

VOTERS SUPPORT REDUCING THE USE OF FINES AND FEES IN SENTENCING

Criminal justice has long been one of the rare areas where bipartisan collaboration is possible. One of the few bipartisan successes of the current Congress involved sentencing reform, and no area has perhaps shown more striking bipartisan support than the eradication of court debt. At the core of this reform is the idea of economic justice: ending the crippling burden of criminal-justice debt obligations on low-income communities. Contact with the criminal legal system destroys the economic mobility of both individuals and their communities, and the staggering debts imposed on individuals do little to actually subsidize the systems that impose them. What's more, these obligations prove bad for public safety: Debt can be criminogenic for impacted people, and police become less effective as crimestoppers when repurposed as debt collectors.

Voters seem to be ahead of the curve on moving away from court debt. Our recent polling suggests clear support among voters for a simple approach in line with these recommendations: Limit the use of fines and fees to those whose sentencing prospects would not be unreasonably worsened by the imposition of fines and fees.

The public often misunderstands the role of fines and fees in the sentencing process. In a concise outline, the Justice Collaborative, a leading national policy organization focused on criminal legal reform, explains the role of fines in perpetuating the carceral state. Imagine being sentenced for shoplifting a \$2 drink and being charged \$1,000 by the private company who provided your court-ordered ankle monitor. Imagine being charged of a crime and found innocent, only to later be jailed because the state charged you \$600 for the lab tests necessary to exonerate you. Often, fines and fees are largely peripheral to any actual criminal matter: city and state governments, hoping to increase revenue, attempt to squeeze payments from noncriminal offenders, low-level offenders, and the innocent and hand off that revenue to political incumbents' corporate

partners. In fact, little of this revenue is ever collected, and the costs of enforcement dwarf what little money does come in.

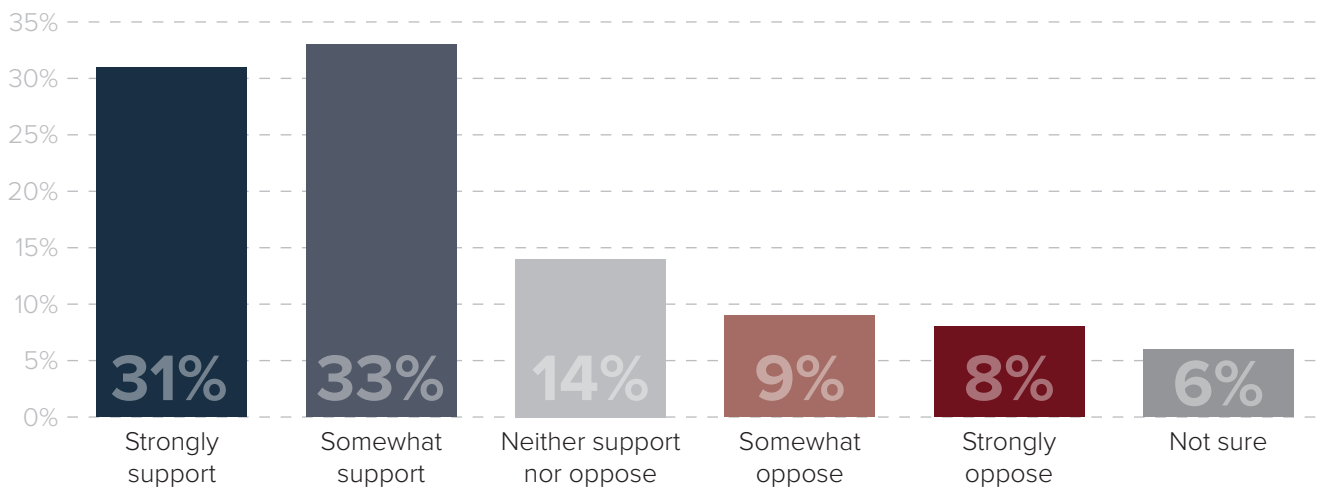
Voters recognize the inherent inequity in this system. In a survey of US voters fielded by YouGov Blue from May 30–June 3, 2019, we asked respondents:

Would you support or oppose limiting the use of fines and fees in sentencing for crimes and minor infractions (like speeding tickets) to those who are able to pay, and community service or other alternatives for those who are unable to pay?

- <1> Strongly support
- <2> Somewhat support
- <3> Neither support nor oppose
- <4> Somewhat oppose
- <5> Strongly oppose
- <6> Don't know

Sixty-four percent either somewhat or strongly supported limiting the use of fines and fees to those able to pay. Just 17 percent of respondents opposed the idea, with the rest being unsure or having no opinion.

**SUPPORT FOR LIMITING FINES AND FEES
IN SENTENCING TO THOSE WHO CAN PAY**



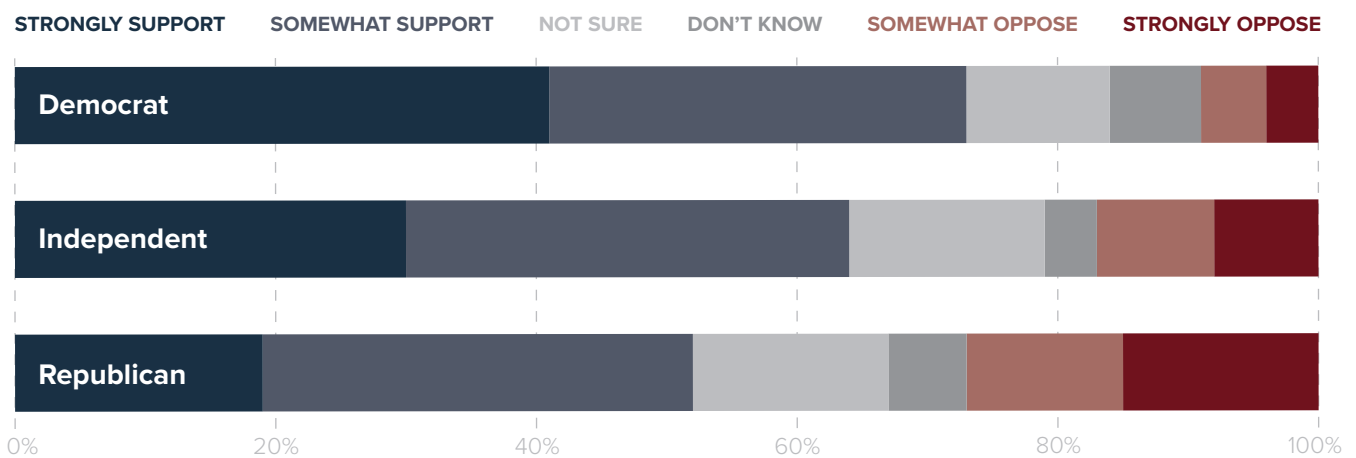
The sample size for the charts was 1,057 and it fielded 5/30/19–6/3/19 on a frame of US registered voters.

DATA FOR PROGRESS

While Democrats were most supportive of this idea and Republicans were least supportive, outright majorities across the political spectrum support reducing the use of fines and fees in sentencing. This includes majorities of Democrats, independents, and Republicans. This is remarkable when considering that the item clearly includes shifting away from fines and shifting toward alternative sentencing like community service—rather than to, say, additional prison time.

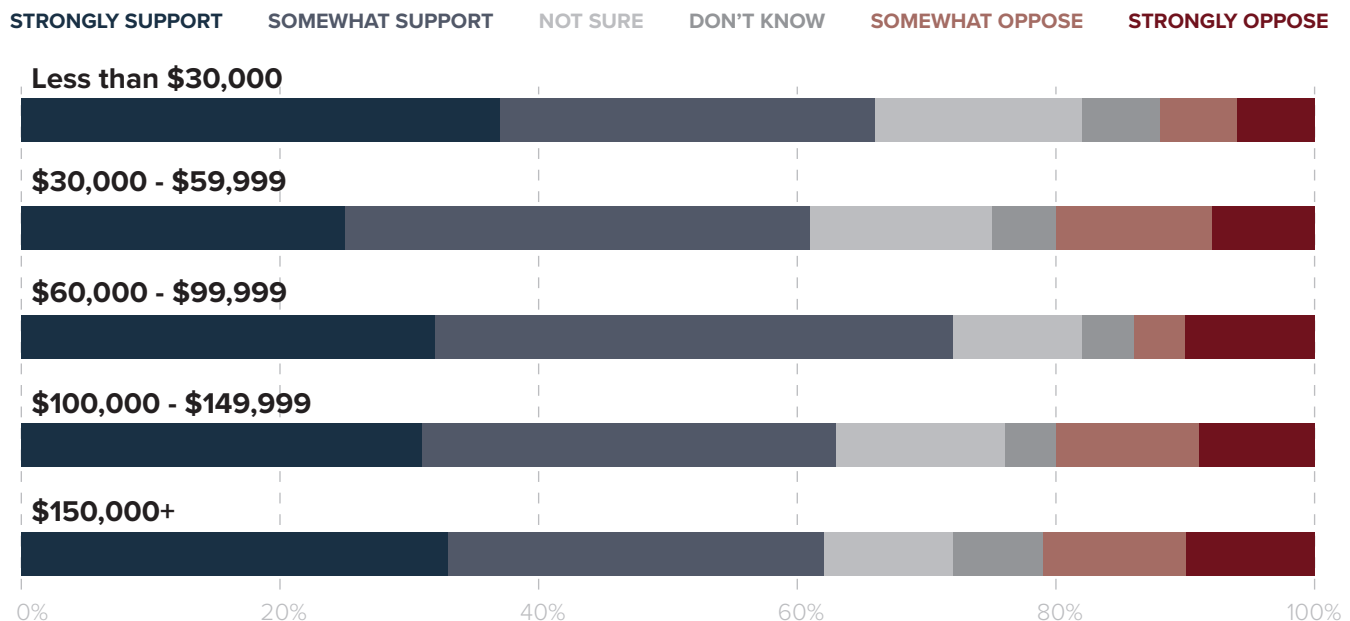
In another possibly unexpected turn, middle-class respondents show the highest levels of support for this policy. While large majorities across the income brackets in our survey supported reducing the use of fines and fees, 72 percent of respondents whose households earned in the \$60,000–99,999 range support reducing fines and fees in sentencing, down to a bare majority (52 percent) of those whose households earn over \$150,000 per year.

SUPPORT FOR LIMITING FINES AND FEES IN SENTENCING | BY PARTY ID



DATA FOR PROGRESS

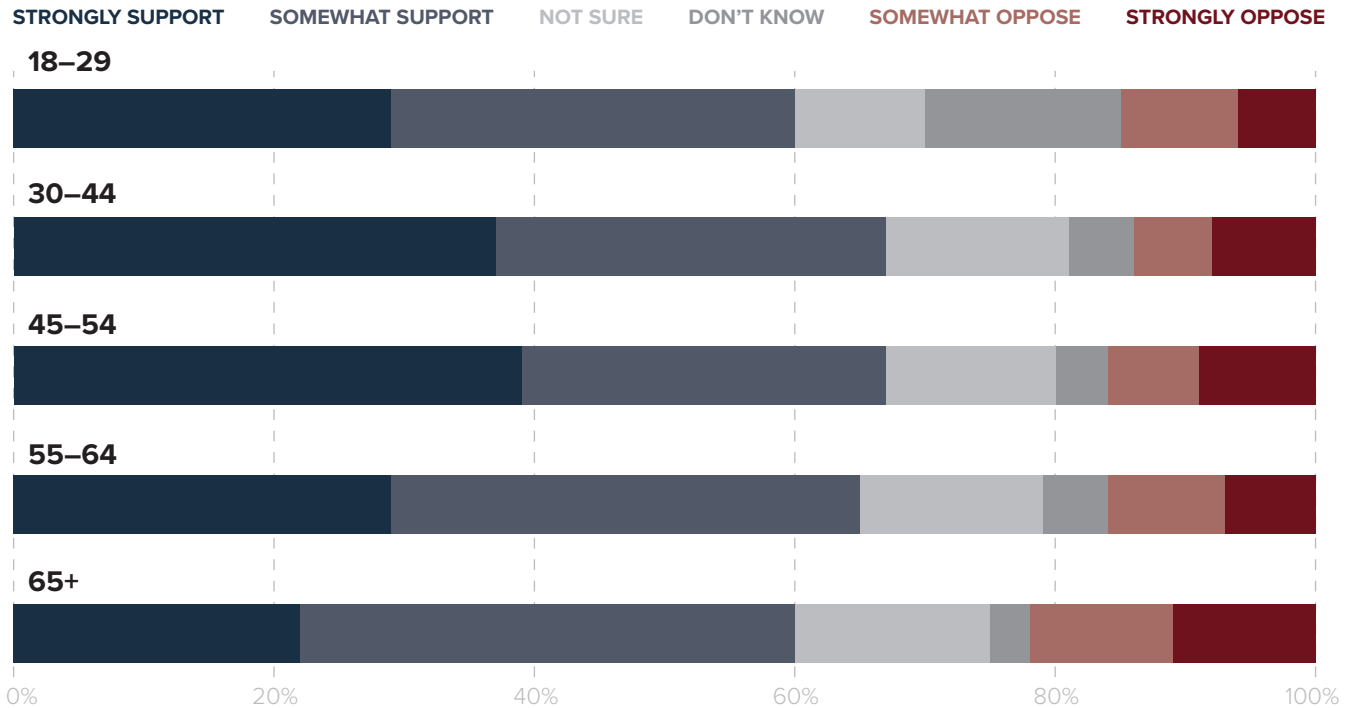
SUPPORT FOR LIMITING FINES AND FEES IN SENTENCING | BY INCOME



DATA FOR PROGRESS

Reducing the use of fines and fees is also popular across all age groups.

SUPPORT FOR LIMITING FINES AND FEES IN SENTENCING | BY AGE



DATA FOR **PROGRESS**

POLICY RECOMMENDATIONS

The most straightforward path to reform is to end the imposition of court fees and limit fines to situations where a person has an ability to pay. Additionally, states must end practices that result in incarceration, extension of supervision, or stripping of rights for nonpayment of a debt alone.

Fines and fees, while often discussed together, play distinctly separate roles in the criminal system. While a fine may serve as a punishment (often substituting for community service or incarceration), fees merely act as a tax on impacted people, requiring defendants to subsidize the cost of their own arrest, jailing, representation, dispositions, and more—even if found innocent. Common are surcharges for probation, for treatment programs, for public-defender services, for

the cost of processing a case, and even for the cost of imprisonment.

FINES: Fines cannot be eliminated because they offer an alternative to incarceration. But that doesn't mean people with no ability to pay should be saddled with debts: Instead of using the typical model of flat fines imposed broadly, jurisdictions should reform their levying structure, as New York City is considering. That proposal would have administrative judges decide the amount of a fine based on a person's earnings. Beyond adjusting the amount imposed, courts could be given the power to actively and structurally consider ability to pay in making determinations about what fines are imposed and what the consequences are for nonpayment. Prosecutors, too, have the ability to use their authority to recommend waiver of fines for indigent people. What is essential is that ability-to-pay

determinations be applied in relevant cases, and that new laws and regulations be passed (if necessary) to require such analysis.

FEES: Regarding fee assessment, California offers an example of state-level reform with the recent Senate Bill 144, which the state Senate passed in its 2019 session, and which would eliminate fees in the criminal legal system. But eliminating future fees likely doesn't aid those whose economic mobility has already been hamstrung by criminal legal debt. To enact meaningful reform, the erasure of existing court debt must be part of a policy package. Durham, North Carolina, has provided an excellent example of such an initiative. Local officials there have launched an initiative to clear tens of thousands of criminal legal debts.

DRIVER'S LICENSES: In order to wholly address the criminogenic and damaging impact of criminal legal debt, states also must cease suspending driver's licenses for nonpayment—a practice that creates a cycle of license suspension and arrest. A growing number of states are seeking to eliminate this practice through legislation, including Montana, Virginia, Tennessee and New York.

VOTING RIGHTS: The other crucial change is severing the tie between debt and voting. The simplest remedy would be decoupling voting from the criminal legal system entirely, but at the very least, the right to vote should be restored upon release from incarceration rather than conditioned on payment of debts.

MODEL STATE LEGISLATION

Though fines and fees in most states are integrated throughout various bodies of law, and imposition of any reform would require more detailed modification of existing statutes, we have presented our own Economic Justice Act below as a model for state legislatures.

ECONOMIC JUSTICE ACT

Sec. 1 Findings and Declarations

The Legislature finds and declares the following:

- ▶ Fines and fees¹ assessed during the criminal process disproportionately punish the poor, lead people far into debt, and deeply destabilize lives.
- ▶ Fines are used to punish unlawful conduct, and fees are costs imposed on individuals in exchange for perceived services. Fees are often assessed for services critical to securing liberty, like pretrial release, the assignment of a public defender, or participation in a diversion program in lieu of a possible conviction or incarceration. Though the two are different and require different solutions, they have many similar detrimental characteristics.
- ▶ Fines and fees are assessed at every stage of the criminal process, from arrest to jail to trial to imprisonment to supervision.
- ▶ Fines and fees make us less safe, because they lead to further instability and a greater likelihood of recidivism. They can prevent individuals from having their voting rights restored, from obtaining (or keeping) a driver's license, from receiving badly needed social services, and from establishing stable, financially viable, households. In addition, they require law enforcement, prosecutorial, and court resources to be spent collecting debt rather than addressing crime that actually threatens community safety.

- ▶ These fines and fees have a crippling effect on people’s ability to live a dignified life. Research shows that many individuals saddled with outstanding court debt report foregoing basic necessities like food or health care to pay it off.
- ▶ Fines and fees harm everyone, but they disproportionately harm Black and Latinx populations. Those communities are overpoliced and overprosecuted, and as a result, overburdened with fines and court fees.
- ▶ They have also disproportionately impacted women. Women often pay off fines and fees imposed on loved ones, including their children. As a result, one study revealed, 83 percent of those who shoulder the burden of court fines and fees are women.
- ▶ These fines and fees are ostensibly levied to fund court systems or to make up for budget shortfalls, but only a very small percentage of outstanding court debt obligations are collected.
- ▶ Although debtors’ prisons are unconstitutional, *Bearden v. Georgia*, 461 U.S. 660 (1983), people regularly go to jail for falling behind on court fines and fees.
- ▶ Until we change our fines and fees policies by eliminating fees and dramatically reducing fines so that a fine can only be imposed in limited circumstances, proportionately to the severity of the person’s conduct and demonstrated ability to pay, we will continue to push people further into debt and make life less dignified and humane for our most vulnerable.

Sec. 2 Legislative Intent

- ▶ It is the intent of the Legislature to eliminate fees and restrict the assessment of fines and restitution obligations. For those court debts in existence already, this bill makes the unpaid balance of most court debts unenforceable and uncollectible, and requires the vacatur of any portion of a judgment imposing those debts.

- ▶ This bill also eliminates the court’s authority to impose a lien on property, including homes and cars, in order to pay for a public defender or other court-imposed fees. And it eliminates the ability of the court to suspend driver’s licenses for unpaid court debt.
- ▶ Finally, this bill will ensure that any fine or restitution levied is tethered to an individual’s ability to pay.

Sec. 3 Definitions

- ▶ **FINE:** Monetary punishment for civil or criminal infractions, misdemeanors, or felonies. Fines are intended to deter crime and punish people for unlawful conduct.
- ▶ **FEES:** Itemized payments for court activities, supervision, or incarceration, often assessed irrespective of guilt, as well as financial charges levied as a result of conviction, adjudication, or a finding of guilt.
- ▶ **RESTITUTION:** Money levied to compensate a victim.
- ▶ **COURT DEBT:** All fines, fees, and restitution assessed as part of the criminal legal process.
- ▶ **ABILITY TO PAY:** A person’s ability to pay a fine or restitution without foregoing necessary expenses that include health care, food, housing, utilities, childcare, schooling, and transportation. An ability to pay assessment must be based on 80 percent of a person’s self-reported income, because studies show that individuals tend to overestimate their available resources and income. After a person establishes his or her income through self-reporting, the burden shifts to the government, if it desires, to disprove the amounts by clear and convincing evidence.

Sec. 4 Fees

- ▶ On and after PASSAGE date, [INSERT STATE] will no longer assess court fees. This includes but is not limited to fees associated with supervision, parole, drug testing, mental health assessments, GPS monitoring, jail terms, public defender assistance, any other criminal justice program, service, or requirement, and any costs previously assessed upon conviction or adjudication.
- ▶ On and after PASSAGE date, no county or municipality within the [STATE] may assess any court fee.
- ▶ The unpaid balance of any and all court-imposed fee is deemed unenforceable and uncollectible and any portion of a judgment imposing those costs should be vacated.
- ▶ A third party who contracts with the court system, corrections, or the State to provide services to comply with any necessary legal obligation, such as an ignition interlock device or a drug test required by a criminal sentence, may not assess any fees against sentenced individuals for those services, though contractors may seek payment through the state or relevant systems.

Sec. 5 Ability to Pay Restitution and Fines

- ▶ No fine or restitution shall be levied without an assessment of an ability to pay.
- ▶ In addition, before the court may impose any consequence for failure to pay a previously-assessed fine or restitution obligation, it must conduct a new inquiry into ability to pay and determine that the financial obligation is still within the means of the individual.

Sec. 6 Restitution

- ▶ Restitution must be assessed only with respect to a person's ability to pay.
- ▶ Any restitution assessed without a basis in an

individual's ability to pay is unenforceable, including that previously assessed but with an unpaid balance.

- ▶ Determining ability to pay restitution:
 - ▷ Where an individual is eligible for the assessment of both fines and restitution, restitution obligations must be determined and set first.
 - ▷ Where the State has proven restitution is owed, a monthly payment amount for restitution may be set, after a hearing, to a level consistent with the individual's ability to pay.
 - ▷ Because individuals tend to over-estimate their own income and resources, the court may only consider 80 percent of self-reported income in making an ability to pay determination.
 - ▷ Under no circumstances may monthly payment amounts for restitution exceed 10% of net monthly income, after reducing income totals by 20 percent and calculating and subtracting basic living expenses.²
 - ▷ An ability to pay assessment will never consider a home or vehicle as an asset that can be liened for payment.
 - ▷ A sentence or punishment can never be lengthened or rendered more severe because of an individual's inability or limited ability to pay restitution.
- ▶ Total restitution amounts are capped at the amount an individual is able to pay during the term of his or her probation or within a time period that is no longer than the statutory maximum for the offense of conviction, whichever is shorter.
- ▶ When an individual is unable to pay restitution, community service or resolutions through restorative justice are permissible alternatives.

- ▶ No restitution shall be assessed for those under 18.
- ▶ A fund, entitled the “Victim’s Restitution Fund,” is established, to be funded by yearly grant of [state-specific amount] dollars from this state’s budget, to provide reasonable restitution in cases where the defendant lacks an ability to pay.
- ▶ Incarceration is impermissible for a failure to pay restitution, and any collections must occur through the civil system or an alternative resolution.
- ▶ Driver’s licenses will never be suspended because of a person’s failure to pay restitution.
- ▶ A failure to pay restitution will never result in the loss of the right to maintain custody or care for one’s children.

Sec. 7 Fines

- ▶ Excessive criminal justice fines are unconstitutional. Writing for the Court in *Timbs v. Indiana*, ___ U.S. ___ (Feb. 20, 2019), Justice Ginsburg stated that the protection against excessive fines is “fundamental to our scheme of ordered liberty with deep roots in our history and tradition.” This jurisdiction will consider as “excessive” any fine that does not account for a person’s ability to pay, that limits potential services to a person based solely on an inability to afford it, or that punishes a person for a failure to pay a fine without first making a determination by clear and convincing evidence the person had the ability to pay it.
- ▶ Fines must be assessed with respect to a person’s ability to pay.
- ▶ Any fine assessed without a basis in an individual’s ability to pay is unenforceable and void.
- ▶ Determining ability to pay fines:
 - ▷ Information to ascertain whether an individual is able to pay a fine will be collected through self-reporting, via a standardized form.

- ▷ A person is presumptively unable to pay any fine if they qualify for a public defender, utilize a means-tested, needs-based public assistance like TANF, SSI, SSDI, or veterans’ disability benefits, have an income below 200 percent of the Federal Poverty Guidelines or the HUD Section 8 Housing “Very Low” income limits for the individual’s zip code, whichever is higher, and adjusted for the number of dependents, or if the individual has been homeless, incarcerated, or in a treatment program within six months of the charge.
- ▷ If a person is not presumptively unable to pay a fine, a monthly payment amount for a fine will be set, after a hearing, to a level proportionate to the individual’s ability to pay and to the offense.
- ▷ Any amount of restitution imposed pursuant to subsection 3., above, must be considered before a fine may be assessed.
- ▷ Because individuals tend to over-estimate their own income and resources, the court may only consider 80 percent of self-reported income in making an ability to pay determination.
- ▷ Under no circumstances may monthly payment amounts for restitution and fines together exceed 10% of net monthly income, after reducing income totals by 20 percent and calculating and subtracting basic living expenses.³
- ▷ An ability to pay assessment will never consider a home or vehicle as an asset that can be liened for payment of a fine.
- ▶ A sentence or punishment can never be lengthened or rendered more severe because of an individual’s inability or limited ability to pay a fine.

- ▶ Total amounts of fines plus restitution are capped at the amount an individual is able to pay during the term of his or her probation or within a time period that is no longer than the statutory maximum for the offense of conviction, whichever is shorter.
- ▶ Any legally enforced fine must include an option for a person who lacks the ability to pay to resolve the fine through proportionate community service. There shall be a presumption that for every \$100 in fines, a person can absolve the fine through no more than eight hours of community service.
- ▶ Any fine assessed in addition to incarceration is unenforceable and void.
- ▶ Any fine assessed on an individual under 18 is unenforceable and void.
- ▶ Incarceration is impermissible for a failure to pay a fine, and any collections must occur through the civil system or an alternative resolution.
- ▶ Driver's licenses will never be suspended because of a person's failure to pay a fine.
- ▶ A failure to pay a fine will never result in the loss of the right to maintain custody or care for one's children.

ENDNOTES

1. Depending on jurisdiction, "fees" may also be referred to as "costs," "surcharges," or "assessments." This legislation will use the term "fees" for any imposed cost on a person by the government during the criminal legal process.
2. The IRS Monthly Necessary Expenses for Health and Welfare Chart may be used as a guide: Collection Financial Standards, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> ("The necessary expense test is defined as expenses that are necessary to provide for a taxpayer's (and his or her family's) health and welfare and/or production of income.").
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