



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Hemangi Pai – Criminal Defense Practice**

***BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council**

**Committee on Justice System**

**Oversight Hearing on the Cost of Justice**

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My name is Hemangi Pai and I am a senior staff attorney in the criminal defense practice of Brooklyn Defender Services (BDS). Our organization provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy in nearly 35,000 cases involving indigent Brooklyn residents every year. I am a senior staff attorney on the Brooklyn Adolescent Representation Team (BART), a specialized unit at BDS made up of dedicated attorneys and social workers who represent over two thousand adolescents ages 13-24 annually. During my tenure at BDS, I have defended hundreds of young people accused of crimes in Brooklyn's criminal and Supreme Court.

I thank the New York City Council Committee on Justice System, and in particular Chairperson Rory Lancman, for the opportunity to testify about the use of monetary penalties in our criminal legal system. On any given day, thousands of indigent people plead guilty to crimes or non-criminal violations and become burdened with various court-imposed fines, fees and surcharges that they have no ability to pay. This continues to be an issue that disproportionately impacts poor defendants and their families, particularly those who are Black and Latinx.

**I. Introduction**

Monetary penalties have a deep and pernicious impact on people with criminal legal system involvement. These penalties include: bail, fines, restitution, and child support obligations that are ordered by the court. New Yorkers may also be subject to surcharges, user fees, late fees, payment plan fees, and interest. Unpaid debt often accumulates, making it more difficult to pay, affecting a person's employment options, credit applications, ability to obtain loans and housing, driver's license, and sometimes even leading to incarceration.

Fines and fees are an enormous source of income for state and local entities. In 2017, for example, village and town courts in New York State collected a total of \$171 million in 2017 just for traffic tickets and other minor violations.<sup>1</sup> In the same year, the New York State Office of Court Administration reported an intake of \$607 million from all state, county and city remedies, though not all of that revenue came from defendants or their families.<sup>2</sup>

As with most aspects of the criminal legal system, monetary penalties disproportionately impact poor Black and Latinx people and their families. The legal system's reliance on financial penalties siphons much-needed money from already vulnerable communities and deepens inequality in our society.

## **II. Client Story**

A few years ago, the BDS adolescent team represented Maria, a high school student with no prior criminal record who was accused of a misdemeanor. Maria participated in Young New Yorkers, an eight-week youth arts program, and pleaded guilty to disorderly conduct, a violation that allowed her to avoid a permanent criminal record. However, people convicted of violations are required to pay a mandatory surcharge of \$95, with a crime victim assistance fee of \$25, for a total of \$120.

Maria was still in high school and had no source of income or immediate job prospects. Maria lived with her mom, who did not have a job or any other source of income. Though the court deferred the payment to a later date, she would be subject to a civil judgment if she could not pay the \$120 by the court-required deadline. A civil judgment would act as a lien against future property and would have remained on Maria's credit score for up to seven years, even if she managed to pay it off, limiting her ability to obtain school loans, rent an apartment, secure employment, and even obtain healthcare. BDS filed a resentencing motion on behalf of Maria, in the interest of justice, and we convinced a judge to waive the surcharge, allowing Maria to graduate high school and pursue her dream of going to college without these mandatory and unaffordable surcharges and fees hanging over her head.

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<sup>1</sup> Michelle Breidenbach, *50 Upstate NY towns that collect most fines for speeding, traffic violations*, NEW YORK UPSTATE, July 26, 2018, available at <https://www.newyorkupstate.com/expo/news/erry-2018/07/ab2e7d572e1626/50-upstate-ny-towns-that-colle.html>.

<sup>2</sup> New York State Unified Court System 2017 Annual Report (2018), available at [http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/17\\_UCS-Annual\\_Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-09/17_UCS-Annual_Report.pdf) (Note: This revenue includes fees for attorney registrations and criminal search histories. The report does not break down what percentage of the \$607 million was charged to defendants or indigent defendants).

Another recent example is Marcus, a Black teenager, whom we represented after he was brought into late-night arraignments because he failed to pay a fee on a marijuana summons a few months earlier. The warrant squad arrested him at his home and took him into custody, where he remained for hours before he was finally brought before the judge. To the credit of the King's County DA's Office, once the Assistant District Attorney saw the charge, they immediately dismissed the case. But Marcus still suffered the indignity of being forced from his home in handcuffs and detained in a putrid holding cell because he was too poor to pay the fine for engaging in behavior that is now legal in seven other states, and that white people throughout New York City regularly engage in without fear of arrest or fines.<sup>3</sup>

Mary and Marcus are just two of the hundreds of clients that I and the rest of the BART team represent every year who are impacted by heavy fines and fees that limit their ability to overcome their previous criminal legal system involvement. We call on the Council to require more extensive reporting on this issue and to join with advocates to call on the state legislature to end, wherever possible, this systemic extraction of wealth from poor people.

### III. Fines and Fees

#### a. *Fines*

Fines are monetary punishments for infractions, non-criminal violations, misdemeanors or felonies. Fines are usually intended to deter crime and compensate victims for losses, but given the broader inequalities in our criminal legal system, they unduly burden poor defendants and their families. Depending on the conviction, fines can be used as an alternative to incarceration, but in many cases, if a person cannot pay then they will be incarcerated. Currently, the statute for collection of fines and surcharges stipulates that payments are first allocated to surcharges, then to fines, which is problematic because non-payments of fines can land a person in jail.<sup>4</sup> Some common fines are listed below:

	Level/Type of Offense	Fine Amount	Notes
Crimes	Felonies (A-I, A-II, B, C)	\$15,000 - \$100,000 <sup>5</sup>	
	A misdemeanor	\$1,000 or double the value of the property disposed of in the	

<sup>3</sup> See, e.g., P.R. Lockhart, *Black people in NYC are 8 times more likely to be arrested for marijuana than whites*, VOX, May 14, 2018, available at: <https://www.vox.com/identities/2018/5/14/17353040/racial-disparity-marijuana-arrests-new-york-city-nypd>.

<sup>4</sup> N.Y. CRIM. PROC. LAW § 420.10.

<sup>5</sup> N.Y. PENAL LAW § 80.00.

		commission of the crime <sup>6</sup>	
	B misdemeanor	\$500 <sup>7</sup>	
Non-Criminal Violations	Violation	\$250 or as specified for the violation <sup>8</sup>	
	Disorderly behavior	Up to \$200 <sup>9</sup>	
Vehicle and Traffic Law Violations	Traffic infraction	\$75 to \$2,000 <sup>10</sup>	
	Traffic misdemeanor	\$300 to \$2,500	
	Traffic felony (E, D)	\$1,000 to \$10,000 <sup>11</sup>	
Prison and Jail Infractions	NYCDOC disciplinary infraction	\$25 per ticket/rule violation <sup>12</sup>	This usually is in conjunction with other punishment such as solitary confinement and other restrictions, essentially a perverse system where individuals pay to be locked up in “The Box.”
	NYSDOCCS disciplinary infraction	\$5 per infraction	Same as above.

*b. Fees*

Fees are itemized payments for court activities, supervision or incarceration charged to a defendant found guilty of infractions, misdemeanors or felonies or individuals who have not been charged and are going through the criminal justice process. Fees serve as a regressive form of punishment because criminal debt presents an increasingly larger burden for a person on the lower end of the income scale. Moreover, when a person cannot pay the cash amount of the court-mandated financial penalty upfront, their debt only grows with payment plans fees, late

<sup>6</sup> N.Y. PENAL LAW § 80.05.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> N.Y.C. ADMIN. CODE § 10-177.

<sup>10</sup> N.Y. VEH. & TRAF. LAW § 1800.

<sup>11</sup> *Ibid.*

<sup>12</sup> Erika Eicherlberger, *The Literal Cost of Solitary Confinement*, THE NEW REPUBLIC, Sept. 15, 2015, available at: <https://newrepublic.com/article/122822/prisons-use-solitary-confinement-empty-inmates-wallets>.

payment fees or interest. We list below many, but not all, of the fees that typically burden our clients and their families.

Surcharges and fees:

- Mandatory surcharges<sup>13</sup>
  - Felony – \$300 and a \$25 crime victim assistance fee
  - Misdemeanor – \$175 and a \$25 crime victim assistance fee
  - Violation – \$95 and a \$25 crime victim assistance fee
- DWI probation administrative fee – \$30 per month<sup>14</sup>
- Parole supervision fee – \$30 per month<sup>15</sup>
- DNA databank fee (including for people who have already had their DNA taken) – \$50<sup>16</sup>
- Sex offender registration fee – \$50<sup>17</sup>
- Supplemental sex offender victim fee – \$1,000<sup>18</sup>
- Supervision fee while in prison – \$1 per week<sup>19</sup>
- Termination of license fee – \$100<sup>20</sup>
- Administrative fee of 3% on every credit card bail payment
- Non-refundable 2.49% fee per transaction for online bail payments
- Fee for obtaining one's own RAP sheet (which may be riddled with errors) – \$65

As we know from Intro. No. 741, a bill the Council recently passed to make domestic phone calls in Department of Correction facilities free to people in city jails and their families, our system has many egregious user fees that often go unnoticed unless brought to the forefront by advocates and elected officials. We want to reiterate our thanks to Speaker Johnson and the Committee on Criminal Justice for passing Intro. No. 741 and hope we can continue the momentum towards eliminating other costs that burden indigent people and their families.

The reality is that paying fines, fees or any monetary penalty comes with a very real human cost. Every time a person shows up to court to resolve their case or make payments towards their financial penalty they have to take off from work, which means potentially losing income for that day or days. People who are reliant on the subway have to pay \$2.75 per ride to get to and from the courthouse to go before the judge or to make payments at the courthouse. The money they pay could have gone toward rent, food, medicine, or other necessities.

#### **IV. Punishments for people who cannot pay their criminal debt**

<sup>13</sup> N.Y. PENAL LAW § 60.35.

<sup>14</sup> N.Y. EXEC. LAW § 257-c.

<sup>15</sup> N.Y. CORRECT. LAW § 201 (9)(a).

<sup>16</sup> N.Y. PENAL LAW § 60.35 (1)(a)(v).

<sup>17</sup> N.Y. PENAL LAW § 60.35.

<sup>18</sup> *Ibid.*

<sup>19</sup> N.Y. CORRECT. LAW § 189.

<sup>20</sup> N.Y. VEH. & TRAF. LAW § 503.

Fines and fees incurred during the criminal legal process may follow people months or years after their case is resolved. Even for people who have not been sentenced to jail or prison, the non-payment of monetary sanctions may lead to unnecessary warrants, arrests, incarceration or probation revocations. For people on parole, failure to pay the supervision fee can be used as a reason to deny early discharge or a person's application for a Certificate of Relief from Disabilities or a Certificate of Good Conduct.<sup>21</sup> Unfortunately, our clients are sometimes rearrested and sentenced to up to 15 days in jail for failure to pay these fees. When we ask for an indigency hearing to prevent our clients from incarceration for inability to pay, judges may be skeptical, asking why our clients asked for time to pay in the first place if they could not actually do so. Financial hardship is not static – for many of our clients living paycheck to paycheck or on fixed incomes, their ability to afford their day-to-day expenses can change quickly and unexpectedly. But for people interacting with the criminal legal system and experiencing poverty, these changes that make it impossible for a person to pay a fine or fee may result in incarceration, exacerbating harm to both our clients and their families, simply because they are poor.

Fines also follow our clients who are sentenced to jail or prison time. People in City jails may have their minimal wages or commissary accounts garnished to pay off accumulated fines, surcharges and fees. The state prisons system may also garnish payment from an incarcerated person's commissary account, money earned from work release programs or any source of income or money in a person's possession. For people incarcerated in upstate prisons who owe criminal legal debt and are paid pennies for every hour worked, the state removes 20 percent from their commissary every two weeks and 50 percent of any money added to their account by a loved one or family members.<sup>22</sup> Also, the New York State Department of Corrections and Community Supervision regularly takes two percent of funds in a commissary account for the \$40 (also known as "gate money") given to every person upon their release.<sup>23</sup> The parallels between slavery and Jim Crow and this nearly-unpaid work scheme for incarcerated people are staggering and are not lost on our clients and their families. Our clients frequently tell us that fines and fees limit their ability to overcome their criminal legal system interactions and move on with their lives.

## **V. How is the money being allocated?**

It takes a great amount of time and research to track these fines through the criminal legal system and figure out how they are being allocated. I am sure we do not know all the ways the city and state use money that extracts from poor New Yorkers who become involved in the criminal legal system, but we are sure that it is not being reinvested into more needed programs or into the communities as viable resources. However, we were able to find out some of the places where

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<sup>21</sup>New York State Corrections and Community Supervision, *Community Supervision Fees* (Mar. 9, 2017), available at <http://www.doccs.ny.gov/Directives/9250.pdf>. See also Center for Community Alternatives, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction* (Feb. 2007), available at <http://www.communityalternatives.org/pdf/financial%20consequences.pdf>.

<sup>22</sup> *Ibid.*

<sup>23</sup> N.Y. CORRECT. LAW § 125.

money is being allocated. Based on the Criminal Court of the City of New York 2016 Annual Report, \$29,828,600 was generated from fines, summons, DNA fees, transcript fees, bail and more.<sup>24</sup> This money went to the “operational cost of the unified court system.” A New York State Commission of Correction report found that as of March 2017, “there was \$3,538,419.60 waiting to be transferred to the Police Property Payable Fund.”<sup>25</sup> This figure refers to money that belonged to incarcerated people that was not returned to them after their release. BDS is well acquainted with how difficult it is for our clients to have their own money returned to them after their release from DOC custody. It is unconscionable that the City has not improved this process and allows the police to utilize this money to continue to target and arrest poor people of color. In short, it is unscrupulous for our city and state to collect money from impoverish communities and not be transparent about how and where the money is being allocated.

## **VI. Racial biases in arrests and summonses generate revenue for the criminal legal system and perpetuate harm**

Fines and fees are particularly problematic because of the intentional discrimination, racial bias and stereotyping of Black, Latinx and immigrant communities that leads to the racial disparities that are well-documented at every stage of the criminal legal system.<sup>26</sup> It is unconscionable that in our progressive city we continue to create and bolster more ways to extract money out of low-income communities of color, while neglecting to sufficiently invest in them as a means to prevent the continuous interaction with the justice system.

Pushed by advocates for criminal justice reform, and in this era of heightened awareness about racial disparities in NYPD enforcement and the immigration impacts of criminalization, New York City has begun to reduce arrests for certain low-level offenses. Indeed, misdemeanor arrests have declined in most categories. However, it is important to recognize replacing racially targeted arrests with racially targeted summonses does not end the harm. Criminal summonses, which can result in warrants that trigger pre-trial detention upon arrest, and civil summonses, which can damage a person’s credit and even trigger debt collection, are not the answer to an unequal criminal legal system. This is particularly true for offenses linked to poverty, such as fare evasion, where hefty fines are clearly out of reach for those who could not afford a \$2.75 fare in the first place. Instead, we should question the impulse toward punishment altogether, and pursue models of support and harm reparation that do not involve police.

## **VII. Impact on young people**

<sup>24</sup> Criminal Court of the City of New York, *Annual Report* (2016), at 56, available at <http://www.nycourts.gov/COURTS/nyc/criminal/2016-Annual-Report-Final.pdf>

<sup>25</sup> New York State Commission of Correction, *The Worst Offenders, Report: The Most Problematic Local Correctional Facilities of New York State* (Feb. 2018), available at <http://www.scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf>.

<sup>26</sup> U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Communities of Color: Civil Rights & Constitutional Implications* (Sept. 2017), available at [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf). see also Greg Ridgeway, *Analysis of Racial Disparities in the New York Police Department’s Stop, Question, and Frisk Practices* (Santa Monica, CA: RAND Corporation, 2007), available at [https://www.rand.org/pubs/technical\\_reports/TR534.html](https://www.rand.org/pubs/technical_reports/TR534.html).

On any given day, hundreds of indigent young people plead guilty and become burdened with various court-imposed fines, fees and surcharges that they have no ability to pay. This includes children 16 and 17 who, even after Raise the Age is fully implemented, will be forced to pay \$120 in fees if convicted of disorderly conduct. These court costs discriminate heavily against the poorest young people. Young people from middle-class families who can afford to pay the court costs on their behalf face a mere inconvenience while young people from poor families face what is in many cases a longer lasting punishment than the sentence. When a person cannot pay the costs associated with criminal justice involvement, these costs are entered as a civil judgment against them. A civil judgment ruins young people's fledgling credit scores before they even have a chance to develop them and erects barriers to becoming responsible income-earning adults. A civil judgment on a credit score affects the young person's future applications for apartments, employment, car loans and even student loans, even though these resources are correlated with reducing recidivism.

## **VIII. Recommendations**

### *a. City Actions*

The City should compile a comprehensive list of all the user fees, fines and surcharges that exist within the criminal legal system, imposed at the state and city level, and document the total revenue generated, where it is going and how it is spent. This information should be easily accessible to the public, so that people facing criminal justice involvement and their families can know the costs that they potentially face.

The Council should also require reporting on the number of New York City residents who are incarcerated or had their driver's license suspended because of their inability to pay a fine, surcharge or fee and the number of civil judgments issued against defendants by the courts.

If the City imposes any user fees on criminal defendants, the Council should eliminate them or allow judges or clerks to waive them for indigent people. Additionally, the City should eliminate other costs imposed on incarcerated people and their families, such as JPAY service charges and fines for alleged infractions in city jails.

The City should assess current criminal debt collection practices, with particular attention to the practices of private debt collection agencies. Often there are little to no enforceable regulations when people attempt to seek recourse against these entities for abuse or misconduct.

### *b. Supporting State Reforms*

The Council should join with advocates to call on the New York State Legislature to eliminate or significantly limit most court fines and fees and call for broader discretion for judges to waive them for indigent defendants. People should never be incarcerated due to failure to pay criminal court debt, especially if the court has not made an ability-to-pay determination. People should never be saddled with a civil judgment for failure to pay criminal legal debt absent a court

determination that they are not indigent (i.e., able to pay without unreasonable hardship). Fees and fines should be tailored to an individual's ability to pay and courts should be allowed to reduce or eliminate such fines and fees based on a person's change in circumstances.

One suggestion is to pass a Resolution in favor of A.9786/S.7917, a bill that passed the New York State Assembly earlier this year, that would authorize judges to waive certain surcharges and fees for a defendant under the age of 21 under certain circumstances. That said, BDS believes that all indigent people, regardless of age, should not be burdened with the financial responsibility for our legal system.

### **Conclusion**

Financial penalties exacerbate both the economic and emotional distress for impoverished families involved in the criminal legal system. These penalties force families to choose between paying court fines and fees or paying for basic needs such as rent or food, putting pressure on family ties. This hearing is an important first step in better understanding the problems associated with fines and fees and the burdens they impose on our communities, but further investigation is necessary to provide a full understanding of what steps the Council can take to address this problem.

Thank you for your time and consideration of this important issue. If you have any questions, please feel free to reach out to Saye Joseph, Policy Associate, 718-254-0700 ext. 206 or [scjoseph@bds.org](mailto:scjoseph@bds.org).