.<sup>216</sup> Legislative amendments were promptly proposed to strengthen the law.<sup>217</sup> Legislators lowered the revenue cap to twenty (20) percent throughout the state in 2015. Notably, a section of the legislation that reduced the cap to 12.5% for one specific Missouri county was overturned by the Missouri Supreme Court in 2017.<sup>218</sup>

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<sup>211</sup> Fla. Stat. § 316.660 (LexisNexis 2018).

<sup>212</sup> Scott, B. (2016). From Macks Creek to Ferguson: How Illinois Can Learn from Missouri to Prevent Predatory Enforcement Practices by Municipalities. *Southern Illinois University Law Journal*, 40, 513-536.

<sup>213</sup> Scott (2016, pp. 515-517).

<sup>214</sup> Scott (2016, p. 515).

<sup>215</sup> Myers, S. (2016, February 25). *Ferguson: A Financial Ethics Explanation* (Rep.). Retrieved October 25, 2018, from Seven Pillars Institute website: <https://sevenpillarsinstitute.org/ferguson-a-financial-ethics-explanation/>. Scott (2016, pp 516, 530).

<sup>216</sup> Myers (2016). Scott (2016).

<sup>217</sup> § 479.359 R.S.Mo. (LexisNexis 2018). Scott (2016).

<sup>218</sup> *City of Normandy v. Greitens*, 518 South West Reporter 183 (May 16, 2017).

Under the current law, Missouri political subdivisions determine “the percentage of [their] annual general operating revenue received from fines, bond forfeitures, and court costs for minor traffic violations.”<sup>219</sup> Funds collected by courts that exceed the cap are routed to the Missouri Department of revenue.<sup>220</sup> That excess revenue is used to fund public education within the state.<sup>221</sup>

The Missouri experience with revenue caps suggests that the reform measure requires sufficient enforcement resources and meaningful penalties to be successful. Media reports suggest that prior to the Ferguson investigation, state officials did little to monitor and enforce Macks law.<sup>222</sup> Recent comments from local leaders indicate that Missouri communities are now well aware of the updated revenue cap law and that it has prompted changes in police strategies.<sup>223</sup> It also appears that state regulators are keeping a closer eye on local governments to ensure compliance with legal requirements.<sup>224</sup>

One of the most challenging decisions faced by lawmakers considering this option is the level at which to set the revenue cap. Lawmakers in Missouri sought to establish a cap that would alter local government behavior but not completely cripple communities that relied on fine revenue. The initial cap established by Macks law in 1995 had little impact on most

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<sup>219</sup> § 479.359 R.S.Mo. (LexisNexis 2018).

<sup>220</sup> § 479.359 R.S.Mo. (LexisNexis 2018).

<sup>221</sup> § 479.359 R.S.Mo. (LexisNexis 2018).

<sup>222</sup> Frankel, T. C. (2010, September 15). Missouri's First Official Speed-trap Town Fingered in Audit. *St. Louis Post-Dispatch*. Retrieved October 25, 2018, from [https://www.stltoday.com/news/local/missouri-s-first-official-speed-trap-town-fingered-in-audit/article\\_19e8a57e-c04c-11df-89fe-00127992bc8b.html](https://www.stltoday.com/news/local/missouri-s-first-official-speed-trap-town-fingered-in-audit/article_19e8a57e-c04c-11df-89fe-00127992bc8b.html).

<sup>223</sup> Kohler, J. (2018, April 23). Traffic Enforcement, Court Collections Continue to Drop in Post-Ferguson Era. *St. Louis Post-Dispatch*. Retrieved October 25, 2018, from [https://www.stltoday.com/news/local/crime-and-courts/traffic-enforcement-court-collections-continue-to-drop-in-post-ferguson/article\\_e289b576-7d5d-5b1e-a5ab-676561c1a848.html](https://www.stltoday.com/news/local/crime-and-courts/traffic-enforcement-court-collections-continue-to-drop-in-post-ferguson/article_e289b576-7d5d-5b1e-a5ab-676561c1a848.html).

<sup>224</sup> Missouri Department of Revenue. (n.d.). Excess Traffic Fines. Retrieved October 25, 2018, from <https://dor.mo.gov/business/citycounty/traffic-fines.php>.

communities. Conversely, the updated Missouri revenue cap law has created significant challenges for many communities.<sup>225</sup> At least one local Missouri court location has been closed and police agencies have experienced reductions or disbanded due to revenue reductions.<sup>226</sup>

Critics of revenue cap reform contend that the laws are overinclusive. They believe that they penalize all of the communities in a state because of a few bad apples.<sup>227</sup> Some officials suggest that reduced numbers of law enforcement officers will result in increased incidents of dangerous driving and other unlawful behavior.<sup>228</sup> Another observer suggests that while revenue cap laws are well intended, they are a “superficial solution.”<sup>229</sup> That individual suggests that a “...better solution may be instead to address the imbalance of power in the financial, racial, and government sectors of the community.”<sup>230</sup>

Decision makers considering the possibility of a revenue cap should review local budgets and local court revenue to determine how much of their funding comes from their local court. While a revenue cap level in one jurisdiction might have a major impact on a community in one state, it might not have any impact in another. One report from Colorado suggests that over half of one town’s budget is funded by court fines.<sup>231</sup> Another report, prepared by the U.S. Commission on Civil Rights, highlighted numerous cities that received significant portions of their revenue from fines and fees.<sup>232</sup> On the other hand, a review of financial information from

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<sup>225</sup> Kohler (2018).

<sup>226</sup> Field (2017). Village of Four Seasons. (n.d.). Village of Four Seasons Municipal Court. Retrieved October 25, 2018, from <https://villageoffourseasons.com/index.php/pages/municipal-court>. Kohler (2018).

<sup>227</sup> Field (2017).

<sup>228</sup> Kohler (2018).

<sup>229</sup> Myers (2016).

<sup>230</sup> Myers (2016).

<sup>231</sup> Kuntz (2015).

<sup>232</sup> U.S. Commission on Civil Rights. (2017). *Targeted Fines and Fees Against Communities of Color* (pp. 1-228, Rep.). Washington, D.C.

cities in the State of Nevada indicates that fine revenue did not exceed 4% for any of the cities in 2016.<sup>233</sup>

## 2. Day Fines

Some critics of American criminal fine practices have suggested that the current system should be replaced with one similar to the “day fine” systems used in some European and Latin American countries.<sup>234</sup> In recent years, a number of academic articles and media reports have argued that day fine systems will help address a number of criminal justice concerns. Jurisdictions in the United States, however, have not been quick to jump on the day fine bandwagon.

Unlike most American courts which utilize set fines for many offenses, day fine systems result in variable fines that are usually tied to the offender’s daily income.<sup>235</sup> Courts utilizing day fines “set the sentence at a certain number of fine units...reflecting the degree of punishment the judge deems appropriate for the gravity of the criminal behavior.”<sup>236</sup> Judges then “determine the monetary value of each fine unit, basing this decision on the individual’s economic circumstances.”<sup>237</sup> Violators are required to pay the court that share of their daily income as the penalty for their offense.<sup>238</sup>

Although day fine systems vary from country to country, they share a key commonality.<sup>239</sup> Court officials utilizing day fines in these countries are typically able to obtain

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<sup>233</sup> See Appendix A. Note: A few smaller Nevada cities were omitted from the table because financial information could not be located online.

<sup>234</sup> Beckett & Harris (2011 p. 528).

<sup>235</sup> Schwartztol (2016, p. 19).

<sup>236</sup> Hillsman (1990, p. 76).

<sup>237</sup> Hillsman (1990, p. 76).

<sup>238</sup> Hillsman (1990, p. 77).

<sup>239</sup> Hillsman (1990, p. 77).

information about offender employment and income from government sources and through court inquiry.<sup>240</sup> Officials appear to have a high degree of confidence in the collected data used to set fine amounts.<sup>241</sup> Advocates of day fine systems like the fact that the systems give judges little discretion in setting fine amounts, work on a sliding scale, and take each defendant's financial status into consideration.<sup>242</sup> They consider fines assessed under this approach to be more fair and equitable than traditional fine assessments that are based strictly on the gravity of the offense.<sup>243</sup> One day fine proponent highlighted the impact that set fines can have on people in different economic groups stating: “[t]he flat fine threatens poor people with financial ruin while letting rich people break the law without meaningful repercussions.”<sup>244</sup>

Day fine proponents believe that “[e]quity requires punishment that is equally felt.”<sup>245</sup> They assert that tailoring fines to impact offender pocketbooks results in greater deterrence and helps keep offenders out of prison who cannot afford to pay fines.<sup>246</sup> They also contend that because day fines “are better scaled to offenders’ ability to pay, they may be paid more often and more fully.”<sup>247</sup> Some day fine advocates in the United States predict that implementation of that system will result in higher fine collection rates, fewer compliance problems for courts, and

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<sup>240</sup> Hillsman (1990, p. 77).

<sup>241</sup> Hillsman (1990, p. 77-82).

<sup>242</sup> Beckett & Harris (2011 pp. 513-15).

<sup>243</sup> Hillsman (1990, p. 82); Schierenbeck, A. (2018, March 15). A Billionaire and a Nurse Shouldn't Pay the Same Fine for Speeding. *The New York Times*. Retrieved October 25, 2018, from <https://www.nytimes.com/2018/03/15/opinion/flat-fines-wealthy-poor.html>.

<sup>244</sup> Schierenbeck (2018).

<sup>245</sup> Schierenbeck (2018).

<sup>246</sup> Schierenbeck (2018).

<sup>247</sup> Greene, J., & Worzella, C. (1992, April). *Day Fines in American Courts: The Staten Island and Milwaukee Experiments* (Rep.). Retrieved October 25, 2018, from National Criminal Justice Reference Service website: <https://www.ncjrs.gov/pdffiles1/Digitization/136611NCJRS.pdf>.



decreased costs to the court system.<sup>248</sup> Proponents also anticipate that day fine systems will help deter police from targeting certain groups and the poor because citations issued to those groups will not generate significant revenue.<sup>249</sup>

A significant number of surveyed judges in the United States recognize potential benefits in day fine systems and are open to experimenting with the concept.<sup>250</sup> However, day fines have not gained popularity in the United States.<sup>251</sup> Some attribute lack of interest in day fine reform to an American “tough on crime” mentality.<sup>252</sup> There is also a feeling among many Americans that if two individuals commit the same crime, there should be equal punishment. In other words, one person should not have to pay a higher fine for committing the same crime because the person is employed or has a bigger savings account.<sup>253</sup> There is also a concern that day fine systems that are intended to help poor offenders do not benefit victims. They believe that day

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<sup>248</sup> Zedlewski, E. W. (2010, April). *Alternatives to Custodial Supervision: The Day Fine* (Rep.). Retrieved October 25, 2018, from National Institute of Justice website: <https://www.ncjrs.gov/pdffiles1/nij/grants/230401.pdf>.

<sup>249</sup> Taylor, A. (2016, July 22). Want Police Reform? Charge Rich People More for Speeding Tickets. *The Guardian*. Retrieved October 25, 2018, from <https://www.theguardian.com/commentisfree/2016/jul/22/police-reform-speeding-tickets-higher-fines-for-wealthy>.

<sup>250</sup> Hillsman (1990, p. 82).

<sup>251</sup> Colgan, B. A. (2017). Graduating Economic Sanctions According to Ability to Pay. *Iowa Law Review*, 103, 53-112. Retrieved October 25, 2018, from <https://ilr.law.uiowa.edu/assets/Uploads/ILR-103-1-Colgan.pdf>.

<sup>252</sup> Pinsker, J. (2015, March 12). Finland, Home of the \$103,000 Speeding Ticket. *The Atlantic*. Retrieved October 25, 2018, from

<https://www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/>. Rosenberg, T. (2015, October 9). Instead of Jail, Court Fines Cut to Fit the Wallet. *The New York Times*. Retrieved October 25, 2018, from

<https://opinionator.blogs.nytimes.com/2015/10/09/scaling-fines-to-what-offenders-can-pay/>.

<sup>253</sup> Arnett, G. (2015, March 4). €54,000 Fine for Speeding? Doing the Maths on 'Progressive Punishment'. *The Guardian*. Retrieved October 25, 2018, from <https://www.theguardian.com/news/datablog/2015/mar/04/finland-speeding-progressive-punishment-motorist-fine>. Zedlewski (2010, p.).

fine systems could result in higher instances of criminal offenses in some areas in comparison to others because of differing potential fines.<sup>254</sup>

Day fine pilot programs have been attempted in the United States in recent decades with limited success.<sup>255</sup> At least three states, Alabama, Alaska, and Oklahoma, have enacted laws that permit the use of day fines.<sup>256</sup> However, interest in these programs has not been significant. Additional examples of successful pilot programs will be necessary to spark serious American interest in day fines.

A number of additional obstacles to implementing day fines have been identified in the United States.<sup>257</sup> Defendant employment and income information is not as readily accessible for court officials as it seems to be in other countries that utilize day-fines.<sup>258</sup> Self-reported income by defendants is unreliable.<sup>259</sup> Additionally, some are concerned that implementation of day-fine systems will result in additional costs and lower fine revenue that supports existing programs.<sup>260</sup> Some believe that existing coercive efforts to collect set fines are effective and necessary in order to obtain payment from defendants who could pay, but will avoid doing so if possible.<sup>261</sup> State limitations on maximum fine amounts present an additional barrier to effective day fine

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<sup>254</sup> Pinsker (2015).

<sup>255</sup> Greene & Worzella (1992). Hillsman (1990, pp. 82-94). Kantorowicz-Reznichenko, E. (2018). Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend. *American Criminal Law Review*, 55, 333-372. Retrieved October 25, 2018, from <https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2018/04/55-2-Day-Fines-Reviving-the-Idea-and-Reversing-the-Costly-Punitive-Trend.pdf>.

<sup>256</sup> Zedlewski (2010, p. 6).

<sup>257</sup> Zedlewski (2010, p. 9).

<sup>258</sup> Zedlewski (2010, p. 9).

<sup>259</sup> Zedlewski (2010, p. 9).

<sup>260</sup> Greene & Worzella (1992, p. 77).

<sup>261</sup> Zedlewski (2010, p. 8).

systems.<sup>262</sup> Existing laws prohibit a court from assessing a billionaire with a million dollar fine in the United States for a criminal or traffic violation.

A number of scholars and public policy groups continue to encourage officials to consider day fines as a viable reform alternative.<sup>263</sup> They believe that use of this type of monetary sanction system would quiet claims that courts are inequitable and unfair in assessing and collecting fines and fees. Although the widespread adoption of day fines in the United States is unlikely anytime soon, aspects of the concept can be utilized by courts with minimal effort.

Judges often have discretion in setting fine amounts. They should gather basic information during the sentencing process, appoint public defenders where appropriate, consider whether defendants have means to pay a fine, discuss whether other fines are owed in other courts, and review obstacles to satisfying fine assessments.<sup>264</sup> After tailoring sentencing requirements in individual cases, courts should look for ways to help defendants be successful in satisfying their requirements.<sup>265</sup> Courts should set up payment plans, consider alternatives to fine payments such as community service, lower fines or waive fines where appropriate, and follow other best practices outlined by national and state judicial experts.<sup>266</sup> Implementing these

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<sup>262</sup> Zedlewski (2010, p. 9).

<sup>263</sup> Kantorowicz-Reznichenko (2018). Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend. Kantorowicz-Reznichenko, E. (2015). Day-Fines: Should the Rich Pay More?. *Review of Law and Economics*, 11(3), 481–501. doi:10.1515/rle-2014-0045.

<sup>264</sup> Pepin, A. W. (2016). *The End of Debtors' Prisons: Effective Court Policies for Successful Compliance with Legal Financial Obligations* (Rep.). Retrieved October 26, 2018, from Conference of State Court Administrators website: [https://www.ncsc.org/~media/microsites/files/cosca/policy\\_papers/end-of-debtors-prisons-2016.ashx](https://www.ncsc.org/~media/microsites/files/cosca/policy_papers/end-of-debtors-prisons-2016.ashx).

<sup>265</sup> Pepin (2016).

<sup>266</sup> Pepin (2016).

suggestions will improve administrative efficiency and enhance fairness in the criminal justice process.

### 3. Decriminalizing Certain Criminal and Traffic Offenses

Another reform option that some states have pursued is the decriminalization of certain traffic and misdemeanor criminal offenses.<sup>267</sup> The idea of decriminalization has been increasingly popular with both sides of the political spectrum because it promises to reduce or eliminate many of the collateral consequences that defendants experience as a result of petty offenses.<sup>268</sup> Decriminalization also has the potential to reduce government expenditures associated with the criminal justice system, including jail costs.<sup>269</sup> Some believe decriminalization holds promise as means for reducing the disparate treatment of the poor and certain ethnic groups by law enforcement.<sup>270</sup> As with other reform experiments, lawmakers must be cautious to ensure that decriminalization measures actually improve the status quo.

Decriminalization laws can be divided into two categories. Some laws “fully decriminalize” by taking what was formerly a criminal offense and making it legal.<sup>271</sup> For example, some states have “fully decriminalized” low-level marijuana possession for

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<sup>267</sup> Natapoff, A. (2015, p. 1069). Misdemeanor Decriminalization. *Vanderbilt Law Review*, 68, 1055-1116. Woods, J. B. (2015). Decriminalization, Police Authority, and Routine Traffic Stops. *UCLA Law Review*, 62, 672-759.

<sup>268</sup> Hartig, H., & Geiger, A. (2018, October 8). *About Six-in-Ten Americans Support Marijuana Legalization* (Rep.). Retrieved October 27, 2018, from Pew Research Center website: <http://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>. Natapoff (2015, pp. 1071-77).

<sup>269</sup> Hartig, H., & Geiger, A. (2018, October 8). *About Six-in-Ten Americans Support Marijuana Legalization* (Rep.). Retrieved October 27, 2018, from Pew Research Center website: <http://www.pewresearch.org/fact-tank/2018/10/08/americans-support-marijuana-legalization/>. Natapoff (2015, pp. 1071-77).

<sup>270</sup> Natapoff (2015, p. 1075). Woods (2015, p. 740).

<sup>271</sup> Natapoff (2015, pp. 1065-69).

recreational use.<sup>272</sup> Other laws only “partially decriminalize.”<sup>273</sup> These efforts result in the reclassification of offenses and adjustment of penalties. Some states have partially decriminalized laws by enacting specific limits on fines, removing jail time as a potential consequence for offenses, or converting offenses from criminal to civil violations.<sup>274</sup>

The full decriminalization of petty offenses is the favored approach among many reform advocates as it reduces interaction between the criminal justice system and low level offenders and eliminates negative collateral consequences that occur when fines are unpaid and court dates are missed.<sup>275</sup> When behavior is fully decriminalized, court fine revenue will decrease. However, law enforcement and courts may also experience reductions in operational costs due to reductions in citations and court cases. The biggest question lawmakers and the public must consider as they debate full decriminalization is whether they are comfortable legalizing something that has been illegal.

Much of the current decriminalization debate in the United States is in the area of partial decriminalization.<sup>276</sup> Although this form of decriminalization has gained popularity, it has potential pitfalls. When partial decriminalization takes place, potential penalties are reduced, but individuals may end up with fewer due process protections.<sup>277</sup> For example, an indigent defendant facing the possibility of incarceration would qualify for representation by a public

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<sup>272</sup> Hartig & Geiger (2018).

<sup>273</sup> Natapoff (2015, pp. 1067-69).

<sup>274</sup> Solis, J. (2018, August 28). One Step Closer to Decriminalizing Traffic Tickets. *Nevada Current*. Retrieved October 27, 2018, from <https://www.nevadacurrent.com/2018/08/28/one-step-closer-to-decriminalizing-traffic-tickets/>. Woods (2015, pp. 698-99).

<sup>275</sup> Natapoff (2015, pp. 1069-69).

<sup>276</sup> Natapoff (2015).

<sup>277</sup> Natapoff (2015, pp. 1082-86). Neyfakh, L. (2015, February 17). Does Decriminalization Work? *Slate*. Retrieved October 27, 2018, from <https://slate.com/news-and-politics/2015/02/decriminalization-why-reducing-the-punishments-for-misdemeanors-doesnt-necessarily-make-the-criminal-justice-system-fairer.html>.

defender.<sup>278</sup> Unless the indigent defendant voluntarily waives the right to counsel, the defendant has the assistance of a licensed attorney through the court process. Courts, however, are not required to appoint counsel to indigent defendants if jail time is not a potential outcome in a criminal matter.<sup>279</sup>

When partial decriminalization takes place, offenders may still face harsh penalties, including jail time, if they are not compliant in satisfying their original case requirements.<sup>280</sup> For example, a defendant might face a contempt hearing as a result of non-compliance with case requirements.<sup>281</sup> Scholars suggest that partial decriminalization can actually “widen the net” that brings people into the criminal justice system.<sup>282</sup> They further suggest that partial decriminalization can increase the likelihood that local governments will be tempted to use defendants as a source of revenue.<sup>283</sup>

Notwithstanding these pitfalls, partial decriminalization can still achieve positive goals if safeguards are taken.<sup>284</sup> These safeguards include: removing arrest as an option for the petty offense, removing incarceration as a consequence for not paying a fine, and avoiding the creation of a criminal record for the minor offense.<sup>285</sup> Many of the current efforts aimed at converting traffic offenses from criminal offenses to civil infractions satisfy these safeguards. Some states,

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<sup>278</sup> *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963). *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158 (1979).

<sup>279</sup> *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158 (1979).

<sup>280</sup> Natapoff (2015, pp. 1078-82). Neyfakh (2015).

<sup>281</sup> Nev. Rev. Stat. Ann. § 22.010 (LexisNexis 2019).

<sup>282</sup> Natapoff (2015, pp. 1094-98). Neyfakh (2015).

<sup>283</sup> Natapoff (2015, pp. 1098-1102).

<sup>284</sup> Natapoff (2015, pp. 1109-1114).

<sup>285</sup> Natapoff (2015, pp. 1109-1114).

including Massachusetts, have exercised significant care to avoid negative collateral consequences as they have decriminalized some of their laws.<sup>286</sup>

A number of states have converted most of their traffic violations from criminal to civil offenses and other states are following suit.<sup>287</sup> Where minor offenses are treated through non-criminal forums, bench warrants are no longer issued for individuals that fail to appear at court. In these jurisdictions, criminal courts are no longer responsible for collecting outstanding fines or imposing consequences, such as jail time, for violators who refuse to pay their fines or perform approved alternatives. Rather, when civil judgments are obtained in these states and fines are not voluntarily paid, local governments pursue legal means to execute the judgments such as imposing liens, attaching wages and seizing property .

Those in favor of decriminalizing traffic tickets emphasize the detrimental impact that harsh penalties can have on the poor. They assert that this group is the least prepared to deal with court proceedings and fines.<sup>288</sup> They contend that the poor will be less likely to struggle with child care arrangements, face employment challenges, housing, and other day-to-day challenges if low-level violations are handled through a non-criminal process.<sup>289</sup> These advocates believe that through a civil court process, the government still has the ability to hold offenders accountable, but through a system that is less harsh.

Moving minor offenses out of the criminal courts reduces costs and responsibilities for courts and other criminal justice partners. Numerous bench warrants are issued each day in courts for individuals who fail to appear at traffic court hearings. Court staff and criminal justice employees spend countless hours issuing warrants, arresting people on warrants, removing bench

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<sup>286</sup> ALM GL ch. 277, § 70C (LexisNexis 2018). Neyfakh (2015).

<sup>287</sup> Natapoff (2015, p. 1070).

<sup>288</sup> Neyfakh (2015).

<sup>289</sup> Neyfakh (2015).

warrants from computer systems, handling bail transactions, and transporting arrestees to and from court. Decriminalization also reduces costs for prosecutors and public defenders.<sup>290</sup> While local governments still require legal representation in civil proceedings, defendants would no longer be eligible for legal representation at a cost passed along to the public.

Decriminalizing traffic and petty criminal offenses would reduce the likelihood that local officials would pressure courts to generate revenue to fund local government. Under a civil court process, judges would still be involved in determining whether a defendant violated the law and was obligated to pay a judgment. However, courts would have minimal involvement with fine collection. Criminal courts would retain their duties of collecting fines in more serious criminal matters, but local governments would bear the responsibility of collecting fine revenue owed from civil judgments. Under this system, city officials would likely see little benefit in approaching court staff or a judge about the need to increase fine revenue.

While positive systemic change could result from partial decriminalization, changing long standing practices without careful consideration could result in huge financial challenges for local governments. In one Nevada county, officials suggested that up to \$33 million in fine and fee revenue would “disappear” under a decriminalization law that had been proposed.<sup>291</sup> While local governments might see some reductions in costs due to partial decriminalization, there would be increases in other areas. For example, local governments would need to invest funds and resources to facilitate increased numbers of civil filings and the collection of judgments.

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<sup>290</sup> Neyfakh (2015).

<sup>291</sup> Dehaven, J. (2017, December 21). Do Traffic Tickets Unfairly Hurt the Poor? Nevada Lawmakers Eyeing Traffic Law Reforms. *Reno Gazette Journal*. Retrieved October 27, 2018, from <https://www.rgj.com/story/news/politics/2017/12/21/do-traffic-tickets-unfairly-hurt-poor-nevada-lawmakers-again-eyeing-traffic-law-reforms-despite-city/975423001/>.



Lawmakers must also weigh criminogenic concerns as they consider decriminalization. Reducing penalties for minor violations could result in increased violations. Some worry that without the possibility of jail time or court consequences, judgment-proof debtors will skip court dates without fear of reprisal.<sup>292</sup> The concern was recently expressed in Missouri that new, lenient laws have “defanged” local courts, that violators ignore court dates, and that they are not held accountable for unlawful behavior.<sup>293</sup> Additionally, because decriminalization laws aim to reduce the “arrest to incarceration pipeline”, a number of serious criminals will undoubtedly avoid detection if low level laws are decriminalized.<sup>294</sup>

Lawmakers should keep a final set of potential pitfalls in mind as they consider reform options associated with “net-widening” and “revenue trap” concerns. Shifting petty violations from criminal to civil violations reduces the burden of proof that the government must establish to prove its case.<sup>295</sup> Violations of civil cases must meet a “preponderance of the evidence” standard. The preponderance of the evidence standard equates to “more likely than not” and is significantly lower than the “beyond a reasonable doubt standard” required in criminal cases.<sup>296</sup> Thus, civil violations are easier for the government to prove and more difficult for citizens to contest. If violations become easier to prove, there is a concern that more citations will be issued with the goal of generating revenue.<sup>297</sup>

Additionally, decriminalizing minor violations may result in it becoming more difficult for some offenders to resolve their cases. Courts often have considerable flexibility setting

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<sup>292</sup> Kansas City Star Editorial Board. (2018, July 8). There's No Punishment for Not Showing up to Court: How Missouri Defendants Get Off Easy. Kansas City Star. Retrieved October 29, 2018, from <https://www.kansascity.com/opinion/editorials/article214329034.html>.

<sup>293</sup> Kansas City Star Editorial Board (2018).

<sup>294</sup> Natapoff (2015, p. 1078). Woods (2015, pp. 742-743).

<sup>295</sup> Natapoff (2015, p. 1078).

<sup>296</sup> Natapoff (2015, p. 1078).

<sup>297</sup> Natapoff (2015, pp. 1098-1102). Neyfakh (2015).

payment plans and considering alternatives to fines, such as community service. Unless this flexibility is built into new laws, violators may lose some of their existing options for promptly resolving their cases.

As courts, lawmakers, and policy advocates consider full and partial decriminalization, there are multiple options to improve the status quo. However, careful consideration is needed to ensure that laws are not simply “repackag[ing] punishment.”<sup>298</sup> Legislation that provides consequences for low level offenses, but avoids arrest, incarceration, and criminal records holds promise for improving criminal justice systems under certain circumstances.<sup>299</sup>

#### **4. Recalibrating Court Funding Sources & Fine Distribution Processes**

Another option for court and government leaders wishing to improve their criminal justice systems is to adjust the way that courts are funded and fines are collected and disbursed to local governments. This sub-section discusses the idea of funding all of the courts within a state using state general fund dollars. The sub-section also reviews the suggestion of having court fine revenue sent to a central state fund before being dispersed to local governments on a per capita or other equitable basis. Finally, it explores the benefits and drawbacks of outsourcing court fine collection to a state agency that specializes in collecting outstanding debt to the government.

##### **a) Funding Local Courts through the State General Fund**

Local courts within states are typically created by way of state constitutions.<sup>300</sup> These local courts receive funding one of three ways ways. Some courts are funded through state

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<sup>298</sup> Neyfakh (2015).

<sup>299</sup> Natapoff (2015, pp. 1109-1114).

<sup>300</sup> Carlson, A., Harrison, K., & Hudzik, J. K. (2008, September). *Adequate, Stable, Equitable, and Responsible Trial Court Funding: Reframing the State vs. Local Debate* (Rep.). Retrieved

general funds, some are funded by local governments, and some receive funding from both state and local sources.<sup>301</sup> In jurisdictions that do not fund their courts through the state general fund, shifting the funding procedure to that model may result in a number of positive benefits to criminal justice systems.

Many of the states that fund their courts via a state budget method have made that adjustment as part of a larger state court unification process.<sup>302</sup> Court unification typically involves some degree of court consolidation, centralization of administrative support for the courts, and the adoption of uniform court rules.<sup>303</sup> This process aims to promote greater efficiency and uniformity in court practices.<sup>304</sup> Court fines collected in unified systems are sent to the state general fund.<sup>305</sup>

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October 29, 2018, from U.S. Department of Justice website:

<https://www.ncjrs.gov/pdffiles1/nij/grants/223973.pdf>.

<sup>301</sup> Hall, D. J. (2017, July/August). Funding Justice. *The Council of State Governments*.

Retrieved October 29, 2018, from

[https://www.csg.org/pubs/capitolideas/2017\\_mar\\_apr/court\\_funding.aspx](https://www.csg.org/pubs/capitolideas/2017_mar_apr/court_funding.aspx). Zemans, F. K. (2003, August). *Court Funding* (Rep.). Retrieved October 29, 2018, from American Bar Association website:

[https://www.americanbar.org/content/dam/aba/administrative/judicial\\_independence/court\\_funding\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/judicial_independence/court_funding_authcheckdam.pdf). Carlson, Harrison & Hudzik (2008).

<sup>302</sup> Conference of State Court Administrators. (2012). *The 2012 Budget Survey of State Court Administrators* (Rep.). Retrieved October 31, 2018, from Conference of State Court website:

[https://www.ncsc.org/~media/Files/PDF/Information and Resources/Budget Resource Center/COSCA Budget Survey Summary 2012 with Tables.ashx](https://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/COSCA%20Budget%20Survey%20Summary%202012%20with%20Tables.ashx). National Center for State Courts. (n.d.). Court Unification State Links. Retrieved October 31, 2018, from

<https://www.ncsc.org/topics/court-management/court-unification/state-links.aspx>. Ortega, C. (2009, Winter). The Long Journey to State Funding. *California Courts Review*. Retrieved October 31, 2018, from <http://www.courts.ca.gov/partners/documents/TCFWG19-TheRoadtoIndependenceAHistoryofTrialCourtFunding-2009.pdf>. Zemans (2003).

<sup>303</sup> Raftery, W. E. (2016, May). *Judicial Unification and Its Impact on Efficiency* (Rep.).

Retrieved October 31, 2018, from Institute for Court Management website:

[https://www.ncsc.org/~media/Files/PDF/Education and Careers/CEDP Papers/2016/Judicial Unification and Its Impacts on Efficiency.ashx](https://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2016/Judicial%20Unification%20and%20Its%20Impacts%20on%20Efficiency.ashx).

<sup>304</sup> Raftery (2016).

<sup>305</sup> Schwartz et al. (2016, p. 12). Zemans (2003).

Funding court budgets at the state level promotes the principle that the judiciary is an independent and equal branch of government.<sup>306</sup> The practice also helps alleviate many concerns that exist when courts assess and collect fines that are then disbursed directly to local governments.<sup>307</sup> A state funding model creates distance between courts and local leaders. Judges and local leaders have no need to discuss court budget issues under this model as the budget is controlled at the state level through a streamlined legislative process. Because fines are sent to the state in these systems, local leaders have little incentive to promote court fine revenue goals or policing-for-profit.

Another benefit of a state funded court system is that it may reduce local challenges associated with reliance on an unstable fine revenue stream. Collected court fines can vary significantly from year to year. In a system that fully funds courts with state dollars, local governments are unburdened from costs associated with operating courts. Local leaders are also freed from challenges that accompany the obligation of providing services from an inconsistent funding source.

Another benefit of a state funded court system is the potential for more consistent and adequate distribution of resources to the judiciary throughout an entire state.<sup>308</sup> Some have suggested that state funding helps “equalize justice within the states...”<sup>309</sup> In more localized systems, courts in one part of a state might be well-taken care of while courts in another might be neglected. While it may prove challenging initially to achieve equity from one geographic area to another, gradual steps can be made to create greater consistency in the distribution of resources and services.

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<sup>306</sup> Zemans (2003).

<sup>307</sup> Kachmar & Pugliese (2018).

<sup>308</sup> Zemans (2003).

<sup>309</sup> Zemans (2003, p. 4).

While a number of states have taken steps to unify their courts and adjust court funding, others have not for a variety of reasons. Local jurisdictions are resistant to change that will result in revenue loss. Altering the way that courts are funded may also decrease local control of court programs, reduce the ability of the local court to respond to community problems, and reduce innovative solutions.<sup>310</sup>

Even if a state were to agree to fund the costs of the courts throughout a state, a great amount of negotiation would be required to determine exactly what services and expenses are covered by the state versus those that should be covered by the local government.<sup>311</sup> For example, states and local governments may hotly contest who is responsible for funding costly court buildings. Moving funding responsibility from the local to the state level shifts a budget challenge from one legislative body to another.<sup>312</sup> This can result in courts being underfunded. Near the turn of the century, one state court system received \$40 million less than it had requested from the state legislature.<sup>313</sup>

States considering whether to modify the way they fund their courts also have to determine whether to retain unspent fine revenue for use by the court or to spend the money elsewhere.<sup>314</sup> Additionally, politics at the state level can negatively impact the funding approved

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<sup>310</sup> Zemans (2003).

<sup>311</sup> Zemans (2003).

<sup>312</sup> Carlson, Harrison & Hudzik (2008). McGovern & Greenberg (2014, p. 55). Zemans (2003).

<sup>313</sup> Zemans (2003).

<sup>314</sup> McGovern & Greenberg (2014, p. 39).

for courts.<sup>315</sup> For example, in California the state legislature reduced funding for courts after the California Supreme Court upheld a term-limits law.<sup>316</sup>

Changing the way that courts are funded is a monumental task that requires public support, political will, years of planning, and careful implementation.<sup>317</sup> States interested in pursuing this option should consider implementing this reform through several phases. As an initial step, states might focus on unifying the courts at the general jurisdiction level and then adding the limited jurisdiction courts.

**b) Re-considering the Direct Court-to-Local Government Fine Disbursement**

For states not ready to ready or willing to fund their courts through state general fund dollars, court leaders and lawmakers can explore the idea of having local courts deposit all court fine revenue in a central state account and then re-distributing it back to local governments on a monthly basis using a per-capita or other equitable model. Under this approach, local governments could still utilize available funds to support local services. However, the distribution process would create some distance between local courts that collect fines and local leaders that make decisions about the use of collected fine revenue.

Given the number of jurisdictions contributing to the collected fine revenue fund, efforts by a single jurisdiction to engage in policing-for-profit would likely have a negligible impact on that jurisdictions revenue allotment. In addition to addressing ethical concerns, a revised

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<sup>315</sup> Justice at Stake & National Center for State Courts. (2012). *Funding Justice: Strategies and Messages for Restoring Court Funding* (Rep.). Retrieved November 1, 2018, from National Center for State Courts website: [https://www.ncsc.org/~media/Files/PDF/Information and Resources/fundingjustice.ashx](https://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/fundingjustice.ashx).

<sup>316</sup> Conference of State Court Administrators (2012, p. 5).

<sup>317</sup> Ortega (2009).

distribution process could help stabilize the amount of funds that local governments receive from fine distributions and reduce disparate treatment of the poor and certain ethnic groups.

Additional research on this reform option would aid policy makers considering this alternative. Historical examinations demonstrating what fine disbursement might have looked like for jurisdictions under this approach could give decision makers confidence to pursue the idea. Conversely, if the research suggests that communities would continue to suffer from unstable fine distributions or significantly reduced funding, they could consider alternate reform options.

c) **Outsourcing Court Collection Responsibilities**

A final alternative that states should consider to address criminal justice concerns related to fines is the outsourcing of their collection to specialized state agencies. This approach has been implemented in the State of Utah and other states.<sup>318</sup> While this approach does not completely address all of the criticisms associated with the collection of fines by courts, it may be an improvement over the status quo in many jurisdictions.

In Utah, local courts are able to collect assessed fines in criminal cases.<sup>319</sup> However, when collection of an outstanding fine appears unfeasible, the fine can be converted to a civil judgment and collection efforts can be transferred to the Office of State Debt Collections.<sup>320</sup> This state agency has the responsibility of handling all debt owed to the state.<sup>321</sup> Once the fine is reported to the state agency, specialized state employees interact with debtors and court

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<sup>318</sup> Matthias & Klaversma (2009, p. 18).

<sup>319</sup> Utah Code Ann. § 77-32a-102 (LexisNexis 2018).

<sup>320</sup> Utah Code Ann. § 63A-3-502, § 77-32a-102 (LexisNexis 2018).

<sup>321</sup> Utah Code Ann. § 63A-3-502. Utah Division of Finance. (n.d.). Office of State Debt Collection. Retrieved October 29, 2018, from <https://finance.utah.gov/office-state-debt-collection/>.

workers cease collection efforts.<sup>322</sup> As a result, judges in Utah have little, if any, contact with offenders regarding unsatisfied fines.

Transferring collection of unsatisfied fines to a centralized body may help ensure equitable treatment in the way that fine obligations are dealt with throughout the state. Judges, who no longer interact with offenders who fail to pay their fines, cannot be accused of using coercive tactics to generate revenue for their local government. Local government officials, who receive a fine disbursement from the state, would have little incentive to directly or indirectly pressure a local court to generate fine revenue.

Officials considering the possibility of outsourcing the collection of court fines should be careful to ensure that they do not create new problems for courts, defendants, and local governments. Agents assigned to these accounts should be well-versed in permissible practices under fair debt collection laws. They should also be permitted to set up payment plans with defendants that will not only result in fines being paid, but that will give defendants a chance to pay their rent and purchase other necessities.

This reform option would require some effort to implement. State resources would be required to establish or enhance a state office of debt collection in order for it to carry out its enhanced duties. However, centralization of the collection of court debt could also result in cost saving and greater efficiency.

### **Conclusion**

This paper reviews the appropriate role of the local court in collecting and assessing fines in criminal and traffic cases. It further makes the argument that judicial and government leaders need to address problems that are present when local court fines are directly used to fund local

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<sup>322</sup> Utah Code Ann. § 77-32a-102 (LexisNexis 2018).



government services. Rather than waiting for another catastrophe like the one that took place in Ferguson, Missouri, now is the time to explore reform options and act. The concerns are real, criminal justice reform is one of the few things that political leaders can currently agree on, and there are a variety of available solutions.

Several states have been active in addressing problems related to the use of court fines to generate revenue for local government use. This paper outlines lessons that have been learned from their efforts and solutions that can be borrowed. The reform alternatives identified in this paper eliminate or lessen ethical concerns that arise when local court revenue directly funds local government. Many of the solutions reduce local government reliance on court fines as a revenue stream. The proposed solutions also reduce the disparate impact that court fine collection and distribution practices can have on defendants that are poor or in certain ethnic groups.

This paper advocates education and training as a starting point for addressing the concerns that are present when court fines directly fund local government. Members of the judiciary can lead out in this area and ensure that judges, court employees, and their counterparts in local government, are aware of ethical obligations and the problems that arise when courts are used as revenue generators. This training should be offered on a regular basis.

After implementing the important initial step of education, members of the judiciary and policy makers should consider additional reform options. There is not a one-size-fits-all solution to the systemic concerns raised in this paper due to the variety of ways that courts interact with local government bodies throughout the United States. Judicial leaders, policymakers, and scholars should engage in additional research to identify reform alternatives that will work best to improve their criminal justice systems.

To aid in that effort, this paper outlines both small and big steps that courts and government bodies can consider to improve their criminal justice systems. The paper identifies both benefits and drawbacks to the different alternatives. Smaller reform steps that can be considered include: 1) reinforcement of existing ethics laws; 2) creation of criminal penalties for misconduct, and 3) utilization of court administrators to assist with court fine and revenue issues. Jurisdictions willing to pursue more ambitious systemic change can consider: 1) capping the amount of fine revenue that local jurisdictions can utilize, 2) implementing day-fine systems, 3) decriminalizing certain criminal and traffic offenses, 4) restructuring court funding sources and fine distribution processes, or 5) outsourcing court fine collection responsibilities.

The decision to address both the obvious and subtle concerns related to court revenue collection and distribution will promote trust in local courts. The enactment of appropriate reform will strengthen the independence of the judiciary and build a criminal justice system that is more just. These benefits justify the time and effort required to revisit established practices and implement positive systemic reform.

## **Appendices**

## Appendix A

### Nevada Cities -- Fines/Fees as a Percentage of Total General Fund Revenue (2016)

City	Fines/Fees as a Percent of Total Revenue
Boulder City <sup>323</sup>	1.46%
Carson City <sup>324</sup>	0.78%
Elko <sup>325</sup>	0.58%
Ely <sup>326</sup>	3.94%
Fernley <sup>327</sup>	3.32%
Henderson <sup>328</sup>	2.02%
Las Vegas <sup>329</sup>	1.93%
Mesquite <sup>330</sup>	1.75%
North Las Vegas <sup>331</sup>	2.39%
Reno <sup>332</sup>	0.93%
Sparks <sup>333</sup>	0.76%

<sup>323</sup> Boulder City, Nevada. (2017, p. 2). 2017-2018 Budget. Retrieved November 1, 2018, from [http://www.bcnv.org/DocumentCenter/View/3485/2017-2018-City-Budget-PDF?bidId=.](http://www.bcnv.org/DocumentCenter/View/3485/2017-2018-City-Budget-PDF?bidId=)

<sup>324</sup> Carson City, Nevada. (2017, p. 3 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <http://www.carson.org/home/showdocument?id=55930>.

<sup>325</sup> City of Elko, Nevada. (2017, p. 4 Schedule S-1) 2017-2018 Tentative Budget. Retrieved November 1, 2018, from [http://www.elkocity.com/2017\\_18\\_Budget.pdf](http://www.elkocity.com/2017_18_Budget.pdf).

<sup>326</sup> City of Ely, Nevada. (2017, p. 3 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <https://docs.google.com/viewer?a=v&pid=sites&srcid=ZWx5Y2l0eS5jb218Y2l0eS1vZi1lbHl8Z3g6MThkZjBIOTE2YTc0Mzlk>.

<sup>327</sup> City of Fernley, Nevada. (2017, p. 19) 2017-2018 Budget. Retrieved November 1, 2018, from <http://www.cityoffernley.org/DocumentCenter/View/21231>.

<sup>328</sup> City of Henderson, Nevada. (2017, p. 1 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <http://www.cityofhenderson.com/docs/default-source/finance-docs/budget-reports/current-year/fy18-final-budget-updated-with-cover-for-web05c77db7172867948ddbff0a00c21263.pdf?sfvrsn=4>.

<sup>329</sup> City of Las Vegas, Nevada. (2017, p. 1 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <https://files.lasvegasnevada.gov/finance/CLV-Final-Budget-FY2018.pdf>.

<sup>330</sup> City of Mesquite, Nevada. (2017, pp. 18-19) 2017-2018 Final Budget. Retrieved November 1, 2018 <https://drive.google.com/file/d/0BwNiebN3iJMIdGo5aFlaLTBTMwS/view>.

<sup>331</sup> City of North Las Vegas, Nevada. (2017, p 6 Schedule S-1) 2017-2018 Final Budget, Retrieved November 1, 2018, from [http://www.cityofnorthlasvegas.com/docs/Finance/BudgetBooks/2018\\_FINAL\\_BUDGET\\_Revised\\_signed.pdf](http://www.cityofnorthlasvegas.com/docs/Finance/BudgetBooks/2018_FINAL_BUDGET_Revised_signed.pdf).

<sup>332</sup> City of Reno, Nevada. (2017, section II-3) 2017-2018 Final Budget. Retrieved November 1, 2018, from <http://www.reno.gov/home/showdocument?id=69484>

Wells <sup>334</sup>	1.01%
West Wendover <sup>335</sup>	0.92%
Yerington <sup>336</sup>	2.59%

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<sup>333</sup> City of Sparks, Nevada (2017, p. 1 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <http://cityofsparks.us/wp-content/uploads/2017/05/fin-fy18-budget-final.pdf>.

<sup>334</sup> City of Wells, Nevada (2017, p. 46) Financial Statement June 30, 2016. Retrieved November 1, 2018, from <http://www.cityofwellsnv.com/financial/City%20of%20Wells%20Financial%20Statement%206-30-16.pdf>.

<sup>335</sup> City of West Wendover, Nevada (2017, p. 4 Schedule S-1) 2017-2018 Final Budget. Retrieved November 1, 2018, from <http://www.westwendovercity.com/Home/ShowDocument?id=2185>.

<sup>336</sup> City of Yerington, Nevada (2017, p. 17) Financial Report June 30, 2016. Retrieved November 1, 2018, from <http://epubs.nsla.nv.gov/statepubs/epubs/31428003173669-2016.pdf>.