DEBTORS' PRISON FOR KIDS?

The High Cost of Fines and Fees in the Juvenile Justice System

Authored by Jessica Feierman
with Naomi Goldstein, Emily Haney-Caron, Jaymes Fairfax Columbo

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Juvenile Law Center
advancing the rights and well-being of children in jeopardy

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A Publication of Juvenile Law Center

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Juvenile Law Center is the oldest public interest law firm for children in the United States. Juvenile Law Center uses an array of legal strategies and policy advocacy to promote fairness, prevent harm, ensure access to appropriate services, and create opportunities for success for youth who come into contact with the child welfare and justice systems.

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INTRODUCTION

Across the country, youth and their families, including many in poverty, face monetary charges for a young person's involvement in the juvenile justice system. Too often, the inability to pay pushes the young person deeper into the juvenile justice system and exacerbates the family's economic distress. This report examines how and when youth and families face financial obligations, briefly looks at the economic consequences, and considers the legal consequences for failure to pay.

In Part A, the report provides an overview of the problem: the widespread imposition of costs, fines, fees, and restitution on youth; the significant legal consequences for failure to pay, including further juvenile justice system involvement and incarceration; the financial stress on youth and their families; the unique challenges young people face in attempting to pay fines because they are too young to work, must attend school, or can't find employment even if age-eligible; and the exacerbation of racial and economic disparities in the juvenile justice system resulting from such financial obligations.

In Part B, the report looks in detail at eight types of costs imposed on youth and families, including: probation/supervision, informal adjustment/diversion, evaluation/testing, cost of care, court costs, fines, expungement costs, and restitution. For each type of cost, we identify which states impose such costs by statutes, provide initial data on how widespread the practice is based on survey responses, and when possible, further illustrate the issue with stories from youth or families.

In Part C, the report documents the harms that costs may impose on youth living in poverty. For example, youth who can't pay for alternative programs may enter the juvenile justice system when a wealthier peer would not; youth may be charged with violations of probation for failure to pay costs; youth may be unable to expunge a juvenile record because they owe money to the court; and youth or their parents may be held in contempt, incarcerated, or have driver's licenses suspended for failure to pay. Court costs and fees can also cause families to go into debt and strain family relationships. In other words, children from families living in poverty may face harsher consequences than their more affluent peers, be deprived of diversion programs and rehabilitation options, and be pushed deeper into the juvenile justice system just because they cannot afford to pay court costs, fines, and fees.

In a companion publication, authored by criminologists Alex Piquero and Wesley Jennings, we present a case study, based upon data collected from Allegheny County, Pennsylvania, which specifically examines the inter-relatedness of these court-imposed financial obligations, recidivism, and key demographic characteristics such as race.[1]

While this report focuses on a problem—the imposition of costs on youth and families who cannot afford to pay and its relationship to recidivism—it also highlights solutions. Within each section, the publication identifies promising practices, as well as legislative remedies that could be replicated across the country. We also highlight jurisdictions which recently stopped imposing court costs, fees, and fines in the juvenile system.

Youth who can't pay for alternative programs may enter the juvenile justice system when a wealthier peer would not.

A. OVERVIEW

Significant research establishes that court costs, fees, and fines exacerbate poverty for individuals in the adult criminal justice system and their families.[2] The United States Department of Justice, for example, has recognized that

> the harm caused by unlawful practices [imposing costs without adequate due process] … can be profound. Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape. Furthermore, in addition to being unlawful, to the extent that these practices are geared not toward addressing public safety, but rather toward raising revenue, they can cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.[3]

Little is known, however, about these practices in the juvenile justice system nationally. To address this gap, Juvenile Law Center reviewed statutes in all 50 states and the District of Columbia to assess the legal framework for financial obligations placed on youth in the juvenile justice system and their families. We also conducted a national survey of lawyers, other professionals, adults with previous juvenile justice involvement, and families to collect information about local practices.[4] We received responses from 183 individuals in 41 states; in each of these states, respondents reported on the imposition of costs, fines, fees or restitution, and harms to youth or families as a result. In addition, we engaged in conversations with attorneys and young adults who had experiences with the juvenile justice system to further understand how cost of justice issues play out in practice. Again, we heard that costs were regularly imposed and that they posed significant problems for youth and families.

We conclude that the imposition of costs, fees, and fines is widespread and poses significant problems for youth and their families. Approximately one million youth appear in juvenile court each year.[5] In almost every state and the District of Columbia, youth may be charged for multiple court-related costs, fines, and fees. Across the country, the inability to make these payments subjects youth and families to possible incarceration, suspension of driver's licenses, an inability to expunge or seal records, and economic and social stress, among other consequences.

In 1899, the Illinois legislature established the first separate juvenile court system.[6] The new system was designed to recognize that youth are different from adults, and to respond with a focus on rehabilitation and child development.[7] Over the course of the next century, the idea of a separate juvenile system became firmly entrenched nationally.[8] While state juvenile justice systems have changed over time, they still maintain core goals of supporting youth, assisting rehabilitation, developing youth competency, and improving outcomes.[9] Juvenile court fines, fees, and costs risk undermining the core goal of the juvenile court system by increasing wealth disparities in the system, pushing youth deeper into the system based on inability to pay, penalizing youth well into adulthood, and heightening family stress.

Policymakers and professionals aiming to ensure that the juvenile justice system is structured to support positive outcomes for youth and families should take a hard look at the consequences of monetary sanctions on youth. They should safeguard the due process rights of youth and families and ensure that the juvenile justice system, designed primarily to support and rehabilitate, does not instead impose undue harm on youth and their families.

1. State Laws

This report provides an analysis of statutes in 50 states and the District of Columbia which impose myriad financial obligations on youth and families when young people enter the juvenile justice system. Our analysis is based on statutory provisions contained in state juvenile justice or children's codes only, and does not identify judicial interpretations of these statutes, rules of procedure, or statutes found outside the state's juvenile or children's code. Our research reveals that across the country, courts may require youth, parents,[10] or both to pay:

- court expenses (including witness fees, transportation, cost of prosecution, cost of court operations);
- fees for a public defender, sometimes even after a determination of indigence;
- costs for evaluations and testing;
- probation supervision fees and costs;
- fees and costs for participation in diversion programs (designed to keep youth out of the juvenile justice system);
- child support to the state;
- treatment costs, including mental health treatment and rehabilitative programming;
- health care costs;
- the cost of GPS monitoring;
- cost of care generally; and
- fines.

Many of these costs, including court expenses, public defender fees, and costs for evaluations and testing, may be imposed before the court has made a delinquency determination. Even if the individual is not adjudicated, the youth or family does not recoup the money paid.

In addition, every state juvenile justice system allows courts to impose restitution on youth or their parents or guardians. Because restitution is designed to make the victim whole rather than to fund courts or agencies, this report considers it separately from other costs, fines, and fees. However, restitution is part of the larger story about how poverty can push young people deeper into the juvenile justice system. As a result, the publication considers the structure and impact of restitution policies and provides examples of promising practices to support victims' rights without sacrificing youth rehabilitation.

In almost every state, youth and families are likely to pay not just one, but multiple costs for juvenile court involvement. As shown in Appendix A, most states have statutory provisions permitting the imposition of costs at numerous points in the delinquency system. In Arkansas, Kansas, Michigan, Montana, Oregon, Texas, and Washington, for example, statutes permit at least seven different categories of costs to be imposed on youth or families.

Even within one category of cost, an individual may be required to make multiple payments for different purposes. In some states, for example, where youth or families must pay for the "cost of care," a close look at the statutes reveals that they must pay for the cost of placement *and* the cost of programming or treatment. Indeed, there are often numerous "cost of care" statutes in any state.[11]

In almost every state, youth and families are likely to pay not just one, but multiple costs for juvenile court involvement.

Youth and families may also face additional costs not reflected in our detailed state-by-state analysis. For example, in a number of states, youth or families are charged costs or fees for public defenders, or are asked to reimburse the cost of counsel, even if they have been determined indigent. An analysis of these charges will be included in a forthcoming publication. In addition, survey respondents noted that the costs of system involvement itself—including transportation costs and the cost of phone calls for youth in placement—created serious financial burdens for low-income families.

2. State Practices

Because costs, fines, and fees are often established at the local level, we surveyed public defenders, other professionals, family members with juvenile justice-involved youth, and adults with previous involvement in the juvenile justice system to gather information about the prevalence of monetary sanctions and their impact on youth and families.

Although further research is needed, our survey suggests that costs, fines, and fees are often imposed, even in the absence of relevant statutes. In each section, we have highlighted states where survey respondents reported that the practice exists even though our legal research makes clear there is no statutory provision authorizing it.

In addition, our research suggests that in the many instances where costs, fines, or fees are discretionary under state law, they are frequently imposed on youth or families. One survey respondent, for example, reported that, even though the state statute requires judges to assess whether individuals are able to pay particular costs, in practice all families must pay regardless of their financial circumstances.

Conversations with advocates indicate that the county or municipality, rather than the state, often determines whether to impose a financial obligation. Since this study focused on state statutes and did not examine local court or agency rules, the burdensome cumulative costs presented in this report likely underestimate the extent of costs charged to youth and families.

"Some of these families are teetering on the brink [financially] when their children enter the juvenile justice system.... The added costs push them further."

3. The Burden of Legal Financial Obligations

Costs, fines, fees, and restitution may be burdensome individually; when considered cumulatively, they can be overwhelming to already financially stressed youth and families. Research on adults has shown that monetary sanctions in the criminal justice system exacerbate poverty for indigent adults and their families[12] and interfere with defendants' capacity to find permanent housing, manage drug or alcohol addictions, and maintain strong social bonds.[13] For young people, the consequences may be as harmful, if not more so.

Juvenile justice-related cost can be highly burdensome. One report in Alameda County, California, for example, concluded that the total fees to families for juvenile involvement, including investigation, GPS monitoring, placement, and public defender fees, added up to approximately $2,000 for an average case.[14] For young people incarcerated for extended periods of time, the costs can be significantly higher.[15] For a single-parent family making federal minimum wage, even the average payment constitutes approximately two months' salary.[16] While public assistance levels vary by state, in any state such payments would constitute several months of public benefits.[17]

Even seemingly minimal payments may require families to choose between buying basic necessities, such as groceries, and paying fees. Survey respondents reported that costs and fees cause families difficulty "surviving on a day to day basis" and that "[s]ome of these families are teetering on the brink [financially] when their children enter the juvenile justice system and the added costs push them further. I have seen single moms, which describes many of these cases, have difficulty scraping together 10 to 15 dollars out of their monthly budget

to pay on these fees, fines, and costs." Even that low cost "means the difference to some [families] between eating for a day or two." Another respondent indicated that even a single type of cost (e.g., cost for informal adjustment) "results in families not having funds for rent, food, groceries..."

Another survey respondent indicated that the costs imposed for juvenile justice involvement impact youths' siblings: "It can determine if another child in the family goes to college or not. Gets school clothes or not. Get[s] to do anything else other children get to do because money is being spent on the juvenile system."

The financial burden also undermines family relationships. One survey respondent explained that:

> The debt in effect creates a rift between parents and their children. I... spoke to a family where a grandmother had taken custody of her grandson but when facing these insurmountable fees, she was told (by a county employee) that the only way she could avoid paying was to hand over custody. Given her limited income, she has seriously considered giving up custody of her grandson, which would make him a ward of the state....

For young people, the consequences of costs and fines can be particularly devastating. Youth and families who cannot pay fees face criminal contempt, civil judgments that follow them into adulthood, probation violations, additional fees, incarceration, property liens, and ineligibility for expungement.

It is particularly problematic that youth who would otherwise remain at home with their families may be incarcerated because they can't afford fees even if they pose no public safety risk and have no need for services.[18] This, in turn, puts youth at risk of lasting harm. Youth facilities aren't safe, with high rates of physical[19] and sexual violence.[20] Youth in facilities are typically subjected to correctional practices that may be uniquely traumatizing to youth, including strip searches, restraints, and solitary confinement.[21] Youth placed in facilities tend to fall further behind in school and often drop out upon reentry into their communities.[22] Placement as a juvenile also increases a youth's chances of reoffending and future incarceration as an adult.[23] Ironically, juvenile justice placement is itself highly expensive[24] – and often the state places still further financial burdens on youth and families by charging them for the cost of placement or care.[25]

Youth who would otherwise remain at home with their families may be incarcerated because they can't afford fees.

Even in the absence of incarceration, costs and fees undermine the juvenile justice system's rehabilitative goals. In High Pain, No Gain, a recent report on juvenile fees and costs in Alameda County, California, the authors quote probation officers in more than one California county recognizing that the stress and strain of fees may hamper efforts to support positive outcomes for youth and families.[26] In our companion criminology study, criminologists Alex Piquero and Wesley Jennings demonstrate that costs and fees, and the amount of costs and fees owed, significantly increase the likelihood of recidivism.[27]

Not surprisingly, many youth simply have no way to obtain the money to pay costs and fines. Some youth in the system are not old enough to work at all, or at least cannot work full time under state and federal law,[28] and those who are old enough may have unique difficulty finding employment as significant numbers of teenagers are shut out of the labor market.[29] This is particularly true of youth from families living in poverty, who tend to have more difficulty finding employment than their more affluent peers.[30]

Ensuring opportunities to work, however—even if feasible—wouldn't wholly solve the problem. Pushing youth to work too much, too soon may lead to long-term negative consequences, including lower grades and increased school drop-out rates.[31] Although youth with higher economic status may be more likely to have jobs, those from more disadvantaged backgrounds tend to work longer hours.[32] Financial obligations that push young people into such work experiences may therefore further undercut the juvenile justice system's rehabilitative goals.

Costs, fines, fees, and restitution also exacerbate racial disparities in the juvenile justice system.

Financial obligations in the juvenile system also exacerbate the system's existing economic disparity. Children from families in poverty are over-represented in the juvenile justice system. Multiple factors contribute to these disparities, including unequal access to quality counsel, a "needs-based delinquency system" that allows children with access to private services to avoid justice system involvement entirely, high rates of crossover youth entering the juvenile justice system from the child welfare system, and disproportionate entry into the system by youth in highly policed schools and neighborhoods.[33] When an inability to pay deprives a young person of the opportunity to be diverted from the juvenile justice system, is considered a violation of probation, or otherwise results in heightened system involvement, it intensifies economic inequalities in the system. Juvenile costs and fees lead to inherently unequal treatment for youth in poverty.

Costs, fines, fees, and restitution also exacerbate racial disparities in the juvenile justice system. A recent Sentencing Project report shows that while the most stark racial disparities in the juvenile justice system arise in the context of arrest, such disparities are also evident at multiple decision points in the delinquency system, including diversion (away from formal court processing), detention (prior to hearing), probation, and commitment to placement.[34] These disparities persist despite similar offending rates among youth of color and white youth for most common juvenile offenses.[35] In our companion publication, criminologists Alex Piquero and Wesley Jennings present a study showing that youth of color in Allegheny County, Pennsylvania were more likely to have costs or fees owed after case closing, which, in turn, was related to higher recidivism rates, even after controlling for a host of other demographics and case characteristics.[36] Fee structures that push young people deeper into the system for failure to pay may contribute to racial disparities in the juvenile justice system nationally.

Problematic policies on costs, fees, and fines create, in some instances, modern-day debtors' prisons. As described in Part C, some state laws explicitly establish that youth or families may be incarcerated for failure to pay. Others establish that youth who fail to pay may have probation revoked, be turned away from diversion programs, or be held in contempt of court. Still other states revoke or suspend the driver's licenses of youth or parents. As one survey respondent explained, such suspensions "result in financial hardships to families and youth during periods of suspension as well as in costs associated with restoration privileges." We explore below how the imposition of such serious penalties—including a loss of liberty—for failing to pay costs, fines, and fees raises serious constitutional questions.

4. Changing the Story

If costs, fines, and fees cause harm to youth and families, what are the alternatives? A few jurisdictions have already taken steps to make their juvenile court systems more equitable. In Alameda County, California, a report examined the fiscal impact of court costs and fees and concluded that the county garners minimal benefit from fees. Although the county collects approximately $400,000 annually from families, it expends approximately $250,000 in collections, in addition to county personnel time spent on administration of fees.[37] After learning of the real harms to families and the minimal or negligible financial benefit, the county repealed the policy of imposing fees and costs in the juvenile justice system.[38] Other counties in California have also limited reliance on costs, fines, and fees.[39]

In Washington State, the legislature passed the Year Act, which eliminates juvenile diversion fees, juvenile court costs and appellate costs, collection fees for juvenile financial obligations, adjudication fees, and certain fines. The bill also permits youth to petition the court for modification or relief from legal financial obligations and directs the court to consider such factors as ability to pay, other debts, and restitution owed. In addition, it gives judges the discretion to consider a youth's ability to pay restitution and allows young people to have their juvenile records sealed if they have made a good faith opportunity to pay restitution.[40]

Counties and states across the country should consider a similar approach—eliminating harmful costs, fines, and fees, and ensuring that any orders of restitution are reasonable and effectively balance the victim's need to be made whole with the financial reality of youth and their families. For some states, the first step will be a fiscal analysis, like the one done in Alameda, to assess what kind of alternate revenue sources will be needed. Ultimately, however, state and local policymakers should establish more sustainable and effective models for funding court systems instead of attempting to get "blood from a turnip," as one of our survey respondents described it, by imposing costs on youth and families who just can't afford to pay.

B. TYPES OF LEGAL FINANCIAL OBLIGATIONS

In each section below, we provide the number of states with statutes authorizing or requiring such costs to be imposed. We also report on the number of states with survey respondents reporting youth or families making such payments. Because costs and fees can be imposed as a matter of practice, these survey responses sometimes identify costs imposed in states with no relevant statute.

1. Fees for Probation or Supervision

- **Statutes:** 20 states have statutes linking payment to probation or supervision. (See Table 1)
- **Practice:** Survey respondents in 18 states reported youth or families making such payments.[41]

Youth in the juvenile justice system or their families are often required to pay a cost or fee for probation or other supervision. In most jurisdictions, parents or youth are required to pay fees for the cost of supervision. In a small number of jurisdictions, they may instead be forced to put up a surety and then lose the money if the young person violates the terms of probation.[42]

These costs are often assessed monthly,[43] and failing to pay the fee each month can be treated like any other probation violation and constitute grounds for revocation of probation.[44] In addition, youth may be required to pay restitution, court costs, or other fees as a condition of probation.[45] Such additional costs are not reflected in this chart. As a result, youth who cannot meet the financial obligations imposed by probation fees or supervision costs risk being pushed further into the juvenile justice system, ultimately being placed outside the home when they otherwise would not have been. Of survey respondents who reported that youth or families were charged for probation, 62% reported that difficulty paying caused not only heightened juvenile justice system involvement, but also more frequent court contact, family debt, driver's license issues, and family stress and strain.

Among attorneys and other professionals surveyed, respondents in seven states reported that failure to pay probation costs can result in juvenile justice placement. As one survey respondent explained, if a young person can't afford the treatment ordered while he or she is on probation, "the juvenile is often charged with a probation violation, which results in a new sentence even though it's not the fault of the juvenile." Another noted that failure to pay could extend a youth's probation, creating a risk of additional probation violations that otherwise would not have occurred.

This extremely harsh consequence may create impossible choices for parents; one survey respondent (from a state in which failure to pay can result in probation revocation) reported, "I have seen families use their food budget to pay these fees." Accordingly, the best practice in this area is to not charge parents or children for probation or cost of supervision. In jurisdictions that persist in charging supervision fees, inability to pay should not be considered a probation violation, and failure to pay should never result in the youth being sent to placement.

TABLE 1: STATUTES ON PROBATION OR SUPERVISION FEES OR COSTS

STATUTES IMPOSING PROBATION OR SUPERVISION FEES OR COSTS ON YOUTH		
STATUTE	**# OF STATES**	**STATES**
Mandatory fees for probation	3	Colorado (37% or greater surcharge on fines imposed), Illinois, Massachusetts (minimum state costs as a condition of probation supervision)
Judicial determination*	10	Arkansas (monthly fee up to $20), California (cost of probation supervision), Georgia (initial fee of $10-200 and monthly fee of $2-30 for all youth under court's supervision), Indiana (initial fee of $25-100 and monthly fee of $10-25), Louisiana (monthly supervision fee of $10-100), Ohio (reimbursement of actual costs), Oregon (supervision fee), Oklahoma (up to $25/month), Texas (up to $15/month, court may waive for inability to pay), Washington (probation bond, with $10 nonrefundable)

STATUTES IMPOSING PROBATION OR SUPERVISION FEES OR COSTS ON PARENTS		
STATUTE	**# OF STATES**	**STATES**
Mandatory fees for probation	4	Arizona (monthly fee), Idaho (monetary fee of $1,000 for each breach of probation contract), Indiana (parent must pay for supervision costs), Kansas (parent is liable for cost of providing youth with probation services)
Judicial determination	14	California (cost of probation supervision), Connecticut (cost of supervision for youth on probation, including monthly fee), Florida ($1/day supervision fee for youth on probation or in nonsecure detention, waived or reduced for financial hardship), Georgia (initial fee of $10- 200 and monthly fee of $2-30 for all youth under court's supervision), Illinois (up to $50/month), Indiana (initial fee of $25-100 and monthly fee of $10-25), Kentucky (surety of up to $500 if parent's failure to control child was proximate cause of delinquency), Louisiana (monthly supervision fee of $10-100), Montana (as condition of consent agreement), North Carolina (fee for probation supervision), Oklahoma (up to $25/month), Oregon (supervision fee), Texas (up to $15/month, court may waive for inability to pay), Washington (probation bond, with $10 nonrefundable)

*Throughout this report, we use the category "judicial determination" to refer to a statute that is discretionary, presumptive, or mandates payment only if individual is financially able.

2. Fees for Informal Adjustment/Diversion

- **Statutes:** 22 states have statutes on costs or payment at informal adjustment or diversion. (See Table 2)
- **Practice:** Survey respondents in 26 states reported youth or families making such payments.[46]

Research has shown that when young people are diverted out of the juvenile justice system and into effective diversion programs or informal adjustment programs, they have better outcomes and are less likely to recidivate than their peers who are formally processed.[47] Diversion also allows young people to avoid the stigma of the juvenile justice system, reduces costs, and improves access to treatment.[48]

In a significant number of states, youth or their guardians are charged a fee for the youth to be diverted away from formal processing. This may be a one-time fee[49] or may be recurring, with a monthly charge until the informal adjustment or diversion conditions have been completed.[50] Diversion fees are often imposed as a matter of practice; in 14 states with no relevant statute, survey respondents reported that youth or families are charged for diversion.[51]

Youth in poverty…may be incarcerated while those able to pay benefit from community-based treatment.

Fees for diversion or informal adjustment function as a gatekeeping mechanism, leading youth in poverty into formal processing, while youth who can afford the fees remain in the community and avoid further system involvement. Youth may be required to pay a fee to participate in a program, or failure to pay may constitute a violation of the terms of the informal adjustment agreement that results in formal processing of the case.[52] Additionally, in some states, parents or youth may be required to comply with restitution or make other payments as a condition of diversion.[53] These additional costs are not included in our tally of diversion fees. Thus, youth in poverty may end up being processed formally instead of accessing diversion programs; they may be incarcerated while those able to pay benefit from community-based treatment.

Survey respondents in 14 states indicated that inability to pay for diversion sometimes resulted in a formal petition being filed, and respondents in 6 states reported that it resulted in youth being put in juvenile justice placements. In two additional states, respondents noted that youth who cannot afford to pay for diversion cannot participate in the programs. One survey respondent explained that "[d]iversion usually requires a theft offender class, substance abuse treatment, etc., which cost money that our low-income client population cannot afford. Diversion becomes more of a privilege for those who are privileged." Additionally, at least one survey respondent noted that paying for diversion can result in families not having funds for basic necessities such as rent and groceries.

Of survey respondents who reported that youth or families were charged for diversion, 60% reported consequences flowing from difficulty paying. In addition to facing formal juvenile justice system processing, respondents reported a variety of other consequences, including more frequent court visits, longer placement times, and conversion of the payment into a civil judgment.

Typically, diversion fees are charged in tandem with restitution (required as part of diversion in some states)[54] and costs of counseling or other rehabilitative programming.[55] As a result, even when diversion fees are minimal, the true costs of being diverted may be quite high for any one youth, potentially exceeding what the family could pay.

The best practice is to not charge a fee at all for participation in diversion programs. In jurisdictions that do charge a fee for diversion, fees should be based on a determination of ability to pay,[56] with clear guidelines to judges making such a determination; youth should not be denied access to diversion because they cannot pay;[57] and failure to pay should never be grounds for revocation of an informal adjustment agreement. As described in Part C, when youth face possible incarceration for failure to pay, due process protections must be put in place.

TABLE 2: STATUTES ON INFORMAL ADJUSTMENT OR DIVERSION FEES OR COSTS

STATUTES IMPOSING DIVERSION FEES OR COSTS ON YOUTH		
STATUTE	**# OF STATES**	**STATES**
Mandatory	4	Idaho (if county isn't insured), Illinois, Michigan, Nebraska
Judicial determination	15	Arkansas, Illinois, Indiana, Iowa, Louisiana, Mississippi, Nevada, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Washington, West Virginia (municipality or county has discretion to impose mandatory fee policy), Wisconsin

STATUTES IMPOSING DIVERSION FEES OR COSTS ON PARENTS		
STATUTE	**# OF STATES**	**STATES**
Mandatory	6	Indiana, Nebraska, New Hampshire, New Jersey, Oklahoma, Washington
Judicial determination	8	Arizona, Arkansas, Indiana, Montana, Nevada, Oklahoma, Pennsylvania, Wisconsin

3. Evaluation and Testing

- **Statutes:** 31 states have statutes on costs of evaluation or testing. (See Table 3)
- **Practice:** Survey respondents in 26 states reported youth or families making such payments.[58]

Although fees for exams or assessments—including mental health evaluations, drug and alcohol assessments, tests for sexually transmitted diseases, and DNA or blood tests—are not designed to be punitive, they place youth who cannot pay at risk of juvenile justice placement, as well as family strain and financial debt.

Of survey respondents who stated that youth or families had to pay for drug and alcohol testing or other testing, approximately 60% reported that such fees caused problems.[59] One survey respondent explained that "failure to obtain a mental health, offense specific evaluations ... can result in a failure to be given a bond...." This means that the youth "can't go home" but "has to remain in placement." In addition, failure to pay may constitute a violation of probation, leading the youth to be "resentenced through no fault of his own." Requiring youth or families to pay for these court-ordered evaluations adds to the existing financial burden from other costs, fines, and fees. Because these costs may create financial strain without serving any penological purpose, the better policy is to establish by statute that testing is paid for by the state or local entity.[60]

TABLE 3: STATUTES IMPOSING EVALUATION AND TESTING COSTS

STATUTES IMPOSING EVALUATION AND TESTING COSTS		
STATUTE	**# OF STATES**	**STATES***
Assessments, generally[61]	20	Alabama (mandatory for parents), Connecticut (parents), District of Columbia (parents), Hawaii (parents), Idaho (parents or youth), Iowa (parents), Louisiana (parents), Maine (parents), Mississippi (parents), Montana (parents), Nebraska (parents), New Hampshire (parents or youth – parent liable for parent's own evaluation, youth liable for youth's evaluation), North Carolina (parents), North Dakota (parents), Oregon (parents, for certain weapons possession charges, youth, for cost of evaluation for fitness to proceed), South Carolina (parents), Tennessee (parents), Virginia (county may seek reimbursement from parents), Wisconsin (parents), Wyoming (parents or youth)
Substance abuse evaluation or assessment	11	California (parents or youth), Indiana (mandatory for parents), Kansas (youth), Minnesota (youth, if determined to be a major traffic offender), Mississippi (parents), Nevada (parents or youth), New Hampshire (parents or youth – parent liable for parent's own evaluation, youth liable for youth's evaluation), Ohio (youth, if youth was adjudicated for a drug abuse offense), Washington (youth), Wyoming (parents)
DNA or blood tests	5	Arkansas (youth, for enumerated offenses), Michigan (mandatory for youth, if felony conviction), Oregon (parents or youth, for enumerated offenses), Texas (parents or youth), Utah (youth, for sex offenses)
HIV or STI test	4	Kansas (mandatory for youth if adjudicated for offense involving sexual act), New Jersey (youth if victim or other person suffered prick from needle if there is probable cause to believe that youth is an intravenous drug user, or there was contact involving likely transmission of bodily fluids), Oregon (parent or youth if act involves sexual act or transmission of bodily fluids), Wisconsin (parents)

*Statutes permit judicial discretion or allow judge to take into account ability to pay unless marked as mandatory.

4. Cost of Care

- **Statutes:** 47 states have statutes on cost of care, which can include the cost of child support, placement, programming, health care, and other support. (See Table 4)
- **Practice:** Survey respondents in 31 states reported youth and families paying for the cost of care.[62]

Almost all states charge parents for the care and support of youth involved with the juvenile justice system; a small but significant number place such charges on juveniles. Such charges may also occur at the local level: in 4 states without relevant statutes, survey responses indicated that youth or their families were paying for the cost of care. Cost of care charges include general funds for "expense and maintenance including food, clothing, shelter and supervision of the child,"[63] child support payments to the state,[64] charges for a child's custody,[65] detention,[66] confinement,[67] or placement in a residential facility.[68] Many states also have statutes specifically requiring the parent or child or both to pay specific costs related to the child's treatment; case management;[69] education programs;[70] tobacco, drug, and alcohol testing or programs;[71] and other program fees.[72] In addition, many states require youth or families to pay for a child's physical or mental health care while the child is in the custody of the juvenile justice system.[73]

Inability to pay for treatment can result in youth being deprived of treatment, held in violation of probation, or even facing extended periods of incarceration. Approximately half of respondents who reported such charges also stated that difficulty paying caused problems for youth and families.[74] One survey respondent explained that "if the family cannot pay for court-ordered treatment, and does not have insurance that can pay, sometimes the court-ordered treatment is simply not provided, leading to other complications in the child's behavior or increased seriousness of the child's condition."

A family's inability to pay for community-based treatment may force the youth to remain in placement longer. One survey respondent explained that youth remained in secure custody longer when the "family couldn't afford [the] cost of [the] treatment center" and the judge would not release youth until "appropriate treatment" was found. Another noted that inability to pay caused a "longer stay in detention because [the] family couldn't afford outpatient treatment."

The cost of medical treatment for families raises some unique challenges. While parents are responsible for medical care for children living with them at home, statutes imposing such costs on parents for youth in juvenile justice custody create different legal consequences, including contempt orders, for failure to pay.[75] Moreover, medication costs for families may be higher in detention than they would be in the community, leading to dangerous interruptions in medication. One survey respondent explained:

> Our juvenile placement facilities will NOT accept medication for the child when he is taken into detention. The family must bring prescription orders to the detention center, which then orders daily doses to be delivered from their own pharmacy, usually at a much higher cost than what the family was paying, and without insurance price reductions, and then those costs are billed back to the family. If the family does not have copies of the prescriptions, they have to either figure out how to obtain them or ask for the child to be reevaluated at the facility so that a new prescription can be obtained. In addition to the huge costs that are charged back to the family, this sometimes causes as much as a week's interruption in critical medications, which can create serious medical problems, especially for a child with asthma or diabetes. This

Inability to pay for treatment can result in youth being deprived of treatment, held in violation of probation, or even facing extended periods of incarceration.

issue is aggravated when the child is moved from one facility to another, as any extra prescriptions are thrown away rather than transferred with the child, and then the family is left with the challenge of getting medications properly set up at the next facility. Also, prescriptions are not kept between visits, so the problems are repeated with chronic offenders.

While statutes on health care costs for juvenile justice-involved youth typically impose liability on parents, at least two states also hold young people responsible for the costs of their own health care.[76]

Additionally, in a number of states, youth or families may be charged for multiple "costs of care," creating a particularly serious financial burden.[77]

The best practice is to improve coordination with health insurance whenever possible to avoid gaps in care and to eliminate any charges on parents for cost of care that cannot be covered by insurance. If such costs *are* imposed, however, state policy should ensure that a failure to pay does not result in a denial of treatment, a violation of probation, or incarceration.

TABLE 4: COSTS OF CARE

STATUTES IMPOSING COSTS OF CARE ON YOUTH		
TYPE OF COST	**# OF STATES**	**STATES**
Mandatory	3	California (substance abuse treatment upon reaching age 18), Iowa, Oklahoma
Judicial determination	14	Arizona, California, Colorado, Iowa, Idaho, Kansas, Michigan, Minnesota, Montana, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, Wisconsin

STATUTES IMPOSING COSTS OF CARE ON PARENTS		
TYPE OF COST	**# OF STATES**	**STATES**
Mandatory	12	Alabama, Alaska, Arizona, Arkansas, Connecticut, Indiana, Kentucky, Minnesota, Nevada, Ohio, Oklahoma, Virginia, Washington, Wisconsin
Judicial determination	44	Alaska (for parent's own treatment), Arizona, Arkansas, California, Connecticut, Colorado, Delaware (but only if the parent/guardian refuses to take custody of the child and the child enters detention), District of Columbia, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

5. Court Costs and Fees

- **Statutes:** 25 states have statutes on court costs and fees for juveniles. (See Table 5)
- **Practice:** Survey respondents in 28 states reported that youth or families were charged court costs or fees.[78]

Court costs and fees range from a designated amount, which may be quite limited,[79] to an obligation to cover a broad array of costs for service, notice, deposition, travel expenses, prosecution costs, and other legal expenses, which could create a financial burden of thousands of dollars.[80] In a few states, costs are not imposed at trial, but youth or parents must pay for any appellate costs,[81] which may have a chilling effect on appeals.

Because court costs and fees are not designed for punishment, restitution, or rehabilitation, they serve no penological function. However, as with other financial obligations, such costs place significant stress on youth and families. As described earlier, one survey respondent noted that debt for such fees created a "rift" between parents and children. Another explained that certain court costs are assessed to youth on every adjudication and that youth are required to pay in cash, not community service. As a result, "[p]robation is sometimes extended so that the [youth] can come up with the money.... This causes there to be even more monthly probation supervision fees, more court appearances and more lost work for parents." Of survey respondents who reported youth or families being charged court fees, 65% reported that difficulty paying had caused problems for youth or families, the most common of which were debt, additional court visits leading to missed work or school, and the youth's case remaining open longer than it would have. Nonetheless, a significant number of state statutes include either mandatory or discretionary court cost provisions.

Even minimal costs, arising from either statutory obligations or local practice, may place youth and families at risk of serious legal consequences for failure to pay. For example, Wisconsin requires youth to pay a victim and witness assistance surcharge of $20 when disposition is imposed; failure to pay this surcharge may result in suspension of the youth's driver's license for at least 30 days and up to 5 years.[82] In Indiana, the statute mandates families to pay all court costs;[83] failure to pay any costs or fees ordered by the court can trigger a finding of contempt and the entering of a judgment for the outstanding amount.[84] Even when costs are discretionary or established as a matter of local practice, they may be imposed on youth or families who cannot afford to pay.[85] For these reasons, best practice is not to impose court costs on youth or families. If states do impose such costs, they must also explicitly provide that youth cannot be denied access to certain programs or services because of an inability to pay costs or fees.[86]

TABLE 5: COURT COSTS AND FEES

STATUTES IMPOSING COURT COSTS AND FEES ON YOUTH

STATUTE	# OF STATES	STATES
Mandatory	5	Indiana (but may be assessed against parents), Kentucky (but may be assessed against parents), Michigan, Mississippi, Texas
Judicial determination	12	Arkansas, Delaware, Kansas, Maryland, Massachusetts (for certain appeals only), Montana, Ohio (but shall not be held in jail for failing to pay), Oregon, Pennsylvania, South Dakota, Wisconsin, Wyoming

STATUTES IMPOSING COURT COSTS AND FEES ON PARENTS

STATUTE	# OF STATES	STATES
Mandatory	3	Alabama, Indiana, Texas
Judicial determination	18	Arkansas, Georgia, Hawaii, Iowa, Kansas, Kentucky (unless parent is a victim of the offense), Maryland, Missouri, Montana, Nevada, New Mexico, Oregon, Pennsylvania, South Dakota, Tennessee, Wisconsin, Wyoming (witness fees, travel expenses, service of process, other costs)

6. Fines

- **Statutes:** 43 states have statutes designating fines for youth in the juvenile justice system or their parents. (See Table 6)
- **Practice:** Survey respondents in 29 states reported youth or families paying fines. [87]

The vast majority of states impose fines on youth in the system, a significant number impose such costs on parents when the parent has played some role in the child's delinquency,[88] and some impose costs on parents without a separate requirement of parental responsibility. Fines may be imposed only for designated offenses, such as truancy,[89] established as an alternative to incarceration,[90] or available as a general dispositional option.[91]

At first blush, imposing a fine seems like a logical alternative to removal of the young person from his or her family and community, subjecting a youth to incarceration, or requiring costly services. However, this approach only works if the law doesn't penalize young people for economic disadvantage. Given the significant link between poverty and justice system involvement,[92] imposing fines on this population is often highly problematic.

Even when fines are not mandated by statute, they may be treated as mandatory in practice. In Arkansas, for example, there is a discretionary fine of up to $500 for truancy. One individual who had been in the juvenile justice system there reported that he spent three months in a locked facility at age 13 because he couldn't afford the truancy fine. He appeared in court without a lawyer or a parent and was never asked about his capacity to pay or given the option of paying a reduced amount. He assumed he had to either pay the full fine or spend time in jail. He explained, "my mind was set to where I was just like forget it, I might as well just go ahead and do the time because I ain't got no money and I know the [financial] situation my mom is in. I ain't got no money so I might as well just go and sit it out." He didn't want his mother with him in the courtroom because "I didn't want her to see me the way I was looking. I didn't want her to see her son being in the situation he was in...."[93] Of survey respondents who reported the imposition of fines on youth or families, 70% stated that difficulty paying had exacerbated financial hardship, increased court contact resulting in missed school or work, or led to deeper juvenile justice system involvement.

The best practice is to eliminate fines entirely. States that do continue to charge fines should consider setting low caps on fines,[94] assessing fines only after a determination of ability pay, allowing youth to participate in community service in lieu of paying a fine,[95] and maintaining a focus on rehabilitation.[96] These approaches can mitigate the harsh consequences of imposing fines in the juvenile justice system.

TABLE 6: FINES

STATUTES IMPOSING FINES ON YOUTH		
STATUTE	**# OF STATES**	**STATES**
Mandatory	10	California (restitution fine – fine imposed when restitution imposed); Delaware (driving on a revoked license), Idaho (for violation of curfew), Michigan, Mississippi (for youth in work program), Nevada, Oklahoma, Rhode Island (for youth ages 16-18 who habitually spend time in poolrooms, bars, and houses of ill-repute), South Carolina (for youth misrepresenting age at theater), Wisconsin
Judicial determination	40	Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia (for traffic offenses), Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts (for traffic offenses), Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota (for specific vehicular offenses), Ohio, Oklahoma, Oregon (presumptive), Pennsylvania, South Carolina, South Dakota, Tennessee, Texas (for graffiti), Virginia, Washington, West Virginia, Wisconsin (forfeiture), Wyoming

STATUTES IMPOSING FINES ON PARENTS		
STATUTE	**# OF STATES**	**STATES**
Mandatory	2	Delaware, Nevada
Judicial determination	16	Alabama, Arizona, Arkansas, Massachusetts, Michigan, Mississippi, Nebraska (for child's absenteeism), Nevada (for fine imposed on child under 17), New Hampshire, Oklahoma, Oregon, Rhode Island, Tennessee, Texas (for graffiti), Virginia, Wisconsin

7. Expungement/Sealing

- **Statutes:** 11 states explicitly link payment to sealing or expungement by statute. (See Table 7)
- **Practice:** Survey respondents in 20 states reported payment requirements associated with sealing or expungement.[97]

Juvenile records have the potential to stymie a young person's path to economic independence by making it difficult for him or her to get into college, get a job, or find housing.[98] Juvenile records can also affect a young person's credit rating, further hampering the road to economic independence.[99] While many people assume that juvenile records are automatically sealed, expunged, or otherwise protected, that is generally not the case.[100] Rather, in most states, youth need to petition the court to seal or expunge their records. For the many youth who need an attorney's help with the complicated task of filing a petition, expungement may often be unaffordable.

A lack of funds makes it hard for young people to seal or expunge their juvenile records and move forward in their education, employment, and housing.

Even for young people proceeding without counsel, sealing and expungement can be costly. States may impose fees to file petitions seeking sealing or expungement, to obtain criminal history reports, and to effectuate sealing or expungement. This usually means that the youth must pay the fees before the request for sealing or expungement can be processed. Fees may be set by statute established through a statewide fee schedule[101] or established as a matter of local practice. Survey respondents in 12 states with no explicit legislation reported that youth were nevertheless required to pay a fee before they could have their records expunged. Such fees and costs dissuade many young people from seeking sealing or expungement, creating yet another barrier to employment and other opportunities.

Additionally, at least six states explicitly state that expungement will not be granted if the individual has remaining restitution or court costs.[102] The practice is likely much more widespread, as many other state statutes require that all conditions of probation be met, and payment of fees, fines, and restitution are common probation terms.[103] While requiring probation terms to be met prior to expungement may seem reasonable, conditioning expungement on obligations that fall unequally on youth based upon ability to pay allows poverty to pose a barrier to expungement.

Of survey respondents who reported that youth or families were charged for expungement, 57% reported that inability to pay had prevented the expungement of a juvenile record. A lack of funds makes it hard for young people to seal or expunge their juvenile records and move forward in their education, employment, and housing.

Best practice is to explicitly clarify by statute, as some states have done, that no fee will be associated with juvenile expungement[104] and that fees or restitution will not be considered in determining rehabilitation or eligibility for record sealing/expungement.[105] States should also consider establishing automatic sealing and expungement[106] so that youth are not dependent on counsel for filing.

TABLE 7: STATUTES LINKING EXPUNGEMENT AND SEALING TO PAYMENT

STATUTES IMPOSING PROBATION OR SUPERVISION FEES OR COSTS ON YOUTH		
STATUTE	**# OF STATES**	**STATES**
Expungement/Sealing only if previous fees are paid, filing fee is paid, or both	11	Arizona, Colorado, Delaware, Florida, Illinois, Kansas, Michigan, New Jersey, Oregon, Rhode Island, Utah

8. Restitution

- **Statutes:** All 50 states and the District of Columbia have statutes providing for juvenile restitution. (See Table 8)
- **Practice:** Survey respondents in all states reporting on this question confirmed that youth or families paid restitution charges.[107]

Every state juvenile code has a provision on restitution, including a few that mandate restitution payments.[108] A significant number of states place restitution obligations on parents in addition to youth.[109] Restitution may be imposed at various points in the juvenile justice system: as a condition of a diversion program designed to keep youth out of the juvenile justice system, as a probation condition, or as part of the child's disposition (the equivalent of a sentence in an adult case). Some states have multiple restitution statutes. For example, restitution may be a mandatory component of diversion programs, but optional at disposition; or it may be optional for some categories of offenses, but mandatory for others.

Although restitution can play an important role in holding juvenile offenders accountable and making their victims whole,[110] it can also undermine the rehabilitative purpose of the juvenile justice system. Youth living in poverty, in particular, may be driven deeper into the juvenile justice system for inability to pay restitution.

Of reporting respondents, 76% stated that difficulty paying restitution led to risk of more court visits, deeper contact with the juvenile justice system, debt, driver's license issues, or family stress and strain.

One survey respondent, for example, explained that "[t]he court has developed a special calendar to collect restitution. If the youth fails to appear and has not made a monthly payment a bench writ is issued for the youth's arrest." Moreover, even when a young person is not incarcerated, the financial obligation may create an emotional strain that undermines rehabilitation.

Restitution statutes should be carefully tailored to support positive outcomes for victims within the rehabilitative framework of the juvenile justice system. While further research is needed to assess the impact of varying restitution approaches, some promising approaches in state statutes that may make victims whole while still supporting youth rehabilitation include:

(1) Restitution determined at a judicial hearing with all parties.[111] All parties, including parents if they will be liable, are represented by counsel.

(2) Restitution imposed on parents only when they had a role in the delinquent act.[112]

(3) Work programs are available as an alternative to payment, and:

- don't interfere with a child's education;[113]
- are time limited;[114]
- are developmentally appropriate;[115]
- teach skills;[116]
- allow youth to keep some portion of their earnings; and[117]
- pay at least minimum wage.[118]

(4) As an alternative to a work program, probation may assist youth in finding a job, and the youth may then retain some portion of his or her wages.[119]

(5) Restitution offsets any civil liability so that youth or parents are not required to make payments both through the juvenile justice system and a civil court.[120]

(6) Failure to pay restitution does not lead to automatic probation revocation[121] or to incarceration.

(7) Restitution is capped at a reasonable amount tied to the youth's ability to pay, balancing the need to make the victim whole with the potential lasting burdens on youth and families in poverty.[122]

(8) Restitution has reasonable time limits in keeping with the rehabilitative goals of the juvenile justice system.[123]

TABLE 8: RESTITUTION

STATUTES IMPOSING RESTITUTION ON YOUTH

STATUTE	# OF STATES	STATES
Mandatory	9	Alaska, Arizona (full or partial, taking into account ability to pay), Colorado, Michigan (though parents may be ordered to pay if juvenile is unable and parents are able), Nevada, New Hampshire, Oregon, Texas, Washington
Judicial determination	47	Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

STATUTES IMPOSING RESTITUTION ON PARENTS

STATUTE	# OF STATES	STATES
Mandatory	4	Alaska, Michigan, Nebraska, Nevada
Judicial determination	30	Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kentucky, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, West Virginia, Wisconsin, Wyoming

C. PENALTIES AND CONSEQUENCES

When a failure to pay fines is punished with incarceration, it needlessly pushes youth deeper into the juvenile justice system. When failure to pay results in driver's license revocation or further fines, it pushes youth and families deeper into poverty. When it precludes young people from expunging their records, it poses an obstacle to education, employment, and self-sufficiency. Additionally, when youth or families are incarcerated or deprived of driver's licenses as a result, the penalties may not only be problematic, but also unconstitutional, as described below.

State statutes designate a wide variety of penalties and consequences for failure to pay costs, fines, fees, or restitution. Some statutes, for example, authorize courts to charge additional interest payments or fines on youth or families for previous nonpayment.[124] For youth without the money to make the initial payments, added interest can cause serious financial and emotional stress.

Many state statutes explicitly designate that a youth's payment for restitution or other costs, fines, and fees, can convert into a civil judgment,[125] allowing the financial obligation to extend even after the juvenile court no longer has jurisdiction over the case. Having a civil judgment itself can also put youth at risk of eviction, wage garnishment, a lien on property, and serious credit problems that may interfere with their ability to get loans for education or housing.[126] In a number of states, rather than transferring collection of the debt to a separate civil court, the juvenile court retains jurisdiction into the child's adulthood for the purpose of collecting payment for fines, fees, costs, or restitution.[127] The juvenile justice system was designed to give young people a chance to grow, mature, and move on from adolescent mistakes; these policies may burden youth well into adulthood and hinder their education and their employment opportunities.

Many statutes establish that youth can be incarcerated or otherwise face a loss of liberty when they fail to pay. The most problematic laws are those establishing incarceration as a consequence for nonpayment. Some states explicitly list incarceration as a consequence of failure to pay,[128] while others note that youth may be held in civil or criminal contempt[129] or may be found to have violated probation[130] for failure to make payments. Significant research has shown that juvenile justice placement, especially for low-level and non-violent offenses, makes youth more likely to recidivate than their peers.[131] Placing youth in facilities for failure to pay undermines the rehabilitative goal of the juvenile justice system while also imposing a serious financial burden on the state or county.[132] As discussed in the overview, these statutes exacerbate racial and economic disparities by increasing juvenile justice system involvement for youth of color living in poverty, while allowing their peers to avoid such contact.

Parents, too, face potential incarceration or further system involvement for failure to make payments. In a number of states, parents, like youth, may be found in contempt, either civil or criminal, for failure to pay.[133] Parents may also face increased financial liability through collection fees and interest accruing on payments,[134] as well as civil judgments for failure to pay.[135] Research has shown that strengthening families leads to better outcomes for youth involved with the juvenile justice system.[136] When parents face incarceration or mounting debt for failure to pay, they have even fewer resources to devote to educating, helping, and supporting their children.

In a few states, youth charged with certain tobacco-related offenses may be ineligible for a driver's license or may have a license suspended or revoked for failure to pay.[137] Such suspensions can make it difficult for youth or parents to get to school or work or to take care of their families.[138]

Finally, as described in the expungement section, an inability to pay off fees, fines, costs, and restitution may hinder a young person's ability to have a record expunged. This, too, can limit a youth's education and employment prospects.[139]

The juvenile justice system was designed to give young people a chance to grow, mature, and move on from adolescent mistakes; these policies may burden youth well into adulthood and hinder their education and their employment opportunities.

Our surveys for attorneys, professionals, and community members were designed to provide a preliminary assessment of the prevalence of certain consequences for failure to pay. In the 41 states with survey respondents, participants widely affirmed that youth experience these consequences:

- Case remained open longer (33 states[140])
- Youth was sent to juvenile justice placement (26 states)
- Youth remained in juvenile placement longer than he/she otherwise would have (26 states)
- Family took on debt (31 states)
- Additional court visits leading to missed school or missed work (34 states)
- Youth couldn't get records expunged (24 states)
- Civil judgment imposed (25 states)
- Formal petition filed for failure to pay diversion costs (15 states)

We also asked an open-ended question to gather information about additional consequences youth or families experience. Survey respondents echoed the concerns raised by statutes: they reported that youth or families faced extended probation; youth or parents had a driver's license suspended or revoked or were prevented from obtaining a license; youth were deprived of treatment; youth or parents were held in contempt; and youth faced arrest warrants. They also reported that families experienced added financial and familial stress; families were unable to visit youth in placement; and parents faced possible loss of custody or parental rights.

While it is beyond the scope of this publication to explore constitutional implications in detail, it is worth noting that the United States Supreme Court has made clear that an individual may not be incarcerated for nonpayment if the court does not first conduct an indigence determination and establish that the failure to pay was willful.[141] The Supreme Court has also held that courts must consider "alternative measures of punishment other than imprisonment"[142] for indigent defendants. Nonetheless, some states require neither willfulness nor capacity to pay in statute,[143] and only a few explicitly limit or prohibit incarceration for failure to pay.[144]

Additionally, the Supreme Court has held that "courts must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees."[145] This right is even more important for children, who lack both the developmental capacity and the legal knowledge to represent themselves.[146] Several states, such as Arizona and Wyoming, expressly provide access to counsel in contempt proceedings, and should serve as a model for state statutes that comply with constitutional standards;[147] the majority of states have no such provisions.

Further research is needed regarding the constitutional implications of imposing penalties on youth for failure to pay fines, fees, costs, and restitution. This research should take into account the United States Supreme Court's repeated admonition that constitutional protections must be calibrated to the unique developmental needs of adolescents.[148]

Policymakers and other professionals should consider these and other constitutional considerations as they develop policy and practice moving forward. Additionally, policies should ensure that youth are not pushed deeper into the juvenile justice system simply for failure to pay; such policies undermine both the rehabilitative goals of the juvenile justice system and the chances of youth becoming self-sufficient, productive adults. For youth still of school age and not old enough to work, financial burdens serve little or no benefit and impose serious stress, strain, and harm.

CONCLUSION

The juvenile justice system in each state is designed to help young people meet their potential, get back on track, and become productive members of their communities. Across the country, however, the imposition of costs, fines, fees, and restitution hinders these goals. For the many youth and families who cannot afford these payments, consequences can be dire, including recidivism (as shown by criminologists Piquero and Jennings), incarceration, and significant financial strain. As Piquero and Jennings also demonstrate, these policies have a racially disparate impact. This means that youth in poverty and youth of color may face harsher consequences and receive less rehabilitative treatment than their more affluent peers. Moreover, while further research is needed, existing studies suggest that court costs, fees, and fines have limited, if any, fiscal benefit to states and counties, given the difficulty in collecting from families in poverty and the high administrative costs in trying to do so.

It is time to re-focus the juvenile justice system on approaches that work: eliminating costs, fines, and fees placed on youth who are not yet old enough to enter into contracts or take on full-time work; prioritizing restitution payments that go directly to victims and are within the youth's ability to pay; and ensuring that restitution policies are developmentally appropriate by thoughtfully addressing the needs of victims in the context of the juvenile justice system's rehabilitative model. These approaches can hold youth accountable, ensure public safety, and support youth in realizing their own potential.

ENDNOTES

1 Piquero, A.R., & Jennings, W.G. (2016). *Juvenile System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*. Final Report submitted to the Juvenile Law Center, Philadelphia, PA.

2 *See, e.g.,* Alexes Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor (2016).

3 Letter from United States Department of Justice, Civil Rights Division, Office for Access to Justice (Mar. 14, 2016) at 3, *available at* https://www.justice.gov/crt/file/832461/download.

4 Available survey results are included throughout. For survey methodology, please see Appendix B. Because of the exploratory nature of the survey, the great variation in practices across counties, and the sample size, the results do not present a complete picture of costs and practices in any one state or even county. Instead, we present the number of states in which at least one respondent reported a particular cost. Additionally, we provide quotes from survey responses to illustrate the impact of costs and fees on individual children and families. It is impossible to draw a conclusion from states with no response regarding a particular cost. Such responses may be because we didn't connect with individuals in that state, because there are no costs imposed, or because survey respondents were not familiar with the costs charged.

5 Sarah Hockenberry & Charles Puzzanchera, Juvenile Court Statistics, 2013 (National Center for Juvenile Justice) 2015 at 6, available at www.ojjdp.gov/ojstatbb/njcda/pdf/jcs2013.pdf.

6 A Century of Juvenile Justice 42 (Margaret K. Rosenheim et al. eds., 2002).

7 *Id.*

8 *Id.* at 69.

9 *See OJJDP Statistical Briefing Book*, http://www.ojjdp.gov/ojstatbb/structure_process/qa04205.asp?qaDate=2012 (released on August 05, 2013); see also: Monahan, K., Steinberg, L., & Piquero, A.R. (2015). Juvenile justice policy and practice: a developmental perspective. In M. Tonry (Ed.), *Crime and Justice: A Review of Research* (vol. 44, pp. 577-619). Chicago: University of Chicago Press.

10 We use the term "parents" here to refer to parents, guardians, or others legally responsible for youth. Definitions vary slightly from state to state, but generally place financial responsibility on the adults legally responsible for the care of the child.

11 In Arizona, for example, statutes permit youth or their families to be charged for the cost of detention in a DUI offense, Ariz. Rev. Stat. Ann. § 8-343(M), the cost of medical and mental health care for youth committed to the custody of the department of juvenile corrections, Ariz. Rev. Stat. Ann. § 8-243(B), the cost of food, clothing, shelter, and supervision in a detention facility, Ariz. Rev. Stat. Ann. 8-§ 243(C), the cost of family counseling, Ariz. Rev. Stat. Ann. § 8-263 (A), (C), and the cost of foster care, treatment, or education in a setting other than a state institution for a juvenile. Ariz. Rev. Stat. Ann. § 8-243(A).

12 *See generally* Saneta deVuono-powell et al., *Who Pays?: The Trust Cost of Incarceration on Families* (2015), *available at* http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf (finding that costs often amount to one year's worth of income for families and may force families into significant debt).

13 *See* A Pound of Flesh, *supra* note 2 at 52-73.

14 Myles Bess, *Double Charged: The True Co$t of Juvenile Justice*, YOUTH RADIO (May 8, 2014), https://youthradio.org/news/article/double-charged-fines-and-fees/.

15 *Id.*

16 The federal minimum wage is $7.25 per hour. 29 U.S.C. § 206 (2012). For a single parent making $7.25 an hour, it would take 276 hours, or approximately seven 40-hour work weeks, to pay off justice costs of $2,000.00.

17 Ife Floyd & Liz Schott, *TANF Cash Benefits Have Fallen by More than 20 Percent in Most States and Continue to Erode,* Ctr, Budget Pol'y Priorities (Oct. 15, 2015), http://www.cbpp.org/research/family-income-support/tanf-cash-benefits-have-fallen-by-more-than-20-percent-in-most-states.

18 As described above and explored further in Part C, this may happen because a failure to pay constitutes civil or criminal contempt, because incarceration is a direct consequence of a failure to pay, because youth must pay for alternative diversion programs to avoid juvenile justice system involvement, or because failure to pay constitutes a violation of probation.

19 *See* John R. Vivian et al., *Assaults in Juvenile Correctional Facilities: An Exploratory Study*, 30 J. CRIME & JUST. 17 (2007).

20 *See* Romona R. Rantala & Allen J. Beck, *Survey of Sexual Violence in Juvenile Correctional Facilities, 2007-12 – Statistical Tables* (2016), *available at* http://www.bjs.gov/content/pub/pdf/ssvjcfo712st.pdf.

21 *See* Richard A. Mendel, Annie E. Casey Found., *No Place for Kids: The Case for Reducing Juvenile Incarceration* 5-22 (2011), *available at* http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFull-Report-2011.pdf ; *see generally* Richard A. Mendel, Annie E. Casey Found., *Maltreatment of Youth in U.S. Juvenile Correction Facilities: An Update* 1 (2015), *available at* http://www.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf.

22 Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges*, Q. J. ECON. 780-84 (2015).

23 *Id.* at 784-89.

24 Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 16-19 (2014), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.

25 *See infra* Section B.4.

26 Jeffrey Selbin & Stephanie Campos, *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California* 15-17 (2016), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710.

27 *Supra* note 2.

28 The Fair Labor Standards Act sets 14 as the minimum age for most non-agricultural work. 29 C.F.R. § 570 (2012); *see also* U.S. Dept. Labor, *Fact Sheet # 43: Youth Employment Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations* (2010), *available at* https://www.dol.gov/whd/regs/compliance/whdfs43.pdf. While youth under 14 may work in a few designated jobs (such as babysitting or having a paper route), the vast majority of youth under 14 are simply can't earn the money they would need to pay off even minimal fees and costs.

29 While older youth may be legally capable of work, recent reports show that they are increasingly unable to access employment. One recent study found that the number of jobs held by teenagers between ages 14 and 18 shrank by 33% between 2001 and 2014. Career Builder, *The Changing Face of U.S. Jobs: Composition of Occupations by Gender, Race, and Age from 2001-2004* 13 (2015), *available at* http://careerbuilder-communications.com/pdf/changing-face-of-us-jobs.pdf. Another study found that the youth employment rate in 2011 was 26%, the lowest since World War II. JP Morgan Chase & Co., *Building Skills Through Summer Jobs: Lessons from the Field* 4 (2015), *available at* https://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54887-jpmc-summeryouth-aw2.pdf. Teens seeking jobs are now in competition with college graduates, workers over 55, and others competing for the same entry-level roles. Andrew Soergel, *Why Teens are Getting Shut out of the Workforce*, U.S. News & World Rep. (Mar. 26, 2015, 4:30 PM), http://www.usnews.com/news/blogs/data-mine/2015/03/26/studies-suggest-teens-getting-shut-out-of-workforce.

30 According to a report from the Center for Labor Market Studies at Northeastern University, only 21% of teenagers from low-income families worked at all, while 38% of wealthier teens had jobs. Andrew Sum et al., Ctr. Labor Mkt. Studies at Northeastern Univ., *The Dismal State of the Nation's Teen Summer Job Market, 2008-2012, and the Employment Outlook for the Summer of 2013* 4 (2013), *available at* https://repository.library.northeastern.edu/downloads/neu:mo406v58n?datastream_id=content.

31 According to one study, youth who work more than 20 hours a week "may have lower grade point averages and are more likely to drop out of school than those who work fewer hours." The study notes that "Overall, the negative effects of employment appear to be linked, not to whether students work, but how often and how long." Child Trends Data Bank, *Youth Employment: Indicators on Children and Youth* 2 (2015), *available at* http://www.childtrends.org/wp-content/uploads/2012/05/120_Youth_Employment.pdf.

32 *Id.* ("[s]ome studies show that longer work hours are more prevalent among minority and other disadvantaged students").

33 For a more detailed discussion of these and other factors leading to economic disparities in the system, *see* Tamar Birkhead, *Delinquent by Reason of Poverty*, 38 Wash U. J. L. & Pol'y 53 (2012).

34 *See* The Sentencing Project, *Racial Disparities in Youth Commitments and Arrests, 6* (2016), *available at* http://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf.

35 *Id.*

36 *Supra* note 1.

37 Selbin & Campos, *supra* note 13, at 12-13.

38 Press Release, Alameda County is the First in State to Repeal Juvenile Justice Fees (July 12, 2016) (*available at* http://ebclc.org/in-the-news/ac-first-in-state-to-repeal-juv-fees/).

39 Selbin & Campos, *supra* note 13, at 16.

40 S.B. 5564, 64th Leg., Reg. Sess. (Wash. 2015).

41 In 18 of 38 states with respondents answering this question, at least one survey participant reported such a cost. The states are: Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, New Jersey, Ohio, Pennsylvania, Tennessee, Texas, Wisconsin, and Wyoming.

42 *See, e.g., Idaho Code Ann. § 20-522* (monetary fee of $1,000 for each breach of contract).

43 *See, e.g.,* 705 Ill. Comp. Stat. Ann. 405/5-615(10) (requiring a $50/month supervision fee charged to youth or parents). Other jurisdictions use other payment schemes, including costs accruing daily. *See, e.g.,* Fla. Stat. Ann. § 985.039 (mandating a $1/day charge for parents of youth on probation or under other non-secure supervision).

44 *See, e.g.,* Ark. Code Ann. § 9-27-339. This statute establishes that "nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment." Although this statute essentially creates an exception when the juvenile is unable to pay, the burden is on the juvenile to show that inability, and judges are given discretion in determining what constitutes a "purposeful refusal."

45 text: See, e.g. Del. Code Ann. tit. II § 1009A, Del. Code Ann. tit. II § 4218(a)(2).

46 In 26 of 38 states with respondents answering this question, at least one survey respondent reported a youth or family paying this cost. The states were: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

47 Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-analytic Review*, 40 Crim. Just. & Behav. 497, 504-09 (2012).

48 Models for Change, *Juvenile Diversion Guidebook* 11-12 (2011), *available at* http://www.models-forchange.net/publications/301.

49 *See, e.g.,* Ariz. Rev. Stat. Ann. §8-321(N).

50 *See, e.g.,* Ind. Code Ann. § 31-37-9-9. Or, as in Illinois, a minor may be required as a condition of diversion or "continuance under supervision" to "contribute to his or her own support at home or in a foster home." 705 Ill. Comp. Stat. Ann. 405/5-615(5)(f).

51 In each of the 16 states, at least one survey respondent reported these fees imposed.

52 *See, e.g.,* Okla. Stat. Ann. tit. 10A, § 2-2-104 (indicating that an informal adjustment agreement may include a requirement for payment of a fee, and establishing that failure to carry out the terms of the informal adjustment agreement may result in revocation).

53 *See, e.g.,* Nev. Rev. Stat. Ann. 62E.210.

54 *See, e.g.,* Alaska Stat. Ann. § 47.12.060(b)(3) (indicating that informal adjustment is not successfully completed unless the youth agrees to pay or has finished paying restitution).

55 *See, e.g.,* Ind. Code Ann. § 31-37-9-9.

56 *See, e.g.,* Ark. Code Ann. §9-27-323.

57 *See, e.g.,* Wash. Rev. Code Ann. §13.40.085.

58 26 of 38 states with respondents answering this question had at least one respondent reporting the costs imposed. The states were: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington, Wisconsin, Wyoming. This includes data aggregated across two survey questions; respondents in 23 states reported youth or families are charged for drug or alcohol screening, and respondents in 18 states reported youth or families are charged for other types of assessments.

59 Drug and alcohol screening costs were reported problematic by 59% of respondents, and other assessments by 61% of respondents.

60 *See, e.g.,* Va. Code Ann. § 16.1-278.8:01 (the cost of such (drug or alcohol) testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose").

61 This includes a wide variety of assessments used for juvenile justice purposes, including behavioral assessments, mental health assessments, and general provisions around "examinations." It excludes medical exams for medical treatment purposes.

62 In 31 of 38 states with respondents answering this question, at least one survey respondent reported youth and families paying these costs. The states include: Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming. This includes data aggregated across two survey questions; respondents in 24 states reported youth or families are charged for child support or cost of care, and respondents in 29 states reported youth or families are charged for court-ordered treatment.

63 Ariz. Rev. Stat. Ann. § 8-243.

64 *See, e.g.,* Alaska Stat. Ann. § 47.12.230; Ind. Code Ann. § 31-40-1-5; Kan. Stat. Ann. § 38-2319; S.C. Code Ann. § 63-19-1680; Tenn. Code Ann. § 37-1-151; Tex. Fam. Code Ann. § 54.06; Vt. Stat. Ann. tit. 33, § 5116; W. Va. Code Ann. § 49-4-714(b)(4).

65 Wis. Stat. Ann. § 938.275.

66 Mont. Code Ann. § 41-5-1525; Ga. Code Ann. § 15-11-36.

67 Wash. Rev. Code Ann. § 13.40.220.

68 N.C. Gen. Stat. Ann. § 7B-2704.

69 *See, e.g.,* Me. Rev. Stat. tit. 15, § 3314-B.

70 *See, e.g.,* Ariz. Rev. Stat. Ann. § 8-243; Iowa Code Ann. § 232.141; Wash. Rev. Code Ann. § 13.40.220.

71 *See, e.g.,* N.H. Rev. Stat. Ann. § 169-B:21; Wis. Stat. Ann. §§ 938.34(f)(4); 938.361(2); Miss. Code. Ann. § 43-21-605; Okla. Stat. Ann. tit. 10A, § 2-2-509; Utah Code Ann. § 78A-6-1207; Wash. Rev. Code Ann. § 13.40.165; Wis. Stat. Ann. § 938.34(6)(b).

72 *See, e.g.,* Nev. Rev. Stat. Ann. 62E.210 (programs for arts, sports and physical fitness); N.H. Rev. Stat. Ann. § 169-D:17 (after-school or evening programs); N.J. Stat. Ann. § 2A:4A-71.1 (remedial education and counseling); S.C. Code Ann. § 63-19-1430 (youth mentor program); Utah Code Ann. § 78A-6-1207; Wash. Rev. Code Ann. § 13.40.640.

73 *See, e.g.,* Nev. Rev. Stat. Ann. § 62B.110 (West) ("If a child becomes subject to the jurisdiction of the juvenile court and the child receives ancillary services that are administered or financed by a county, including, but not limited to, transportation or psychiatric, psychological or medical services, the county is entitled to reimbursement from the parent or guardian of the child for all money expended by the county for such services."); Ariz. Rev. Stat. Ann. § 8-243(B) (parents liable for cost of medical and mental health care for juveniles committed to department of juvenile justice, based on their ability to pay); Ark. Code Ann. § 9-27-602(d)(1)-(2) (parents liable for cost of out of state mental health services, based on ability to pay).

74 Specifically, 47% of respondents aware of such costs reported cost of care/child support charges cause problems, and 54% reported that costs for treatment are problematic.

75 *See, e.g.,* S.D. Codified Laws § 26-7A-42 (Establishing parental liability for health care costs and stating that "[t]he court may issue such orders as necessary and appropriate to secure the payment of the costs of treatment of the child under this section ...."); *See also* Miss. Code. Ann. § 43-21-615(2) a parent who willfully refuses to pay medical expenses may be proceeded against for contempt).

76 *See* Minn. Stat. Ann. § 260B.188 (West) (county of residence is entitled to reimbursement from the child or the child's family for payment of medical bills to the extent that the child or the child's family has the ability to pay for the medical service); Ariz. Rev. Stat. Ann. § 8-243(B).

77 For example, Alabama statutes permit judges to require parents to pay for the cost of healthcare, detention/placement, child support, and other undefined costs for juveniles. Ala. Code § 12-15-109; Ala. Code § 12-15-215(f).

78 In 28 of 40 states with respondents answering this question, at least one survey respondent reported youth or families were charged court costs or fees. The states reporting such practices are: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

79 Ark. Code Ann. § 9-27-330(a)(6) (imposing a $35.00 court cost).

80 *See, e.g.,* Ga. Code Ann. § 15-11-36(c). In some states, youth may also incur separate costs for taking appeals., *e.g.,* Mass. Gen. Laws Ann. ch. 231, § 118.

81 *See, e.g.,* Mass. Gen. Laws Ann. ch. 231, § 118.

82 Wis. Stat. Ann. § 938.34(8d).

83 Ind. Code Ann. § 31-32-16-9.

84 Ind. Code. Ann. § 31-40-4-1.

85 In 12 states where statute gives judges discretion to impose costs, and in 14 states that have no statute on point, survey respondents reported that youth or families paid court costs or fees.

86 *See, e.g.,* Okla. Stat. Ann. tit. 10A, § 2-2-507.

87 In 29 of 39 states with respondents answering this question, at least one survey respondent reported that youth or families were paying fines. This included three states with no relevant statute on point. The states are: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, Wyoming.

88 For example, Alabama imposes fines on parents if they interfere with the performance of duties by juvenile probation officers, Ala. Code. § 12-15-112, or if contribute to the delinquency, dependency, or need supervision of children. Ala. Code § 12-15-111.

89 *See, e.g.,* Ark. Code Ann. § 9-27-332(a)(7)-(8).

90 *See, e.g.,* Conn. Gen. Stat. Ann. § 46b-141a(b).

91 *See, e.g.*, Ala. Code § 12-15-215.

92 *See* N.C. Dep't Pub. Safety, *Family, School, Community and Economic Factors Associated with Juvenile Crime in North Carolina: A System Impact Assessment*, *available at* https://www.nccrimecontrol.org/div/gcc/juvcorr.htm.

93 Telephone Interview by Whiquitta Tobar with E.B. (Apr. 13, 2016).

94 Tennessee, for example, limits fines to $50 per offense. Tenn. Code Ann. § 37-1-131(a)(5).

95 Ohio Rev. Code Ann. § 2152.20.

96 *See, e.g.,* Ky. Rev. Stat. Ann. § 635.085 ("The imposition of a fine for an offense committed by a child shall be based upon a determination that such disposition is in the best interest of the child and to aid in his rehabilitation. Any such order shall include a finding that the child is financially able to pay the fine.").

97 In 20 of 41 states with respondents answering this question, at least one survey respondent reported youth paying a fee for expungement petitions. The states reporting such issues are: Alabama, California, Colorado, Delaware, Florida, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Minnesota, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wyoming.

98 Riya Saha Shah & Jean Strout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 9-11 (2016), *available at* http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf.

99 *Id.* at 13-15.

100 *Id.* at 6-9.

101 *See, e.g.,* fee schedule for Georgia at https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/GCICFees.pdf; fee schedule for Nebraska at https://supremecourt.nebraska.gov/self-help/7240/filing-motion-seal-juvenile-criminal-record.

102 Colorado (Colo. Rev. Stat. § 19-1-306(7)(e)); Arizona (Ariz. Rev. Stat. § 8-349); Washington (Wash. Rev. Code Ann. § 13.50.270(1)(v)); Iowa (Iowa Code § 232.150(1)(3)(c)); Rhode Island (R.I. Gen. Laws § 12-1.3-3(b)(1)); Utah (Utah Rev. Stat. § 78A-6-1105(c)(3)).

103 *See, e.g.,* 42 Pa.C.S 9123(a)(3)(establishing by statute that individuals are eligible for expungement five years after final discharge from probation) and Pa.R.J.C.P. 631 (establishing by court rule that probation is complete when all restitution, fines, and costs have been paid in full).

104 See, e.g., Cal. Welf. & Inst. Code § 781(D)(2) and (D)(3); Ohio Rev. Code. §§ 2151.356(C)(1).

105 See Cal. Welf. & Inst. Code § 781(D)(2) and (D)(3).

106 *See, e.g.*, N.M. Stat. § 32A-2-26.

107 In 39 of 39 states with respondents answering this question, at least one survey respondent reported youth or families being charged restitution. These states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

108 Still others have separate provisions creating parental liability for damages for the actions of their children. *See, e.g.,* Neb. Rev. Stat. § 43-801. Unless the provisions explicitly state that such liability can become a part of the disposition order, they are not included here.

109 Additionally, some states require parents to engage in "community restitution," which are work programs. Because those don't have an explicit financial liability component, they are not included here. *See, e.g.,* Ariz. Rev. Stat. Ann. § 8-341(S); Ariz. Rev. Stat. Ann. § 8-234(E)(3).

110 Indeed, a number of survey respondents reported that restitution should be considered separately from other costs because of its function of making the victim whole.

111 Ky. Rev. Stat. Ann. § 635.060.

112 *See, e.g.,* Conn. Gen. Stat. Ann. § 46b-140; Utah Code Ann. § 78A-6-1113.

113 Me. Rev. Stat. tit. 15, § 3314.

114 *Id.*

115 *Id.*

116 Nev. Rev. Stat. § 62E.580.

117 *See, e.g.,* Nev. Rev. Stat. Ann. § 62E.580; 42 Pa. Cons. Stat. Ann. § 6352.

118 Okla. Stat. Ann. tit. 10A, § 2-7-801; 42 Pa. Cons. Stat. Ann. § 6352.

119 R.I. Gen. Laws Ann. § 14-1-32.

120 Or. Rev. Stat. Ann. § 419C.450.

121 *See, e.g.,* S.D. Codified Laws § 26-8C-14; *See, e.g.,* Cal. Welf. & Inst. Code § 730.6(m).

122 *See, e.g.,* N.Y. Fam. Ct. Act § 353.6 (N.Y. Fam. Ct. Act § 758-a).

123 *See, e.g.,* Miss. Code. Ann. § 43-21-605.

124 *See, e.g.,* Fla. Stat. Ann. § 985.0301(5)(d); Fla. Stat. Ann. § 775.089(5) (establishing that an order of restitution may be enforced in the same manner as a judgment in a civil action; defendant is responsible for any interest, and costs and attorney's fees resulting from civil enforcement).

125 *See, e.g.,* Alaska Stat. Ann. § 47.12.170(a); Ariz. Rev. Stat. Ann. § 8-221(G); Cal. Welf & Inst. Code § 730(6); Colorado § 18-1.3-701; Fla. Stat. Ann. § 985.0301(5)(d); Fla. Stat. Ann. § 775.089(5); Me. Rev. Stat. tit. 15, § 3314; Nev. Rev. Stat. Ann. § 62B.420; N.D. Cent. Code Ann. § 27-20-31.2; Okla. Stat. Ann. tit. 10A, § 2-2-503 (c) (5); Or. Rev. Stat. Ann. § 419C.203(5); Or. Rev. Stat. Ann. § 419C.600); Tenn. Code Ann. § 37-1-131 (b)(2)(A); Vt. Stat. Ann. tit. 33 § 5235(k)(1) – (2); Wis. Stat. Ann. § 895.035; Wash. Rev. Code Ann. § 13.40.080(b)) (Wash. Rev. Code Ann. § 13.40.192(1).

126 Kathryn A. Sabbeth, The Prioritization of Criminal over Civil Counsel and the Discounted Danger of Private Power, 42 Fla. St. U. L. Rev. 889, 913-14 (2015). Indeed, rather than converting the judgment into a civil judgment, some states make these consequences explicit. *See, e.g.,* Utah Code Ann. § 78A-6-1101 (The court may enforce orders of fines, fees, or restitution through garnishments, wage withholdings, supplementary proceedings, or executions).

127 *See, e.g.,* Ala. Code § 12-15-117(c) (juvenile court shall retain jurisdiction over an individual of any age for the enforcement or modification of any prior orders requiring the payment of fines, court costs, restitution, or other money ordered by the court until paid in full); Florida (Fla. Stat. Ann. § 985.0301(5)(d) (the court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied); Mo. Ann. Stat. § 211.185 (11) (a judgment of restitution ordered against a child may be executed upon after the child attains the age of 18); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-7-504(D)) (the court may retain jurisdiction over a child adjudged delinquent beyond the age of 18 to the extent necessary for the child to complete payment of court costs); Wash. Rev. Code Ann. § 13.40.300 (in no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment).

128 *See, e.g.,* Wash. Rev. Code Ann. § 13.40.200(2)) (If the court finds that a respondent has willfully violated the terms of an order [including an order to pay a penalty assessment] ..., it may impose a penalty of up to thirty days' confinement; Ala Code § 12-15-117(d) (the juvenile court can incarcerate individuals 18 or older who have failed to pay fines, court costs, restitution, or other money ordered by the court).

129 *See, e.g.,* Ala. Code § 12-15-117(d) (the juvenile court can use any of the remedies available for the punishment for contempt to enforce any order requiring the payment of fines, court costs, restitution, or other money ordered by the court); Me. Rev. Stat. tit. 15, § 3314) (The court must give notice of its ability to enforce orders through contempt powers. For nonpayment of fine, court may use "in addition to its contempt powers" civil judgments); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-7-504(D)) (court may institute contempt proceedings against any person adjudged delinquent and ordered to pay court costs who neglects or refuses to pay).

130 Although these statutory provisions typically require a finding of willfulness, the wide discretion afforded judges to make determinations regarding willfulness or ability to pay may still result in probation violations for youth unable to afford payments. *See, e.g.,* Ark. Code Ann. § 9-27-339(f)) ("Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment."); Cal. Welf. & Inst. Code § 730.6(m) ("Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay").

131 Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 16-19 (2014), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.

132 Justice Policy Inst., *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* 4 (2014), *available at* http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.

133 *See, e.g.,* Minnesota (Minn. Stat. Ann. § 260B.331 (A parent or custodian who fails to pay without good reason may be proceeded against for contempt, or the court may inform the county attorney, who shall proceed to collect the unpaid sums, or both procedures may be used).

134 *See, e.g.,* Alaska § 47.12.170. (If the restitution recipient enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded. If the state on the restitution recipient's behalf enforces or collects restitution through civil process, collection costs and full reasonable attorney fees shall be awarded, up to a maximum of twice the amount of restitution owing at the time the civil process was initiated.)

135 *See, e.g.,* Alaska Stat. Ann. § 47.12.170. (A recipient of a restitution order, or the state on behalf of the restitution recipient, may enforce a restitution order against the minor and the minor's parent by any procedure authorized by law for enforcement of a civil judgment); Arizona (Ariz. Rev. Stat. Ann. § 8-221(G)) (if the court finds that the juvenile or parent or guardian has sufficient financial resources to reimburse, at least in part, the costs of an appointed attorney, the court will order payment and the order may be enforced as a civil judgment); Colo. Rev. Stat. § 19-2-114 (Any order for payment toward the cost of care entered by the court pursuant to subsection (1) of this section shall constitute a judgment which shall be enforceable by the state or the governmental agency that would otherwise incur the cost of care for the juvenile in the same manner as are civil judgments).

136 *See generally* Lili Garfinkel, *Improving Family Involvement for Juvenile Offenders with Emotional/Behavioral Disorders and Related Disabilities*, 36 Behav. Disorders 52 (2010).

137 Nevada (Nev. Rev. Stat. Ann. 62E.440(4)) (no hearing required, but requires willful non-payment); Oklahoma (Okla. Stat. Ann. tit. 10A, § 2-8-224(B)) (no hearing requirement); Wisconsin (Wis. Stat. Ann. § 938.34(8)) (no hearing requirement).

138 Harris, *supra* note 2.

139 *See supra* Part B, Section 7.

140 For each of these consequences, at least one survey respondent, and often more, in this many states reported the designated consequences.

141 *Bearden v. Georgia*, 461 U.S. 660 (1983). In *Bearden*, the Court opined that "punishing a person for his poverty…would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id* at 671-73. *See also* Letter from United States Department of Justice, Civil Rights Division, Office for Access to Justice (Mar. 14, 2016) at 3, *available at* https://www.justice.gov/crt/file/832461/download, reiterating the importance of this principle.

142 *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

143 *See, e.g.,* S.D. Codified Laws § 26-7A-98. Several other states are silent on the issue of willful non-payment or indigency. *See, e.g.,* Indiana (IND. CODE ANN.§ 31-40-4-1), Michigan (Mich. Comp. Laws Ann. § 712A.18b), New Mexico (N.M. Stat. Ann. § 32A-2-28(C)), Tennessee (Tenn. Code Ann. § 37-1-151), and Utah (Utah Code Ann. § 78B-6-310).

144 *See* Me. Rev. Stat. tit. 17-A, § 1301-A (requiring courts to always consider the imposition of a fine instead of imprisonment for failure to pay, and preventing courts from incarcerating an individual based on inability to pay); Nev. Rev. Stat. Ann. *Rev. Stat. Ann.* § 62B.420(2) (preventing indigent individuals from being incarcerated due to failure to pay).

145 United States Department of Justice, *supra* note 3, at 5. (relying on *Mullane v. Cent. Hanover Bank & Trust Co.* and other Supreme Court cases regarding the constitutionality of incarcerating a defendant without counsel.)

146 *See In re Gault,* 387 U.S. 1 (1967) (explaining that youth need the "guiding hand of counsel" to ensure their rights are met).

147 *See* Ariz. Rev. Stat. Ann. § 8-221(G); Wyo. Stat. Ann. § 14-6-242) (requiring representation in accordance with Wyo. R. Crim. P. 42(c)(4)).

148 *See generally Roper v. Simmons*, 534 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina,* 564 U.S. 261 (2011); *Miller v. Alabama,* 132 S. Ct. 2455 (2012); *Montgomery v. Louisiana,* 136 S. Ct. 718 (2016). See also Monahan, Steinberg, & Piquero, *supra note* 8.

APPENDIX A – CUMULATIVE COSTS

	RESTITUTION	EXPUNGE	FINES	COURT	CARE	EVALUATION	DIVERSION*	PROBATION*	TOTAL
AL	•		•	•	•	•			5
AK	•				•				2
AZ	•	•	•		•		•	•	6
AR	•		•	•	•	•	•	•	7
CA	•		•		•	•		•	5
CO	•	•	•		•			•	5
CT	•		•		•	•		•	5
DE	•	•	•	•	•				5
DC	•		•		•	•			5
FL	•	•			•			•	4
GA	•		•	•	•			•	5
HI	•			•	•	•			4
ID	•		•		•	•	•	•	6
IL	•	•	•				•	•	5
IN	•			•	•	•	•	•	6
IA	•			•	•	•	•		6
KS	•	•	•	•	•	•		•	7
KY	•		•	•	•			•	5
LA	•		•		•	•	•	•	6
ME	•		•		•	•			4
MD	•		•	•	•				4
MA	•		•	•	•			•	5
MI	•	•	•	•	•	•	•		7
MN	•		•		•	•			4
MS	•		•	•	•	•	•		6
MO	•		•	•	•				4
MT	•		•	•	•	•	•	•	7
NE	•		•		•	•	•		5
NV	•		•	•	•	•	•		6
NH	•		•		•	•	•		5
NJ	•	•	•			•	•		5
NM	•		•	•	•				4
NY	•								1
NC	•		•		•	•		•	5
ND	•		•		•	•			4
OH	•		•	•	•	•		•	6
OK	•		•		•		•	•	5
OR	•	•	•	•	•	•		•	7
PA	•		•	•	•		•		5
RI	•	•	•		•				4
SC	•		•		•	•	•		5
SD	•		•	•	•				4
TN	•		•	•	•	•			5
TX	•		•	•	•	•	•	•	7
UT	•	•				•	•		4
VT	•				•				2
VA	•		•		•	•			4
WA	•		•		•	•	•	•	7
WV	•		•		•		•		4
WI	•		•	•	•	•	•		6
WY	•		•	•	•	•			5
TOTAL	51	11	43	25	47	32	22	21	

*This table identifies a state as having a statute on probation or diversion only if the statute designates a cost for those specific purposes. Youth or families may also be required to pay other costs, fines, fees, or restitution as a condition of probation, or a condition of participation in a diversion program. Because those costs are captured elsewhere in this chart, we have not listed them here.

APPENDIX B

Survey Methodology

To complement the statutory research presented in this report, researchers in the Psychology Department at Drexel University (Naomi Goldstein, PhD and Emily Haney-Caron, MS, JD) conducted a survey of professionals and non-professionals.

Participants

Survey respondents were 183 individuals, comprised of 96 attorneys, 50 other professionals working with justice-involved youth, 3 individuals with former juvenile justice system involvement, 13 family members of justice-involved youth, and 21 participants who did not identify with one of the above categories (including 4 students, 6 advocates, 2 educators, 1 researcher, 1 law enforcement officer, 1 academic researcher, and 2 individuals identifying with more than one role). Respondents are presented in two samples: the first, comprised of attorneys and other professionals, totaled 146 participants, and the second, comprised of all other respondents, totaled 37 individuals. An additional 12 participants discontinued immediately after indicating they agreed to participate. Among attorneys and other professionals, 19 participants (9 attorneys, 10 other professionals) discontinued immediately after selecting their role. In the second sample, 4 participants (1 formerly juvenile justice-involved individual, 1 family member, and 2 "other") discontinued immediately after identifying their role. All other respondents completed at least some of the substantive questions.

The sample of attorneys and other professionals ranged in age from 24-70 (mean = 46.98, standard deviation = 12.12). The sample was 72.8% female and 23.3% male (3.9% preferred not to answer). Participants identified as White (53.7% of respondents), Black or African American (4.1% of respondents), Asian (2% of respondents), American Indian or Alaskan Native (1.4% of respondents), and Native Hawaiian or other Pacific Islander (.7% of respondents); 5.4% identified as Hispanic or Latino, 53.7% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported working in 39 states and at least 78 distinct counties.

The second sample, comprised of formerly juvenile justice-involved individuals and friends or family of justice-involved youth, ranged in age from 25-75 (mean = 45.25, standard deviation = 12.67) and was 70.4% female. Participants identified as White (40.5% of respondents) and African American (27.0% of respondents), with the remainder choosing not to answer; 2.7% identified as Hispanic or Latino, 54.1% as not Hispanic or Latino, and the remainder chose not to answer. Participants reported living in 15 states, and at least 25 distinct counties.

Including lay and professional participants, we received responses from 41 states and the District of Columbia.

Procedures

Participants were recruited via professional and family advocacy listservs, social media, and word of mouth. Participants were provided with information about the survey and were asked to either agree or decline to participate. Participants were asked to complete an online, anonymous survey approximately 10 minutes in length. Data were collected using Qualtrics, a software platform designed to conduct online research. Two slightly different survey versions were used: the first, for attorneys and other professionals, asked additional questions inappropriate for lay respondents (e.g., citations for relevant statutes); the second, for all other respondents, provided more explanation as needed regarding the meaning of legal terms included in questions. Attorneys and other professionals were asked to provide information about the juvenile justice system in the jurisdiction in which they work. All other respondents

were asked to provide information about the juvenile justice system in the county in which they live. All participants were asked questions about the frequency of costs related to 11 aspects of juvenile justice involvement (expungement, restitution, fees, fines, child support or cost of care, treatment, probation, diversion or informal adjustment, drug and alcohol testing, other assessments or testing, and phone calls and visits to/from placement) and the impact those costs have on youth and families. Participants were also asked about problems resulting from inability to pay each type of cost, including cases remaining open, youth being put in placement or staying in placement longer, family debt, additional court visits resulting in missed school or work, youth being prevented from having juvenile records expunged, civil judgments extending into adulthood, and other (with space for participants to write in additional problems resulting from each cost). Additionally, for diversion costs, respondents were asked about inability to pay resulting in a formal petition being filed. Finally, participants were asked demographic questions.

Method of Analysis

Because of the exploratory nature of this survey, only descriptive data are presented. The purpose of the survey was to collect preliminary information about the frequency and impact of various types of costs on juvenile justice-involved youth and their families to supplement the statutory analysis. Given the limited sample size and the approach to participant recruitment, as well as the varying policies and impacts across counties, the descriptive data cannot provide a complete picture of any jurisdiction, but does provide initial information regarding the perspectives of individuals working in and experiencing the juvenile justice systems regarding the costs imposed by those systems on youth and families.

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