



Law Office of the COOK COUNTY PUBLIC DEFENDER

69 W Washington, Suite 1600, Chicago, IL 60602 • (312) 603-0600
Sharone R. Mitchell, Jr. • Public Defender

August 26, 2022

Statutory Court Fee Task Force
Illinois Supreme Court
222 N. LaSalle Street, 13th Floor
Chicago, Illinois 60601

Sent via email to Gabriela Conley at gconley@illinoiscourts.gov.

Re: Written Comments on Draft Report for August 30, 2022 Public Hearing

Dear Supreme Court Statutory Court Fee Task Force:

Thank you for the opportunity to provide comment on the Task Force's Draft Report on Implementation of 2016 Task Force Recommendations and Additional Proposed Measures for Addressing Barriers to Access to Justice and Excessive Financial Burdens Associated with Fees and Costs in Illinois Court Proceedings. The Law Office of the Cook County Public Defender has been and remains strongly in support of all efforts to reduce the impact of court assessments on our clients, and we are pleased to see the Task Force taking up and proposing solutions to implementation challenges with the Criminal and Traffic Assessments Act ("CTAA"). We support all of the recommendations contained in the draft report, and—on a few matters—would even like to see the proposed recommendations make more significant changes.

I. Remove the Sunset on and Continue to Document the Impact of the CTAA

The most essential recommendation is to remove the sunset provision in the CTAA (Implementation Issue 1) and to continue to provide this much-improved guidance on assessments to Illinois courts, lawyers, litigants and accused people. The ongoing use of and ability to evaluate the impact of the CTAA will benefit greatly from the recommendations in the *Data Collection and Reporting Needed to Provide Empirical Basis for Additional Improvements* section of the report. As both the appointed representative of individual accused people and policy advocates, our work and understanding of the system in which we operate would benefit immensely from the adoption of *Data Reporting Recommendation 1: Continuation and Expansion of Annual Reports by Circuit Court Clerks Regarding Assessments in Criminal and Traffic Proceedings*. We are optimistic that the already planned \$10 million investment in trial technology will also help realize this goal, but it is essential that we are able to better understand the impact of court assessments on both accused people and on county budgets.

II. Close Loopholes that Defeat the Goals of the CTAA

The Task Force has identified numerous practices, policies, and statutory authorizations that contradict the goals of the CTAA and undermine its success. In particular, it is essential that the proposed statutory prohibition on prosecutors' ability to require an accused person, as part of a



negotiated plea agreement, to relinquish their right to seek an assessment waiver (*Implementation Issue 3*) be recommended in the Task Force's final report and adopted by the General Assembly. Allowing this practice to continue would deeply undermine the public's faith in the court system and threatens this and all future attempts by the legislature to make changes to criminal law or practice in the name of increasing equity and fairness and achieving broader public policy goals. As the draft report notes, "some 95-99% of all criminal dispositions are effectuated by pleas, [and allowing this practice to continue] would very nearly constitute a de facto repeal of the statutory assessment waiver provisions in those jurisdictions which condition plea agreements on the defendant giving up the statutory right to an assessment waiver." Failure to end this practice would allow prosecutors across the state to revive or continue practices prohibited by state statute, eroding the rule of law and dramatically increasing the coercion experienced by accused people.

Similarly, the current statutory authorities to assess multiple late fees or percentage increases in assessments as part of collection processes must be addressed. We are excited to see the Task Force recommending repeal of some duplicative collection fee statutes as part of *New Initiative 4: Debt Collection Fees*, but the repeal of only some of the smaller fees is an inadequate response to the problem. While it is important to eliminate the authority to impose additional fees of 5% to 15% of the outstanding balance under 705 ILCS 105/27.1b(y-5) and 725 ILCS 5/124A-10, the much larger burden is created by the up to 30% fee authorized in 730 ILCS 5/5-9-3(e) and carried out by the State's Attorney or a private company. *New Initiative 4 should be expanded to recommend the repeal or reduction of this exorbitant late fee and to eliminate the role of for-profit debt collection companies in this government function.*

It is likewise important that *Implementation Issue 5 (Existence of Assessments in Statutes Outside of the CTAA and Section 27.1b)* is addressed. Rather than incorporating all of the currently excluded assessments into either the CTAA or Section 27.1b, the General Assembly should eliminate as many of these assessments as possible while ensuring that any necessary programs or costs—such as county law libraries—remain fully funded through equitable revenue sources.

We also support the proposed Illinois Supreme Court Rule amendments to prevent the decision of an application for assessment waiver in a criminal case from being deferred until the accused person completes his or her sentence, as described in *Implementation Issue 4*.

We commend the Task Force for addressing the impact of court assessments on people sentenced to the Illinois Department of Corrections (IDOC) in New Initiative 5 and urge you to consider a more aggressive schedule for eliminating such debts. Given how felony convictions function as barriers to employment upon reentry and undermine the public policy goal of supporting success upon a person's release, all court assessments and fines should be eliminated for people sentenced to IDOC, rather than through a staggered, annual approach as currently proposed. In the very unusual case in which a sentenced person can afford to pay, a petition process such as the one outlined in the draft report could remain available.

Finally, the Public Defender's Office is in strong support of the recommendations in *New Initiative 3: Assessments and Fines in Juvenile Delinquency Cases*. *We also support the complete elimination of assessments and fines in juvenile delinquency cases as contained in*



Senate Bill 3621. While juvenile assessments are not currently ordered in Cook County, nothing except local practice prevents this from changing in the future. For all of the well-researched reasons outlined in the draft report, this section of the statute should be repealed so this process can be permanently ended statewide.

III. Plan to Address Punitive Tickets and Court Fines in Addition to Fees and Costs

The Task Force’s original 2016 report and the CTAA consciously chose to focus on court assessments in the form of fees and costs while excluding consideration of fines ordered by a judge as punishment. While legally and philosophically distinguishable from fees and costs, the experience of punitive fines by accused people is often identical and many of the same negative impacts result. In particular, it would serve the interests of the court and broader communities to investigate whether tickets and fines that are assessed by the courts as punishment in quasi-criminal and criminal matters in any way further the goals of deterrence or rehabilitation—and the experiences of our clients demonstrate that they do not. In fact, when unpaid court fines are subject to the same debt collection practices described in *New Initiative 4: Debt Collection Fees*, what we see are court assessments that continue to grow as a financial burden and negatively impact reentry, employment prospects, and overall goals of supporting financial self-sufficiency for people who by definition are already disadvantaged by the collateral consequences of a criminal conviction.

Examining and proposing remedies for harmful fines should include efforts to address tickets and fines issued under municipal ordinances. In April of this year, *ProPublica* and *The Chicago Tribune* released [an investigation](#) describing more than 11,800 tickets issued to students in nearly 150 Illinois school districts over the past three years—many seemingly in violation of existing state laws prohibiting such tickets. These loopholes or inadequate enforcement mechanisms regarding existing prohibitions on tickets and fines must be addressed to move Illinois closer to a system in which revenue no longer motivates law enforcement activity. The article further highlights the lack of meaningful difference between court costs, fees, and fines; it describes a hearing officer waiving \$50 in costs while imposing a fine of \$150 to be paid by a mother who indicates she will have to choose between paying the fine or paying for her daughter’s education. Throughout the article, many impacted students and parents describe the burden of tickets ranging from \$50 to \$450.

These ordinance violation fines create problems for low- and middle-income Illinois residents that are significantly similar to those caused by court assessments. To address them, the Task Force should either expand its mandate or a new and complementary effort should be convened specifically to examine the tickets and fines currently not addressed by the CTAA.

IV. Eliminate Public Defender Fees and Fully Fund the Court System Through Equitable Revenue Streams

There is an additional court fee that does not appear to be contemplated for waiver or repeal as part of either the original CTAA or the current draft report, which is Payment for Court-Appointed Counsel under 725 ILCS 5/113-3.1. *Accused people who were appointed counsel by the court have already been determined to be indigent and unable to afford to hire a private*



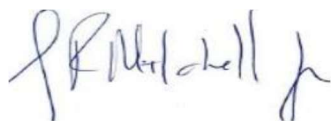
lawyer. While Section 113-3.1 instructs the court to “consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties,” there is no clear bar to imposition of reimbursement to the county for use of the public defender, and use of this statute varies widely by county. In Cook County, [a prepared form exists](#) for use by the State’s Attorney’s Office for this purpose but is rarely filed. Ironically, the Task Force’s excellent proposed amendments clarify that certification of representation by a public defender is sufficient to secure waiver of court assessments, yet that same client could still be ordered to pay up to \$5,000 to the county for the cost of representation by that public defender (when the case is a felony). These exorbitant court costs should be eliminated entirely; at a minimum, however, they must be included in and subject to the clear waiver standards provided for in the CTAA.

As the court-appointed attorney on more than 70,000 cases each year, it is of special interest to our office that the court system be funded through general revenue streams and not through court assessments, user fees or other financial burdens on our clients. We strongly support the recommended *New Initiative #7, Working Toward a Unified, Assessment-Free Court System*. It is essential that court systems and other organizations (as referenced in *Implementation Issue 8*) are equitably funded through general revenue and not user fees. There must be no possible financial incentive to ticket or criminally prosecute residents, and basic fairness demands court system funding should not depend on the volume of cases filings or types of convictions in any given jurisdiction.

One element of the court system in Illinois that desperately needs additional funding is, in fact, public defenders. A [June 2021 report](#) by the Sixth Amendment Center found that trial-level public defenders in Illinois lack sufficient resources to provide constitutionally adequate representation. While addressing the crisis of public defense funding in Illinois is certainly beyond the scope of the Task Force, we urge the inclusion of public defense in considerations of what it means to develop “a Unified, Assessment-Free Court System” in Illinois alongside explicit recognition of the need for increased funding to trial-level public defense to meet the state’s Constitutional obligations.

Thank you again for all of your work on behalf of accused people in Illinois and for the opportunity to comment on the draft report. The Law Office of the Cook County Public Defender is happy to answer any additional questions the Task Force may have and can be reached at 312-603-0600 at your convenience.

Sincerely,



Sharone R. Mitchell, Jr.
Cook County Public Defender

