

CHICAGO
APPLESEED
CENTER FOR FAIR COURTS

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**TESTIMONY OF CHICAGO APPLESEED CENTER FOR FAIR COURTS
TO THE ILLINOIS SUPREME COURT STATUTORY COURT FEES TASK FORCE
FOR THE PUBLIC HEARING ON TUESDAY, JULY 13, 2021**

Some of the stated objectives of court fees and costs (“monetary sanctions” or “legal financial obligations”) include retribution for people impacted by crime, reimbursement for use of the system, and revenue-raising. Chicago Appleseed Center for Fair Courts supports the efforts of the Criminal and Traffic Assessment Act (CTAA) and other waivers of legal financial obligations (LFOs), but, in line with the considerable literature on this topic, believes that monetary sanctions, as currently instituted in Illinois, fail to meet any of their main objectives -- even under provisions of the Criminal and Traffic Assessments Act.

In this testimony, we will outline why monetary sanctions fail to meet these objectives and offer possible steps forward in the effort to address the inequities and inefficiencies of monetary sanctions in the Illinois courts.

PUNISHMENT

Monetary sanctions help construct a cycle of debt as punishment for participating in the court system. Like continued pretrial court appearances, which serve as a form of social control while also punishing people -- primarily lower-income communities of color -- these procedures are specifically designed to substitute confinement and to apply both physical and economic constraints.

The kinds of policies that emphasize financial punishment and retribution as consequences for ‘crime’ fail to deter people from involvement in the criminal courts; evidence proves that by the time LFO revenue reached its peak in the 2010s, crime rates across the country had already been declining significantly.¹ As stated in Chicago Appleseed’s 2020 report, “Court Costs, Fines, and Fees are Bad Policy,” monetary sanctions are an “inconsistent and unreliable form of punishment that is at times inconsequential and at times too severe, depending on the wealth of the person being punished and not the severity of the offense.” Additional punishment applies once individuals fail to pay court fees.² Although in *Bearden v. Georgia (1983)* the courts ruled that it was unconstitutional

¹ Marsano, Emma. 2020. “Court Costs, Fines, and Fees are Bad Policy: Recommendations for Illinois Legislators.” Chicago Appleseed Center for Fair Courts & Chicago Council of Lawyers, 1-39. Accessible via <http://www.chicagoappleseed.org/wp-content/uploads/2020/07/FINAL-Court-Costs-Fines-Fees-in-IL-Chicago-Appleseed-07212020.pdf>.

² Cadigan, Michele, and Gabriela Kirk. 2020. “On Thin Ice: Bureaucratic Processes of Monetary Sanctions and Job Insecurity.” *The Russell Sage Foundation Journal of the Social Sciences* 6(1): 113-31. 10.7758/RSF.2020.6.1.05.

to incarcerate individuals for not obeying court fees without any procedures to determine their willfulness in paying, courts continue to pressure and threaten defendants with such punishment.³

When considering fines and fees as punishment, court actors rarely consider defendants' socioeconomic positions and inability to pay; excessive criminal court fees and fines inevitably create court debts. When people cannot pay these debts outright, they must accept payment plans through the state's courts,⁴ which is often an added bill that court-involved people cannot afford. Ability to pay provides a certain kind of freedom, while an inability to pay requires frequent court appearances and further court supervision. This continued supervision is a commonly imposed unjust encumbrance for court-involved people in poor communities of color.⁵ Legal financial obligations, repeated court appearances, and ongoing supervision translate to the regulation of a defendant's body, time, and energy. Profiteering on oppressed communities multiplies the experiences of debt and punishment while extorting resources from families that already cannot afford it.

Similarly, these procedural burdens affect not only defendants but also their families and communities. As Pattillo and Kirk (2020) describe, the collateral damages (job loss, economic instability, housing inaccess, etc.) of monetary sanctions lead to the delayed freedom of people involved in the system and delayed justice for people who have been harmed. A struggle to pay monetary sanctions can easily translate to additional difficulties to pay for essential services like childcare, transportation, and healthcare. Until their accounts are fully paid, individuals will likely be placed under more prolonged supervision. This can lead to future incarceration over non-payments. In 2017, up to 26% of people surveyed in Chicago, Champaign, and Peoria had received prolonged jail time because of their inability to pay their court debt.⁶ This cycle of debt is inevitably extracting resources of social mobility through a means of monetary sanctions. Court actors must also not forget the prominent racial disparity among those incarcerated over court fines. Aggressive policing of Black and Latine neighborhoods is mainly to blame for this disparity.⁷

FAIRNESS

Despite well-documented evidence to the contrary, proponents of regressive monetary sanctions justify them by perpetuating the notion that 'fairness' requires everyone to pay the same penalty for the same crime regardless of their identity or socioeconomic status. The penalties associated with failing to pay, including high late fees, prolonged supervision, driver's license suspensions, and incarceration, exacerbate the burden of the court system for low-income individuals and lead to cycles of perpetuated injustice.

³ Pattillo, Mary, and Gabriela Kirk. 2020. "Pay Unto Caesar: Breaches of Justice in the Monetary Sanctions Regime." *UCLA Criminal Justice Law Review* 4(1): 50-80.

⁴ See Pattillo & Kirk, 2020.

⁵ See Pattillo & Kirk, 2020.

⁶ See Pattillo & Kirk, 2020.

⁷ Henricks, Kasey, and Daina C. Harvey. 2017. "Not One but Many: Monetary Punishment and the Fergusons of America." *Sociological Forum* 32: 930-951. <https://doi.org/10.1111/socf.12360>. See also Pattillo & Kirk, 2020.

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Black, Indigenous, and other low-income people of color are very clearly impacted differently by monetary sanctions as their wealthier counterparts. When wealthier individuals are assessed for monetary sanctions, they are generally able to pay the entirety of the cost immediately. For those unable to pay their assessments immediately, they become subject to a variety of penalties that make it much harder for them to pay off their debt, extricate themselves from the system, and lead to further cycles of poverty and state control. Incarceration, though generally used as a threat to coerce individuals into paying (often at the cost of basic necessities), also prevents individuals from making money that can help pay off the amounts remaining on their accounts.⁸ If someone does not appear at their court hearing (perhaps due to the fact that their driver's license has been suspended, or simply due to fear of incarceration) judges can issue "failure to appear" (FTA) warrants that deepen justice system involvement and can add greater amounts of monetary sanction. These penalties worsen the situation of the affected individual and use the coercive arm of the state to perpetuate poverty and involvement with the criminal legal system.

Instead of being assessed punishment proportional to the offenses with which they are charged, low-income individuals can be given monetary sanctions many times the amount they are able to pay and be subject to court supervision that lasts months and years longer than would be assessed if they had the financial means to pay monetary sanctions immediately. Even with the fee waivers established under the CTAA, low-income individuals are still assessed monetary sanctions in the form of fines, restitution, and mandatory program costs that lead to the same cycles of court debt as laid out above.⁹ Further, while the CTAA made court assessments uniform across the State, many elements of the payment and collection of assessments are not uniform across counties, including: the percentage of late fees and when the late fees are assessed; the use of collection agencies; and the availability of electronic payment methods rather than pay-or-appear hearings. Further, the state must be vigilant in ensuring that financial penalties are not unfairly increased among Black communities. Indeed, nationwide research indicates that the biggest indicator of disproportionate imposition of court debt is not income but race: a recent study found "[o]n average, monetary punishment increases by \$34,864 per 100,000 residents for every 1% increase in the black population." Kasey Henricks and Daina Cheyenne Harvey, "Not One but Many: Monetary Punishment and the Fergusons of America," 32 *Sociological Forum* 930, 940 (July 2017). Whether it is based on income or race, disproportionate punishment is the antithesis of fairness and means that monetary sanctions fail to meet their objective in this regard.

REVENUE

Monetary sanctions generate revenue by syphoning funds away from those least able to pay without improving accessibility to the courts. Courts are likely "spending dollars to collect pennies"; these financial obligations are a regressive and inefficient funding mechanism that perpetuates structural inequality by flawed neoliberal justifications.

⁸ See Pattillo & Kirk, 2020.

⁹ Friedman, Brittany, and Mary Pattillo. 2019. "Statutory Inequality: The Logics of Monetary Sanctions in State Law." RSF: Russell Sage Foundation Journal of Social Services 5(1): 173-96. 10.7758/RSF.2019.5.1.08.

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Due to “broken windows” policing and the criminalization of poverty in Black, Indigenous, and Latine neighborhoods, lower-income people are far more likely to be personally affected by the criminal legal system and thus more likely to be assessed monetary sanctions.¹⁰ In addition to unpayable fines, studies have shown that contact with the criminal legal system limits job prospects,¹¹ lowers long-term earnings,¹² and decreases labor market participation.¹³ All of these factors mean that the financial burden of monetary sanctions hits the least advantaged the hardest. This regressive funding mechanism keeps vulnerable communities from financial security, contributing to cycles of poverty and criminalization. In addition, by forcing low-income communities to fund the systems of coercion and control of which they disproportionately fall victim, crime survivors are forced to fund the perpetuation of state control of their lives and finances.

Prevalent in the background of monetary sanctions is the neoliberal logic of “personal responsibility.”¹⁴ This is the notion that one’s actions, including their finances, are completely under their own control and that failure is solely a personal failing. According to this logic, those who are assessed monetary sanctions are solely responsible for their crimes, and must “pay for their mistakes” without considering extenuating circumstances. This overlooks the disproportionate amount of criminal legal involvement experienced by low-income individuals, especially in Black communities, as well as the well-documented personal and financial consequences of incarceration and other forms of state control. Likewise, the court system spends revenue collected through fines and fees to address issues “only tangentially, if at all” related to the offense.¹⁵

In short, though courts are among those receiving funds from monetary sanctions, there are many others that benefit from monetary sanctions, often for no other reason than an inability to gain taxpayer approval. These “pet projects” should not be funded by those least able to afford them. If politicians and system actors cannot convince taxpayers to foot the bill for a criminal legal system with a well-documented tendency to over-police and over-incarcerate the least advantaged communities, then the court system should accept limited funding and reduce the footprint of state control in the lives of citizens, many of whose only ‘crime’ is their poverty. Further, funding necessary programs, such as child advocacy centers, based on the number of people convicted of a crime, such as child abuse, is a perverse and troubling system. Necessary services should be funded regardless of the number of people convicted of crimes and their ability to pay assessments.

¹⁰ See Marsano, 2020.

¹¹ Pager, Devah. 2009. *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press. 10.7208/chicago/9780226644851.001.0001.

¹² Harding, David J., Jeffrey D. Morenoff, Anh P. Nguyen, and Shawn D. Bushway. 2017. “Short- and Long-Term Effects of Imprisonment on Future Felony Convictions and Prison Admissions.” *Proceedings of the National Academy of Sciences* 114(42): 11103-108.

¹³ Seim, Josh, and David J. Harding. 2020. “Parole Fare: Post-prison Supervision and Low-Wage Work.” RSF: The Russell Sage Foundation *Journal of the Social of Social Sciences* 6 (1): 173-95. 10.7758/RSF.2020.6.1.08.

¹⁴ See Friedman & Pattillo, 2019.

¹⁵ See Friedman & Pattillo, 2019.

Beyond inherent inequities, monetary sanctions are, plain and simple, a horribly inefficient source of revenue, plagued by high costs and unreliable payments. Collection of monetary sanctions comes at a conservatively estimated cost of \$0.41 per dollar.¹⁶ To put this into context, “on average, the IRS spends \$0.34 for every one-hundred dollars they collect—in other words, on average revenue from criminal justice debt costs 121-times more to collect than revenue from federal taxation.”¹⁷ Though this data concerns federal, rather than state, taxation, it is safe to assume that state taxation is likewise incredibly more efficient at raising funds than monetary sanctions. Proponents of monetary sanctions claim that they are necessary to fund the courts and other aspects of the government, but, even from a purely fiscal perspective, normal taxation systems are more efficient at raising funds. The unpopularity of general taxation should not be a reason to use monetary sanctions when the former are so much more efficient and do not impact disadvantaged communities with such disparity.

RECOMMENDATIONS TO THE ILLINOIS SUPREME COURT TASK FORCE

Based on the literature, both short- and long-term policy changes are necessary and possible. From the cascade of collateral punishments to a means of social control, monetary sanctions are unreliable and often plague the court system with high costs and inconsistent revenue. Chicago Appleseed Center for Fair Courts recommends shrinking the court system to a size that can be fully funded by the state; expanding and creating full, partial, and retroactive fee waivers; and abolishing monetary sanctions:

1. **DEBT FORGIVENESS** | So long as the court system continues to utilize monetary sanctions, scholars have argued for debt forgiveness, motivated in part by the disproportionate impact of debt on communities of color and the poor, as well as the unlikelihood of a full collection of payments. Without forgiving excessive court debts and retroactively assessing people’s abilities to pay, our state is continuing to participate in unfair and unsustainable punishment systems that inhibit social and financial mobility and perpetuate systemic racism.
2. **EXPAND FULL AND PARTIAL FEE WAIVERS** | It is essential to expand fee waiver accessibility in order to provide short- and long-term material relief for Illinois communities.¹⁸ In addition to retroactive fee waivers (as stated above), the CTAA’s fee waiver system for indigent and near-indigent individuals should be extended to cover all forms of legal financial obligations and costs, including criminal court fines, restitution, and all probation fees, as well as traffic cases. By expanding the Criminal and Traffic Assessment Act waivers to all cases - including those

¹⁶ Menendez, Matthew, Michael F. Crowley, Lauren-Brooke Eisen, and Noah Atchison. 2019. “The Steep Costs of Criminal Justice Fines and Fees: A Fiscal Analysis of Three States and Ten Counties.” Brennan Center for Justice at NYU Law School. Accessible via https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.

¹⁷ See Menendez et al., 2019 via Marsano, 2020).

¹⁸ As the impact of waivers on court revenues is assessed, it is critical to recognize that the implementation of the CTAA coincided with the proliferation in the use of collections agencies across the State. The impact of the use of collection agencies for criminal assessments on the amount of revenue collected by the State must also be considered.

involving the Illinois Vehicle Code - the state would further prioritize, equitably, the needs of Illinois residents by focusing only a person's ability to pay and not just on their conviction.

- 3. END REGRESSIVE COURT FUNDING** | The two short-term attempts to relieve the debt cycle stated above must be accompanied by a decision to abandon monetary sanctions -- an inherently regressive taxation system -- and fund the court system entirely differently. Instead, the state legislature should take measures to decarcerate, shrink the system, and fund restorative, evidence-based practices through traditional taxation. A fully-funded court system would allow these short-term recommendations to come into effect and remove the need for monetary sanctions as revenue. Removing court costs and fees entirely would alleviate such challenges and is a promising step towards eliminating cycles of debt and punishment. In the near future, reparations should also be considered to help repair communities negatively affected by the consequences of the court system's historical reliance on monetary sanctions.¹⁹

Courts should act to create and protect public safety, but no evidence exists that monetary sanctions do that. A deeply-rooted history of racial oppression and cascades of collateral consequences hide behind the use of court costs, fees, and fines. These debt processes represent a harmful method of social control and financial support that, as mentioned previously, are not backed by evidence, are not a reasonable revenue stream, nor does this kind of excessive punishment deter instances of harm.

Chicago Appleseed Center for Fair Courts encourages the Supreme Court Statutory Court Fee Task Force to forgive current debts and assess abilities to pay retroactively; encourage and advocate for a smaller, fully-taxpayer-funded court system; and expand the fee waiver program to cover all cases, including traffic, while it moves toward the full elimination of monetary sanctions. These steps may help Illinois repair the collateral damages of its racist, outdated system and provoke a movement of reparations and redress to communities of color.

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¹⁹ See Marsano, 2020.