

**STAFF MEETING MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
THURSDAY, AUGUST 23, 2018
COUNTY-CITY BUILDING
ROOM 113 - BILL LUXFORD STUDIO
8:30 A.M.**

Commissioners Present: Todd Wiltgen, Chair; Jennifer Brinkman, Vice Chair; Deb Schorr, Roma Amundson and Bill Avery

Others Present: Kerry Eagan, Chief Administrative Officer; Ann Ames, Deputy Chief Administrative Officer; Dan Nolte, County Clerk; Cori Beattie, Deputy County Clerk; and Leslie Brestel, County Clerk's Office

Advance public notice of the Board of Commissioners Staff Meeting was posted on the County-City Building bulletin board and the Lancaster County, Nebraska web site and provided to the media on August 22, 2018.

The Chair noted the location of the Open Meetings Act and opened the meeting at 8:33 a.m.

AGENDA ITEM

1) APPROVAL OF STAFF MEETING MINUTES FOR AUGUST 16, 2018

MOTION: Avery moved and Amundson seconded approval of the August 16, 2018 Staff Meeting minutes. Wiltgen and Avery voted yes. Amundson abstained. Brinkman and Schorr were absent. Motion carried 2-0 with 1 abstention.

2) ACLU BOND PILOT PROGRAM – Danielle Conrad, American Civil Liberties Union (ACLU) of Nebraska Executive Director

Schorr entered the meeting at 8:35 a.m.

Danielle Conrad, American Civil Liberties Union (ACLU) of Nebraska Executive Director, discussed the history of the ACLU of Nebraska Lancaster County Bail Fund project (Exhibit A). After research and data collection from Lancaster, Hall, Sarpy and Douglas counties, the ACLU found pre-trial individuals waiting in jail for their trial due to their inability to pay their bond.

Conrad stated the ACLU worked with State Senators to pass LB 259 which requires an assessment of the individual's ability to pay. The ACLU has developed self-help forms for unrepresented individuals to give to judges about their inability to pay.

Schorr asked Conrad if she felt the reason no change is being seen is historical precedence. Conrad answered yes but also that the criminal justice system is under resourced. She outlined ways jurisdictions could proactively address alternatives to a person sitting in jail.

When asked about program statistics, Conrad responded close to twenty individuals have been helped. It is too early in the program for a significant analysis as to the return of the bonds.

Brinkman entered the meeting at 9:05 a.m.

Conrad stated the ACLU is doing a reminder program to those for the bail fund to go to court.

Amundson inquired if the bail fund is available to other southeastern Nebraska counties. Conrad said the bail fund is limited to Lancaster County.

Schorr suggested Conrad visit with the Human Services Federation and the multicultural centers about the program.

3) A. NATIONAL PREPAREDNESS MONTH (SEPTEMBER) – Jim Davidsaver, Emergency Management Director

Jim Davidsaver, Emergency Management Director, said he will have a resolution on the next Tuesday meeting for the Board to officially recognize September as National Preparedness Month. He reviewed the PowerPoint presentation (see agenda packet). The Red Cross is also reaching out to those in the community who do not have smoke alarms or carbon monoxide detectors.

Davidsaver said new this year is a National Day of Action on September 15 where people are encouraged to make a positive contribution to the community.

B. FULL-SCALE AIRPLANE CRASH EXERCISE

Davidsaver stated Mark Hosking, Emergency Management Deputy Director, has coordinated a full-scale simulation of a plane crash on Wednesday, September 26 at the Lincoln Municipal Airport. Davidsaver gave a PowerPoint presentation (see agenda packet) and said those who want to watch the simulation can contact him.

Amundson thanked Hosking for coordinating the exercise.

4) CIVIL PROCESS UNIT SOFTWARE – Sheriff Terry Wagner; Chief Deputy Sheriff Todd Duncan; and Captain Josh Clark

Captain Josh Clark said the Sheriff's Office is seeking the Board's approval on SoftCode by Tyler Technologies, a more efficient software system that will help with civil process. The initial \$130,000 purchase would be funded through asset forfeitures while the \$15,000 per year maintenance fees would be covered by a processing fee associated with the papers.

Wiltgen asked if the system must interact with Criminal Justice Information Services (CJIS). Clark responded no as the SoftCode system is for the civil process.

Brinkman questioned how forfeited assets can be used. Chief Deputy Sheriff Todd Duncan said it is because the County is state-mandated to serve civil process as law enforcement.

When asked if the fee is set in statute, Duncan replied there is some leeway in processing fees.

Schorr inquired if there would be any staff savings. Clark stated there are 9 staff members total, all of whom would be able to focus on additional duties.

5) VISITORS PROMOTION COMMITTEE RECOMMENDATIONS ON IMPROVEMENT FUND GRANT REQUESTS – Lynne Ireland, Visitors Promotion Committee Chair; and Jeff Maul, Convention and Visitors Bureau Executive Director

A. LINCOLN PARKS AND RECREATION, \$120,000 OVER THREE YEARS FOR PRAIRIE CORRIDOR TRAIL; AND

Lynne Ireland, Visitors Promotion Committee (VPC) Chair, reviewed the proposal for the Prairie Corridor Trail on Haines Branch project. She said there is a three-purpose approach to the project: 1) conservation and habitat; 2) economic; and 3) education and research. The VPC recommended granting \$120,000 at a rate of \$40,000 for three years contingent upon the receipt of the \$900,000 Nebraska Environmental Trust (NET) grant.

MOTION: Schorr moved and Amundson seconded to direct the County Attorney to proceed with a contract with the City of Lincoln Parks and Recreation Department for the Haines Branch Prairie Corridor Trail project for a total of \$120,000 at \$40,000 for three years contingent upon receipt of the \$900,000 NET grant. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

B. CELEBRATING NEBRASKA STATEHOOD, INC. – \$200,000 FOR CAPITOL COURTYARD GARDENS

Ireland outlined the proposal for restoration of the original landscaping at the State Capitol for the Courtyard Gardens. There is significant fundraising to create an endowment for maintenance of the plantings. The VPC passed a motion to contribute \$75,000 in 2019 and \$125,000 in 2020 for the project.

Jeff Maul, Convention and Visitors Bureau Executive Director, said there was discussion on expanding visitation hours and offering opportunities for outside receptions to bring people back to the Capitol.

Bob Wickersham stated the major cost to the project is \$15,000-\$16,000 to buy and install annual plantings. The VPC has conversed with master gardeners to help with the process. Hopefully, routine maintenance will be covered by the State at 25% of a Full Time Equivalent (FTE).

MOTION: Schorr moved and Avery seconded to direct Kerry Eagan, Chief Administrative Officer, to prepare a contract with Celebrating Nebraska Statehood, Inc., allocating \$75,000 in 2019 and \$125,000 in 2020 for the Capitol Courtyard Gardens.

Wiltgen asked for any additional discussion and stated he felt there would be increased foot traffic to the Capitol with this project.

ROLL CALL: Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

- 6) LABOR NEGOTIATIONS** – Doug McDaniel, Human Resources Director; Kristy Bauer, Deputy County Attorney; Nicole Gross, Compensation Manager; and Amy Sandler, Compensation Technician

MOTION: Schorr moved and Brinkman seconded to enter Executive Session at 9:54 a.m. for the purposes of discussing labor negotiations and to protect public interest.

The Chair said it has been moved and seconded that the Board enter Executive Session.

ROLL CALL: Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

The Chair restated the purpose for the Board entering Executive Session.

MOTION: Schorr moved and Amundson seconded to exit Executive Session at 10:39 a.m. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

- 7) TAX EQUALIZATION REVIEW COMMISSION (TERC) EXPERT CONTRACT** – David Derbin, Deputy County Attorney; and Dan Zieg, Deputy County Attorney

David Derbin, Deputy County Attorney, informed the County Board that Great Plains Appraisal Company, Inc., and Tom Kubert parted ways after the completion of this year's Board of Equalization (BOE) contract. He noted the County also has a contract with Great Plains Appraisal for assistance with TERC appeals for the 2017 tax year and previous years and sought direction on how to proceed for 2018. It was the consensus of the Board for the County Attorney's Office to begin conversations with Great Plains Appraisal and Tom Kubert and to forward a recommendation to the Board.

Derbin felt the Board should also begin discussing the 2019 BOE Referee Coordinator contract.

- 8) BREAK**

The meeting was recessed at 10:48 a.m. and reconvened at 11:00 a.m.

- 9) FY 2018 – 2019 BUDGET UPDATE** – Dennis Meyer, Budget and Fiscal Officer

Dennis Meyer, Budget and Fiscal Officer, said on Tuesday there will be two different public hearings, one for the Keno fund and one for the budget. The Board's consensus was to vote on the budget on August 30, 2018 at 8:00 a.m., when all five Commissioners would be present.

Meyer asked for the Board's recommendation on where to allocate the additional \$386,273 from valuation increases. He noted the funds could be built into the spending authority, put in cash reserve or used to reduce the levy. There was discussion on cash reserve versus spending authority.

Amundson said the recommendation from the Lincoln Independent Business Association (LIBA) is to use the funds for cash reserve or the County Engineer's budget.

Wiltgen stated he asked elected officials to attend the hearing to justify their budget requests.

Wiltgen suggested further discussion on cash reserves. Brinkman and Amundson felt the Board should create a cash reserve policy.

10) ACTION ITEM

- A.** Authorize Lancaster County Attorney Pat Condon to Execute Certificate of Compliance With 8 U.S. C. §1373 on Behalf of Lancaster County for FY 2017 JAG Funding

MOTION: Schorr moved and Amundson seconded to authorize Pat Condon, County Attorney, to execute the Certificate of Compliance. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

11) CHIEF ADMINISTRATIVE OFFICER REPORT

- A.** Justice Council Membership

Wiltgen stated the Justice Council wants a more diverse representation at the meetings. Eagan will work with Sara Hoyle, Human Services Administrator, to distribute an invitation to the next meeting to suitable groups.

- B.** Board of Equalization Meeting Times

The BOE meetings will be on the first and third Tuesdays beginning in September, 2018.

- C.** Appeal on Special Permit No. 18025 (Set Public Hearing)

Eagan noted the Board will have a short briefing with the Planning Department next Thursday. There was general consensus to schedule the public hearing on September 11 during the regular Board of Commissioners meeting.

Amundson exited the meeting at 11:39 a.m. and returned at 11:42 a.m.

12) CHIEF DEPUTY ADMINISTRATIVE OFFICER REPORT

- A.** NACo High Performance Leadership Academy – Candace Meredith

Ann Ames, Deputy Chief Administrative Officer, stated Candace Meredith, Chief Deputy County Treasurer, would like to attend the 12-week online NACo (National Association of County Officials) High Performance Leadership Academy. It was noted that the County's cost for one participant would be \$495 to be funded by the Treasurer's budget.

MOTION: Schorr moved and Amundson seconded to allow Meredith to participate in the NACo High Performance Leadership Academy. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

B. NACo/Visa Pilot Program

Meredith said Lancaster County is being considered for a NACo/Visa pilot program which would then be used as a blueprint for other counties nationwide. The program will evaluate increased electronic payments.

MOTION: Schorr moved and Amundson seconded to authorize the County Treasurer's Office to participate in the NACo/Visa Pilot Program. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.

C. Annual Report

Amundson thought the Board should have a report available for the public to go along with the budget. Ames indicated that she could develop an annual summary.

13) DISCUSSION OF OTHER MEETINGS ATTENDED

A. White House Meeting

Schorr reported on the Kansas and Nebraska White House Conference.

14) DISCUSSION OF BOARD MEMBER MEETINGS ATTENDED

A. Lincoln Parks and Recreation Advisory Board – Schorr

Schorr said the following items were discussed: bounce house policy, the renaming of University Place Park to Seng Park, recognition of new student board members, Lincoln Parks and Recreation Foundation capital campaigns and the City's capital improvements and budget.

B. Public Building Commission (PBC) Chair Meeting with the Mayor – Brinkman

Amundson said she informed the Mayor that Brinkman is the Chair and Rich Meginnis is the Vice Chair of the PBC and that the budget was passed.

C. Justice Council – Wiltgen/Schorr

Wiltgen said the following items were discussed: Sequential Intercept Mapping workshop, Stepping Up Initiative, The Bridge program license, ACLU bail program, jail population, Warrant Week and the Wellbeing Initiative update.

D. Lincoln Independent Business Association Elected Officials Meeting – Amundson

Amundson stated she reported on the following: County budget, Infrastructure Task Force, ACLU bail fund, Enterprise Rent-A-Car contract, fleet management options and the lead pipes project. Other

discussion topics included: cash reserves, downtown parking problems, the future of Pershing Auditorium, lane closures and the potential 2020 bond issue for Lincoln Public Schools.

15) SCHEDULE OF BOARD MEMBER MEETINGS

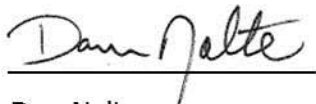
For informational purposes only.

16) EMERGENCY ITEMS

There were no emergency items.

17) ADJOURNMENT

MOTION: Schorr moved and Brinkman seconded to adjourn the meeting at 12:09 p.m. Wiltgen, Brinkman, Schorr, Amundson and Avery voted yes. Motion carried 5-0.



Dan Nolte
Lancaster County Clerk





Memo on Bail Funds

Background Information on Debtors Prisons:

Defining the Problem Debtors Prisons

Over 30 years ago in *Bearden v. Georgia*, the United States Supreme Court issued a seminal ruling that to imprison someone because of their poverty and inability to pay a fine or restitution would be fundamentally unfair and violate the Equal Protection Clause of the Fourteenth Amendment. Yet today, courts across the United States and in Nebraska routinely imprison people because of their inability to pay. This practice has been termed modern-day debtors' prisons.

Debtors prison practices represent the monetary bookends of the criminal justice system- pretrial when setting bail and postconviction "sitting out" fines and fees in jail due to an inability to pay. The result is a maze with dead-ends at every turn for low-income people, with disproportionately harsh impacts for communities of color.

The remaining focus of this proposal is on bail reform though there is general applicability for some concepts in terms of those sitting out fines and fees as well.

Our Clients Trapped in Debtors Prisons

Janet Vashon, a 46-year-old woman who experienced homelessness.

"This is the first time I've ever hit rock bottom. It's been a hard couple of months. I'm living in my car while some social workers are helping me apply for benefits." In September 2016, Janet and a friend decided to stand by the side of the road with signs reading "Homeless, anything will help." "I'd seen other people doing it. I was scared and embarrassed, but I was out of options and thought I'd try anything." Lincoln Police arrested Janet under a city ordinance prohibiting soliciting donations near a roadway. "When the officer pulled up, I thought he was going to tell me to move on. But he arrested me. He put handcuffs on me and put me in the back of his car to take me to jail. When they booked me, one officer told another 'She's transient, no address to list.' This was the first time that word had ever been applied to me and it just hit me like a ton of bricks. I couldn't stop crying." Janet was told she could leave if she could post \$1,000 at 10%, that means she could go free if she had \$100. "I didn't have \$100! That's why I was standing on the corner in the first place!" Ultimately, Janet was able to call her mother and have \$100 posted. "My court date was three weeks after my arrest— they would have kept me in jail that whole time if my mother hadn't come through for me. Not everybody has resources. How does this even make sense?"

Debtors Prisons Hurt Local Families & Needlessly Burden Local Taxpayers

Our 2016 report, *Unequal Justice*, revealed that 50%+ of the jail populations in Lancaster, Douglas, Sarpy, and Hall counties were pretrial detainees—Nebraskans presumed innocent but unable to afford bail to go home.

An average of 17.5% of the pretrial defendants were jailed for nonviolent drug offenses, 11.4% for theft/shoplifting charges, and 7.3% for traffic-related charges.

Nonviolent offenders who cannot afford bail spend an average of 48 days sitting in jail pretrial with devastating impacts for their health, their family, and their employment.

Debtors prisons are expensive. Several Nebraska counties are paying steep costs to run ever-growing county jails and many are already overcrowded and spending even more funds to house these prisoners in other counties. It costs about \$80-\$90 per day per inmate in most local facilities. The annual costs to run the jails in our four largest counties in 2017 exceeds \$73 million.

After years of overcrowding, Lancaster County was forced to build a new jail in 2013. The new jail carried a hefty \$65 million construction price tag and increased maintenance/staffing costs by about \$5 million annually. Now just five years later, the jail is operating close to maximum capacity at 99% in July 2017.

Debtors Prisons and Racial Injustice

Disproportionate treatment of people of color in the pretrial context shows how the court system systematically disadvantages people of color. Nebraska's racial disparities are not an anomaly; studies across the U.S. have demonstrated that money bail specifically has a disproportionate impact on communities of color.

[In Lancaster County, whites compose 87% of the population, African Americans compose 4% and Hispanics compose 6%.](#) In the Lancaster pretrial population, 59.1% are whites, 21.8% are Blacks and 8.2% are Hispanics, illustrating systemic biases of over policing communities of color.

Racial disparities extend to the amount of bail as well. The average bail for a nonviolent offense in these four counties in Nebraska in 2016 was about \$40,251 and \$73,772 for a violent offense. African American, Hispanic or Native American detainees typically face bail that is \$14,572 more than the average bail for a nonviolent offense compared to bail amounts for white Nebraskans and \$13,109 more for a violent offense compared to the bail amounts for white Nebraskans.

A Snapshot of Debtors Prisons in Lancaster County Nebraska on January 23, 2018

On January 23rd, 2018 we refreshed this data with a look at the Lancaster County jail population. There were about 350 individuals awaiting trial that had not been convicted a crime, and about 211 individuals incarcerated serving a sentence. Thus, about 62% of the overcrowded Lancaster County jail population were people who had not been convicted of any crime and may well be there due to poverty.

Of the 325 with listed with bail amounts, the overall bail due was about \$31 million. The actual cost to bail them out at 10% is about \$3.1 million.

Removing the individuals with the highest bonds due to charges involving serious violent crimes- and segregating the data set with bails set at \$20,000 or less- the overall amount due was about \$1.3 million or at 10% about \$132k. To sort the data another way, those charged with misdemeanors had an overall bail amount due at about \$1.1m or at 10% about \$115k.

The data set was 56% or 181 detainees white and 44% or 144 from communities of color.

Solution: Build Recent Reforms and Victories

Legislative Victories

- The ACLU of Nebraska worked with Senator Matt Hansen to introduce [LB 145](#) which passed as amended into [LB 259](#) in 2017. This bill clarified that offender's ability to pay must be considered and gave judges options such as creating payment plans, requiring community service, or discharging fines for indigent defendants. However, in our recent [court watching](#) sessions over the past few months our attorneys discovered that judges are not implementing these laws on the front lines. Lancaster County judges are still reflexively and consistently continuing business as usual debtors prison practices. Our office has received intakes on similar issues from counties in greater Nebraska too.

Community Education & Empowerment Efforts

- The ACLU of Nebraska created pro se legal forms or [waivers for indigent defendants to self advocate in the court system](#). We hope to use a network of organizers and volunteers to make sure this critical information gets into the hands of Nebraskans who need it most and to force county judges and prosecutors to deal with these issues case by case head on if they fail to do so systematically.
- The ACLU of Nebraska taught a Continuing Legal Education (CLE) session for legal aid and other attorneys on the front lines of poverty in 2016. We hope to repeat this CLE annually and cast the net even wider to include other legal services and human services professionals. Our experience has demonstrated that many legal professionals are unaware of the law on these critical points. We plan to submit an educational article to the Nebraska Lawyer Magazine in 2018 to reach a broader yet targeted audience. We would like to explore outreach to the law school legal clinics and volunteer lawyer's assistance programs.
- Nebraska was given "F" in a nationwide [study](#) of pretrial justice systems. ACLU of Nebraska has reached out directly to the Nebraska Supreme Court to address this problem and has asked the court to issue a [guidance](#) to local judges, instill judicial branch education opportunities on these topics, and/or join the Pretrial Justice Institute's [3 Days Campaign](#). The Supreme Court has rejected each of these opportunities for reform. We even offered to pick up the tab! Now, we plan to reach out to stakeholders in Lancaster and Douglas County to see if they are willing to join the PJI 3 Days Campaign as over twenty other American jurisdictions have recently.

Community Bail Funds- Short Term Solutions That Save Lives & Protect Families

- [Community bail funds](#) are effective. After a successful pilot in the Bronx, the National Bail Project grew to providing resources and support in 40 different cities. 95% of those that had their bail funds donated appeared for their court dates.
- Community bail funds improve the chances of an individual not being convicted of a crime because its more effective to work with their lawyer and independently collect facts to build a case on release. It is very difficult to build a strong defense while in jail.
- Community bail funds improve outcomes for families. Individuals get to stay with their family and continue to be functioning members of society while awaiting trial. Less child welfare interventions are good for everyone.

LANCASTER CO. BAIL FUND

ABOUT

The Lancaster Co. Bail Fund posts bail for people who can't afford it. We review requests for assistance regularly and will take requests from individuals currently incarcerated pre-trial, friends or family of an individual who is incarcerated pre-trial, or community partners.

The Lancaster Co. Bail Fund has a limited amount of money and cannot directly respond to every request for assistance.

PROCESS

When a person supported by the Lancaster Co. Bail Fund appears in court for their trial, the bail posted for them by the fund will be transferred back to the fund. This creates a revolving pool of money and allows the same dollar to help many people.

CONTACT

The best way to contact the Bail Fund is to send the full name of the individual needing assistance to:

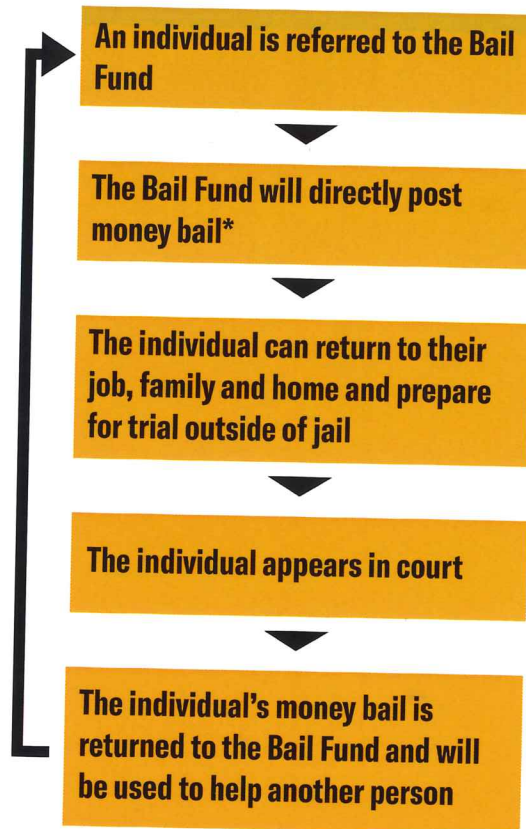
info@lancastercobailfund.org

or call 402-613-7468 and leave a message.

Your stories about how not affording bail has affected your family, employment and housing can help us advocate for ending money bail.

Please let us know if you are willing to share your story at: **lancastercobailfund.org**.

LANCASTER CO. BAIL FUND



If you or someone you know needs help to pay bail, please contact us with the full first and last name of the individual that needs help at:
info@lanastercobailfund.org
or call 402-613-7468 and leave a message.

*The Lancaster Co. Bail Fund has limited resources and cannot post bail for everyone referred to the program. Contacting the Bail Fund multiple times will not increase the likelihood of assistance.

LEGISLATIVE BILL 259

Approved by the Governor May 12, 2017

Introduced by Hansen, 26; Chambers, 11.

A BILL FOR AN ACT relating to courts; to amend sections 25-1577, 29-901, 29-901.01, 29-1823, 29-2206, 29-2206.01, 29-2277, 29-2278, 29-2279, 29-2404, 29-2412, and 60-692, Reissue Revised Statutes of Nebraska, and section 60-4,100, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to conditions of and ability to post bail, debt collection procedures, pretrial release, competency in criminal defendants, and financial ability to pay fines or costs or a traffic citation; to provide for hearings, community service, and discharge as prescribed; to change provisions relating to procedures for suspending an operator's license; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-1577, Reissue Revised Statutes of Nebraska, is amended to read:

25-1577 (1) Except as provided in subsection (2) of this section, if ~~If~~ any person, party, or witness disobeys ~~disobey~~ an order of the judge or referee, duly served, such person, party, or witness may be punished by the judge as for contempt, and if a party, he or she shall be committed to the jail of the county wherein the proceedings are pending until he or she complies shall comply with such order; or, in case he or she has, since the service of such order upon him or her, rendered it impossible for him or her to comply therewith, until he or she has restored to the opposite party what such party has lost by such disobedience, or until discharged by due course of law.

(2) No imprisonment related to the debt collection process shall be allowed unless, after a hearing, a judgment debtor is found to be in willful contempt of court. A judgment debtor shall not be committed to jail for failing to appear pursuant to section 25-1565 unless, after service of an order to appear and show cause as to why the judgment debtor should not be found in contempt for failing to appear, the judgment debtor is found to be in willful contempt.

Sec. 2. Section 29-901, Reissue Revised Statutes of Nebraska, is amended to read:

29-901 (1) Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. The court shall consider all methods of bond and conditions of release to avoid pretrial incarceration. If when such determination is made, the judge determines that the defendant shall not be released on his or her personal recognizance, the judge shall consider the defendant's financial ability to pay a bond and shall impose the least onerous of the following conditions that will reasonably assure the defendant's appearance or that will eliminate or minimize the risk of harm to others or the public at large either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(a) (1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(b) (2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release; or

(c) (3) Require, at the option of any bailable defendant, either of the following:

(i) (a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(ii) (b) The execution of a bail bond with such surety or sureties as

shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

(2) If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety. ~~+~~

(3) In order to assure compliance with the conditions of release referred to in subsection (1) of this section, the court may order a defendant to be supervised by a person, an organization, or a pretrial services program approved by the county board. A court shall waive any fees or costs associated with the conditions of release or supervision if the court finds the defendant is unable to pay for such costs. Eligibility for release or supervision by such pretrial release program shall under no circumstances be conditioned upon the defendant's ability to pay. While under supervision of an approved entity, and in addition to the conditions of release referred to in subsection (1) of this section, the court may impose the following conditions:

(a) Periodic telephone contact by the defendant with the organization or pretrial services program;

(b) Periodic office visits by the defendant to the organization or pretrial services program;

(c) Periodic visits to the defendant's home by the organization or pretrial services program;

(d) Mental health or substance abuse treatment for the defendant, including residential treatment, if the defendant consents or agrees to the treatment;

(e) Periodic alcohol or drug testing of the defendant;

(f) Domestic violence counseling for the defendant, if the defendant consents or agrees to the counseling;

(g) Electronic or global-positioning monitoring of the defendant; and

(h) Any other supervision techniques shown by research to increase court appearance and public safety rates for defendants released on bond.

(4) The incriminating results of any drug or alcohol test or any information learned by a representative of an organization or program shall not be admissible in any proceeding, except for a proceeding relating to revocation or amendment of conditions of bond release.

~~(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.~~

Sec. 3. Section 29-901.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-901.01 In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, consider the defendant's financial ability to pay in setting the amount of bond. The judge may also take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of criminal convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Sec. 4. Section 29-1823, Reissue Revised Statutes of Nebraska, is amended to read:

29-1823 (1) If at any time prior to trial it appears that the accused has become mentally incompetent to stand trial, such disability may be called to the attention of the district or county court by the county attorney or city attorney, by the accused, or by any person for the accused. The judge of the district or county court of the county where the accused is to be tried shall have the authority to determine whether or not the accused is competent to stand trial. The ~~district~~ judge may also cause such medical, psychiatric, or

psychological examination of the accused to be made as he or she deems warranted and hold such hearing as he or she deems necessary. The cost of the examination, when ordered by the court, shall be the expense of the county in which the crime is charged. The district judge may allow any physician, psychiatrist, or psychologist a reasonable fee for his or her services, which amount, when determined by the district judge, shall be certified to the county board which shall cause payment to be made. Should the district judge determine after a hearing that the accused is mentally incompetent to stand trial and that there is a substantial probability that the accused will become competent within the foreseeable future, the district judge shall order the accused to be committed to a state hospital for the mentally ill or some other appropriate state-owned or state-operated facility for appropriate treatment until such time as the disability may be removed.

(2) Within six months after the commencement of the treatment ordered by the district or county court, and every six months thereafter until either the disability is removed or other disposition of the accused has been made, the court shall hold a hearing to determine (a) whether the accused is competent to stand trial or (b) whether or not there is a substantial probability that the accused will become competent within the foreseeable future.

(3) If it is determined that there is not a substantial probability that the accused will become competent within the foreseeable future, then the state shall either (a) commence the applicable civil commitment proceeding that would be required to commit any other person for an indefinite period of time or (b) release the accused. If during the period of time between the six-month review hearings set forth in subsection (2) of this section it is the opinion of the Department of Health and Human Services that the accused is competent to stand trial, the department shall file a report outlining its opinion with the court, and within twenty-one days after such report being filed, the court shall hold a hearing to determine whether or not the accused is competent to stand trial. The state shall pay the cost of maintenance and care of the accused during the period of time ordered by the court for treatment to remove the disability.

Sec. 5. Section 29-2206, Reissue Revised Statutes of Nebraska, is amended to read:

29-2206 (1)(a) ~~(1)~~ In all cases in which courts or magistrates have now or may hereafter have the power to punish offenses, either in whole or in part, by requiring the offender to pay fines or costs, or both, such courts or magistrates may make it a part of the sentence that the party stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law if the court or magistrate determines that the offender has the financial ability to pay such fines or costs. The court or magistrate may make such determination at the sentencing hearing or at a separate hearing prior to sentencing. A separate hearing shall not be required. In making such determination, the court or magistrate may consider the information or evidence adduced in an earlier proceeding pursuant to section 29-3902, 29-3903, 29-3906, or 29-3916. At any such hearing, the offender shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following such hearing and prior to imposing sentence, the court or magistrate shall determine the offender's financial ability to pay the fines or costs, including his or her financial ability to pay in installments under subsection (2) of this section.

(b) If the court or magistrate determines that the offender is financially able to pay the fines or costs and the offender refuses to pay, the court or magistrate may:

(i) Make it a part of the sentence that the offender stand committed and be imprisoned in the jail of the proper county until the fines or costs are paid or secured to be paid or the offender is otherwise discharged according to law; or

(ii) Order the offender, in lieu of paying such fines or costs, to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(c) If the court or magistrate determines that the offender is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Impose a sentence without such fines or costs; or

(B) Enter an order pursuant to subdivision (1)(d) of this section discharging the offender of such fines or costs; and

(ii) May order, as a term of the offender's sentence or as a condition of probation, that he or she complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(d) An order discharging the offender of any fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) If Notwithstanding subsection (1) of this section, when any offender demonstrates to the court or magistrate determines, pursuant to subsection (1) of this section, that an offender he or she is financially unable to pay such fines or costs in one lump sum but is financially capable of paying in installments, the court or magistrate shall make arrangements suitable to the court or magistrate and to the offender by which the offender may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. When the judgment of conviction provides for the suspension or revocation of a motor vehicle operator's license and the court authorizes the payment of fines or

costs by installments, the revocation or suspension shall be effective as of the date of judgment.

(3) As an alternative to a lump-sum payment or as an alternative or in conjunction with installment payments, the court or magistrate may deduct fines or costs from a bond posted by the offender to the extent that such bond is not otherwise encumbered by a valid lien, levy, execution, or assignment to counsel of record or the person who posted the bond.

Sec. 6. Section 29-2206.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-2206.01 Installments provided for in section 29-2206 shall be paid pursuant to the order entered by the court or magistrate. Any person who fails to comply with the terms of such order shall be liable for punishment for contempt, unless such person he has the leave of the court or magistrate in regard to such noncompliance or such person requests a hearing pursuant to section 29-2412 and establishes at such hearing that he or she is financially unable to pay.

Sec. 7. Section 29-2277, Reissue Revised Statutes of Nebraska, is amended to read:

29-2277 As used in sections 29-2277 to 29-2279, unless the context otherwise requires:

(1) Agency means ~~shall mean~~ any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative; ~~and~~

(2) Community correctional facility or program has the same meaning as in section 47-621; and

(3) ~~(2)~~ Community service means ~~shall mean~~ uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

Sec. 8. Section 29-2278, Reissue Revised Statutes of Nebraska, is amended to read:

29-2278 An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court or magistrate shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. The performance or completion of a sentence of community service or an order to complete community service may be supervised or confirmed by a community correctional facility or program or another similar entity, as ordered by the court or magistrate. If an offender fails to perform community service as ordered by the court or magistrate, he or she may be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

Sec. 9. Section 29-2279, Reissue Revised Statutes of Nebraska, is amended to read:

29-2279 The length of a community service sentence shall be as follows:

(1) Pursuant to section 29-2206, 29-2412, or section 12 of this act, for an infraction, not less than four nor more than twenty hours;

(2) For a violation of a city ordinance that is an infraction and not pursuant to section 29-2206, 29-2412, or section 12 of this act, not less than four hours;

(3) ~~(1)~~ For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(4) ~~(2)~~ For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(5) ~~(3)~~ For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(6) ~~(4)~~ For a Class IIIA or Class IV felony, not less than two hundred nor more than three thousand hours; and

(7) ~~(5)~~ For a Class III felony, not less than four hundred nor more than six thousand hours.

Sec. 10. Section 29-2404, Reissue Revised Statutes of Nebraska, is amended to read:

29-2404 In all cases of misdemeanor in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against the offender, to be levied on the goods and chattels of any such offender, and, for want of the same, upon the body of the offender, who shall, following a determination that the offender has the financial ability to pay such fine pursuant to section 29-2412, thereupon be committed to the jail of the proper county until the fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

Sec. 11. Section 29-2412, Reissue Revised Statutes of Nebraska, is amended to read:

29-2412 (1) Beginning July 1, 2019:

(a) Any person arrested and brought into custody on a warrant for failure to pay fines or costs, for failure to appear before a court or magistrate on

the due date of such fines or costs, or for failure to comply with the terms of an order pursuant to sections 29-2206 and 29-2206.01, shall be entitled to a hearing on the first regularly scheduled court date following the date of arrest. The purpose of such hearing shall be to determine the person's financial ability to pay such fines or costs. At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's ability to pay the fines or costs, including his or her financial ability to pay by installment payments as described in section 29-2206;

(b) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(i) Order the person to be confined in the jail of the proper county until the fines or costs are paid or secured to be paid or the person is otherwise discharged pursuant to subsection (4) of this section; or

(ii) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(c) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(i) Shall either:

(A) Enter an order pursuant to subdivision (1)(d) of this section discharging the person of such fines or costs; or

(B) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subdivision (1)(d) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(ii) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279; and

(d) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

(2) ~~(1)~~ Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who ~~is subject to being or~~ is confined in jail for any ~~fine~~ fines or costs of prosecution for any criminal offense has no estate with which to pay such ~~fine-fines~~ or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such ~~fine~~ fines or costs, which discharge shall operate as a complete release of such ~~fine-fines~~ or costs.

(3) ~~(2)~~ Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, or when such person shall default on a payment due pursuant to an installment agreement arranged by the court.

(4)(a) ~~(3)~~ Any person held in custody for nonpayment of a ~~fine-fines~~ or costs or for default on an installment shall be entitled to a credit on the ~~fine-fines~~, costs, or installment of one hundred fifty ninety dollars for each day so held.

(b) In no case shall a person held in custody for nonpayment of a ~~fine-fines~~ or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Sec. 12. (1) A person who has been ordered to pay fines or costs and who has not been arrested or brought into custody as described in subdivision (1) (a) of section 29-2412 but who believes himself or herself to be financially unable to pay such fines or costs may request a hearing to determine such person's financial ability to pay such fines or costs. The hearing shall be scheduled on the first regularly scheduled court date following the date of the request. Pending the hearing, the person shall not be arrested or brought into custody for failure to pay such fines or costs or failure to appear before a court or magistrate on the due date of such fines or costs.

(2) At the hearing, the person shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay. Following the hearing, the court or magistrate shall determine the person's financial ability to pay the fines or costs, including his or her financial ability to pay in installments as described in section 29-2206.

(3) If the court or magistrate determines that the person is financially able to pay the fines or costs and the person refuses to pay, the court or magistrate may:

(a) Deny the person's request for relief; or

(b) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs and order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(4) If the court or magistrate determines that the person is financially unable to pay the fines or costs, the court or magistrate:

(a) Shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the person of such fines or costs; or

(ii) If the person is subject to an order to pay installments pursuant to section 29-2206, the court or magistrate shall either enter an order pursuant to subsection (5) of this section discharging the person of such obligation or make any necessary modifications to the order specifying the terms of the installment payments as justice may require and that will enable the person to pay the fines or costs; and

(b) May order the person to complete community service for a specified number of hours pursuant to sections 29-2277 to 29-2279.

(5) An order discharging the person of fines or costs shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such fines or costs.

Sec. 13. Section 60-4,100, Revised Statutes Cumulative Supplement, 2016, is amended to read:

~~60-4,100 (1) The director shall suspend the operator's license of any resident of this state:~~

(1) Any resident of this state who (a) who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact of 1977 or in any jurisdiction inside this state shall be subject to having his or her operator's license suspended pursuant to this section, until satisfactory evidence of compliance with the terms of the citation has been furnished to the director; or

(b) who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction inside this state until satisfactory evidence of compliance with the terms of the citation has been furnished to the director.

(2) The court having jurisdiction over the offense for which the citation has been issued shall notify the director of a resident's violation of a promise to comply with the terms of the citation only after thirty twenty working days have elapsed from the date of the failure to comply, unless within such thirty working days the resident appears before the clerk of the county court having jurisdiction over the offense to request a hearing pursuant to subsection (3) of this section to establish that such resident lacks the financial ability to pay the citation.

(3) A hearing requested under subsection (2) of this section shall be set before the court or magistrate on the first regularly scheduled court date following the request. At the hearing, the resident shall have the opportunity to present information as to his or her income, assets, debts, or other matters affecting his or her financial ability to pay the citation. Following the hearing, the court or magistrate shall determine the resident's financial ability to pay the citation, including his or her financial ability to pay in installments.

(4)(a) Except as provided in subdivision (4)(c) of this section, if the court or magistrate determines under subsection (3) of this section that the resident is financially able to pay the citation and the resident refuses to pay, the court or magistrate shall either:

(i) Notify the director of the resident's violation of a promise to comply with the terms of the citation; or

(ii) Postpone the hearing for a period of no more than one month during which period the court or magistrate may order the resident to complete such hours of community service as the court or magistrate deems appropriate, subject to a total limit of twenty hours. At the end of such period, if the resident has completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director. If the resident has not completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation. A hearing may only be postponed once under this subdivision.

(b) If the court or magistrate determines under subsection (3) of this section that the resident is financially unable to pay the citation, the court or magistrate shall either:

(i) Enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation;

(ii) Postpone the hearing for a period of no more than one month during which period the court or magistrate may order the resident to complete such hours of community service as the court or magistrate deems appropriate, subject to a total limit of twenty hours. At the end of such period, if the resident has completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director. If the resident has not completed such community service to the satisfaction of the court or magistrate, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation. A hearing may only be postponed once under this subdivision.

(c) If the court or magistrate determines under subsection (3) of this section that the resident is financially able to pay in installments and the resident agrees to make such payments, the court or magistrate shall make

arrangements suitable to the court or magistrate and to the resident by which the resident may pay in installments. The court or magistrate shall enter an order specifying the terms of such arrangements and the dates on which payments are to be made. If the resident fails to pay an installment, the court or magistrate shall notify the director of the resident's violation of a promise to comply with the terms of the citation unless the resident requests a hearing from the clerk of the county court on or before ten working days after such installment was due. At the hearing, the resident shall show good cause for such failure, including financial inability to pay. If, following such hearing, the court or magistrate finds:

(i) That the resident has not demonstrated good cause for such failure, the court or magistrate shall either notify the director of the resident's violation of a promise to comply with the terms of the citation or postpone the hearing and order community service pursuant to subdivision (4)(a)(ii) of this section;

(ii) That the resident remains financially able to pay but has demonstrated good cause for such missed installment, the court or magistrate shall make any necessary modifications to the order specifying the terms of the installment payments; or

(iii) That the resident has become financially unable to pay, the court or magistrate shall enter an order pursuant to subsection (5) of this section discharging the resident of the obligation to pay such citation and shall notify the director.

(5) An order discharging the resident of the obligation to pay a traffic citation shall be set forth in or accompanied by a judgment entry. Such order shall operate as a complete release of such payment obligation.

(6) ~~(3)~~ Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall ~~send not suspend such resident's license until he or she has sent~~ written notice to such resident by regular United States mail to the ~~resident's person's~~ last-known mailing address or, if such address is unknown, to the last-known residence address of such ~~resident person~~ as shown by the records of the ~~department~~ Department of Motor Vehicles. Such notice shall state that such resident has twenty working days after the date of the notice to show the director that the resident has complied with the terms of such traffic citation

~~No suspension shall be entered by the director if the resident complies with the terms of a citation during such twenty working days.~~

If the resident fails to show the director that he or she has complied with the terms of such traffic citation on or before twenty working days after the date of the notice, the director shall summarily suspend the operator's license and issue an order. The order shall be sent by regular United States mail to the ~~resident's person's~~ last-known mailing address as shown by the records of the department. The suspension shall continue until the resident has furnished the director with satisfactory evidence of compliance with the terms of the citation.

(7) ~~(4)~~ The reinstatement fee required under section 60-4,100.01 shall be waived if five years have passed since issuance of the license suspension order under this section.

(8) The performance or completion of an order to complete community service under this section may be supervised or confirmed by a community correctional facility or program or another similar entity as ordered by the court or magistrate.

(9) For purposes of this section:

(a) Agency means any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from residents under this section and to supervise and report the progress of such community service to the court or magistrate;

(b) Community correctional facility or program has the same meaning as in section 47-621; and

(c) Community service means uncompensated labor for an agency to be performed by a resident when the resident is not working or attending school.

Sec. 14. Section 60-692, Reissue Revised Statutes of Nebraska, is amended to read:

60-692 When any person fails within thirty working ~~ten~~ days to satisfy any judgment imposed for any traffic infraction, it shall be the duty of the clerk of the court in which such judgment is rendered within this state to transmit a copy of such judgment to the Department of Motor Vehicles as provided in section 60-4,100, ~~immediately after the expiration of such ten-day period, a copy of such judgment.~~

Sec. 15. Sections 5, 6, 7, 8, 9, 10, 12, 13, 14, and 17 of this act become operative on July 1, 2019. The other sections of this act become operative on their effective date.

Sec. 16. Original sections 25-1577, 29-901, 29-901.01, 29-1823, and 29-2412, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 17. Original sections 29-2206, 29-2206.01, 29-2277, 29-2278, 29-2279, 29-2404, and 60-692, Reissue Revised Statutes of Nebraska, and section 60-4,100, Revised Statutes Cumulative Supplement, 2016, are repealed.

AMERICAN BAR ASSOCIATION
WORKING GROUP ON BUILDING PUBLIC TRUST
IN THE AMERICAN JUSTICE SYSTEM
SECTION ON CIVIL RIGHTS AND SOCIAL JUSTICE
STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS
CRIMINAL JUSTICE SECTION
SECTION ON STATE AND LOCAL GOVERNMENT LAW
COMMISSION ON YOUTH AT RISK
MASSACHUSETTS BAR ASSOCIATION
KING COUNTY BAR ASSOCIATION
WASHINGTON STATE BAR ASSOCIATION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association adopts the *ABA Ten Guidelines on*
2 *Court Fines and Fees*, black letter and commentary, dated August 2018; and
3
4 FURTHER RESOLVED, That the American Bar Association urges all federal, state,
5 local, territorial, and tribal legislative, judicial and other governmental bodies to apply the
6 *ABA Ten Guidelines on Court Fines and Fees*.

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AMERICAN BAR ASSOCIATION
TEN GUIDELINES ON COURT FINES AND FEES
(AUGUST 2018)

6 **GUIDELINE 1: Limits to Fees**

7 *If a state or local legislature or a court imposes fees in connection with a conviction for a*
8 *criminal offense or civil infraction, those fees must be related to the justice system and the*
9 *services provided to the individual. The amount imposed, if any, should never be greater than*
10 *an individual's ability to pay or more than the actual cost of the service provided. No law or*
11 *rule should limit or prohibit a judge's ability to waive or reduce any fee, and a full waiver of*
12 *fees should be readily accessible to people for whom payment would cause a substantial*
13 *hardship.*

14
15 **COMMENTARY:**

16 Many state and local legislatures have enacted mandatory surcharges and assessments, which
17 seek to fund programs or services imposed when individual who is sentenced.¹ Courts in many
18 states have also imposed a broad range of “user fees” on criminal defendants, ranging from
19 supervision fees to drug testing fees.² Some fees are unrelated to the justice system or to the
20 service provided.³ These surcharges, assessments, court costs, and user fees—collectively

¹ For example, Michigan requires judges to impose on people convicted of traffic and misdemeanor offenses a minimum state assessment in addition to any fines and costs. Hon. Elizabeth Hines, *View from the Michigan Bench*, National Center for State Courts 36, <http://www.ncsc.org/~media/Microsites/Files/Trends%202017/View-from-Michigan-Bench-Trends-2017.ashx>. The minimum assessment in Michigan misdemeanor cases is \$125. *Id.* See also *id.* 36 & n.2 (“When James W. pleads guilty to ‘Driving Without a Valid Operator’s License on His Person,’ it is unlikely anyone is aware that a portion of the fines and costs he is ordered to pay may be used to support libraries, the Crime Victims’ Rights Fund, retirement plans for judges, or, in one state, construction of a new law school.”).

² For an illustrative catalog of fees imposed in just a single case, see Alicia Bannon, Mitali Nagrecha & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, The Brennan Center of Justice at New York University School of Law (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (“*Criminal Justice Debt*”), at 9 (snapshot of Case Financial Information sheet from a criminal case in the Court of Common Pleas of Cambria County, Pennsylvania. See also Human Rights Watch, *Profiting from Probation America’s “Offender-Funded” Probation Industry* (2014), <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry> (“*Profiting from Probation*”), at 27-31 (discussing “pay only” probation arrangements). See also Michelle Alexander, *The New Jim Crow* (2012), at 154-54 (describing the many types of “preconviction service fees,” such as jail book-in fees and public defender application fees, and post-conviction fees, including parole or probation service fees, that are imposed in states around the country).

³ For example, the vast majority of revenue collected from mandatory driver’s license reinstatement fees in Arkansas goes to the Arkansas State Police. Ark. Code Ann. § 27-16-808. In California, California, a \$4 fee is imposed for

21 known as “fees”—have proliferated to the point where they can eclipse the fines imposed in low-
 22 level offenses.⁴ Many states even impose “collection fees,” payable to private debt collection
 23 firms for the cost of collecting other fees, and well as fines.⁵ All such fees imposed in
 24 connection with a conviction or criminal offense or civil infraction should be eliminated because
 25 the justice system serves the entire public and should be entirely and sufficiently funded by
 26 general government revenue.⁶

27

28 If imposed at all, fees should be commensurate with the service they cover, and consistent with
 29 the financial circumstances of the individual ordered to pay, so that the fees do not result in
 30 substantial hardship to the individual or his/her dependents.⁷ A judge should always be
 31 permitted to waive or reduce any fee if an individual is unable to pay. Fees that are legislatively
 32 mandated should be revised to permit such waiver or reduction based on inability to pay.

33

34 When an individual is unable to pay, courts should not impose fees, including fees for counsel,
 35 diversion programs, probation, payment plans, community service, or any other alternative to the
 36 payment of money.⁸ An individual’s ability to pay should be considered at each stage of
 37 proceedings, including at the time the fees are imposed and before imposition of any sanction for
 38 nonpayment of fees, such as probation revocation, issuance of an arrest warrant for nonpayment,
 39 and incarceration. The consideration of a person’s ability to pay at each stage of proceedings is
 40 critical to avoiding what are effectively “poverty penalties,” *e.g.*, late fees, payment plan fees,
 41 and interest imposed when individuals are unable to pay fines and fees.

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every criminal conviction, including traffic infractions, for Emergency Medical Air Transportation. Cal. Govt. Code § 76000.10(c)(1).

⁴ *Profiting from Probation* at 14.

⁵ *Criminal Justice Debt* at 17.

⁶ The National Task Force on Fines, Fees and Bail Practices was established by the Conference of Chief Justices and the Conference of State Court Administrators. In December 2017, the Task Force issued its “Principles on Fines, Fees, and Bail Practices” (the “National Task Force Principles” or “NTF Principles”) which are available at <http://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx>. Principle 1.5 states, “Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges.”

⁷ NTF Principle 1.6 states that fees should only be used for a narrow scope of “administration of justice” purposes and that “in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service.” See also *The Criminalization of Poverty*, at 53.

⁸ See Amer. Bar Ass’n, Resolution 110 (2004 AM), *ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases*, Guideline 2 (“An accused person should not be ordered to pay a contribution fee that the person is financially unable to afford.”).

44 **GUIDELINE 2: Limits to Fines**

45 *Fines used as a form of punishment for criminal offenses or civil infractions should not result*
 46 *in substantial and undue hardship to individuals or their families. No law or rule should limit*
 47 *or prohibit a judge’s ability to waive or reduce any fine, and a full waiver of fines should be*
 48 *readily accessible to people for whom payment would cause a substantial hardship.*

49
50 COMMENTARY:

51
52 Fines should be calibrated to reflect the financial circumstances of the individual ordered to pay,⁹
 53 so that the fines do not result in substantial and undue hardship to the individual or his/her
 54 dependents.¹⁰

55
56 An individual’s ability to pay should be considered at each stage of proceedings, including at the
 57 time fines are imposed and before any sanction for nonpayment, such as probation revocation,
 58 issuance of an arrest warrant for nonpayment, or incarceration.¹¹

59
60 **GUIDELINE 3: Prohibition against Incarceration and Other Disproportionate Sanctions,**
 61 **Including Driver’s License Suspensions.**

62
63 *A person’s inability to pay a fine, fee or restitution should never result in incarceration or*
 64 *other disproportionate sanctions.*

65
66
67 COMMENTARY:

68

⁹ *Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing*, Standard 18-3.16 (d) (“The legislature should provide that sentencing courts, in imposing fines, are required to take into account the documented financial circumstances and responsibilities of an offender.”). NTF Principle 2.3 states, “States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person’s ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.” NTF Principle 6.2 urges that state law and court rules “provide for judicial discretion in the imposition of legal financial obligations.”

¹⁰ *See Amer. Bar Ass’n, Resolution 111B (2016 AM)*, cmt. at 13 (urging the abolition of user-funded probation systems supervised by for-profit companies based on a detailed explanation of the Supreme Court’s decision in *Bearden v. Georgia*, 461 U.S. 660, 672 (1983), and the problem of debtors’ prisons—the unlawful incarceration of people too poor to pay court fines and fees); Council of Economic Advisers Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor* (Dec. 2015) (“CEA Brief”), at 5-6, available at https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf.

¹¹ *Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing*, Standard 18.3.22(e) (“Non-payment of assessed costs should not be considered a sentence violation.”)

69 Despite the popular belief that “debtors’ prisons” have been abolished in the United States,
 70 people are still incarcerated because they cannot pay court fines and fees, including contribution
 71 fees for appointed counsel.¹² In many states, people are incarcerated because they owe fines and
 72 fees and are unable to pay. Such incarceration has been documented in at least thirteen states
 73 since 2010.¹³ As the Brennan Center has explained, there are four “paths” to debtors’ prison: (1)
 74 many courts may revoke or withhold probation or parole upon an individual’s failure to pay; (2)
 75 some states authorize incarceration as a penalty for failure to pay, such as through civil
 76 contempt; (3) some courts force defendants to “choose” to serve prison time rather than paying a

¹² The ABA opposes incarceration for inability to pay contribution fees for appointed counsel. *E.g.*, Amer. Bar Ass’n, Resolution 110 (2004 AM), *ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases*, Guideline 4 (“Failure to pay a contribution fee should not result in imprisonment or the denial of counsel at any stage of proceedings.”); Amer. Bar Ass’n, Resolution of the House of Delegates 111B (Aug. 2016) (commentary on *Bearden* and debtors’ prisons); Amer. Bar Ass’n, Resolution of the House of Delegates 112C (Aug. 2017) (urging governments to “prohibit a judicial officer from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay”). The reasoning underlying Resolution 112C’s principle against pretrial incarceration for inability to pay also applies to any stage of court proceedings that could lead to incarceration for inability to pay. NTF Principle 6.3 states that courts should make an ability-to-pay determination before ordering incarceration or probation revocation for failure to pay. Principle 4.3 states that courts should make an ability-to-pay determination before ordering license suspension for failure to pay.

¹³ American Civil Liberties Union, *In For A Penny: The Rise Of America’s New Debtors’ Prisons* (2010), https://www.aclu.org/files/assets/InForAPenny_web.pdf. (documenting incarceration for unpaid fines and fees in Michigan, Ohio, Georgia, Louisiana, and Washington); CLU of Louisiana, *Louisiana Debtors’ Prisons: An Appeal To Justice* (2015), https://www.laaclu.org/sites/default/files/field_documents/2015_Report_Louisiana_Debtors_Prisons_0.pdf; ACLU of New Hampshire, *Debtors’ Prisons In New Hampshire* (2015), <http://aclu-nh.org/wp-content/uploads/2015/09/Final-ACLU-Debtors-Prisons-Report-9.23.15.pdf>; ACLU of Ohio, *In Jail & In Debt: Ohio’s Pay-To-Stay Fees* (2015), <http://www.acluohio.org/wp-content/uploads/2015/11/InJailInDebt.pdf>; ACLU of Ohio, *The Outskirts Of Hope: How Ohio’s Debtors’ Prisons Are Ruining Lives And Costing Communities* (2013), http://www.acluohio.org/wp-content/uploads/2013/04/TheOutskirtsOfHope2013_04.pdf; ACLU of Washington and Columbia Legal Services, *Modern-Day Debtors’ Prisons: The Ways Court-Imposed Debts Punish People For Being Poor* (2014), <https://aclu-wa.org/sites/default/files/attachments/Modern%20Day%20Debtor%27s%20Prison%20Final%20%283%29.pdf>; Alison Beyea, *Legislature Has a Chance to End Debtors’ Prisons in Maine*, ACLU of Maine blog (Mar. 8, 2016), <https://www.aclumaine.org/en/news/legislature-has-chance-end-debtors-prisons-maine>; Debtors’ Prisons, ACLU of Colorado, <http://aclu-co.org/court-cases/debtors-prisons> (compiling 2013 letters to municipalities of Westminster, Northglenn, and Wheat Ridge concerning illegal jailing of people unable to pay fines and fees); Press Release, ACLU of Colorado, Colorado Legislature Approves Ban on Debtors’ Prisons (Apr. 23, 2014), <http://aclu-co.org/colorado-legislature-approves-ban-debtors-prisons>; Complaint, *Thompson v. Dekalb County*, No. 1:15-cv-280-TWT (N.D. Ga. Jan. 29, 2015), https://www.aclu.org/sites/default/files/field_document/2015.01.29_filed_thompson_complaint.pdf; Complaint, *Fuentes v. Benton County*, Washington, No. 15-2-02976-1 (Sup. Ct. Wash. Yakima County Oct. 6, 2015), https://www.aclu.org/sites/default/files/field_document/fuentes_v_benton_county_complaint.pdf; Complaint, *Kennedy v. City of Biloxi*, No. 1:15-cv-00348-HSO-JCG (S.D. Miss. Oct. 21, 2015), <https://www.aclu.org/kennedy-v-city-biloxi-complaint>; Complaint for Superintending Control, *In re Donna Elaine Anderson*, Circuit Court Case No. 15-2380-AS (Cir. Court County of Macomb Jul. 9, 2015), <http://www.aclumich.org/sites/default/files/Motion%20for%20Class%20Cert%20as%20filed.pdf>.

77 court-imposed debt; and (4) many states authorize law enforcement officials to arrest individuals
78 for failure to pay and to hold them while they await an ability-to-pay hearing.¹⁴

79
80 In the seminal 1983 *Bearden* decision, the U.S. Supreme Court ruled that courts may not
81 incarcerate an individual for nonpayment of a fine or restitution without first holding a hearing
82 on the individual's ability to pay and making a finding that the failure to pay was "willful."¹⁵
83 ABA policy reflects this principle.¹⁶ The *Bearden* case followed a line of cases in which the
84 Supreme Court had attempted to make clear that individuals who are unable to pay a fine or fee
85 should not be incarcerated for failure to pay.¹⁷ Unfortunately, the problem persists almost a half-
86 century later.

87
88 Fines and fees that are not income-adjusted (*i.e.*, are not set at an amount the person reasonably
89 can pay) are regressive and have a disproportionate, adverse impact on low-income people and
90 people of color.¹⁸ For these and other reasons, incarceration and other disproportionate

¹⁴ *Criminal Justice Debt* at 20-26. *See also Profiting from Probation* at 51-52. This "harsh reality" of people being incarcerated for failure to pay impossible-to-pay fees and fines "harks back to the days after the Civil War, when former slaves and their descendants were arrested for minor violations, slapped with heavy fines, and then imprisoned until they could pay their debts. The only means to pay off their debts was through labor on plantations and farms. . . . Today, many inmates work in prison, typically earning far less than the minimum wage." Alexander, *The New Jim Crow*, at 157.

¹⁵ *Bearden v. Georgia*, 461 U.S. 660, 667-69 (1983).

¹⁶ Amer. Bar Ass'n, Resolution 111B (2016 AM). *See also* Amer. Bar Ass'n, Resolution 112C (2017 MY) (urging governments to "prohibit a judicial officer from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay"). The rationale for Resolution 112C's principle against pretrial incarceration for inability to pay also applies to any stage of court proceedings that could lead to incarceration for inability to pay. *See also* Amer. Bar Ass'n, *Standards for Criminal Justice: Sentencing* 18-3.22 (Sentencing courts should consider an individual's ability to pay before determining whether to assess fines or fees and how much to assess).

¹⁷ *See, e.g., Williams v. Illinois*, 399 U.S. 235 (1970) (holding that an Illinois law requiring that an individual who was unable to pay criminal fines "work off" those fines at a rate of \$5 per day violated the Equal Protection Clause because the statute "works an invidious discrimination solely because he is unable to pay the fine"); *Tate v. Short*, 401 U.S. 395 (1971) ("Imprisonment in such a case [of an 'indigent defendant without the means to pay his fine'] is not imposed to further any penal objective of the State. It is imposed to augment the State's revenues but obviously does not serve that purpose [either]; the defendant cannot pay because he is indigent.").

¹⁸ Studies show that the imposition and enforcement of fines and fees disproportionately and regressively affect low-income individuals and families. *See, e.g., CEA Brief*, at 5-8. For example, in many jurisdictions black people disproportionately experience license suspensions for nonpayment of fines and fees, due in part to racial disparities in wealth and poverty. *See* Back on the Road California, Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California, at 27 (2016) (hereinafter "Stopped, Fined, Arrested"), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf. These racial disparities in license suspension in turn contribute to racial disparities in conviction for driving on a suspended license, making black people in these states disproportionately vulnerable to the resulting steep financial penalties. *See* Legal Aid Justice Center, *Driven by Dollars: a State-by-State Analysis of Driver's License Suspension Laws for Failure to Pay Court Debt* (2017), <https://www.justice4all.org/wp->

114

91 sanctions, including driver’s license suspension, should never be imposed for a person’s inability
92 to pay a fine or fee.¹⁹ The same principle applies with full force to restitution and forfeiture.
93 Although restitution and forfeiture are beyond the scope of these Guidelines, at minimum it is
94 clear that a person who is unable to pay *any* court-imposed financial obligation—including
95 restitution or forfeiture—must not be incarcerated or subjected to other disproportionate sanction
96 for failure to pay.

97
98 Just as a person’s ability to pay should be considered in imposing a fine or fee in the first place,
99 and must be considered when imposing incarceration for failure to pay, the same principles apply
100 to other disproportionate sanctions short of incarceration. A disproportionate sanction for
101 nonpayment of court fines and fees includes any sanction with a substantial adverse impact on
102 the life of the individual.

103
104 A common sanction used by courts in the vast majority of states for failure to pay a fine is the
105 suspension of a driver’s license, often imposed without a hearing. People who are prohibited
106 from driving often lose their ability to work or attend to other important aspects of their lives.²⁰
107 Suspending a driver’s license can lead to a cycle of re-incarceration, because many such
108 individuals find themselves in the untenable position of either driving with a suspended license
109 or losing their jobs, and because driving on a suspended license is itself an offense that may be

[content/uploads/2017/09/Driven-by-Dollars.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf). Such racial disparities in the adverse impact of the imposition and enforcement of court fines and fees also contribute to tension between law enforcement and courts on the one hand and the communities of color they serve on the other, as documented in a devastating 2015 report by the U.S. Department of Justice. See U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, at 79-81 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (detailing evidence of how municipal court and policing practices related to court fine and fee collection erode community trust in law enforcement).

¹⁹ NTF Principle 4.3 states that, “Courts should not initiate license suspension procedures until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. . . . Judges should have discretion to modify the amount of fines and fees imposed based on an offender’s income and ability to pay.” See also *Robinson v. Purkey*, No. 3:17-cv-1263, 2017 WL 4418134, at *8 (M.D. Tenn. Oct. 5, 2017) (“No person . . . can be threatened or coerced into doing the impossible, and no person can be threatened or coerced into paying money that she does not have and cannot get.”).

²⁰ See *Fowler v. Johnson*, No. 17-11441, 2017 WL 6540926, at *2 (E.D. Mich. Dec. 17, 2017) (finding that “the loss of a driver’s license, particularly in a state like Michigan lacking an efficient and extensive public transportation system, hinders a person’s ability to travel and earn a living” and preliminarily enjoining Michigan’s system for suspending driver’s licenses upon non-payment of traffic tickets).

110 sanctioned with incarceration.²¹ Suspending a driver’s license for nonpayment is therefore out of
 111 proportion to the purpose of ensuring payment and destructive to that end.²²

112
 113 Nothing in this Guideline is intended to preclude a court from issuing an arrest warrant to secure
 114 the court appearance of a defendant who failed to appear if the court determines that the
 115 defendant received actual notice of the hearing. Courts should endeavor to ensure that any
 116 defendants arrested on failure-to-appear warrants are expeditiously brought before a judicial
 117 officer. In such circumstances, no person should be jailed without a hearing on ability to pay; in
 118 no event should bail or the bond amount on the warrant be set purposely to correspond with the
 119 amount of any fines and fees owed.

120

121 **GUIDELINE 4: Mandatory Ability-To-Pay Hearings**

122

123 *Before a court imposes a sanction on an individual for nonpayment of fines, fees, or*
 124 *restitution, the court must first hold an “ability-to-pay” hearing, find willful failure to pay a*
 125 *fine or fee the individual can afford, and consider alternatives to incarceration.*

126

127 COMMENTARY:

128

129 As set forth in Guideline 3, if a person is unable to pay a fine or fee, he or she should not be
 130 incarcerated or subjected to any other disproportionate sanction, including suspension of a
 131 driver’s license. There must also be procedures to ensure protection of that right, including a
 132 hearing where a court determines whether an individual is able, or unable, to pay the fine or fee
 133 at issue. In other words, at minimum the procedures set forth in *Bearden* must precede any
 134 incarceration or imposition of any other sanction for nonpayment of a fine or fee.²³ These

²¹ See Department of Justice “Dear Colleague” Letter (March 14, 2016), <https://www.courts.wa.gov/subsite/mjc/docs/DOJDearColleague.pdf> (“*Department of Justice Guidance*”), at 6 (“In many jurisdictions, courts are also authorized—and in some cases required—to initiate the suspension of a defendant’s driver’s license to compel the payment of outstanding court debts. If a defendant’s driver’s license is suspended because of failure to pay a fine, such a suspension may be unlawful if the defendant was deprived of his due process right to establish inability to pay.”). See also *Criminal Justice Debt* at 24-25 (explaining the consequences of driver’s license suspensions).

²² In *Robinson*, a federal court in Tennessee ordered the restoration of driver’s licenses for individuals’ whose licenses had been suspended for nonpayment finding that a license suspension is “not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end.” 2017 WL 4418134, at *7. The court held that “taking an individual’s driver’s license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.” *Id.* at *9.

²³ See *Bearden*, 461 U.S. at 667-69 (incarceration for failure to pay a fine and restitution); *Turner v. Rogers*, 564 U.S. 431, 449 (2011) (incarceration for failure to pay child support); *Robinson*, 2017 WL 4418134, at *8-9 (driver’s license suspension). See also *Department of Justice Guidance* at 3 (“Courts must not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing that the failure to

135 procedures must apply whenever a sanction is being sought for nonpayment of a fine or fee,
 136 including in connection with deferred sentencing, implementation of a suspended incarceration
 137 sentence, or extension or revocation of probation, parole, or other form of supervision.

138

139 Courts must also provide adequate and meaningful notice of an ability-to-pay hearing to people
 140 alleged to have failed to pay, including notice of the hearing date, time and location, the subject
 141 matter to be addressed, and advisement of all applicable rights, including any right to counsel.²⁴

142

143 **GUIDELINE 5: Prohibition against Deprivation of Other Fundamental Rights**

144

145 *Failure to pay court fines and fees should never result in the deprivation of fundamental*
 146 *rights, including the right to vote.*

147

148 COMMENTARY:

149

150 Payment of court fines and fees should never be tied to a person’s ability to exercise fundamental
 151 rights,²⁵ which include the right to vote and the right to the care, custody, and control of one’s
 152 children.²⁶ Yet, in certain states, the exercise of these fundamental rights is conditioned on the
 153 payment of court fines and fees by statute or through court practice.

pay was willful. . . . Further, a court’s obligation to conduct indigency inquiries endures throughout the life of a case.”).

²⁴ In connection with the NTF Principles, the National Task Force on Fines, Fees and Bail Practices also published a “Bench Card for Judges” entitled *Lawful Collection of Legal Financial Obligations*, available at http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx. The Bench Card explains the importance of affording “Adequate Notice of the Hearing to Determine Ability to Pay,” and recognizes that such notice “shall include” notice of: the hearing date and time; the total amount due; that the court will evaluate the person’s ability to pay at the hearing; that the person should bring any documentation or information the court should consider in determining ability to pay; that incarceration may result only if alternative measures are not adequate to meet the state’s interests in punishment and deterrence or the court finds that the person had the ability to pay and willfully refused; the right to counsel; and that a person unable to pay can request payment alternatives, including, but not limited to, community service and/or reduction in the amount owed. *See also Department of Justice Guidance* at 5 (“Courts should ensure that citations and summonses adequately inform individuals of the precise charges against them, the amount owed or other possible penalties, the date of their court hearing, the availability of alternate means of payment, the rules and procedures of court, their rights as a litigant, or whether in-person appearance is required at all. Gaps in this vital information can make it difficult, if not impossible, for defendants to fairly and expeditiously resolve their cases.”).

²⁵ The term “fundamental right” as used in this principle does not include freedom from incarceration, which is addressed in Guidelines 3 and 4.

²⁶ *See Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (referring to “the political franchise of voting” as “a fundamental political right, because [it is] preservative of all rights”); *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously

154
155 For example, court fines and fees can effectively serve as a poll tax because certain states,
156 including Georgia, require payment of all outstanding court fines and fees before a person
157 convicted of a felony can regain his or her ability to vote.²⁷ In other states, reported nonpayment
158 or willful nonpayment of fines and fees can lead to a revocation of voting rights.²⁸ And
159 researchers have found that in states where people are prohibited from voting “while incarcerated
160 or under other forms of criminal justice supervision,” people can suffer from voting restrictions
161 as a result of “additional sanctions associated with or triggered by nonpayment,” such as
162 violation of conditions of supervision and revocation of probation.²⁹ Although not required by
163 state statute, there are also troubling reports that parents have been denied contact with their
164 children until they have made payment on outstanding court fees—a deprivation of their
165 fundamental right to make decisions concerning the care, custody, and control of their children.³⁰
166
167 The deprivation of fundamental rights, such as the right to vote, or to the care, custody, and
168 control of one’s children, should never result from inability to pay or even a willful failure to pay
169 by a person with means. No government interest in collecting court fines and fees, or in
170 achieving punishment and deterrence through such collection, warrants the deprivation of such
171 fundamental rights.

172

173

scrutinized.”); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (collecting cases recognizing “the fundamental right of parents to make decisions concerning the care, custody, and control of their children”).

²⁷ Alexes Harris, *et al.*, *Monetary Sanctions in the Criminal Justice System: A review of law and policy in California, Georgia, Illinois, Minnesota, Missouri, New York, North Carolina, Texas, and Washington* 14, <http://www.monetarysanctions.org/wp-content/uploads/2017/04/Monetary-Sanctions-Legal-Review-Final.pdf>.

²⁸ *Id.* (“In Washington, failure to make three payments in a twelve-month period can lead to a revocation of voting rights. The court can also revoke voting rights if they determine that a person has willfully failed to comply with the terms of payment.”).

²⁹ *Id.* (“In Missouri, Illinois, and New York, nonpayment of legal financial obligations can be considered a violation of conditions of supervision which can potentially lead to an extension of supervision or revocation of probation and parole. In Minnesota, probation can be extended for up to five years for unpaid restitution and probation can be revoked for failure to pay for mandatory conditions of probation.”).

³⁰ In 2017, a Youth Court Judge in Mississippi entered an order prohibiting a mother from having contact with her four-month-old baby until she paid her court fees in full, and was reported to have taken similar action with respect to other parents. The University of Mississippi School of Law, *MacArthur Justice Center Initiated Demands that Led to Mississippi Youth Court Judge Resigning* (Oct. 26, 2017), <https://law.olemiss.edu/macarthur-justice-center-initiated-demands-that-led-to-mississippi-youth-court-judge-resigning>.

174 **GUIDELINE 6: Alternatives to Incarceration, Substantial Sanctions, and Monetary**
 175 **Penalties**

176 *For people who are unable to pay fines or fees, courts must consider alternatives to*
 177 *incarceration and to disproportionate sanctions, and any alternatives imposed must be*
 178 *reasonable and proportionate to the offense.*

179
 180 COMMENTARY:

181
 182 Fines seek to punish and deter—goals that can often be served fully by alternatives to
 183 incarceration and disproportionate sanctions like driver’s license suspension. Reasonable
 184 alternatives include: an extension of time to pay; reduction in the amount owed; and waiver of
 185 the amount owed.³¹ Frequently, the most reasonable alternative to full payment of a fine that a
 186 person cannot afford is reduction of the fine to an amount that an individual can pay.

187
 188 As addressed above, fees seek to recoup court costs, generate revenue for programs through
 189 surcharges or assessments, or cover the cost of services related to the justice system. Fees should
 190 only be imposed if, among other things, the individual is able to pay. If a person who has been
 191 required to pay a fee subsequently cannot afford to pay, the fee should be waived entirely or
 192 reduced to an amount the person can pay.³²

193
 194 Judges must have the authority to waive any or all fines and fees if the person has no ability to
 195 pay. Any non-monetary alternatives to payment of a fine, such as community service, treatment,
 196 or other social services, should be developed in line with the individual’s circumstances.³³
 197 Participation in these alternatives should never be conditioned on the waiver of due process
 198 rights, such as the right to a hearing or to counsel. Nor should additional fees be imposed as a
 199 condition of participating in the alternative ordered.³⁴

200

³¹ *Bearden*, 461 U.S. at 672.

³² NTF Principle 6.5 provides:

Courts should not charge fees or impose any penalty for an individual’s participation in community service programs or other alternative sanctions. Courts should consider an individual’s financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

³³ *Bearden*, 461 U.S. at 667-69; *Report on the Future of Legal Services in the United States*, ABA Commission on the Future of Legal Services (2016), <http://abafuturesreport.com>, at 62 (endorsing the principle that courts must consider alternatives to incarceration for indigent defendants unable to pay fines and fees). *See also* Amer. Bar Ass’n, Resolution 102C (2010 MY) (recommending local, state, territorial and federal governments to undertake a comprehensive review of the misdemeanor provisions of their criminal codes, and, where appropriate, to allow the imposition of civil fines or nonmonetary civil remedies instead of criminal sanctions).

³⁴ NTF Principle 6.8 provides that courts should never charge interest on payment plans.

201 Any non-monetary alternatives should be reasonable and proportional in light of the individual's
 202 financial, mental, and physical capacity, any impact on the individual's dependents, and any
 203 other limitations, such as access to transportation, school, and responsibilities for caregiving and
 204 employment. Non-monetary alternatives should also be proportional to the offense and not force
 205 individuals who cannot pay to provide free services beyond what is proportional.
 206

207 **GUIDELINE 7: Ability-to-Pay Standard**

208
 209 *Ability-to-pay standards should be clear and consistent and should, at a minimum, require*
 210 *consideration of at least the following factors: receipt of needs-based or means-tested public*
 211 *assistance; income relative to an identified percentage of the Federal Poverty Guidelines;*
 212 *homelessness, health or mental health issues; financial obligations and dependents; eligibility*
 213 *for a public defender or civil legal services; lack of access to transportation; current or recent*
 214 *incarceration; other fines and fees owed to courts; any special circumstances that bear on a*
 215 *person's ability to pay; and whether payment would result in manifest hardship to the person*
 216 *or dependents.*

217
 218 COMMENTARY:

219
 220 Courts should apply a clear and consistent standard to determine an individual's ability to pay
 221 court fines and fees.³⁵

222
 223 All court actors, including judges, prosecutors, probation officers, and defenders, should be
 224 trained in the standards used in their jurisdiction to determine ability to pay and the constitutional
 225 protections for people who cannot afford to pay court-ordered financial obligations.

226

227 **GUIDELINE 8: Right to Counsel**

228
 229 *An individual who is unable to afford counsel must be provided counsel, without cost, at any*
 230 *proceeding, including ability-to-pay hearings, where actual or eventual incarceration could be*
 231 *a consequence of nonpayment of fines and/or fees. Waiver of counsel must not be permitted*
 232 *unless the waiver is knowing, voluntary and intelligent, and the individual first has been*
 233 *offered a meaningful opportunity to confer with counsel capable of explaining the*
 234 *implications of pleading guilty, including collateral consequences.*

³⁵ The National Task Force's "Bench Card" (http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx), a step-by-step guide for state and local judges to use to protect the rights of people who cannot afford to pay court fines and fees, includes a set of factors judges should consider when making an ability-to-pay determination.

235

236

237 COMMENTARY:

238

239 No indigent person should be incarcerated without being offered the assistance of court-
 240 appointed counsel to ensure that due process standards are met and that all potential defenses are
 241 considered. Such counsel should be provided in all proceedings “regardless of their
 242 denomination as felonies, misdemeanors, or otherwise.”³⁶ Moreover, counsel should be offered
 243 whenever eventual incarceration is a possible result regardless of whether the proceeding at issue
 244 is denominated “criminal” or “civil.”³⁷ The cost to the court of providing counsel is not a
 245 legitimate justification for the failure to provide counsel when it is required by law.³⁸

246

247 It is longstanding ABA policy that, “[n]o waiver of counsel be accepted unless the accused has at
 248 least once conferred with a lawyer.”³⁹ This ensures that an individual who intends to waive
 249 counsel has a full understanding of the assistance that counsel can provide.⁴⁰ Judges have the
 250 primary responsibility for ensuring that counsel is appointed, that individuals receive effective

³⁶ Amer. Bar Ass’n, Resolution 114 (MY 2018), https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/114.html (urging federal, state, local, territorial and tribal governments “to provide legal counsel as a matter of right at public expense to low-income persons in all proceedings that may result in a loss of physical liberty, regardless of whether the proceedings are: a) criminal or civil; or b) initiated or prosecuted by a government entity.”). See also Amer. Bar Ass’n, *ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings* (2010), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_105_revised_final_aug_2010.authcheckdam.pdf; Amer. Bar Ass’n, *Standards for Criminal Justice: Providing Defense Services* 5-5.1 (3d ed. 1992), https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html.

³⁷ See Amer. Bar Ass’n, *Standards for Criminal Justice: Providing Defense Services* 5-5.2 cmt. (3d ed. 1992), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf, at 65 (“[T]he line between criminal and civil proceedings which give rise to a constitutional right to counsel has become increasingly blurred. Thus, protected liberty interests have extended due process concepts to justify the provision of counsel for indigent litigants in such ‘quasi-criminal’ matters[.]”); Amer. Bar Ass’n, Resolution 114 (MY 2018) at 6 (reiterating that commentary about the blurring between criminal and civil proceedings).

³⁸ NTF Principle 4.4 states that indigent defendants should be provided with court-appointed counsel at no charge.

³⁹ Amer. Bar Ass’n, *Standards for Criminal Justice: Providing Defense Services* 5-8.2(b) (3d ed. 1992), https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html#8

⁴⁰ *Id.* cmt., https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf, at 105 (“An accused who expresses a desire to proceed without counsel may sometimes fail to understand fully the assistance a lawyer can provide. Accordingly, this standard recommends that ‘[n]o waiver should be accepted unless the accused has at least once conferred with a lawyer.’ Some courts have recognized that counsel may be assigned by the court for this limited purpose. Such a practice helps to counter the argument that any waiver of counsel by a layperson must be the result of insufficient information or knowledge.”).

251 assistance of counsel,⁴¹ and that any waivers of counsel are knowing and voluntary.⁴² Judges
 252 should never encourage unrepresented persons who qualify for public defense services to waive
 253 counsel.⁴³ “An accused should not be deemed to have waived the assistance of counsel until the
 254 entire process of offering counsel has been completed before a judge and a thorough inquiry into
 255 the accused’s comprehension of the offer and capacity to make the choice intelligently and
 256 understandingly has been made.”⁴⁴ Accordingly, prosecutors should not seek waivers of the
 257 right to counsel from unrepresented accused persons.⁴⁵ Only after the defendant has properly
 258 waived counsel may a prosecuting attorney “engage in plea discussions with the defendant,” and
 259 “where feasible, a record of such discussions should be made and preserved.”⁴⁶

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262 **GUIDELINE 9: Transparency**

263 *Information concerning fines and fees, including financial and demographic data, should be*
 264 *publicly available.*

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266

⁴¹ *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (“[W]e think the matter, for the most part, should be left to the good sense and discretion of the trial courts with the admonition that if the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel, and that judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts.”)

⁴² *Id.*, *See also Johnson v. Zerbst*, 304 U.S. 458, 465 (1947) (“The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused whose life or liberty is at stake is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court[.]”).

⁴³ *See* Model Code of Judicial Conduct, Rule 2.6 (providing that a judge must “accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law,” and should not “act in a manner that coerces any party into settlement”).

⁴⁴ Amer. Bar Ass’n, *Standards for Criminal Justice: Providing Defense Services* 5-8.2. *See also id.* (“A waiver of counsel should not be accepted unless it is in writing and of record.”).

⁴⁵ Amer. Bar Ass’n, *Standards for Criminal Justice: Prosecution Function* 3-5.1(e) (“The prosecutor should not approach or communicate with an accused unless a voluntary waiver of counsel has been entered or the accused’s counsel consents.”). *See also* Model Rules of Professional Conduct, Rule 3.8(c) (Prosecutors shall not “seek to obtain from an unrepresented accused a waiver of important pretrial rights.”); *id.* Rule 3.8(b) (Prosecutors “shall make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel”); *id.* Rule 4.1 (providing that officers of the court should not fail to disclose material facts when dealing with persons other than clients).

⁴⁶ Amer. Bar Ass’n, *Standards for Criminal Justice: Prosecution Function* 3-4.1(b) (4th ed. 2015), https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html (“A prosecutor should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so.”).

267 COMMENTARY:

268 Courts should track and timely⁴⁷ make available to the public data documenting: a) court revenue
269 and expenditures, including the aggregate amount of fines and any fees imposed, the aggregate
270 amount of fines and any fees collected, and the aggregate cost of collecting fines and fees; b) the
271 amount of fines and fees imposed, waived, and collected in each case; c) any cost to the court of
272 administering non-monetary alternatives to payment, including community service and treatment
273 programs;⁴⁸ and d) demographic data regarding people ordered to pay fines and fees.⁴⁹ The need
274 for transparency is especially compelling with respect to private probation companies.⁵⁰

275

276 **GUIDELINE 10: Collection Practices**

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278 *Any entities authorized to collect fines, fees, or restitution, whether public or private, should*
279 *abide by these Guidelines and must not directly or indirectly attempt to thwart these*
280 *Guidelines in order to collect money; nor should they ever be delegated authority that is*
281 *properly exercised by a judicial officer, such as the authority to adjudicate whether a person*
282 *should be incarcerated for failure to pay. Any contracts with collection companies should*
283 *clearly forbid intimidation, prohibit charging interest or fees, mandate rigorous accounting,*
284 *outlaw reselling, and otherwise avoid incentivizing harmful behavior. Contracts should*
285 *include some mechanism for monitoring compliance with these prohibitions.*

286

287 COMMENTARY:

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289 Many jurisdictions have awarded contracts to private companies to collect fines and fees, for
290 diversion programs, or to supervise probation. Others have created a public agency or office
291 responsible for collections of fines and fees. Often these entities, and especially those that are
292 “for-profit” companies, have an interest in maximizing collections, and thus face inherent

⁴⁷ “Timely” means as soon as feasible after the information is collected.

⁴⁸ The cost to the court of administering any non-monetary alternative to payment should never be imposed on the defendant or respondent.

⁴⁹ See National Center for State Courts, *Principles for Judicial Administration* 11 (2012) (requiring transparency and accountability through the use of performance measures and evaluation at all levels of the court system). See also Amer. Bar Ass’n, Resolution 302 (MY 2011) (urging state and local governments to identify and engage in best practices for court funding to insure protection of their citizens, efficient use of court resources, and financial accountability). NTF Principle 3.2 provides that “[a]ll courts should demonstrate transparency and accountability in the collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state’s court of last resort or administrative office of the courts.”

⁵⁰ *Profiting from Probation*, at 18 (“A good place for state governments to start would be to require basic transparency about the revenues probation companies extract from probationers. No state does this now.”).

293 conflicts of interest when charging fees for diversion or probation, seeking to collect fines and
294 fees, and informing probationers of their right to counsel in probation revocation hearings
295 concerning charges of probation violation due to nonpayment of fines and fees.⁵¹ Often these
296 entities have imposed additional fees when people cannot immediately pay fines and fees, have
297 misinformed indigent people facing incarceration for nonpayment of their right to counsel in
298 such proceedings, and have failed to help courts identify people whose debts should be waived,
299 reduced, or converted to carefully thought-out non-monetary alternatives.⁵²

300
301 The integrity of the criminal justice system depends on eliminating such conflicts of interest.
302 These conflicts thwart the fair and neutral provision of justice that is integral to due process and
303 must be the hallmark of our justice system.⁵³ Therefore, courts and state and local governments
304 ensure that all entities that collect fines and fees or administer diversion or probation, including
305 for-profit companies, abide by these Guidelines.

306
307 Courts should only forward for collection those cases in which an individual has been found to
308 have willfully failed to pay following a court hearing in adherence to these Guidelines. Any
309 contracts with collection companies should clearly forbid intimidation, prohibit charging interest
310 or fees, mandate rigorous accounting, outlaw reselling, and otherwise avoid incentivizing
311 harmful behavior. Contracts should also include some mechanism for monitoring compliance
312 with these prohibitions.

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314

⁵¹ *Department of Justice Guidance at 8; Profiting from Probation at 42-44.*

⁵² *See Rodriguez v. Providence Community Corrections*, 155 F. Supp. 3d 758, 771 (M.D. Tenn. Dec. 17, 2017) (finding that a for-profit collection company's failure to inquire into ability to pay before stacking fees, effectively revoking probation, raised due process and equal protection concerns).

⁵³ *See Amer. Bar Ass'n, Resolution 111B (2016 AM) and Report* (condemning the use of for-profit companies for user-funded probation with reasoning that supports the principle against the use of for-profit companies to collect court fines and fees).

REPORT

In July 2016, in the face of increasing racial tensions, retaliatory violence against police officers, and a growing sense of public distrust in our nation’s justice system, the ABA created the Task Force on Building Public Trust in the American Justice System. The Task Force wrote a Report, received by the ABA Board of Governors in February 2017, that calls on the ABA and state and local bar entities to: (1) encourage the adoption of best practices for reforming the criminal justice system; (2) build consensus about needed reforms and work to carry them out; and (3) educate the public about how the criminal justice system work.¹ In August, 2017, incoming ABA President Hilarie Bass appointed a Working Group on Building Public Trust in the American Justice System to continue the work of the Task Force. The Working Group chose to focus in on one particular issue causing distrust of the justice system – the imposition and enforcement of excessive fines and fees. The Working Group chose to focus first on this topic because it adversely impacts millions of Americans and has contributed significantly to negative public perceptions of the justice system. After a year of study and broad-based consultation within and outside the ABA, the Working Group has developed Ten Guidelines on Court Fines and Fees (the “Guidelines”), which we now propose be adopted by the ABA House of Delegates.

Every day in the United States, courts impose myriad financial obligations on individuals who have been charged with criminal offenses or civil infractions. These include fines imposed as part or all of the punishment levied against them for low-level offenses, such as traffic tickets or civil ordinance violations, as well as misdemeanors and felonies.² They also include fees, which, are not imposed to punish or deter offenses but to raise revenue or fund services.³ Some fees are legislatively-mandated assessments or charges to recoup court costs, while others are “user fees” assessed to help fund the justice system, including costs associated with probation, public defenders, diversion programs, and court costs, as well as other essential government services. They also include orders of forfeiture and restitution, which are not the focus of these

¹ Report of the Task Force on Building Public Trust in the American Justice System (January 2017), available at https://www.americanbar.org/content/dam/aba/administrative/office_president/2_8_task_force_on_building_trust_in_american_justice_system.authcheckdam.pdf. Following the issuance of the Report, the Task Force focused on creating dialogue around the issues of distrust in the justice system, developing a Toolkit for holding forums on safety and justice. The Toolkit is available at https://www.americanbar.org/groups/leadership/office_of_the_president/publictrust.html.

² The term “fines” includes monetary penalties imposed by a court as punishment for a criminal offense or civil infraction. For purposes of these *Guidelines*, restitution and forfeiture are not included in the definition of “fines and fees.”

³ The term “fees” includes fees, court costs, state and local assessments, and surcharges imposed when a person is convicted of criminal offenses and civil infractions. The term, as used in these *Guidelines*, does not include civil filing fees.

Guidelines, although several of the principles underlying these Guidelines apply to forfeiture and restitution as well.⁴

The imposition and enforcement of these fines and fees disproportionately harm the millions of Americans who cannot afford to pay them, entrenching poverty, exacerbating racial and ethnic disparities, diminishing trust in our justice system, and trapping people in cycles of punishment simply because they are poor. In communities around the country, millions of people are incarcerated, subjected to the suspension of driver's and occupational licenses, or prohibited from voting simply because they cannot afford to pay fines or fees imposed by courts. Even children are incarcerated for failure to pay fines or fees, even though children almost by definition lack a personal ability to pay such fines or fees.

An estimated 10 million Americans owe more than \$50 billion resulting from their involvement in the criminal justice system.⁵ Some are sentenced solely to the payment of fines and fees. Others have been sentenced to prison terms in addition to any fines and fees imposed. According to the most recently available numbers, approximately two-thirds of people in prison have been assessed court fines and fees.⁶ This remarkable statistic persists even though people sent to prison often have little prospect of earning enough money to pay their debt: 65 percent of prisoners do not have a high school diploma, and 15 to 27 percent of people leaving prison or jail expect to go to a homeless shelter upon release and as many as 60 percent remain unemployed a year after release.⁷

Studies show that the imposition and enforcement of fines and fees disproportionately and regressively affect low-income individuals and families.⁸ Communities of color are particularly devastated for reasons that include the longstanding racial and ethnic wealth gap,⁹ higher rates of

⁴ For example, as noted below with respect to Guideline 3, a person who is unable to pay an order of restitution should not be incarcerated for failure to pay.

⁵ Lauren-Brooke Eisen, *Charging Inmates Perpetuates Mass Incarceration*, The Brennan Center of Justice at New York University School of Law (2015) (“*Charging Inmates*”), at 1, available at <https://www.brennancenter.org/publication/charging-inmates-perpetuates-mass-incarceration>.

⁶ Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 15 Am. J. Sociology 1753, 1769 (2010) (citing statistics from 2004).

⁷ *The Criminalization of Poverty: How to Break the Cycle through Policy Reform in Maryland*, The Job Opportunities Task Force (Jan. 2018), http://www.jotf.org/Portals/0/jotf/publications/COP%20report%20013018_FINAL.pdf (“*The Criminalization of Poverty*”) at 46.

⁸ See, e.g., Council of Economic Advisers Issue Brief, *Fines, Fees, and Bail: Payments in the Criminal Justice System That Disproportionately Impact the Poor* (Dec. 2015) (“*CEA Brief*”), at 5-8.

⁹ A 2013 Pew Research Center study of federal data found that the median wealth of white households was 13 times the median wealth of black households, and 10 times the median wealth of Latino households. See Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Center (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession>.

poverty and unemployment,¹⁰ and the over-policing of communities of color, for reasons that include racial and ethnic profiling.¹¹ For example, in many jurisdictions black people disproportionately experience license suspensions for nonpayment of fines and fees, due in part to racial disparities in wealth and poverty.¹² These racial disparities in license suspension in turn contribute to racial disparities in conviction for driving on a suspended license, making black people in these states disproportionately vulnerable to the resulting steep financial penalties.¹³ Such racial disparities in the adverse impact of the imposition and enforcement of court fines and fees also contribute to tension between law enforcement and courts on the one hand and the communities of color they serve on the other, as documented in a 2015 report by the U.S. Department of Justice.¹⁴

The application of fines and fees is not limited to adults in the criminal justice system. Frequently fines and fees are imposed on juveniles and their families in connection with the

¹⁰ In 2014, the Pew Research Center found that black and Latino people were, on average, at least twice as likely to be poor than were white people in the United States. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, Pew Research Center (June 27, 2016), <http://www.pewsocialtrends.org/2016/06/27/1-demographic-trends-and-economic-well-being>.

¹¹ Racial and ethnic profiling—the targeting of people of color for police stops, frisks, and searches without reasonable suspicion of criminal activity and based on perceived race or ethnicity—is well documented in jurisdictions across the country. For example, in 2013, a federal court ruled that the New York City Police Department was liable for a pattern and practice of racial and ethnic profiling in police stops of black and Latino people. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 665 (S.D.N.Y. 2013) (finding the City of New York liable for “targeting young black and Hispanic men for stops based on the alleged criminal conduct of other young black or Hispanic men” in violation of the Fourteenth Amendment Equal Protection Clause). *See also Melendres v. Arpaio*, 989 F. Supp. 2d 822, 899-05 (D. Ariz. 2013) (finding sheriff’s office liable for policies and practices of profiling Latino motorists for police stops). Whether due to racial and ethnic profiling or other factors, well-documented racial disparities in justice-system involvement render communities of color more vulnerable to the adverse impact of the imposition and collection court fines and fees. For example, a 2013 report found that across the United States, black people are 3.73 times as likely to be arrested for marijuana possession even though marijuana use is roughly equal among black and white people as documented by the U.S. Department of Health & Human Services Substance Abuse and Mental Health Services Administration. *See American Civil Liberties Union Foundation, The War on Marijuana in Black and White* 17, 31, 49-50 (2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white> (analyzing 2010 data from the Federal Bureau of Investigation and U.S. Census, and the 2014 National Survey on Drug Use and Health finding that an estimated 15.7% of black people and 13.7% of white people had used marijuana at some point in the past year).

¹² *Back on the Road California, Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, at 27 (2016) (hereinafter “Stopped, Fined, Arrested”), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf. *See discussion supra* notes 63-65 (discussing evidence of racial disparities in wealth and poverty in the United States).

¹³ Legal Aid Justice Center, *Driven by Dollars: a State-by-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt* (2017), <https://www.justice4all.org/wp-content/uploads/2017/09/Driven-by-Dollars.pdf>.

¹⁴ *See* U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, at 79-81 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (detailing evidence of how municipal court and policing practices related to court fine and fee collection erode community trust in law enforcement).

young person's involvement with the juvenile justice system.¹⁵ A recent report on Alameda County, California, showed that total fees to families for juvenile involvement added up to approximately \$2,000 for an average case.¹⁶

Bedrock constitutional principles of due process and equal protection of the law apply when courts impose and collect fines and fees. More than thirty years ago, the U.S. Supreme Court ruled in *Bearden v. Georgia*, 461 U.S. 660 (1983), that it is unconstitutional to incarcerate people solely for their inability to pay fines or restitution. For decades, the Court has warned that the justice system must not treat those with money more favorably than those without. Yet these practices endure.

The effect is that poor people are punished because of their poverty, in violation of basic constitutional principles guaranteeing fairness and equal treatment of rich and poor in the justice system. This harms us all. When people are jailed, or their driver's licenses are suspended, because they cannot afford to pay court fines or fees, they face heightened barriers to employment and education, disrupting families and undermining community stability.¹⁷ Similarly, requiring fees to access diversion or treatment programs, such as "drug courts," creates a two-tiered system of justice—one for the rich and one for the poor. These effects detract from public trust in our justice system, including our law enforcement officials and our courts.

Although fines are an appropriate sanction in certain circumstances, the Guidelines seek to ensure that no one is subjected to disproportionate sanctions, including incarceration, simply because they do not have the money to pay an otherwise appropriate fine or fee.

An important objective of the Guidelines is to eliminate any and all financial incentives in the criminal justice system to impose fines or fees. The justice system serves the entire public and should be entirely and sufficiently funded by general government revenue. The total funding for any given court or court system should not be directly affected by the imposition or collection of fines or fees (as defined for purposes of the Guidelines). This core principle was adopted by the National Task Force on Fines, Fees and Bail Practices, established by the Conference of Chief

¹⁵ See, e.g., Jessica Feierman, et. al, *Debtors' Prison for Kids? The High Cost of Fines and Fees in the Juvenile Justice System*, The Juvenile Law Center (2016), <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>.

¹⁶ See Berkely Law Public Advocate Clinic, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* (2016), http://64.166.146.245/docs/2016/BOS/20161025_813/27510_PAC%20High%20Pain%2C%20No%20Gain.pdf.

¹⁷ See, e.g., Alicia Bannon, Mitali Nagrecha & Rebekah Diller, *Criminal Justice Debt: A Barrier to Reentry*, The Brennan Center of Justice at New York University School of Law (2010), <https://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> ("Criminal Justice Debt"), at 5.

Justices and the Conference of State Court Administrators. In December 2017, the Task Force issued its “Principles on Fines, Fees, and Bail Practices” (the “National Task Force Principles” or “NTF Principles”),¹⁸ which were endorsed in 2018 by the Access, Fairness and Public Trust Committee of the Conference of Chief Justices.¹⁹ Principle 1.5 of the NTF Principles states, “Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges.”

“Requiring users to pay for judicial services is, in many ways, anathema to public access to the courts.”²⁰ All components of the justice system, including courts, prosecutors, public defenders, pre-trial services, and probation, should be sufficiently funded from public revenue sources and not reliant on fees, costs, surcharges, or assessments levied against criminal defendants or people sanctioned for civil infractions. As a Louisiana federal court held in December 2017, where judges in a given jurisdiction are responsible for both (a) “managing fines and fees revenue” that fund court operations, and (b) “determining whether criminal defendants are able to pay those same fines and fees,” such judges face an impermissible “institutional incentive to find that criminal defendants are able to pay fines and fees.”²¹

¹⁸ The NTF Principles are available at <http://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx>. In connection with the NTF Principles, the National Task Force on Fines, Fees and Bail Practices also published a “Bench Card for Judges” entitled *Lawful Collection of Legal Financial Obligations*, available at http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx.

¹⁹ The Access, Fairness and Public Trust Committee officially endorsed the NTF Principles and has “encourage[d] inclusion of the Principles on Fines, Fees and Bail Practices into training for court staff and education for all judicial officers who are authorized by law to make decisions regarding pretrial release, levy fines, assess fees, and order imprisonment for traffic-related offenses, misdemeanors or infractions.” *Resolution 4: In Support of the Principles of the National Task Force on Fines, Fees, and Bail Practices* (Jan. 31, 2018), <http://www.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01312018-Support-Principles-National-Task-Force-Fines-Fees-Bail.ashx>. The Conference of Chief Justices has also endorsed the NTF Bench Card. *Resolution 3: Encouraging Education on and Use of the Bench Card on Lawful Collection of Court-Imposed Legal Financial Obligations Prepared by the National Task Force on Fines, Fees, and Bail Practices* (Feb. 1, 2017), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02012017-Encouraging-Education-Use-Bench-Card-Lawful-Collection.ashx>. The Supreme Court of Missouri has adopted the Bench Card in full and currently requires all state judges to use it. En Banc Order (June 30, 2017), <https://www.courts.mo.gov/sup/index.nsf/9f4cd5a463e4c22386256ac4004a490f/afb7e8d9e2e4ecec186258150000541b4?OpenDocument>.

²⁰ Geoffrey McGovern & Michael D. Greenberg, *Who Pays for Justice? Perspectives on State Court System Financing and Governance*, RAND Corporation Institute for Civil Justice (2014) at 10-11, available at https://www.rand.org/pubs/research_reports/RR486.html.

²¹ *Cf. Cain v. City of New Orleans*, No. 15-4479, 2017 WL 6372836 (E.D. La. Dec. 13, 2017). The NTF Principles echo this position. Principle 1.5 states, “A judge’s decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from the imposition of a legal financial obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, or court staff, nor should such funds be used to evaluate the performance of judges or other court officials.” *See also Tumey v. State of Ohio*, 273 U.S. 510, 532 (1927) (holding that due process was violated where a court’s revenue, and the judge’s salary, depended in part on the imposition and collection of court fines and fees).

The justice system should not be used as a revenue source for government services.²² State and local governments should not depend on fines and fees imposed in the justice system for general revenue or to fund particular services inside or outside the criminal justice system.²³ “When courts are pressured to act, in essence, as collection arms of the state, their traditional independence suffers.”²⁴

In addition, a number of ABA policies include guidelines designed to protect the right to counsel and to ensure that the poor do not disproportionately suffer because of their indigence. These existing ABA guidelines apply to the collection and imposition of court fines and fees as well.

The current resolution and Guidelines build on ABA policies, the NTF principles, and existing law to create straightforward, coherent, and focused guidelines that can assist courts, administrators, legislators, and advocates seeking to remedy harms presented by the imposition and collection of fines and fees in the justice system. The Guidelines are also intended to be readily accessible and useful for members of the public, including non-lawyers. In this way, the Guidelines serve the original three goals set out in the Task Force report: (1) to encourage the adoption of best practices; (2) to establish consensus around needed reform; and (3) to educate the public. The Guidelines will thus help in building public trust in the American justice system.

²² *Amer. Bar Ass’n, Standards for Criminal Justice: Sentencing*, Standard 18-2.2 (ii) (“Economic sanctions include fines, monetary awards payable to victims, and mandatory community service. The legislature should not authorize imposition of economic sanctions for the purpose of producing revenue.”). See *Amer. Bar Ass’n Resolution 117A (AM 2008)* (urging Congress to support quality and accessible justice by ensuring adequate, stable, long-term funding for tribal justice systems) (citing ABA resolution 10A (AM 2004), adopting *Report of the American Bar Foundation Commission on State Court Funding* (2004)).

²³ See *id.* The history behind court-imposed fees and fines—and incarceration for failure to pay—is closely tied to practices that arose during Reconstruction. As Professors Harris, Evans and Beckett have explained, monetary sanctions were commonplace in the South, “where their imposition was the foundation of the convict lease system that existed from emancipation through the 1940s.” *Drawing Blood from Stones*, 15 *Am. J. Sociology* at 1758. “Charged with fees and fines several times their annual earnings, many southern prisoners were leased by justice officials to corporations who paid their legal debt in exchange for inmates’ labor in coal and steel mines as well as on railroads, quarries, and farm plantations. Collected fees and fines were used to pay judges’ and sheriffs’ salaries. Monetary sanctions were thus integral to systems of criminal justice, debt bondage, and racial domination in the American South for decades.” *Id.* (citations omitted). See also Michelle Alexander, *The New Jim Crow* (2012), at 31 (“[During Reconstruction] vagrancy laws and other laws defining activities such as ‘mischief’ and ‘insulting gestures’ as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in [*Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II* (2008)], describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release.”).

²⁴ *Criminal Justice Debt* at 2. See also *id.* at 30; Katherine Beckett & Alexes Harris, *On cash and conviction: Monetary sanctions as misguided policy*, 10 *Criminology & Public Policy* 505, 511 (2011) (“*On cash and conviction*”) (“[I]f the state compels penal targets to use (often expensive and ineffective) state ‘services,’ then the government is obligated to pay for them. Indeed, this fiscal obligation is an important check on government power.”).

Respectfully submitted,
Robert N. Weiner, Chair
Working Group on Building Public Trust in the American Justice System
Section on Civil Rights and Social Justice
August 2018

GENERAL INFORMATION FORM

Submitting Entity: Working Group on Building Public Trust in the American Justice System

Submitted By: Robert Weiner, Chair

1. Summary of Resolution(s). This resolution urges federal, state, local, territorial, and tribal legislative, judicial and other government bodies to promulgate law and policy consistent with and otherwise adhere to, the proposed guidelines for the imposition and collection of court fines and fees.
2. Approval by Submitting Entity. This resolution was passed by the Working Group on Building Public Trust in the American Justice System on May 2, 2018.
3. Has this or a similar resolution been submitted to the House or Board previously?
No.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

- 04A110, adopting *ABA Guidelines on Contribution Fees for Costs of Counsel in Criminal Cases*
- 04A107, adopting *Report of the American Bar Foundation Commission on State Court Funding*
- 10M192C
- 11M302
- 16A111B
- 17M112C
- 18M114
- *ABA Standards for Criminal Justice: Sentencing*, Standards 18.2.2 (ii), 18.3.16 (d) & 18.3.22(e)
- *ABA Basic Principles for a Right to Counsel in Civil Legal Proceedings* (2010)
- *ABA Standards for Criminal Justice: Providing Defense Services* 5-5.1 & 5-5.2 (1992)

None of these policies would be affected by the adoption of this resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?
N/A
6. Status of Legislation. (If applicable)
N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
This policy will enable the ABA and relevant ABA committees to provide guidance to courts, legislatures, and advocates on the ground working to expose and end practices leading to modern-day debtors' prisons, through *amici curiae* in appropriate cases, for example.
8. Cost to the Association. (Both direct and indirect costs)
None.
9. Disclosure of Interest. (If applicable)
N/A
10. Referrals.
At the same time this policy resolution is submitted to the ABA Policy Office for inclusion in the 2018 Annual Agenda Book for the House of Delegates, it is being circulated to the chairs and staff directors of the following ABA entities:

Judicial Division
 Section of State and Local Government Law
 Government and Public Sector Lawyers Division
 Litigation
 Young Lawyer's Division
 Section on Civil Rights and Social Justice
 Criminal Justice Section
 Law Practice Division
 Solo, Small Firm and General Practice Division
 Ethics and Professional Responsibility
 Commission on Veteran's Legal Services
 Standing Committee on Public Education
 Commission on Disability Rights
 Commission on Hispanic Legal Rights & Responsibilities
 Commission on Homelessness and Poverty
 Center for Human Rights
 Commission on Immigration
 Coalition on Racial & Ethnic Justice
 Commission on Youth at Risk
 Law Student Division
 Standing Committee on Legal Aid and Indigent Defendants
 Standing Committee on the Delivery of Legal Services
 Commission on Women in the Profession
 Standing Committee on Pro Bono and Public Service
 Diversity Entities

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Robert Weiner – Chair, Section on Civil Rights and Social Justice and Chair, ABA Working Group on Building Public Trust in the American Justice System

Arnold & Porter
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Washington, DC 20001
Robert.Weiner@apks.com

EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution adopts the ABA Ten Guidelines on Court Fines and Fees and urges federal, state, local, territorial, and tribal legislative, judicial and other governmental bodies to promulgate law and policy consistent with, and otherwise to adhere to, the Guidelines.

2. Summary of the Issue that the Resolution Addresses

This resolution is intended to address the fundamental unfairness created when people are subjected to disproportionate sanctions, including imprisonment, simply because they do not have the ability to pay a fine or fee for a criminal offense or civil infraction.

3. Please Explain How the Proposed Policy Position will Address the Issue

A policy position from the ABA will provide much needed leadership and guidance to federal, state, local, territorial, and tribal legislative, judicial and other government bodies, and to advocates before those bodies, on how to lawfully impose and enforce court fines and fees and how to address ongoing constitutional violations.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.

https://journalstar.com/opinion/editorial/editorial-pilot-program-promising-for-reducing-jail-overcrowding/article_cf1e4944-8808-553d-b1c1-683a962fda9e.html

Editorial, 7/22: Pilot program promising for reducing jail overcrowding

Journal Star editorial board Jul 21, 2018

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Lancaster County Corrections

BUY NOW

3801 W. O St., Lincoln

566 average daily population, male and female

Maximum, medium, minimum custody

The jail lodges individuals arrested and charged with various local and state offenses and awaiting court dispositions. It also houses inmates with sentences of less than one year.

\$97 average cost per inmate per day

72 percent of design capacity

85 percent of operational capacity

Brad Johnson, interim director

MATT RYERSON, Journal Star

As Lancaster County officials unveiled the new county jail in 2013, they told the Journal Star that it should last more than twice as long as the overcrowded facility it replaced in downtown Lincoln.

The structure connected to the City-County Building served the county for 22 years, meaning the initial forecast called for the new jail on West O Street to last four-plus decades. Yet, after just five years, the much larger Lancaster County Jail is nearing its capacity.

Accordingly, a new donor-funded pilot program that's being coordinated by ACLU of Nebraska strikes us as a positive development to decrease the number of people in the Lancaster County Jail by paying their cash bonds.

Aiding people who are being held in jail on minor charges because they're unable to afford bond should reduce the number of people stuck in prison awaiting trial. In theory, it should save the county money on jail costs while also preventing Nebraskans' ability to pay from being a reason they're behind bars.

On average, the cost to house one inmate at the Lancaster County Jail is roughly \$100 per day. Yet people are frequently jailed for weeks at a time because they're unable to afford bonds for offenses that would cost a fraction that amount.

For instance, a woman who was arrested on a panhandling charge in Lincoln was taken to the jail. She would have had to post \$100 to make bond – but she clearly lacked the money to cover that cost. Instead, she waited in jail for a few weeks before pleading guilty to the charge and paying a fine.

What good did it do to force Lancaster County residents to pay several times more for the detention of someone facing such a minor charge than her offense cost? None.



Debtors' prisons have long been outlawed. The Nebraska Legislature in 2017 overwhelmingly passed a measure to require judges to take into account a suspect's ability to pay when setting bond amounts. Yet, a new, expanded jail is already almost full, with much of the space occupied by pre-trial holds.

Something's not right here.

Individuals are more productive when they're at work or at home with their families, than sitting out a bond they could never pay.

This is why such a program offers the potential save taxpayers money while helping people get back on their feet. It's why jail officials are helping to identify candidates who could benefit from this program that, as long as those bonded out appear for their hearings, will recycle money to help even more people over the six-month trial period.

At a week old, it's too early for data to be available on the handful of people who posted bond through this program. But we're willing to try anything that reduces jail overcrowding without jeopardizing the safety of the community.

The wonderfully simple principle behind this new pilot is something that offers great promise in Lancaster County.

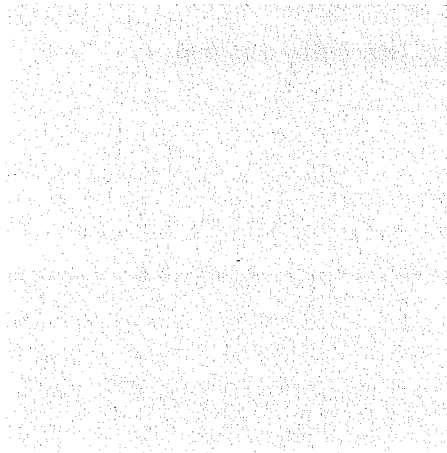
https://journalstar.com/opinion/columnists/local-view-jails-overcrowded-with-nebraskans-too-poor-for-bond/article_9d95b8c7-f1c7-51cd-b7a1-dcdb5a1762fd.html

Local View

Local View: Jails overcrowded with Nebraskans too poor for bond

Local View

SEN. MATT HANSEN Jul 11, 2018



District 26

Matt Hansen

Lincoln

Elected 2014

402-471-2610

mhansen@leg.ne.gov

Courtesy photo

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Mass incarceration is straining our severely overcrowded state prison system and fueling overcrowding in many county jails. Recent news reports show that the three largest counties in Nebraska are all facing extreme county jail overcrowding.

Douglas County is working to head off an overcrowding crisis with some promising new initiatives while it struggles for space, staff, and to provide adequate medical care. Sarpy County is actively exploring constructing a new jail. The relatively new Lancaster County jail has hovered near capacity the last two years. Corrections costs are an ever-increasing burden on Nebraska taxpayers.

Mass incarceration and overcrowding are caused by a variety of factors such as state policy decisions, local prosecutors' decisions and judicial practices. While it is important to note that one initiative designed to ease state prison overcrowding -- LB605 passed with broad support and signed into law in 2015 -- is a contributing factor to the increase in local jail populations, it's not the only factor.

Another key driver in county jail overcrowding has not received as much public attention and needs to be a bigger part of these discussions: modern-day debtors prison practices.

County jails -- particularly in Douglas, Sarpy and Lancaster -- are filled with pretrial detainees. These people are presumed innocent and have not been convicted. Since they are too poor to post the money bonds sought by prosecutors and set by judges, they sit in jail until their trial date. Many pretrial detainees are being held for nonviolent, low-level misdemeanor offenses.

This is troubling from a constitutional and public policy standpoint. These practices also come with devastating human costs for low-income Nebraskans, sometimes costing them their jobs and their families. Additionally, being held in jail while awaiting trial means one is more likely to be found guilty and receive a harsher sentence.

A recent study by the ACLU of Nebraska showed that, before they even get to trial, Nebraska defendants charged with nonviolent offenses spend an average of 48 days behind bars -- and more than half of the county jail populations in our largest counties were pretrial detainees unable to afford bail.

These practices unnecessarily fill our jails and unnecessarily strain county budgets and increase pressure on property taxes. It's also important to note significant racial disparities at each stage of our criminal justice and bail systems.

When a bill I introduced, LB259, was signed into law in 2017, it enacted significant bond reform and changes to how courts impose fines.

The legislation required local judges and prosecutors to consider the individual financial circumstances of pretrial detainees when setting money bonds, broadened the authority for courts to release pretrial detainees under community supervision programs and provided for courts to specifically make findings about defendant's ability to pay fines. If defendants cannot afford to pay, the bill broadens the ability of the courts to discharge fines altogether, allow community service or installment payments.

I urge Nebraska's hardworking and thoughtful judges and attorneys to continue their commitment to implement these important changes to the law and to develop alternatives to the money-bond system to reduce the burden jail populations place on our counties without jeopardizing public safety.

Disproportionately incarcerating low-income people prior to trial or requiring a very poor defendant to "sit out" a fine in jail costs much more than counties recoup and does little if anything to advance our shared public safety goals.

It's time for all stakeholders to roll up their sleeves and update our practices to conform with the law, uphold the rights of poor Nebraskans, ease the burden on our taxpayers and front-line corrections staff and dedicate scarce public resources to where they are needed most.

Sen. Matt Hansen represents District 26, which includes northeast Lincoln, in the Nebraska Legislature.



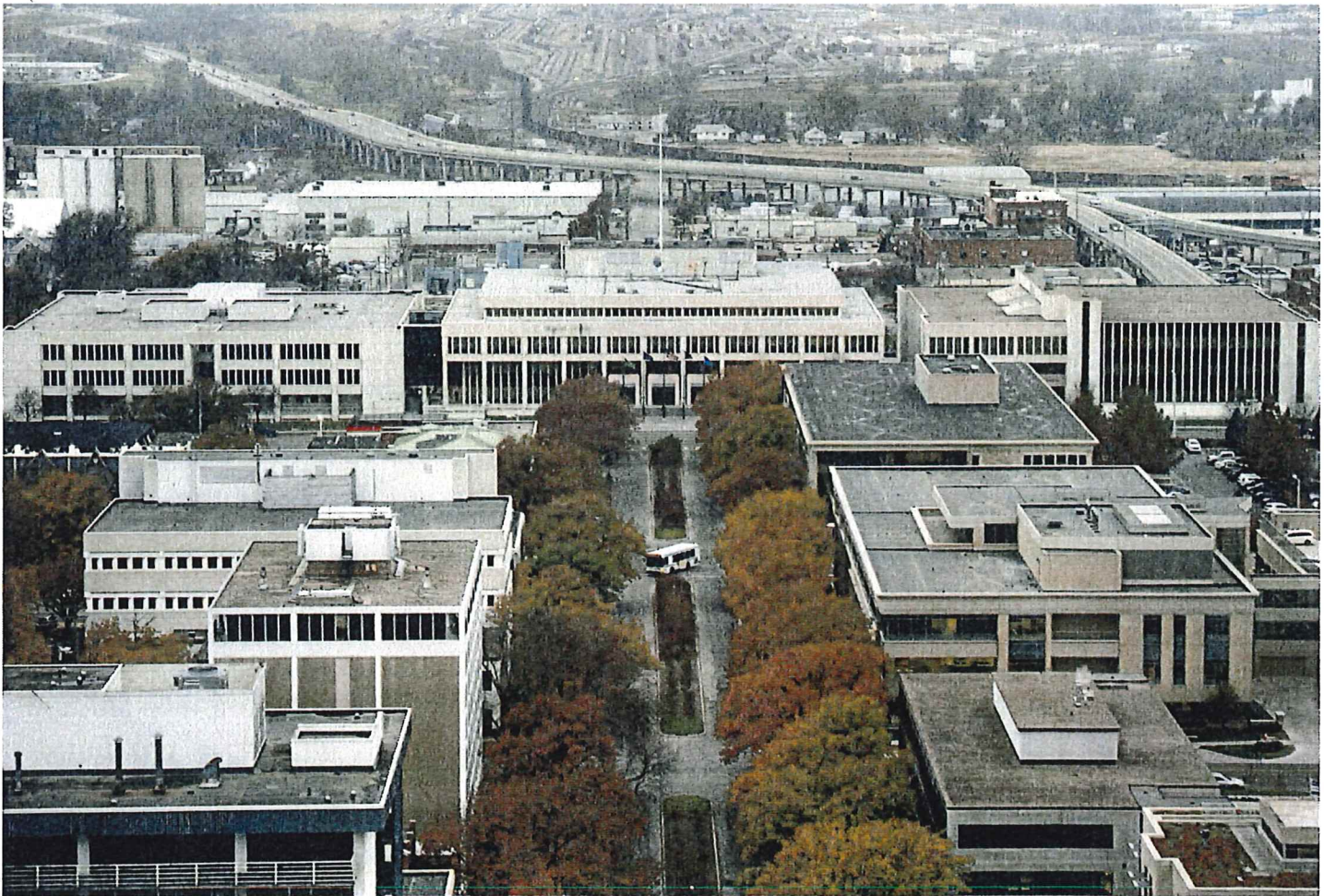
BREAKING Teen arrested in burglary at Husker coach Scott Frost's home

https://journalstar.com/opinion/editorial/editorial-county-effort-on-warrants-a-great-way-to-test/article_6f548ba4-8d01-546f-9ddf-f9520f17d020.html

Editorial, 8/8: County effort on warrants a great way to test jail reform

Journal Star editorial board Aug 7, 2018

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A view of the County-City Building looking west along Lincoln Mall.

KAYLA WOLF, Journal Star

BUY NOW

A pair of promising pilot programs in the midst of trial runs could yield positive results at easing crowding at the Lancaster County Jail, nearing capacity after only five years in operation.

An editorial last month commended the first to be rolled out, an effort led by ACLU of Nebraska to pay bail costs for low-level, nonviolent offenders. It seeks to reduce the monetary and societal costs of holding inmates who were unable to afford bond and sit out their fine while awaiting trial.

Now, it's time to laud the second.

For four days this week, from Tuesday through Friday, Lincoln and Lancaster County prosecutors are offering anyone with an active misdemeanor warrant the chance to go to the clerk of courts' office to request their case be sent to court. By doing this, the warrant is recalled once a hearing is set – and the person will then be released on their own recognizance, avoiding the need for bail.

By keeping the lowest level of misdemeanor offenders from being booked into jail and held there until trial at a cost that averages roughly \$100 per day, this effort will almost certainly save taxpayers money. And since many people miss court appearances because of family or work obligations, as Lancaster County Attorney Pat Condon noted, this pilot allows them to avoid the pitfalls that can hurt both.

If all goes well, outstanding warrants – of which the county has about 5,000 – will be cleaned up and sped up. Those with the least severe offenses can have their situations remedied without paying bail or serving time in jail. Lincoln and Lancaster County save

money. Families and businesses don't lose valuable members for minor crimes on account of court appearances or awaiting trial.

See why we're optimistic about the results of this four-day test run?

These steps are certainly small. But trying new things and seeing which of them are successful may help inspire the needed criminal justice reform to reduce the mass incarceration.

The status quo has led to packed jails in Nebraska's largest counties. Meanwhile, the state corrections system remains one of the nation's most overcrowded at more than 150 percent its designed capacity. When on a path this unsustainable, innovation becomes imperative.

And this latest model, along with the initial push by the ACLU that inspired it, being tried in Lancaster County certainly offers promise.

Two sources are approaching criminal justice reform with short-term trials. One is attempting to keep low-level offenders from being booked into jail; the other is hoping to prevent them from sitting out fines in jail.

What matters most is that Lincoln and Lancaster County are exploring ways to reduce the fiscal and social burden of a packed jail. And both of these test cases deserve praise for attempting to solve a serious problem on a small scale.

COURT FINES AND FEES

KNOW YOUR RIGHTS

Use these instructions if you are facing a fine or fee for a criminal offense and you do not have a lawyer.

If you do not have enough money to pay your fine or court costs for a criminal offense, you have the right to have a court hearing to ask for one of three things:

1. That you be given more time to pay;
2. That you do community service instead of paying;
3. That the Court discharge (or not make you pay) the fine or costs.

Attached are forms for the three options. You need to fill out the **one** that fits your situation and bring it to Court. You may be asked to stand in front of the judge at a hearing and give more information about what you are asking for.

At a hearing, you can:

- Tell the Judge how much money you have (bring paystubs or other proof of income).
- Tell the Judge how much you pay for rent, food, or other things (bring copies of bills, expenses).
- Ask the Judge to let you pay the money later.
- Ask the Judge to let you pay on a payment plan.
- Ask the Judge to let you do community service instead of paying the fines.
- Ask the Judge to let you pay less or nothing at all.
- Ask the Judge to appoint a lawyer to help you.

Always make sure that court officials have your current mailing address, phone number, and/or email. Respond to all court notices and always come to all your scheduled court dates.

Sample court forms are available online at aclunebraska.org/myrightsincourt

LANCASTER CO.

BAIL FUND

Name	Date	Email
Phone	Alternate phone	Best way to contact
Address	Alternate address	May we remind you of your court date?

The ACLU is leading a new community bail fund effort to help our neighbors who cannot afford to make bail return to their families, jobs and community. In addition to helping pay bonds, we are collecting stories to document and share how these issues have impacted your life and our community. These stories will help us demonstrate to policy makers why holding people in jail who cannot afford bail is bad for families and the community.

1. Are you a parent? If yes, did being held in jail cause child care problems for your family?
2. Are you employed? If yes, did being held in jail cause problems with your employer?
3. What other connections do you have in the community that were disrupted?
4. How would you or your family have afforded your bail had we not paid it?
5. Are you willing to share your experience about how being held in jail without being found guilty disrupted your life and that of your family?
6. Are you willing to allow us to use your name?
7. If not, may we use your story but keep your identity anonymous?
8. Would you allow us to archive your experience by:

<input type="checkbox"/> recording video	Now?	Later?
<input type="checkbox"/> recording audio	Now?	Later?
<input type="checkbox"/> taking a photo	Now?	Later?
<input type="checkbox"/> writing a letter		

(Circle one.)

Signature: _____ Date: _____

Image Release and Agreement

In consideration of my wish to allow the American Civil Liberties Union Foundation, Inc. (together with the American Civil Liberties Union, Inc., referred to herein as "ACLU") to use my likeness as displayed in the attached photograph ("Image"), I agree:

- (1) that I have the right to grant ACLU permission to reproduce the attached photograph without violation of third party rights;
- (2) that I irrevocably grant ACLU (and its affiliates, licensees, and assigns) the worldwide right in perpetuity to use my Image together with my name and biographical information/affiliation and I agree the ACLU may reproduce, distribute, create derivative works of, publicly display, perform and otherwise use the Image in all media now known or hereafter developed in connection with its mission, including for promotional or marketing purposes ("Materials");
- (3) that I irrevocably release ACLU (and its affiliates, licensees, and assigns) on behalf of myself, my heirs, family members, and executors from any claim of any nature, known or unknown, that I have or ever may have (including for invasion of privacy, libel, slander, portraying me in a false light, breach of my right of publicity or violation of copyright) based on use of the Image and the Materials as described above;
- (4) that the ACLU (and its affiliates, licensees and assigns) will own all rights, including copyrights, in the Materials it creates, and to the extent I have any rights in the Materials, I hereby irrevocably assign to ACLU all worldwide rights, including copyright;
- (5) that I will not receive any consideration from the ACLU for use of my Image or the Materials and acknowledge that neither the ACLU nor any of its affiliates, licensees or assigns has any obligation to use the Materials in any manner;
- (6) that ACLU (and its affiliates, licensees, and assigns) will rely on this release, that I may not revoke it; and
- (7) that this Release (A) contains all of the terms and supersedes all other understandings between the ACLU and me regarding its subject matter and it may be amended only by a written document signed by the ACLU and me, and (B) is governed by the laws of New York State, without regard to its conflicts of law principles.

NOTE: If you are a California resident, you agree to the following: You expressly waive all rights and benefit that you may have under California Civil Code Section 1542 which states: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor. For other persons appearing in the photograph: I have read the foregoing and fully understand the contents hereof. I hereby consent to the statements in sections 2 through 7.

Signature: _____ Date: _____

For participants under 18: I, _____ represent that I am the [parent/legal guardian] of the above named individual. I have read the foregoing and fully understand the contents hereof. I hereby consent to the foregoing on his/her behalf.

Signature: _____ Date: _____

Disclaimer

This form is not a solicitation or an offer by the ACLU of Nebraska to represent you. We cannot promise you that the information you provide will lead to any specific action on the part of the ACLU of Nebraska.

If you fill out this complaint form, you agree that the ACLU of Nebraska or the national American Civil Liberties Union may use the information you give us, as long as we don't include your name or email address for one or more of the following purposes: 1) legislative testimony; 2) litigation; 3) contacting a city, state or federal agency; or 4) telling your story to the public, including the media. If the ACLU of Nebraska or the American Civil Liberties Union wants to identify you, we will contact you prior to doing so.

We will keep your name and email confidential unless you give us permission to use it or unless we are ordered to turn it over by a court, (although we will attempt to prevent any disclosure).

BOND ASSIGNMENT
ASIGNACION DE FIANZA

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA
EN LA CORTE DEL CONDADO DE LANCASTER, NEBRASKA

STATE OF NEBRASKA
ESTADO DE NEBRASKA
Plaintiff
Demandante

vs.

Defendant
Demandado

Case No. _____

BOND ASSIGNMENT
ASIGNACION DE FIANZA

I hereby assign the proceeds of the bond to another entity as follows:

Yo asigno los fondos de la fianza a la siguiente entidad:

Name/Nombre: ACLU of Nebraska Foundation
Address/Direccion: 134 South 13th Street, Ste. #1010
Lincoln, NE 68508

Signature/Firma

Date/Fecha

Name (Defendant/Assignee)/Nombre (Demandado/Beneficiario)

Street Address/P.O. Box/Direccion/P.O. Box

City/State/Zip Code/Ciudad/Estado/Codigo Postal

Phone/Telefono

E-mail Address/Correo electronico

Defendant's (Your) Name
Nombre del Demandado (Usted)

Address
Dirección

Phone Number
Número de teléfono

Email
Correo electrónico

Mi deuda mensual actual consiste de:

- a. Rent/Renta.....\$ _____
- b. Utilities (electricity, gas, water, etc.) /Servicios públicos (electricidad, gas, agua, etc.).....\$ _____
- c. Food/Comida.....\$ _____
- d. Automobile loan payments/Pagos de préstamo del automóvil.....\$ _____
Balance of loan/Saldo del préstamo: \$ _____
- e. Clothing and other bills/Ropa y otras deudas.....\$ _____
- f. Court-ordered child support/Manutención de menor.....\$ _____

4. My monthly sources of income are as follows:

Mis ingresos mensuales son los siguientes:

- a. Income from all government assistance programs.....\$ _____
Ingreso de programas de asistencia gubernamentales
- b. Other (specify) /Otro (especificar) _____ \$ _____

Dated this ____ day of _____, 2017.
Con fecha del ____ día de _____, 2017.

I hereby declare the above information is true and correct.
Por lo presente declare que la información antedicha es verdadera y correcta.

Defendant (Your) Signature
Firma del Demandado (Usted)

Defendant's (Your) Name
Nombre del Demandado (Usted)

Address
Dirección

Phone Number
Número de teléfono

Email
Correo electrónico
