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Blood from a Turnip: Money as Punishment in Idaho

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BLOOD FROM A TURNIP: MONEY AS PUNISHMENT IN IDAHO

CRISTINA MENDEZ, JEFFREY SELBIN & GUS TUPPER*

The fines, fees, costs, or other financial obligations are staggeringly high. On a weekly basis, in criminal cases, I order people who make \$9/hour to pay over \$250 in court costs alone. That is without restitution, without a fine, without a civil penalty, without restitution [for] the victim, without public defender reimbursement, without the costs of probation supervision, with the pre-sentence investigation fee, etc. There is no way to get blood from a turnip. The greatest single challenge is the blood from a turnip problem. Often, the cost for collections [is more] than the order to pay. . . . Right now, the costs just defeat the person from the very beginning.

– Anonymous Idaho Judge (2019)¹

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1. OFF. OF PERFORMANCE EVALUATIONS, IDAHO LEGISLATURE, COURT-ORDERED FINES AND FEES 36 (2019) [hereinafter FINES AND FEES REPORT], <https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1903.pdf> (quoting Idaho judge).

I. INTRODUCTION

On October 28, 2019, Peace Officer Kyle Rawlins cited Roxana Beck for a parking violation in Mountain Home, Idaho.² After further questioning and investigation, Officer Rawlins arrested Ms. Beck for alleged possession of drug paraphernalia and transported her to the Elmore County Detention Center where she was booked into jail.³ At the time of her arrest, Ms. Beck was employed part-time at Burger King earning \$12 an hour, so the Elmore County Court determined that she was indigent and appointed a public defender to represent her.⁴

In February 2020, Ms. Beck pled guilty to “frequenting,” an Idaho misdemeanor for being in a place where drugs are present, punishable by a fine of up to \$300 and ninety days in the county jail.⁵ At sentencing, the county prosecutor proposed waiving the fine in exchange for Ms. Beck’s time served in jail.⁶ Magistrate Judge Theodore Fleming nevertheless imposed a \$150 fine.⁷ Although he waived the public defender fee due to her poverty, Judge Fleming also ordered Ms. Beck to pay \$197.50 in court costs and a \$291 “restitution” fee to a state laboratory.⁸

When Ms. Beck was unable to pay the \$150 fine and the additional \$488.50 in court costs and fees, Judge Fleming required her to enter into a payment plan.⁹ In debt for \$638.50, or more than four times the actual fine, Ms. Beck signed an agreement to make \$25 monthly payments for the next twenty-six months.¹⁰ The Judge also warned Ms. Beck, “so long as you pay as agreed, you would not be back before the court under contempt. Contempt does carry up to five days in the county jail and up to a \$5,000 fine.”¹¹

In July 2020, Elmore County initiated a contempt proceeding against Ms. Beck for failing to make payments under the plan, and Judge Fleming issued a warrant

2. Answer to Petition for Writ of Prohibition at exhs. 1–2, *Beck v. Elmore Cty. Magistrate Ct.*, No. 48475-2020 (Idaho June 24, 2021) (Affidavit of Probable Cause for Arrest; Verified (Sworn) Application for Public Defender; Order Upon Request for Public Defender § 19-854).

3. *Id.*

4. *Id.*

5. IDAHO CODE § 37-2732(d) (2020). Although beyond the scope of this article, critics have argued that “when a person is charged with frequenting [in Idaho], it is essentially an admission that the state could not prove one of the more serious charges directly related to illegal drugs. Indeed, one can be convicted of frequenting without ever having come into contact with illegal drugs in any form at all. Simply being present while knowing of their existence on the premises is deemed to be a criminal act. . . . The sheer number of innocent people who could be charged with criminal frequenting makes it a statute that is unconstitutionally overbroad and one that should be stricken from the books.” Geoffrey Talmon, *‘Criminal Frequenting’ Is a Trap Door that Should Be Sealed Shut*, IDAHO FREEDOM FOUND. (Oct. 24, 2014), <https://idahofreedom.org/criminal-frequenting-is-a-trap-door-that-should-be-sealed-shut/>.

6. Respondents’ Brief in Opposition to the Petition for Writ of Prohibition at 3, *Beck*, No. 48475-2020.

7. *Id.* at 2.

8. *Id.*

9. *Id.*

10. *Id.*

11. Answer to Petition for Writ of Prohibition, *supra* note 2, exh. 3 at 10 (Transcript of Change of Plea and Sentencing Hearing).

for her arrest.¹² In addition to the amount of the outstanding fine and fees, plus accrued interest, the warrant included a bond of \$6,400, or ten times the amount of her outstanding monetary sanctions.¹³ On October 29, police arrested Ms. Beck on the warrant.¹⁴ When Ms. Beck was unable to pay the outstanding \$638.50 debt or post bond—a 10 percent cash deposit for her bond would have been \$640—she was jailed for contempt.¹⁵

After spending seven days in jail, Ms. Beck appeared again before Judge Fleming, where she entered an *Alford* plea, accepting the consequences of (but without admitting guilt to) contempt for failing to pay the original fine and fees.¹⁶ The prosecutor requested that the court order two days of jail time, credit Ms. Beck \$35 per day for the additional time in jail, and reorder the outstanding balance of the fine and fees.¹⁷ Ms. Beck's public defender requested that Judge Fleming waive the remaining balance of the court debt in light of the jail time served.¹⁸ Judge Fleming instead imposed five days for contempt (time served), credited Ms. Beck for the two additional days she spent in jail, reordered the remaining amount of the outstanding fine and fees (plus interest), and required Ms. Beck to reenter the same payment plan.¹⁹

Starting December 15, 2020, Ms. Beck once again owed the court \$25 per month.²⁰ Contained in her payment plan was the following escalation clause: "If . . . you miss a payment, the entire sum will become due and a **Warrant may be issued for your arrest** for failure to pay."²¹ More than one year after her original arrest and after spending more than a week in jail on two occasions, Ms. Beck remained under the continued threat of arrest and additional jailtime for failure to pay more than \$600 in fees and fines.²²

Sadly, Ms. Beck's experience is not unique.²³ Nationwide research over the last decade has documented skyrocketing fees and fines in the criminal system that

12. Petition for Writ of Prohibition at 2, *Beck*, No. 48475-2020.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 3. An *Alford* plea allows a defendant to enter a guilty plea while maintaining their innocence. *North Carolina v. Alford*, 400 U.S. 25 (1970).

17. Answer to Petition for Writ of Prohibition, *supra* note 2, ex. 3 at 12 (Transcript of Change of Plea and Sentencing Hearing).

18. *Id.* at 12–13.

19. Petition for Writ of Prohibition, *supra* note 12, at 3. Ms. Beck was credited \$70 for the time she spent in jail, \$35 per day. *Id.*

20. *Id.*

21. *Id.*

22. See Petitioner's Reply at 1, *Beck*, No. 48475-2020 (recounting that Ms. Beck was initially sentenced in February 2020); Order, *Beck*, No. 48475-2020 (setting oral argument for May 2021).

23. Even in Elmore County, Ms. Beck's experience is not an isolated incident. See Motion to Take Judicial Notice, *Beck*, No. 48475-2020 (noting a nearly identical case after the filing of Ms. Beck's cases in which Francisco Aguila-Cardenas was subsequently jailed in a criminal contempt prosecution for alleged failure to pay court debt).

seriously harm people and make future system involvement more likely.²⁴ Monetary sanctions fall especially harshly on low-income, Black, Latinx, and Indigenous people, but fees and fines are not just a problem in populous states with large communities of color.²⁵ Mostly White and rural states like Idaho regularly impose substantial monetary sanctions on people without the means to pay them.²⁶

Idaho law authorizes, and in many cases requires, state and local courts to charge fees and fines to people in both adult and juvenile court.²⁷ In 2019, the Idaho Legislature's Office of Performance Evaluations (OPE) published a report acknowledging that "Idaho has made a policy decision to rely on fees and fines as a considerable source of court funding."²⁸ The bulk of the revenue comes from fees and fines assessed in criminal proceedings, and much of it flows to entities and programs outside the court system.²⁹ According to the OPE report, "[i]n fiscal year 2015, Idaho judges ordered about \$65 million in fines, fees, and costs."³⁰ More recent data suggest that judges order an average of \$19 million in fees and fines

24. See generally REBEKAH DILLER ET AL., BRENNAN CTR. FOR JUST., MARYLAND'S PAROLE SUPERVISION FEE: A BARRIER TO REENTRY (2009), <https://www.brennancenter.org/sites/default/files/legacy/publications/MD.Fees.Fines.pdf> (documenting the harm and recidivistic effect of supervision fees); Alex R. Piquero & Wesley G. Jennings, Research Note, *Justice System—Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 325 (2017), <https://journals.sagepub.com/doi/10.1177/1541204016669213> (showing the recidivistic nature of monetary sanctions in youth populations); COUNCIL OF ECON. ADVISERS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR (2015), https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf (discussing the disproportionate harm of monetary sanctions in low-income communities); Tamar R. Birkhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595 (2015); Amanda Y. Agan, Jennifer L. Doleac & Anna Harvey, *Misdemeanor Prosecution* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28600, 2021), <https://www.nber.org/papers/w28600> (finding that misdemeanor prosecutions are themselves criminogenic).

25. One recent study showed how localities ramp up DUI and drug violation enforcement against Black and Latinx residents—but not White residents—during times of fiscal distress to meet their economic needs. Michael D. Makowsky et al., *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 211 (2019); see also FRANK EDWARDS & ALEXES HARRIS, AN ANALYSIS OF COURT IMPOSED MONETARY SANCTIONS IN SEATTLE MUNICIPAL COURTS, 2000–2017 (2020), <https://www.seattle.gov/Documents/Departments/CivilRights/SMC%20Monetary%20Sanctions%20Report%207.28.2020%20FINAL.pdf> (finding that, in Seattle, court debt falls most heavily on people of color).

26. Harvard University and the Juvenile Law Center have thoroughly reviewed state statutes authorizing monetary sanctions in both adult criminal and juvenile delinquency cases. CRIM. JUST. POL'Y PROGRAM HARV. L. SCH., 50-STATE CRIM. JUST. DEBT REFORM BUILDER, <https://cjdebtreform.org/> (last visited May 2, 2021); *Fees Established by State Law*, JUV. L. CTR.: DEBTORS' PRISON FOR KIDS, <https://debtorsprison.jlc.org/#!/map> (last visited May 2, 2021).

27. See *infra* Part I.C and II.A.

28. FINES AND FEES REPORT, *supra* note 1, at 55.

29. FINES AND FEES REPORT, *supra* note 1, at 12, 20 (showing \$10 million in civil fees and \$52 million in criminal fees and fines).

30. FINES AND FEES REPORT, *supra* note 1, at 22.

per month.³¹ Although courts collect some of the charged fees and fines, Idahoans cumulatively owe more than \$268 million in delinquent debt.³²

Through the lens of the OPE report and Ms. Beck's case, we will examine Idaho's growing reliance on both adult and juvenile monetary sanctions as a form of punishment and revenue in the criminal legal system, with a focus on fees in the juvenile delinquency system. We will situate Idaho's fee scheme in the larger debate about fees and fines nationally and how monetary sanctions contribute to mass criminalization and racial injustice. Finally, we will recommend specific steps for reform in Idaho. Rather than trying to find ways to "optimize" fee and fine revenue, as the OPE was directed to do by the state legislature, Idaho law and policy makers should end the harmful impact and administrative costs of monetary sanctions.³³

II. FEES AND FINES FROM FERGUSON TO MOUNTAIN HOME

The modern practice of charging criminal fees and fines in the United States arose almost imperceptibly as a byproduct of larger sociopolitical trends beginning in the 1960s.³⁴ During the decades-long wars on crime and drugs, state and federal lawmakers increased the number of criminal offenses and their immediate and long-term consequences, often by stoking racial stereotypes and fears.³⁵ At the same time, Californians started a tax revolt in the late 1970s that swept the country.³⁶ Driven in part by suburban White anxiety, voters and lawmakers

31. See *What Are the Fines and Fees Assessed in Court Cases?*, IDAHO SUP. CT., <https://courtdata.idaho.gov/stories/s/rbj3-wcbu> (last visited Aug. 11, 2021) ("How Much Fines And Fees Are Assessed Each Month?" subheading).

32. See *How Are Delinquent Fines and Fees Collected*, IDAHO SUP. CT., <https://courtdata.idaho.gov/stories/s/cti3-7ezq> (last visited Aug. 11, 2021). With a population of fewer than 1.8 million people, the outstanding total is almost \$150 for every resident of Idaho. *Quick Facts: Idaho*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/ID> (last visited May 2, 2021).

33. FINES AND FEES REPORT, *supra* note 1, at 13.

34. Racialized wealth extraction in the United States did not begin in the 1960s. It is a legacy of other forms of state-sanctioned abuse and control of low-income people, people of color, and Black people in particular. See, e.g., Emma Coleman Jordan & Angela Harris, *The New Black Codes: Racialized Wealth Extraction, Economic Justice, and Excessive Fines Schemes in Timbs v. Indiana*, LPE PROJECT: BLOG (Mar. 11, 2019), <https://lpeproject.org/blog/the-new-black-codes-racialized-wealth-extraction-economic-justice-and-excessive-fines-schemes-in-timbs-v-indiana/> (tracing racialized wealth extraction from slavery through the Black Codes to Ferguson and other contemporary examples); Alexes Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 15 AM. J. SOCIO. 1753, 1758 (2010) (connecting monetary sanctions to convict leasing).

35. MICHELLE ALEXANDER, *THE NEW JIM CROW* (10th anniversary ed. 2020); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME* (2017); ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018); ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF WINDOWS POLICING* (2019); PETER EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (2017); RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* (2019).

36. Clyde Haberman, *The California Ballot Measure that Inspired a Tax Revolt*, N.Y. TIMES (Oct. 16, 2016), <https://www.nytimes.com/2016/10/17/us/the-california-ballot-measure-that-inspired-a-tax-revolt.html> (noting how the passage of California's Proposition 13 in 1978 inspired tax revolts across the country).

constrained the ability of state and local governments to raise general revenue.³⁷ Faced with the rising costs of mass criminalization and declining public coffers, state legislatures approved both more fines in greater amounts and a growing array of administrative fees charged to people for every aspect of their involvement in the criminal legal system from arrest to incarceration and beyond.³⁸

States authorize criminal fines to deter and punish law violations, sometimes as an alternative to harsher sanctions, but often in addition to other punishments.³⁹ Administrative fees in the criminal system, however, are not intended to be punitive like fines, and cannot be justified in criminological terms. Fees are meant solely to generate revenue from “users” of the criminal system.⁴⁰ States charge user fees for things like fishing licenses, highway tolls, and park entry as a mechanism to regulate access to scarce public goods, services, or spaces.⁴¹ By imposing criminal administrative fees, however, states seek to generate revenue from people who have not chosen to use a government “service,” who are not special beneficiaries of a government system, and who are often the least able to pay.⁴²

For people caught up in the criminal system, fees simply operate as another layer of punishment despite their legal distinction from fines.⁴³ In Ms. Beck’s case, the additional court fees (\$197.50) and laboratory fees (\$291) only contributed to her inability to pay the \$150 fine that was supposed to represent her punishment for pleading guilty to a misdemeanor.⁴⁴ Compounding the economic harm,

37. See, e.g., Kathryn Julia Woods, *California’s Voters Revolt: Lynwood, California and Proposition 13, A Snapshot of Property’s Slipping from Whiteness’s Grasp*, 37 UWLA L. REV. 171, 194 (2004) (attributing Proposition 13’s success to White people’s desire to protect their property as a racial entitlement); ROBERT O. SELF, *AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND* (2003) (tracing the origins of Proposition 13 to residential segregation and racial politics); RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017) (documenting how tax policy has contributed to residential segregation).

38. ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* (2016).

39. *Id.*

40. *Id.* However, Idaho law seems to muddy this distinction—HB 530 labels all fees, fines, and restitution as “Fees.” The legislative purpose notes that the funds derived from these monetary sanctions are “vital” to the programs funded by the “fees”—suggesting that fines are not intended to serve solely a punitive purpose, but also to generate revenue. H.R. 530, 64th Leg., 2d Reg. Sess. (Idaho 2018) (Statement of Purpose).

41. See Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 72 HASTINGS L.J. 517 (2021); ANDREW AUSTIN, CONG. RSCH. SERV., R45463, *ECONOMICS OF FEDERAL USER FEES* (2019), <https://fas.org/sgp/crs/misc/R45463.pdf>.

42. See Jurow Kleiman, *supra* note 41.

43. FINES AND FEES REPORT, *supra* note 1, at 22 (“In practice, fines, fees, and costs can have a punitive effect on defendants and have all been used to offset costs for various programs.”). Note here that we are not addressing restitution to victims, which was not the subject of the OPE report or at issue in Ms. Beck’s case. But restitution is a monetary sanction that imposes many of the same harms as fees and fines, without much evidence that it provides effective support for crime victims. See *The Reality of Restitution*, U.S. ATT’Y’S OFF. S. DIST. ILL., <https://www.justice.gov/usao-sdil/victim-witness-assistance/reality-restitution> (Feb. 23, 2015) (describing numerous barriers to the receipt of restitution); Ryan Luby, *For Victims of Crime, Collecting Court-Ordered Restitution Can Be a Nightmare*, DENVER 7 (Dec. 12, 2018), <https://www.thedenverchannel.com/longform/for-victims-of-crime-collecting-court-ordered-restitution-can-be-a-nightmare> (describing the continuous frustration that the restitution process causes victims).

44. Respondents’ Brief in Opposition to the Petition for Writ of Prohibition, *supra* note 6, at 2.

enforcing monetary sanctions with the threat of additional fines, fees, and jail time merely recriminalizes financially precarious people, without any legitimate policy goal or discernible benefit to the state.

To provide some context for money as punishment in Idaho, in this Part we describe key findings of the U.S. Department of Justice (DOJ) investigation of Ferguson, Missouri, after the 2014 killing of Michael Brown. As one indicator of how Ferguson thrust fees and fines into the public consciousness, we then explore the response of activists, academics, and advocates to this newly conspicuous feature of mass criminalization. Finally, we share what we know about fees and fines in Idaho, including the experiences of people like Ms. Beck in Mountain Home.

A. Fees and Fines in Ferguson

Shortly after Michael Brown's killing in 2014, the DOJ launched two civil rights investigations in Ferguson, Missouri. In one probe, the Justice Department determined there was insufficient evidence to support federal criminal charges against Officer Darren Wilson for the shooting death of Mr. Brown.⁴⁵ In the second investigation, however, the DOJ found that the Ferguson Police Department engaged in a pattern and practice of conduct that violated the U.S. Constitution.⁴⁶ The DOJ also found unlawful conduct by the Ferguson Municipal Court related to fees and fines and unlawful racial bias in both the police department and courts.⁴⁷

With respect to fees and fines, the Justice Department first found that the Ferguson Police Department prioritized revenue generation over community safety.⁴⁸ In a city of just over 20,000 residents, police issued 90,000 citations and summonses from 2010 to 2014, or more than one per resident every year.⁴⁹ By fiscal year 2015, the City projected receiving almost one quarter of its budget (23 percent) from fees and fines revenue, up from 13 percent only three years earlier.⁵⁰ Notably, the Ferguson Police Department evaluated officers' job performances based on how many tickets they issued.⁵¹ Indeed, the DOJ found that "the City considers revenue generation to be the municipal court's primary purpose."⁵²

45. U.S. DEP'T OF JUST., DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

46. U.S. DEP'T OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 15 (2015) [hereinafter FERGUSON REPORT], https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (finding that the FPD conducted stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment; interfered with the right to free expression in violation of the First Amendment; and used unreasonable force in violation of the Fourth Amendment).

47. *Id.* at 15.

48. *Id.* at 2.

49. *Id.* at 7.

50. *Id.* at 10.

51. *Id.* at 12.

52. FERGUSON REPORT, *supra* note 46, at 14.

Second, and relatedly, the DOJ found that Ferguson used “the police department in large part as a collection agency for its municipal court.”⁵³ The court issued a “staggering” number of arrest warrants—more than 9,000 in 2013 alone for over 32,000 different infractions.⁵⁴ According to the DOJ, “[t]he large number of warrants issued by the court ... is due exclusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations.”⁵⁵ In other words, the warrants had nothing to do with public safety but were “primarily issued to coerce payment.”⁵⁶ People were jailed, regardless of their ability to pay outstanding fees and fines, in direct violation of U.S. Supreme Court precedent.⁵⁷

Finally, the DOJ found that Ferguson police and municipal court practices disproportionately harmed the City’s Black residents. While 67 percent of Ferguson residents were Black, Black people constituted 85 percent of all drivers stopped, 90 percent of drivers cited, and 93 percent of drivers arrested.⁵⁸ Black drivers made up 96 percent of people who were arrested during traffic stops solely for outstanding warrants, which, as noted above, were issued almost exclusively to coerce payment of fees and fines.⁵⁹ With the explicit goal of revenue generation, public officials at all levels in Ferguson turned fees and fines into a form of racialized wealth extraction from some of its most politically powerless and economically vulnerable residents.

B. Ferguson Is Everywhere

The DOJ’s findings shocked many people, but Ferguson is not an anomaly. While fees and fines had become a fixture of the criminal legal system in the late 20th century, state and local fiscal crises in the wake of the Great Recession of 2008 rapidly accelerated government efforts to fund courts, probation departments, and a wide range of other programs through monetary sanctions imposed on people with little choice but to pay.⁶⁰ During and after the recession, local organizers, social scientists, and national advocacy groups began raising the alarm, documenting the nature and scope of the problem, and pushing for reform.

In 2008, young people in Los Angeles began fighting back against a fee imposed by the county probation department on the families of youth detained in the juvenile delinquency system. The Youth Justice Coalition (YJC) published the first community report on juvenile fees, outlining their harmful financial, emotional,

53. FERGUSON REPORT, *supra* note 46, at 55.

54. FERGUSON REPORT, *supra* note 46, at 55.

55. FERGUSON REPORT, *supra* note 46, at 55.

56. FERGUSON REPORT, *supra* note 46, at 56.

57. FERGUSON REPORT, *supra* note 46, at 57–58; *Bearden v. Georgia*, 461 U.S. 660 (1983) (revoking a defendant’s probation and jailing him for failing to pay monetary sanctions was unconstitutional without an inquiry into whether such non-payment was willful).

58. FERGUSON REPORT, *supra* note 46, at 62.

59. FERGUSON REPORT, *supra* note 46, at 63.

60. *See, e.g.*, Frank Edwards, *Fiscal Pressures, the Great Recession, and Monetary Sanctions in Washington Courts of Limited Jurisdiction*, 4 UCLA CRIM. JUST. L. REV. 157 (2020) (concluding that courts issued more debt during and after the recession).

and legal impact.⁶¹ In response to YJC's activism, Los Angeles County imposed a moratorium on assessing juvenile detention fees in 2009, which it maintained until 2017 when the California Legislature repealed all state laws authorizing counties to charge juvenile fees.⁶² In 2018, the county discharged more than 52,000 juvenile fee accounts relieving families of more than \$89 million in outstanding debt.⁶³

In 2010, sociologists Alexes Harris, Heather Evans, and Katherine Beckett published the first academic paper describing the prevalence, magnitude, and consequences of monetary sanctions in the criminal legal system.⁶⁴ Based on an analysis of national and state-level data and interviews, the researchers found that the imposition of fees and fines was widespread and increasing.⁶⁵ In terms of magnitude and consequences, average assessments were often in the thousands of dollars per person, imposing not only serious financial harm, but constraining people's opportunities and exposing them to further punitive sanctions.⁶⁶

National advocacy organizations also began to fill the knowledge gap about fees and fines. In 2010, the Brennan Center for Justice published a report on criminal court debt.⁶⁷ Drawing on data from jurisdictions with more than half of all criminal cases nationally, the authors found that "states are introducing new user fees, raising the dollar amounts of existing fees, and intensifying the collection of fees and other forms of criminal justice debt."⁶⁸ In 2016, the Juvenile Law Center conducted a 50-state analysis of monetary sanctions in the juvenile legal system, finding extensive use of juvenile fees and fines with devastating economic, emotional, and legal consequences for youth and families.⁶⁹ A companion study by criminologists found that juvenile fee and fine debt correlated strongly with increased youth recidivism.⁷⁰

The growing national recognition of the racial, economic, and social harm of fees and fines has fueled a new reform movement. Under the Obama Administration, the U.S. Council of Economic Advisors and the DOJ cautioned local jurisdictions against imposing monetary sanctions that are unjust and at times

61. YOUTH JUST. COAL., GETTING PAID (2009), <https://www.youth4justice.org/wp-content/uploads/2012/12/GettingPaidReportYJC.pdf>.

62. Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement*, 98 N.C. L. REV. 401, 409–12 (2020).

63. POL'Y ADVOCACY CLINIC, BERKELEY L., UNIV. OF CAL., FEE ABOLITION AND THE PROMISE OF DEBT-FREE JUSTICE FOR YOUNG PEOPLE AND THEIR FAMILIES IN CALIFORNIA 18 (2017) (reporting that California counties discharged hundreds of thousands of accounts relieving families of more than \$350 million in juvenile fees).

64. Harris et al., *supra* note 34, at 1755 (noting that prior works on the subject "focus instead on the advantages of using monetary sanctions as an alternative to incarceration and criminal justice supervision").

65. Harris et al., *supra* note 34, at 1769–71.

66. Harris et al., *supra* note 34, at 1771–85.

67. ALICIA BANNON ET AL., BRENNAN CTR. FOR JUST., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf.

68. *Id.* at 1.

69. JESSICA FEIERMAN ET AL., JUV. L. CTR., DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 6–8 (2016), <http://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

70. Piquero & Jennings, *supra* note 24.

unlawful.⁷¹ System stakeholders, including national associations of law enforcement officials, probation officers, state court judges, court administrators, juvenile defenders, and lawyers have called for the reduction or elimination of fees and fines.⁷² And in response to local reform campaigns, agencies, courts, prosecutors, and lawmakers in states across the country have started to take action, including abolishing fees and fines and discharging outstanding debt.⁷³

71. COUNCIL OF ECON. ADVISORS, *supra* note 24; Letter from Vanita Gupta, Principal Deputy Att’y Gen., Civ. Rts. Div., & Lisa Foster, Dir., Off. for Access to Just. (Mar. 14, 2016), <https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf>; U.S. DEP’T OF JUST., ADVISORY FOR RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE U.S. DEPARTMENT OF JUSTICE ON LEVYING FINES AND FEES ON JUVENILES (2017), <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/documents/AdvisoryJuvFinesFees.pdf>. Former Attorney General Sessions rescinded the two fines and fees guidance documents. Press Release, U.S. Dep’t of Just., Off. of Pub. Affs., Attorney General Jeff Sessions Rescinds 25 Guidance Documents (Dec. 21, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents>. However, system stakeholders are requesting the DOJ to update and reissue the guidance. Letter from ACLU et al., to Merrick Garland, Att’y Gen., Dep’t of Just., & Susan Rice, Assistant to the President for Domestic Pol’y, White House Domestic Pol’y Council (Apr. 7, 2021), https://finesandfeesjusticecenter.org/content/uploads/2021/04/Letter-to-Biden_Harris-Administration_-Fines-and-Fees-Reforms.pdf (Fines and Fees Reforms: Recommendations to the Biden/Harris Administration); Letter from Juvenile Law Center et al., to Merrick Garland, Att’y Gen., Dep’t of Just. (June 7, 2021), <https://www.law.berkeley.edu/wp-content/uploads/2021/06/2021.06.08-Request-for-Guidance-on-Juvenile-Fees-and-Fines.pdf> (Request to Issue Guidelines Eliminating Juvenile Fees and Fines). Through federal funding, Congress can also incentivize states to end juvenile fees. *See, e.g.*, Eliminating Debtor’s Prison for Kids Act of 2019, H.R. 2300, 116th Cong. (2019) (proposing to create a grant program for mental and behavioral health services for at-risk youth with eligibility conditioned on states certifying they do not charge juvenile administrative fees to youth or their parents or guardians).

72. NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, RESOLUTION ADDRESSING FINES, FEES, AND COSTS IN JUVENILE COURTS (2018), <https://www.ncjfcj.org/wp-content/uploads/2019/08/resolution-addressing-fines-fees-and-costs-in-juvenile-courts.pdf>; L. ENF’T LEADERS TO REDUCE CRIME & INCARCERATION, ENSURING JUSTICE AND PUBLIC SAFETY: FEDERAL CRIMINAL JUSTICE PRIORITIES FOR 2020 AND BEYOND 17 (2020), http://lawenforcementleaders.org/wp-content/uploads/2020/04/2020_04_LEL_Policy_Report_Final.pdf; NAT’L JUV. DEF. CTR., THE COST OF JUVENILE PROBATION: A CRITICAL LOOK INTO JUVENILE SUPERVISION FEES (2017), https://njdc.info/wp-content/uploads/2017/08/NJDC_The-Cost-of-Juvenile-Probation.pdf; NAT’L TASK FORCE ON FINES, FEES, & BAIL PRACS., PRINCIPLES ON FINES, FEES, AND BAIL PRACTICES, https://www.ncsc.org/_data/assets/pdf_file/0021/61590/Principles-on-Fines-Fees-and-Bail-Practices-Rev.-Feb-2021.pdf; ABA Comm. on Ethics & Pro. Resp, Formal Op. 490 (2020) [hereinafter ABA Formal Op. 490], https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_490.pdf (Ethical Obligations of Judges in Collecting Legal Obligations and Other Debts); ABA PRESIDENTIAL TASK FORCE ON BUILDING PUB. TR. IN THE AM. JUST. SYS., ABA TEN GUIDELINES ON COURT FINES AND FEES (2018), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_scl_aid_ind_10_guidelines_court_fines.pdf; ABA Resolution Abolishing Financial Conditions of Pretrial Release in Juvenile Cases (2017) (adopted), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2017/2017-am-112d.pdf>.

73. *See infra* Part II.

C. Criminal Fees and Fines in Idaho

Like most states, Idaho law authorizes courts to charge a wide range of criminal fees and fines.⁷⁴ Unlike most states, however, the Idaho Legislature recently commissioned a study of its monetary sanction regime, providing insight into its purpose and rare public data about its labyrinthine nature, scope, and impact. The findings suggest a somewhat contested system of fees and fines, without stakeholder agreement about the wisdom of assessing and collecting monetary sanctions from people who are mostly unable to pay them.

Ms. Beck's \$638 in court debt and more than a week in jail started as a \$150 misdemeanor fine.⁷⁵ While Idaho law authorizes specific fines for many crimes,⁷⁶ it gives judges the general discretion to impose fines in all criminal cases.⁷⁷ But as the DOJ investigation revealed in Ferguson, fines can also lead to overzealous policing, prosecution, and punishment.⁷⁸ Further, fines are often only the tip of the monetary sanctions iceberg, hiding an increasing array of fees, surcharges, and other costs.⁷⁹

In Ms. Beck's case, Judge Fleming added significant monetary sanctions to the punitive fine, ordering her to pay \$197.50 in court costs and a \$291 state laboratory fee.⁸⁰ Idaho law imposes an "administrative surcharge fee" in every criminal case, including first-time infractions.⁸¹ In addition to these flat surcharges, courts are required to charge for any "services" provided. For example, Idahoans must pay for court-ordered evaluation, related treatment or counseling, and participation in Drug Court and Mental Health Court.⁸² Courts are also required to charge "cost of supervision" for probation and parole, as well as a fee for every hour of community service they order defendants to perform.⁸³

In addition to mandatory costs, courts may impose certain fees at their discretion. People may be required to pay for their state-appointed public defenders and for participation in diversion programs.⁸⁴ Courts also have discretion to charge people for electronic monitoring, alcohol testing, or drug testing.⁸⁵ Even before adjudication, courts can charge people, including those who are presumed

74. FINES AND FEES REPORT, *supra* note 1, at 5.

75. IDAHO CODE § 37-2732(d) (2020).

76. *See, e.g., id.* §§ 18-802, 18-803, 18-804, 18-2408 (arson); 18-902 (assault); 37-2732(c) (drug possession).

77. *See id.* §§ 18-112 (authorizing \$50,000 fine for a felony conviction); 18-113 (authorizing a \$1,000 fine for a misdemeanor conviction).

78. FERGUSON REPORT, *supra* note 46, at 3–4.

79. *See supra* Parts I.A–B.

80. Petition for Writ of Prohibition, *supra* note 12, at exh. F (Motion and Affidavit in Support of Contempt Proceedings).

81. IDAHO CODE § 31-3201(3). Courts also add a mandatory surcharge fee to all traffic fines related to motor vehicles. *Id.* § 18-8010.

82. *See, e.g., id.* §§ 18-8005 (alcohol evaluations); 18-8318 (psychosexual evaluations); 31-3201E (Drug Court and Mental Health Court fee).

83. *Id.* §§ 20-225 (costs of supervision); 31-3201C (community service).

84. *Id.* §§ 19-854 (public defender fees); 19-3509 (diversion fees).

85. *Id.* § 31-3201J.

innocent, for release on pretrial supervision.⁸⁶ The law permits courts in some circumstances to waive fees if it determines that a person is indigent and unable to pay them.⁸⁷

D. Idaho's Evaluation of Court-Ordered Fees and Fines

In 2018, the Idaho Legislature commissioned an evaluation of court-ordered fees and fines by the Office of Performance Evaluations (OPE). The OPE is an independent office created by the legislature to evaluate the efficiency, cost-effectiveness, and success of state programs and policies.⁸⁸ The legislature directed the OPE "to identify ways that would help counties optimize court funding from fines, fees, and costs."⁸⁹ Consistent with the emphasis on revenue generation, the OPE noted that "the interest in this evaluation stems from a perceived lack of accountability for the collection of court-ordered financial obligations."⁹⁰

Collecting relevant data to make meaningful findings and recommendations was difficult. Although the evaluators were able to gather some piecemeal data from existing case management systems, statewide information from a new case management system was not yet available.⁹¹ Therefore, the OPE had a relatively small sample of cases and lacked systematic data, especially about the cost of collections.⁹² Nevertheless, the OPE interviewed stakeholders, analyzed statutes, rules, and court documents, and randomly sampled misdemeanor cases in Idaho.⁹³

The OPE found that in 2015, Idaho courts ordered \$65 million in criminal fees and fines, and that the large majority of the courts' gross revenue came from monetary sanctions in criminal cases.⁹⁴ However, the statewide collection rate in misdemeanor cases decreased from 2000 to 2015, and there was a wide variation in collection rates among judicial districts suggesting significant geographic disparities.⁹⁵ In 21 percent of cases in the sample, no payments had been made.⁹⁶ Overall, the OPE found a "substantial backlog" of court-ordered monetary

86. *Id.* § 19-2904A; S. 1300, 64th Leg., 2d Reg. Sess. (Idaho 2018), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/legislation/S1300.pdf>.

87. *See, e.g.*, IDAHO CODE § 20-225; *see also* FINES AND FEES REPORT, *supra* note 1, at 48 (mentioning the lack of uniformity in Idaho's fee waiver process).

88. FINES AND FEES REPORT, *supra* note 1, at 2.

89. FINES AND FEES REPORT, *supra* note 1, at 13.

90. FINES AND FEES REPORT, *supra* note 1, at 5, 13.

91. FINES AND FEES REPORT, *supra* note 1, at 3.

92. FINES AND FEES REPORT, *supra* note 1, at 21–29. The Idaho Supreme Court recently began publishing data about fee and fine collection, partially in response to the 2019 OPE report. Idaho's courts are completing the transition to the Odyssey case management system and the Idaho Court Data dashboard relies on self-reported data that may be incomplete or incorrect. *Idaho Court Data*, IDAHO SUP. CT., <https://courtdata.idaho.gov/> (last visited May 3, 2021).

93. Misdemeanor cases were chosen because they ostensibly have the highest potential for closing the gap between ordered and collected fines, i.e., the highest potential to improve their collection rates. FINES AND FEES REPORT, *supra* note 1, at 29.

94. FINES AND FEES REPORT, *supra* note 1, at 22.

95. FINES AND FEES REPORT, *supra* note 1, at 6.

96. FINES AND FEES REPORT, *supra* note 1, at 8.

sanctions.⁹⁷ Court debt in excess of \$50 can be collected from people's state tax returns, and as of July 1, 2018, the Tax Commission reported more than 206,289 claims for outstanding fees and fines from the Administrative Office of the Courts totaling \$195 million.⁹⁸

Using assignment of a public defender as a proxy for poverty, the OPE found that poor people were significantly less able to pay monetary sanctions.⁹⁹ The OPE noted that low-income Idahoans are overrepresented in the criminal system, but neither Idaho law nor court policy specifies a standard for determining when defendants are unable to pay fees and fines.¹⁰⁰ Further, there is no standard for writing off or waiving unpaid debt in Idaho, so courts rarely do it, though some judges also reported that they rarely order discretionary fines for punishment because the mandatory administrative fees are already too high and too hard to pay.¹⁰¹

As the following diagram from the OPE report demonstrates, fee and fine revenue can flow to dedicated accounts and programs, to the county court, or to the state general fund. Notably, almost a quarter of the combined sanctions are apportioned to highway maintenance and public schools, which are unrelated to the criminal system.¹⁰² The gray portion indicates \$276 in fines that the court suspended, and it is unclear what dedicated programs that money would have funded.

97. FINES AND FEES REPORT, *supra* note 1, at 45.

98. FINES AND FEES REPORT, *supra* note 1, at 45. This figure includes criminal and civil fees and fines, though as noted criminal fees and fines represent the vast majority of court revenue. FINES AND FEES REPORT, *supra* note 1, at 22.

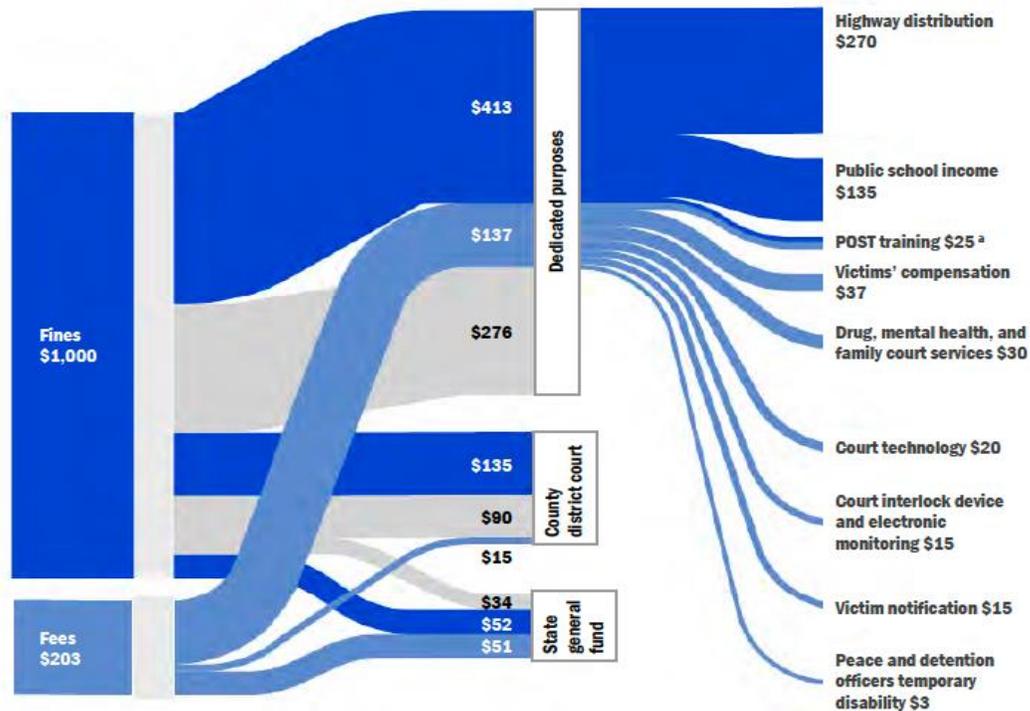
99. The OPE based this conclusion on the fact that in cases where people were assigned public defenders, they paid less toward fees and fines. FINES AND FEES REPORT, *supra* note 1, at 37. The OPE did not collect information about the racial or gender identities of people ordered to pay monetary sanctions. *See generally* FINES AND FEES REPORT, *supra* note 1.

100. FINES AND FEES REPORT, *supra* note 1, at 18, 36–37.

101. FINES AND FEES REPORT, *supra* note 1, at 9, 18, 27.

102. FINES AND FEES REPORT, *supra* note 1, at 23 exh. 5.

OPE REPORT SAMPLE OF FINES AND FEES DISTRIBUTION



In this example, a misdemeanor case involving a \$1,000 fine and \$203 in fees, courts receive a relatively small share of the assessed amounts: \$135 of the \$1,000 fine—with another \$90 suspended—and \$15 of the \$203 in fees. Small amounts of the fees also support specific court programs under the “dedicated purposes” category, such as drug, mental health, and family court services, court technology, court interlock devices and electronic monitoring, and victim notification. Although not reflected in the diagram, the OPE report notes that the judge in this case ordered an additional \$720 misdemeanor probation fee (\$40 per month for 18 months), most of which is designated for the county.¹⁰³ Finally, the portion of the fees and fines that flows to the state general fund may be spent on anything authorized by the legislature.¹⁰⁴

System actors interviewed by the OPE researchers provided a range of views about fees and fines. A few judges considered ordering fees and fines a central part of their duties, but the “overall sentiment” was that monetary sanctions were too

103. FINES AND FEES REPORT, *supra* note 1, at 23.

104. For the purpose of its analysis, OPE assumed that the citation was issued by a county or state officer, not a city officer. If issued by a city officer, the city receives 90 percent of the fine. FINES AND FEES REPORT, *supra* note 1, at 22.

high, and some judges and clerks chafed in their role as debt collectors.¹⁰⁵ One Idaho judge noted that the courts have more important priorities, but policy demands that revenue generation take precedence.¹⁰⁶ Many argued that probation officer time is eaten up “serving as . . . de facto collection agent[s].”¹⁰⁷ Notably, the OPE’s analysis did not include the experiences and opinions of Idahoans who are charged monetary sanctions.

The OPE acknowledges that “all \$195 million in past due” court debt cannot be collected, “regardless of what additional sanctions are applied.”¹⁰⁸ To improve collection, the OPE recommends more frequent probation contact with people who owe fees and fines and greater use of collection agencies, payment plans, and review hearings.¹⁰⁹ However, the counties already employing some of these more aggressive collection practices did not have higher collection rates, and such actions have diminishing returns as the likelihood of collecting unpaid fees and fines “decreases rapidly” over time.¹¹⁰ The OPE also recommends gathering better data on the cost of collections, because it is difficult to evaluate the financial success of Idaho’s fee and fine system without more data about its cost.¹¹¹ At the end of fiscal year 2020, the Idaho Supreme Court reported more than \$268 million in delinquent court debt.¹¹²

Importantly, the OPE report focuses on misdemeanors, infractions, and felonies in the criminal legal system.¹¹³ The report does not differentiate between fees and fines charged to adults and those imposed on youth in the juvenile system and their families.¹¹⁴ In the next Part, we begin to fill this gap by exploring court-ordered fees and fines in the juvenile system. Juvenile fees and fines merit attention in their own right because of their unique harm to young people and their families. Further, there is a growing movement to abolish juvenile fees and fines nationally, which provides an example for Idaho lawmakers to consider as they grapple with the problem of money as punishment.

III. JUVENILE FEES IN IDAHO

Idaho’s Juvenile Corrections Code authorizes courts to impose fees and fines as part of an alarmingly punitive delinquency regime. Youth of any age in Idaho can be charged with certain crimes in adult court, and 14-year-olds can be charged in adult court for any crime.¹¹⁵ The state has the sixth highest youth incarceration rate

105. FINES AND FEES REPORT, *supra* note 1, at 26–27, 36.

106. FINES AND FEES REPORT, *supra* note 1, at 41. “Everyone’s time is just maxed out. . . . Fines and fees are not the highest priority.” FINES AND FEES REPORT, *supra* note 1, at 41.

107. FINES AND FEES REPORT, *supra* note 1, at 42.

108. FINES AND FEES REPORT, *supra* note 1, at 8.

109. FINES AND FEES REPORT, *supra* note 1, at 8.

110. FINES AND FEES REPORT, *supra* note 1, at 34, 46–47.

111. FINES AND FEES REPORT, *supra* note 1, at 47.

112. See *How Are Delinquent Fines and Fees Collected*, *supra* note 32.

113. *How Are Delinquent Fines and Fees Collected*, *supra* note 32, at 29.

114. It is unclear whether juvenile delinquency cases were part of the “criminal” category in the OPE report. See *How Are Delinquent Fines and Fees Collected*, *supra* note 32, at 5, 11.

115. IDAHO CODE § 20–508 (2020).

in the country, detaining its young people at almost 150 percent of the national average.¹¹⁶

As noted above, fees are not designed to punish, deter crime, or serve any other penological purpose. In fact, as the Idaho Legislature's Office of Performance Evaluations report clearly reveals, state legislatures often permit, or even require, courts to charge administrative fees to generate revenue. In this Part, we focus on the scope and impact of fees in the Idaho juvenile delinquency system as a uniquely regressive and unjust tax on poor, rural Idahoans and Idahoans of color. First, we describe the juvenile administrative fees authorized by state law. Next, we emphasize the special harms that monetary sanctions impose on youth and families. Finally, we explain why juvenile fees are not a reliable source of state and local revenue.

A. Idaho's Juvenile Fee Scheme

Idaho youth and their families can be charged fees at many points during a delinquency proceeding. From the outset, a youth's parent or guardian may be liable for the costs of their "free" court-appointed public defender, even if the court finds them to be indigent.¹¹⁷ Like adult defendants, if youth are released from custody pretrial, they can be charged as much as \$75 per month for supervision before any admission or finding of guilt (or "adjudication of delinquency" in the juvenile system).¹¹⁸ The court can also require young people to pay for electronic monitoring or drug and alcohol testing ordered as a condition of pretrial release.¹¹⁹

As a case proceeds, courts can charge parents for the mental health and psychological evaluations that are often necessary in presenting a defense or helping a young person recover from trauma.¹²⁰ If the court finds a child incompetent to stand trial, parents can be charged for "competency restoration programs."¹²¹ If a youth is held by the County or the Department of Juvenile Corrections pending trial, the court may order their family to pay the costs of detention.¹²² Young people and their parents can also be charged for any

116. JOSH ROVNER, THE SENT'G PROJECT, RACIAL DISPARITIES IN YOUTH INCARCERATION PERSIST 6 (2021), <https://www.sentencingproject.org/wp-content/uploads/2021/02/Racial-Disparities-in-Youth-Incarceration-Persist.pdf> (Idaho incarcerates 200 youth per 100,000 compared to a national average of 138 per 100,000).

117. IDAHO CODE § 20-514(7)-(8) ("The current inability of those persons or entities to pay the reimbursement shall not, in and of itself, restrict the court from ordering reimbursement."). Though imposing financial liability for state-provided counsel would appear to belie common sense, it does not run afoul of current Supreme Court precedent. See *Fuller v. Oregon*, 417 U.S. 40 (1974) (holding that indigent defendants entitled to a court-appointed attorney can nevertheless be charged for costs of counsel if they have a foreseeable ability to pay without hardship).

118. IDAHO CODE § 20-516A(2).

119. *Id.* § 20-516A(4).

120. *Id.* §§ 20-519A(1), 20-511A. We use the term parent in this section as a shorthand. Idaho law typically imposes juvenile administrative fees on parents, guardians, or other adults legally responsible for the child.

121. *Id.* § 20-519B(7)(b).

122. *Id.* § 20-524(1)-(2); see also *State v. Doe*, 211 P.3d 787 (Idaho Ct. App. 2009) (holding that due process requires parents receive notice and an opportunity to contest the award of detention fees).

treatment, class, or counseling that the court orders.¹²³

We summarize Idaho's juvenile administrative fees in the following table, including the fee type, the legal authority for the fee, the fee amounts, who is liable for the fees (youths, parents, or both), and whether the fee imposed can be waived or suspended due to the youth's or parents' inability to pay. As the table indicates, under Idaho law, courts are authorized to impose most juvenile fees without considering the financial circumstances of youth or their parents.

Juvenile Administrative Fees in Idaho

Fee type	Statute	Amount	Liable	Ability to Pay
Mental health	20-511(A)	Actual costs	Both	Yes
Appointed counsel	20-514(7)-(8)	Actual costs	Parents	Yes
Pretrial supervision	20-516A(2)	Up to \$75/mo.	Youth	No
Pretrial electronic monitoring	20-516A(4)	Actual costs	Youth	No
Pretrial drug testing	20-516A(4)	Actual costs	Youth	No
Pretrial alcohol testing	20-516A(4)	Actual costs	Youth	No
Psychological evaluations	20-519A(1)	Actual costs	Parents	Yes
Competency restitution	20-519(B)(7)(b)	Actual costs	Parents	Yes
Substance abuse assessment	20-520(1)(i)	Actual costs	Parents	Yes
Training academy	20-520(1)(p)	\$20/petition	Youth	No
Community service	20-520(1)(q)	\$0.60/hour	Youth	No
Probation supervision	20-520(1)(r)	Discretionary	Youth	No
Court-ordered services	20-520(4)	Actual costs	Parents	No
Breach of parental contract	20-522	\$1,000	Parents	No
Detention	20-524(1)-(2)	Discretionary	Both	Yes

Youth and families face many negative consequences for nonpayment of juvenile administrative fees. Outstanding juvenile fees, like other court debt in Idaho, are subject to a 12 percent annual interest rate.¹²⁴ Parents who fail to pay can be jailed for contempt, have their wages garnished, or have their tax refunds intercepted.¹²⁵ And long after a young person has been released from detention, court clerks in Idaho can assign unpaid debt to private collection agencies.¹²⁶ The private agency may charge an additional 33 percent of the person's outstanding

123. IDAHO CODE § 20-520(4). Youth might have to pay monthly if placed on supervision and will have to pay an hourly rate if performing court-ordered community service. *Id.* §§ 20-520(1)(q)-(r), 31-3201D, 20-225.

124. *Id.* § 28-22-104.

125. *Id.* § 20-520(5). Parents and guardians can also have their wages garnished or their tax refunds intercepted. *Id.* Incarceration as punishment post-adjudication (after trial) carries the same costs and consequences as pre-adjudication detention. *Id.* § 20-524(1)-(2). When young people are incarcerated, their parents, guardians, or foster parents no longer receive federal or state public assistance related to their child. *Id.* § 20-524(2).

126. *Id.* § 19-4708(5).

balance as a “collections fee.”¹²⁷ This means that years after a case is closed, a young person’s debt can increase by one third, solely because they are unable to pay.

B. Juvenile Fees Harm Youth and Families

Idaho is hardly alone in authorizing juvenile administrative fees. Almost every state requires or permits courts, probation departments, and other system actors to charge one or more fees to youth in the juvenile legal system and their families.¹²⁸ Juvenile fees around the country have been shown to impose economic stress on family relationships and can force people to choose between paying rent and paying fees. The fees worsen outcomes for youth, pushing them deeper into the system, making family reintegration more difficult, and increasing recidivism. And fees do not fall equally on all youth and families, exacerbating racial and socioeconomic disparities in the juvenile system.

Parents report myriad ways that the economic harm of fee debt strains their relationships with their children.¹²⁹ Although parents recognize that courts, prison systems, and probation departments impose the fees, the bills can lead to “a lot of fighting” with their children.¹³⁰ Many parents lament a system that takes their children against their will, but asks them to foot the bill.¹³¹ The court debt also does not go away.¹³² One mother testified to the Oregon Legislature that the state placed a lien on her home, which remained even after she had paid off her son’s detention fees, making it difficult to sell her family home years later.¹³³ Orange County, California, chased a single mother into bankruptcy after she sold her home but was still unable to pay off all of her outstanding juvenile fee debt.¹³⁴

Beyond the very real economic and emotional pain that fees cause families, they undermine young people’s success during and after their juvenile system involvement. In fact, Idaho imposes juvenile fees that have been found to drive youth deeper into the system. For example, if youth or their families cannot pay the fee for more lenient punishments like diversion, they risk probation violations,

127. *Id.* § 19-4708(4).

128. FEIERMAN ET AL., *supra* note 69, at 6–8.

129. LESLIE PAIK & CHIARA PACKARD, IMPACT OF JUVENILE JUSTICE FINES AND FEES ON FAMILY LIFE: CASE STUDY IN DANE COUNTY, WI (2019), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison-dane-county.pdf>.

130. *Id.* at 12.

131. *Id.* at 11–12. Youth also report missing out on important time with their siblings due to working to pay off court debt or otherwise attempting to satisfy court requirements. *Id.* at 13.

132. See *Collection Bureau, Inc. v. Dorsey*, 249 P.3d 1150, 150 Idaho 695 (2011) (holding that there is no statute of limitations for criminal court debt in Idaho).

133. *Hearing on S.B. 422 Before the Committee on Judiciary of the Senate*, 81st Leg., 2021 Reg. Sess. (Or. 2021), <https://olis.oregonlegislature.gov/liz/mediaplayer/?clientID=4879615486&eventID=2021021035> (testimony of Karen Cain).

134. Jeffrey Selbin & Abbye Atkinson, *Time to End Injustice in Juvenile Justice System*, ORANGE CNTY. REG. (Aug. 18, 2017), <https://www.oregionregister.com/2017/08/18/time-to-end-injustice-in-juvenile-justice-system/>. The county later reported pursuing juvenile fee debt from dozens of families in bankruptcy. *Id.*

more fees, and incarceration.¹³⁵ Criminologists have found that fee and fine debt correlates to increased recidivism among young people, which undermines both the rehabilitative and community safety goals of Idaho's juvenile system.¹³⁶

Not surprisingly, the OPE report noted that low-income Idahoans are less likely to pay off fees and fines.¹³⁷ Although data do not exist on the socioeconomic status of system-involved youth in Idaho, national research suggests that the vast majority of children in delinquency proceedings are poor.¹³⁸ For example, the Oregon Youth Authority reported that 96 percent of parents owing detention fees lived below the poverty line.¹³⁹

The rural-urban divide is a distinct but related disparity measure, because rural youth are, on average, poorer than urban youth.¹⁴⁰ A recent study of Colorado, which eliminated juvenile fees in 2021, found that youth in rural counties were charged significantly more in fees than their urban counterparts.¹⁴¹ This disparity is particularly relevant in a state like Idaho, where about one third of the population lives in rural areas.¹⁴²

The OPE report does not mention race, but racial disparities in Idaho's juvenile system are well documented and increase the further a young person goes into the system. Compared to White youth in Idaho, for example, Indigenous youth are twice as likely to be arrested, more than four times as likely to be detained, and

135. See, e.g., IDAHO CODE § 20-522 (2020) (\$1,000 fine for breach of probation contract; other punishments for probation violations include incarceration).

136. Piquero & Jennings, *supra* note 24; see IDAHO CODE § 20-501 ("It is the further intent of the legislature that the primary purpose of this [Juvenile Corrections A]ct is to provide a continuum of programs which emphasize the juvenile offender's accountability for his actions while assisting him in the development of skills necessary to function effectively and positively in the community in a manner consistent with public safety. These services and programs will individualize treatment and control of the juvenile offender for the benefit of the juvenile offender and the protection of society.").

137. See FINES AND FEES REPORT, *supra* note 1, at 37.

138. H. Ted Rubin, *Impoverished Youth and the Juvenile Court: A Call for Pre-Court Diversion*, 16 JUV. JUST. UPDATE 2 (2011) (noting that juvenile courts are considered courts of the poor and that juvenile courts in wealthier jurisdictions are rare); Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53 (2012) (arguing that emphasis on family need when adjudicating delinquency has a disproportionate effect on low-income children); JUST. FOR FAMS., FAMILIES UNLOCKING FUTURES: SOLUTIONS TO THE CRISIS IN JUVENILE JUSTICE 28 (2012) (finding that of youth involved with the juvenile justice system, more than 50 percent came from families earning less than \$25,000 per year, and that roughly 1 in 5 of these families spent over \$1,000 per month on juvenile justice costs).

139. OR. DEP'T OF JUST., DIV. OF CHILD SUPPORT, CHILD SUPPORT INFORMATION RELATED TO OREGON YOUTH AUTHORITY 5 (2020), <https://berkeley.box.com/s/5mgugtq1ritzrvj86rylezbfm5yt9an>. In 2021, Oregon abolished all juvenile fees and fines and discharged all outstanding debt, including fees owed to the Oregon Youth Authority. S. 817, 81st Leg. Assemb., Reg. Sess. (Or. 2021) (enacted).

140. *Rural Poverty & Well-Being*, ECON. RSCH. SERV. U.S. DEP'T AGRIC. (June 17, 2021), <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/>.

141. Press Release, Colo. Juv. Def. Ctr. et al., Governor Signs Bill to End Juvenile Fees (July 6, 2021), <http://stand.org/colorado/blog/governor-signs-bill-end-juvenile-fees>.

142. *Idaho*, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/states/idaho> (last visited Aug. 11, 2021).

three times as likely to be incarcerated.¹⁴³ The state charges youth and families additional fees at each stage of these proceedings, so juvenile fee debt continues to accumulate as system involvement deepens.

C. Juvenile Fees Do Not Benefit the State

Idaho is beholden to fee and fine revenue by design. As the OPE report noted, “Idaho has made a policy decision to rely on fines and fees as a significant source of court funding.”¹⁴⁴ In addition to the harm to youth and families described above, however, the state incurs costs in assessing and collecting fines. Furthermore, funding the judiciary on the backs of poor people creates clear conflicts between judges’ interest in funding court operations and their duty to administer justice, and it undermines public confidence in the courts.¹⁴⁵ Finally, funding Idaho’s judicial system from fees and fines limits the legal system’s ability to achieve other priorities.

The OPE report revealed that about 90 percent of the judiciary’s budget comes from monetary sanctions.¹⁴⁶ The bulk of the revenue comes from fees assessed in criminal proceedings,¹⁴⁷ including fees charged in juvenile cases.¹⁴⁸ But a recent study found that it costs at least 100 times more to collect criminal fees and fines than it does to collect taxes.¹⁴⁹ The costs quickly add up: holding review hearings, sending probation officers out to collect money,¹⁵⁰ developing and administering ability-to-pay processes, contracting with private collections firms, and—most harmful and expensive—incarcerating people who cannot pay fees.¹⁵¹

Compelling evidence outside Idaho suggests that juvenile fees, in particular, are inefficient revenue streams. For example, in 2019, the Oregon Division of Child Support spent \$866,268 to collect \$864,370 in revenue through the Oregon Youth Authority’s incarceration fee program.¹⁵² Before it repealed juvenile fees, Santa

143. *United States of Disparities*, BURNS INST., <https://usdata.burnsinstitute.org/decision-points/13/idaho#comparison=2&placement=1&aces=2,3,4,5,6&offenses=5,2,8,1,9,11,10&odc=0&dm p=1&dmp-comparison=2&dmp-decisions=2,5,9&dmp-county=-1&dmp-races=1,2,3,4,7,5,6&dmp-year=2013> (last visited Mar. 5, 2021).

144. FINES AND FEES REPORT, *supra* note 1, at 55.

145. Poor people and people of color, especially Black people, are much less likely to feel confident in the judiciary. Memorandum from GBA Strategies, to Nat’l Ctr. for State Cts. (Nov. 17, 2015), https://www.ncsc.org/__data/assets/pdf_file/0018/16164/sosc_2015_survey-analysis.pdf (Analysis of National Survey of Registered Voters).

146. *Compare id.* at 12 (\$52.7 million from fees and fines in 2015), with JOINT SENATE FINANCE HOUSE APPROPRIATIONS COMM., IDAHO 2014 LEGISLATIVE FISCAL REPORT FOR FISCAL YEAR 2015, 62d Leg., 2d Sess., at 11 (2014), <https://legislature.idaho.gov/wp-content/uploads/budget/publications/Legislative-Fiscal-Report/2014/Legislative%20Fiscal%20Report.pdf> (\$59.7 million total judicial branch budget).

147. FINES AND FEES REPORT, *supra* note 1, at 12.

148. *Id.* at 29 (\$33.9 million of \$52.7 million charged in 2015 was in criminal cases).

149. MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES 5, 9 (Nov. 21, 2019), https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf.

150. See FINES AND FEES REPORT, *supra* note 1, at 42.

151. FINES AND FEES REPORT, *supra* note 1, at 9–10.

152. OR. DEP’T OF JUST., *supra* note 139.

Clara County, California, spent \$450,000 to collect less than \$400,000.¹⁵³ States and localities also have billions of dollars in aging fee debt, which will almost certainly never be collected and may distort their balance sheets.¹⁵⁴

In spite of the considerable costs associated with assessing and collecting monetary sanctions, Idaho incentivizes judges to impose fees and fines. In 2013, the Idaho Legislature reasoned that, “because of the continuing economic challenge, these funds continue to be needed to keep the courthouse doors open and maintain essential judicial functions.”¹⁵⁵ Perhaps even more troubling is the legislature’s decision to direct fees and fines toward non-court expenditures.¹⁵⁶ As the OPE’s Sample of Fines and Fees Distribution diagram above shows, the legislature is asking courts to act as a general taxing authority for many other government functions having nothing to do with the judicial branch.

The Ferguson investigation is again instructive, where the U.S. Department of Justice found that judges often faced intense pressure to generate money from fees

153. POL’Y ADVOCACY CLINIC, BERKELEY L., UNIV. OF CAL., MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA 18 (2017) [hereinafter MAKING FAMILIES PAY], https://www.law.berkeley.edu/wp-content/uploads/2019/12/State-Juvenile-Fees-Report_revised12-10-19-.pdf.

154. See FINES AND FEES REPORT, *supra* note 1, at 46–47; see also OR. JUD. DEP’T, COURT ORDERED FINANCIAL OBLIGATIONS: IMPOSITION, COLLECTION, AND DISTRIBUTION 12 (2018), <https://berkeley.box.com/s/b5f21m57yr12gqbl9nxynfehdb4iegm4> (“After year 5, collection drops to less than 10%. [D]ebt . . . older than 5 years [is] virtually uncollectable.”). Alameda County was the most effective at collecting juvenile court debt from youth—it was only collecting 8 percent of debt less than six months old, and the collection rate decreased as debt got older. DEBT FREE JUST. CAL., IMPACT ANALYSIS OF SB 144 (2020), <https://berkeley.box.com/s/plejrhdxkfcuzz157xy7u9b940y2177>. Furthermore, there is no reason that criminal legal system debt would be any different from other forms of debt which have long been known to decrease in collectability as they age. See George J. Wallace, *The Logic of Consumer Credit Reform*, 82 YALE L.J. 461, 463 (1973) (consumer debt); U.S. GEN. ACCT. OFF., INTERNAL REVENUE SERV., COMPOSITION AND COLLECTABILITY OF UNPAID ASSESSMENTS (1998), <https://www.gao.gov/assets/aimd-99-12.pdf> (taxes); ELAINE SORENSEN ET AL., THE URB. INST., EXAMINING CHILD SUPPORT ARREARS IN CALIFORNIA: THE COLLECTABILITY STUDY (2003), https://www.youngwilliams.com/sites/default/files/u258/examining_child_support_arrears_in_california-collectability_study.pdf (child support); see also Marc C. McAllister, *Ending Litigation and Windfalls on Time-Barred Debt*, 75 WASH. & LEE L. REV. 449, 461–63 (2018) (discussing the decrease in price of older debt as debt buyers view it as less likely to be collected). The Fines and Fees Justice Center urges states to stop trying to collect court debt after three years, because at that point collections are “a waste of government resources” and “harm low-income communities and communities of color.” FINES & FEES JUST. CTR., TIP OF THE ICEBERG: HOW MUCH CRIMINAL JUSTICE DEBT DOES THE U.S. REALLY HAVE? 9 (2021), https://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal-Justice-Debt_FFJC_20211.pdf.

155. H.R. 103, 62d Leg., 1st Reg. Sess. (Idaho 2013) (citing statement of purpose regarding Idaho Code Ann. § 31-3201, which imposes a surcharge on every criminal defendant who “is found or pleads guilty”).

156. *Id.* Fees and fines, under HB 530 of 2018, are *both* understood as a source of revenue, creating a fiscal incentive to over-police and over-convict. H.R. 530, 64th Leg., 2d Reg. Sess. (Idaho 2018) (citing routing slip statement of purpose). Further, given that the legislature acknowledges that fees, like fines, amount to a penalty, fees should trigger the same constitutional protections afforded to those who are fined. See *Bearden v. Georgia*, 461 U.S. 660 (1983).

and fines.¹⁵⁷ As scholars have noted, “[t]he fact that such a system [in Ferguson] is permitted to operate in a way that it generates such questions [about conflict of interest] should, at least, fit a reasonable person’s definition of the ‘appearance of impropriety.’”¹⁵⁸

An Alabama judge was censured for violating his duty to promote confidence in the judiciary when he directed indigent people to pay exorbitant fees regardless of their ability to pay.¹⁵⁹ As Michigan Supreme Court Chief Justice Bridget McCormack noted in a recent concurring opinion:

No matter how neutral and detached a judge may be, the burden of taxing criminal defendants to finance the operations of his court, coupled with the intense pressures from local funding units (and perhaps even from the electorate), could create at least the appearance of impropriety. Assigning judges to play tax collector erodes confidence in the judiciary and may seriously jeopardize a defendant's right to a neutral and detached magistrate.¹⁶⁰

In articulating principles on the purpose of courts, the National Center for State Courts made clear that “[courts] are not established to be a revenue generating arm of any branch of government—executive, legislative, or judicial.”¹⁶¹ In 2020, the American Bar Association (ABA) issued a formal opinion stating that judges are ethically required to undertake a meaningful inquiry into the ability of court users to pay fines, fees, and other costs before imposing sanctions for failure to pay.¹⁶² The ABA noted that such an inquiry is “a fundamental element of procedural justice necessary to maintain the integrity, impartiality, and fairness of

157. FERGUSON REPORT, *supra* note 46, at 14–15. It also documents the difficulty of resisting such pressure. *Id.* Researchers have also found that “police departments in cities that collect a greater share of their revenue from fees solve violent and property crimes at significantly lower rates.” Rebecca Goldstein, Michael W. Sances & Hye Young You, *Exploitative Revenues, Law Enforcement, and the Quality of Government Service*, 56 URB. AFFS. REV. 5 (2020), <https://journals.sagepub.com/doi/full/10.1177/1078087418791775>.

158. Peter A. Joy, *Lawyers Serving as Judges, Prosecutors, and Defense Lawyers at the Same Time: Legal Ethics and Municipal Courts*, 51 WASH. U. J.L. & POL’Y 22, 43 (2016).

159. Final Judgment, *In re Marvin Wayne Wiggins*, No. 45 (Ala. Ct. of the Judiciary Jan. 21, 2016), <https://www.reuters.com/investigates/special-report/assets/usa-judges-misconduct/13.pdf>. He told them to either donate blood or go to jail. *Id.* at 3. Apparently, the judge defended his fee practices by arguing that the state court administrator “put a great deal of pressure on [judges] to collect. . . court costs.” Ryan W. Toone, *Criminal Justice Fines: The Role of the Local Court and a Review of Reform Alternatives* (May 2019) (Master’s thesis, University of Nevada, Reno), https://scholarworks.unr.edu/bitstream/handle/11714/5775/Toone_unr_0139M_12808.pdf?sequence=1&isAllowed=y (citing *In re Marvin Wayne Wiggins*, No. 45).

160. *See* *People v. Cameron*, 929 N.W.2d 785, 786 (Mich. 2019) (McCormack, C.J., concurring in denial of certiorari).

161. NAT’L TASK FORCE ON FINES, FEES, & BAIL PRACS., *supra* note 72, at 2.

162. ABA Formal Op. 490, *supra* note 72.

the administration of justice and the public's faith in it."¹⁶³

To be sure, not everyone in the Idaho court system is enamored with using fees and fines to fund the judicial branch and government more generally. In 2018, then-State Supreme Court Chief Justice Roger Burdick raised concerns about the legislature's lack of clarity about how courts should distribute collected fees and fines.¹⁶⁴ The Idaho State Court Administrator noted that "a good collections system [is] not necessarily an effective [judicial] system."¹⁶⁵ Even the OPE report worries that, "[m]any programs depend on fees and fines to offset costs, but judges' decisions on fees and fines must be made without consideration of program budgets."¹⁶⁶

The policy value of the OPE report is circumscribed primarily by the legislature's insistence that the courts self-fund and that the OPE limit the scope of its inquiry and recommendations to optimizing collections.¹⁶⁷ The report notes some of the problems with such an approach, including the obvious potential for conflict of interest in tasking courts to generate revenue, but it does not seriously consider alternatives to the current system.¹⁶⁸ In the next Part, we make alternative recommendations for system actors and decision-makers to end the state's reliance on harmful and regressive taxation through criminal fees and fines.

IV. RECOMMENDATIONS FOR REFORM

Ms. Beck's case and the Idaho Legislature's Office of Performance Evaluations report are shining a light on adult fees and fines in Idaho, most of which have been on the books for many years. At the same time, the Idaho Legislature adopted new juvenile fees for pretrial supervision in 2020, including fees for electronic monitoring and drug or alcohol testing ordered as a condition of release.¹⁶⁹ This expansion of an already-extensive juvenile fee regime puts Idaho squarely at odds with the increasing number of states that have recently reduced or eliminated fees in the juvenile system.

The growing state and local fee reforms are not coincidental or ad hoc. In the

163. ABA Formal Op. 490, *supra* note 72, at 1. The Fines and Fees Justice Center also issued policy guidance on establishing more equitable ability-to-pay procedures as a first step "toward eliminating government reliance on fines and fees." *First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability to Pay Assessments, Payment Plans, and Community Service*, FINES & FEES JUST. CTR. (Nov. 17, 2020).

164. Chief Just. Robert R. Burdick, State of the Judiciary 3 (Jan. 24, 2018), https://isc.idaho.gov/legislative/2018_FINAL_SOJ_1-24-18.pdf.

165. OFF. OF PERFORMANCE EVALUATION, MINUTES OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE (2019).

166. FINES AND FEES REPORT, *supra* note 1, at 22.

167. FINES AND FEES REPORT, *supra* note 1, at 55. This limited ability to maneuver apparently left the OPE with no choice but to cite, almost exclusively, de-published guidance from the National Center for State Courts about fees and fines. See Letter from Mary McQueen, President, Nat'l Ctr. for State Cts. (Aug. 10, 2020), <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/897/rec/1>. The National Center for State Courts has since asked courts not to rely on this 2009 guidance and updated its standards to call on courts to reduce or eliminate fines and fees. *Id.*

168. FINES AND FEES REPORT, *supra* note 1, at 22.

169. An Act Relating to Court Fees and Costs, H.R. 463, 65th Leg., 2d Sess. (Idaho 2020), <https://legislature.idaho.gov/sessioninfo/2020/legislation/H0463/>.

last several years, national and local organizations have partnered on a coordinated “Campaign for Debt-Free Justice” to abolish monetary sanctions in the juvenile system.¹⁷⁰ In this Part, we recommend concrete reforms in Idaho that grow out of lessons learned from more than a dozen state and local reform campaigns.¹⁷¹ We focus on juvenile fee reform, but these recommendations apply with equal force in the adult system. We begin by setting out specific steps for government actors to take regarding juvenile fees, explain how half-measures are inadequate to address fundamental inequities in the system, and describe why we think Idaho is ripe for juvenile fee reform.

A. Key Action Steps

Idaho state agencies, counties, and juvenile courts can exercise their discretion to end the assessment and collection of many juvenile fees immediately. For example, relevant state agencies should place a moratorium on all garnishments, liens, tax refund intercepts, interest accrual, and other harmful penalties and collection measures. Courts should stop issuing and recall all arrest warrants for unpaid court debt (juvenile court or otherwise), and they should never refer fees to private collections.¹⁷² Different actors, of course, have different degrees of discretion under Idaho law. But everyone, from the governor and the legislature down to law enforcement and public defenders, can take steps now that would mitigate the worst harms that monetary sanctions inflict on young people and families.

The legislative and executive branches of Idaho’s government can end juvenile administrative fees once and for all. The legislature should eliminate fees while preserving funding for important state and local programs with tax dollars. The legislature should also waive outstanding debt, which is unlikely to be collected and can hang over youth and families for years.¹⁷³ Governor Brad Little has issued emergency executive orders during the COVID-19 pandemic, and he should also issue an order to suspend state statutes and rules authorizing the assessment and

170. The Campaign for Debt-Free Justice is coordinated nationally by the Berkeley Law Policy Advocacy Clinic, Juvenile Law Center, and National Center for Youth Law, which provide on the ground technical assistance to support local, legal, and policy advocacy to end fees and fines imposed on youth in the justice system. Berkeley L. Pol’y Advocacy Clinic et al., *The Campaign for Debt-Free Justice* (on file with the authors). The campaign is funded principally by Arnold Ventures and Schusterman Family Philanthropies, which also provide financial support to local partners. *Id.*

171. Many elements of these recommendations derive from a national call to place a moratorium on all juvenile fees and fines during the COVID-19 pandemic drafted by the Berkeley Law Policy Advocacy Clinic, Juvenile Law Center, and the National Center for Youth Law and signed by more than 130 groups across the country and political spectrum. Call for a Nationwide Moratorium on Juvenile Fees and Fines (2020), <https://drive.google.com/file/d/1JmX2L9cArGxAL8yl4IjWolOB6XAQIFcz/view>.

172. *C.f.* *Collection Bureau, Inc. v. Dorsey*, 249 P.3d 1150, 150 Idaho 695 (2011) (approving courts and counties contracting with private debt collections agencies to collect fee debt).

173. Several states that have repealed juvenile fees prospectively have also waived outstanding fee debt. *See, e.g.*, S. 1290, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted); H.D. 36, 2020 Leg., Reg. Sess. (Md. 2020) (enacted); H.R. 183, 55th Leg., Reg. Sess. (N.M. 2021) (enacted).

collection of juvenile fees.¹⁷⁴ Of course, the governor's signature will also be necessary for fee abolition legislation to become law.

Until the state legislature and governor act to abolish juvenile fees, County Boards of Commissioners should pass ordinances barring the imposition of all discretionary fees.¹⁷⁵ County governments should also refuse to contract, and cancel any existing contracts, with the private debt collection agencies that seek to recover juvenile fees from Idaho youth and families.¹⁷⁶ Counties, too, should cancel outstanding debt from fees over which they have control, and notify youth and families of the policies and practices in place to shield them from court debt.

Juvenile courts, while subject to state statute and county ordinance, have enormous power over juvenile monetary sanctions. In addition to ceasing imposition and collection of all discretionary fees, the courts should seek to limit the collateral consequences of debt. For instance, courts should recall debt from collection agencies and vacate arrest warrants for unpaid fees. Prosecutors should exercise their discretion not to pursue fees in juvenile cases, not to prosecute failure to pay fees, and never to condition plea agreements on payment of fees.

Probation and other law enforcement officers work closely with the juvenile courts, but they have many interactions with youth and families outside of the formal court process. Officers should ensure that probation is not extended and that no probation requirements—like counseling, drug treatment, or anger management classes—are denied because of a youth's or family's inability to pay fees. Youth in detention should, at the very least, be able to call home for free.¹⁷⁷ In general, youth should be diverted from the juvenile system and treated with the least restrictive interventions possible. System actors should seek to avoid ticketing, arresting, and detaining youth in favor of restorative and transformative approaches to addressing mistakes and harm.¹⁷⁸

Juvenile public defenders and community advocates will have to build and experiment with non-carceral responses to children in need, but in the meantime, they must intercede on behalf of youth to fight fees in court. Attorneys should

174. ASSOCIATED PRESS, *Lawmakers Seek Long-Term Limit on Governors' Emergency Power*, IDAHO NEWS 6 (Apr. 16, 2021), <https://www.kivitv.com/news/political/inside-the-statehouse/lawmakers-seek-long-term-limit-on-governors-emergency-power>. The governor's power is only expanded in a state of emergency. See IDAHO CODE § 46-1008 (2020); see also Press Release, Off. of the Governor, Idaho, *Governor's Emergency Declaration Secures Millions in Funding for Vaccination Effort* (Mar. 2, 2021), <https://gov.idaho.gov/pressrelease/governors-emergency-declaration-secures-millions-in-funding-for-vaccination-effort/>.

175. See, e.g., IDAHO CODE § 20-516A (authorizing the board of county commissioners to establish a pretrial supervision fee).

176. See, e.g., *Bids: RFP No. 16083*, ADA CNTY., <https://apps.adacounty.id.gov/Admin/bids/bid.aspx?key=495> (last visited May 6, 2021) (Court Debt Collection Services for the Fourth Judicial District Court of the State of Idaho); Katie Lobosco, *Debt Collectors Can Seize the New Stimulus Checks. Lawmakers Are Trying to Fix That*, EASTIDAHONEWS.COM (Mar. 16, 2021), <https://www.eastidahonews.com/2021/03/debt-collectors-can-seize-the-new-stimulus-checks-lawmakers-are-trying-to-fix-that/>.

177. See Conor McClesky, Presentation at Idaho Law Review Symposium (Mar. 25, 2021).

178. Gus Tupper, *Breaking California's Cycle of Juvenile Transfer*, 15 CAL. LEGAL HIST. 207 (2020) (discussing transformative community interventions).

object to the assessment of all discretionary and mandatory fees, especially fees for public defenders, which can undermine children's right to counsel.¹⁷⁹ Idaho Magistrate Courts hear juvenile cases, and defenders should appeal fee orders to the District Courts and beyond as needed.¹⁸⁰ While fees continue to be imposed, juvenile defenders should insist on entering information into the record about the harms of monetary sanctions. Community members, organizations, and advocates must push for these changes at every level to raise awareness and hold system actors accountable for a more just system.

B. Half Measures Are Not Enough

More procedural protections will not effectively eliminate the race and class bias in fee and fine collection.¹⁸¹ As noted above, Idaho law requires a judge to determine a person's ability to pay some fees, but not all.¹⁸² At no point during Ms. Beck's case, for example, did the Elmore County Magistrate Court assess her ability to make payments, other than to determine that she was indigent and appoint a public defender. Further, while the American Bar Association cautions that a robust ability-to-pay process is necessary for the institutional legitimacy of the courts,¹⁸³ such procedural reforms do not serve other institutional goals of the courts or government stakeholders.¹⁸⁴

Racialized policing and the overrepresentation of Black, Brown, and Indigenous youth at every stage of the juvenile legal system—higher rates of arrests, referrals, and convictions, as well as longer time spent on probation and in placement—mean that system-involved youth of color and their families are liable for more costs and fees than White youth.¹⁸⁵ Disproportionately harsher treatment of youth of color results in higher financial penalties, which cannot be offset by

179. JESSICA FEIERMAN ET AL., JUV. L. CTR., THE PRICE OF JUSTICE: THE HIGH COST OF "FREE" COUNSEL FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM (2018); NAT'L JUV. DEF. CTR., ACCESS DENIED: A NATIONAL SNAPSHOT OF STATES' FAILURE TO PROTECT CHILDREN'S RIGHT TO COUNSEL (2017).

180. THE STATE OF IDAHO, OVERVIEW OF THE IDAHO COURT SYSTEM, <https://isc.idaho.gov/overview.pdf>.

181. Theresa Zhen, *(Color)Blind Reform: How Ability-to-Pay Determinations Are Inadequate to Transform a Racialized System of Penal Debt*, 43 N.Y.U. REV. L. & SOC. CHANGE 175, 188–89 (2019).

182. See, e.g., IDAHO CODE § 20-225 (2020).

183. David L. Hudson, Jr., *Judges Must Ensure Defendants Can Afford Court Costs Before Imposing Fines and Fees*, ABA J. (Aug. 1, 2020), <https://www.abajournal.com/magazine/article/judges-must-ensure-defendants-can-afford-court-costs-before-imposing-fines-and-fees>.

184. Some legal scholars and advocates argue that reducing or eliminating fees and fines should not be an excuse to expand the power of courts to monitor and invade privacy through alternative sanctions and intrusive ability-to-pay analyses. Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. (forthcoming 2022) (manuscript at 15–18, 27–28), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3785373.

185. POL'Y ADVOCACY CLINIC, BERKELEY L., UNIV. OF CAL., HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 9 (2017), https://www.researchgate.net/publication/304784356_High_Pain_No_Gain_How_Juvenile_Administrative_Fees_Harm_Low-Income_Families_in_Alameda_County_California.

ability-to-pay determination or indigency presumptions.¹⁸⁶ Ability-to-pay analyses are analogous to purported procedural protections elsewhere in criminal law, which have been rightly critiqued as inadequate to address foundational racial inequities in the system.¹⁸⁷

The inequity of ability-to-pay mechanisms is compounded by the design of judicial determinations, which must be invasive to have any probative value, but are insufficient to guarantee both procedural and racial justice. These mechanisms do not account or correct for underlying problems, including racialized policing practices, racial wealth differences, and the cumulative effects of prior fees and fines.¹⁸⁸ Moreover, even when such determinations are required by law, courts have “creatively skirted the rules or flatly disobeyed them,” and are often subject to little or no oversight.¹⁸⁹ Because the Idaho Legislature insists courts generate the revenue they need to operate, the courts themselves should not be tasked with meaningfully reducing Idahoans’ court debt through ability-to-pay hearings.

Perhaps most importantly, the focus on ability to pay elides fundamental questions about monetary sanctions like juvenile fees. As described above, some of the “key concerns” with ability to pay include administrative hurdles and economic waste.¹⁹⁰ But even if juvenile fees could be administered more fairly, larger concerns suggest that we should instead ask questions like: Why should vulnerable youth and families bear the burden of a justice system that is supposed to benefit society as a whole? What are positive interventions to interrupt harm and violence without further traumatizing youth and families? If we center the interests of youth, family, and society in our inquiry, the idea of right-pricing such an unjust practice is much less appealing.

C. Idaho Is Ripe for Reform

The OPE Report and Ms. Beck’s case paint a depressing picture about the current landscape of fees and fines in Idaho, but we see reasons for hope. First, Ms. Beck’s public defender filed a successful writ with the Idaho Supreme Court arguing that the Magistrate Court had violated the federal Constitution by jailing Ms. Beck for unpaid fees and fines without first assessing her ability to pay. Second, a nationwide campaign to eliminate juvenile fees and fines has garnered bipartisan support in many states, including some of Idaho’s neighbors. Third, despite the

186. See Alex R. Piquero, *Disproportionate Minority Contact*, 18 JUV. JUST. 59, 59–61 (2008) (discussing disproportionate punishments, including monetary sanctions, for youth of color in state juvenile systems); MAKING FAMILIES PAY, *supra* note 153.

187. For a thorough explanation of this phenomenon in the context of policing, see Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1806–09 (2020).

188. Zhen, *supra* note 181, at 193.

189. Zhen, *supra* note 181, at 187 (quoted language); Zhen, *supra* note 181, at 178 (“Ability-to-pay determinations often happen daily behind closed doors or in unmonitored courtrooms where there is no oversight or regulation. They can occur in front of an audience with no intimate understanding of the devastating conditions of poverty, such as a judge, an employee of the court, a collections agent, or any person authorized by the court or county.”).

190. Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 IOWA L. REV. 53 (2017).

legislature's policy preference for funding the courts and other government services through fees and fines, Idaho recently scaled back the reach of its punitive monetary sanction regime by limiting debt-based suspensions of driver's licenses.

In response to the writ filed by Ms. Beck's public defender, the Idaho Supreme Court issued a Preliminary Writ of Prohibition ordering the Elmore County Magistrate Court to refrain from "[t]aking any additional collection efforts" including "issuing any arrest warrant against Ms. Beck for failure to pay and/or contempt pending further of this court."¹⁹¹ The Supreme Court also prohibited the Elmore County court from issuing arrest warrants against anyone else for failure to pay fines and fees. Although Elmore County undertook to recall outstanding contempt warrants for unpaid fines and fees, according to Ms. Beck's lawyer, people with unpaid monetary sanctions continued to be arrested and jailed.¹⁹²

The Supreme Court heard oral argument in the case, and in June 2021, it ruled in Ms. Beck's favor, holding that "effectively turn[ing] a fine into jail time without due process" violated the Fourteenth Amendment.¹⁹³ Beyond the immediate impacts—Idaho courts are now prohibited from jailing Idahoans who are unable to pay fees and fines—the *Beck* decision presents the opportunity for courts to reevaluate their monetary sanction practices. The decision may have the incidental effect of causing judges to waive or reduce fees and fines rather than conducting extensive ability-to-pay assessments.¹⁹⁴ Local advocates have already started to use the court victory as a jumping off point to recommend broader reforms to fees and fines in Idaho.¹⁹⁵

Seven states enacted legislation to reduce or eliminate juvenile fees and fines between 2015 and 2020, including Washington, Utah, and Nevada.¹⁹⁶ In 2021, Oregon, Colorado, Louisiana, New Mexico, Texas, and Virginia eliminated some or

191. Order Re: Petition for Writ of Prohibition, at 1, *Beck v. Elmore Cnty. Magistrate Ct.*, No. 48475-2020 (Idaho June 24, 2021).

192. See Motion to Take Judicial Notice, *supra* note 23 (noting that Francisco Aguila-Cardenas was subsequently jailed in Elmore County on a criminal contempt prosecution for alleged failure to pay court debt).

193. *Beck*, No. 48475-2020, <https://isc.idaho.gov/opinions/48475.pdf>.

194. Jacob Scholl, *Idaho Supreme Court Issues 'Significant' Ruling for Those Who Can't Afford Court Fees*, IDAHO STATESMAN (June 28, 2021), <https://www.idahostatesman.com/news/politics-government/article252362638.html> ("The case drew widespread attention and will affect how courts treat indigent defendants.").

195. IDAHO CTR. FOR FISCAL POL'Y, *THE HIDDEN COSTS OF FINES AND FEES IN IDAHO'S CRIMINAL JUSTICE SYSTEM* (2021), <https://idahocfp.org/new/wp-content/uploads/2021/07/Fees-and-Fines-Policy-Review-7-15.pdf>; *Eliminate Juvenile Fees*, IDAHO JUST. PROJECT (2021), <https://www.idahojusticeproject.org/eliminate-juvenile-court-fees>.

196. S. 5564, 2015-2016 Leg., Reg. Sess. (Wash. 2015) (enacted) (repealing most juvenile fees); H.R. 239, 2017 Leg., Gen. Sess. (Utah 2017) (enacted) (capping juvenile fees); S. 190, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (enacted) (repealing all juvenile fees); S. 1290, 2019-2020 Leg., Reg. Sess. (Cal. 2020) (enacted) (discharging all outstanding debt from juvenile fees); A. 439, 80th Leg., Reg. Sess. (Nev. 2019) (enacted) (eliminating all juvenile fees); H.D. 36, 2020 Gen. Assemb., Reg. Sess. (Md. 2020) (enacted) (eliminating all juvenile fines and fees); S. 48, 2018-2019 Leg., 2d Ann. Sess. (N.J. 2020) (enacted) (eliminating all juvenile fines); H.R. 1162, 2020 Gen. Court, Reg. Sess. (N.H. 2020) (enacted) (eliminating some juvenile detention fees).

all juvenile fees, and lawmakers introduced similar repeal bills in another 8 states.¹⁹⁷ Additionally, local jurisdictions in states across the country and political spectrum have abolished juvenile fees.¹⁹⁸

When New Mexico Governor Lujan Grisham recently signed a bill ending juvenile fees in her state, she noted that monetary sanctions were especially painful for low-income families:

Nickel-and-diming New Mexico families doesn't solve anything. On the contrary, it can create a vicious cycle of fee collection and license revocation, all of which serves only to entrap too many New Mexicans in the criminal justice system. Instead, we need to be looking at ways to reduce the administrative burden on families and reduce the potential for recidivism, so we can focus on providing more opportunities for growth to all youth and families in New Mexico.¹⁹⁹

Colorado State Representative Leslie Herod, who sponsored Colorado's 2021 juvenile fee abolition bill, said, "Eliminating these fees would allow judges to stop acting as cashiers and instead focus on rehabilitating kids and making communities

197. S. 817, 81st Leg. Assemb., Reg. Sess. (Or. 2021) (enacted); H.R. 21-1315, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (enacted); H.R. 183, 55th Leg., Reg. Sess. (N.M. 2021) (enacted); H.R. 216, 2021 Leg., Reg. Sess. (La. 2021) (enacted); S. 41, 87th Leg., Reg. Sess. (Tex. 2021) (enacted); H.D. 1912, 2021 Gen. Assemb., Spec. Sess. (Va. 2021) (enacted); H.R. 2385, 55th Leg., 1st Reg. Sess. (Ariz. 2021); S. 455, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); H.R. 244, 151st Gen. Assemb., Reg. Sess. (Del. 2021); S. 1926, 2021 Leg., Reg. Sess. (Fla. 2021); H.R. 1208, 122d Gen. Assemb., 1st Reg. Sess. (Ind. 2021); H.R. 4987, 2021 Leg., Reg. Sess. (Mich. 2021); S. 3319, 2020-2021 Leg., 2d Ann. Sess. (N.J. 2021); H.R. 246, 66th Leg., Gen. Sess. (Wyo. 2021).

198. See ORLEANS PARISH JUV. CT., STANDING POLICY ON JUVENILE ADMINISTRATIVE FEES (2018), <https://finesandfeesjusticecenter.org/content/uploads/2018/12/Orleans-Parish-Juvenile-Fees-2018.07.19.pdf> (locality in Louisiana); Katherine Burgess & Sarah Macaraeg, *Shelby County to Stop Billing, Waive Debt for Families of Juvenile Detainees in Memphis*, COM. APPEAL (Aug. 27, 2019), <https://www.commercialappeal.com/story/news/2019/08/26/shelby-county-stops-billing-discretionary-fees-juvenile-detention/1718482001/> (locality in Tennessee); Dane Cnty. Bd. of Supervisors, 2019 Operating Budget Amendment (2019), <https://dane.legistar.com/View.ashx?M=F&ID=6697774&GUID=FD523C89-C0E7-4F79-81E8-BC2168BD6F72> (locality in Wisconsin); Bd. of Cnty. Comm'rs of Johnson Cnty., Agenda Review (2017), https://bocmeetings.jocogov.org/OnBaseAgendaOnline/Documents/ViewDocument/BOCC_AGENDA_REVIEW_4994_Agenda_Packet_6_29_2017_9_30_00_AM.pdf?meetingId=4994&documentType=AgendaPacket&itemId=0&publishId=0&isSection=false (locality in Kansas); Phila., Pa., Res. No. 161029 (Nov. 17, 2016), <https://phila.legistar.com/LegislationDetail.aspx?ID=2892230&GUID=0830ED46-D598-413C-BC9B-8859E0B0F6E2&Options=ID%7CText%7C&Search=161029> (follow "Signature16102900.pdf" link to final resolution); Memorandum from Justin Kollar, Prosecuting Att'y, Off. of the Prosecuting Att'y, Cty. of Kaua'i, State of Haw., to All Deputy Prosecuting Att'ys (June 29, 2021), <https://www.law.berkeley.edu/wp-content/uploads/2021/07/FINAL-Fines-Fees-Kauai-DA-Policy.pdf> (juvenile monetary sanctions).

199. Maryam Shah, *New Mexico Governor: Law Eliminating Fees for Juvenile Crimes*, STL NEWS (Mar. 30, 2021), <https://stl.news/new-mexico-governor-law-eliminating-fees-for-juvenile-crimes/441499/>.

safer.”²⁰⁰ Governor Grisham and Representative Herod succinctly summarized why juvenile fees are bad policy—they harm families, prolong and deepen system involvement for young people, and undermine community safety. These are many of the key harms animating the national campaign against juvenile monetary sanctions.

The parallel movement to end debt-based driver’s license suspensions reflects some appetite for monetary sanction reform in Idaho.²⁰¹ With the enactment of House Bill 599 in 2018, Idaho limited the harmful practice of suspending driver’s licenses for failure to pay outstanding court debt, even in the face of concern from judges and clerks that reducing this sanction would hamper debt collection.²⁰² Like juvenile fees, losing a driver’s license can be especially punitive in rural states with little public transit infrastructure. Advocates argue that there is no logical connection between driving and paying court fees and note that the punishments for driving on a suspended license are severe and fall disproportionately on people of color.²⁰³ Importantly, the fiscal note for the HB 599 estimated a *savings* to the state of \$9 million, despite any alleged reduction in fee and fine collection.²⁰⁴

System actors in Idaho can learn from other states’ experiences ending juvenile fees. We now have clear evidence that juvenile fee abolition reduces harm to youth and families without negatively impacting bottom lines in state and local budgets. States have considered and rejected illusory fixes like ability-to-pay provisions, recognizing the futility in trying to mend the fundamental injustice of juvenile fees. Much work lies ahead to build a movement to end juvenile fees in Idaho, but law and policy makers at all levels of government can begin taking steps now to end this regressive and racially discriminatory practice.

VI. CONCLUSION

More than a year after her arrest, the Idaho Supreme Court recognized the extreme injustice imposed on Ms. Beck by the Elmore County Magistrate Court:

200. Leslie Herod, *Rep. Herod: Eliminating Juvenile-Justice Fees Means Better Justice for Juveniles*, COLO. SUN (May 23, 2021), <https://coloradosun.com/2021/05/23/eliminating-juvenile-justice-fees-opinion/>.

201. See *National Driver’s License Suspension Campaign: Free to Drive*, FINES & FEES JUST. CTR. (June 25, 2019), <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/>; H.R. 599, 64th Leg., 2d Sess. (Idaho 2018).

202. Idaho H.R. 599; see also FINES AND FEES REPORT, *supra* note 1, at 30 (“A few judges and elected clerks were concerned that collection rates on infractions cases may decline as a result of recent changes made by the Legislature. In 2018, House Bill 599 revised Idaho Code § 49-328(3) to no longer allow a person’s driver’s license to be suspended for failure to pay an infraction penalty. As of yet, there has been no clear evidence that the change has affected collection rates on infraction cases. However, given the concern expressed by judges and elected clerks, the impact of the change may need additional analysis.”).

203. RACIAL JUST. PROJECT, N.Y. L. SCH., *DRIVING WHILE BLACK AND LATINX: STOPS, FINES, FEES, AND UNJUST DEBT* (2020), <https://finesandfeesjusticecenter.org/content/uploads/2020/02/RJP.-Drivers-License-Suspension.-Final.pdf>.

204. RS26012C1 Statement of Purpose / Fiscal Note H0599 (2018), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2018/legislation/H0599SOP.pdf>.

Beck's choices when presented with her warrant of attachment were to (1) pay \$643.72 to purge the contempt; (2) pay roughly \$640 to a bail bond agent to post bail; or (3) go to jail. In other words, the bail amount set by the magistrate court had the practical effect of converting Beck's court-ordered fines into jail time if she could not afford to pay roughly \$640.²⁰⁵

In vindicating Ms. Beck's constitutional claims, the Idaho Supreme Court reasserted the importance of decades of U.S. Supreme Court precedent and took an important step toward guaranteeing debt free justice to thousands of Idahoans suffocating under the heavy burden of fees and fines.

Ms. Beck's victory, however, only provides relief from the worst abuses—jailing people without determining their ability to pay monetary sanctions. The answer is not to treat these procedural symptoms of the harm, but to abolish its source. As the Idaho judge quoted in the Idaho Legislature's Office of Performance Evaluations report stated so evocatively, "there is no way to get blood from a turnip."²⁰⁶

In addition to Ms. Beck's case, the OPE report offers a clear opportunity for reflection and course correction in Idaho. The OPE heeded the charge of the legislature to focus on how to improve the collection of fees and fines, but it is not hard to see through the data and sense a lack of enthusiasm for this mandate. The report's authors acknowledge the reality that most people in the criminal system are low-income, that courts cannot become tax collectors, and that many of its suggested revenue-optimization strategies have not succeeded. Hundreds of millions of dollars in outstanding debt menacing vulnerable Idahoans is a testament to a failed policy that requires reexamination and reform.

State-sanctioned racialized wealth extraction in Ferguson put fees and fines on the map. Activists, advocates, and academics have taken up the cause to address this injustice through evidence-based state and local reform. With national momentum behind juvenile fee and fine reform and in-state attention to the OPE report and the plight of people like Roxana Beck, Idaho can stop trying to get blood from a turnip and end its system of money as punishment.

205. Beck v. Elmore Cty. Magistrate Ct., No. 48475-2020, slip op. at 20 (Idaho June 24, 2021), <https://isc.idaho.gov/opinions/48475.pdf>.

206. Order Re: Petition for Writ of Prohibition at 1, Beck, No. 48475-2020, <https://isc.idaho.gov/opinions/beck.pdf> (setting the case for oral argument on May 7, 2021).