

TESTIMONY OF:

Rochester-Monroe Anti-Poverty Initiative (RMAPI)

Written Testimony of:

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Presented before

The New York State

Senate Committee on Finance and Assembly Committee on Ways and Means

Joint Legislative Budget Hearing

January 25, 2024

On behalf of RMAPI (the Rochester-Monroe Anti-Poverty Initiative), we would like to thank Chair Krueger of the Senate's Standing Committee on Finance and Chair Weinstein of the Assembly's Standing Committee on Ways and Means for holding today's Joint Legislative Budget hearing on Public Protection, and for giving us the opportunity to lift up our community's concerns on the importance of eliminating predatory court fees in the State of New York.

RMAPI is a coalition of strong-willed individuals and organizations working together to tackle the systematic root causes that create and perpetuate poverty in Rochester. Historic and continuing discriminatory policies, practices and systems in the United States and the Rochester area have created enduring inequities and conditions for Black people, Indigenous people, and People of Color, actively and passively preventing access to upward mobility. Predatory court fees are among these barriers, criminalizing poverty and constructing a roadblock to upward mobility.

Through extensive outreach to members of our community, especially those impacted by poverty, we learned that the criminalization of poverty and eliminating excessive fines and fees are a major priority. That is reflected in our 2024 Policy Agenda, which sets a priority to eliminate penalties, fees/fines, and financial practices that exploit low-income people and criminalize poverty.

In New York, every traffic ticket and criminal conviction carries a non-waivable surcharge, or fee, in addition to any fine or sentence that may be imposed.¹ These fees are predatory. They are unrelated to punishment or accountability and were created for the sole purpose of raising revenue on the backs of those who are subjected to the court process. They are hidden regressive taxes that are tacked on to tickets and to charges imposed on people who have any contact with the legal system, extracting millions of dollars from disproportionately low-income communities and communities of color. Predatory fees encourage policing-for-profit, criminalize poverty, and endanger Black and Brown lives. Additionally, the imposition of these fees creates a cycle of punishment and poverty. Failure to pay fines or fees can lead to additional financial distress or even arrest and incarceration.

New Yorkers deserve to live without fear of lifelong debt and poverty. As identified in RMAPI's Unity Agenda, we believe that everyone in our community deserves equitable, accountable, and responsive government, public safety, and legal systems. The End Predatory Court Fees Act would eliminate mandatory court surcharges, probation fees, and mandatory minimum fines, end debtors prisons in New York, and do away with the practice of using the justice system for ineffective revenue generation. The legislature made it clear that eliminating

¹ See N.Y. Vehicle and Traffic Law § 1809, 1809-a, 1809-aa, 1809-b, 1809-c, 1809-d, 1809-e; N.Y. Penal Law § 60.35(1)(a).

parole supervision fees was a priority by eliminating them in the 2022 budget, and this year we urge the legislature to pass the End Predatory Court Fees Act in its entirety.

I. Court Fees Are a Regressive and Fiscally Irresponsible Method of Raising Revenue.

Fees, or surcharges, are extra costs that the government attaches to every conviction — even traffic tickets and minor infractions. They can total hundreds of dollars, not including the amount of any fine a court may impose. Individuals are often required to pay fees on top of a fine, or even when the judge decides not to impose a fine at all. These court fees are explicitly intended not as part of a person’s sentence, but as a means of raising government revenue.² As such, they function as a form of regressive taxation on New Yorkers who are often the least able to afford them.

New York's top predatory fee is the mandatory surcharge. The mandatory surcharge is a fee attached to every conviction in New York, from minor violations to felonies.³ Courts cannot waive or reduce these fees or surcharges, or even consider your ability to pay them, and ending this practice across the state calls for legislative reform.⁴ Depending on the type of conviction, a single mandatory surcharge can amount to hundreds of dollars. In addition to mandatory fees, some convictions carry a mandatory minimum fine, meaning that judges cannot consider someone’s ability to pay. The inflexible imposition of these court fees raises a number of issues touching on equity, economic justice, and the cruelties of the criminal legal system.

A. Court fees place an unjust and racially disproportionate burden on poor New Yorkers.

² *People v. Guerrero*, 12 N.Y.3d 45, 49 (N.Y. 2009).

³ See New York State Penal Law, §60.35, New York State Finance Law, §97-BB, and New York State Vehicle and Traffic Law, §1809.

⁴ C.P.L. 420.35(2) bars courts from waiving the surcharge, and ending this practice across the state calls for legislative reform.

Fines and fees punish people living in poverty. When governments use predatory fines and fees to raise money, the result is a hidden, disproportionate tax on those who can least afford it. This system of taxation-by-citation extracts wealth from some of the most vulnerable members of our society and exposes Black and Brown New Yorkers to more encounters with police, resulting in a disproportionate rate of court involvement.

Fees have significant consequences, impacting everything from housing stability to emotional well-being to relationships with friends and family. Paying just one traffic ticket and its mandatory surcharge could mean missing rent, going without healthcare, or living without basic necessities. These fines and fees often force an indigent defendant or their family to choose between paying a fine that, if unpaid, could land a family member in jail, or being able to afford rent, food, and other daily essentials. In one survey, more than 8 in 10 respondents gave up necessities like rent, food, medical bills, car payments, and child support, in order to pay down their court debt.⁵

New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Since the creation of the mandatory surcharge in the 1980s, the surcharge for violations has increased *178 percent more* than the expected inflation-adjusted amount. For misdemeanors and felonies, the surcharge increased 92 percent and 75 percent, respectively, relative to the inflation-adjusted amount.⁶

⁵ Alabama Appleseed, *UNDER PRESSURE: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide*, <https://alabamaappleseed.org/underpressure/>.

⁶ Fines & Fees Justice Center, *New York's Ferguson Problem*, p. 4, https://nopriceonjustice.org/wp-content/uploads/2020/09/New_York_Ferguson_Problem_NPJ_Report.pdf.

The burden that fines and fees impose is not felt equally. Black and brown New Yorkers are significantly more likely to be stopped, questioned, frisked, and issued summonses by police,⁷ and are living everyday with the fear of being arrested and jailed for the inability to pay a fine or fee. Harsh policing of minor violations, driven by governments' dependence on fines and fees as revenue, does not lead to greater public safety. Rather, it exposes Black and Brown people to unnecessary interactions with law enforcement and financial insecurity.

B. Court Fees Exacerbate the Harms of the Criminal Legal System and Make Us Less Safe

Eight years ago, after police in Ferguson, Missouri, killed Michael Brown, the U.S. Department of Justice (DOJ) issued a report that shed light on a pattern of racially discriminatory policing practices incentivized by the city's dependence on the criminal legal system to raise revenue.⁸ The report cites the use of warrants and jail time to coerce fine and fee payments and stark racial disparities in traffic stops, citations, and arrests. This pattern of discrimination, incentivized by revenue goals, contributed to "deep mistrust between parts of the community and the police department."⁹ The report found that the city's policing practices were "shaped by the City's focus on revenue rather than by public safety needs."¹⁰ Last year, the DOJ issued a dear colleague letter to state and local courts across the country that identified constitutional concerns inherent in heavy use of fines and fees, warning that the imposition of fines and fees can erode

⁷ See, e.g., *NYS Division of Criminal Justice Services, Adult Arrest Demographics by County and Region, 2022*, available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/adult-arrest-demographics/2022/index.html>.

⁸ United States Department of Justice Civil Rights Division, *The Ferguson Report: Department of Justice investigation of the Ferguson Police Department* (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

⁹ *Id.* at p. 2.

¹⁰ *Id.*

trust between government and constituencies, increase recidivism, undermine rehabilitation and reentry, and generate little net revenue.¹¹

The lessons of these investigations and findings should be a warning for New York. Yet our state continues to depend on this toxic revenue source that criminalizes Black and Brown New Yorkers and low-income people. In fact, thirty-four localities in New York are about as reliant or even more reliant on fines and fees for revenue than Ferguson at the time of the DOJ investigation.¹² Like in Ferguson and elsewhere, racial disparities are endemic to New York's criminal legal system.¹³ Police acting as "armed debt collectors" risk Black and brown lives and extract wealth from New York's poorest communities.¹⁴ Distrust of law enforcement is already entrenched in low-income and marginalized communities, and when police officers and members of the warrant squad are deployed to arrest people for failure to pay mandatory mandatory fines and surcharges, "it further diminishes their credibility."¹⁵

Officer time spent in the pursuit of collecting fines and fees rather than addressing public safety issues has an adverse impact on public safety. According to a study on the Exploitative Revenues, Law Enforcement, and the Quality of Government Service, a 1% increase in the share

¹¹ U.S. Department of Justice, Office of the Attorney General, *Dear Colleague Letter to Courts Regarding Fines and Fees for Youth and Adults*, April 20, 2023, available at <https://www.justice.gov/opa/pr/justice-department-issues-dear-colleague-letter-courts-regarding-fines-and-fees-youth-and>.

¹² 34 localities raise 10 percent or more of their revenue through fines and fees; 12 localities raise 20 percent or more of their revenue through fines and fees. Mike Maciag, "Local Government Fine Revenues By State," *Governing*, September, 2019, <https://www.governing.com/gov-data/other/local-governments-high-fine-revenues-by-state.html>.

¹³ See, e.g., *New York Civil Liberties Union, A Racial Disparity Across New York That Is Truly Jarring*, Dec. 16, 2022, <https://www.nyclu.org/en/news/racial-disparity-across-new-york-truly-jarring#:~:text=In%20Albany%20County%20and%20Onondaga,percent%20of%20the%20state's%20population>.

¹⁴ Ariel Nelson, Wingo Smith, and Leah Nelson, "Why the Police Shouldn't Be Armed Debt Collectors," *Governing*, July 31, 2020, <https://www.governing.com/now/Why-the-Police-Shouldnt-Be-Armed-Debt-Collectors.html>.

¹⁵ Julie Livingston and Andrew Ross, *How U.S. police got the deadly power to stop drivers at will*, *The Guardian*, Feb. 3, 2023, <https://www.theguardian.com/us-news/2023/feb/03/us-police-traffic-stops-tyre-nichols>.

of revenues from fees, fines, and forfeitures collected by a municipality is associated with a 6.1% decrease in the violent crime clearance rate.¹⁶ This is especially concerning in over policed Black and Brown neighborhoods. A New Mexico study on the impact of fines and fees found that pressure to pay fine and fee debt is leading to high-risk behavior and undermining community safety; nearly half of respondents had resorted to “payday” loans (short term, high interest loans usually due on your next payday) or other exploitative loan options to pay fines and fees. In this study, 41% of respondents indicated they had at some point committed a crime to get money to pay court-ordered fines and fees. Meanwhile, 67% of respondents impacted by court debt indicated that they themselves have been a victim of crime at some point.¹⁷

In the end, court fees act as one additional cruelty that the criminal legal system imposes on those who are subjected to it. Even after a person convicted of an offense has satisfied their sentence, outstanding fees that they cannot afford to pay keep them tied to the system and under threat of additional consequences if they cannot satisfy the debt. Any positive reform of the criminal legal system must include an elimination of predatory court fees.

II. Conclusion: New York Must Eliminate Predatory Court Fees

The inefficient, extractive, and predatory practice of imposing predatory fees has far-reaching consequences that endanger individual's' attempts to secure stable housing and employment. In addition to systematically punishing people living in poverty, fines and fees disproportionately expose Black and Brown New Yorkers to more, potentially deadly, interactions with law enforcement. New York must start funding government equitably, not on

¹⁶ “Exploitative Revenues, Law Enforcement, and the Quality of Government Service”, Rebecca Goldstein, Michael W. Sances, and Hye Young You, 2018

¹⁷ “The Impact of New Mexico’s Fines and Fees”,
https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf

the backs of those least able to afford it. New York must also regularly and transparently report any revenue imposed and collected within the legal system, including geographic and demographic data, as well as how that revenue is spent.

The End Predatory Court Fees Act (S.313/A.4283) would address these injustices by first and foremost eliminating the mandatory surcharge and other common court fees that attach to traffic tickets and criminal convictions. Probation fees would be eliminated so a person's ability to re-enter the community and the workplace isn't unnecessarily burdened by further financial obligations. Additionally, the practice of garnishing the commissary accounts to pay for fines and fees would be eliminated. This legislation would also eliminate mandatory minimum fines and create a mechanism for judges to consider a person's ability to pay before imposing a fine. And most significantly, this legislation would put a long overdue end to the draconian practice of incarceration for failure to pay a fine or a fee.

New York has an opportunity to build a more just society that does not pay for itself by preying on the poor and exacerbating economic inequality, opening doors to upward mobility for all of our residents. The End Predatory Court Fees Act is an important part of that effort. We urge Governor Hochul and the Legislature to pass the End Predatory Court Fees Act as part of the 2024 budget process.