

**The New Jersey
Social Justice
Commission**

Memo

To: New Jersey Senate President Nicholas Scutari

From: Carol Cuadrado, Chair

cc: The New Jersey Social Justice Commission

Date: April 23, 2023

Re: Criminal Justice Reforms Related to Fines and Fees

In an effort to promote racial and social justice and effectuate rational, positive system change through legislation and regulatory reform, we appeal to you to analyze and consider potential recommendations for a more effective criminal justice policy reform.

As advocates for fairness and equality, we write to express our growing concern for the excessive increase in the fines and fees associated with the criminal justice system, which disproportionately affect low-income defendants that come in contact with the courts. In recent decades, these fines and fees have increased as a result of “tough on crime” policies signed into law across the U.S., as well as to fund operational costs in criminal justice agencies. While exploring the effectiveness or lack thereof, data-driven failures, and unfortunate consequences of these policies, we would like to recommend that through legislation you work toward changing a discriminatory practice that predominantly affects members of the minority community, mainly Blacks and Hispanics.

As you are aware, fines are imposed as a form of monetary punishment for infractions, misdemeanors, or felonies. They are intended to deter crime, punish offenders, and compensate victims for losses. Fees, on the other hand, are payments for court activities, supervision, or incarceration charged to defendants determined guilty. Fee collections are intended to support operational costs in the criminal justice system and may also be used to compensate victims for losses. Fees may also have a punitive and deterrent purpose.

Formerly, the operational cost of the criminal justice system was funded by the state and federal government, but with budget cuts to the criminal justice agencies and with economic downturns, these excessive fines and fees known as the “Legal Financial Obligations (LFO’s) have increasingly been used to fund the system. Some stakeholders believe that taxpayers should not be responsible for funding the criminal justice system.

As states form commissions to reform the criminal justice system and to explore ways of reducing crime and mass incarceration, it has become increasingly apparent that these excessive fines and fees have failed to prevent crime, reform, and rehabilitate. On the contrary, they force individuals and families into poverty and contribute to recidivism when a defendant is unable to pay the fines and fees associated with the offense(s). Other challenges associated with non-payment are limited employment opportunities and transportation limitations. Many defendants have to choose between paying for rent and food or paying the criminal justice system to avoid incarceration for lack of payment. Fines and fees can lead to civil judgments, driver’s license suspensions, and other long-term consequences that adversely affect people’s credit, leaving them unable to obtain student loans or mortgages and altering the course of their lives. Research also shows that it cost the judicial system more money to contract with third-party agencies to collect the debt.

The recent pandemic caused by the COVID-19 virus also helped to raise awareness and to highlight the need to revise the policies guiding the increase in fines and fees in the criminal justice system. They are known to cause racial disparities. Wealthy or middle-class individuals and families are able to afford payments or payment plans, while those living in poverty who are disproportionately from communities of color, cannot. As a result, those that pay are more quickly and easily extricated from the legal system, while people of color face continued involvement and the long-term consequences of non-payment, perpetuating their systemic involvement. Enforcement efforts to collect a payment, nonetheless increase the barriers to successful reentry, after an offense. We have found that in some jurisdictions, approximately 20 percent of all jail inmates were incarcerated for failure to pay criminal justice debts.

While fines and fees serve different purposes in the criminal justice system, research also tells us that they are more used as an alternative to incarceration and for less serious crimes. For all of these reasons, which show significant racial disparities affecting communities of color, our organization would like to respectfully request that as a policymaker you consider legislation that removes discriminatory policies from the criminal justice system and implement one that is fairer and more just. We highly recommend amending the current law, which dictates that fines and fees are set based on statutory or judicial discretion depending on the offense. Fixed payments for a given offense create regressive penalties, or penalties more punitive for poorer individuals than for wealthier individuals. This would be a significant step toward correcting the substantial harm caused by the imposition of fines and fees to those with no income or a fixed source of revenue, and it shall serve to help those impacted to achieve financial independence and stability.