No. 122495

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Appellate Court |
| | ) | of Illinois, First District, |
| Plaintiff-Appellee, | ) | No. 1-15-0740. |
| | ) | |
| | ) | There on Appeal from the |
| v. | ) | Circuit Court of Cook County, |
| | ) | Illinois |
| | ) | No. 13 CR 21421 |
| | ) | |
| DENNIS CLARK, | ) | The Honorable |
| | ) | Rickey Jones, |
| Defendant-Appellant. | ) | Judge Presiding. |

**BRIEF OF PLAINTIFF-APPELLEE**
**PEOPLE OF THE STATE OF ILLINOIS**

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ORAL ARGUMENT REQUESTED

## POINTS AND AUTHORITIES

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## NATURE OF THE ACTION

Following a jury trial in the Circuit Court of Cook County, defendant was convicted of delivery of a controlled substance and sentenced to serve a fifteen-year term of imprisonment and pay various fines and fees. C111-14.[1]

Defendant appealed, and the Illinois Appellate Court, First District, ordered that a number of fines be offset by presentence custody credits and affirmed. *People v. Clark,* 2017 IL App (1st) 150740-U, ¶¶ 25-26. Defendant now appeals the judgment of the appellate court. No question is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether the document storage charge authorized under 705 ILCS 105/27.3c (2015) is a fee such that it cannot be offset by presentence custody credits.

2. Whether the felony complaint charge authorized under 705 ILCS 105/27.2a(w)(1) (2015) is a fee such that it cannot be offset by presentence custody credits.

3. Whether the court automation charge authorized under 705 ILCS 105/27.3a(1) (2015) is a fee such that it cannot be offset by presentence custody credits.

4. Whether the State's Attorney records automation charge authorized under 55 ILCS 4/2002.1(c) (2015) is a fee such that it cannot be offset by presentence custody credits.

5. Whether the Public Defender's records automation charge authorized under 55 ILCS 5/3-4012 (2015) is a fine and should be offset by presentence custody credits.

[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," and to defendant's brief as "Def.. Br. __."

## JURISDICTION

On September 27, 2017, this Court allowed defendant's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rules 315 and 612(b).

## STATEMENT OF FACTS

On February 10, 2015, following a jury trial in the Circuit Court of Cook County, defendant was convicted of delivery of a controlled substance and sentenced to serve a fifteen-year term of imprisonment and pay various fines and fees. C111-14. The sentencing order specified that the following charges imposed by the circuit court were fees not to be offset by defendant's presentence custody credit: a $2 Public Defender records automation charge, assessed pursuant to 55 ILCS 5/3-4012; a $2 State's Attorney records automation charge, assessed pursuant to 55 ILCS 5/4-2002.1(a); a $190 felony complaint charge, assessed pursuant to 705 ILCS 105/27.2a(w)(1)(A); a $15 document storage charge, assessed pursuant to 705 ILCS 105/27.3c; and a $15 court automation charge, assessed pursuant to 705 ILCS 105/27.3a-1. C113.

Defendant appealed, C118, arguing, *inter alia*, that these charges should have been offset by his presentence custody credit because they were fines rather than fees. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶ 21. The appellate court affirmed. *Id.* at ¶ 25.

## STANDARD OF REVIEW

Whether a charge authorized by a statute is a fine or a fee is a question of statutory interpretation that this Court reviews de novo. *People v. Jones*, 223 Ill. 2d 569, 580 (2006).

## ARGUMENT

### I. A Charge Is a Fee If It Is Intended to Compensate the State for a Cost Relating to the Defendant's Prosecution and a Fine If It Is Not.

For each day spent in presentencing custody, a defendant is entitled to a five-dollar credit against fines but not against fees or taxes. *See* 725 ILCS 5/110-14 (2018) (providing that presentence custody credit is available where "a fine is levied on conviction" and cannot exceed "the amount of the fine"). Whether a charge assessed against a defendant is a fee turns on whether its purpose is compensatory. *See People v. Jones*, 223 Ill. 2d 569, 581, 600 (2006). A charge is a fee if it "seeks to recoup expenses incurred by the state — to 'compensat[e]' the state for some expenditure incurred in prosecuting the defendant." *Id.* at 581 (alteration original to *Jones*). If a charge is not assessed to compensate the State for a cost relating to the defendant's prosecution, then it is either a tax (if assessed regardless of whether the defendant is convicted) or a fine (if assessed only upon conviction). *See Crocker v. Finley*, 99 Ill. 2d 444, 452 (1984) (explaining that "court charges imposed on a litigant are fees if assessed to defray the expenses of his litigation," but "a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax"); *Jones*, 223 Ill. 2d at 582 (explaining that "a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the [S]tate").

Determining the legislature's purpose in authorizing a charge against a defendant is a matter of statutory interpretation. *Jones*, 223 Ill. 2d at 580. "The fundamental rule of statutory interpretation is to ascertain and give effect to the legislature's intent" by "consider[ing] the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it." *Id.* at 580-81. Because "[t]he best

indication of legislative intent is the statutory language, given its plain and ordinary meaning," *id.* at 581, a charge's characterization as a fee in its authorizing statute "constitutes strong evidence as to how the charge should be characterized," *id.* at 599. But ultimately whether a charge is a fee depends on its purpose, rather than its statutory label. *Id.* at 600. A statute's characterization of a charge as a fee does not govern where the charge plainly does not relate to any expense incurred by the State as a result of the defendant's prosecution. *See People v. Graves*, 235 Ill. 2d 244, 251 (2009) (holding that mental health court and youth diversion program "fees" imposed upon conviction regardless of whether prosecution involved use of such services were in fact fines); *Jones*, 223 Ill. 2d at 600 (holding that non-compensatory "fee" for Spinal Cord Injury Paralysis Cure Research Trust Fund assessed only upon conviction was in fact fine); *see Crocker*, 99 Ill. 2d at 452 (holding that non-compensatory "fee" assessed in addition to filing fee in all dissolution of marriage actions for Domestic Violence Shelter and Service Fund was in fact tax).

Where a statute labels a charge as a "fee" but does not otherwise indicate that the charge is intended to recoup a cost of prosecution, the Court considers secondary indications of legislative intent. Such indications include contingency upon conviction (which may indicate that an ambiguous charge is intended as punishment rather than compensation) and directions that revenue generated by the charge be remitted to the state treasury rather than to the county that actually incurred the costs of prosecution or deposited into a county fund unrelated to such costs (which may indicate that the ambiguous charge is not intended to compensate the county for a cost of prosecution). *See Jones*, 223 Ill. 2d at 600. If an ambiguous charge, labeled a fee in the authorizing

statute but otherwise showing no compensatory purpose, "possesses only the attributes of a fine and none of the attributes of a fee," then the Court will find it to be a fine. *Id.* But "the *central* characteristic which separates a fee from a fine" is that "it is intended to reimburse the [S]tate for some cost incurred in defendant's prosecution." *Id.* (emphasis original). If the plain language of a charge's authorizing statute clearly shows that the charge is intended to recoup a cost of prosecution, secondary indicators like contingency upon conviction cannot overcome the legislature's controlling expression of compensatory purpose.

Defendant argues that a charge that is expressly authorized to recoup a particular cost of prosecution can nonetheless be considered a fine if any of four factors are present: (1) the charge is contingent upon conviction, Def. Br. 11, 17, 21, 27, 32; (2) the charge is mandatory, Def. Br. 12, 17, 21, 27; (3) the charge is intended to generate revenue for the county, Def. Br. 22-24; and (4) the revenue generated by the charge is not earmarked to defray only the specific court cost of prosecution that it recoups, Def. Br. 14, 17, 22-24, 27, 29, 32. In effect, he argues that the Court should reverse its established analysis and ignore an authorizing statute's statement of compensatory purpose in favor of secondary indications of legislative intent. But even if defendant's four factors may suggest that a charge is non-compensatory where the authorizing statute is otherwise silent on the issue of compensatory purpose, they cannot overcome an explicit statement in the authorizing statute that the charge is authorized for the purpose of recouping a particular cost of prosecution.

### A. A charge is not a fine just because it is contingent upon conviction.

Although defendant is correct that contingency upon conviction is a characteristic of fines — after all, a pecuniary punishment cannot be imposed as part of a defendant's sentence if the defendant is not first convicted — he errs in suggesting that it is a characteristic *exclusive* to fines. The General Assembly may choose to impose a fee upon only convicted defendants for a variety of reasons other than punishment. Some costs of prosecution are incurred only in cases that lead to conviction, and a charge seeking to recoup such an expense is "a collateral consequence of the defendant's conviction *that is compensatory in nature*." *Jones*, 223 Ill. 2d at 581 (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2d Dist. 2002)) (emphasis original to *Jones*); *see, e.g.*, *People v. Guadarrama*, 2011 IL App (2d) 100072, ¶ 13 (finding charge intended to "cover the cost incurred in collecting and testing a DNA sample that is taken from a defendant convicted of a qualifying offense" to be fee); 730 ILCS 5/5-6-3(b)(10)(iv) (2018) (authorizing fee for each day defendant uses electronic monitoring device ordered as condition of probation); 730 ILCS 5/5-6-3(g) (2018) (authorizing assessment of fees to recoup costs of drug and alcohol testing from defendants sentenced to testing as condition of probation). The legislature may also choose to condition fees upon conviction as an exercise of legislative grace, sparing a defendant who has already suffered the stress, disruption, and expense of defending against an unsuccessful prosecution from bearing the additional expense of that prosecution. *See* 725 ILCS 5/124A-5 (2018) ("When a person is convicted of an offense . . . , the court shall enter judgment that the offender pay the costs of the prosecution."). Thus, the bare fact of a charge's contingency on

conviction provides little insight into the nature of its relationship to the costs of prosecution and cannot overcome a plain statement of compensatory purpose.

**B. A charge is not a fine just because it is mandatory.**

Defendant asserts that mandatory imposition is characteristic of a fine rather than a fee, but he offers no explanation as to why that should be the case. Certainly, mandatory imposition is neither necessarily nor exclusively characteristic of fines. Although some fines are mandatory, many are discretionary. *See, e.g.*, 730 ILCS 5/5-4.5-55 (2018) (providing that fine "may be imposed" for Class A misdemeanors); 730 ILCS 5/5-4.5-50(b) (2018) (providing that felony offenders "may be sentenced to pay a fine"); 720 ILCS 550/5 (2018) (providing that fines "may be imposed" for unlawfully manufacturing, delivering, or possessing with intent to deliver various amounts of cannabis); 720 ILCS 570/411.1 (2018) (providing that fine "may be levied" for violations of Article IV of Illinois Controlled Substances Act). Similarly, although some fees are discretionary, many are mandatory. *See, e.g.*, 730 ILCS 5/5-4-3(j) (2018) (providing that defendant required to submit blood or saliva specimens for analysis "shall pay an analysis fee of $250"); *People v. Johnson*, 2011 IL 111817, ¶ 28 (holding that section 5-4-3's DNA analysis is a fee); 55 ILCS 5/5-1103 (2018) (providing that court services fee "shall be assessed against the defendant" upon plea of guilty, conviction, or order of supervision or probation); *People v. Braden*, 2018 IL App (1st) 152295, ¶ 47 (holding that section 5-1103's court services fee is a fee because "its stated purpose in the statute is to 'defray[ ] court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security") (quoting 55

ILCS 5/5-1103 (2014)). The legislature's decision to restrict judicial discretion in imposing a charge does not alone reveal punitive intent.

In support of his assertion that mandatory imposition is characteristic of a fine rather than a fee, defendant cites *People v. Jones*, 397 Ill. App. 3d 651 (1st Dist. 2009), and *People v. Price*, 397 Ill. App. 3d 684 (1st Dist. 2007). *See* Def. Br. 12, 17, 21, 27. But neither case stands for the proposition that a charge is a fine if its imposition is mandatory. Rather, *Jones* held that the Children's Advocacy Center (CAC) "fee" under 55 ILCS 5/5-1101(f-5) was actually a fine because "the charge is mandatory for convicted defendants, and does not reimburse the [S]tate for expenses incurred while prosecuting the defendant." 397 Ill. App. 3d at 660 (citing *Jones*, 223 Ill. 2d at 600, for proposition that "a charge is a fine, despite its label, if it 'does not seek to compensate the [S]tate for any costs incurred as the result of prosecuting the defendant'"). Thus, the First District in *Jones* merely recognized that a non-compensatory charge mandated against convicted defendants is a punitive fine; it did not suggest that its holding turned on the mandatory nature of the charge, such that the non-compensatory CAC charge would be a fee if it were discretionary.

Nor did *Price* hold that a charge is a fine if its imposition is mandatory. *Price* held that mental health court and youth diversion program charges mandated against all convicted defendants are fines not because they are mandatory, but because they are mandatory "regardless of how rationally related [they are] to a qualifying offense."[2] *Price*, 375 Ill. App. 3d at 701. In other words, because the imposition of

[2] *Price* misunderstood this Court's then-newly-issued decision in *Jones* as holding "that because spinal cord research bore no rational relationship to controlled substance possession, . . . the charge was in fact a fine," conflating *Jones*'s observation that a

mental health court and youth diversion program charges is mandated in cases that do not involve those services, those charges "do not even remotely attempt to compensate the [S]tate for prosecuting a defendant" and thus are fines. *Price*, 375 Ill. App. 3d at 701 (citing *Jones*, 223 Ill. 2d at 600). When this Court subsequently held the same mental health court and youth diversion program charges to be fines, it explained that the charges are fines because they are mandated against all defendants regardless of whether their prosecutions "involved the resources of the programs financed by the mental health court and youth diversion/peer court fees." *Graves*, 235 Ill. 2d at 252; *see also People v. Carter*, 2016 IL App (3d) 140196, ¶ 56 (finding probation fee to be fine where assessed against all defendants upon conviction regardless of whether probation services were called upon in their cases); *People v. Gildart*, 377 Ill. App. 2d 39, 42 (1st Dist. 2007) (holding youth diversion program charge to be non-compensatory because it is mandated against every defendant regardless of whether he is a youth).

A charge is a fee because it has a compensatory purpose, *Graves*, 235 Ill. 2d at 250 (citing *Jones*, 223 Ill. 2d at 600), not because the legislature granted the trial court discretion to impose it. A legislative mandate that a charge be imposed only reveals non-

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charge is a fee if intended to recoup a cost of prosecution and its explanation that a fine need not be rationally related to the criminal conduct it punishes. *See Price*, 375 Ill. App. 3d at 700 (citing *Jones*, 223 Ill. 2d at 600). As a result, *Price* mistakenly focused on the nature of the defendant's criminal conduct rather than his prosecution, finding the mental health court and youth diversion program charges at issue to be non-compensatory when imposed against a defendant convicted of aggravated unlawful use of a weapon because "the nexus between the aggravated-unlawful-use-of-a-weapon offense and the courts financed by these charges is too tenuous to survive rational basis." *Price*, 375 Ill. App. 3d at 700. Relying on *Price*'s misunderstanding of *Jones*, the appellate court in *Jones* similarly concluded that the CAC charge is a fine because, "in the instant case, there was no relevant connection between defendant's theft of scrap metal pipes and children's advocacy or juvenile justice." *Jones*, 397 Ill. App. 3d at 660. However, as noted above, *Jones* also applied a more conventional compensatory purpose analysis. *See id.*

compensatory intent if it contemplates imposition regardless of whether a particular cost of prosecution was incurred; a charge intended to recoup the cost of a service does not lose its compensatory purpose simply because the legislature mandates that it be assessed whenever that cost is incurred.

**C. A charge is not a fine just because it is intended to generate revenue.**

Defendant argues that a charge is a fine rather than a fee if it is intended to generate revenue for the county, Def. Br. 22-24 (asserting that because legislature referred to charge as "a way for the county to raise a few bucks," the charge "is not compensatory"). But every monetary assessment, whether compensatory or punitive, is intended to generate revenue. Whether a monetary assessment is a fine or fee does not turn on whether it generates revenue but on *why* it generates revenue — that is, whether it is imposed to punish a defendant for his offense or to compensate the State for a cost of prosecuting him. *Jones*, 223 Ill. 2d at 600.

**D. A charge is not a fine just because the revenue it generates is available to finance a county's court system as a whole.**

Defendant asserts that a charge is non-compensatory if the revenue it generates is not earmarked to defray only the particular cost of prosecution that it is imposed to recoup. Def Br. 14, 17, 22-24, 27, 29, 32. But what the revenue generated by a charge is ultimately spent on is not dispositive of whether the charge was assessed to compensate the State for a cost of prosecution. *Cf. Jones*, 223 Ill. 2d at 584 (explaining that statutory requirement that some portion of all charges be deposited into particular fund "does not mean that every charge is a fee."). Dollars are fungible; by recouping a cost of prosecution from defendants, a county is free to use dollars it otherwise would have spent on that cost for other purposes. *See Jabateh v. Lynch*, 845 F.3d 332, 347-48 (7th Cir.

2017) (explaining that "money is fungible," such that dollars paid to organization for one purpose frees the organization to use other dollars for other purposes); *United States v. Grossi*, 143 F.3d 348, 350 (7th Cir. 1998) (explaining that "money is fungible and its effects transcend program boundaries," such that paying dollars to a government for one program frees other dollars for other programs). The legislative decision to allocate the proceeds from an expressly compensatory charge to one program rather than another is purely budgetary. For example, were the legislature to impose a nominal ten-cent electricity charge on convicted defendants for the express purpose of compensating the county for the cost of keeping the courtroom lights and computers running during defendants' proceedings, that charge would be compensatory whether the specific dollars defendants used to pay it were spent on electricity bills, courtroom renovations, or adult literacy programs. A charge is compensatory if it compensates the State for a cost of prosecution; what the compensatory payment is later spent on is irrelevant in the face of an express statement of compensatory purpose.

In support of his assertion to the contrary, defendant cites *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17, *People v Smith*, 2013 IL App (2d) 120691, ¶ 21, and *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 — three cases finding the court system finance charge authorized under section 5-1101 of the Counties Code to be a fine — for the proposition that "[i]nsofar as [an] assessment [i]s intended to fund the court system as a whole, it is a fine." Def. Br. 24. But none of those cases stands for the proposition that a charge is not compensatory if its proceeds are deposited in a county's general fund rather than earmarked for a particular use. Rather, all three simply followed this Court's holding in *Graves* that the charges authorized under section 5-1101 of the Counties Code

are "'fines and penalties,' although they are labeled 'fees to finance court system," because they do not seek to compensate the State for any particular cost of prosecution. *Graves*, 235 Ill. 2d at 251-53; *see Wynn*, 2013 IL App (2d) 120575, ¶ 17 (citing *Graves*, 235 Ill. 2d at 253); *People v Smith*, 2013 IL App (2d) 120691, ¶¶ 20-21 (same); *Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (same).

As *Graves* explained, although section 5-1101 is entitled "Additional fees to finance court system," the charges it authorizes do not "seek to compensate the [S]tate for any costs incurred as the result of prosecuting the defendant." *Graves*, 235 Ill. 2d at 252. Indeed, section 5-1101 contains no indication whatsoever that the charges it authorizes bear any relation to any cost of prosecution. *See* 55 ILCS 5/5-1101 (2006) (containing no reference to court services provided during prosecution). The only connection between section 5-1101's charges and the costs of prosecution is the requirement that the charges be deposited in the county general fund and used to finance the court system in the county. 55 ILCS 5/5-1101(g) (2006) (directing that proceeds from charges be deposited in general county fund and used to fund court system). But the mere fact that a particular charge is deposited in a particular fund "does not mean that [it] is a fee," *Jones*, 223 Ill. 2d at 584. Moreover, the general expenses of the court system as a whole are not a cost of defendants' prosecutions; civil litigation and juvenile delinquency proceedings do not relate at all to the costs of prosecution. In light of this total absence of compensatory intent, as well as "[t]he clear language of the Counties Code show[ing] that the legislature intended to grant county boards the limited authority to set fines as punishments for various violations" in the division of the Counties Code containing section 5-1101, *Graves*, 235 Ill. 2d at 253 (citing 55 ILCS 5/5-1113 (2006)), *Graves* found all of the

charges under section 5-1101 to be fines. But *Graves*'s conclusion that the charges under section 5-1101 of the Counties Code are fines *despite* their use to finance the court system does not stand for the proposition that a charge is a fine *because* it is used to finance the court system, nor do *Wynn*, *Smith*, or *Ackerman* do so by following *Graves*. Just as depositing a fine into an account to fund the court system does not erase its punitive purpose, depositing a fee into an account to fund the court system does not erase its compensatory purpose.

## II. With the Exception of the Public Defender Records Automation Charge, the Disputed Charges Are Fees, Not Fines, Because They Are Intended to Compensate the State for Costs of Defendants' Prosecutions.

### A. The document storage charge is a fee because it is intended to recoup the cost of storing documents created in the course of defendants' prosecutions.

"To defray the expense [of establishing and maintaining a document storage system] in any county that elects to establish a document storage system and convert the records of the circuit court clerk to electronic or micrographic storage," the clerk may collect a document storage fee from civil litigants and criminal defendants, "provided that the storage system is in place or has been authorized by the county board." 705 ILCS 105/27.3c(a) (2015). By section 27.3c(a)'s plain language, this charge is intended to compensate the county for the cost of storing the records of defendants' prosecutions in the county's current document storage system, as well as the cost of the planned conversion of defendants' records to a new document storage system. The fact that the document storage charge is mandatory and contingent upon conviction cannot overcome the charge's clear compensatory purpose. *See supra* § I.A & B. The document storage charge is mandatory in all cases because all prosecutions generate documents that must

be stored at public expense, and the legislature's decision to spare defendants who are not convicted the burden of paying for the storage of their unsuccessful prosecution's records is not dispositive evidence of the charge's punitive intent.

Defendant argues that the document storage charge is not compensatory because although the costs of storing defendants' documents in an extant system may be compensatory, the costs of moving them to a new system are not. Def. Br. 32. But the cost of storing the records of a defendants' prosecution (which is indisputably a cost of prosecution) is not limited to the costs of storage while the prosecution is proceeding. For example, established clerical policy may dictate that after a certain period defendants' records be transported to a warehouse. Because the county would not incur the cost of transporting records of defendants' prosecutions but for the defendants' prosecution, a charge to recoup the cost from defendants would be compensatory. Similarly, where the county has determined that it will be converting defendants' records for electronic or micrographic storage, a charge to recoup from defendants the cost of that planned conversion is compensatory; but for the defendants' prosecutions, the county would not incur the cost of converting records of those prosecutions. Because the cost of maintaining defendants' records is a "collateral consequence" of prosecution, the document storage charge to recoup that cost from defendants is compensatory. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding document storage charge to be fee); *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (1st Dist. 2006) (same).

Defendant further argues that the document storage charge is non-compensatory because its proceeds may be used to pay for "any costs relative to the storage of court records, including hardware, software, research and development costs, and related

personnel," 705 ILCS 1015/27.3c(c) (2015), as opposed to being limited to use only for the expense of storing criminal defendants' records, and so may result in the proceeds of criminal defendants' document storage fees commingling with the proceeds from civil litigants' document storage fees. Def. Br. 32-33. But defendant confuses the legislature's reason for imposing the document storage charge — to recoup the cost of storing the records of defendants' prosecutions, *see* 705 ILCS 105/27.3c(a) — with the legislature's budgetary decision to allocate the proceeds from that compensatory charge to a more general use. *See supra* § I.D. For example, the legislature's hypothetical ten-cent electricity charge to recoup the cost of providing electricity to the courtroom during defendants' proceedings, *see supra* § I.B, would not lose its compensatory nature just because the proceeds of the charge in criminal cases may be used to pay the courthouse's electricity bill, even though that bill reflects the electricity used during both criminal and civil cases. The legislature's decision to devote the proceeds from civil litigants' and criminal defendants' document storage charges to pay for the variety of costs relating to document storage rather than merely the costs arising from their particular cases does not render the charge punitive. The legislature need not ensure that no dollar received from a fee in a criminal case ever goes toward any system that affects anyone other than criminal defendants to preserve the fee's compensatory purpose.

### B. The felony complaint charge is a fee because it is intended to recoup the clerk's costs in handling the felony complaint filed in a defendant's case.

Section 27.2a(w)(1) of the Clerks of Courts Act provides that "[t]he clerk shall be entitled to costs in all criminal cases from each person convicted or sentenced to supervision therein." 705 ILCS 105/27.2a(w)(1) (2015). Such costs include the costs

associated with a variety of filings, such as petty offense complaints, 705 ILCS 105/27.2a(w)(1)(D) (2015), misdemeanor complaints, 705 ILCS 105/27.2a(w)(1)(B) (2015), felony complaints, 705 ILCS 105/27.2a(w)(1)(A) (2015), motions to vacate or amend final orders, 705 ILCS 105/27.2a(w)(1)(G) (2015), and motions to vacate bond forfeiture orders, 705 ILCS 105/27.2a(w)(1)(H) (2015). The legislative history of section 27.2a reveals that the various charges are "based upon the approximate cost of handling the respective services," 87th Ill. Gen. Assem., House Proceedings, June 28, 1991, at 79-80 (Statements of Rep. Lechowicz), so that subsection 27.2a(w)(1)(A)'s felony complaint charge reflects the legislature's finding that clerks incur "a minimum of $125 and a maximum of $190" in costs from handling felony complaints. 705 ILCS 27.2a(w)(1)(A).

The felony complaint charge is a fee because it is intended to compensate the State for the costs incurred by the clerk in handling felony complaints. In addition to expressly stating that the charges (including the felony complaint charge) represent costs incurred by the clerk, 705 ILCS 105/27.2a(w)(1), section 27.2a repeatedly characterizes the felony complaint charge as a fee. *See Jones*, 223 Ill. 2d at 599 (noting that statutory characterization "constitutes strong evidence as to how the charge should be characterized"). For example, the felony fee is listed among the "fees of the clerks of the circuit court in all counties having a population of 3,000,000 or more inhabitants," 705 ILCS 105/27.2a; then again among the "Criminal and Quasi-Criminal Costs and Fees," 705 ILCS 105/27.2a(w); and yet again among the "costs in all criminal and quasi-criminal cases," 705 ILCS 105/27.2a(w)(1). *See Jones*, 223 Ill. 2d at 582 n.1 (treating fees and costs as interchangeable for purposes of determining whether charge is fee or fine).

Notwithstanding section 27.2a(w)(1)'s clear statement (repeated in the legislative history) that the felony complaint charge represents the clerk's costs relating to felony complaints and the repeated statutory references to the felony complaint charge as a fee, defendant argues that it is not compensatory because its assessment is mandatory and contingent on conviction. Def. Br. 21. But as explained above, *see supra* § I.A & B, these characteristics cannot overcome the legislature's clear expression of compensatory intent. The fact that a felony complaint charge is mandated whenever a felony complaint is filed (and, thus, whenever the clerk incurs the cost of handling a felony complaint) is entirely consistent with a compensatory purpose. *See supra* § I.B. And the legislature's decision to spare acquitted defendants the burden of paying for the unsuccessful felony complaints filed against them is more reasonably construed as an exercise of legislative grace than evidence of punitive intent. *See supra* § I.A.

Defendant suggests that subsection 27.2a(gg)'s provision that a delinquency charge may be assessed for unpaid section 27.2a fees (including unpaid felony complaint charges) "arguably supports the conclusion that [the felony complaint charge] is a fine," Def. Br. 22, but it is unclear why that would be. Under subsection 27.2a(gg), the clerk may add a delinquency charge equal to a percentage of unpaid fees and costs "to defray additional administrative costs incurred by the clerk of the circuit court in collecting unpaid fees and costs." 705 ILCS 105/27.2a(gg) (2015). Not only is subsection 27.2a(gg)'s collection charge explicitly compensatory, it reinforces the legislature's consistent characterization of the felony complaint charge as a fee, repeatedly referring to the charges listed under section 27.2a as "fees." *See id.*

Nor does the legislature's recognition during debate that recouping from defendants the clerk's costs incurred during defendants' prosecution will relieve counties of those expenses, allowing them to spend their limited tax dollars on other matters or even reduce taxes, indicate punitive intent. *See* 92nd Gen. Assem., Senate Proceedings, Nov. 28, 2001, at 100 (Statements of Sen. Dillard) (explaining that if cost of litigation "doesn't come from the litigants, it's going to come from, sadly, real estate taxpayers and sales taxpayers in these counties"). Rather, it reflects the legislature's understanding that dollars are fungible. A charge assessed to compensate the State for a service is compensatory regardless of what the government subsequently spends the compensatory payment on. *See supra* § I.D. Therefore, the felony complaint charge is a fee, not a fine. *See Tolliver*, 363 Ill. App. 3d at 97 (finding felony complaint charge to be fee).

### C. The court automation charge is a fee because it is intended to recoup the costs of the clerk's automated record keeping system incurred in every defendant's prosecution.

Under 705 ILCS 105/27.3a(1) (2015), counties may impose a "court automation fee" to defray "[t]he expense of establishing and maintaining automated record keeping systems in the office of the clerks of the circuit court," which the clerk shall collect from each civil litigant and convicted criminal defendant, "provided that the record keeping system which processes the case category [i.e., felony, misdemeanor, etc.] is automated or has been approved for automation by the county board." The fees shall be remitted to the county treasurer and placed in "a special fund designated as the court automation fund" for "payment of any cost related to the automation of court records, including hardware, software, research and development costs and personnel related thereto." 705 ILCS 105/27.3a(3) (2015). This charge has an expressly compensatory purpose: to

recoup from defendants and civil litigants the costs of maintaining the various automated record keeping systems used by every circuit court in every criminal and civil case. *See* 705 ILCS 105/27.3a(1); *Tolliver*, 363 Ill. App. 3d at 97 (finding court automation charge to be fee); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 39 (same); *Brown*, 2017 IL App (1st) 142877, ¶ 81 (same); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (same).

Although defendant argues that the court automation charge is non-compensatory because it is ostensibly authorized in criminal cases where the court has no automated record keeping system yet in place, Def. Br. 27, that language is a relic of a bygone era; there are no such cases any more, nor have there been for years. When the court automation fee was debated prior to its initial enactment in 1985, "only about 30 counties of 102 counties in the [S]tate [we]re automated." S*ee* 83rd Gen. Assem., House Proceedings, June 30, 1984, at 57 (Statements of Rep. Steczo). In the decades since, every circuit court has incorporated computers into its record keeping system in some manner. Accordingly, there is no defendant whose case does not involve the use of a court's automated record keeping systems, and so a charge to recoup a share of the cost of maintaining that system is compensatory in every case. Indeed, the Senate debate on the most recent increase in the amount of the charge reveals the legislature's understanding of the purpose of the court automation fee to be simply "for automated record keeping," rather than for automating wholly unautomated courts. *See* 98th Gen. Assem., Senate Proceedings, Nov. 7, 2013, at 39-40 (Statements of Sen. Hutchinson) (describing bill to increase amount of court automation charge as increasing the maximum charge "for automated recordkeeping" and acknowledging that "cost of processing" had increased with the growing scale of existing automated record keeping

systems). Although the increase in the court automation fee's rate may be motivated in part by the need to fund new and better automated record keeping systems, the purpose of the fee itself remains to recoup the cost of the use of existing record keeping systems in every defendant's case. Accordingly, the court automation charge is unlike other charges that, although related to a potential cost of prosecution, are actually fines because their imposition is mandated in cases that do not incur that cost. *See, e.g.*, *Graves*, 235 Ill. 2d at 252 (mental health court and youth diversion program charges are fines because their imposition is mandated in cases that do not "involve[] the resources of the programs financed by the mental health court and youth diversion/peer court fees"); *see also Carter*, 2016 IL App (3d) 140196, ¶ 56 (probation operations assistance charge is fine because its imposition is mandated against all convicted defendants regardless of whether their cases involved probation services); *see infra* § II.E (conceding that public defender automated record keeping system fee is non-compensatory because it is mandated in cases that do not involve public defender).

Defendant also argues that the court automation charge is non-compensatory because the legislature made its proceeds available to pay record keeping automation costs in general, rather than limiting them to the record keeping automation costs specific to a defendant's particular case. Def. Br. 28-29. But the legislature's decision not to earmark a compensatory charge's proceeds for a particular use reveals the legislature's budgeting priorities, not its lack of compensatory intent, especially where, as here, the statutory language contains an express statement of such intent. *See supra* § I.D. Similarly, the fact that the court automation charge is mandatory and contingent on

conviction does not overcome the legislature's clear compensatory intent. *See supra* § I.A & B.

### D. The State's Attorney records automation charge is a fee because it is intended to recoup the costs of the automated record keeping system used in defendants' prosecutions.

Under 55 ILCS 5/4-2002.1(c) (2015), State's Attorneys are entitled to a two-dollar fee from defendants convicted of felonies "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." The proceeds from that charge are remitted to the county treasurer, placed "into a special fund designated as the State's Attorney Records Automation Fund," and used to pay for "hardware, software, research, and development costs and personnel related thereto." *Id.* Like the court automation charge, *see supra* § II.C, the State's Attorney records automation charge is compensatory because its purpose is to recoup a cost that is incurred in every criminal prosecution; because the State's Attorney is involved in every prosecution, so too are its automated record keeping systems. *See People v. Reed*, 2016 IL App (1st) 140498, ¶ 16 (finding that State's Attorney record automation charge is compensatory because "the State's Attorney's office would have utilized its automated record keeping systems in the prosecution of defendant when it filed charges with the clerk's office and made copies of discovery, which were tendered to the defense"). Accordingly, the appellate court has held in every published opinion addressing this charge but one that the State's Attorney records automation charge is a fee. *See, e.g.*, *People v. Maggio*, 2017 IL App (4th) 150287, ¶ 54 (State's Attorney records automation charge is a fee); *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 19 (same); *Reed*, 2016 IL App (1st) 140498, ¶ 16 (same); *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115

(same); *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 (same); *but see People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 50, 56 (finding that State's Attorney record automation charge is a fine because its proceeds may be used for prospective purposes, but noting that "every [other] published decision on this matter" has held charge to be fee and collecting cases).

Defendant argues that the State's Attorney records automation charge is non-compensatory, relying on *Camacho*'s assertion that because the proceeds from the fee may be spent on hardware, software, research and development, and personnel, its imposition is solely to "fund the technological advancement" of the State's Attorneys' offices, *Camacho*, 2016 IL App (1st) 140604, ¶ 50, rather than, as the statute states, "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems," 55 ILCS 5/4-2002.1(c). But *Camacho* overlooks the difference between the legislature's purpose in imposing a charge and its budgetary decision regarding how to allocate the proceeds from the charge. *See supra* § I.D. Moreover, *Camacho* fails to recognize that most of the authorized expenditures from the State's Attorney Records Automation Fund represent the actual costs of operating the automated record keeping systems already in place and used in defendants' cases: hardware, software, and personnel. 55 ILCS 5/4-2002.1(c). The only authorized expenditures that do not necessarily compensate the State's Attorney for the costs it incurred by using its automated record keeping systems in a defendant's case are those for research and development. *See id.* But the legislature's decision to allow the State's Attorney to use defendants' compensatory payments to defray the cost of using existing automated record keeping systems in their cases as well as the maintenance and

improvement of those systems does not erase the compensatory purpose for imposing the charge in the first place.

### E. The Public Defender records automation charge is a fine because it is mandated even in cases that do not involve the Public Defender.

The People concede that the Public Defender automation charge is a fine. Although the charge is intended to "discharge the expenses of the Cook County Public Defender's Office for establishing and maintaining automated record keeping systems," 55 ILCS 5/3-4012 (2015) — an apparently compensatory purpose, *see supra* § II.D — the charge's imposition is not limited to cases involving the public defender. Rather, the charge is mandated in all cases, regardless of whether the defendant was represented by the public defender and thereby could be attributed a share of the cost of the public defender's record keeping systems. Because the legislature intended that the charge be assessed against a significant number of defendants whose cases did not incur the cost the charge purports to recoup, the charge lacks a compensatory purpose and is a fine.

## CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that this Court affirm the judgment of the appellate court in part, reverse the judgment of the appellate court with respect to its holding that the Public Defender records automation fee is a fee for purposes of presentence custody credit application, and remand to the circuit court with direction to apply defendant's presentence custody credits to the two-dollar Public Defender records automation charge.

May 29, 2018

Respectfully submitted,

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twenty-four pages.

/s/ Joshua M. Schneider
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**PROOF OF FILING AND SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 29, 2018, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail address of the person named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail the original and nine copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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