



TESTIMONY OF:

The No Price on Justice Coalition

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 The No Price on Justice Coalition, 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 advocates and impacted community members the opportunity to share the importance of eliminating predatory court fees in the State of New York.

The No Price on Justice Committee strongly supports the immediate passage of the End Predatory Court Fees Act (S.313-Salazar/A.4183-Burgos) as part of the 2024 budget. No Price on Justice is a coalition of economic and racial justice advocates, grassroots organizations, and impacted people working to end New York's predatory court fees and fines. Our mission is to end legal system fees that contribute to economic inequality and find more equitable ways to

fund our government. Our coalition members share resources, exchange knowledge and provide mutual support as we strive to create a New York where there is no price on justice.

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 convictions 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, and they deserve a fair, transparent government. 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 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.

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).

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 and 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, constitutionality, and the cruelties of the criminal legal system.

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

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

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.

it. This system of taxation-by-citation encourages policing for profit, 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 2023, the Wilson Center at Duke Law School, in partnership with the Fines and Fees Justice Center conducted the first nationally representative survey of the impacts of fines and fees. The survey demonstrated severe destabilizing impacts - with 27% of people who owe fines and fees face housing instability, and 35% of people faced food insecurity. A full 99 % of parents who owed fines and fees reported having to cut back on at least one basic necessity such as housing, food, or medicine. If those results are true in New York, that would translate to four million children who are facing food insecurity, housing insecurity, and lack of access to another basic necessity.⁵ 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.⁶

New York has not only increased fees over time, but also made certain fees *less affordable* and a much greater financial burden. Between 1980 and 2020, the surcharge for violations

⁵ FFJC and Wilson Center for Science and Justice, *Debt Sentence: How Fines and Fees Hurt Working Families*, May 2023, https://www.google.com/url?q=https://finesandfeesjusticecenter.org/content/uploads/2023/05/Debt_Sentence_FFJC-Wilson-Center-May-2023.pdf&sa=D&source=docs&ust=1706070677144988&usg=AOvVaw2j13UAr9HYeenZfe10nJd1

⁶ Alabama Appleseed, *UNDER PRESSURE: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide*, <https://alabamaappleseed.org/underpressure/>.

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.⁷

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, are more likely to be issued multiple citations in a single stop. Black and brown New Yorkers are also more likely to be convicted, and because of the demographics of poverty, are least likely to be able to afford to pay,⁸ and are instead forced to live 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 cause administrative burdens and generate little revenue for the state.

Relying on court fees that target the poorest New Yorkers is not just a fundamentally immoral method of raising revenue for government operations – it is a deeply ineffective one. By relying on fees charged to people who very often cannot afford to pay them, the state ensures that this expected revenue will go uncollected. Moreover, it saddles courts with a massive and unnecessary administrative burden for courts and others charged with collection.

It is no secret that New York's courts are overwhelmed. In the wake of the COVID-19 pandemic, the backlog of cases continues to build, and everyone within the court system – judges, prosecutors, public defenders, court officers, and court clerks – are desperately trying to

⁷ 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.

⁸ 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>.

catch up. At a legislative hearing last year, the Office of Court Administration testified that “there are limits to [their] resources, especially on the number of personnel available” and that “legislative reporting requirements do not include funding that may be needed to secure supplemental resources.”⁹

One of these reporting requirements is the imposition and collection of fines and surcharges by the courts. Yet despite a statutory mandate,¹⁰ agencies in New York do not appear to be keeping legally mandated records on how the government assesses, collects, and distributes revenue from individual fees, including the mandatory surcharge. These agencies also fail to maintain data reporting infrastructure to track the amounts imposed and collected for specific fees, including the mandatory surcharge and associated revenue spending.¹¹ Despite this failure, a number of advocates, including the Fines & Fees Justice Center (FFJC) and the New York Civil Liberties Union (NYCLU), have used New York Freedom of Information Law (FOIL) requests and statistical analyses to determine how much the state actually collects from these court fees.

The results of those analyses reveal that despite the significant impact of court fees on the people charged with paying them, they contribute minimally to state revenue. A 2023 analysis of FOIL data by the NYCLU showed that collection rates for the most common types of court fees are between 27% and 58% depending on the category, and result in less than \$40 million in

⁹ *Joint Legislative Hearing on Criminal Data Reporting, Remarks of OCA Chief of Administration, Justin Barry, January 30, 2023.*

¹⁰ *N.Y. Criminal Procedure Law § 420.35(3).*

¹¹ The lead researchers for the No Price on Justice coalition along with the Fiscal Policy Institute, contacted the New York State Division of Criminal Justice Services (DCJS), the Office of Court Administration - New York Unified Court (OCA), the New York Office of the State Comptroller (OSC), the New York State Department of Taxation and Finance (DTF), and the New York State Division of Budget (DOB) in attempts to obtain data and reporting relating to the state’s mandatory surcharge, other fees, and fines. The lack of complete and transparent reporting of all imposition, collection, and disposition of the mandatory surcharge and other fee revenue suggests that government decision-making about these fees suffers from persistent data gaps, which makes the individual and community impact of fees challenging to assess and simultaneously raises questions about fiscal policy intentions.

annual revenue – just 0.001% of the state’s tax revenues.¹² A similar analysis by FFJC using more recent data shows that the fiscal impact to the state may even be slightly lower.¹³ FFJC’s analysis of the Governor’s Enacted Budget documents further shows that over the last five fiscal years, miscellaneous receipts for the Criminal Justice Improvement Account (CJIA) – where much of the money from court fees is supposed to be deposited by statute – decreased by about half, suggesting that court fees are already failing to fund the types of services they were ostensibly intended to.¹⁴ Moreover, the same budget documents show that the CJIA has consistently had fund balance remaining in it at the end of the year – almost \$25 million at the end of FY2023 – indicating that even these declining levels of fees are not all being used for the purposes set by statute.

The elimination of major court fees that the End Predatory Court Fees Act would accomplish may in fact result in savings for the state when factoring in the administrative burdens of collecting, managing, and reporting on these fees. Attempting to collect court fee money from those charged with paying it involves an entire apparatus of judges, clerks, court personnel, bookkeepers, and law enforcement. When individuals are jailed for nonpayment or have their commissary accounts garnished to pay off court debt, it implicates the notoriously high costs of incarceration. Additionally, when people who are already struggling financially owe court fees, they often have to find the money to pay by forgoing other basic needs like food,

¹² NYCLU, *Following the Money: How New York Tries, and Ultimately Fails, to Extract Revenue from Indigent Defendants*, March 2023,

https://www.nyclu.org/sites/default/files/field_documents/230306-whitepaper-finesfees.pdf.

¹³ A working analysis by FFJC shows that the amount of revenue taken in by court fees is in the range of about \$29 to \$33 million. Publication of these findings is forthcoming.

¹⁴ Governor’s Division of the Budget, Enacted Budget Financial Plan by Fiscal Year. See appendix tables “Cash Combining Statement by Account, Miscellaneous Special Revenue Fund”. FY2023 example:

<https://www.budget.ny.gov/pubs/archive/fy23/en/index.html>.

rent, or childcare.¹⁵ This may cause reliance on government-funded assistance programs to increase, which grows overall government costs. Given the paltry amount of revenue actually obtained from court fees, the benefit to the government is simply not worth the effort.

C. 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.¹⁶ 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."¹⁷ The report found that the city's policing practices were "shaped by the City's focus on revenue rather than by public safety needs."¹⁸ 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 trust between government and constituencies, increase recidivism, undermine rehabilitation and reentry, and generate little net revenue.¹⁹

¹⁵ FFJC and Wilson Center for Science and Justice, *Debt Sentence: How Fines and Fees Hurt Working Families*, May 2023, https://www.google.com/url?q=https://finesandfeesjusticecenter.org/content/uploads/2023/05/Debt_Sentence_FFJC-Wilson-Center-May-2023.pdf&sa=D&source=docs&ust=1706070677144988&usg=AOvVaw2j13UAr9HYeenZfe10nJd1.

How Fines and Fees Hurt Working Families", May 2023: https://finesandfeesjusticecenter.org/content/uploads/2023/05/Debt_Sentence_FFJC-Wilson-Center-May-2023.pdf.

¹⁶ 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.

¹⁷ *Id.* at p. 2.

¹⁸ *Id.*

¹⁹ 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

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.²⁰ Like in Ferguson and elsewhere, racial disparities are endemic to New York's criminal legal system.²¹ Police acting as "armed debt collectors" risk Black and brown lives and extract wealth from New York's poorest communities.²² 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."²³

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 of revenues from fees, fines, and forfeitures collected by a municipality is associated with a 6.1% decrease in the violent crime clearance rate.²⁴ This is especially concerning in over policed Black and Brown neighborhoods. A New Mexico study on the impact of fines and fees found that

<https://www.justice.gov/opa/pr/justice-department-issues-dear-colleague-letter-courts-regarding-fines-and-fees-youth-and>.

²⁰ 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>.

²¹ 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>.

²² 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>.

²³ 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>.

²⁴ "Exploitative Revenues, Law Enforcement, and the Quality of Government Service", Rebecca Goldstein, Michael W. Sances, and Hye Young You, 2018

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.²⁵

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. Court Fees and Fines Have Real-World Impacts for New Yorkers.

The harms of predatory court fees are not theoretical. The members of the No Price on Justice Coalition have seen the effects of mandatory surcharges and mandatory minimum fines firsthand. Extracting money from individuals that come into the criminal justice system, impoverished and often-times seeking help for mental health issues or substance use disorders, is not only fiscally irresponsible, but morally wrong. The following are just four, out of many, real-life examples demonstrating the impact of predatory court fees.

Mr. A owed a \$200 fine along with a mandatory court surcharge back in 2019. In the two years since then, Mr. A was unable to pay the fine and the surcharge. He has since had a new baby and moved to Staten Island. Subsequently, Mr. A was arrested late at night inside his home, where multiple police officers barged inside, scaring his newborn baby and his wife, all because

²⁵ “The Impact of New Mexico’s Fines and Fees”, https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf

he couldn't pay that \$200 fine. He was brought to Brooklyn Central Booking in handcuffs, where he sat waiting until the next day to see a Judge. His attorney told him that all he could do was ask the judge for more time to pay the fine, otherwise Mr. A could be facing a jail sentence for failure to pay. Unfortunately for Mr. A, the judge did not give him more time to pay and Mr. A spent four days in Rikers Island, amidst a catastrophic humanitarian crisis.

Mr. B. owed a mandatory statutory minimum fine of \$500 along with a mandatory surcharge in 2018. Even though Mr. B's attorney informed the court that he was living in a shelter and could not pay the fine, the judge could not waive the fine because it is mandated by statute. The judge was also unable to consider Mr. B's financial situation and his inability to pay before imposing a mandatory fine. In 2021, Mr. B, who is still living in a shelter, cannot pay this fine and has made several court appearances, through the ongoing COVID-19 pandemic, only to have a judge tell him repeatedly that the fine cannot be waived. His attorney attempted to negotiate with the District Attorney's office so that Mr. B could withdraw his plea from 2018 and enter a plea to a different charge, one that doesn't have a mandatory minimum fine attached to it. Regardless, Mr. B still had to pay a mandatory surcharge, which must be imposed by law on virtually every traffic and criminal charge.

Ms. C was arrested for driving on a suspended license. Ms. C's attorney advised her that her best chance of avoiding a criminal record was to pay off her tickets and have her license reinstated. Ms. C is a single mother, and despite the difficulties of taking on additional employment, she started working extra jobs to pay off her tickets. Eventually, she was able to get her license back and avoid a criminal conviction that would go on her record, but because virtually every traffic offense carries a mandatory surcharge, Ms. C had to work to pay off the

surcharge, forcing her to make many of the same hard choices these predatory court fees force families to make, taking money needed for food and rent and using it to fund state government.

Mr. D was unable to pay a fine and mandatory surcharge. As a result, a warrant was issued for his arrest. Mr. D was arrested for this warrant and brought in handcuffs to Central Booking in Brooklyn, where he had to wait to see a judge so he could ask for more time to pay. The judge was not willing to give him more time to pay, and as a result he was sentenced to serve time in jail. Mr. D had to get a friend to come to the courthouse with money to pay his fine, otherwise he would've gone to Rikers island. It is often family members or friends that step in to help pay these fines and court surcharges. As a result, predatory fees not only negatively impose financial hardships on the individuals ordered to pay them, but impact their families and communities as well, perpetuating the cycle of poverty, and further preying on the poor.

No one should spend a single day in jail simply because they could not afford to pay a fine or fee. No one should be forced to choose between buying food for their family and paying a fine or a fee. New York State should not be operating debtor prisons, nor should the State continue to forcibly extract money from the poorest communities to fund its court system and other programs.

III. 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

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. 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.