

# ENFORCING INEQUALITY:

BALANCING BUDGETS ON THE BACKS OF THE POOR

CALIFORNIA REINVESTMENT COALITION  
MARYLAND CONSUMER RIGHTS COALITION  
REINVESTMENT PARTNERS  
WOODSTOCK INSTITUTE

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**JUNE 2018**

**A FORD  
COLLABORATIVE  
EFFORT**

A movement is taking hold across the United States to address the impact of fines and fees associated with the criminal justice system, as well as the criminalization of consumer debt and civic debt, and how these perpetuate and deepen structural racism. This report takes a look at four problematic examples of debt and its collection in California, Illinois, Maryland, and North Carolina. Each report makes state-specific recommendations for how to ease the burden on people affected by the system, with particular emphasis on people of color and low-income people. We hope policymakers will use the findings from these four states to better understand the ways in which the collection of fines and fees debt, consumer debt, and civic debt disproportionately hurt low-income people and people of color, and be inspired to seek changes that address the issues in their own jurisdictions and at a national level.

## **Background**

People of color, especially low-income people of color, bear the brunt of the criminal justice system throughout the United States. By nearly every metric of racial disparity, from neighborhood over-policing and high rates of incarceration to the use of deadly force by police officers, people of color are impacted by the government-imposed fines and fees at disproportionately higher rates than their white counterparts.<sup>1</sup> Disparities in the case of fines, fees, and the collection of civil and court-imposed debt levy disproportionate harm on those who are already financially marginalized.

As local governments compete with one another to attract corporations to move into their communities through economic incentives and tax breaks,<sup>2</sup> many have become more reliant on revenue collected from fines and fees, such as traffic tickets, video tolls, and court payments (such as bail, jail costs, probation, and supervision fees). Fines are assessed as “punishment” for a crime or infraction, and fees are costs assessed for using the court system. While the amount of revenue returned to local governments through the collection of fines and fees varies significantly from state to state and city to city, the impact of these practices is alarmingly similar. This regressive system of public taxation affects people of color and poor people the most, and can send people spiraling into a vicious cycle of poverty. This is especially true when policies are in place to aggressively collect on civil debt and court debt from those who can least afford it.

## **State-by State Findings**

There are several commonalities among these four states and their approaches to government-imposed fines and fees and debt enforcement. People of color and low-income people bear the brunt of debt cycles imposed by courts and civic debt; such debt can quickly spiral out of control and have lasting impacts on families, communities, and inter-generational wealth building. When local governments turn to fines and fees as a source of revenue, perverse incentives encourage collection of debts, at the expense of marginalized residents, with private debt collection companies often benefiting the most.

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<sup>1</sup> “Report To the United Nations on Racial Disparities in the U.S. Criminal Justice System.” The Sentencing Project. April 18, 2018.

<https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

<sup>2</sup> “How America’s cities are competing for Amazon’s headquarters.” The Economist. Dec 5<sup>th</sup>, 2017.

<https://www.economist.com/the-economist-explains/2017/12/05/how-americas-cities-are-competing-for-amazons-headquarters>

**California:** Several California counties contract with third-party private debt collectors to collect on fines and fees debt. This relationship is troubling; private debt collectors in California are not subject to consumer protection laws and are even incentivized to collect on this debt, with increasing commission earnings the older the debt is. Each county and court varies in its practices, creating an uneven system of justice; unavailability of public information about Ability-to-Pay programs and other consumer assistance programs means there is a serious lack of accountability by counties and courts to the public. These debt collection practices often return little revenue back to local municipalities, instead enriching a handful of corporations.

**Illinois:** In Chicago, vehicle-related ticket issuance makes up more than seven percent of the City's annual budget; the high rate of ticketing has disparate impacts on people of color and low-income people. Unpaid ticket debt can result in bankruptcy, vehicle seizure, loss of employment opportunities, and driver's license suspension. Chicago's heavy reliance on this practice means, in effect, that it is partially funding the City's government off the backs of its most marginalized residents.

**Maryland:** In addition to housing, student loan, and medical debt, many Marylanders find themselves carrying a large burden of civic debt – or debt owed to the State. For too many Marylanders – especially those in communities of color and population centers – the debt burden becomes unmanageable and they fall behind on their payments. Maryland law provides numerous ways for creditors to collect from indebted individuals including body attachments and wage garnishments. Although Maryland has some strong consumer protections in place to curtail abusive and deceptive debt collection practices, when it comes to civic debt, Maryland has exempted itself from the very protections it requires of private debt collectors. The concomitant failures to consider either ability-to-repay or affordability options, coupled with outdated, punitive practices to collect debts results in a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

**North Carolina:** In North Carolina, people of color and low-income people have higher rates of interaction with the criminal justice system and are more likely to face criminal justice debt. This can have lasting impacts on families and communities. Several of the penalties faced by people in the court system, such as driver's license suspension, can have outsized effects, by restricting access to employment or economic opportunity. Court costs and fees can pile up, placing an unfair burden on individuals who have been convicted of infractions as small as not wearing a seatbelt as a passenger in a car. Missteps in the system can lead to a debt spiral, where debt begets more debt.

Across these four states, it is clear that criminal justice and civic debt and its collection can affect peoples' financial lives for the long haul, and that states have few protections in place to protect people from the effects of these types of debt.

#### **Highlights from State Recommendations**

- Advocates in California are recommending that counties end contracts with private debt collectors; if this is not politically possible at the moment, making sure that private debt collectors are subject to consumer protection laws is critical, as is increased transparency during contract negotiations.
- In addition to an audit of Chicago ticketing enforcement practices, advocates in Illinois recommend ending the practice of driver's license suspensions for non-moving violations such as parking tickets.

- Advocates in Maryland are recommending an elimination of the use of “body attachments” for debts below \$5,000, as well as increases to Maryland’s debt exemption threshold and access to legal council for individuals involved in consumer cases. They also recommend strengthening consumer protections around civic debt, including a fee waiver for debtors who enter into payment plans with the State, establishing an ability-to-repay standard for civic debt, and more.
- Advocates in North Carolina recommend that the state end revocation of driver’s licenses for failure to appear or pay court costs. Relevant state law should require ability to pay determinations, such that the court must determine whether someone can pay court costs prior to getting a driver’s license revoked. The court system should also incorporate alternative models for payment of court debt, such as sliding-scale payment systems.

Advocates in California, Illinois, Maryland and North Carolina recommend policies that account for peoples’ economic circumstances and ability to pay, encourage statutes of limitations on debts, and advocate ending punishments such as driver’s license and vehicle registration suspensions that affect peoples’ ability to access economic opportunity.

In some states, including California, there is a viable pathway forward to end certain fines and fees in the criminal justice system altogether, as well as policies to discharge outstanding debt. In other states, there may be alternative sources of government funding that would negate the need to rely on fines and fees as a source of revenue. While the specific strategies for reducing the burden of fines and fees on communities of color may vary by region, it is clear that the status quo is no longer acceptable.

*This report was compiled by the Multi-State Collaborative, which is comprised of four partner organizations serving four states: California Reinvestment Coalition (CA); Woodstock Institute (IL); Maryland Consumer Rights Coalition (MD); and Reinvestment Partners (NC). With funding from the Ford Foundation, the Collaborative has provided this consumer advocate perspective at the disproportionate impact of fines and fees upon people of color and low-income people.*



# UNHOLY ALLIANCE:

CALIFORNIA COURTS' USE OF PRIVATE DEBT  
COLLECTORS

CALIFORNIA REINVESTMENT COALITION



# Unholy Alliance: California Courts' Use of Private Debt Collectors

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CALIFORNIA REINVESTMENT COALITION

# Unholy Alliance: California Courts' Use of Private Debt Collectors

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May 2018

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*The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner.*

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## EXECUTIVE SUMMARY

Government-created debt through criminal fines and fees creates financial insecurity and income inequity for already overburdened communities, with a disproportionate impact on low-income communities of color. California has tried several approaches to reform the system of fines and fees, such as ceasing suspension of drivers' licenses as a method of collecting traffic court fines and fees.<sup>1,2</sup> However, California counties' use of government-contracted third-party private vendor debt collectors is especially troublesome: private debt collectors are not subject to the consumer protection laws, and accumulated debt can spiral out of control for consumers who are unable to pay. A full overhaul of this system is urgently needed to protect low-income communities and communities of color.

In an effort to better understand the relationship between state and county courts and private debt collection agencies, the California Reinvestment Coalition (CRC) conducted evaluations of private debt collections agencies that contract with state and county courts to collect data on delinquent court debt. CRC reviewed Master Agreements from the California Judicial Council and Participating Agreements from counties that set the terms between the counties and contracted debt collectors. Data

was also collected to evaluate Ability-To-Pay (ATP) programs in 17 California counties. Such programs evaluate each person's ability to pay fines and fees before determining the amount to be paid.

Our research showed that the collection of fines and fees is a regressive form of income generation for municipalities. Private debt collectors profit from fines and fees assessed on poor people, facilitated by the state of California. However, the revenue to counties from collecting these fines and fees is miniscule; this system only benefits the private debt collectors.

### Findings further showed that:

- Court-ordered debt collected by private agencies<sup>3</sup> makes up an insignificant amount of a county's total revenue.<sup>4</sup> It ranges from 0.001-0.46%, meaning none of the studied counties derive even half of a single percent of their revenue from the collection of court-ordered debt by debt collectors.
- No court-ordered debt, nor its collection practices, are covered under the Fair Debt Collection Practices Act (FDCPA), a federal law passed in 1977 to protect consumers from unfair debt collection practices. California has its own version

<sup>1</sup> Associated Press. (2017, June 29). California no longer will suspend driver's licenses for traffic fines. Retrieved from <http://www.latimes.com/local/lanow/la-me-ln-driver-license-fees-20170629-story.html>

<sup>2</sup> Lawyers' Committee for Civil Rights of the San Francisco Bay Area. (2017, May). Paying More for Being Poor: Bias and Disparity in California's Traffic Court System. Retrieved from <https://www.lccr.com/wp-content/uploads/LCCR-Report-Paying-More-for-Being-Poor-May-2017.pdf>

<sup>3</sup> **Private Agency:** A private entity employed or contracted to collect court-ordered fines, fees, forfeitures, assessments, and penalties, Judicial Council of California. (2017, November 7). Judicial Council Report to the Legislature: Statewide Collection of Delinquent Court-Ordered Debt for Fiscal Year 2016–17. Retrieved from

<http://www.courts.ca.gov/documents/lr-2017-collections-delinquent-court-ordered-debt.pdf>; Only 15 counties use private agencies to collect debt.

<sup>4</sup> **Total County Revenue/Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

of FDCPA, called the Rosenthal Fair Debt Collection Practices Act (RFDCPA). Like the FDCPA, the RFDCPA does not cover court debt. Some of the debt types not covered by FDCPA and RFDCPA include traffic fines, fees and charges from commitment and probation orders, criminal restitution, or court fine resulting from an arrest.<sup>5</sup>

- The process by which debt is collected varies widely by county and by court, creating an uneven system of justice whereby the consequences of court-imposed debt, and the financial burden of repaying it, largely depend on which county court system imposed the fine or fee.
- Out of the 17 counties studied, two counties, San Bernardino and Kern, do not contract with private debt collectors. This indicates that it is possible for counties to collect debt without the use of private debt collectors.
- Private debt collections agencies make commissions off the debt they collect, ranging from 12%-18% for newly delinquent debt<sup>6</sup> to 14.9-25.8% for delinquent debt over five years old.
- Of the 17 counties studied, only one private collections agency was subject to a Code of Ethics in their service agreement.
- The majority of counties have no public information available regarding their Ability-To-Pay evaluation policies and procedures, making it difficult to evaluate their programs and assess whether they are made available to debtors in an equitable way.

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<sup>5</sup> National Consumer Law Center. (2016, September). *Confronting Criminal Justice Debt: A Guide for Litigation*. Retrieved from <http://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-2.pdf>

## **Based on these findings, CRC recommendations include the following:**

### **County-Level Recommendations:**

- 1) Counties should end contracts with debt collectors.
- 2) For those counties that do contract with private debt collectors, court-imposed debt collection practices should be subject to debt collection protections outlined in FDCPA and RFDCPA to ensure debt is collected fairly. This debt should not be reported to credit bureaus.
- 3) Counties should discharge debt before sending it to private debt collectors.

### **Statewide Recommendations:**

- 4) The State of California and County Courts should increase transparency about debt collections practices, contract negotiations for Master Agreements and Participating Agreements, and Ability-to-Pay programs; and institute a public process for communities to give feedback.
- 5) Delinquent debt should not be transferred to the California Franchise Tax Board.
- 6) California should create statewide, uniform and accessible Ability-to-Pay evaluations and processes, regardless of type of court.

<sup>6</sup> **Newly Delinquent**=Accounts not fully paid 30 days past its stated due date, or on which an installment payment has not been paid 30 days past its stated due date.

# THE DISPROPORTIONATE IMPACT OF FINES AND FEES DEBT IN CALIFORNIA

The California Reinvestment Coalition is a statewide network of 300 community-based organizations that work together to build a more inclusive and fair economy that meets the needs of low-income communities and communities of color. For more than 30 years, CRC has helped to ensure that banks and other corporations conduct business in a just and equitable manner. CRC advocates for policies and practices that promote economic opportunity and prevent corporate practices that cause financial harm to historically marginalized communities.

For this report, we were particularly interested in learning how harmful collection practices of fines and fees perpetuate a cycle of poverty in communities of color, particularly in counties with high percentages of adults of color. This report considers the processes by which delinquent court-ordered fines and fees (focusing on criminal fines and fees) are collected by a jurisdiction and referred to private debt collection companies. It also considers the process by which someone who is unable to pay is evaluated through an Ability-To-Pay program.

In California, 64.4% of adults arrested, and therefore subject to fines and fees, are adults of color.<sup>7</sup>

The imposition of these criminal, municipal, and civil fines and fees disproportionately impact communities of color due to systemic race and criminal justice issues that hurt communities of color, such as higher rates of economic instability,<sup>8</sup> the over-policing of neighborhoods,<sup>9</sup> and higher traffic stop rates.<sup>10</sup> For example, 67.9% of the probation caseload, and the relevant fines and fees, in the California Probation System consists of people of color, overrepresented by African Americans.<sup>11</sup>

<sup>7</sup> Author calculation, including ages 18 and older. Information from: Department of Justice. (n.d.). Data Portal. Retrieved March 20, 2018, from <https://openjustice.doj.ca.gov/data>

<sup>8</sup> Asante-Muhammad, D., Nieves, E., Collins, C., & Hoxie, J. (2016, August). The Ever-Growing Gap Without Change, African-American and Latino Families Won't Match White Wealth for Centuries. Retrieved from [https://prosperitynow.org/files/resources/The\\_Ever\\_Growing\\_Gap-CFED\\_IPS-Final.pdf](https://prosperitynow.org/files/resources/The_Ever_Growing_Gap-CFED_IPS-Final.pdf)

<sup>9</sup> Miller, T. R., Lawrence, B. A., Carlson, N. N., Hendrie, D., Randall, S., Rockett, I. R., & Spicer, R. S. (2017, January 20).

Perils of police action: A cautionary tale from US data sets. Retrieved from <http://injuryprevention.bmj.com/content/injuryprev/23/1/27.full.pdf>

<sup>10</sup> East Bay Community Law Center. (2016, April). Stopped, Fined, Arrested - Racial Bias in Policing and Traffic Courts in California. Retrieved from [http://ebclc.org/wp-content/uploads/2016/04/Stopped\\_Fined\\_Arrested\\_BOTRC\\_A.pdf](http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRC_A.pdf)

<sup>11</sup> Nguyen, V., Grattet, R., & Bird, M. (2017, August). California Probation in the Era of Reform. Retrieved from [http://www.ppic.org/wp-content/uploads/r\\_0817vnr.pdf](http://www.ppic.org/wp-content/uploads/r_0817vnr.pdf)

“This system perpetuates a cycle of debt and poverty that disparately affects people of color; people of color are disproportionately represented in the criminal justice system in California and this involuntary debt can affect the building of intergenerational wealth.”

Theresa Zhen, Staff Attorney, East Bay Community Law Center

This issue affects not just individuals, but families as a whole. A study on juvenile probation in Alameda County found that “a family with an African American youth serving average probation conditions is liable for more than twice the juvenile administrative fees (\$3,438) as a family with a white youth serving average

probation conditions (\$1,637)... Families are doubly harmed by current practices-their children are overrepresented within the system, and they are liable for higher fees because of longer probation conditions”.<sup>12</sup>

Within the civil debt world, regulators continue to receive complaints in regards to bail laws, even though California is perceived to have strong consumer protections in this area.<sup>13</sup> In an analysis of 100 bail contracts, it was found that “bail bond agents profit off their poor clientele through late fees and interest payments, they charge numerous fees-some of which may not be legal, they may skirt reporting requirements when charging extra fees, and discounts were available-to wealthier people.”<sup>14</sup> The collection of these fees and the little awareness of fee waivers and alternative payment programs further exacerbates financial instability within communities of color, which increases the inequality of wealth between communities of color and white communities.

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<sup>12</sup> Kaplan, A., Lavalais, A., Kline, T., Le, J., Draznin-Nagy, R., Rodriguez, I., . . . Selbin, J. (2016, March 26). High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2738710](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710)

<sup>13</sup> Silver-greenberg, J., & Dewan, S. (2018, March 31). When Bail Feels Less Like Freedom, More Like Extortion. Retrieved

April, from <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>

<sup>14</sup> UCLA School of Law: Criminal Justice Reform Clinic. (2017, May). The Devil in the Details: Bail Bond Contracts in California. Retrieved from [https://static.prisonpolicy.org/scans/UCLA\\_Devil\\_in\\_the\\_Details.pdf](https://static.prisonpolicy.org/scans/UCLA_Devil_in_the_Details.pdf)



Our research focuses on counties with higher numbers of adults<sup>15</sup> of color<sup>16</sup> than the state's average. The counties studied were:

Alameda, Colusa, Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Monterey, Riverside, San Benito, San Bernardino, San Joaquin, Santa Clara, and Tulare. San Francisco<sup>17</sup> was included, even though its proportion of adults of color is less than the state's proportion.

In these counties, adults of color arrested made up 55% to 83.4% of the total adults arrested.<sup>18</sup>

**Table 1: Proportion of Adults of Color to Non-Hispanic White Adults in Studied Counties**

<i>County</i>	<b>Adults Total</b>	<b>Number of Non-Hispanic White Adults</b>	<b>Number of Adults of Color</b>	<b>Proportion</b>
<i>Imperial</i>	117,217	17,914	99,303	84.7%
<i>Los Angeles</i>	7,071,965	2,303,159	4,768,806	67.4%
<i>Merced</i>	171,586	63,103	108,483	63.2%
<i>San Bernardino</i>	1,414,191	527,350	886,841	62.7%
<i>Tulare</i>	287,805	110,392	177,413	61.6%
<i>Fresno</i>	628,133	243,467	384,666	61.2%
<i>Alameda</i>	1,152,242	447,938	704,304	61.1%
<i>Santa Clara</i>	1,325,841	524,531	801,310	60.4%
<i>Monterey</i>	289,832	114,959	174,873	60.3%
<i>Kings</i>	102,617	40,847	61,770	60.2%
<i>San Joaquin</i>	471,143	198,264	272,879	57.9%
<i>San Benito</i>	39,524	17,229	22,295	56.4%
<i>Kern</i>	570,742	250,422	320,320	56.1%
<i>Madera</i>	101,753	45,776	55,977	55.0%
<i>Colusa</i>	14,408	6,536	7,872	54.6%
<i>Riverside</i>	1,548,431	716,542	831,889	53.7%
<i>State of CA</i>	26,856,280	12,437,054	14,419,226	53.7%
<i>San Francisco</i>	671,592	316,966	354,626	52.8%

<sup>15</sup> Ages 18 through 85 and older are "adults." Working age adults were chosen as a proxy for the age when criminal, municipal, and civil fines and fees would be applied, not considering ability to work. According to author's calculation and information from the Department of Finance, the State of California's estimated proportion of "adults" of color is 53.7%.

<sup>16</sup> Adults of Color includes African-Americans, Hispanics, Asians, Native Americans, and anyone who is not categorized, or has not identified themselves as non-Hispanic whites.

<sup>17</sup> The San Francisco municipality is the City and County of San Francisco.

<sup>18</sup> Author calculation, including ages 18 and older. Information from: Department of Justice. (n.d.). Data Portal. Retrieved March 20, 2018, from <https://openjustice.doj.ca.gov/data>



# HOW DEBT COLLECTION OF FINES AND FEES WORKS IN CALIFORNIA

California ranks 8<sup>th</sup> among US states in the number of criminal fees imposed on people.<sup>19</sup>

California has a total of 684 criminal justice financial penalties,<sup>20</sup> of which 597 are fines<sup>21</sup> and 58 are fees.<sup>22</sup>

Base fines and certain surcharges are set in state law for each criminal offense. State law also gives counties and courts the authority to levy additional charges depending on the specific violation. Additionally, courts, at the discretion of judges, can reduce the total amount owed by waiving or reducing certain charges.<sup>23</sup> Counties can submit for the collection of debts owed for property taxes, delinquent fines, bail, vehicle parking penalties, court-ordered payments, and other permitted debts.<sup>24</sup>

The process in which debt is collected by an agency before being sent to debt collection varies throughout California's counties. Courts are currently the primary administrator of collection programs in about two-thirds of the state's counties.<sup>25</sup> Collection can happen through trial courts, county agencies, the Franchise Tax Board, the Department of Motor Vehicles or Metropolitan Transportation Authority, and private debt collectors.<sup>26</sup>

Counties are required to report on the collection of court-ordered debt to the Legislature through the Judicial Council of California, using the Collections Reporting Template.<sup>27</sup> This report includes an overview of money collected from delinquent court-ordered debt within county governments and their Superior Courts in California's 58 counties, and is used to determine if the counties and courts meet the Judicial Council's Best Practices for Collection, which includes 25 practices. Of greatest relevance to

<sup>19</sup> Criminal Justice Policy Program at Harvard Law School: 50-State Criminal Justice Debt Reform Builder. (2018). Retrieved from <https://cjdebtreform.org/national-comparison>

<sup>20</sup> Criminal Justice Policy Program at Harvard Law School. (2018). Fees and Fines. Retrieved from [https://cjdebtreform.org/data-explorer/fines-and-fees?deff\[0\]=state:89](https://cjdebtreform.org/data-explorer/fines-and-fees?deff[0]=state:89)

<sup>21</sup> **Fines:** Financial obligations imposed as a penalty after a criminal conviction or admission of guilt. Criminal Justice Debt Reform Builder: Definitions and Methodology. (2018). Retrieved from <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Definitions-for-Web-Tool.pdf>

<sup>22</sup> **Fees (including Surcharges and Supervisory Fees):** Financial obligations imposed as a way for jurisdictions to recoup costs of the "use" of the criminal justice system, including, but not limited to, costs associated with public defenders, GPS monitoring, court proceedings, imposed as a flat fee or percentage added to a fine to fund a particular government function or a general fund, and/or user fees that are imposed to recoup the cost of parole or probation supervision., Criminal Justice Debt Reform Builder: Definitions and Methodology. (2018). Retrieved from <https://cjdebtreform.org/sites/criminaldebt/themes/debtor/blob/Definitions-for-Web-Tool.pdf>

<sup>23</sup> Legislative Analyst's Office. (2017, February 22). Overview of Criminal Fine and Fee System. Retrieved from <http://www.lao.ca.gov/handouts/crimjust/2017/Fine-and-Fee-Overview-022717.pdf>

<sup>24</sup> Franchise Tax Board. (2017, May 15). Interagency Intercept Collections Program – Client Participation Basics Webinars. Retrieved from <https://www.ftb.ca.gov/aboutFTB/media/webinars/05162017-Text.pdf>

<sup>25</sup> Legislative Analyst's Office. (2014, November). Restructuring the Court-Ordered Debt Collection Process. Retrieved from <http://www.lao.ca.gov/reports/2014/criminal-justice/debt-collection/court-ordered-debt-collection-111014.pdf>

<sup>26</sup> *ibid.*

<sup>27</sup> Collections Reporting Template can be found at: <http://www.courts.ca.gov/documents/SP12-03-Collections-Reporting-Template-Revised.pdf>

this research were A) the effectiveness and efficiency of external collection agencies or companies to which court-ordered debt is referred to collection, and B) the impact of financial screening to assess each individual's ability to pay prior to processing installment payment plans and account receivables.<sup>28</sup>

County governments and their courts contract directly with private debt collectors through Participating Agreements. Our review of these Participating Agreements indicates several problematic aspects. For example, private debt collectors may report unpaid debt to credit bureaus, potentially affecting peoples' credit scores and future opportunities to access credit. Whether or not counties allow private debt collection agencies to report outstanding debt from fines and fees to credit bureaus varies county-by-county. One county court states: "Contractor to perform credit reporting only if/when Court asks Contractor to perform that task." Two of the country courts ensure that "contractor[s] will not report outstanding [accounts] on behalf of the Court to any credit history reporting databases (credit bureaus)."

Private debt collectors may also employ skip tracing<sup>29</sup> and other techniques to locate debtors

anywhere within the United States, and may use Spanish or other languages to do so. Private debt collectors can also provide staff at public counter areas to assist the public with accepting payments, answering questions, and setting up payment arrangements. This means they are legally using county buildings or courthouses to collect on debt, potentially using unfair practices. For example, there is a bank of telephones in a San Francisco courthouse that goes directly to Alliance One, which is contracted with the City and County of San Francisco to collect on delinquent debt.

Only one Participating Agreement provides a Code of Ethics for court employees to the private debt collector. Although private debt collectors cannot represent themselves as court employees, the Code of Ethics they shared promotes behaving "towards all persons with respect, courtesy, patience, and responsiveness, acting always to promote public esteem in the court system".

This system perpetuates a cycle of debt and poverty that disparately affects people of color; people of color are disproportionately represented in the criminal justice system in California and this involuntary debt can affect the building of intergenerational wealth.

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<sup>28</sup>Judicial Council of California. (2016, June 9). Judicial Council Approved Collections Best Practices. Retrieved from <http://www.courts.ca.gov/partners/documents/collectbp.pdf>

<sup>29</sup> "If a collection agency is seeking data on a debtor to collect a debt, it may first check some large data brokers for

consumer information related to the debtor, such as current address, phone or employment information to 'skip trace' the debtor." Williams, J. (2016 [Pending]). U.S. Patent No. US15085267. Washington, DC: U.S. Patent and Trademark Office.

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## PROFILE OF COUNTY-LEVEL DEBT COLLECTION OF FINES AND FEES

*In 2016-2017, in the 17 studied counties, we found that:*

- There are 15 counties that contract with private debt collectors. Only two counties, San Bernardino and Kern, do not contract with a private debt collector.
  
  - 13 of these 15 county governments and/or their courts contract with one private debt collector. Fresno County & Courts contracts with two private debt collectors and Riverside County & Courts contracts with three.
    - 4 of 15 county governments (those that collect on water bills, property taxes, etc.) contract with one or more private debt collectors.
    - 14 of 15 county courts contracts with one or more private debt collectors.
  
  - 15 of 15 counties “contract with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.”
  
  - 15 of 15 counties “attempt telephone contact with delinquent debtors for whom the program has a phone number to inform them of their delinquent status and payment options.”
  
  - 14 of 15 counties “notify delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency.”
  
  - 11 of 15 counties “sends monthly bills or account statements to all delinquent debtors.”
  
  - 10 of 15 counties “use Department of Motor Vehicles information to locate delinquent debtors.”
  
  - 6 of 15 counties “sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.”
  
  - 5 of 15 counties report that their private debt collection agency is where their majority of their delinquent debt is initially referred.
  
  - 3 of 15 counties “coordinate with the probation department to locate debtors who may be on formal or informal probation.”
  
  - 2 of 15 counties “use Employment Development Department employment and wage information to collect delinquent debt.”
  
  - 2 of 15 counties “establish wage and bank account garnishments where appropriate.”
  
  - 1 of 15 counties “places liens on real property owned by delinquent debtors when appropriate.”
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## REVENUE FROM PRIVATE DEBT COLLECTION OF FINES AND FEES IS AN INSIGNIFICANT PORTION OF COUNTIES' BUDGETS

Overall, revenue from court-ordered fines and fees does not make up a significant portion of total county revenue. In 2016-2017, the amount of all Fines, Forfeitures and Penalties (FFP) revenue either collected by private debt collectors or directly by counties, ranged from 0.297%-4.22% of overall county revenue.

**Table 2: Revenue from FFP Compared to Total County Revenue**

<i>County</i>	<b>Total County Revenue (TCR)</b>	<b>Fines, Forfeitures, and Penalties (FFP) Revenue</b>	<b>FFP: TCR</b>
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	1.24%
<i>Colusa</i>	\$57,312,392	\$616,683	1.08%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	0.81%
<i>Imperial</i>	\$458,138,000	\$5,879,000	1.28%
<i>Kern</i>	\$1,688,744,000	\$21,826,000	1.29%
<i>Kings</i>	\$230,037,528	\$1,914,646	0.83%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	1.00%
<i>Madera</i>	\$239,860,000	\$4,865,553	2.03%
<i>Merced</i>	\$455,917,763	\$13,726,140	3.01%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	0.84%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	1.66%
<i>San Benito</i>	\$82,992,000	\$3,502,470	4.22%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000	0.43%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	0.30%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533	0.86%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	1.03%
<i>Tulare</i>	\$758,638,000	\$7,517,000	0.99%

Court-ordered debt collected by private agencies makes up an even less significant portion of county revenue, ranging from 0.001%-0.46% of the overall revenue<sup>30</sup> collected by the counties.

Furthermore, fines and fees revenue collected from private agencies varied greatly county by county, ranging from .002% to 55.25% of counties' Fines, Forfeitures, and Penalties (FFP) revenue line item.

<sup>30</sup> **Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

**Table 3: Revenue Collected by Private Debt Collectors Compared to Total FFP Revenue and Total County Revenue**

<i>County</i>	<b>Total County Revenue (TCR)</b>	<b>Fines, Forfeitures, and Penalties Revenue (FFP)</b>	<b>Private Agency Gross Revenue Collected (PA)</b>	<b>PA: FFP</b>	<b>PA: TCR</b>
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	\$6,241,129	17.01%	0.21%
<i>Colusa</i>	\$57,312,392	\$616,683	\$9,707	1.57%	0.02%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	\$3,765,889	31.53%	0.26%
<i>Imperial</i>	\$458,138,000	\$5,879,000	\$811,762	13.81%	0.18%
<i>Kern</i>	\$1,688,744,000	\$21,826,000		0.00%	0.00%
<i>Kings</i>	\$230,037,528	\$1,914,646	\$1,057,888	55.25%	0.46%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	\$69,233,129	45.25%	0.45%
<i>Madera</i>	\$239,860,000	\$4,865,553	\$356,034	7.32%	0.15%
<i>Merced</i>	\$455,917,763	\$13,726,140	\$692,426	5.04%	0.15%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	\$507,598	5.65%	0.05%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	\$4,346,218	6.10%	0.10%
<i>San Benito</i>	\$82,992,000	\$3,502,470	\$755	0.02%	0.00%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000		0.00%	0.00%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	\$3,506,510	11.39%	0.03%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533	\$4,987,870	39.29%	0.34%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	\$5,663,901	10.16%	0.10%
<i>Tulare</i>	\$758,638,000	\$7,517,000	\$1,606,052	21.37%	0.21%

The harmful, often predatory collection practices employed by private collection agencies combined with the negligible returns to counties for contracting with these private actors leads to a lose-lose scenario; vulnerable residents who often are the least able to pay court-imposed fines and fees are subjected to collection practices that trap them in a cycle of poverty and debt, while counties gain little revenue from these practices. The only winners in this scenario are the private collections agencies that profit from their contracts with county court systems.

“Both counties and state-wide governments need to take steps to ensure that revenue is not being made off the backs of those who can afford it least. It is heartening to see the progress that has been made in reforming our criminal justice system, but fines and fees must be abolished so that counties are not looking to raise revenue from those who can afford it least.”

Aila Ferguson, Legal Fellow at the ACLU of Southern California.

## Recommendation #1:

### Counties should end contracts with private debt collection agencies.

Municipalities can choose to end contracts with private debt collectors. Instead of using private debt collectors, existing collection programs through individual counties and courts can take on the role of collecting on delinquent debt. Revenues from increased collections from these departments can be used to improve processes such as faster payment processing, offering alternative ways to pay, and increasing awareness about Ability-To-Pay programs, discussed later. Dedicated staff should be available to help individuals throughout this process.

County governments and/or courts in Kings, Los Angeles, Riverside, and Tulare counties do not collect on debt.<sup>31</sup> This does not release the debtor from responsibility. California has led efforts to no longer suspend licenses for unpaid traffic fines because it doesn't help the state collect unpaid fines and hurts low-income people as they can experience job loss or more poverty from not having a valid license.<sup>32</sup> Additionally,

California recently ended the assessment and collection of fees charged to parents and guardians with children in the juvenile justice system, a policy which disproportionately hurt communities of color.<sup>33</sup> While there is a debate regarding relieving people from paying fines or fees from violent crime, discharging delinquent court-ordered debt with a history of nonpayment should be feasible.

**REAL LIFE STORY:** In January 2018, John Doe (pseudonym to protect privacy), a legally blind African American resident of Alameda County, got his entire bank account wiped clean by a traffic court debt that AllianceOne (the court's private debt collections agency), erroneously reported to the Franchise Tax Board. Because his income was solely based on a small amount of public assistance every month, this bank levy jeopardized his housing and food security, and caused a great deal of confusion and anxiety.

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<sup>31</sup> Based on Collections Reporting Templates from the "Judicial Council Report to the Legislature: Statewide Collection of Delinquent Court-Ordered Debt for Fiscal Year 2016–17" requested from Judicial Council pursuant to California Rules of Court, rule 10.500, "public access to judicial administrative records."

<sup>32</sup> Bollag, S. (2017, June 29). California to stop suspending licenses for traffic fines. Retrieved from

<https://www.apnews.com/9723bf702b3d4fb0b11d052229b26614>

<sup>33</sup> California Legislative Information. (2017, October 12). Senate Bill No. 190 CHAPTER 678. Retrieved from [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB190](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB190)

## CALIFORNIANS WHO OWE FINES AND FEES ARE NOT PROTECTED FROM ABUSIVE, UNFAIR, OR DECEPTIVE COLLECTION PROCESSES

Under the Fair Debt Collections Practices Act (FDCPA), debt collectors are prohibited from using abusive, unfair, or deceptive practices towards debtors when collecting on a range of consumer debt such as credit card debt or student loan debt.<sup>34</sup> Often debtors are low-income and at risk for the negative effects of debt such as depression, anxiety, and stress.<sup>35</sup> Debt collection in general has the second-most number of complaints in the Consumer Financial Protection Bureau's Consumer Complaint Database.<sup>36</sup>

Interestingly, none of the criminal fines and "nonconsensual" municipal fines that are sent to private debt collectors are covered by FDCPA. Traffic fines and other criminal and municipal fines and fees,<sup>37</sup> are excluded from the term "debt" within the FDCPA.<sup>38</sup> The reason for this is that these debts are "involuntary" debts arising from tickets, fines, or the nonconsensual imposition of a monetary penalty.<sup>39</sup> This includes "nonconsensual" municipal fees, fines for nonpayment for waste collection services, parking fines, private parking lot fines, fees and charges from commitment and probation orders,

towing and storage charges, homeowners' association fines, criminal restitution, and court fines from an arrest.<sup>40</sup> This loophole allows for private debt collectors contracted with municipalities through counties and courts to collect on debt in unfair ways, since they are not required to follow FDCPA.

**REAL LIFE STORY:** In March 2018, Virginia H. submitted a signed statement to the Alameda County Superior Court indicating that she is a disabled African American senior living on a fixed income without the ability to pay court fees for a traffic violation. After submitting this statement, the court forwarded her debt to AllianceOne, which immediately issued her a Demand for Payment commanding her to pay the debt in full within 10 days. The notice warns her if she does not pay in full in 10 days, that the fees "can be entered as a Judgment against you by the court" and that her "account may be referred to the Franchise Tax Board for involuntary collection." This has caused Ms. Hall anxiety and emotional distress.

<sup>34</sup> Federal Trade Commission. (2018, March 13). Debt Collection. Retrieved from <https://www.consumer.ftc.gov/articles/0149-debt-collection>

<sup>35</sup> Fitch, C., Mamo, E., & Campion, J. (2014, April). Primary Care Guidance on Debt and Mental Health. Retrieved from [https://www.rcpsych.ac.uk/pdf/factsheet\\_debtandmentalhealth.pdf](https://www.rcpsych.ac.uk/pdf/factsheet_debtandmentalhealth.pdf)

<sup>36</sup> Consumer Complaint Database. (n.d.). Retrieved from <https://www.consumerfinance.gov/data-research/consumer-complaints/>

<sup>37</sup> Other transactions excluded from FDCPA debt protections include: Taxes, child and other family support; Shoplifting civil claims & theft; Claims related to the theft of services or goods; License fees; Car accidents; Homeowner's association non-fee obligations and fines; Employment compensation claims; Torts; & Other claims.

<sup>38</sup> National Consumer Law Center.

<sup>39</sup> *Gulley v. Markoff & Krasny*, 664 F.3d 1073, 1074 (7th Cir. 2011).

<sup>40</sup> National Consumer Law Center.

**Recommendation #2:**

**For those counties that contract with private debt collectors, court-imposed debt collection practices should be subject to debt collection protections outlined in FDCPA and RFDCPA, to ensure debt is collected fairly. In addition, this debt should not be reported to credit bureaus.**

There must be legislative changes to ensure that debt collectors have to comply with FDCPA so that debtors are protected against unfair, abusive, or deceptive collection. The regulations include rights such as ability to dispute a debt, harassment and call restrictions, prohibiting debt collectors from contacting employers or other people, restrictions on credit reporting, and ability to report complaints.<sup>41</sup>

Additional protections would increase accountability to correctly collect debts and could supersede items in contracts, such as in bail bond contracts. Many bail bond contracts “require the accused to give up substantial privacy rights without any ability to opt out of bail bond agents’ invasive techniques, [in addition to] sacrificing the privacy rights of friends and family of the accused.”<sup>42</sup>

## **THE REAL WINNERS: PRIVATE DEBT COLLECTION AGENCIES**

The Participating Agreements also include commission fee structures that perpetuate perverse profit incentives for collections.

Commission fees<sup>43</sup> are based on the length of time the debt has been delinquent, ranging from 12%-18% for newly delinquent debt<sup>44</sup> to 14.9-25.8% for delinquent debt over five years old.

Only one private debt collection agency has a protection built in for the consumer in their Master Agreement. In this agreement, “Commission fee is determined by age of account at date of referral and remains at the same rate regardless of aging after referral. This prevents a collection vendor from allowing accounts to age so that the fee rises over time.”<sup>45</sup> Commission fees encourage private debt collectors to collect on debt over five years old, and to allow debt to age so that they can collect on it later and receive higher commission fees.

<sup>41</sup> Office of the Attorney General. (2018, January). Debt Collectors. Retrieved from <https://oag.ca.gov/consumers/general/debt-collectors#top>

<sup>42</sup> UCLA School of Law: Criminal Justice Reform Clinic.

<sup>43</sup> With No On-Site Staff. Not including restitution-related debt.

<sup>44</sup> **Newly Delinquent**=Accounts not fully paid 30 days past its stated due date, or on which an installment payment has not been paid 30 days past its stated due date.

<sup>45</sup> Information and contracts obtained from Public Records Act requests and Judicial Council of California. (n.d.). Procurement Services: Collections LPA Master Agreements



Alarming, we found that a couple of these county courts use these private debt collectors to also collect on Non-Delinquent Accounts (or on non-delinquent criminal accounts) and even charged a 9.9% commission fee. Another startling finding from one of the county courts was that they provided a budget to the private debt collector. They shared that the maximum budget for commission fees for the collection service was about \$3.6 million for a previous

### **Recommendation #3:**

#### **Discharge all debt more than 5 years old.**

CRC recommends discharging all court-ordered fine and fee debts more than five years delinquent. This would most benefit those who cannot afford to pay these debts, nor deal with the consequences from private debt collectors trying to collect. This would also save money for counties and their courts, who currently try to collect debt that is unlikely to be paid. Court-ordered debt collection from private agencies is

term. For February 1, 2018 through January 31, 2019, that same county court allocated \$5.3 million for commission fees. While it is unknown how much was collected in commission fees by the private debt collector, this could be a perverse incentive for private debt collectors to collect on accounts using any means necessary, in order to receive the maximum money allocated to them.

insignificant to total county revenue, as we will show in the next section of the report. Private debt collectors are incentivized (through higher commissions) to collect on debt over five years old; this creates more costs for counties and courts.

## **HOW COUNTY CONTRACTS WITH PRIVATE DEBT COLLECTORS ARE AWARDED**

Many of the Master Agreements between the Judicial Council and the “pre-approved” private debt collectors are set to expire at the end of December 2018. These master contracts set the stage for participating agreements for counties. CRC filed an information request with the Judicial

Council to receive records on contract negotiations, but were told that they had no requirement to provide us with records, and that “all records of and related to contracts with third-party vendors are exempt until negotiations have been completed.”<sup>46</sup>

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and Amendments (including Amnesty). Retrieved from <http://www.courts.ca.gov/procurementservices.htm>

<sup>46</sup> Public Records Act requests and Judicial Council of California. (n.d.). Procurement Services.

**Recommendation #4:**

**The State of California and counties should increase transparency about debt collections practices, contract negotiations with debt collectors for Master Agreements and Participating Agreements, and Ability-to-Pay programs; and institute a public process for communities to give feedback.**

The details of these negotiations and their impacts on communities are of interest to the public. When asked about the Request for Proposals (RFP) process for these contracts, the Judicial Council stated, “if an RFP is issued, it will be provided.” The public has a right to know about the status of negotiations for Master Agreements and Participating Agreements, and to push for community-supported, consumer protection requirements. CRC calls for a public process in which communities can give feedback on the RFP process, details of contracts, and negotiations with debt collectors.

There is also a lack of information made publically available about Ability-to-Pay programs. Information about how many people have benefitted from ATP evaluations, fines and fees payment releases, reductions in fines and fees, alternative payments, and which communities have benefitted from these policies is important.

Overall data about who is affected by the collection of fines and fees and for which infractions, is also needed to see how different communities are affected by these policies.

Courts declined to provide researchers with data on infraction/offense type, household size, income, gender, and race/ethnicity demographics. Some information was available for ATP evaluations, however, the cost for this data was prohibitively expensive (over \$500 in one case). This data is critical in order to understand if alternative payment options are being distributed equitably. A solution to this is for the Judicial Council to add access to this information through existing reporting requirements. Making this information available will make it easier to evaluate to what extent collection practices are disproportionately impacting communities of color and low-income communities.

## **THE CALIFORNIA FRANCHISE TAX BOARD AS DEBT COLLECTOR**

Debt accounts for the collection of fines and fees can also be transferred to other government collection programs. In most cases, this is the Franchise Tax Board (FTB) Court-Ordered Debt Collection and Interagency Intercept programs, where the private debt collector will be responsible for the associated costs. Additionally, depending on the Participating Agreement, 2-

50% of the net debt collected from FTB transfer services (or a flat fee of \$10) is provided to the private debt collector as a commission fee.

Participating Agreements between county courts and private debt collectors include the following information<sup>47</sup> about transferring debt to the Franchise Tax Board.

- Government Collection Programs

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<sup>47</sup> All information in this section from a Participating Agreement obtained from Public Records Act requests.

- *Court Ordered Debt (COD) Program.* “Contractor will refer Accounts it receives to the FTB-COD Program, liaise with FTB regarding such Accounts, and administer such Accounts under the terms and conditions set forth in Exhibit A. Statement of Work, of the Master Agreement. Upon such a referral to the FTB. Contractor will cease all collection work on the account but will remain responsible for canceling and adjusting all accounts, as appropriate and answering inquiries related to the FTP from debtors.”
- *Tax Intercept Program (FTB-TIP).* “In addition to other Services provided hereunder. Contractor shall prepare an electronic file transfer for those accounts forwarded from Court that are eligible for the FTB-TIP. Contractor will forward eligible Accounts to the FTB, liaise with FTB regarding such Accounts, and perform the equivalent administrative functions regarding such Accounts as that set forth in Exhibit A, Statement of Work, of the Agreement. Upon such a referral to the FTB, Contractor will remain responsible for collecting, canceling and adjusting all-accounts, as appropriate and answering inquiries related to the FTP from debtors.”
- In addition to the commission back to private debt collectors, while “the Court will not pay Contractor any commission for these cases, the Court does agree to pay a 2% transfer fee for cases transferred and collected to FTB COD and FTB TIP.” Some county courts won’t pay commission fees for accounts transferred to FTB at all.

This transfer can be problematic. All but one of the counties studied use FTB collection programs.

According to community advocates and direct service providers, the FTB has more power to affect someone’s financial life than private agencies, since they can garnish wages and withhold tax refunds.

FTB also has a backlog of work which delays payment processing and can result in debtors being assessed late payment fees in addition to what is already owed, or being subject to a warrant for Failure to Pay.<sup>48</sup>

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<sup>48</sup> Rodriguez, G., California Taxpayers Association. Re: 2014 Taxpayers’ Bill of Rights Hearing [Letter written December 4,

2014 to Steve Sims, Franchise Tax Board]. Retrieved from <http://www.caltax.org/action/2014CalTaxBOR.pdf>

“The Franchise Tax Board’s ability to garnish wages, intercept taxes and levy bank accounts is extremely detrimental to individuals’ financial and emotional health. By virtue of wage garnishments, people’s privacy is impacted, notifying their jobs of their financial struggles. By virtue of tax interceptions, people are denied the ability to apply much needed predicated money towards personal needs and through bank levies individuals are held to the whims of their bank, who also becomes privy to their personal struggles but also to those of the FTB. There are very little safeguards against abuse when these systems go awry.” Brandon Greene, Staff Attorney, East Bay Community Law Center

#### **Recommendation #5:**

#### **Delinquent debt should not be transferred to the California Franchise Tax Board.**

Discharging debt should also happen for debt collection through the Franchise Tax Board’s (FTB) Court-Ordered Debt Collection and Interagency Intercept programs. FTB revenue from collecting court-ordered debt is fairly insignificant. During 2016-2017, the revenue collected from FTB collection programs made up 1.393%-61.931 of an applicable county’s Fines, Forfeitures, and Penalties (FFP) revenue line item. Again, the FFP revenue for the applicable counties do not make up a significant portion of the total county revenue, ranging from 0.297%-4.220%. Court-ordered debt collected through FTB collection programs made up an insignificant amount ranging from 0.006%-0.666% of the total county revenue<sup>49</sup> collected by the counties.

**Table 4: Revenue Collected by FTB Programs Compared to FFP Revenue and Total County**

#### **Revenue**

<i>County</i>	<b>Total County Revenue (TCR)</b>	<b>Fines, Forfeitures, and Penalties Revenue (FFP)</b>	<b>FTB Program (FTB) Gross Revenue Collected</b>	<b>FTB: FFP</b>	<b>FTB: TCR</b>
<i>Alameda</i>	\$2,968,239,000	\$36,698,000	\$11,016,357	30.02%	0.37%
<i>Colusa</i>	\$57,312,392	\$616,683	\$381,916	61.93%	0.67%
<i>Fresno</i>	\$1,466,927,000	\$11,944,000	\$2,404,607	20.13%	0.16%
<i>Imperial</i>	\$458,138,000	\$5,879,000	\$1,252,728	21.31%	0.27%
<i>Kern</i>	\$1,688,744,000	\$21,826,000	\$3,578,386	16.40%	0.21%

<sup>49</sup> **Overall Revenue:** Financial resources collected by a local government to finance operations and services including, but not limited to, revenue received from federal government, local government fines and forfeitures, intergovernmental (including state and federal sources), licenses, permits, and franchises, miscellaneous (from the sale of real or personal property), in-lieu taxes, property taxes, use of money or property, sales and use taxes, state aid, taxes, transient lodging taxes, utility user taxes, etc. Retrieved from: <https://bythenumbers.sco.ca.gov/stories/s/guqp-d3wf>

<i>Kings</i>	\$230,037,528	\$1,914,646	\$175,478	9.17%	0.08%
<i>Los Angeles</i>	\$15,268,481,000	\$153,014,000	\$2,130,915	1.39%	0.01%
<i>Madera</i>	\$239,860,000	\$4,865,553	\$398,217	8.18%	0.17%
<i>Merced</i>	\$455,917,763	\$13,726,140	\$980,311	7.14%	0.22%
<i>Monterey</i>	\$1,070,600,000	\$8,978,549	\$3,235,179	36.03%	0.30%
<i>Riverside</i>	\$4,300,678,000	\$71,196,000	\$1,876,194	2.64%	0.04%
<i>San Benito</i>	\$82,992,000	\$3,502,470	\$315,032	8.99%	0.38%
<i>San Bernardino</i>	\$3,344,596,000	\$14,326,000	\$213,290	1.49%	0.01%
<i>San Francisco</i>	\$10,357,120,000	\$30,798,000	\$4,278,410	13.89%	0.04%
<i>San Joaquin</i>	\$1,475,090,000	\$12,694,533		0.00%	0.00%
<i>Santa Clara</i>	\$5,398,909,000	\$55,746,000	\$8,730,401	15.66%	0.16%
<i>Tulare</i>	\$758,638,000	\$7,517,000	\$4,572,628	60.83%	0.60%

There is more harm done to people through FTB debt collection programs than the amount of revenue a county obtains from this collection. Discharging debt would alleviate debt-related stress for those who cannot afford to do so. This is the most favorable, and perhaps least costly option for improving California's system for the collection of fines and fees.<sup>50</sup>

## ABILITY-TO-PAY (ATP) PROGRAMS ARE A STEP FORWARD FOR CONSUMER RELIEF EFFORTS

Despite a lack of public information about ATP evaluations, such programs are a step forward in providing relief to consumers, yet further improvements are needed. The 1983 *Bearden v. Georgia* federal ruling holds that a judge must first consider whether the defendant has the ability to pay prior to incarcerating them for failure to pay, in an effort to prohibit jailing poor people who cannot pay the fines and fees assessed to them. "When possible and appropriate, base fine and fee amounts should be based on an individual's ability to pay, to ensure consequences are equitable".<sup>51</sup>

ATP evaluations should determine someone's ability to pay the fines and fees imposed on them through evaluating their income and assets. This would lead to the "establishing of payment plans, providing payment alternatives, enforcing court-ordered financial obligations, and identifying uncollectible debts".<sup>52</sup> For example, the San Francisco County Superior Courts and the San Francisco Municipal Transportation Agency are implementing ATP processes that offer discounts and reductions to citations imposed on San Franciscans with incomes at or below 200% of the Federal Poverty Line (FPL) or those who receive public benefits through programs like the

<sup>50</sup> Legislative Analyst's Office. (2016, January 5). Improving California's Criminal Fine and Fee System. Retrieved from <http://www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf>

<sup>51</sup> The Financial Justice Project. (2017, May). SAN FRANCISCO FINES & FEES TASK FORCE: Initial Findings and Recommendations. Retrieved from [http://sftreasurer.org/sites/default/files/SF Fines & Fees Task Force Initial Findings and Recommendations May 2017.pdf](http://sftreasurer.org/sites/default/files/SF%20Fines%20&%20Fees%20Task%20Force%20Initial%20Findings%20and%20Recommendations%20May%202017.pdf)

<sup>52</sup> Legislative Analyst's Office. (2014, November). Restructuring the Court-Ordered Debt Collection Process.

Supplemental Nutrition Assistance Program (SNAP).<sup>53</sup>

Although *Bearden v. Georgia* set a precedent for the right to an assessment, ATP programs vary across states, counties, and even between courts in the same county.

While standards exist, there are no set guidelines for such evaluations. In July 2017, California established a Rule of Courts whereby courts are required to provide notice to defendants about ATP and have outlined a procedure to determine ATP for traffic violations only.<sup>54</sup> To be considered for an ATP evaluation, the defendant has to appear before a judge before an evaluation of their income is processed. After assessing the individual's ability to pay, the court has the option to reduce a defendant's fines or fees or

provide alternative forms of payment. These include implementing a payment plan, requiring community service in lieu of payment, or suspending the fine. However, policies, procedures, and forms vary across county courts. Only some counties have staff assigned to review ATP requests prior to a judge, which increases capacity for evaluating people's ability to pay. More importantly there are no clear guidelines for how evaluations should be conducted.

Anecdotal evidence shows that people have had to negotiate directly with county officials to establish and agree upon the terms of a payment plan. Often, such negotiations are not written down, meaning that debtors cannot hold debt collectors to the agreed-upon plan. Negotiating without legal representation can be difficult, especially considering racial<sup>55</sup> and gender<sup>56</sup> biases against communities of color and women in negotiation, as well as possible language barriers.

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<sup>53</sup> The Financial Justice Project. (2017, October 10). Progress Update Memorandum. Retrieved from [http://sftreasurer.org/sites/default/files/Six month Task Force update 2017.10.11.pdf](http://sftreasurer.org/sites/default/files/Six%20month%20Task%20Force%20update%202017.10.11.pdf)

<sup>54</sup> Information in this paragraph from California Rules of Court. (2017, July 1). Rule 4.335. Ability-to-pay determinations for infraction offenses. Retrieved from [http://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4\\_335](http://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_335)

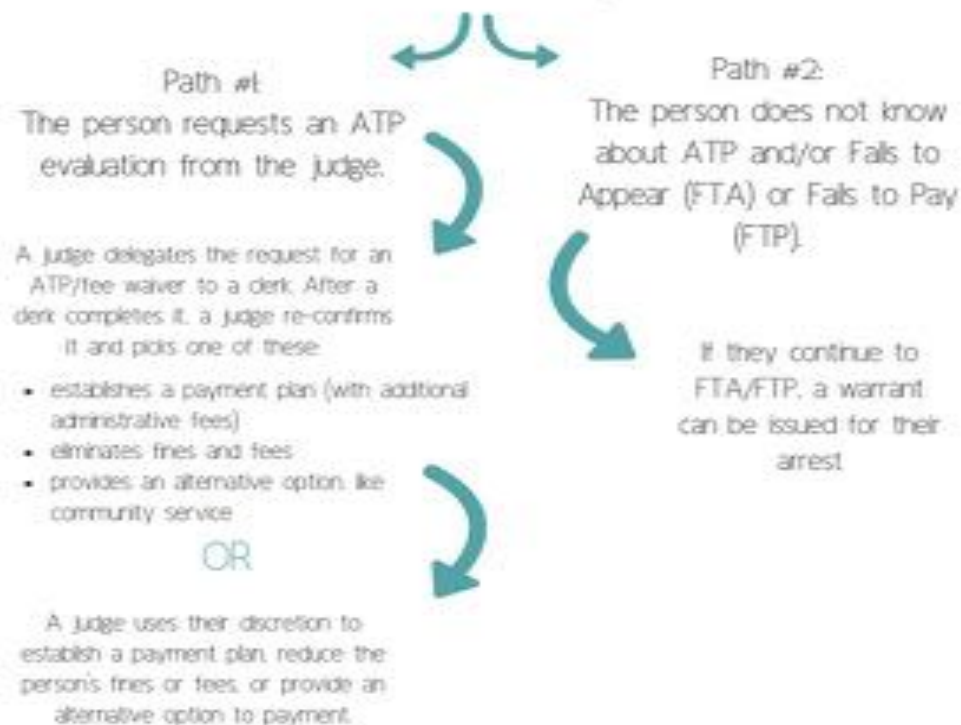
<sup>55</sup> Kubota, J.T., Li, J. Bar-David, E., Banaji, M.R., & Phelps, E.A. (2013). The Price of Racial Bias: Intergroup Negotiations in the Ultimatum Game. *Psychological Science*, 24 (12), 2498-2504. <http://doi.org/10.1177/0956797613496435>

<sup>56</sup> Busse, M., Israeli, A., & Zettelmeyer, F. (2013). Repairing the Damage: The Effect of Price Expectations on Auto-Repair Price Quotes. *Journal of Marketing Research*, 54(1), 75-95. Doi:10.3386/w19154

### ATP Process Example<sup>57</sup>

A process document in the Appendix shows the complexity of what can happen when someone requests an ATP evaluation. There are a number of outcomes from this process; the graphic below shows a simplified version:

A person receives a violation from an officer. The print-out has their name, address, and court they are to report to. This court sends them a courtesy notice about the hearing to the address they gave the officer. If possible, in their county and if they knew beforehand, the person can request an ATP evaluation or fee waiver from the Clerk's Office prior to their hearing. When their adjudication or sentencing date comes up, they can follow one of two paths:



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At any of these stages if the person FTA/FTP, they can be sent to debt collection. Of courts in the 17 studied counties:

- All “impose a civil assessment for failure to appear on infraction cases.”
- 16 of 17 “impose a civil assessment for failure to pay on infraction cases.”
- 16 of 17 “impose a civil assessment for failure to pay on misdemeanor cases.”
- 10 of 17 “impose a civil assessment for failure to pay on felony cases.”

<sup>57</sup> Process according to Judicial Council of California, legal, and community organizations.

<sup>58</sup> A judge can also be a Judicial Officer or a Court Commissioner. A clerk can also be a Legal Clerk, Clerk Staff, Court Collector, Court Specialist, Courtroom Assistant, or Enhanced Collections Officer.

Our research revealed a number of concerns about the process of requesting an ATP evaluation:

*Change of Address:* Low-income communities often go through unpredictable address changes due to job loss, eviction, changes in household size, rising housing cost, or prioritization of other expenses, such as medical payments brought about by illness.<sup>59</sup> Sending a notice of nonpayment and stating that one can request ATP evaluations or fee waivers may not reach community members who have frequent changes of address. However, those charged with fines and fees should be given the option to request an ATP evaluation and citations should have explicit information on them about the ATP evaluation process.

*Court's Limited Capacity to Conduct ATP Evaluations:* Few counties and courts have dedicated staff members in roles conducting full financial capability evaluations. This means that judges, with already large caseloads, cannot dedicate enough time to comprehensively evaluate someone's inability-to-pay or even the accuracy of the amount owed. For example, in terms of bail, "instead of performing an independent analysis to determine the amount of bail required to ensure compliance, many courts simply require payment of the full judgement owed."<sup>60</sup>

*Barriers to Requesting an ATP Evaluation:* Explanations have been offered about low take-up rates for ATP programs such as informational barriers like eligibility requirements, transaction

costs associated with enrollment like onerous documentation collection, and the stigma associated with participation (which could be a form of a transaction cost).<sup>61</sup> If higher take-up of ATP programs is the goal, then removing barriers like having to appear in person before a court during the arrear process would be beneficial. For example, the San Joaquin Court has attributed their increase in collections to the "communication of outstanding fines and fees to our customers, coupled with the Court's typical installment plans, the ability for customers to reappear before the Bench to discuss reasonable methods of satisfying delinquent debt and the additional revenue collected through the Amnesty/Reinstatement programs".<sup>62</sup>

*Problematic Alternatives to Payment:* There has been concern among stakeholders about community service as an alternative form of "payment" in lieu of monetary payment of fines or fees. Considerations include accommodations for lactating participants,<sup>63</sup> people with disabilities, people experiencing homelessness, and those with caregiving responsibilities. A potential solution proposed for the homeless community, introduced through San Diego's Homeless Court Program, gives "credit for time served for participants that accomplish shelter support activities such as life skills, chemical dependency or AA/NA meetings, computer and literacy classes, training or searching for employment, medical care (physical and mental), and counseling."<sup>64</sup>

<sup>59</sup> American Civil Liberties Union. (2018, February 23). A Pound of Flesh: The Criminalization of Private Debt. Retrieved from <https://www.aclu.org/report/pound-flesh-criminalization-private-debt>

<sup>60</sup> *Ibid.*

<sup>61</sup> Palfrey, Q. (2017, July 24). Getting Public Benefits to the People Who Need Them. Retrieved from <http://www.governing.com/gov-institute/voices/col->

[improving-low-take-up-rates-benefit-programs-earned-income-tax-credit.html](https://www.governing.com/gov-institute/voices/col-improving-low-take-up-rates-benefit-programs-earned-income-tax-credit.html)

<sup>62</sup> Information obtained from Public Records Act requests

<sup>63</sup> Letter from ACLU of Northern California to Merced County Probation Office regarding Lactation Accommodations

<sup>64</sup> San Diego Homeless Court Program (HCP). (2018). Home | Homeless Court Program. Retrieved from <https://www.homelesscourtprogram.org/>



### ATP Policies and Procedures<sup>65</sup>

Judicial Council collection best practices call for the inclusion of “financial screening to assess each individual’s ability to pay prior to processing installment payment plans and account receivables” for county courts, and reports claim that all but two of the studied counties follow this practice.<sup>66</sup> Yet, there are county governments or county courts without responsive records regarding policies and procedures. For the 12 county courts that do have supporting documentation, processes regarding ATP evaluations seem to happen mostly through fee waiver templates provided by the Judicial Council. Furthermore, the majority of these waivers, and therefore evaluations for ATP, are only applicable for traffic infractions.<sup>67</sup>

- Initial reviewers vary from county collections officers, legal clerks, court collectors, and judges/court commissioners.
- Letters are sent regarding the denial or approval of alternatives of full payment of fines or fees after an ATP evaluation; given that low-income individuals tend to have frequent changes of address, this method of communication can be ineffective.
- Notice times vary between five days to four weeks. Often along with the notices, requestors have only five to 10 days to go to a hearing to provide supporting documents or provide verbal explanations for the requests. The time

and date of the hearing is determined by the court and imposed on a requestor. This makes it difficult for people to take off work, arrange childcare, and find transportation.

- If someone is denied alternatives to full payment due at once, only 2 of 12 county courts make it clear on their forms that another request can be filed.
  - In some cases, full payment is due within 10 days of the denial letter. If alternatives are denied at a hearing, full payment is due 15 days from when a denial letter was mailed or 15 days from the date the judge orders the first payment paid.
- 4 of 12 county court forms make it clear on their forms that an ATP evaluation can be requested at any stage of appellate and trial proceeding. Only one county court makes it clear that this is available even if you are sent to collections.
- Fees for evaluations can include a \$40-50 payment plan set-up fee, a \$50 additional administrative fee for a subsequent financial evaluation, or a \$300 civil assessment if a person fails to pay.

It is often dangerously unclear when these debts are sent to private debt collection agencies upon failure to pay. Some county evaluation forms share a timeline but most do not.

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<sup>65</sup> Information obtained from documents provided through Public Records Act requests for 12 county courts

<sup>66</sup> Judicial Council of California. (2016, June 9). Judicial Council Approved Collections Best Practices.

<sup>67</sup> California Rules of Court. (2017, July 1). Rule 4.335. Ability-to-pay determinations for infraction offenses. Retrieved from [http://www.courts.ca.gov/cms/rules/index.cfm?title=four&lnkid=rule4\\_335](http://www.courts.ca.gov/cms/rules/index.cfm?title=four&lnkid=rule4_335)

**Recommendation #6:****California should create statewide, uniform and accessible Ability-to-Pay evaluations and processes, regardless of type of court.**

Counties vary in how they assess Ability-to-Pay and how they interpret those results. ATP evaluation forms or waivers ask for different sources of income, assets, and expense statements. Only a few counties have a space for applicants to explain emergency expenses. These variations can lead to vastly different results for the same person in assessing their economic situation.

CRC advocates for a uniform ATP evaluation for counties and courts throughout California. Such an evaluation should consider regional cost of living and all other debt the individual owes. This would allow for proper evaluation of an individual's economic situation, which would be used to provide accurate fine or fee reductions, alternative payment methods, or a payment plan. Harvard Law School's Criminal Justice Policy Program also recommends prohibiting additional interest or other costs incurred during incarceration and making hardship deferments available for times of economic hardship.<sup>68</sup>

Ability-to-Pay hearings must be more accessible. Availing of ATP evaluations requires knowing about the opportunity and appearing at a hearing or sentencing to request it. Transportation, childcare, medical, or immigration barriers may deter people from appearing. They may opt to pay even if they cannot afford it, or not pay at all. To make ATP programs more accessible,

individuals should be able to request an ATP evaluation during fining and prior to arraignment.

Individuals may be asked to attend an eligibility hearing with only 10 days' notice or asked to gather ATP documentation that can be difficult to access, such as income verifications, public benefit verifications, paystubs, or letters from employers. Systems that require online log-ins to access these documents can also present a barrier to those without technical skills or access. Fee waiver processes need to address these barriers and make it easier for those who are eligible to access them.

One impactful way to increase enrollment in ATP programs is to provide information and assistance in applying, not just information about the program.<sup>69</sup> ATP evaluations should occur at the beginning of the sentencing process, even as early as the receipt of a ticket or notice of infraction. Defendants should then be able to immediately get application assistance from a clerk or financial hearing officer. It also should also be better publicized that people may request an ATP determination at any time, even after their case has been referred to collections.<sup>70</sup> Such publicizing should happen online, through posters in court buildings, and in other ways that are likely to reach people where they are.

Other process improvements can break down barriers within the collection system. For example, Alameda County's probation

<sup>68</sup> Criminal Justice Policy Program at Harvard Law School. (2016, September). *Confronting Criminal Justice Debt: A Guide for Policy Reform*. Retrieved from <http://cjpp.law.harvard.edu/assets/Confronting-Criminal-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>

<sup>69</sup> Finkelstein, A., & Notowidigdo, M. (2018, February). *SNAP Take-Up Evaluation*. Retrieved from <https://www.povertyactionlab.org/evaluation/snap-take-up-evaluation>

<sup>70</sup> Judicial Branch of California. (2018). *Payment of Bail / Fines*. Retrieved from <http://www.courts.ca.gov/9581.htm>

department only has jurisdiction over fines and fees debt while probation files are active. In the case of delinquency, cases are closed and sent to collection, meaning that the court cannot conduct a new ATP assessment for someone whose financial circumstances has changed or who has only recently decided to apply for an assessment.

These recommendations are consistent with those put forth by the “Back on the Road” coalition to “create a statewide ability to pay process in traffic courts that makes fines more equitable and payable for Californians who are low income... when fines were adjusted to account for ability to pay, more people paid and the courts collected more total revenue.”<sup>71</sup>

## RECOMMENDATIONS

Our research into fines and fees debt creation and collection in California has shown us the urgency of reforming the system. This debt and the means in which private debt collectors collect upon it causes financial insecurity and income inequity for low-income communities and communities of color. Such policies don’t just affect communities today; they have an effect on intergenerational wealth-building.

It is clear that these policies are low-gain for counties. In this system, the ones who benefit are the private debt collectors, who are incentivized by perverse profit incentives, and are not subject to fair debt collection practices.

California prides itself on its remarkable ability to approach long-standing problems with innovative approaches to problem-solving. This is no less true in the area of criminal justice reform.

Throughout this research process, we have seen counties and municipalities taking bold and creative steps to address some of the most egregious aspects of what’s broken with the current system of fines and fees, and the collection of court-imposed debt.

We recognize that not all of our recommendations can be implemented right away: each one is designed to address a specific problem within the system that will benefit those most at risk from the harms of court-ordered debt and its collection. For reform to be successful at both the county and statewide level, additional information should be uncovered and shared. Transparency and public negotiations are a critical piece of the democratic process.

## ACKNOWLEDGEMENTS

CRC would like to thank the following organizations for their assistance on this report, and whose shoulders we stand on as we embark on this work: ACLU of Southern California, East Bay Community Law Center, Financial Justice Project/San Francisco Office of the Treasurer & Tax Collector, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Prisoners with Children, Policy Advocacy Clinic/UC Berkeley School of Law, Public Good Law Center, Western Center on Law and Poverty.

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<sup>71</sup> Lawyers’ Committee for Civil Rights of the San Francisco Bay Area.



# NO EXIT:

HOW MARYLAND'S DEBT COLLECTION PRACTICES  
DEEPEN POVERTY & WIDEN THE RACIAL WEALTH  
GAP

MARYLAND CONSUMER RIGHTS COALITION





Maryland Consumer Rights Coalition

# **NO EXIT:** HOW MARYLAND'S DEBT COLLECTION PRACTICES DEEPEN POVERTY & WIDEN THE RACIAL WEALTH GAP

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By Robyn Dorsey & Marceline White

June, 2018

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## ABOUT THE AUTHORS

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**Robyn Dorsey** is the Policy Research & Reinvestment Manager at the Maryland Consumer Rights Coalition where she oversees the organization's Community Reinvestment Act work. Prior to coming to MCRC, Robyn was a Regional Organizer at NCRC where she provided technical support in leveraging the Community Reinvestment Act to organizations from Maryland to Maine. She has a Masters of Social Work in Social Action and Community Development from the University of Maryland. Robyn is a proud resident of Highlandtown, Baltimore and serves on the board of the Highlandtown Community Association.

**Marceline White** is the Executive Director of the Maryland Consumer Rights Coalition (MCRC). She has written about debt settlement abuses, rent-to-own stores, foreclosure issues, auto fraud, and for-profit schools for MCRC. She has written op-eds for the Baltimore Sun, and been interviewed by CNN, NPR Marketplace, WYPR, WAMU, WTOP, the Washington Post, the Intercept, the Baltimore Sun, and a number of other print, radio, and television media for her consumer expertise. In 2017, Marceline won an award for Consumer Advocate of the Year by the National Association of Consumer Advocates (NACA), for Excellence in Advocacy from the Common Cents Conference as well as a joint award from the Community Development Network (with the CASH Campaign of Maryland ) for their work ending predatory payday loans in Maryland.

Marceline received her Master's in Public Policy and International Affairs from the University of Pittsburgh and a Bachelor's of Journalism from the University of Missouri- Columbia. Marceline is the president of the board of directors of the Consumer Federation of America and serves on the board of directors of the National Community Reinvestment Coalition. She is also active in the arts in Maryland as a poet and essayist.

## ABOUT THE MARYLAND CONSUMER RIGHTS COALITION

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The Maryland Consumer Rights Coalition (MCRC) advances economic rights and financial inclusion through research, education, advocacy, direct service, and organizing. Founded in 2000, MCRC works with its 8,500 supporters and members to expand economic rights and reduce the racial wealth gap at the local, state, and federal level.

This report was funded by the Ford Foundation as part of its support of our Multi-State Collaborative. We thank them for their generous support. The findings and conclusions presented in this report are those of the authors alone, and do not necessarily reflect the opinions of the Ford Foundation or its staff.

# ACKNOWLEDGEMENTS

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Amy Hennen and Kat Hyland provided valuable feedback and insights into the debt collection process for both consumer and civic debt.

Jane Merkin provided critical background research into Maryland's existing policies, practices and regulations, particularly around the role of the Central Collections Unit. Melisha Neal created a road-map of the debt collection processes. Matthew Stubenberg for creating a user-friendly database of Maryland cases which we used for this analysis.

Emanwell Turnbull's legal and technical expertise provided important data analysis of collection cases as well as insights into the practices in Maryland.

Any errors or mistakes are solely those of the authors.



# EXECUTIVE SUMMARY

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By the end of 2018, consumer debt is projected to reach \$4 trillion – an all-time high.<sup>1</sup> Today, Americans owe more than 26% of their annual income to consumer debt, which includes non-mortgage related debt such as credit cards, auto loans, and student loans.<sup>2</sup> In 2010, 22% of Americans annual income went to their consumer debts.<sup>3</sup>

Although multiple factors contribute to rising consumer debt, one key driver is student loan debt, which recently topped 1.5 trillion, making it the second highest source of consumer debt after mortgages.<sup>4</sup> Medical expenses and housing costs have risen faster than income – wages remain stagnant and for many workers, particularly low-income workers, this creates a perfect storm of deep indebtedness – a storm most cannot emerge from unscathed.<sup>5</sup>

In Maryland, the cost of housing, student loan debt, and medical expenses have increased the debt burden of many, while wages have not kept pace – particularly for working families.

Another type of debt burden a consumer may carry is civic debt – debt owed to the State. Civic debt is usually acquired without the consumer intentionally choosing to take on the debt, as is the case with fees for emergency services, bills at State-owned hospitals, and when toll roads are the best or only way to get to work.

For too many low-income Marylanders, the debt burden becomes unmanageable and they fall behind on their payments. Maryland law provides numerous ways for creditors to collect from indebted individuals including body attachments and garnishments. To collect State-owed debt, Maryland uses fines, fees, and flags on vehicle registration to compel consumers to pay. Yet, there are few measures within Maryland to provide methods for an individual to repay a debt in an affordable, sustainable manner that doesn't exacerbate an already fragile financial situation. Payment plans, assistance programs, and legal counsel are rare, and ability to repay considerations are non-existent.

Although Maryland has some strong consumer protections in place to curtail abusive and deceptive debt collection practices, when it comes to civic debt, debt owed to the state, Maryland has exempted itself from the very protections it requires of private debt collectors.

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<sup>1</sup> Konish, 2018

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> Friedman, 2018

<sup>5</sup> Issa, 2017

The concomitant failures to consider either ability-to-repay or affordability options, coupled with outdated, punitive practices to collect debts results in a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

Using a mix of qualitative and quantitative analysis, the Maryland Consumer Rights Coalition's (MCRC) findings reveal the disparate impact of debt and debt collection on communities-of-color for both consumer and civic debt.

Findings include:

- The existing racial wealth gap contributes to non-white borrowers having more consumer debts in collection, a higher debt load, and more student debt than white borrowers. 43% of non-white residents had at least one debt in collection, while only 19% of white borrowers had a debt in collection. 20% of non-white individuals had student loan debt compared to 14% of white residents.
- In 2016, there were 46,719 debt collection cases filed just in Prince George's County, Baltimore County, and Baltimore City.
- Nearly 400 body attachments were issued to consumers in Baltimore City and County for debts under \$5,000 during a six-month period. Body attachments were issued in about 14% of the debt-collection cases.
- More debt collection suits are filed in Maryland counties that have large communities-of-color.
- 76,611 Marylanders faced garnishment in 2016; 48,868 were wages garnishments, 27,744 were bank account seizures in 2016.
- Between 2015 and 2017, Maryland's Central Collection Unit (CCU) used the District Court system to collect on 12,102 State-owed debts, totaling just over \$18M.
- Racial demographics are a better predictor than income of where, and for how much, CCU sued Marylanders for debt than economic indicators. Geographic indicators had the strongest relationship with locations in which CCU sued for debt.
- Maryland explicitly exempts itself from the three-year statute of limitations on non-monetary judgment debt, and the twelve-year statute of limitation on monetary judgments.
- The State has access to consumer data through tax filings, property records, employment and wage records, and financial records. This data allows Maryland to track the financial lives of debtors who have limited income and assets. When a debtor's financial situation improves, Maryland revives collection efforts and begins garnishing wages and assets.

## Policy Recommendations

### Debtors' Prisons:

- Eliminate the use of body attachments for consumer debts below \$5,000.
- At a minimum, establish that no one can be arrested when court is not in session and eliminate bail requirements for consumer debt cases. An individual could be picked up, answer questions about their assets, and then released on their own recognizance.
- Establish that a body attachment may only be issued if both oral exam and show cause orders were delivered to the person to be served not left with a co-resident or served through certified mail.

### Debt Collection:

- Require any post-judgment discovery to include a list of all types of income and assets that are exempt. This form should explain how to claim these exemptions.
- Require judgment creditors to pursue all out-of court post-judgment discovery options before requesting a post-judgment hearing.
- Raise debt exemptions for wage garnishment to a level that keeps a family of four out of poverty; in Maryland, that would be at least 60 times the Maryland minimum wage or 75% of wages, whichever is higher.
- Establish a right to legal counsel for consumer cases – especially in debt collection and landlord tenant cases.

### Civic Debt:

- Establish a waiver of the 17% fee when a consumer requests a payment plan.
- Place checks on Maryland's debt collection powers through legislation, regulation, and/or an order from Maryland's Attorney General. Limits should include:
  - A statute of limitations on civic debt;
  - Ending use of confessed clauses in CCU payment agreements;
  - Ending of immediate-suspension administrative flags on vehicle registration using;
  - Ending financial incentives program for state-employed debt collection employees; and,
  - Establishing an Ability-to-Repay (ATR) standard for civic debt following the model developed by the San Francisco Fines and Fees Task Force.

# INTRODUCTION

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By the end of 2018, consumer debt is projected to reach \$4 trillion – an all-time high.<sup>6</sup> Today, Americans owe more than 26% of their annual income to consumer debt, which includes non-mortgage related debt such as credit cards, auto loans, and student loans.<sup>7</sup> In 2010, 22% of Americans annual income went to their consumer debts.<sup>8</sup>

Although multiple factors contribute to rising consumer debt, one key driver is student loan debt, which recently topped 1.5 trillion: the second highest source of consumer debt after mortgages.<sup>9</sup> Medical expenses and housing costs have risen faster than income. Meanwhile, wages remain stagnant and for many workers, particularly low-income workers, which creates a perfect storm of deep indebtedness – a storm most cannot emerge from unscathed.<sup>10</sup>

Another type of debt burden consumer may carry is civic debt – debt owed to a government. Civic debt is usually acquired without the consumer intentionally choosing to take on the debt, as is the case with fees for emergency services, bills at State-owned hospitals, and when toll roads are the best or only way to get to work.

For too many low-income Marylanders, the debt burden becomes unmanageable and they fall behind in their payments. Maryland law provides numerous ways for creditors to collect from indebted individuals including body attachments and garnishments. To collect State-owed debt, Maryland uses fines, fees, and flags on vehicle registration to compel consumers to pay. Yet, there are few measures within Maryland to provide ways for an individual to repay a debt in an affordable, sustainable manner that doesn't exacerbate an already fragile financial situation. Payment plans, assistance programs, and legal counsel are rare, and ability-to-repay considerations are non-existent.

Although Maryland has some strong consumer protections in place to curtail abusive and deceptive debt collection practices, when it comes to civic debt – debt owed to the state – Maryland has exempted itself from the very protections it requires of private debt collectors.

The concomitant failures to consider either ability-to-repay or affordability options, coupled with outdated, punitive practices to collect debts results in a system that deepens poverty and widens the racial wealth gap for low-income Marylanders.

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<sup>6</sup> Konish, 2018

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> Friedman, 2018

<sup>10</sup> Issa, 2017

In this report, using a mix of qualitative, quantitative, and statistical methods, the Maryland Consumer Rights Coalition (MCRC) examines debt and debt collection practices in Maryland; provides a closer look at the role of State-owed debt through a case study of video tolls; compares and contrasts the impact of consumer and civic debt on low-income communities, particularly communities-of-color, and recommends policies and programs based on best practices that will provide a fairer and more equitable system for Marylanders.

## POVERTY & CONSUMER DEBT IN MARYLAND

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The cost of living in Maryland has dramatically increased in the past few decades, and our rules to protect working families in financial distress have not kept pace. Between 1990-2016, poverty in Maryland increased by 19.1%.<sup>11</sup> Currently, 576,835 Marylanders are living in poverty across our state.<sup>12</sup> More than 20% of Marylanders are asset-poor, meaning that if they lost their income, they would not have enough money to survive.<sup>13</sup> Black households comprise 34.3% of the asset poor.<sup>14</sup>

While poverty is deepening, housing costs are rising. Today, a person would have to earn \$28.87 per hour to be able to afford a market-rate, two-bedroom.<sup>15</sup> According to Prosperity Now, 50.5% of renters are cost-burdened.<sup>16</sup>

As poverty has increased, so has indebtedness. Alongside rising housing costs, health care costs have skyrocketed. Over 288,000 Marylanders purchase their own health insurance. CareFirst, Maryland's largest insurer has proposed premium hikes that will result in costs ranging from \$1,030 to \$1,500 per year.<sup>17</sup> These insurance costs, coupled with unexpected medical emergencies, may lead to medical debt – one of the biggest drivers of consumer debt. A report from the Consumer Financial Protection Bureau (CFPB) found that 59% of individuals who had been contacted by a debt collector stated it was due to owing medical debt.<sup>18</sup>

Student loan debt has been an increasing issue in Maryland, just as it has been across the country. In Maryland, 54% of students graduate with debt, and the average debt is \$27,455.<sup>19</sup>

Flat wages combined with rising costs of living means that it is difficult for many low-income Marylanders to survive economically, let alone thrive.

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<sup>11</sup> Maryland Alliance for the Poor, 2018

<sup>12</sup> *ibid*

<sup>13</sup> Prosperity Now, 2018

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> Consumer Health First, 2018

<sup>18</sup> *ibid*

<sup>19</sup> The Institute for College Access and Success, 2017

## DEBT COLLECTION & DISPARATE IMPACT

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When an individual falls behind on their payments, and efforts to obtain the debt through collection agencies fail, the creditor can pursue a monetary judgement for debts under \$5,000 in Maryland's District Court. In 2011, there were more than 130,000 debt collection judgements rendered.<sup>20</sup> In 2016, there were 46,719 debt collection judgements in Prince George's, Baltimore County, and Baltimore City alone.<sup>21</sup> While there may be many reasons that these jurisdictions experienced such a large number of collection suits, ProPublica's analysis from three other states found that, even accounting for income, rates of collection lawsuits are twice as high in majority Black communities compared to predominantly white ones.<sup>22</sup>

In Maryland, 43% of non-white residents had at least one debt in collection, while only 19% of white borrowers had a debt in collection.<sup>23</sup> One possible reason for this difference is the racial wealth gap: in Maryland, the typical non-white household has an average household income of \$83,827, while the typical white household has an average income of \$111,935.<sup>24</sup> This means that Black households have fewer resources to cope with any type of financial emergency than white households.

Student loans drive debt loads higher, and in Maryland, borrowers-of-color are more likely to take out loans for higher education and face a higher rates of default than white borrowers. In Maryland, 20% of non-white individuals had student loan debt compared to 14% of white residents.<sup>25</sup> Additionally, 15% of non-white student loan borrowers has student debt in collections, compared to 9% of white borrowers.

For a number of reasons, consumer debt collection lawsuits and the resulting judgements are disproportionately carried out in communities-of-color throughout Maryland.

## DISPARATE IMPACT & DEBTORS' PRISONS

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In many ways, Maryland's District Courts have become an extension of the debt collection industry. In the state, a lawsuit filed by a creditor for a principal amount that is \$5,000 or below is considered a small claim and is heard in District Court, where there are few or no rules of evidence

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<sup>20</sup> Hopkins, 2011

<sup>21</sup> Turnbull, 2016

<sup>22</sup> ProPublica, 2015

<sup>23</sup> Urban Institute, 2018

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

applied, and few procedural safeguards.

The current process is riddled with problematic procedures that favor creditor attorneys over alleged debtors. First, many individuals never receive notice that they are being sued; notices are sent to outdated addresses, particularly in cases where the alleged debtor is sued by a property manager and may be experiencing housing insecurity as a result. Maryland allows personal service to include service by mail, by a sheriff, or a process server to the individual or someone residing at the same address. There have been a number of documented cases of “sewer service” in Maryland, when a process server has falsely claimed to have served a summons to an individual. Finally, for many low-income individuals, other concerns including the inability to take a day off of work, find child-care, or get to the court via public transit may prevent alleged debtors from attending a hearing. For those that do attend a hearing, the majority have little understanding of their rights, and only a fraction have access to legal counsel.

Unsurprisingly, consumers lose the majority of debt collection cases, resulting in a money judgment they must pay. Once a judgement has been rendered, debt collectors can garnish wages, property, and bank accounts to ensure repayment. To obtain the information needed to garnish wages, bank accounts, or property, an individual owing a judgement must answer the debt collector’s questions about their assets. Usually the individual will receive a summons to return to court to answer these questions.

If the individual doesn't answer these questions either in person or in written responses, the judge can order the person to a contempt hearing. If the person fails to appear for the contempt hearing, the court can issue a body attachment, which is an order for arrest. Some Marylanders have had the sheriff show up at their door to arrest them; others have been picked up during a routine traffic stop when their body attachment showed up as the officer was running their tags. The individual is then arrested. Upon arrest, an amount of bail the person must pay to be released is set. If a defendant cannot pay this bail, they can end up languishing in prison for days or weeks until they can arrange to pay the bail bond set in the case.

While this is not a frequent occurrence, it continues to happen in Maryland – resulting in de facto debtors’ prisons. A defendant may also be held in jail if they are picked up on a body attachment and the district court or court commissioner is not in session. In that situation, the individual may be held in jail until they can see a commissioner – sitting in jail for 1-3 days, just because they owe a debt.

In 2013, the Maryland General Assembly passed legislation to try to limit the practice.<sup>26</sup> To assess

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<sup>26</sup> Codified at Md. Code, Cts & Jud. Proc. §6-411

the effectiveness of the 2013 legislation in curbing this practice. MCRC partnered with the University of Baltimore Law School to review court dockets in which oral exams and show cause hearings are heard in Baltimore City and Baltimore County between June, 2014 and December, 2014.<sup>27</sup> From the cases on the docket sheets, investigators picked a small number to examine more closely.

**Findings:**

The District Court of Maryland gave over 217,000 civil judgments in FY 2014.<sup>28</sup> In the same year, fewer than 55,000 judgments were paid in full.<sup>29</sup> Over 28,000 “aids of enforcement”<sup>30</sup> were requested. Some of these 28,000 aids led to the arrest of indigent Marylanders: 77 in a sample of 2,769. Although not commonplace, arrest in debt collection cases is not an anomaly – it is a way that the District Courts work with debt collection attorneys to compel payments from indigent Marylanders.

**Table 1: Debt Collection Cases Baltimore City and County – 6 months of cases**

	Baltimore City	Baltimore County	Total
Individuals	1,248	1,431	2,679
Body Attachments	175	208	384
Arrests	10	67	77
Turn-Ins	13	0	13

As Table 1 shows, in a six-month period, nearly four hundred body attachments were issued to consumers in Baltimore City and County for debts under \$5,000. Body attachments were issued in about 14% of the debt-collection cases. When body attachments are issued, the rate of arrest was approximately 20 percent overall.

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<sup>27</sup> White, Turnbull, & Sine 2014

<sup>28</sup> Maryland Courts Administration, 2014

<sup>29</sup> 55,000 Judgments were marked “satisfied.” However, creditors are relied upon to report when they have been paid in full, so some paid judgments may go unreported.

<sup>30</sup> “Aids of enforcement” includes several types of court order meant to help collect money from defendants who lose. They include garnishments of wages and property, orders to seize a debtor’s property and the post-judgment examination procedures described in this report.



**Table 2: Common Features in Cases Reviewed**

	Baltimore City	Baltimore County	Total
Judgment under \$5,000	71%	74%	73%
Consumer has lawyer	1%	2%	2%
Plaintiff has lawyer	98%	98%	98%
Judgment adds prejudgment interest	49%	63%	56%
Judgment adds attorneys' fees	78%	78%	78%
Small business defendants	3%	2%	3%
Individual plaintiff	6%	4%	5%

Source: White, Turnbull, & Sine 2014

The average underlying debt owed is less than \$4,400. However, the addition of attorneys' fees (78% of the time), interest (56% of the time), and court costs add, on average, one-fifth to the amount of the original debt. Only 2% of consumers had legal representation while 98% of plaintiffs had a lawyer.

Most of the cases are affidavit judgements, meaning that the consumer did not defend the case. However, 50 of the 2,679 are confessed judgements, which allows a ruling to be entered against the consumer in the event of default, waiving the debtor's right to present any defense in court.<sup>31</sup> Most of the confessed judgements were obtained by a single bail bondsman.

Property plaintiffs represent a large percentage in both the City and County (29% in the City, 40% in the County), while financial plaintiffs were consistently a small percentage (11% in the City, 12% in the County). Altogether there were 645 plaintiffs. While most had only a few defendants, the top 25 plaintiffs accounted for 50% of defendants on the dockets. These high-volume plaintiffs included large bail bonding businesses, property managers and owners, some medical providers, and the Mayor and Council of Baltimore City.<sup>32</sup>

As Table 3 illustrates, certain sectors are far more likely to pursue body attachments to collect their debt. More than half the time someone misses a show cause hearing, a property owner will request a body attachment. In medical or bail debt, plaintiffs will pursue a body attachment 45% of the time. The financial sector is, by far, the least likely to ask for a body attachment if an individual misses his/her show cause hearing. In court observations, body attachments were

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<sup>31</sup> A confessed judgment is entered based upon a clause in a contract. Confessed judgment clauses expressly authorize a judgment to be entered against a debtor in the event of breach or default, essentially waiving the debtor's right to present any defense in court. Once a confessed judgment has been entered a defendant has 30 days from receiving notice to move to open, modify, or vacate the judgment.

<sup>32</sup> The Mayor and Council of Baltimore City were one of two public plaintiffs accounting for a small percentage of cases on the dockets. The other plaintiff was the Commissioner of Labor Licensing & Regulation. Together they filed 44 cases, nine against business defendants and obtained three body attachments and one arrest.

granted 98% of the time. Therefore, the plaintiffs are the true determiners of whether or not they will ask the court for an attachment.

**Table 3: Percentage of Missed Show Cause Hearings Turned to a Body Attachment**

<b>Plaintiff</b>	<b>Rate of Conversion to a Body Attachment</b>
Property	52%
Bail Bondsmen	45%
Medical	44%
Financial	29%
Other	28%

While bail bondsmen and property owners are the most frequent and aggressive in pursuing body attachments, cities and counties in Maryland have used these methods to collect on state-owed, civic debt as well.

Baltimore City and Howard, Montgomery and Prince George’s Counties have all used debtor’s prisons as part of their civic debt collection efforts in recent years. Howard County requested that 12 consumers be arrested for debts averaging \$758. Prince George’s County requested arrest warrants for 38 debtors who owed an average of \$2,462.

**Policy is Personal: Debtors’ Prisons**

On a Saturday morning in 2014, 10 minutes after returning home from his night shift, two officers came to Marylander Mondrea Hasty’s door to arrest him. They handcuffed him in front of his children, took him to jail and handcuffed him to a rail, where they left him for an hour. They then took his mugshot, took him to the magistrate, and set a court date for him to appear.

The reason? A \$89.89 vet bill. Hasty states he had paid the bill but the payment was never recorded. He missed his first court hearing, a second summons was sent but went to his old address. He then went to court and explained that he never received a second summons. A new court date was set, but he couldn’t attend. After his arrest, another court date was set and when he appeared, he was told they were going to garnish his wages to collect the debt which had swollen to over \$500 as a result of attorney’s fees.

**Table 4: Body Attachments Sought by Municipal Entities 2015-2017**

<b>Plaintiff</b>	<b># of Motions for Body Attachment</b>	<b>Total Principal Amount of Debt in Complaints</b>	<b>Average Principal Amount of Debt</b>
<b>Howard County, Maryland</b>	<b>12</b>	<b>\$9,083.64</b>	<b>\$757.97</b>
<b>Mayor and City of Council of Baltimore</b>	<b>6</b>	<b>\$4,980.63</b>	<b>\$830.10</b>
<b>Montgomery County, Maryland</b>	<b>3</b>	<b>\$3,299.77</b>	<b>\$1,099.92</b>
<b>Prince George’s County, MD</b>	<b>38</b>	<b>\$93,548.76</b>	<b>\$2,461.81</b>

Source: Judiciary Case Search, 2015-2017

**Alternative Approach: Ending Debtors’ Prisons**

In 2012, Illinois passed The Debtors’ Rights Act of 2012, which significantly limits, the use of debtor’s prisons in Illinois (Madigan, 2012). The bill:

- Required courts to notify borrowers in default that what types of income IL. has determined is exempt from garnishment.
- Required courts to conduct an ability to repay examination. In the event that a borrower in default has only exempt income, courts are required to dismiss the case.
- Prohibits courts from issuing bench warrants for arrest unless the borrower was personally served with the hearing notice and the court believes that the borrower has failed to appear for the purpose of concealing non-exempt assets.
- Requires that bond that is posted by the borrower in default must be returned to the borrower after release, and cannot be transferred to the creditor. The provision prevents creditors from pursuing the arrest of indigent borrowers in order to obtain the bond in lieu of damages.
- Prevents creditors licensed by the Illinois Department of Financial and Professional Regulation from requesting a body attachment, unless a borrower repeatedly fails to appear in court after appropriate notification or has committed fraud to conceal non-exempt assets.
- Requires creditors to keep records of any collection actions that resulted in arrest, as well as maintain a written policy that their collection practices do not include requests for arrest.

The law covers payday lenders, consumer installment lenders, debt collection agencies and any attorney working on behalf of any of these companies.

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<sup>33</sup> Woodstock Institute, 2012

## The Disparate Impact of Debtors' Prisons

Although our analysis was unable to investigate the race and ethnicity of individuals who received body attachments and were arrested or jailed, several factors suggest that there is a disproportionate impact on Black communities. As mentioned above, more debt collection cases are filed in majority Black communities than in majority white ones. In addition, being stopped for a traffic violation will trigger arrest if the driver has a body. Given over-policing of Black communities, Black drivers are more likely to be pulled over and then arrested for body attachments than white drivers. The bail bonds industry is one of the most aggressive in seeking body attachments. This too, is indicative of the disproportionate impact of debtor's prison on Black residents, especially given the over-criminalization and incarceration of Black residents, particularly Black boys and men.

The debt collection system in Maryland works in concert with the small claims courts to privilege creditors at the expense of low-income Marylanders. Debtors' prisons, in particular, exemplify the egregious lengths to which the State criminalizes poverty, recreating Dickensian conditions, despite the fact that imprisonment for debt was outlawed by the Maryland constitution.

Debtors' prisons create a two-tiered system of justice: those who can afford to pay a bail or bond do not go to jail, while those who can't afford to pay remain in jail. The practice creates a vicious cycle of poverty wherein the individual cannot work because they are jailed. They may lose their job, which, of course, makes it far more difficult to repay a debt. Jailing someone for a debt serves no constructive purpose: the individual is not violent, nor are they a danger to the community. They are simply poor, which is not supposed to be aailable offense.

## GARNISHMENTS

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Once an individual answers questions about assets, the debt collection attorney can garnish wages, seize bank accounts as well as property. While we do not have a racial or gender breakdown of debt collection suits, there is a correlation between the number suits filed per county and the racial composition of the counties. Our research found that there are more debt collection suits filed in Maryland counties that have large communities of color. Our findings reinforce a study of Maryland debt collection cases in 2009 which found a similar disparate impact with communities of color over-represented in debt collection cases.<sup>34</sup>

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<sup>34</sup> Holland, Peter

**Table 5: Garnishments Filed by County, 2016**

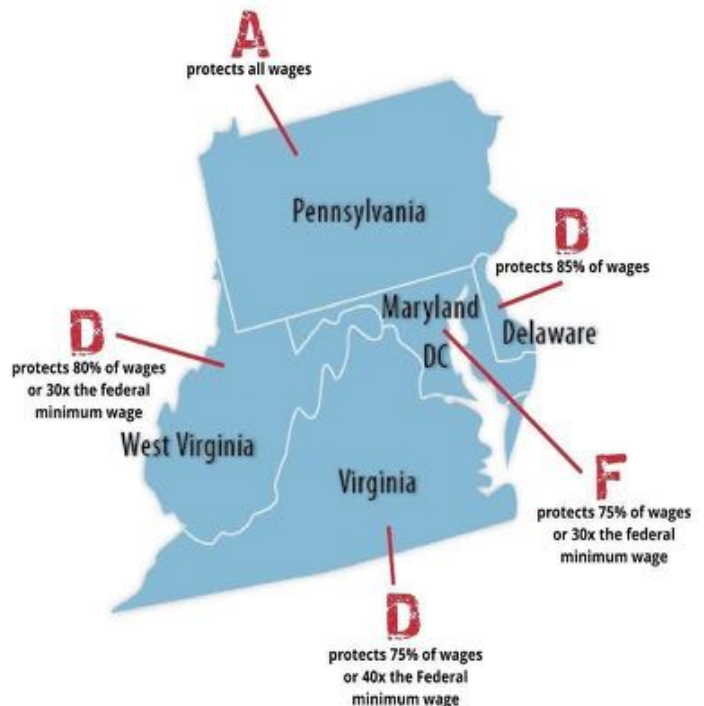
<b>County</b>	<b>Total Garnishments</b>	<b>Wage Garnishments</b>	<b>Property Garnishments</b>
Prince George's	19,059	9,963	9,096
Baltimore County	14,831	10,539	4,292
Baltimore City	12,829	9,888	2,941
Montgomery	7,146	3,228	3,918
Wicomico	3,242	2,938	304
Charles	3,106	1,678	1,428
Harford	3,073	1,954	1,119
Howard	2,527	1,392	1,135
Frederick	2,043	1,223	820
Washington	1,669	1,193	476
Carroll	1,228	762	466
St. Mary's	1,056	657	399
Calvert	910	543	367
Worcester	647	569	78
Cecil	634	399	235
Dorchester	538	402	136
Allegany	518	382	136
Somerset	476	417	59
Caroline	299	223	76
Talbot	289	206	83

Queen Anne's	217	137	80
Garrett	146	87	59
Kent	128	88	41
<b>Total</b>	<b>76,611</b>	<b>48,868</b>	<b>27,744</b>

Source: Judiciary Case Search, 2016

As Table 5 shows, 76,611 Marylanders faced garnishment in 2016; 48,868 were wages garnishments, 27,744 were property seizures. The amount of wages that are protected from garnishment is set by state statute. Unfortunately, Maryland's current law is one of the worst in the region. According to a report from the National Consumer Law Center, *No Fresh Start*, Maryland receives an "F" for our wage exemption law. Pennsylvania receives an 'A' grade for leaving all wages exempt for most debts, Delaware receives a 'D' grade for protecting 85% of wages, as does West Virginia for protecting 80% of wages.<sup>35</sup> Virginia also receives a 'D' grade – although Virginia only protects 75% of wages, they include an allowance for 40 times the federal minimum wage.

In contrast, Maryland does the bare minimum, only protecting 75% of wages, or 30 times the federal minimum wage. This ensures that a low-income worker can keep only \$217.50 in wages per week or \$11,310 per year. The 2018 federal poverty guideline for an individual is \$12,140 and for a family of four \$25,100.<sup>36</sup> This level of protection means that Maryland protects so few wages that an low-wage worker can be pushed below the federal poverty guidelines for repaying their debt. This is significant given that 18% of workers in Maryland are minimum-wage workers.<sup>37</sup>



From National Consumer Law Center

<sup>35</sup> National Consumer Law Center, 2013

<sup>36</sup> <https://www.payingforseniorcare.com/longtermcare/federal-poverty-level.html>

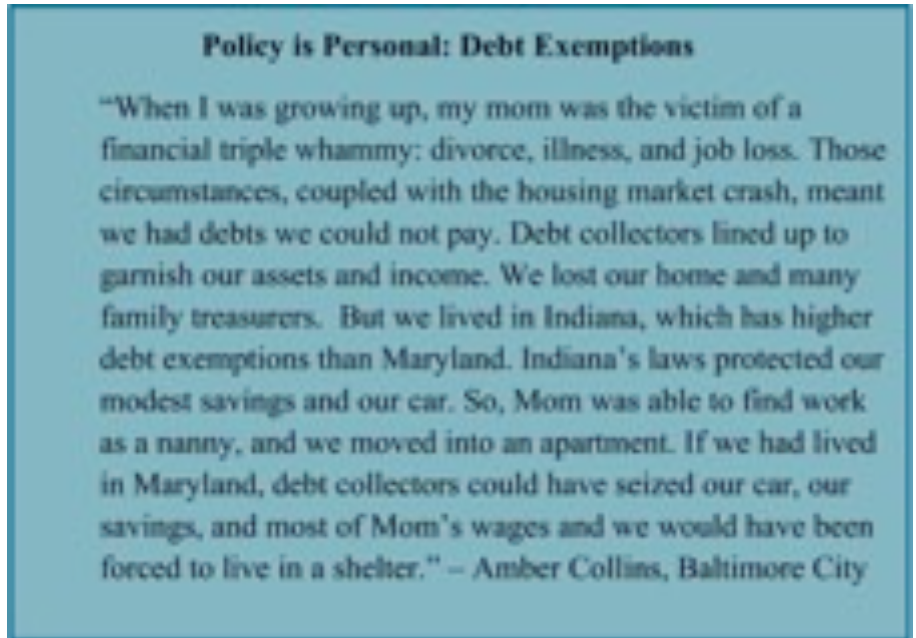
<sup>37</sup> <https://www.nelp.org/wp-content/uploads/Case-for-15-in-Maryland-January-2018.pdf>



For workers and families living paycheck to paycheck, the ability to only protect \$870 per month makes it extremely difficult to increase their financial stability. More likely, any other financial setback may cause them to fall behind on other payments, leading to a vicious cycle of deepening debt and poverty for a person who is actively working and repaying their debt. Increasing the amount Maryland residents can protect from garnishment is necessary to allow an individual to continue to meet their basic needs and go to work – and thereby repay the debt they may owe.

As poverty increases throughout the State and hard-working residents struggle to make ends meet, the State’s response has been anemic.

Maryland’s debt collection practices privilege creditors’ need for payment over families’ need for financial stability. In many ways, the State and courts operate in ways that assist property managers, bail bondsmen, financial services, and other creditors in pursuing aggressive collection tactics and collecting debt through judgements from Maryland residents. Yet, these practices pale in comparison to the tactics used when the debt is owed to the State.



MCRC examined the policies and practices of Maryland’s Central Collection Unit (CCU) in collecting State-owed, civic debt. To better understand how CCU uses the court system to enforce civic debt, we conducted a quantitative analysis of all cases in which CCU took action in the District Court between 2015-2017. In that time frame, CCU took action on 12,102 lawsuits, with a total of just over \$18M in monetary judgements.

## CIVIC DEBT: ENFORCEMENT

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Civic or state-owed debt is any indebtedness to a government entity that an individual may incur. There are a number of ways a resident of Maryland may find themselves owing money to the State, including video tolls and associated civil penalties, tuition and fees at State schools, public

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assistance and food stamp overpayment, fines for lapsed auto-insurance, and court-ordered criminal restitution. Local jurisdictions also issue civic debt, most commonly in the form of jurisdictional tickets for parking and traffic violations. Some civic debt is considered consumer debt by law and consumer protections would apply, while other civic debt is not – so those debtors do not have the same protections.

When a Maryland State agency attempts to collect a civic debt, it begins by issuing written demands for payment at 30-day intervals. If the debt has not been paid after three statements, it can be referred to CCU, the State of Maryland’s internal debt collection department. CCU uses government databases to find a consumer’s contact information, employer, wages, bank accounts and other garnishable property. CCU then contacts the consumer and demands payment.

**Not So Fun Fact**

In 1992, in order to make CCU self-supporting, the agency began assessing a 17% collection fee on all debts. This had the effect of incentivizing prompt payment from those who could afford to avoid the 17% increase. It also allowed for the department referring the debt to collect 100% of their original bill. CCU has the authority to create an automatic payment plan following a “good faith” down payment for obligors who cannot afford to pay their bill in a lump sum. Other state agencies lack this authority and refer accounts requesting payment plans to CCU. This means that consumers who need a payment plan are charged the 17% CCU collection fee.

Sources:

- Chapter 128 of the 1992 Laws of Maryland, codified in Md. Code Ann., State Fin. And Proc. 53- 301, et seq.
- State of Maryland Central Collection Unit Department of Budget and Management, 2006

Harris and Harris, a private debt-collection firm, has a contract with CCU to collect State-owed debt on behalf of the State. The firm receives 7.9% of all monies recovered. CCU reports these collection efforts to credit bureaus, including Transunion and Experian. This reporting negatively impacts a consumer’s credit score. If neither CCU nor Harris and Harris’ collection efforts are successful, and the consumer owes at least \$750 to the State of Maryland, then CCU will sue the consumer in District Court to win a legal judgment. This money judgment allows CCU to garnish wages and property to satisfy the debt. CCU can also intercept Maryland State tax reimbursements once it has a judgment against a consumer.



As described in its handbook, CCU has specific considerations it takes into account when pursuing a lawsuit against a debtor:

**Lawsuits**

CCU moved to a self-supporting funding status effective June 1, 1992. Therefore, our use of lawsuits, the most expensive collection procedure, must be limited to cases that will bring in money, or are of such a high dollar amount and there is a possibility of collection, that the State's interest must be protected.

\$750 is CCU's minimum lawsuit debt amount, unless the debt is a student loan and the \$200 Federal regulation lawsuit minimum is required or unless there are some other extenuating circumstances. Debts ranging from \$750 to \$5,000 should be referred for lawsuit if there are assets (wages or property to attach) or the debt was a college debt. Debts above \$5,000 should be referred for a lawsuit if there is a possibility of collection (i.e. assets to attach). Example: a \$6,000 hospital debt for a drug program patient, 25 years of age, with earnings of \$15,000/year should be referred for a lawsuit; but a \$6,000 debt for a mental health hospital for a 64 year old debtor on social security and not owning a home should not be referred for a lawsuit. The tools available to you to determine assets are the ESA Wage information; MVA information; Assessments and Taxation Information; Credit Bureau reports; CCU's Statements of Financial Condition; CCU's Monthly Statement of Income and Expenses, etc.

Source: 2006 Delinquent Accounts Handbook

### Monetary Judgments

Twenty-nine percent of the judgments won by CCU are affidavit judgments, the typical judgment used in consumer debt. Five percent of judgments are consent judgments – used when a consumer negotiates a settlement during the affidavit judgment process. Thirty-one percent of judgments won by CCU are confessed judgments, in which CCU confesses to owing a debt to the State *on behalf of* a consumer following the failure of a consumer to satisfy a pre-suit agreement with a confessed clause.

CCU has a strong success rate in seeking monetary judgements. Of cases filed between 2015 and 2017, just 14% of defendants had their case dismissed or a trial judgement entered in their favor. CCU won an average judgement of \$1,528.02 in the remaining 86% of cases.

Consumers who defended themselves against the suit received fewer and smaller judgments. Affidavit judgment defendants who filed an intent to defend had their cases dropped by CCU 93% of the time, but only 22% of consumers filed an intent to defend. Sixty percent of affidavit-judgment defendants did not defend themselves, and 95% of those had affidavit judgments entered against them. Across all judgment types, when consumers were represented by an attorney, the judgments against them were an average of \$365 less than the average principal. Consumers without representation saw no reduction between the average principal and

the average judgment. As you can see in Table 6, the rate of attorney representation varies significantly across jurisdictions.

**Table 6: Rate of Attorney Representation by County**

<b>County</b>	<b>Rate of Attorney Representation</b>
Baltimore City	4.22%
Baltimore County	1.48%
Prince George's County	24.68%
Montgomery County	2.64%
Harford County	6.08%
Howard County	34.11%
Carroll County	6.19%

### **Collecting on a Judgment: Garnishments and TRIP**

After CCU wins a monetary judgement against a consumer, there are a number of ways to collect the debt including wage garnishment, seizure of funds from a bank account, and seizure of vehicles, homes, and other funds and properties.

As a collector for the State, CCU has another tactic at its disposal that other collectors do not have: Maryland’s Tax Return Interception Program (TRIP). TRIP is a collaboration between CCU and the Comptroller of Maryland that allows CCU to intercept Maryland residents’ tax refunds. CCU uses the acronym as a verb, “We will continue to TRIP the debtor [until the debt is payed].”<sup>38</sup>

The TRIP program can also be used by agencies to collect debts without being referred to CCU first. The Department of Labor Licensing, and Regulations’ website states, “[A]ny debt of one year old or greater, that has not already been transferred to the Central Collection Unit and is not under current appeal and whose debtor has made little or no effort to repay, will be certified for State income tax refund interception. Any State tax refund payment due to a claimant that has an outstanding debt will be intercepted and applied to that debt in accordance with the agreement stated above. [CCU] has oversight of this process and charges the debtor a ten

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<sup>38</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006

percent (10%) collection fee of any account certified for this interception.”

### Perverse Incentives

The State of Maryland has created a team-based financial incentive program for CCU staff. The *2006 Delinquent Accounts Handbook* explains that, “Incentives are paid if the Unit increases collections over the prior year by a designated percentage. During FY 2006, \$184,970 was paid for incentives.” At that time there were 113 positions at CCU. If the incentive is divided equally among all CCU staff, then each staffer received a bonus of \$1,637. This bonus program is intended to increase the total debt collected annually – regardless of variation in the amount of debt owed to the State year to year. It incentivizes the use of progressively invasive and aggressive debt collection tactics against consumers without regard for the consumer’s ability to repay the debt.

## CONSUMER PROTECTIONS IN MARYLAND’S CIVIC DEBT COLLECTION PROCESS

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Consumer rights advocates have fought for and won essential consumer protections in the debt collection process. The Federal Debt Collections Practices Act (FDCPA), passed in 1978 prohibits false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts. Unfortunately, civic debt is excluded from these protections. CCU and Harris and Harris, on the State of Maryland’s behalf, are legally permitted to use abusive, harassing tactics like calling at unusual times and contacting a consumer at work. The *2006 Delinquent Accounts Handbook* includes this illuminating section, which implies that CCU condones the use of threats in debt collection:

### **Debtor Excuses**

In regard to debtor excuses, put the **Burden of Proof or Correction on the debtor**. For telephone protests/disputes, set a deadline and **inform the debtor that the account is on its ways to more serious collection actions if the dispute is not resolved**. If the debtor disputes the debt **in writing**, we must stop our collection activity until we have answered the correspondence and verified the accuracy of the debt.

CCU is also exempted from state-level protections. Maryland law allows a creditor three years to collect a debt from a consumer before the debt expires.<sup>39</sup> If a creditor sues and wins a monetary judgment before those three years have passed, that monetary judgment is valid for 12 years.<sup>40</sup>

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<sup>39</sup> MD Cts & Jud Pro Code § 5-101

<sup>40</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

Maryland explicitly exempts its own civic debt collection efforts from these limits.<sup>41 42</sup> Between 2015 and 2017, CCU made collection attempts on 207 judgments that were more than 12 years old, some dating back to 1989.

As the section below from the *2006 Delinquent Accounts Handbook* illustrates, the State will use its powers to seize a debtor’s taxes and continue to monitor a person’s wages. When the individual’s earnings increase, CCU may revive a debt—a practice that is prohibited for private consumer debt collectors.

**Abatements/Settlements**

All requests for CCU to accept less than the full amount are forwarded to the Abatement Committee. You will be notified of the Abatement Committee’s decision. If an abatement is coded Uneconomical to Pursue (AUP), we will continue to TRIP the debtor and monitor the ESA Wages of the debtor, to determine whether to bring the debt back to the active file – and possibly to file a lawsuit.

Unlike private debt collectors, who are subject to the statute of limitations, CCU can continue to attempt to collect on the debt until it is satisfied or the consumer dies – whichever happens first.

Table 7 reviews the similarities and differences in policies and practices between private consumer debt collection and Maryland’s State-owned debt collection.

**Table 7: Differences in State-owned debt enforcement and private debt enforcement**

	<b>State-owned Debt Enforcement</b>	<b>Private Debt Enforcement</b>
<p><b>Subject to the consumer protections enumerated in the Fair Debt Collections Practices Act (FDCPA)?</b></p> <p>FDCPA is a federal law enacted in 1978 to prevent personal bankruptcy, marital instability, loss of employment and invasion of personal privacy. It prohibits</p>	<p>No.</p> <p>Traffic fines and other criminal and municipal fines and fees, are excluded from the term “debt” within the FDCPA.</p>	<p>Yes.</p>

<sup>41</sup> MD Court of Appeals Decision Central Collection Unit. State of Maryland v. Atlantic Container Line. Ltd. 277 Md.626 (1976)

<sup>42</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

false, deceptive, misleading, harassing, abusive and offensive conduct during collection of consumer debts.		
<b>Data used to collect debts:</b>	<ul style="list-style-type: none"> <li>● Employment Standards Administration Wage Information;</li> <li>● Unemployment Insurance Administration's Wage Record;</li> <li>● MVA information;</li> <li>● Assessments and Taxation information;</li> <li>● Credit Bureau reports;</li> <li>● CCU's Statements of Financial Condition<sup>43</sup></li> </ul>	<ul style="list-style-type: none"> <li>● Consumer information accessed through data brokers;</li> <li>● Credit Bureau reports</li> </ul>
<b>Use of Confessed Judgments:</b>	Yes.	No.
<b>Body Attachments</b>	De facto permissible – requested in a small number of civic debt collection suits.	De facto permissible – requested in a small number of private debt collection suits.
<b>Wage Garnishments</b>	\$217.50 wages protected per week	\$217.50 wages protected per week
<b>Property Garnishments</b>	\$1000 in home goods protected \$6,000 wild card protected	\$1,000 in home goods protected \$6,000 wild card protected
<b>Vehicle Registration</b>	Vehicle registration may be suspended or flagged for non-renewal via MVA Administrative Flag until civic debt is satisfied or a plan for satisfaction is made and is in good standing. Administrative flags are not discharged by bankruptcy.	No power to impact vehicle registration.

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<sup>43</sup> State of Maryland Central Collection Unit Department of Budget and Management 2006

<b>Statute of Limitations for Non-Judgment Debt</b>	None <sup>44</sup>	Three years <sup>45</sup>
<b>Statute of Limitations for Judgment Debt</b>	None <sup>46</sup>	Judgments expire after 12 years unless the creditor files a notice of renewal. <sup>47</sup>
<b>What collection tactics may a debt collector use if the obligor is found to be judgment proof due to type of income or amount of income?</b>	<ul style="list-style-type: none"> <li>● Suspension/non-renewal of vehicle registration pending payment of debt</li> <li>● Intercept tax refunds via TRIP program</li> <li>● Monitor the obligor's financial situation using government data; upon improvement, use garnishments to collect civic debt.</li> </ul>	None

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<sup>44</sup> MD Court of Appeals Decision Central Collection Unit. State of Maryland v. Atlantic Container Line. Ltd. 277 Md.626 (1976)

<sup>45</sup> MD Cts & Jud Pro Code § 5-101

<sup>46</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102

<sup>47</sup> Md. Code Ann., Cts. & Jud. Proc. §5-102



### Alternative Approach: Ability to Repay

When possible and appropriate, [municipalities should] base fine and fee amounts on an individual's ability to pay, to ensure consequences do not place an inequitable burden on low-income [residents]. There is much momentum towards this goal. The California Judicial Council recently directed courts throughout California to develop processes to base fines and fees on ability to pay. The California Judicial Council also recently won a Price of Justice grant from the United States Department of Justice to develop and pilot ability to pay tools. Other state court systems, such as Michigan, have moved toward basing fines and fee on ability to pay. When people get a fine or fee that is unrealistic for their income budget, they are less likely to pay. When the amount is manageable for their income level, they pay, according to discussions with researchers.

Ability to pay processes should include the following attributes:

- Have a presumption of inability to pay for anyone who is homeless, receiving public benefits, or at/below 250% Federal Poverty Line (approximately \$60,000 for a family of four).
- For total inability to pay, offer options including community service (without participation fees, based on an hourly rate at or above minimum wage, and based on the reduced fine amount); and in which service is satisfied by participation in social services programs, job training, education, drug treatment, etc.; or suspension or dismissal of fine.
- For people with some, but limited ability to pay, reduce fines and offer flexible payment plans without a participation fee.
- Allow for online enrollment in payment plans and alternatives to monetary payment.
- Include easy-to-read information about alternative payment options based on ability to pay on the notices of the fee/fine and on relevant websites.
- Do not charge an up-front fee before allowing an ability to pay determination. Make late fees reasonable and part of the ability to pay process.

Excerpted from *San Francisco Fines and Fees Task Force: Initial Findings and Recommendations*

### Disparate Impact of Debt Collection

Our research shows that Maryland's policies and practices for collecting both State-owed civic debt and private consumer debt have a disparate impact on communities of color, can lead to interaction between consumers and the criminal justice system, and perpetuates cycles of poverty.

While there are 24 counties in Maryland (including Baltimore City), between 2015 and 2017, CCU only filed lawsuits against residents of seven counties.

**Table 8: CCU Cases by County, 2015-2017**

<b>County</b>	<b>Cases filed 2015-2017</b>	<b>% of all cases 2015-2017</b>	<b>Average Judgment</b>	<b>% non-Hispanic white people</b>	<b>Median Income</b>	<b>Poverty Rate</b>
Baltimore City	3,001	42.24%	1528.43	28.10%	\$44,262	23.1
Baltimore County	2,002	28.18%	1454.52	61.80%	\$68,989	9.3
Prince George's County	709	9.98%	1646.32	14.80%	\$75,925	9.7
Montgomery County	433	6.09%	1732.94	48.40%	\$100,352	6.9
Harford County	436	6.14%	1448.36	78.70%	\$81,052	7.7
Howard County	345	4.86%	1524.27	58.10%	\$113,800	4.9
Carroll County	179	2.52%	1823.11	90.80%	\$87,060	5.7

Source: Judiciary Case Search, 2015-2017

As Table 8 and the map above show, Baltimore City residents bore the brunt of CCU’s debt collection attempts in District Court, with 42.88% of all complaints examined being filed against City residents. Carroll County saw the least activity among jurisdictions where cases were filed, with just 2.67% of complaints being filed there. The likelihood of a defendant winning a case (as defined by not having a judgment entered against them) varied significantly from county to county. Defendants in Montgomery County won 23.99% of the time, while defendants in Baltimore County won just 9.46% of the time.

MCRC tested for correlations between CCU’s District Court activities and garnishments across the state, and geographic factors, economic factors, and racial demographics using the Pearson Correlation Coefficient. The data tested is in Appendix B: Correlation Methodology.



**Table 9: Correlations in Private and Civic Debt Collection**

Relationship Strength: Moderate Positive Strong Positive Weak Relationship Moderate Negative Strong Negative		CCU's Collection Activities, 2015-2017			All Garnishments, Civic and Private, 2016		
		Number of Cases Filed	Average Principal Amount	Average Judgment Won	All	Property Garnishmen ts	Wage Garnishmen ts
Geograph ic Factors	County Population	R = 0.6146	R = 0.7787	R = 0.7328	R = 0.8172	R = 0.8291	R = 0.7592
	# of Toll Facilities in County <sup>48</sup>	R = 0.6905	R = 0.6199	R = 0.5997	R = 0.6283	R = 0.5397	R = 0.6464
Economic Factors	Median Income of County	R = -0.116	R = 0.3392	R = 0.3576	R = 0.055	R = 0.1877	R = -0.0334
	Poverty Rate of County	R = 0.0841	R = -0.1942.	R = -0.2122	R = -0.0616	R = -0.1348	R = -0.0109
	Percent Increase in Poverty 1990-2016	R = 0.108	R = 0.5125	R = 0.5147	R = 0.4266	R = 0.4937	R = 0.3573
Race & Ethnicity	Percent of Population that is non-Hispa nic White	R = -0.5924	R = -0.575	R = -0.5016	R = -0.7716	R = -0.7687	R = -0.7259

<sup>48</sup> Excluding facilities targeting out-of-state travelers and tourists.

As you can see in Table 9, geographic factors had the strongest relationship with both private and State-owed debt collection: the more people who live in a county, the more likely they are to be sued for State-owed debt or garnished by any debt collector. This may, in part, be connected to the use of toll-financed roads in densely populated areas – CCU began collecting delinquent video tolls and associated civil penalties in December, 2015.

Surprisingly, economic factors like the poverty rate and median income had no relationship with which communities are experiencing high rates of debt collection activities. The only economic factor that has any relationship to the debt collection activities studied was increases in poverty: CCU's activity has a moderate positive correlation with increases in poverty. CCU is suing for higher amounts in counties that have seen the most growth in poverty rates in the last 25 years. We found no other significant relationships between debt collection and poverty. This suggests that there may be a causative relationship between State-owed debt and increasing rates of poverty.

Debt collection is more closely aligned with racial demographics than economic indicators. For both State-owed debts and debts generally, communities-of-color bear the brunt of debt collection efforts.

## CIVIC DEBT: ENFORCEMENT

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In addition to allowing body attachments, pursuing garnishments, surveilling debtors via State data, and self-exempting from consumer protection laws, Maryland also pursues civic debt through a coordinated effort between CCU and the Motor Vehicle Administration (MVA) to criminalize indebtedness.

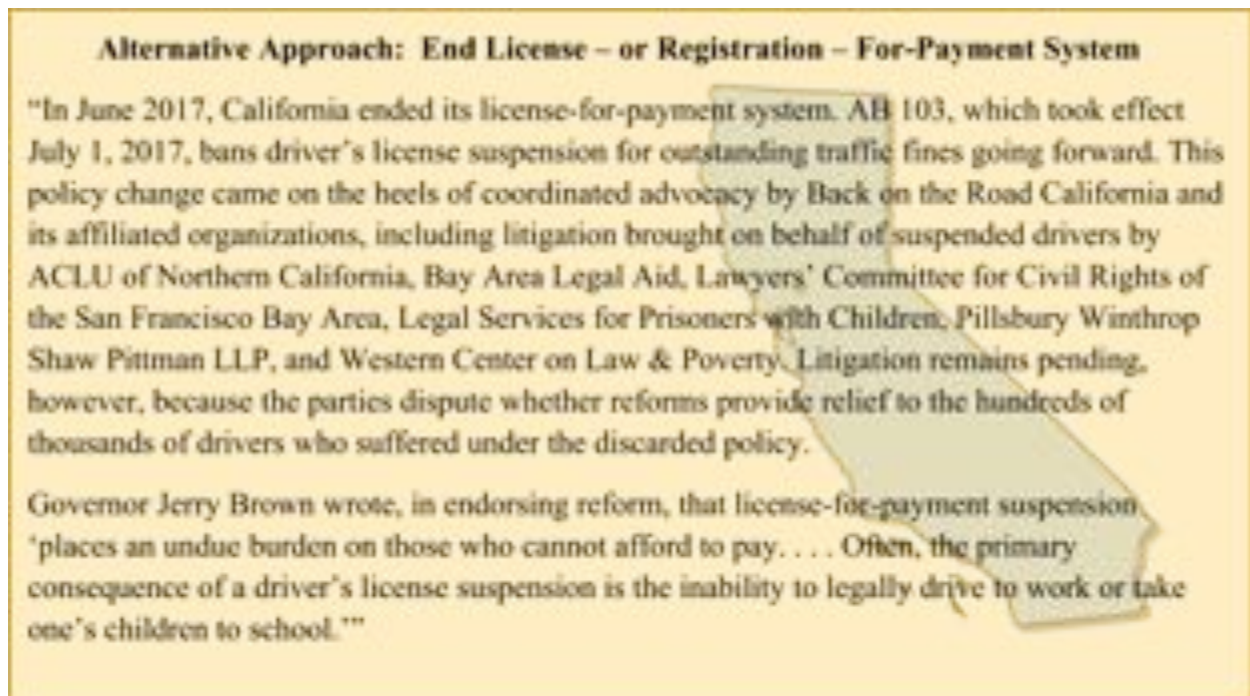
Flagging vehicle registrations for non-renewal or immediate suspension is one of the central tactics used by the State of Maryland to collect civic debt. An administrative flag can be placed on a vehicle's registration for a variety of reasons, including for non-payment of civic debt like parking tickets and video tolls, or when the vehicle owner has an account referred to CCU. When a vehicle has an administrative flag on it, it's registration cannot be renewed, and the title may not be sold or transferred.<sup>49</sup>

Driving without a valid vehicle registration is a criminal misdemeanor in Maryland. If a vehicle owner continues to drive a car after their registration expires or is suspended due to non-payment of a civic debt, they face a maximum penalty of a \$500 fine and restrictions on their driver's license.

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<sup>49</sup> Maryland Vehicle Administration, 2011

In most cases, an administrative flag is accompanied by a \$30 administrative flag fee, which also must be paid before the flag is removed. If an administrative flag is not addressed before the vehicle's registration expires, the registration will lapse. The National Highway Traffic Safety Administration (NHTSA) estimates that 75% of drivers with suspended licenses continue to drive. It seems likely a similar number of drivers would continue to drive a vehicle with suspended registration.<sup>50</sup> CCU has satellite locations in MVA offices to facilitate consumers paying civic debt in order to renew their vehicle's registration.

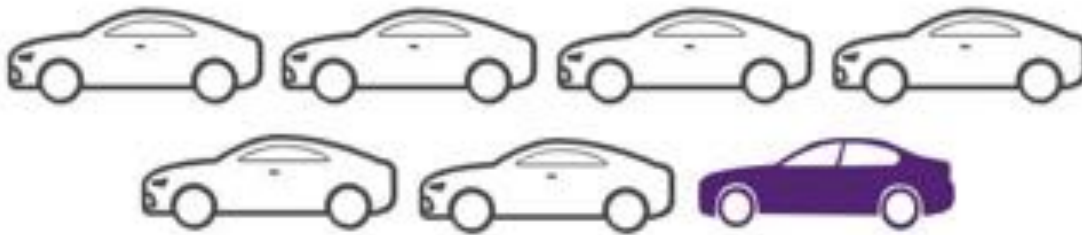


*Source: Driven By Dollars: A State by State Analysis of Driver's License Suspension Laws for Failure to Pay Debt*

Using data from the MVA, we estimate that there are 869,109 cars in Maryland with invalid registration as a result of administrative flags. To put that in context: one in every seven cars in Maryland has an invalid registration as a result of an administrative flag, the majority of which stem from non-payment of a civic debt. The geographic distribution of both CCU's debt collection activities and toll roads – two avenues that can lead to administrative flags – suggests that people living in communities of color are more likely to receive administrative flags on their registration.

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<sup>50</sup> National Highway Traffic Safety Administration, 2000



One in every seven cars in Maryland has an invalid registration as a result of an administrative flag.

The State of Maryland’s use of administrative flags on vehicle registration to collect debt creates a vicious cycle in which consumers must work to generate income to satisfy a debt but cannot legally drive to work, nor reach employment through public transit. If a consumer uses their car to get to work despite the suspended or lapsed registration, then they are committing a criminal misdemeanor.

#### Alternative Approach: Traffic Ticket Amnesty Program

“In April 2015, member organizations of Back on the Road California released *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*. The report detailed how revenue collection incentives have turned California traffic courts into a two-tiered system that works for people who have money and fails those without. It showed that significantly increased fines and penalties, combined with policies that required full payment of all fines and fees before the validity of a citation could be challenged, resulted in over 4.2 million suspended driver’s licenses simply because people could not afford to pay or fight an infraction ticket.

*Not Just a Ferguson Problem* attracted wide national attention to the ways that citations and license suspensions disparately impact low-income individuals and families in California. In response to the mounting public pressure, California’s Governor Jerry Brown spearheaded the creation of a time-limited Statewide Traffic Ticket Amnesty Program, making it easier for many Californians to seek reduction of their traffic fines and reinstatement of their licenses. The state’s Chief Justice, Tani G. Cantil-Sakauye, also put issues of court access on the forefront of the state’s judicial planning agenda.”

Source: *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back On The Road

# CASE STUDY: VIDEO TOLLS

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## Background

In the last 15 years, the State of Maryland has radically shifted how it funds the development, operation, and maintenance of transportation at the state and local level. Facing a budget shortfall and the need to fund transportation projects, Governor Ehrlich proposed the *Transportation Trust Fund – Transportation Financing – Increased Revenues Act* in 2004, which raised the cap on toll-serviced transportation bonds from \$1.5 billion to \$2 billion, increased vehicle registration fees, and allowed the MVA to charge higher fees across the board.

## Civic Debt: Electronic-Tolls

Tolls, including video tolls, are an important facet of the transportation funding stream. In recent years as electronic-tolling has grown in popularity, State-owned debt related to electronic-tolls and their associated civil penalties has grown exponentially.

Drivers can pay tolls electronically in two ways: E-ZPass and Video Tolls. Cars traveling in electronic-only toll lanes are scanned for an E-ZPass transponder. If the vehicle has an E-ZPass, then the cost of the toll is deducted from a prepaid account. If the vehicle doesn't have an E-ZPass, or if there are insufficient funds in the E-ZPass account, then the toll equipment uses a photo of the vehicle's license plate to identify and bill the registered owner for the toll.

## Civil Penalties

In order to address egregious non-payment of tolls by a small but significant number of drivers, in 2013 Maryland passed a law creating strict enforcement mechanisms for unpaid tolls. In accordance with the new law, when a vehicle owner fails to pay a video toll within 45 days, they will receive a civil citation and a civil penalty, set at \$50 by the MDTA.<sup>51</sup> If the toll and civil penalty are not paid within 75 days, the MVA places an administrative flag on the vehicle's registration, which must be cleared by paying the video toll, civil penalty, and a \$30 flag fee before an owner can renew the vehicle's registration or sell the vehicle. If a vehicle incurs \$1,000 in unpaid toll violations, the MVA will issue an administrative flag that immediately suspends the vehicle's registration. The 2013 law also permits the MDTA to refer unpaid video tolls and civil penalties to CCU.

## Impact of 2013 Law

In fiscal year 2016, MDTA processed 6.1 million video tolls. Of those tolls, 1.8 million were assessed a civil penalty and referred to CCU for collection. The outstanding balances of video toll transactions referred to CCU in 2016 was \$104.3 million.<sup>52</sup> That figure includes \$12.3

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<sup>51</sup> Department of Legislative Services, 2017

<sup>52</sup> Department of Legislative Services, 2017

million or 11.8% in unpaid tolls and \$92 million or 88.2% in civil penalties.

Recent reporting by the Washington Post found that, according to MDTA data, “[s]ince summer 2014, more than 479,000 people have been referred to the state’s Central Collection Unit, 207,000 have been sent to the MVA to have holds placed on their registration renewal — and of those, more than 22,000 have had their registration suspended because of toll violations.”<sup>53</sup>

### **Flaws in Electronic-Toll Collection**

Drivers who are un- or underbanked have more barriers in using the E-ZPass system. In Maryland, 4.8% of households are unbanked and 23.9% are underbanked.<sup>54</sup> Thirty percent of E-ZPass users do not have a bank account or credit card connected to their account and must make payments manually.<sup>55</sup>

A driver does not receive immediate notification of insufficient funds in an E-ZPass account when driving in electronic-only lanes. A driver on an electronic-only toll road may not even know that they are obligated to pay a toll at all: toll facilities on these roads are not obvious, and roadside signage can be insufficient to explain the process. Older drivers are especially at risk for this mistake.

Written notifications often arrive weeks after the toll was assessed, and sometimes never arrive at all. Regular commuters who are unaware of problems in processing payment may have dozens of unpaid video tolls before they receive the first notice that something is wrong.

### **Draconian Penalties**

The MDTA sets the penalty for late payment of a video toll at \$50, regardless of the amount of the unpaid toll. Civil penalties are assessed per transaction, meaning that two video toll transactions that are part of the same round trip will be assessed separate \$50 penalties. The MDTA can, at its discretion, waive civil penalties on video tolls.

The MDTA cannot arrange a payment plan, so if a vehicle owner cannot pay a debt in one lump sum, they will be referred to the Central Collection Unit (CCU) to arrange a payment plan for an added fee of 17%.

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<sup>53</sup> Lazo April 28, 2018

<sup>54</sup> Prosperity Now, 2018

<sup>55</sup> Lazo, 2018



### Alternative Approach: Day Fines

"Day fines originated in Scandinavia in the 1920s and have proliferated in Europe and South America. A day fine is a proportional fine, like an income tax, that takes into account both the severity of the offense and the offender's income. Any particular crime has a severity level worth a certain number of days of pay, and then the income of the defendant is calculated to determine the total fine. For example, in Finland, a day fine is equivalent to half of a daily discretionary income, which police may look up in a national database of personal earnings. The result is greater equitability among people of different economic classes and incomes and similar levels of felt hardship regardless of one's financial station."

"[C]ourts in the United States have piloted Day Fines that are proportioned to people's incomes. In some of these pilots, courts saw their overall revenue go up, and their disproportionate impact go down. Since day fines are calculated to be bearable at different income levels, collection rates are much higher than with traditional fines."

#### Sources:

- *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of New Debtors' Prisons*
- *San Francisco Fines and Fees Task Force: Initial Findings and Recommendations*

### Reform Efforts in Maryland

In 2018, Senator Manno passed a bill that allows the MDTA to recall accounts of \$300 or more that have been referred to CCU, in order to create a process by which civil penalties for video tolls can be waived.

In May 2018, Governor Hogan announced that E-ZPass transponders are now free for Maryland drivers. This may reduce the total number of video tolls issued by lowering the barrier to participate in the E-ZPass program. However, free transponders will not help un- and underbanked drivers who may not be able to keep an account in good standing.

## CONCLUSION & RECOMMENDATIONS

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Maryland has seen a rapid rise in poverty and cost of living in the past decade. Yet, despite the increased economic security of residents, the State has continued to permit debt collection processes in courts that assist creditors rather than debtors; support policies that increase the cycle of poverty through the use of arrest and egregious wage garnishment; and failed to create policies or programs that benefit low-wage workers and struggling families. Moreover, debt and

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debt collection activities are disproportionately borne by borrowers-of-color, which increases the racial wealth gap. Finally, Maryland has granted itself nearly unchecked power in collecting civic debts. The debt a consumer owes the State can grow exponentially through the debt collection process, with layers of fines added to unpaid fees.

Debt collection actions operate through the court system, through legislation, and through the State. There are a number of promising practices and policies that Maryland should adopt to expand economic security for low-income residents.

## Recommendations

- **Debtors' Prisons**

- **Programs:**

- Provide trainings on body attachments to Judges and Hearing Examiners (who preside over oral examinations in some jurisdictions) to ensure that the relevant rules and legislation are followed.

- **Policy:**

- Eliminate the use of body attachments for consumer debts below \$5,000;
- At a minimum, establish that no one can be arrested when court is not in session and eliminate bail requirements for consumer debt cases. An individual could be picked up, answer questions about their assets, and then released on their own recognizance;
- Establish that a body attachment may only be issued if both oral exam and show cause orders were delivered to the person to be served not left with a co-resident or served through certified mail.

- **Research:**

- Investigate body attachments and arrests per county to assess trends as well as disparate impact.

- **Debt Collection**

- **Policy:**

- Require any post-judgment discovery to include a list of all types of income and assets that are exempt. This form should explain how to claim these exemptions;
- Require judgment creditors to pursue all out-of court post-judgment discovery options before requesting a post-judgment hearing;
- Raise debt exemptions for wage garnishment to a level that keeps a family of four out of poverty; in Maryland, that would be at least 60 times the Maryland minimum wage or 75% of wages, whichever is higher;





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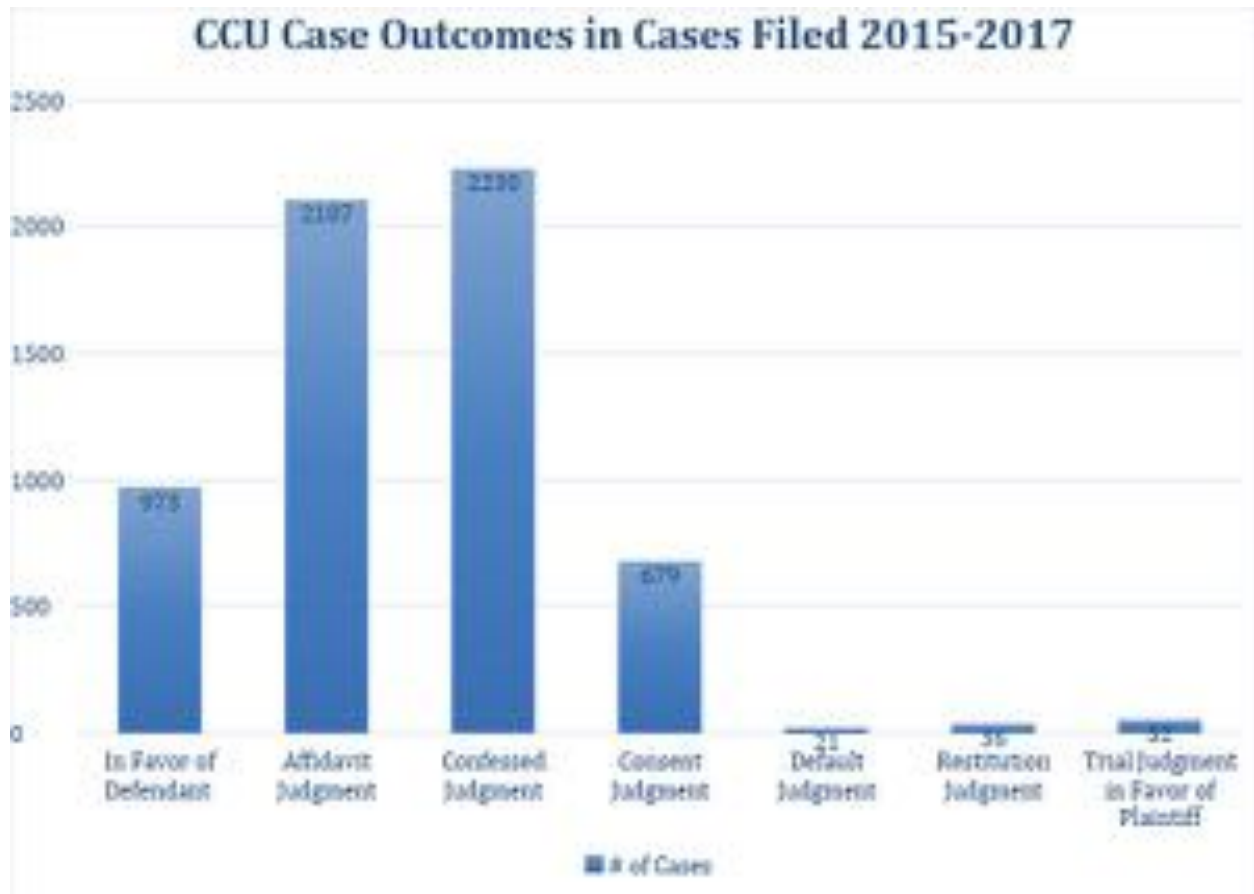
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# APPENDIX A: CCU'S DISTRICT COURT ACTIVITIES, 2015-2017

In order to better understand how CCU uses the court system to enforce civic debt, we conducted a quantitative analysis of all cases in which CCU took action in the District Court between 2015 and 2017. In that time frame, CCU took action on 12,102 lawsuits, with a total of just over \$18M in monetary judgements.

**Table 1: Outcomes of Cases**



**Confessed judgments** are the result of a legal process which allows a creditor’s attorney to file an affidavit with the lawsuit which “effectively confesses, on behalf of the debtor, that the judgement is owed.”<sup>56</sup> In this process, the first notification the consumer will receive from the District Court will be a notice that they have a judgement against them. The debtor then has 30 days to file a motion to open, modify, or vacate the judgment against them. Confessed judgments are not permitted in cases with consumer loans or transactions. Therefore, the confessed judgements are most likely for cases that are not related to consumer transactions or loans. When

<sup>56</sup> Steiner, 2017

CCU used the confessed judgment process, CCU was awarded an average of \$204 in attorney's fees – an order of magnitude larger than the attorney's fees awarded in judgments where the defendant has the opportunity to defend themselves prior to a judgment being entered.

**Affidavit judgments** are the typical legal process used to collect private consumer debts. To win an affidavit judgment, the creditor first files the affidavit in District Court, then the defendant is served with a court summons, a copy of the complaint, and all related documents. The defendant has 15 days to file a Notice of Intention to Defend, which triggers a trial, or negotiate a settlement with the creditor. The terms of that settlement may be filed with the court, and in those instances, it is called a **consent judgment**. If the defendant neither defends themselves or negotiates terms with the creditor, a judge will review the affidavit and documents and will likely enter a default judgment against the defendant. Table 1 shows the process for affidavit judgments, and the outcomes of the affidavits CCU filed between 2015 and 2017.

## APPENDIX B: MVA ADMINISTRATIVE FLAGS DATA

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To better understand the use of administrative flags, we submitted a data request to the MVA for historical information on administrative flags, non-renewal of vehicle registration, and immediate suspension of vehicle registration, by municipality. The MVA advised that they do not collect historical data on administrative flags, and instead provided a point in time report on administrative flags that did not include geographic distinctions.

**Table 2: Point in Time data from Oct. 7, 2017 on Administrative Flags by MVA**

	Source of Flag	Count	% of Total Flags
<b>Jurisdiction related flags</b>		570,839	57%
	Parking	103,933	10%
	Red Light	74,880	8%
	Speed Camera	279,039	28%
	School Bus Camera	629	0.06%
	Tolls	112,358	11%
<b>Immediate-Suspension Flags on Vehicles with Unexpired Registration</b>		104,249	
	Insurance Compliance	24,325	23%
	VEIP (emission controls)	77,882	73%



	Tolls	4,063	4%
<b>Non-renewal Flags on Unexpired Registered Vehicles (excluding suspensions)</b>		215,273	22%
<b>Flags that have resulted in non-renewal of registration</b>		780,469	78%

**Table 3: MCRC Analysis of Registration Status of Vehicles with Administrative Flags**

	Count	Percent of Vehicles with Valid Registration
Estimate of vehicles with <b>expired registration</b> due to administrative flag <sup>57</sup>	764,860	15%
Vehicles with un-expired, <b>suspended registration</b>	104,249	2%
Vehicles with <b>invalid registration</b> as a result of flags	869,109	17%
Vehicles with <b>valid registration</b>	5,104,050	100%

Our analysis shows that on October 7, 2017, 869,109 vehicles in Maryland had suspended or expired registration as a result of administrative flags. Flags are primarily used to collect civic debt; 57.33% of flags resulted from non-payment of jurisdictional fines and fees. Non-payment of video tolls resulted in 112,358 non-renewal flags and 4,063 immediate suspension flags.

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<sup>57</sup> Based on estimate that 2% of flags are duplicative.

# THE DEBT SPIRAL:

ENFORCEMENT OF CRIMINAL JUSTICE DEBT IN  
NORTH CAROLINA

REINVESTMENT PARTNERS



THE DEBT SPIRAL:  
ENFORCEMENT OF CRIMINAL JUSTICE  
DEBT IN NORTH CAROLINA

BY QUISHA MALLETTE



Reinvestment  
PARTNERS  
PEOPLE • PLACES • POLICY

## EXECUTIVE SUMMARY

This report examines the debt spiral for individuals indebted to the criminal justice system in North Carolina, and argues for targeted reforms at state and local levels. Across the state, there is evidence of disproportionately high contact with the criminal justice system among people of color and low-income communities. For these individuals and their families, criminal justice debt can be an insurmountable burden.

This report provides the following: 1. A description of historical context and current trends in criminal justice debt across the United States, particularly in the south; 2. A discussion of criminal justice debt in North Carolina, including the impacts and current state laws furthering the debt spiral; 3. Enforcement mechanisms for criminal justice debt; 4. An overview of current reform efforts across the state; and 5. A proposal

for principles of fairness in addressing criminal justice debt, including policy recommendations for managing the risk and reality of criminal justice debt.

This report builds on a growing body of work in North Carolina and across the country addressing criminalization of poverty. It is intended as a call to action for decision-makers and advocates to engage in reforms that are equitable, transparent and effective. Key findings are highlighted below:

- During the early years of the United States, people were criminalized based on race and poverty, through slavery, debt peonage and later enforcement of the Black Codes.
- Law enforcement continues to be racialized today and target low-income communities.
- In the name of public safety, the justice system has benefitted the wealthy while burdening low-income households.
- Today, from the point of initial contact with the criminal justice system, individuals from

communities of color and low-income communities can be quickly caught in a cycle of criminalization:

- Communities of color and low-income communities are often targeted for ticketing and arrest.
- Individuals who are arrested and cannot afford to be released on bail prior to trial end up sitting in jail with the increased likelihood of being convicted for the charged crime.
- For individuals convicted of crimes, North Carolina imposes discretionary court fines or penalties, and mandatory costs or administrative fees per statute.<sup>1</sup>

There is no requirement in North Carolina that the court determine whether an individual can afford to pay before imposing court costs.

- The State of North Carolina uses varying approaches to enforcing criminal justice debt, which may result in added financial burdens

for low-income families:

- If someone fails to pay court fees, they may get their driver license revoked.
- Based on Durham County data compiled from a six-month period in 2017, black residents had driver licenses revoked disproportionately based on driving while license revoked convictions and failure to appear or pay court costs.
- Other consequences may include incarceration for non-payment, and lasting debt.
- Employment, housing stability, and food access and health may all be impacted by inability to pay costs.

This report proposes several principles of fairness concerning the cost burden for individuals and families impacted by the criminal justice system:

- Address racial and social inequities in law enforcement, application of court costs and enforcement

of criminal justice debt.

- Ensure that costs for use of state and local government resources, such as the court system, do not unfairly burden households with low and moderate incomes.
- Follow the constitutional principle of due process for individuals with outstanding debts and ensure that any penalties imposed for non-payment are based on willful non-payment, based on evidence of effectiveness and correlated/ proportional to one's failure to pay.
- Set clear standards for collecting civic debt in a transparent manner and monitor collection practices by private entities acting on behalf or in furtherance of collecting civic debts from individuals.

## INTRODUCTION

Many people today, including our own families, friends and neighbors face high levels of debt from medical bills, student loans, mortgages, credit cards and other expenses they cannot afford.<sup>2</sup> A recent study of America's workers showed that 78% live paycheck to paycheck and 73% of workers making under \$50,000 per year

are living in debt.<sup>3</sup>

Further, according to a 2018 report by the Federal Reserve, four in ten adults do not have enough cash or savings to handle \$400 in unexpected expenses.<sup>4</sup>

It is worth noting that the median income in North Carolina is just over \$48,000, and 15% of state residents live in poverty.<sup>5</sup>

Additionally, one in five North Carolina residents has a criminal record.<sup>6</sup>

A few financial missteps could lead most people into a debt spiral, where 'debt begets more debt.'<sup>7</sup> Although debts owed to privately-owned entities may be a burden for many, civic debt - owed by individuals to the government - creates an added burden for low-income households, particularly families of color. Such debt can hang like a cloud over one's head, impacting households and communities, and potentially spiraling out of control.

### *Civic Debt Basics*

Debt owed to the state or local government may be described generally as civic debt. In North Carolina and other states, civic debt can be the result of court-related debt or other debts owed to the state or local municipalities, including parking tickets, unpaid utility payments or fines from toll roads. Court-related

debt may be the result of monies owed to the government through civil judgments or criminal court financial obligations.

Criminal court debt includes, but is not limited to financial obligations incurred through bail, court fines and fees, jail costs, probation or supervision, and participation in mandatory programs. For example, if a person is charged with a felony and fails to pay bail, that person generally has to sit in jail awaiting trial. Pre-trial incarceration drastically increases the likelihood that someone will plead guilty and be convicted of a crime they may not have committed.<sup>8</sup> Per a Philadelphia study, pre-trial detention leads to a “13% increase in the likelihood of being convicted . . . a 41% increase in the amount of non-bail court fees owed and a 42% increase in the length of the incarceration sentence.”<sup>9</sup>

In the scenario described above, the same person, who originally could not afford to pay bail, suddenly has to come up with money to pay court costs. The likely result is default on debts owed the court. If the offense is traffic related, one consequence will be driver license suspension or revocation until the debt is repaid. Without a driver license, a person’s transportation or employment may be in jeopardy. Without transportation or employment, hous-

ing, food access and health may be at risk. If that person risks driving without a license and happens to get ticketed or arrested, the cycle starts all over again. Even worse, that individual could become incarcerated, adding additional financial burdens and hardship for themselves and their families.

***A few financial missteps could lead many people into a debt spiral, where ‘debt begets more debt.’***

As pointed out in a 2017 multi-state report, there is no national standard concerning legal financial obligations.<sup>10</sup> The amounts owed for use of the court system and to pay other court obligations vary by state or local court systems. Even the terms used to describe money owed to the criminal justice system may differ between states. “Conceptualized variably as a dimension of punishment, an opportunity for restorative justice, and a source of revenue, legal financial obligations both widen the net and intensify the entanglements with, the criminal



justice system.”<sup>11</sup> Where someone lacks legal representation or the court fails to take into account their ability to pay, the consequences of fines and fees are “exacerbated.”<sup>12</sup>

***Debtor systems have existed in this country since its founding, in most cases, targeting people of color across incomes and other low-income individuals.***

Court costs or fees are the primary focus of this report because this form of legal financial obligation applies most broadly to anyone with a conviction in criminal court, from traffic infraction to felony. While assigned merely as ‘user fees,’ court fees can feel like punishment for low-income individuals. As a result of the current system of legal financial obligations, including court costs, many people who cannot afford to pay court costs may be required to pay anyway.

Part of the challenge with advocating for criminal justice debt policy reforms is getting beyond the prevailing notion that people with legal financial obligations are simply “paying” for their crimes. Some may assume that a person who owes money to the court should be required to do so as a part of their “punishment” or as a deterrent for wrongdoing. However, this argument does not account for the fact that court fees, described as court costs in North Carolina, are the *mandatory* price to pay for *use* of the court system and not intended for punishment. Fines and penalties on the other hand, are actual punishment, and may be imposed at the court’s option. Hence, court fees have been described by advocates as “user fees,” placing an unfair burden on individuals who enter the courthouse and are convicted of even the smallest infraction, such as not wearing a seatbelt as a passenger.

The bills can pile up, with very little say from the person who is impacted. Individuals may owe additional money for paying late or failing to comply, and simultaneously lose their driver’s license or be incarcerated, which

hinders their ability to take care of their family and may result in job loss, loss of government benefits, and other challenges. When several members of a community face these same challenges, it can contribute to disenfranchisement, blight and loss to the local economy. In this way, debt arising from contact with the justice system can spiral out of control.

## PART I. OVERVIEW OF CRIMINAL JUSTICE DEBT

### *History of Criminal Justice Debt*

The existing debt burden must be understood within the context of systemic oppression and individual actions that are often responding to that system. Low-income communities and communities of color often overlap in population and they disproportionately bear the burden of criminal justice debt. This modern barrier to wealth is rooted in history. As noted by Alexes Harris, expert on inequality in the criminal justice system, “[r]eminiscent of the days [of] slavery, poor people convicted today face fiscal servitude to the court.”<sup>13</sup>

This section begins by examining the

historical context across the southern part of the country, and then looks to the current day challenges in the United States. Debtor systems have existed in this country since its’ founding, in most cases targeting people of color across incomes and other low-income individuals, extracting wealth from communities and creating a ceiling for potential economic gains.

***Economic justice and criminal justice meet at an intersection, where the cycle of criminal justice involvement is often a barrier to individual financial stability and community wealth building.***

In the decades following slavery, many poor black and white farmers faced the reality of debt peonage. This system allowed wealthy landowners to rent plots of land, or make pay advances to their workers, leaving many of them in inescapable debt.<sup>14</sup> At the same time, southern state legislatures enacted the Black Codes, and later Pig Laws, restrictive laws that

were “effectively designed to criminalize black life,”<sup>15</sup> including penalties for unpaid debts. This extensive set of laws applied to all residents. However, they were primarily, if not exclusively, enforced against African-American men, in many cases sentencing them to hard labor at the hands of wealthy white landowners.<sup>16</sup> This system is said to have pushed black people away from the political process and then use the justice system to return them to “a state of de facto slavery.”<sup>17</sup> The Pig Laws remained in place until the Jim Crow era.<sup>18</sup>

Moving ahead to 1970, the US Supreme Court found that individuals could not be incarcerated for not paying legal financial obligations if they were not able to pay the amount imposed.<sup>19</sup> By the early 2000s, fiscal crises prompted use of increased court fines and fees as a viable alternative to shrinking state and local budgets.<sup>20</sup> Throughout the 2000s, justice systems across the country, including North Carolina, have dramatically raised the rates of legal financial obligations and expanded the types of obligations that can be imposed.

### *Criminal Justice Debt Today*

Today, anti-poverty advocates are starting to recognize that economic justice and criminal justice meet at an intersection, where the cycle of criminal justice involvement is often a barrier to individual financial stability and community wealth-building, particularly for people of color. Still, the influence of criminal justice policy and practice on opportunities for economic justice requires continued attention.

***A person with lower income plus a lesser criminal offense equals a disproportionately high consequence.***

The 2014 case in Ferguson, Missouri, identifies the intersection between areas of economic and criminal justice. In 2016 the U.S. Department of Justice completed an investigation of collusion between law enforcement and the courts in Ferguson, Missouri, finding a “financial relationship between Ferguson’s municipal

courts and its police department resulted in the disproportionate ticketing, fining and jailing of its African American residents.”<sup>21</sup>

In 2017, the United States Commission on Civil Rights submitted a briefing report with recommendations for the U.S. Department of Justice on *Targeted Fines and Fees Against Low-income Communities of Color*. The Commission noted in its report that

Excessive imposition of fines and fees can damage judicial credibility and the relationship between law enforcement and residents . . . Court imposition of fines and fees for criminal and civil justice activities has become a common practice in many jurisdictions . . . [and] a significant number of low-level fines and fees are for traffic violations . . . There are inconsistent policies in determining the ability to pay fines and fees and the consequences for individuals’ failure to pay.<sup>22</sup>

Recognizing the historical context of criminalization of low-income communities and communities of color, it may be argued that the credibility of the justice system has always been questionable. Further, whereas debt peonage is

not imposed as often today as it was historically, the legacy of insurmountable debt continues with court-imposed fines and fees. Finally, even minimal contact with the justice system, such as a minor traffic ticket, can send someone who is unable to afford the costs spiraling into debt.

Across the country, involvement in the criminal justice system may come with additional costs imposed by private companies contracting with state justice systems. For example, in recent years contractors have profited from allowing video visitation of individuals who are incarcerated, a debt burden that extends to families of individuals who are in jail awaiting trial.<sup>23</sup> Another example might be the pre-paid cards provided upon reentry of formerly incarcerated persons. Per a national consumer advocate, “[t]hese cards often have high fees, lack for clear disclosures, and offer little or no PIN security.”<sup>24</sup>

Such allowances unfairly burden those who cannot afford to pay court debts. Moreover, in recent years, the use of legal financial obligations has become more widespread. While the costs of criminal justice contact have increased,

so has the urgency to address this issue.

As discussed above, historically and today, court debt disproportionately impacts communities of color and low-income communities. The same issues in Ferguson, Missouri, are found in North Carolina and other parts of the country. The cycle begins with law enforcement targeting of low-income, communities of color for minor drug and traffic offenses. Targeting leads to higher rates of ticketing or arrest. The disproportionality continues through the process for charging and convicting individuals for committing crimes.

## PART II. CRIMINAL JUSTICE DEBT IN NORTH CAROLINA

### *Court Fines and Fees in North Carolina*

North Carolina has a system of justice that, in some instances, punishes people beyond the measure of the crime committed. Individuals who cannot afford to pay their way out of the system often face a debt burden that goes well beyond “fines and fees.”<sup>25</sup> The debt burden aris-

ing from court fees has even been challenged by several North Carolina attorneys as unconstitutional.<sup>26</sup> In North Carolina, criminal justice debt may include costs incurred at any point of involvement with the court system, from ticketing or arrest to bail, to conviction, incarceration, and probation or supervision.

In North Carolina, court fees are statutorily authorized for anyone with a criminal conviction, and amounts are set based on a fee schedule.<sup>27</sup> Total costs vary depending on the nature of the infraction, misdemeanor or felony and the details of each case. Added fines or penalties may be imposed for reasons such as failure to appear or failure to comply with imposed costs. However, the base cost for use of the court begins at \$178.<sup>28</sup> The fee schedule is set regardless of income, which results in wealthier people being able to pay the cost and move on with their lives, and traps lower income individuals in a cycle of debt.

North Carolina residents face additional barriers to justice just for living in poverty, such as being unable to afford a private attorney or

even for having a low-level offense that does not qualify them for a court-appointed attorney. The equation here is simple, and yet convoluted: A person with lower income plus a lesser criminal offense equals a disproportionately high consequence.

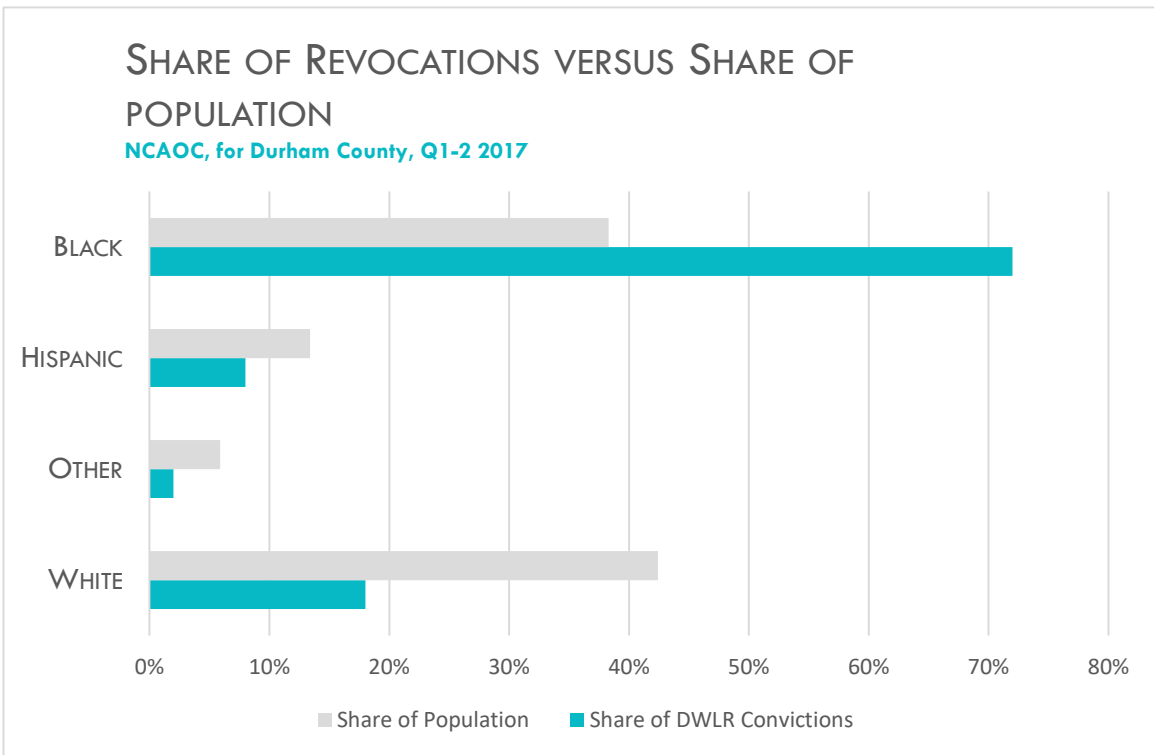
*The Burden of Criminal Justice Debt*

In North Carolina, statutory changes have made court costs, fines and penalties higher and higher, and harder and harder to waive. In past years, funding for the court system was mostly based on taxes paid by all North Carolin-

ians, but the burden has shifted to individuals who use the court system.<sup>29</sup> Mandatory court costs first emerged in 1995 and have increased drastically since that time.<sup>30</sup> Quoting an expert in North Carolina Criminal Law:

Overall, North Carolina’s court fees have risen at a rate quadruple the 54% rate of inflation in the United States over the past twenty years. If fees continue to go up at the rate that they have been increasing over the past twenty years, the general court fees in district court will exceed \$500 by the year 2024!<sup>31</sup>

It is important to recognize this dangerous trend

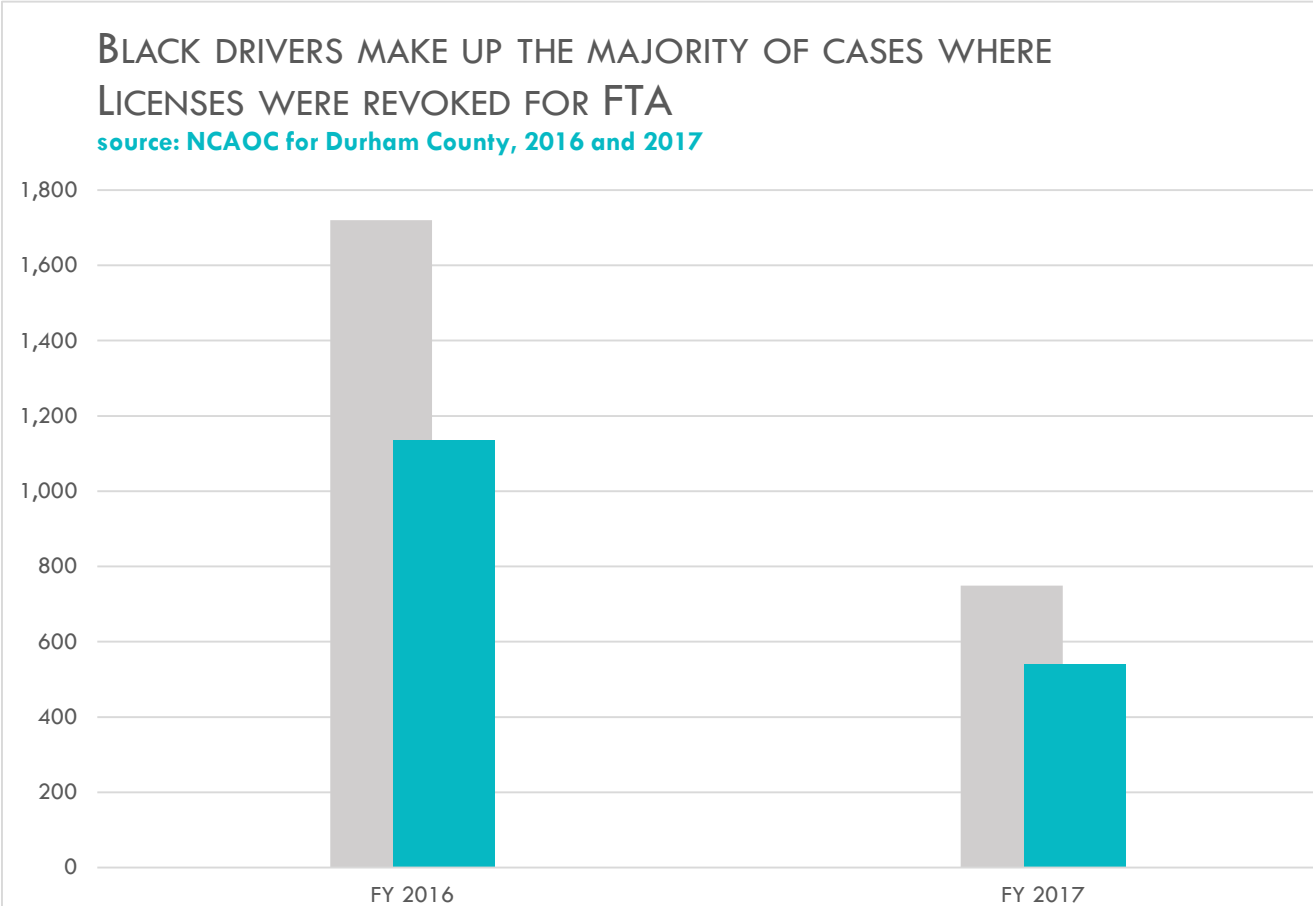


**THE DEBT SPIRAL**  
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of making justice less accessible for state residents. The imposition of fees is not merely an added expense, but a force that influences judicial outcomes – and in a way that has the effect of disadvantaging people of color. As discussed, non-payment of court costs can have lasting consequences. For example, non-payment of court costs is considered a probation violation. As a result, a family may lose eligibility for SNAP, housing assistance and disability benefits.<sup>32</sup>

climate penalizes court-involved individuals and court officials attempting to offer alternatives to the high costs of the justice system. Since 2011, the legislature has increased court fees, creating what many describe as a regressive tax.<sup>33</sup> To add insult to injury, the state legislature passed a 2017 law requiring that judges provide notice to all interested agencies receiving a portion of court fees, prior to waiving the fees. This move essentially strips judges of the discretion to waive fees for individuals dealing with special

In North Carolina, the current political





circumstances, including inability to pay.

Nevertheless, ability to pay court costs must be considered. The Supreme Court case *Bearden v. Georgia* requires courts to consider ability to pay debts prior to imposing punishment for non-payment of court costs.<sup>34</sup> Unfortunately, in practice, North Carolina courts may be enforcing such debts without an ability to pay determination.

### PART III. MECHANISMS FOR CRIMINAL JUSTICE DEBT ENFORCEMENT

In North Carolina, the world of costs, fines, restitution, and other monetary obligations can be quite a maze. The collections process can also be confusing. Criminal court costs are generally ‘coerced’ through revocation of driver licenses, converted into a civil judgment, or collected through debt setoff. Although not discussed at length here, the threat of incarceration may also loom for someone who fails to appear or pay court costs.<sup>35</sup>

#### *Revocation of Driver Licenses*

Per statute, North Carolina requires indefinite revocation of driver’s licenses for individuals who have certain traffic violations or anyone who is determined to have failed to appear or failed to comply with court costs in cases involving a motor vehicle offense. A recent 2017 law requires payment of an additional administrative fee (beyond existing DMV fees for license reinstatement) for individuals seeking a hearing to get their license reinstated. Some may argue that these policy shifts are promoting public safety or making up for economic losses due to unpaid court debts, but these claims are yet to be substantiated. Particularly when it concerns public safety, there is no direct correlation between inability to pay court costs and someone’s dangerousness on the road.

While a driver license revocation may be an appropriate means of ensuring public safety in some instances, non-payment of court costs is not a public safety issue. Plus, North Carolina has not shown clear evidence of effectiveness of revoking driver licenses for the purpose of

ensuring payment of outstanding court debts. In a 2011 audit, the Administrative Office of the Courts, the state entity over the county court system, failed to provide data to support claims of compliance with repayment of debt following license revocation.<sup>36</sup>

Across the state, approximately one million drivers do not have a license.<sup>37</sup> While this fact can be attributed to a variety of factors, one of the primary reasons is due to having a revoked driver license due to inability to pay court costs.<sup>38</sup> In the city of Durham, one in five residents have a suspended driver license and more than 22,000 residents have had their license revoked or suspended for failure to pay or comply with court costs.<sup>39</sup> The numbers in Durham County help illustrate this point.

According to the most recent data available, fifty percent of Durham County residents are white, and 37.2% of residents are black, with other races making up the remainder of the population.<sup>40</sup> Hispanic or Latinx individuals make up 13.4% of the population, an ethnic classification that is included within racial classifications

for the county.<sup>41</sup> North Carolina Division of Motor Vehicles (DMV) data from fiscal years 2016 and 2017 includes the number of driver license revocations each year due to either Driving While License Revoked (DWLR) convictions or failures to pay or appear:<sup>42</sup>

- In Fiscal Year 2016, 588 Durham County residents had driver license revocations extended for additional time for driving with a revoked license. 1720 driver license revocations for failure to appear or pay court costs.<sup>43</sup>
  - Between the two categories, just over three out of four revocations were due to failure to appear or pay court costs.
  - Sixty-six percent or 1136, of those revocations were for black drivers.
- In Fiscal Year 2017, Durham County saw 159 driver license revocations due to DWLRs and 749 revocations due to failure to appear or pay court costs.
  - That year, approximately

four out of five revocations were due to failure to appear or pay court costs.

- 542, or 72%, of those revocations were for black drivers. While additional data on rates of enforcement would provide additional context, the data provided suggests that proportionally more African Americans were charged and convicted for DWLRs than whites.

A review of individual court records based on DWLR charges during a six-month period in 2017 supports the DMV numbers from the last two years:<sup>44</sup>

- African American represented 76% of disposed or completed cases based on DWLR charges between April and October 2017.<sup>45</sup>
- Of the disposed cases, less than half resulted in DMV notification events, meaning that the convicted person's driver license was revoked once the case was completed.<sup>46</sup>

- Nearly half of driver license revocations were for black drivers.<sup>47</sup>
- Black individuals also accounted for more than 50% of the DMV notifications for failure to appear or pay court costs.

The trends here suggest that black drivers in Durham County have a higher rate of conviction and resulting driver license suspension for DWLRs and failure to appear or pay court costs. A key challenge is whether individuals could afford to pay the applicable court costs or penalties. Unfortunately, the data on ability to pay appears to be unavailable to the public.<sup>48</sup>

Other than revocation of a driver license, what happens when someone does not pay the court costs they owe? The Judicial Department is authorized to select from a few different options<sup>49</sup>:

1. Assess a collection assistance fee for amounts still owed thirty days after the allotted repayment period.
2. Contract with a collection agency to collect unpaid amounts owed.

3. Intercept state tax refund or lottery winnings through the debt setoff program.

Although the option is available, the Judicial Department generally does not use private companies for collection of criminal justice debt, which can often be predatory in nature.<sup>50</sup> Even government attempts at collections can be harsh and unfruitful. In 2009, Mecklenburg County attempted to collect outstanding court debt to make up for a budget deficit, arresting and incarcerating those who could not pay on the spot.<sup>51</sup> While the detention cost for debtors was \$40,000, the final collected amount was only around \$33,000.<sup>52</sup> This outcome suggests that the costs of detention outweighed any benefits of collecting outstanding debts.

### *Civil Judgments and Debt Setoff*

Unpaid criminal court debt is commonly docketed as civil judgment upon default, which allows for a judgment creditor to collect on amounts owed for up to ten years, but the state could sue to collect on the debt indefinitely, with no statute of limitations.<sup>53</sup> While interest is not

attached to outstanding court fees, interest on fines, penalties and attorney's fees may accrue annually at eight percent each year.<sup>54</sup> As one attorney has noted, people do not understand that they are entering an 8% loan agreement when they agree to have their outstanding debt converted to a civil judgment.

The state's Debt Setoff program allows state and local agencies to collect unpaid debts, such as a civil judgment, owed to those government entities by intercepting state tax refunds and lottery winnings.<sup>55</sup> Debt setoff is often used by Indigent Defense Services, the body of court-appointed attorneys representing individuals who cannot afford a private attorney. An accused individual, who is declared indigent by the court, will generally be assigned a court-appointed attorney when a public defender is not available. The court-appointed attorney acts as a substitute, with additional attorney's fees.<sup>56</sup> If the accused is found guilty, then the state must collect payment for the court-appointed attorney, even though the person has been declared indigent. The hopeful news is that Indigent Defense

services is reportedly developing statewide standards for determining whether someone qualifies for a court-appointed attorney, which may give more people access to legal representation which they otherwise could not afford.<sup>57</sup> However, regardless of indigence, individual defendants would still have to pay non-waivable costs for a court-appointed attorney.

### *Options for Those Who Cannot Afford to Pay Monetary Obligations*

Considering the high costs for non-payment of court fees, fines and penalties, it is essential to consider what options may be available for those who cannot afford to pay. As noted in a 2018 report on *Court Fines and Fees: Criminalizing Poverty in North Carolina*, “[w]aiver and the ability to pay inquiry are the two main tools available to mitigate or prevent the worst abuses of fines and fees . . . . [T]hey currently fall far short of the task.”<sup>58</sup> In North Carolina, two options include waiver and remission. While there are a lot of restrictions for waiving court costs or “user fees” in North Carolina, costs may be reduced or eliminated in

other ways.<sup>59</sup> Further, certain court costs may actually be reduced, such as the \$600 lab fees, which are those costs outside of the range of those on the fee schedule applied in most cases, currently \$178 for district court and \$205 for superior court.<sup>60</sup>

It bears noting that, in light of recent laws making judicial waiver of court costs more burdensome, waiver is not the only means of reducing or eliminating court costs. For example, different from a waiver, a cost may be “remitted” or forgiven by the court upon petition by a defendant or prosecutor for certain reasons, such it being unjust to require payment.<sup>61</sup> Similar to waiver, this option requires notice to and an opportunity to be heard to any government agency that would have otherwise received a portion of the costs owed, but it does not require a written finding of just cause, so it may be more accessible for judges.<sup>62</sup> While the law appears to provide a window out of possible court debt, remission, along with waiver and other relief from legal financial obligations, are based on the decision of each individual judge, and therefore are not

uniformly applied.

## PART IV. EXISTING REFORM

### EFFORTS IN NORTH CAROLINA

In response to the downward spiral created by criminal justice debt, reforms are necessary to protect impacted individuals and preserve the integrity of the criminal justice system. The US Commission on Civil Rights includes in its recommendations that “states and municipalities should create accountability mechanisms concerning the constitutionality of fines and fees, determination of indigency, and alternatives to the imposition of fines and fees.”

Current reform efforts in North Carolina focus on accountability, standardizing court practice, promoting policy change and providing relief for impacted individuals. Initiatives vary by county and some examples are provided below.

Mecklenburg County judges have started using a bench card that sets clear standards to determine appropriateness of court fines and fees for those convicted of criminal charges.<sup>63</sup>

The bench card, created with support from the National Criminal Justice Debt Initiative at Harvard Law School, calls for a presumption of inability to pay for certain individual defendants such as those who qualify for a court-appointed attorney and full-time students.<sup>64</sup>

In Durham and Wilmington, local government has worked with advocacy organizations to offer amnesty days for individuals with revoked driver licenses to get driver licenses restored.<sup>65</sup> In Durham, the amnesty project was led by the City of Durham Innovation Team, as a part of their overall goals of “lowering the recidivism rate and increasing employment rate of justice-involved individuals.”<sup>66</sup>

Grassroots groups and advocacy organizations have launched campaigns to end money bail, and end or limit pre-trial incarceration. Local and national organizations have also pushed for decriminalization platforms for district candidates for the 2018 election cycle.<sup>67</sup>

Starting with the NC Poverty Research Fund’s January 2018 report, state and local organizations are also researching and producing

reports on issues of fines, fees and bail. Attorney advocates and practitioners and other concerned parties have published series of articles and thought pieces on the issue.<sup>68</sup> With prompting from advocates across the state, there has also been a lot of recent media attention covering the issues of court fines and fees and bail.<sup>69</sup>

As described above, a growing number of state and local officials, attorneys, non-profit and grassroots organizations, and other professional or community advocates across the state are working individually and in tandem to push for changes in the justice system that will decriminalize poverty and remove some barriers to wealth.

These steps are headed in the right direction, and they remind us that state and local officials, attorneys, consumer advocates, service providers and concerned community members can all play a role in curbing the injustices of the current justice system, specifically addressing the financial barriers to justice and lasting consequences for inability to pay off criminal justice debt.

## PART V. POLICY

### RECOMMENDATIONS

Recognizing the continued economic challenges faced by justice-involved individuals, the justice system should adhere to certain principles of fairness in setting, imposing and collecting criminal justice debt. Importantly, advocacy efforts should have an equitable approach: directly impacted individuals, families and community members must be central to reform efforts, informing the goals and direction of the work. Further, advocates must not lose sight of the fact that residents of our state are currently facing court costs they cannot afford, as well as driver's license revocations and other consequences. Many people are in need of pre-trial assistance from advocates who can guide them through the system and ensure they are treated fairly, adequate legal representation to request waiver or remission of costs, as well as support during incarceration and re-entry in order to prevent recidivism and ensure people can pay their debts.

There is also a desperate need for funding and support for financial counseling and



literacy. In many cases, if a consumer does not already have certain supports or financial assets, they may not even be able to access services intended to support consumers, such as access to credit and housing counseling. It is unfortunate that poverty is criminalized by the justice system.

Bearing in mind the above considerations, provided below are principles, outlined in bold, with policy recommendations specific to criminal justice debt, and recommendations for consumer advocates and concerned community members.

### *Principles of Fairness*

#### **Address racial and social inequities in law enforcement, application of court costs and enforcement of criminal justice debt:**

- The Department of Public Safety and Judicial Department should monitor existing policies and practices, to prevent targeting and other forms of discrimination against low-income communities and communities of color, and implement evidence-based reforms to address disparities.

#### **Ensure that costs of use of state and local government resources, such as the court system, do not unfairly burden households with low and moderate incomes:**

- The court system should be accessible to all people regardless of income. Individuals should not be penalized for not being able to afford legal representation or pay legal financial obligations such as bail and court costs. The state Judicial Department should also make sure the payment system is accessible for users with special needs.
- The Administrative Office of the Courts should keep the public informed regarding payment plan options and any reasonable alternatives to payment. Moreover, the state legislature should implement a sustainable funding model for the Justice Department that relies on all taxpayers, rather than burden those who come in direct contact with the courts.

#### **Follow the constitutional principle of due process for individuals with outstanding debts and ensure that any penalties imposed for**

**non-payment are based on willful non-payment, based on evidence of effectiveness and correlated/ proportional to one's failure to pay:**

- North Carolina should end revocation of driver licenses for failure to appear or pay court costs. Relevant state law should require ability to pay determinations, such that the court must determine whether someone can pay court costs prior to getting a driver license revoked. The court system should incorporate alternative models for payment of court debt or other civic debts, including sliding scale payment systems and no-cost opportunities for community service. Outstanding debts or debts in default should not be converted to civil judgments, or debt setoff without a determination of ability to pay.

**Set clear standards for collecting civic debt in a transparent manner and Monitor collection practices by private entities acting on behalf or in furtherance of collecting civic debts from individuals:**

- The justice system should review current enforcement procedures for effectiveness and disproportionality, making the process and findings available to the public. Standards should limit accrual of interests, added costs, and collection tactics such as wage garnishment that put individuals at risk of being unable to repay their financial obligations.

### *Example of Possible Policy Shift with Ability to Pay Determinations*

As mentioned at the start of this report, the challenge of criminal justice debt is one that arises as both a criminal justice and consumer rights issue. Although it primarily involves the legal system, criminal justice debt quickly becomes a consumer issue because it can initiate a debt spiral and hurt access to credit. Approaching criminal justice debt through a consumer rights lens may help provide some solutions. The

Pew Charitable Trusts proposes a standard for affordable installment loan payments as 5% of a typical customer's gross paycheck.<sup>70</sup> While this recommendation arises in the context of lending to underbanked customers who were more likely to be susceptible to abuses from payday lenders, it translates well for an individual's ability to pay court costs or other outstanding debts.

The Pew plan allows for repayment of court debt without triggering a cascade of late fees and interests. Consider the scenario below for a family of four, earning \$26,000 per year, just above the federal poverty line. One of the adults is convicted of a traffic infraction and owes a minimum of \$188 for a motor vehicle infraction in district court, not including possible attorney fees and other costs. If that individual is not able to pay up front, they may owe an additional \$50 for failure to pay. This adds up to an expense of at least \$238, which equals 11% of the family's monthly take home pay. This amount could have gone a long way to cover the costs of groceries, transportation or medication. Under a 5% plan, rather than owe \$238 up front, that family could pay several installments of

\$108.33 per month. Although a \$108.33 installment is still a high monthly cost for a family living in poverty, it is much more manageable than \$238. Even more, by being enrolled in the payment plan, the family is able to avoid additional penalties and interests that create a debt trap. A possible 5% plan is outlined below:

#### Short-term change

- Ensure that a payment plan option is made user-friendly and readily available to justice-involved individuals.
- Installments for repayment of court-related debt should not exceed 5% of income.<sup>71</sup>

#### Mid-term change (Requires change to existing payment structure)

- Allow individual defendant to provide evidence of income at court appearance, similar to the financial affidavit used by civil court. If someone cannot provide evidence, allow affirmation under oath.<sup>72</sup> Those with the inability to

pay court fees outright should be allowed to “opt- in” to a payment plan where court costs would be more than 5% of income.

Long-term change (Requires changes in state statute)

- Provide sliding scale court costs with cap based on low percentage of income (i.e. 5%)
- Change the dollar amount allotted to each agency in the existing set fee schedule to a percentage amount per agency to allow reduction of costs based on ability to pay analysis
- Offer an optional payment plan allowing for payment of past due criminal justice debt at a 5% rate

## **PART VI. CONCLUSION**

The nature of criminal justice debt has changed form over time. Even so, the current racial disparities in the criminal justice system, which lead to criminal justice debt today, are rooted in American history. The challenge remains the same: People of color and low-income

households often bear the brunt of criminal justice debt.

In North Carolina, and across the United States, court costs, fines, penalties and other charges have increased over the last twenty years, helping fill gaps in local and state budgets. However, the rate of costs increase in this state exceeds the rate of inflation. Further, the costs are akin to a “tax” on individuals with any level of criminal conviction. The lower someone’s income, the higher the percentage of their hard-earned money goes to pay this tax.

Moreover, recent state laws make fee waivers both unpopular and virtually impossible, while other forms of relief from fines and fees, such as remission, are left up to a judge’s discretion. As a result, legal financial obligations penalize people because of their economic status, trapping many in a debt spiral simply because they cannot afford to pay.

When someone fails to pay fines and fees, the mechanisms employed can be harsh and unyielding. While the court system has wisely avoided using predatory third-party debt

collectors, the other means of “collecting” unpaid costs can be just as problematic.

Driver license revocation is the primary means of enforcement of criminal justice debt and it is an illogical consequence for non-payment. If someone has their driver license revoked, then it is even harder for them to make a living and come up with the necessary funds to pay the costs.

Finally, additional barriers to license reinstatement, such as a new fee for an administrative hearing, leave many without hope of getting their license back. Incarceration and conversion to civil judgment are other mechanisms with

lasting ramifications for non-payment of fines and fees, including possible loss of employment, government benefits and household stability.

The reality is sad, but there is a glimmer of hope. Reform efforts across the state, including research, amnesty days, judge’s bench cards, grassroots campaigns and direct representation of impacted people, all demonstrate that political will is mounting in favor of a more equitable justice system. With support from court officials, advocates of all forms and engaged community members, North Carolina courts can one day ensure justice for all.

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**THIS RESEARCH CONTRIBUTES TO A COMPILATION OF REPORTS BY MEMBERS OF A MULTI-STATE COLLABORATIVE, INCLUDING CALIFORNIA REINVESTMENT COALITION, WOODSTOCK LOCATED IN ILLINOIS, MARYLAND CONSUMER RIGHTS COALITION AND REINVESTMENT PARTNERS LOCATED IN NORTH CAROLINA. EACH OF THESE CONSUMER ADVOCACY ORGANIZATIONS HAS RESEARCHED KEY ISSUES RELATED TO ENFORCEMENT OF CIVIC DEBT IN THEIR RESPECTIVE STATES. THE COMPI- LATION OF REPORTS IS FORTHCOMING.**

### **ACKNOWLEDGEMENTS**

**I WOULD LIKE TO EXPRESS MY SINCERE GRATITUDE TO PETER SKILLERN AND ADAM RUST FOR SUPERVISING THE RESEARCH AND PROVIDING USEFUL CRITIQUES OF THIS WORK. I AM VERY GRATEFUL TO CRISTINA BECKER, DAVE HALL AND HEATHER HUNT FOR THEIR REVIEW AND COMMENTS ON REPORT DRAFTS. I WOULD ALSO LIKE TO THANK TANYA WOLFRAM FOR SUPPORT WITH EDITS. SPECIAL THANKS TO AMANDA CAZZOLLA AND ADAM RUST FOR EDITORIAL AND PUBLICATION ASSISTANCE.**

# THE DEBT SPIRAL:

HOW CHICAGO'S TICKETING PRACTICES UNFAIRLY  
BURDEN LOW-INCOME AND MINORITY  
COMMUNITIES

WOODSTOCK INSTITUTE



# The Debt Spiral:

## How Chicago's Vehicle Ticketing Practices Unfairly Burden Low-Income and Minority Communities



## **ACKNOWLEDGEMENTS**

Woodstock Institute thanks the author of this report, Research Director Lauren Nolan, and greatly appreciates the efforts of editors and contributors Brent Adams, Jason Olson, Dory Rand, Beverly Berryhill, Patricia Woods-Hessing, and Jenna Severson. We would also like to thank our national collaborative partner organizations on this project: California Reinvestment Coalition, Reinvestment Partners, and Maryland Consumer Rights Coalition. Finally, Woodstock would like to extend a thank you to Melissa Sanchez of ProPublica Illinois for her invaluable insights during the research process.

Woodstock gratefully acknowledges the generosity of the Ford Foundation, whose financial support made this report and the work of our national collaborative possible. Woodstock also would like to acknowledge our general operating support funders: Citi, Fifth Third Bank, Northern Trust, Bank of America, Woods Fund of Chicago, The Richard H. Driehaus Foundation, Capital One, The Elizabeth Morse Genius Charitable Trust, The Harris Family Foundation, U.S. Bank, VantageScore Solutions LLC, The Big Cat Foundation, The Chicago Community Trust, Polk Bros. Foundation, and MFUG Union Bank. The content of this report reflects the views of Woodstock and its partners and does not necessarily represent the views of our funders.

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# Executive Summary

In 2017, the City of Chicago issued over 3.6 million vehicle-related tickets, more, per capita, than New York and Los Angeles.<sup>1</sup> The majority of tickets issued were for non-moving violations. Ticket issuance is so pervasive that it makes up over seven percent of the City's annual budget.<sup>2</sup> This practice is lucrative for a cash-strapped city, third-party debt collectors, and bankruptcy lawyers, but it is highly punitive to the City's residents, particularly those who do not have the means to pay the tickets. Tickets quickly accrue additional fines and can land recipients in bankruptcy, vehicle impoundment, or with a driver's license suspension. Using data obtained from Freedom of Information Act requests submitted to the City of Chicago and the State of Illinois, this report quantifies the disparate impact that ticket issuance had on low-income communities and communities of color in Chicago. It analyzes the negative impacts of unpaid ticket debt such as bankruptcy, employment prohibitions, and loss of driver's licenses. Finally, it provides a series of policy recommendations aimed at addressing the issue.

## A Disparate Impact on Low-income and Minority Communities

Tickets had disparate impacts on Chicago's most vulnerable residents. According to Woodstock Institute's analysis of tickets issued to Chicago drivers in 2017:

- Tickets were **40 percent** more likely to be issued to drivers from low- and moderate-income (LMI) zip codes than drivers from higher-income zip codes.
- Tickets were **40 percent** more likely to be issued to drivers from zip codes with a higher-than-average proportion of minority residents than drivers from non-minority zip codes.
- Ticket recipients from LMI and minority zip codes were twice as likely as recipients in non-LMI and non-minority zip codes to file for bankruptcy.
- Tickets issued to drivers from LMI and minority zip codes were more likely to go unpaid (and therefore accrue additional fines) than those issued to drivers from non-LMI and non-minority zip codes.
- Drivers from LMI and minority zip codes were more likely to have their driver's license suspended for failure to pay tickets than drivers from non-LMI and non-minority zip codes.

## Consequences of Unpaid Ticket Debt

**Additional Fines:** Tickets that are not paid on time double in value, and can accrue collection fees and interest. In 2017, Chicago issued \$87.59 million in late fees to Chicago drivers in addition to the \$162.76 million face value of the initial tickets. Tickets for drivers from LMI and minority zip codes were more likely than tickets for drivers from non-LMI and non-minority zip codes to go unpaid and double in amount.

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<sup>1</sup> Melissa Sanchez, Sandhya Kambhampati, "How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy," ProPublica Illinois, last modified February 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>.

<sup>2</sup> Ibid.

**Vehicle Seizure and Impoundment:** Unpaid tickets can result in vehicle immobilization (booting), towing, and impoundment. Chicago towed nearly 19,000 vehicles in 2016 due to unpaid tickets.<sup>3</sup> If recipients were not able to pay initial tickets, it is likely they were unable to afford additional fees resulting from towing and impoundment.

**Driver's License Suspension:** In 2016 and 2017, Chicago asked the Secretary of State to suspend 8,202 licenses for failure to pay tickets. The majority of these suspensions affected drivers from LMI and minority zip codes. License suspension can seriously jeopardize one's ability to keep a job. Driver's license suspensions were concentrated in zip codes with high rates of unemployment.

**Bankruptcy:** Ticket debt is driving a significant number of low-income and minority Chicagoans into bankruptcy. The federal court for the Northern District of Illinois leads the nation in Chapter 13 bankruptcy filings.<sup>4</sup> Between one-third and half of Chapter 13 filers are filing because local governments have suspended, or are threatening to suspend, their driver's licenses or seize their cars because they have accumulated excess fines.<sup>5</sup>

## Policy Recommendations

Ticket issuance in Chicago is a broken system that amounts to a regressive revenue generation strategy. It burdens the City's most vulnerable residents and traps many in an inescapable cycle of debt. Reforms to this system are needed to address this issue and make the system work better for Chicago residents.

- **Limit Driver's License Suspensions:** End the practice of suspending driver's licenses for non-moving violations, including failure to pay tickets and other fines/fees.
- **Provide Compliance Opportunity:** Implement a compliance program whereby drivers cited for a compliance issue, such as missing license plates or city stickers, have the opportunity to address the issue and avoid being assessed a fine.
- **Improve Repayment Plans:** Create and implement municipal repayment plans that are affordable to low-income households. Mandate that all cities have repayment plan options.
- **A Community Service Alternative:** Allow ticket recipients to pay off tickets through community service hours.
- **Institute Ability-to-Pay Determinations:** Institute ability-to-pay determinations whereby qualifying low-income persons are able to apply for reduced fine amounts.
- **Lower Fees for First-time and Low-income Offenders:** Allow first-time offenders and/or low-income drivers one-time fee waivers.
- **Write-offs/Statute of Limitations:** Institute a statute of limitations on ticket debt (none such exists in Illinois), and write off stale ticket debt.

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Edward R. Morrison, Antoine Uettwiller, "Consumer Bankruptcy Pathologies," Columbia Law and Economics Working Papers, September 29, 2017, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2845497](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2845497).

- **End Employment Prohibitions:** End the practice of barring those who owe ticket debt to the City of Chicago from public jobs.
- **Re-evaluate Ticket and Policing Practices:** Tickets that do not have a direct connection to public safety should be eliminated. Chicago should conduct an audit of its ticketing enforcement practices to identify the existence of any geographic, racial, or economic bias.

# Introduction

This report examines resident indebtedness resulting from ticket issuance practices in the City of Chicago. In 2017, the City of Chicago issued 3.6 million vehicle-related tickets. Ticket issuance is lucrative for the City. In fact, tickets issued in 2016 brought in \$264 million, which was seven percent of the City's operating budget.<sup>6</sup> For many drivers, getting a ticket is a mere inconvenience. Those with the financial means to do so simply pay the ticket, chalking it up to bad luck or carelessness. But for those without the resources to pay, getting a ticket can be a nightmarish situation that can quickly lead to additional fines, bankruptcy, and loss of driving privileges. This revenue generation practice unfairly attempts to balance the City budget regressively on the backs of the residents least able to afford it.

This report discusses the debt spiral phenomenon resulting from vehicle-related tickets. Using data obtained from Freedom of Information Act requests submitted to the City of Chicago and the State of Illinois, this report quantifies the disparate impact ticket issuance had on low-income communities and communities of color in Chicago. It analyzes the negative impacts of unpaid ticket debt such as bankruptcy, employment prohibitions, and loss of driver's licenses. Finally, it provides a series of policy recommendations aimed at addressing the issue.

## Analysis of Chicago Ticket Data

In 2017, the City of Chicago issued over 3.6 million vehicle-related tickets and warnings. Of these, 1.9 million were issued to Chicago residents.<sup>7</sup> Nine percent were issued to out-of-state drivers, and the remaining 38 percent were issued to Illinois drivers residing outside of Chicago. Violations were issued for over 100 different types of driving and parking offenses. The largest number of tickets was for red light violations (273,224), followed by speed violations over 11 miles per hour (mph) (250,238), and not possessing a city sticker (187,275).<sup>8</sup> The majority of tickets (54 percent) was for non-moving violations such as missing city vehicle stickers, expired parking meters, or improper license plates. (See Figure 1).

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<sup>6</sup> Melissa Sanchez, Sandhya Kambhampati, "How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy," ProPublica Illinois, last modified February 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>.

<sup>7</sup> "Chicago residents" were defined as those with a zip code within the City of Chicago. Drivers with a P.O. Box zip code rather than a physical zip code were excluded from the analysis.

<sup>8</sup> All Chicago residents driving, parking, leasing and/or owning a vehicle for which they are responsible in the City of Chicago are subject to the Chicago Wheel Tax and must purchase a Chicago City Vehicle Sticker. This includes Chicago residents who maintain their registration outside of the City of Chicago, but use the vehicle in the City. Vehicle Stickers must be purchased within 30 days of residing in the City or acquiring a new vehicle to avoid late fees and fines. Revenue from the Chicago City Vehicle Sticker Sales Program funds street repair and maintenance.

**Figure 1: Tickets Issued by Type**

Violation Type	# of Tickets	Percent of Total (%)
Red light violation	273,224	14.2
Speed violation 11+ mph	250,238	13.0
No city sticker vehicle under/equal to 16,000 lbs.	187,275	9.7
Expired meter	175,917	9.1
Expired plates or temporary registration	162,059	8.4
Speed warning*	160,824	8.3
Street cleaning	144,982	7.5
Residential permit parking	100,094	5.2
Parking/standing prohibited anytime	80,928	4.2
Speed violation 6-10	74,728	3.9
No standing/parking time restricted	36,828	1.9
Rush hour parking	32,938	1.7
Rear and front plate required	24,166	1.3
Within 15' of fire hydrant	23,142	1.2
Other	202,708	10.5

\*Does not result in a fine.

### Disparities in Ticket Issuance

Ticket issuance had disparate impacts on certain groups of Chicago residents. Tickets were more likely to be issued to drivers from low- and moderate-income (LMI) zip codes and to drivers from minority zip codes than to other drivers.<sup>9</sup>

Fifty percent of Chicago adults live in LMI zip codes, however, 58 percent of all tickets were issued to drivers from LMI zip codes. This disparity persisted despite the fact that residents in LMI areas were less likely than residents in non-LMI areas to commute by driving and to own a vehicle. According to American Community Survey data, of Chicagoans who drove to work rather than took public transportation, 46 percent lived in LMI zip codes and 54 percent lived in non-LMI zip codes. Similarly, 55 percent of all vehicles belonged to Chicago households in non-LMI zip codes, and 45 percent belonged to those in LMI zip codes. Despite these trends, tickets were 40 percent more likely to be issued to drivers from LMI zip codes than to those from non-LMI zip codes. (See Figure 2 and Figure 3).

**Figure 2: Tickets Issued, LMI and Non-LMI Zip Code Drivers**

	Tickets Issued		Adult Population <sup>10</sup>		Commuters Who Drove <sup>11</sup>		Vehicles <sup>12</sup>		Tickets Per 100 Adults
	#	%	#	%	#	%	#	%	
Non-LMI	743,349	42	1,090,283	50	402,826	54	653,147	55	68.18
LMI	1,026,081	58	1,072,142	50	347,595	46	531,821	45	95.70

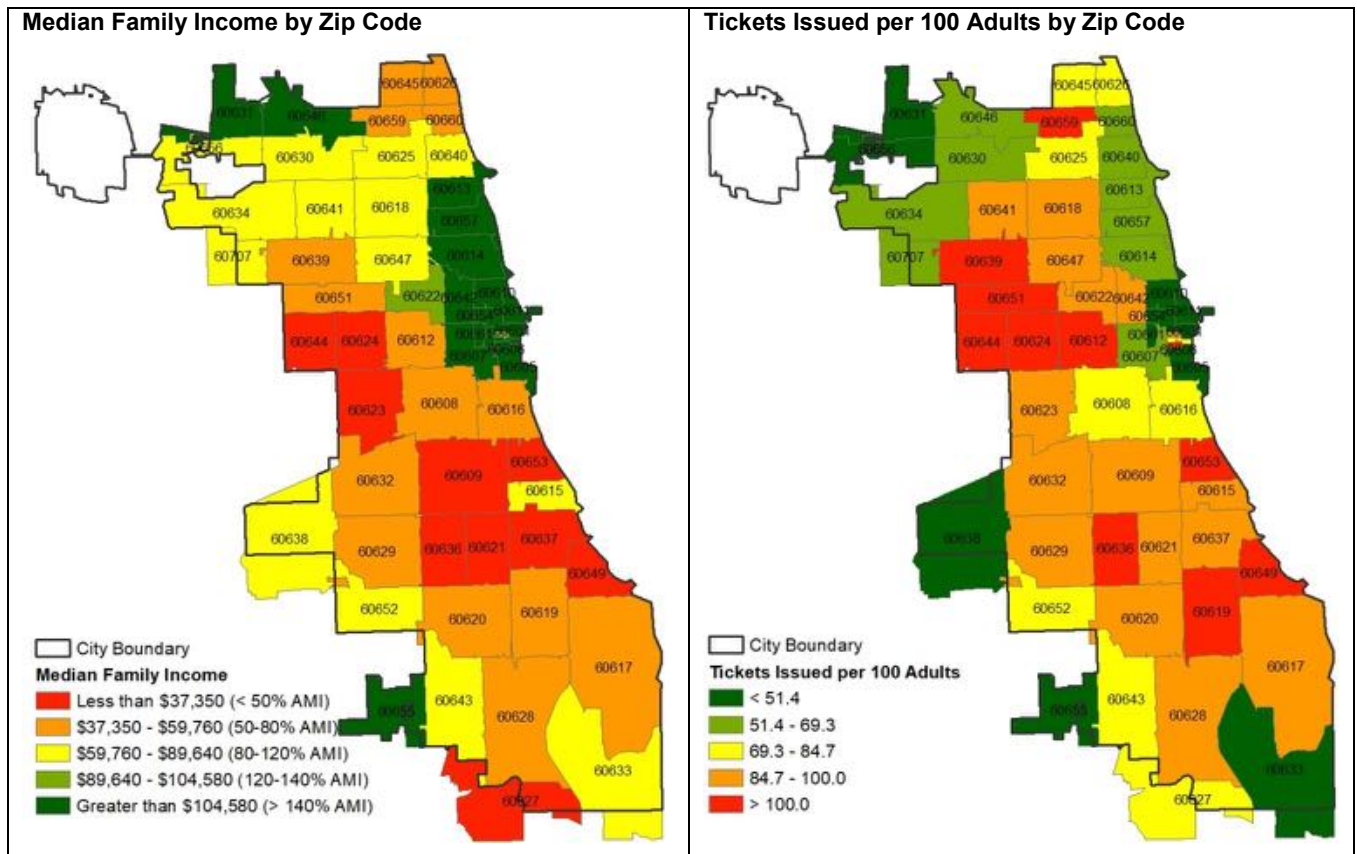
<sup>9</sup> LMI zip codes were defined as zip codes where median family income was less than 80 percent of area median family income (\$74,700). Minority zip codes were defined as zip codes where the population of racial and/or ethnic minorities (Non-White and/or of Hispanic/Latino origin) exceeded the city average of 67.7 percent. Income and racial/ethnic data are from the 2016 Five-Year American Community Survey. There were 58 physical (non-P.O. Box) five-digit zip codes in Chicago. Twenty-five (43 percent) of these were LMI zip codes and 24 (41 percent) were minority zip codes. All but four LMI zip codes were also minority zip codes, and all but three minority zip codes were also LMI zip codes.

<sup>10</sup> Data are from the 2016 Five-Year American Community Survey.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

**Figure 3: Median Family Income & Tickets Issued**



See Appendix for full-size maps.

Disparities also existed between minority and non-minority zip codes. Forty-eight percent of Chicago adults lived in minority zip codes, but 56 percent of tickets were issued to drivers from minority zip codes. Forty-five percent of workers who commuted by car lived in minority zip codes, and 44 percent of vehicles were owned by households in minority zip codes. Despite these trends, tickets were 40 percent more likely to be issued to drivers from minority zip codes than to drivers from non-minority zip codes. (See Figure 4 and Figure 5).

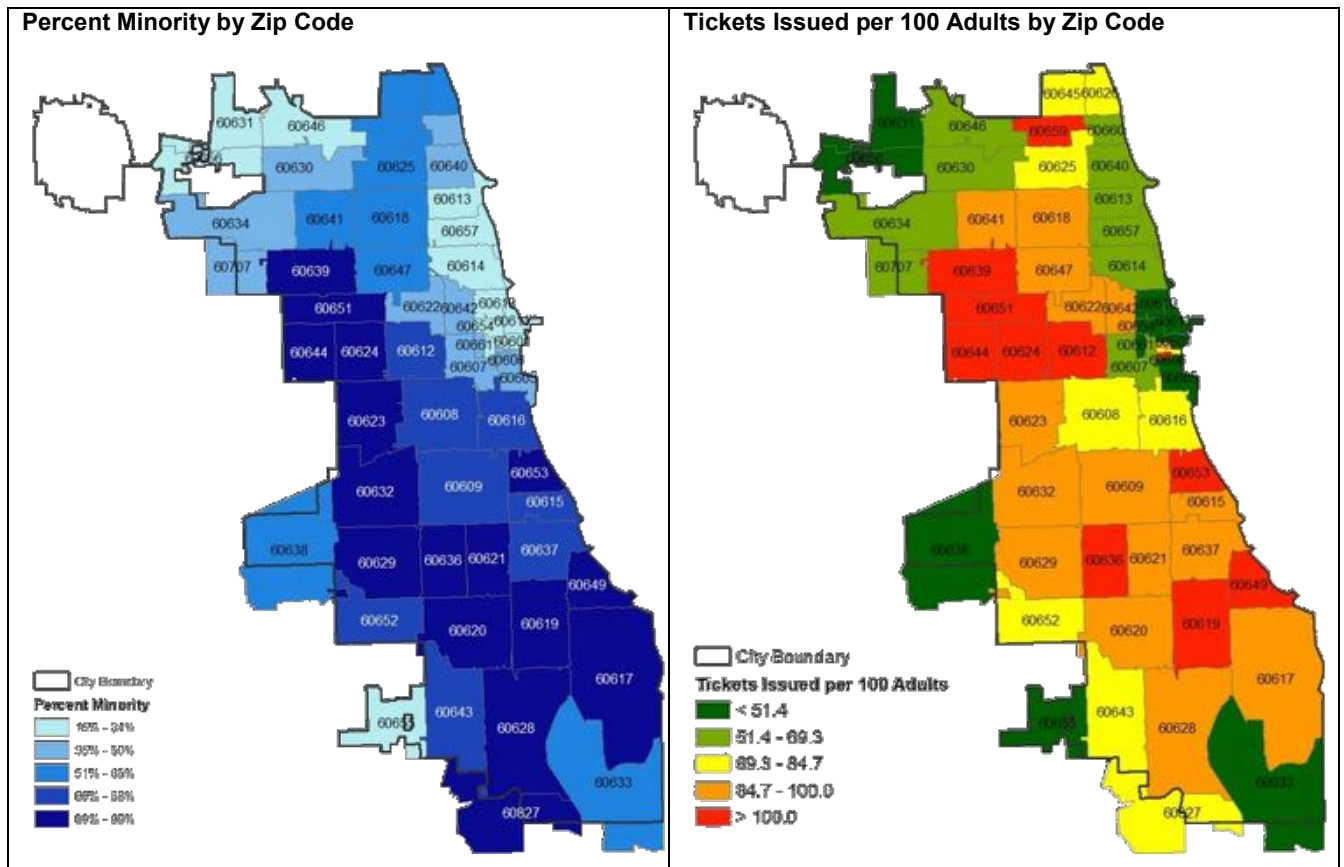
**Figure 4: Tickets Issued, Minority and Non-minority Zip Code Drivers**

	Tickets Issued		Adult Population <sup>13</sup>		Commuters who Drive		Vehicles <sup>14</sup>		Tickets Per 100 Adults
	#	%	#	%	#	%	#	%	
Non-minority	774,934	44	1,128,192	52	411,334	55	658,294	56	68.69
Minority	994,496	56	1,034,233	48	339,087	45	526,674	44	96.16

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

**Figure 5: Percent Minority & Tickets Issued**



See Appendix for full-size maps.

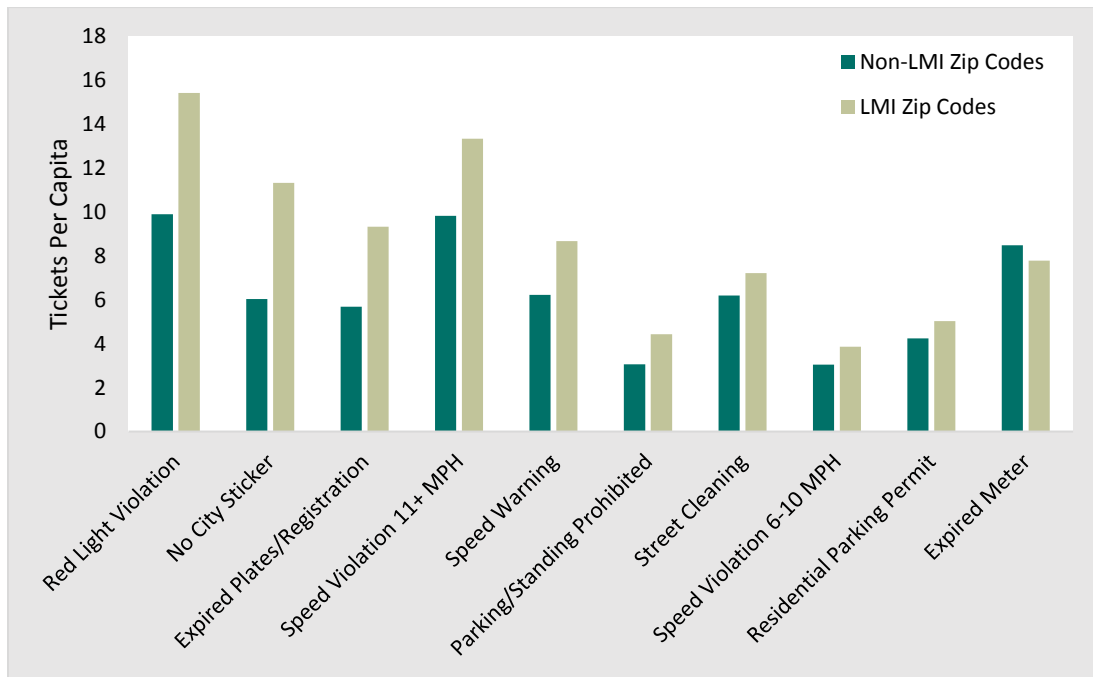
### **Types of Tickets Issued**

The types of tickets issued varied based on driver zip code. Red light violations were the leading cause of tickets in 27 zip codes. These zip codes covered large swaths of the City’s south, southwest, and west sides. Speed violations (11 mph or more) were the leading cause of tickets in 15 zip codes. Most of these zip codes were located on the edges of the City. Expired meters were the leading cause of tickets in 14 zip codes, all of which were located near the Loop (central business district) and on Chicago’s north side. Street cleaning violations led in two zip codes. (See Figure 6).



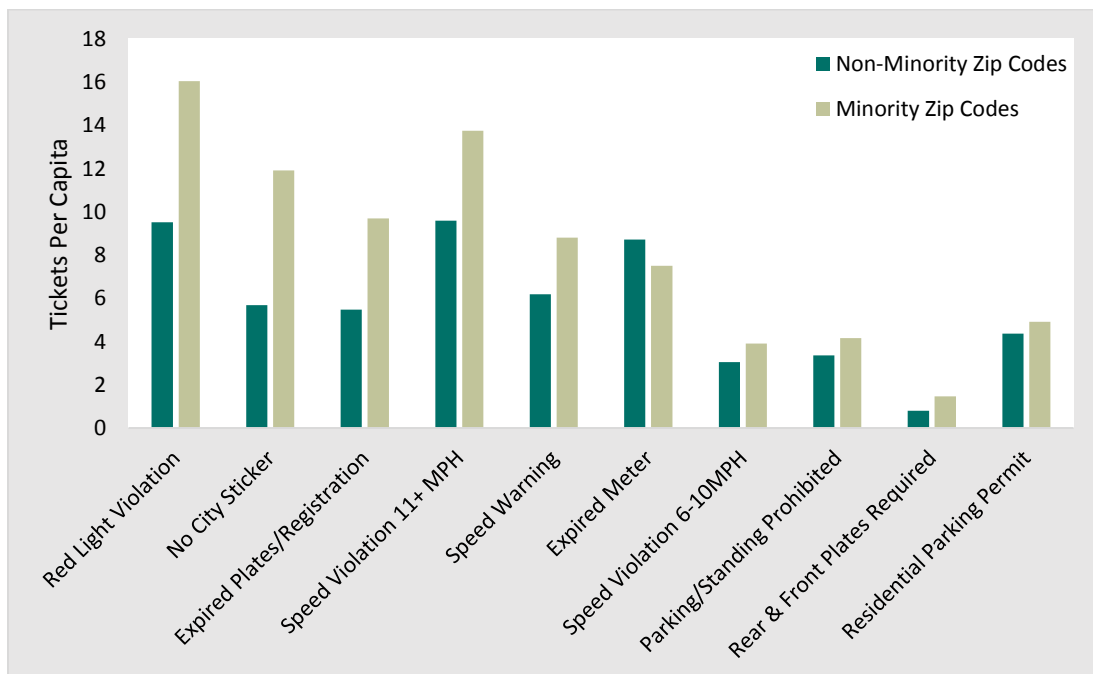


**Figure 7: Tickets Issued Per Capita by Type, LMI and Non-LMI Zip Code Drivers**



Similarly, drivers from minority zip codes received more tickets per capita than drivers from non-minority zip codes in 83 percent of ticket categories. Drivers from non-minority zip codes received more tickets per capita than drivers from minority zip codes in 17 percent of ticket categories. The largest disparities existed for red light violations, missing city stickers (vehicles less than 16,000 lbs.), and expired plates/temporary registration, with tickets issued to drivers from minority zip codes significantly outpacing those issued to drivers from non-minority zip codes. (See Figure 8).

**Figure 8: Tickets Issued Per Capita by Type, Minority and Non-minority Zip Code Drivers**



## What is Driving this Trend?

There are a number of factors that could be influencing ticket trends. One is the spatial location of automated red light and speed cameras. Even though only 43 percent of Chicago zip codes are LMI zip codes, they contained 54 percent of Chicago's speed cameras and 50 percent of its red light cameras. Similarly, only 50 percent of Chicago zip codes are minority zip codes, but they contain 59 percent of speed cameras. Non-minority zip codes had a slightly higher proportion of red light cameras (52 percent) relative to their share of city zip codes (50 percent). (See Figures 9, 10 and 11).

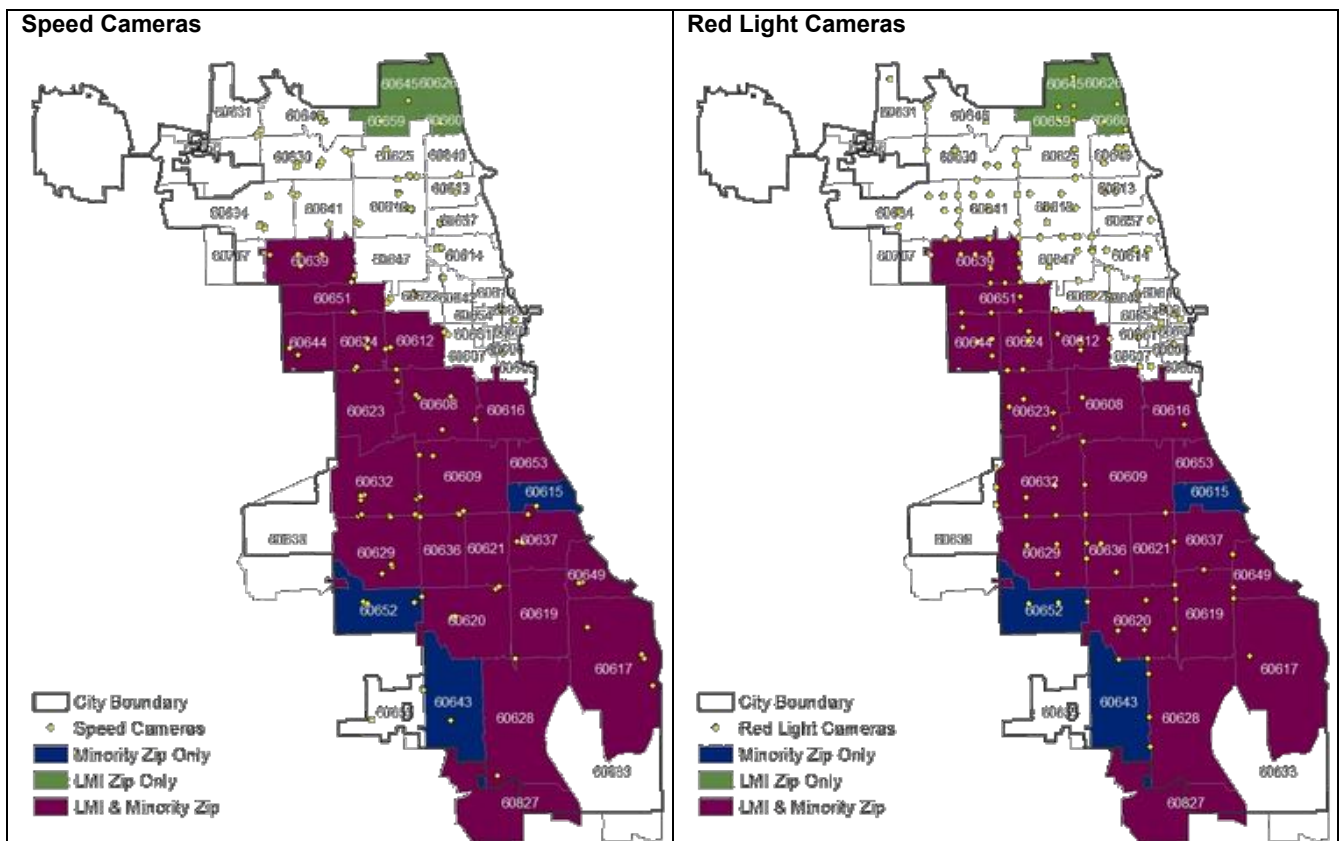
**Figure 9: Proportion of Speed and Red Light Cameras, LMI and Non-LMI Zip Codes**

	Zip Codes		Speed Cameras		Red Light Cameras	
	#	%	#	%	#	%
Non-LMI	33	57	70	46	75	50
LMI	25	43	81	54	74	50

**Figure 10: Proportion of Speed and Red Light Cameras, Minority and Non-minority Zip Codes**

	Zip Codes		Speed Cameras		Red Light Cameras	
	#	%	#	%	#	%
Non-minority	24	50	62	41	77	52
Minority	24	50	89	59	72	48

**Figure 11: Camera Locations**



See Appendix for full-size maps.

There is an extensive body of research documenting racial profiling in traffic stops.<sup>15</sup> Studies have also shown that neighborhood characteristics play a role in policing and ticket issuance. Officers are more likely to issue tickets in neighborhoods characterized by higher levels of ‘disorganization’ and ‘disadvantage,’ than in other areas, when controlling for other factors.<sup>16</sup> It is possible that bias in the City’s policing practices and enforcement patterns is driving ticket disparities in Chicago.

Other explanations for the disparities in ticket issuance could stem from driving patterns. Higher-income zip codes tend to be in the central parts of the City, while lower-income zip codes are often further away from the central business district. Proximity to metered parking is likely driving higher rates of parking tickets in non-LMI and non-minority areas. It is possible that more centrally located residents drive fewer miles, drive less frequently, and have fewer opportunities to speed given the density of the street grid and traffic levels, thereby exposing themselves to less ticket risk than other drivers. Absent more detailed data on vehicle miles traveled, it is difficult to discern how much these factors are impacting ticket issuance trends.

Given that parking and missing sticker violations make up a significant proportion of issued tickets, parking availability may also be impacting this trend. Drivers who are able to park their vehicles in private driveways or parking garages may be less likely to accrue tickets for missing city stickers, street cleaning violations, or expired meters than those who must park on the street. Income availability is also likely playing a role. Limited-income drivers may be more likely than higher-income drivers to let city stickers or license plate renewals lapse, thereby exposing them to ticket risk.

## The Consequences of Unpaid Tickets

### Ticket Outcomes

Ticket issuance caused various outcomes. The issuance of a warning did not, and presently does not, result in a fine (eight percent of all issued tickets were speed warnings). Some tickets (six percent in 2017) were dismissed following a court hearing. Of the remaining tickets, some were paid, and some went unpaid. In 2017, 67 percent of tickets requiring payment (excluding warnings and dismissed tickets) were paid by the recipient. Thirty-four percent went unpaid, which resulted in additional fines. The City was unable to contact the recipients of one percent of issued tickets to send notice of an outstanding violation. One percent of tickets went unpaid because the recipient was in, or filed for, bankruptcy.

One’s ability to pay tickets had significant impacts on outcomes, as demonstrated by disparate ticket outcomes between drivers from LMI and non-LMI zip codes. Tickets issued to drivers from LMI zip codes were more likely to go unpaid, resulting in doubling ticket amounts and additional fines, than tickets issued to drivers from non-LMI zip codes. Tickets were less likely to be dismissed for drivers from

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<sup>15</sup> Robin Shepard Engel and Jennifer M. Calnon, “Examining the Influence of Drivers Characteristics during Traffic Stops with Police: Results from a National Survey,” *Justice Quarterly* 21, no. 1 (August 20, 2004): doi:10.1080/07418820400095741; Patricia Warren et al., “Driving While Black: Bias Processes And Racial Disparity In Police Stops,” *Criminology* 44, no. 3 (September 1, 2006): doi:10.1111/j.1745-9125.2006.00061.x.

<sup>16</sup> Jason R. Ingram, “The Effect of Neighborhood Characteristics on Traffic Citation Practices of the Police,” *Police Quarterly* 10, no. 4 (December 1, 2007): doi:10.1177/1098611107306995.

LMI zip codes than drivers from non-LMI zip codes. Furthermore, ticket recipients from LMI zip codes were twice as likely as those from non-LMI zip codes to be in bankruptcy. (See Figure 12).

**Figure 12: Ticket Outcomes, LMI and Non-LMI Zip Code Drivers**

	Recipient in Bankruptcy	Unable to Issue Notice	Ticket Dismissed	Unpaid; Notice Issued	Paid	Warning Issued (no fine)
Non-LMI	0%	1%	7%	16%	67%	8%
LMI	2%	1%	5%	34%	50%	8%

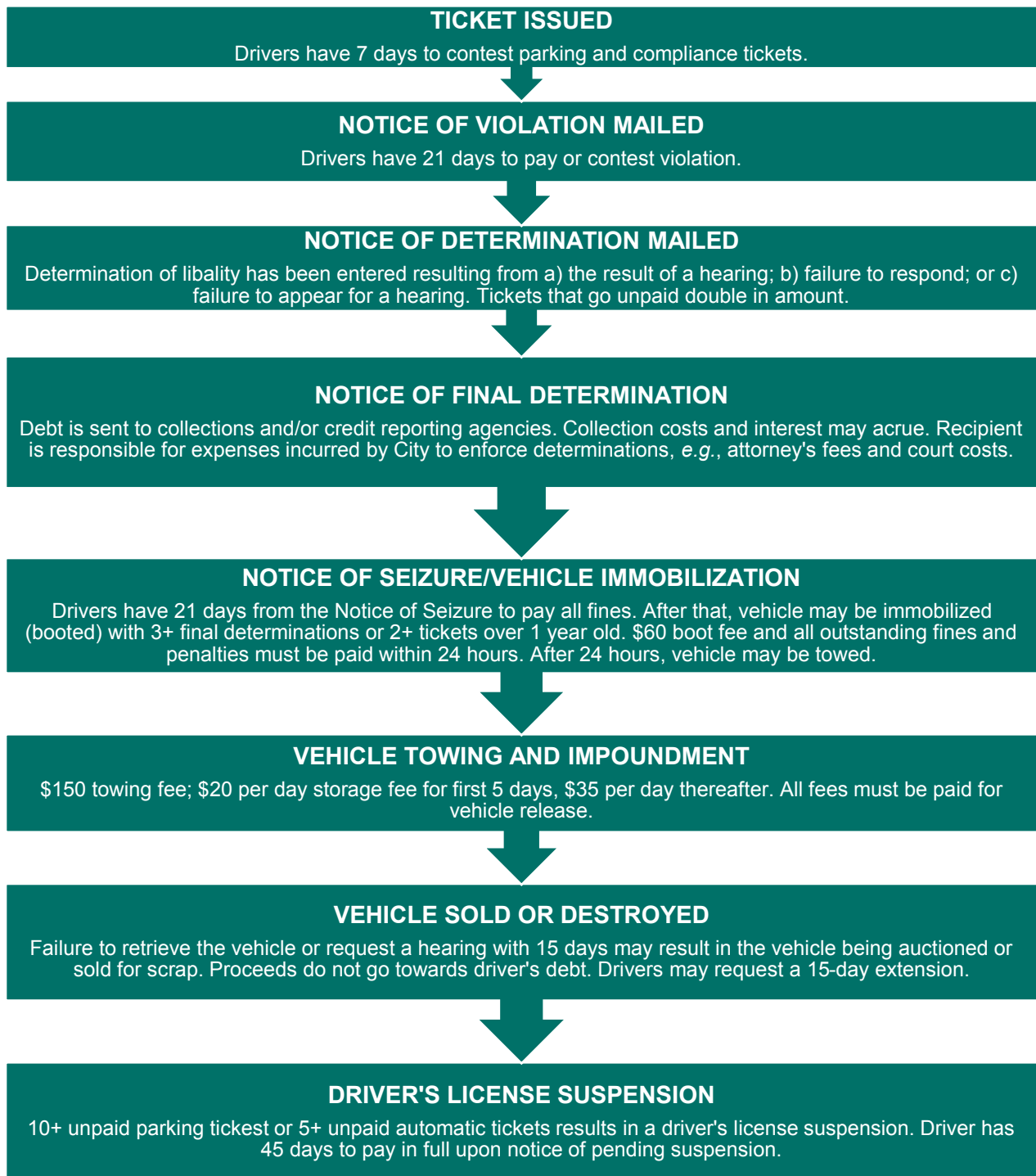
Tickets issued to drivers in minority zip codes were also more likely to go unpaid and accrue fines than tickets issued to drivers from non-minority zip codes. Recipients in minority zip codes were twice as likely to be in bankruptcy and less likely to have tickets dismissed than those in non-minority zip codes. (See Figure 13).

**Figure 13: Ticket Outcomes, Minority and Non-minority Zip Code Drivers**

	Recipient in Bankruptcy	Unable to Issue Notice	Ticket Dismissed	Unpaid; Notice Issued	Paid	Warning Issued (no fine)
Non-minority	0%	1%	7%	15%	68%	8%
Minority	2%	1%	5%	35%	49%	8%

Once a ticket goes unpaid, it can quickly push the recipient into a debt spiral. Tickets that go unpaid double in amount and accrue additional fines. Vehicles can be immobilized by car boot, towed, and impounded, which results in additional fines. Unpaid tickets can also result in the loss of one's license. Figure 14 describes the ticketing process in Chicago.

**Figure 14: Chicago Ticket Process**



### **Doubling of Fines**

Ticket amounts issued by Chicago ranged from \$25 to \$500 depending on the offense. In 2017, Chicago issued \$162.76 million in ticket fees to drivers with Chicago zip codes. Ticket amounts double and accrue additional fines if they go unpaid. In fact, in 2017, Chicago issued an additional \$87.59

million in late fees to Chicago drivers. Tickets were much more likely to go unpaid and double in amount for drivers from LMI and minority zip codes than for other drivers. (See Figure 15 and Figure 16). In 2017, drivers from LMI zip codes received an aggregate of \$96.93 million in initial ticket fines, which averages to \$90.41 per adult.<sup>17</sup> Drivers from non-LMI areas received an aggregate of \$65.83 million in tickets, which is \$60.38 per capita. Additional fines resulting from failure to pay tickets were more than twice as high among drivers from LMI zip codes compared to drivers from non-LMI zip codes (\$59.59 versus \$21.74 per capita). Drivers from minority zip codes received on average \$91.74 per capita in initial ticket fines compared to \$60.17 for drivers from non-minority zip codes. Additional fines were nearly three times higher for drivers from minority zip codes than for drivers from non-minority zip codes (\$61.78 versus \$21.01 per capita).

**Figure 15: Fines, LMI and Non-LMI Zip Code Drivers**

	Initial Tickets		Additional Fines	
	<i>Aggregate</i>	<i>Per Capita</i>	<i>Aggregate</i>	<i>Per Capita</i>
Non-LMI	\$65.83 M	\$60.38	\$24.87 M	\$21.74
LMI	\$96.93 M	\$90.41	\$62.73 M	\$59.59
Total	\$162.76 M	\$75.27	\$87.59 M	\$40.51

**Figure 16: Fines, Minority and Non-minority Zip Code Drivers**

	Initial Tickets		Additional Fines	
	<i>Aggregate</i>	<i>Per Capita</i>	<i>Aggregate</i>	<i>Per Capita</i>
Non-minority	\$67.87 M	\$60.17	\$23.70M	\$21.01
Minority	\$94.88 M	\$91.74	\$63.89M	\$61.78
Total	\$162.76 M	\$75.27	\$162.76M	\$40.51

## Vehicle Immobilization & Impoundment

Unpaid tickets can result in vehicle immobilization (booting), towing, and impoundment. This results in additional fees that must be paid in full by the driver. Chicago towed nearly 19,000 vehicles in 2016 due to unpaid tickets.<sup>18</sup> If recipients were not able to pay initial tickets, it is likely they were unable to afford additional fees resulting from towing and impoundment.

## Driver's License Suspensions

Unpaid tickets may result in the loss of one's driver's license, which can have devastating impacts on workers' ability to obtain and retain employment. Driver's license suspension was originally conceived as an administrative sanction meant to alter bad driving behavior. Today, it is used in many states, including Illinois, to punish behaviors unrelated to driving. In Illinois, one's driver's license can be suspended for a variety of non-driving-related violations, including failure to pay parking tickets. According to data obtained from the Illinois Secretary of State, over 480,000 licenses were suspended from 2016 through 2017. Most suspensions were related to driving without insurance, but a significant

<sup>17</sup> Per capita calculations were made using the total adult population age 18 and older from the 2016 Five-Year American Community Survey.

<sup>18</sup> Melissa Sanchez, Sandhya Kambhampati, "How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy," ProPublica Illinois, last modified February 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>.



number was for failure to pay tickets. In 2016 and 2017, municipalities asked the Illinois Secretary of State to suspend over 11,000 licenses for failure to pay 10 or more parking tickets.

Woodstock analyzed data on driver’s license suspensions provided by the Illinois Secretary of State from 2016 and 2017. Among drivers with a Chicago zip code, 8,202 licenses were suspended for failure to pay parking tickets. Drivers living in LMI and minority zip codes were twice as likely as drivers from non-LMI and non-minority zip codes to have unpaid tickets, therefore resulting in a license suspension. (See Figures 17 and 18).

**Figure 17: License Suspensions, LMI and Non-LMI Zip Code Drivers, 2016-2017**

	Suspensions	
	#	%
Non-LMI	1,619	25
LMI	6,583	75

**Figure 18: License Suspensions, Minority and Non-minority Zip Code Drivers, 2016-2017**

	Suspensions	
	#	%
Non-minority	1,477	22
Minority	6,725	78

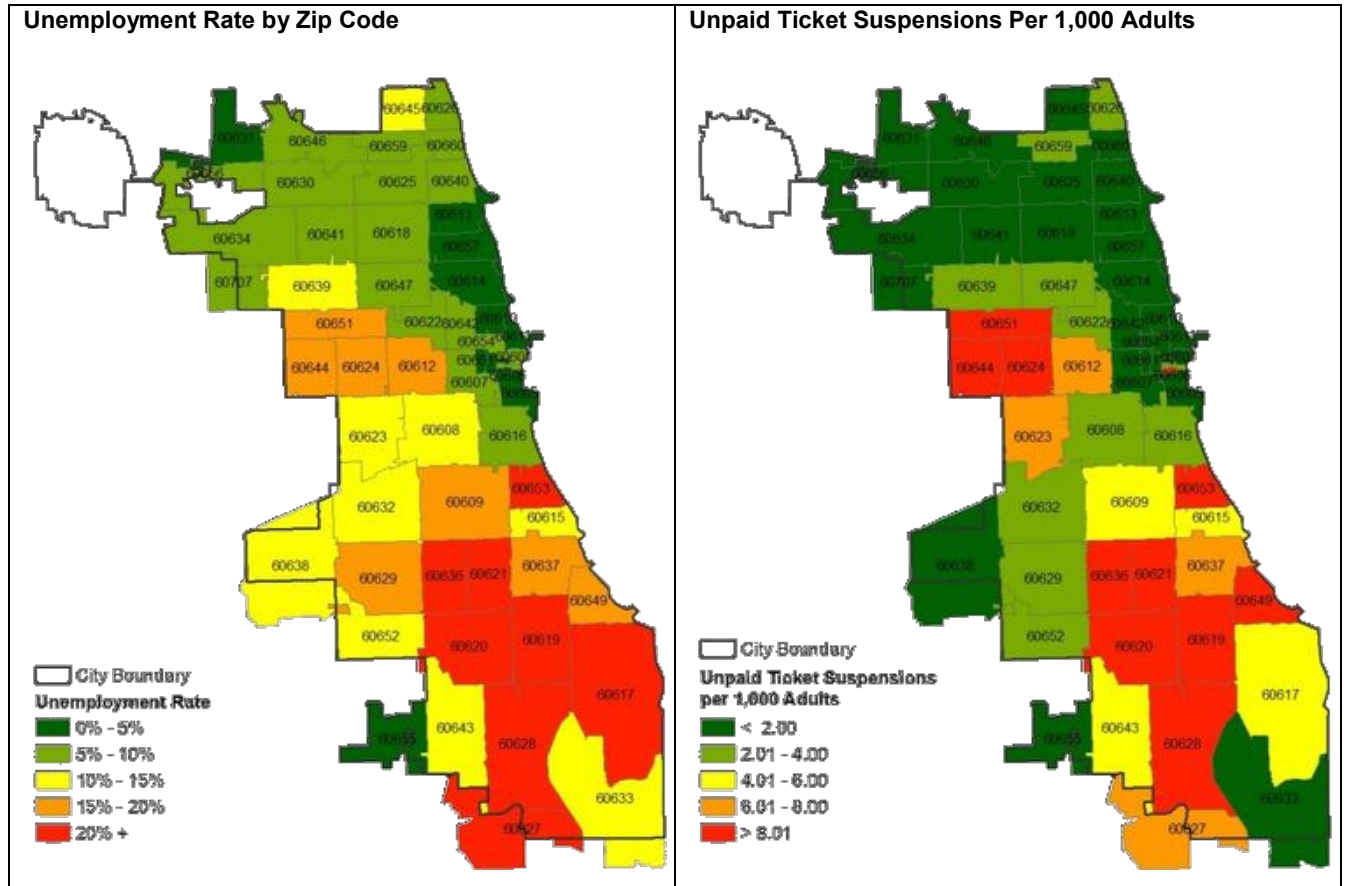
Studies have shown that driver’s license suspension can have negative economic and social impacts, particularly among lower-income drivers.<sup>19</sup> Driver’s license suspension has a particularly detrimental impact on one’s ability to find and maintain employment. According to a 2004 survey in New Jersey conducted by a research team at Rutgers University, 42 percent of survey respondents with a history of suspension lost their jobs when they had their driving privileges suspended.<sup>20</sup> Job loss was experienced among all income and age groups of suspended drivers, but was most significant among low-income and younger drivers. Forty-five percent of those who lost their job because of a suspension could not find another job, and of those who were able to find another job, 88 percent reported a decrease in income. Fifty-eight percent of survey respondents reported that the suspension negatively impacted their job performance.

<sup>19</sup> John Pawasarat, *Removing Transportation Barriers to Employment: The Impact of Driver’s License Suspension Policies on Milwaukee County Teens*, report, Employment & Training Institute, University of Wisconsin-Milwaukee, February 2000, accessed June 8, 2018, <http://www4.uwm.edu/eti/reprints/TeenDOT.pdf>; John Pawasarat and Frank Stetzer, *Removing Transportation Barriers to Employment: Assessing Driver’s License and Vehicle Ownership Patterns of Low-Income Populations*, report, Employment & Training Institute, University of Wisconsin-Milwaukee, July 1998, accessed June 8, 2018, <http://www4.uwm.edu/eti/dot.htm>; Marti Maxwell, *The Suspended Driver: New Strategies Addressing the Impact of Driver’s License Suspensions*, report, National Center for State Courts, 2001, accessed June 8, 2018, [https://www.ncsc.org/~media/Files/PDF/Education and Careers/CEDP Papers/2001/Suspended\\_Driver.ashx](https://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2001/Suspended_Driver.ashx); Ken Zimmerman and Nancy Fishman, *Roadblock on the Way to Work: Driver’s License Suspension in New Jersey*, report, October 2001, accessed June 8, 2018, [http://d3n8a8pro7vnm.cloudfront.net/njsi/legacy\\_url/234/roadblock\\_report.pdf?1478622798](http://d3n8a8pro7vnm.cloudfront.net/njsi/legacy_url/234/roadblock_report.pdf?1478622798).

<sup>20</sup> Jon A. Carnegie, *Driver’s License Suspensions, Impacts and Fairness Study*, report, Alan M. Voorhees Transportation Center, Rutgers University, August 2007, accessed June 1, 2018, <http://www.nj.gov/transportation/refdata/research/reports/FHWA-NJ-2007-020-V1.pdf>.

Unfortunately, communities struggling with high rates of unemployment also tend to be those with high rates of license suspension. In Chicago, 12 of the 15 zip codes with the highest unemployment rates<sup>21</sup> also reported the highest rates of driver's license suspensions for failure to pay tickets. (See Figure 19).

**Figure 19: Unemployment and Unpaid Ticket Suspensions**



See Appendix for full-size maps.

There are also non-job related costs to license suspension. Continuing to drive with a suspended license can result in additional, more serious penalties. The majority of New Jersey survey respondents reported additional costs associated with a suspension, including increased insurance costs, license reinstatement fees, court and legal fees, and costs associated with finding alternative forms of transportation during the suspension. The majority of those reporting additional costs said they could not afford the additional costs. License suspension can also have psychological impacts. According to the New Jersey survey, 83 percent of suspended drivers experienced increased stress; 81 percent reported a loss of freedom; and 74 percent reported that suspension placed a strain on family, friends, and colleagues. The impact of license suspensions can extend well beyond drivers to their dependents and other family members, and can jeopardize household financial stability.

<sup>21</sup> Data from 2016 Five-Year American Community Survey.

## Bankruptcy

Faced with mounting unpaid tickets and fees, many Chicago drivers are turning to bankruptcy, as filing Chapter 13 bankruptcy offers a temporary reprieve from a license suspension or car impoundment. Chapter 13 bankruptcy offers temporary relief, but drivers are at risk again if a case is dismissed, which occurs frequently.

This problem is pervasive in Cook County. According to a 2016 study of Chapter 13 filings in Cook County by faculty at Columbia University Law School, between one-third and half of Chapter 13 filers filed for bankruptcy because local governments suspended, or were threatening to suspend, their driver's licenses or seize their cars because they had accumulated excess fines. The consumers who filed for Chapter 13 bankruptcy protection tended to have incomes near the poverty line and few to no assets. Over 50 percent of these bankruptcy cases failed.<sup>22</sup>

ProPublica Illinois further examined this issue, publishing its first article on the subject in early 2018. Parking, traffic, and vehicle compliance tickets prompt so many bankruptcies that the federal court for the Northern District of Illinois (which includes Chicago and its surrounding suburbs) leads the nation in Chapter 13 filings, and ProPublica's analysis show the problem is growing worse.<sup>23</sup> In 2007, an estimated 1,000 Chapter 13 bankruptcies included debts to the City of Chicago, usually for unpaid tickets, with a median amount claimed around \$1,500 per case. By 2017, Chapter 13 filings had surpassed 10,000, with a typical debt totaling \$3,900. ProPublica noted that the number of tickets issued did not change during that time, but Chicago increased the cost of fines, expanded its traffic camera program, and sought more license suspensions. The majority of bankruptcy cases analyzed by ProPublica involved tickets from city sticker violations, which are a leading cause of tickets issued in many low-income and minority zip codes. According to ProPublica's analysis, sticker violations accounted for 19 percent of citations connected to bankruptcy cases.

## Income Tax Refund Garnishments

In 2011, Illinois passed legislation that allowed municipalities, school districts, and public universities to enter into intergovernmental agreements with the Illinois Comptroller's office to collect delinquent debts, such as unpaid fees and fines, parking tickets, and property code violations, by garnishing income tax refunds. The law became effective in 2012, and since then many municipalities have successfully used it to recover debt. Using data obtained from a Freedom of Information Act request submitted to the Comptroller's Office, Woodstock analyzed tax refund garnishments issued by Illinois' largest municipality—the City of Chicago. In 2017, the City of Chicago asked the Comptroller's office to apply 54,628 tax garnishments under the debt recovery program. Most but not all taxpayers subjected to the garnishments were located within Illinois. Sixty-four percent of these garnishments targeted taxpayers residing within the City of Chicago.

The majority (73 percent) of these garnishments was issued for unpaid parking tickets. Twenty-eight percent were issued for administrative judgements, and nine (0.03 percent) were issued for unpaid taxes. As with ticket issuance and license suspensions, refund garnishments had a greater impact on LMI and

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<sup>22</sup> Edward R. Morrison, Antoine Uettwiller, "Consumer Bankruptcy Pathologies," Columbia Law and Economics Working Papers, September 29, 2017, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2845497](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2845497).

<sup>23</sup> Melissa Sanchez, Sandhya Kambhampati, "How Chicago Ticket Debt Sends Black Motorists Into Bankruptcy," ProPublica Illinois, last modified February 27, 2018, <https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/>.

minority residents than on non-LMI and non-minority residents. Seventy-five percent of garnishments were issued to taxpayers in LMI zip codes, and 25 percent were issued to taxpayers in non-LMI zip codes. Seventy-seven percent of garnishments were issued to taxpayers in minority zip codes and 21 percent were issued to those in non-minority zip codes.

**Figure 20: Tax Refund Garnishments for City of Chicago Debt, LMI and Non-LMI Zip Code Residents**

	#	%
Non-LMI	8,650	25
LMI	26,486	75

**Figure 21: Tax Refund Garnishments for City of Chicago Debt, Minority and Non-minority Zip Code Residents**

	#	%
Non-minority	8,075	23
Minority	27,061	77

## Employment Prohibitions

Owing debt to the City of Chicago can jeopardize one’s employment opportunities. The City of Chicago prohibits anyone owing money to the City from obtaining employment with the City. This includes entities such as the Chicago Public Schools and the Chicago Transit Authority, which combined employ over 45,000 people. POWER-PAC Illinois, a project of Community Organizing and Family Issues (COFI), details one such case in its 2018 report entitled *Stopping the Debt Spiral*.<sup>24</sup> Rosalva, a low-income mother on Chicago’s West Side, was offered jobs at her children’s school to be a clerk and recess monitor, but she was told she was not eligible for the jobs because she owed debt to the City. Rosalva incurred the debt because an abusive ex-husband stole her license plates and racked up more than \$6,000 in tickets and fines in her name. She tried to enter into repayment plans with the City, but large down payment requirements exceeded her income and she soon fell behind on payments. Survey results from COFI POWER-PAC’s report show that 14 percent of respondents with incomes over \$15,000 and 22 percent of respondents with incomes less than \$15,000 annually held past-due vehicle ticket debt.

City jobs are not the only ones off limits to those with ticket or other debt. The City of Chicago prohibits ridesharing drivers (Uber, Lyft, and Via) from driving if they owe debt to the City of Chicago. Drivers must pay off the debt or enter into a payment plan or their ability to drive will be suspended.<sup>25</sup> Employers in a variety of industries are increasingly using credit checks in the hiring process.<sup>26</sup> In the past, credit checks were typically used for sensitive positions in financial services, but more and more employers are using credit checks for jobs that have nothing to do with financial services or money

<sup>24</sup> POWER-PAC Illinois, a project of Community Organizing and Family Issues, *Stopping the Debt Spiral*, report, winter 2018, accessed June 20, 2018, <http://www.cofionline.org/COFI/wp-content/uploads/2018/01/COFI-STOP-Report.pdf>.

<sup>25</sup> “Chicago City Debt,” Uber.com, accessed June 01, 2018, <https://www.uber.com/drive/chicago/resources/city-debt-questions/>.

<sup>26</sup> Amy Traub, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job*, report, February 2013, accessed June 8, 2018, <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

handling.<sup>27</sup> A poor credit score due to unpaid ticket debt can hinder one's employment opportunities, making it increasingly difficult to pay off that debt.

## The Debt Collection Process

The City of Chicago sends a ticket recipient a series of notices regarding an unpaid ticket. After final notice, the debt is turned over to one of several third-party debt collectors that work on behalf of the City. Debt collection is lucrative for these third-party debt collectors. According to payment records on the City of Chicago Finance Department website, Chicago paid three different third-party debt collectors a combined \$10.5 million in 2017. Debt collectors are paid a portion of the debts they recover (18.95 percent for most contracts), which is passed on to the debtor through increased fees.

# Policy Recommendations

- **Limit Driver's License Suspensions:** Illinois should end the practice of suspending driver's licenses for non-moving violations, including failure to pay tickets and other fines and fees. Furthermore, a license suspension should not prohibit someone from entering into a debt repayment plan. The practice of suspending driver's licenses should return to its original public safety intent of addressing dangerous driving and should not be used as an administrative debt enforcement mechanism that penalizes low-income drivers. The State of Washington stopped suspending licenses for failure to pay nonmoving violations in 2013. California ended the practice in 2017, and other states are considering doing so as well. In Illinois, the License to Work Act (SB 2411) passed the State Senate on May 30, 2018, but has yet to pass both chambers.
- **Compliance Opportunity:** Chicago should implement a compliance program whereby drivers cited for a compliance issue such as expired license plates or missing city stickers have the opportunity to address the issue and thereby avoid being assessed a fine. San Francisco has a similar program referred to as "Fix-it Compliance Tickets." Drivers cited for compliance issues may provide proof of the correction by having a California law enforcement officer or Department of Motor Vehicles (DMV) employee sign the back of the ticket (or fill out a Proof of Correction form if they no longer have the physical ticket). Violators then mail the signed citation and a \$10 compliance fee within 21 days of receiving the initial citation. This type of program has great potential in Chicago to address the issue of tickets for missing city stickers. Drivers cited for missing a city sticker would have the opportunity to purchase one and comply and thereby avoid being assessed a ticket. Many new arrivals to Chicago are unaware that they even need to purchase the sticker until it's too late. Allowing an opportunity for compliance would help address some of the negative externalities and inequities associated with city sticker enforcement.
- **Improve Repayment Plans:** Cities should create and implement municipal repayment plans that are affordable to low-income residents. All municipalities issuing tickets should be required to have repayment plans available. Furthermore, information on how to enroll in a repayment plan and deadlines to do so should be readily accessible and easy to understand. Information on

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<sup>27</sup> Ibid.

repayment plan enrollment should be provided at every stage in the ticketing process, including on issued tickets and in notices of violations. Currently, drivers with vehicle immobilization, impoundment, or license suspension history must pay 50 percent of ticket debt (25 percent for those who qualify for a “Hardship” repayment plan) up front, plus all outstanding fees (boot, tow, storage, etc.) in full to enter into a repayment plan. These requirements can make repayment plan enrollment cost prohibitive for low-income drivers. These requirements should be eliminated, so that any driver can enroll in debt repayment programs.

- **Community Service Alternative:** Ticket recipients should have the option to pay off tickets through community service hours. Cook County provides some opportunities for community service in lieu of paying certain traffic violations, but the City of Chicago does not currently offer a community service alternative to pay off tickets. Chicago should implement a community service alternative program like San Francisco’s. San Francisco allows people to complete community service in lieu of parking and transit citation payments. Community service hours must be completed within a timeline (ranging from six to 14 weeks based on the amount of the ticket). Enrollees have the option to make partial payments on the remaining amount due if they are unable to complete their hours. The program requires an enrollment fee, which is waived once annually for low-income households.
- **Institute Ability-to-Pay Determinations:** Currently, the City of Chicago does not have ability-to-pay determinations regarding tickets. While a low income or other criteria may make a person eligible for enrolling in a “Hardship” repayment plan, the “Hardship” plan simply extends the repayment period from 24 to 36 months. Qualifying low-income persons should be able to apply for reduced fine amounts.
- **Lower Fees for First-time and Low-income Offenders:** The City of Chicago should implement a program whereby booting, towing, and impoundment fees are reduced for first-time and low-income offenders. In San Francisco, low-income drivers and drivers whose vehicles are towed for the first time are eligible for reduced tow fees and a three-day impoundment fee waiver.
- **Write-offs/Statute of Limitations:** Illinois, like others states, should institute a statute of limitations on public debt including tickets, and write-off stale debt. No such statute of limitations currently exists in Illinois. Under New York’s statute of limitations, for example, fines are enforceable for eight years.
- **End Employment Prohibitions:** Chicago and Illinois should end the practice of barring those who owe ticket debt to the City of Chicago from public jobs.
- **Re-evaluate ticket and policing practices:** The City of Chicago should re-evaluate its ticket issuance practices. Tickets that do not have a direct connection to public safety should be eliminated. Chicago should conduct an audit of its ticketing enforcement practices to identify the existence of any geographic, racial, or economic bias.

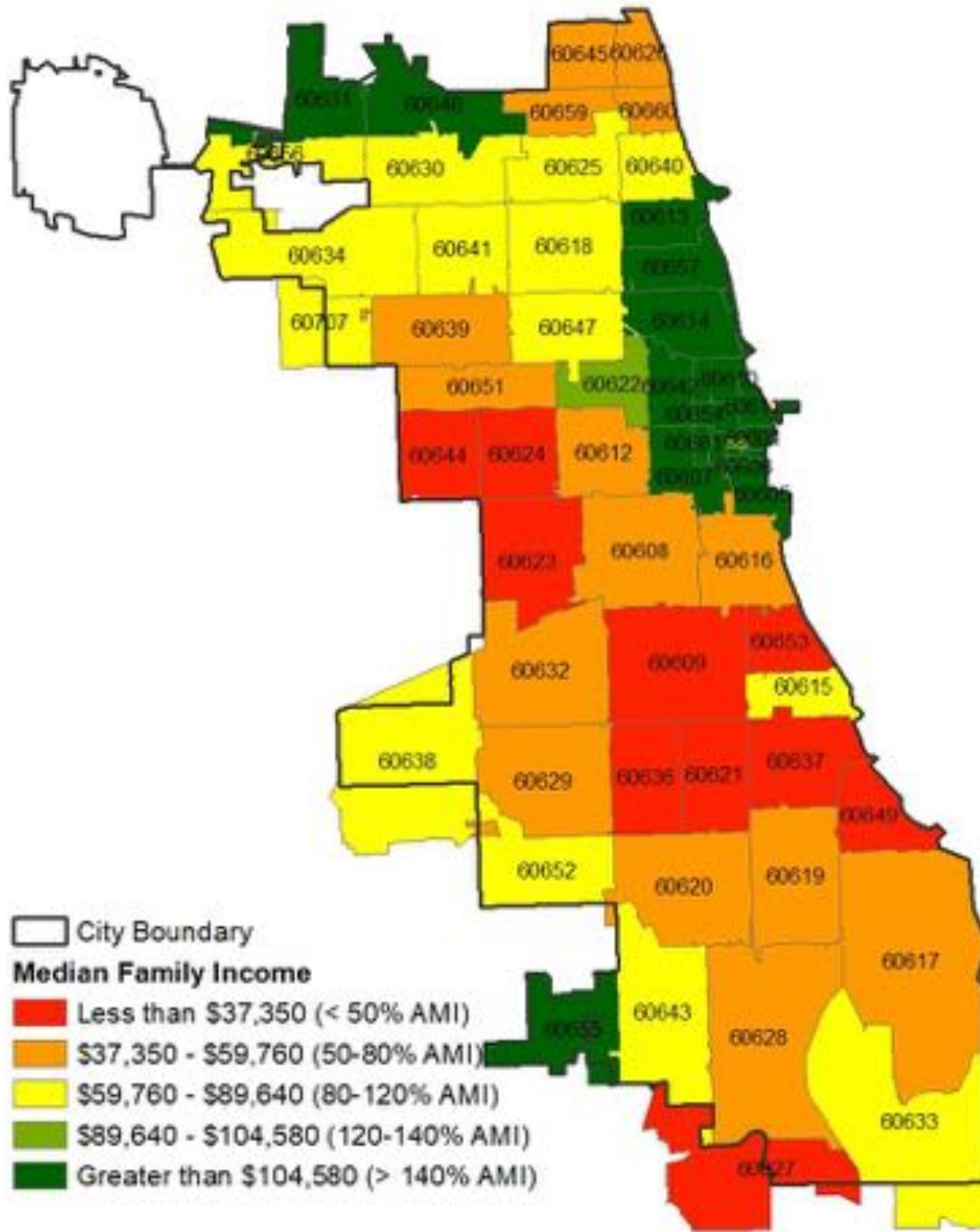
# Conclusion

Ticketing generates substantial income for the City of Chicago, but at what cost? It is a regressive form of revenue generation, borne disparately by drivers from low-income and minority communities. Tickets are disproportionately issued to drivers from low-income and minority areas, who then become trapped in an inescapable cycle of debt simply because they lack the means to pay these tickets. Indebtedness, bankruptcy, and loss of one's ability to drive have long-lasting negative impacts on the economic and social wellbeing of Chicago communities. The City must take steps to fix this broken system.



# Appendix

Figure 3: Median Family Income by Zip Code



Figures 3, 5: Tickets Issued per 100 Adults by Zip Code

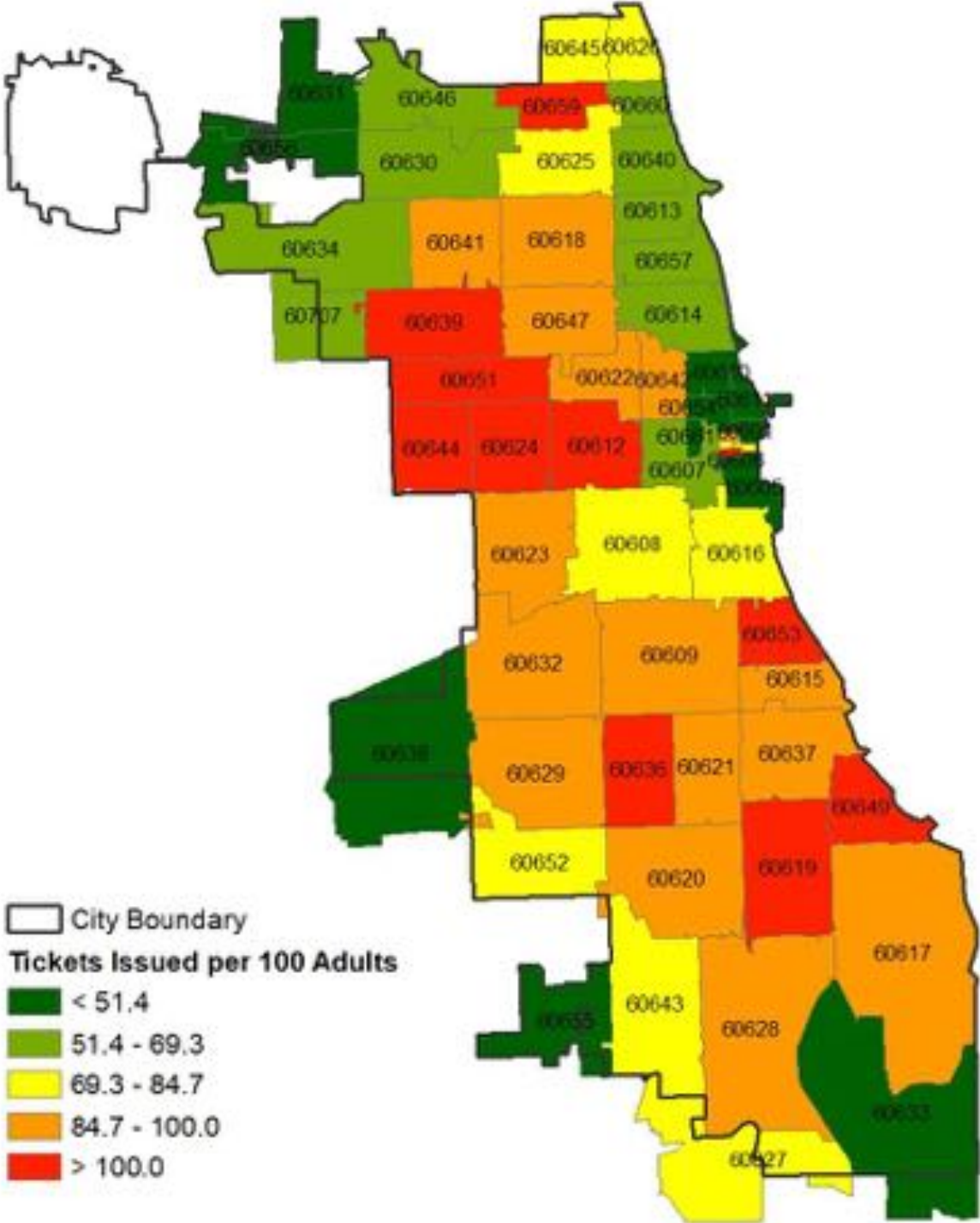


Figure 5: Percent Minority by Zip Code

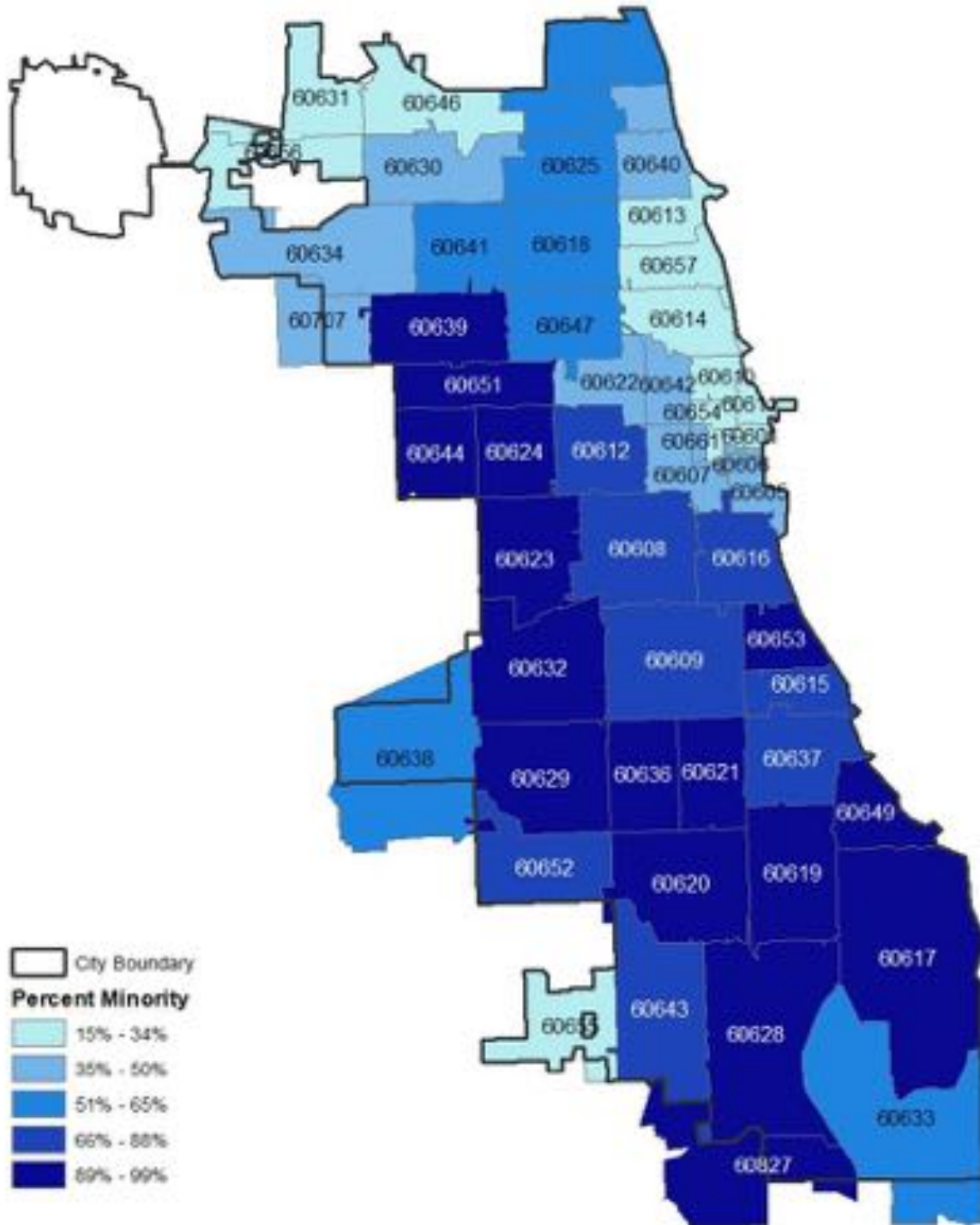


Figure 6: Largest Number of Vehicle-related Tickets Issued by Zip Code

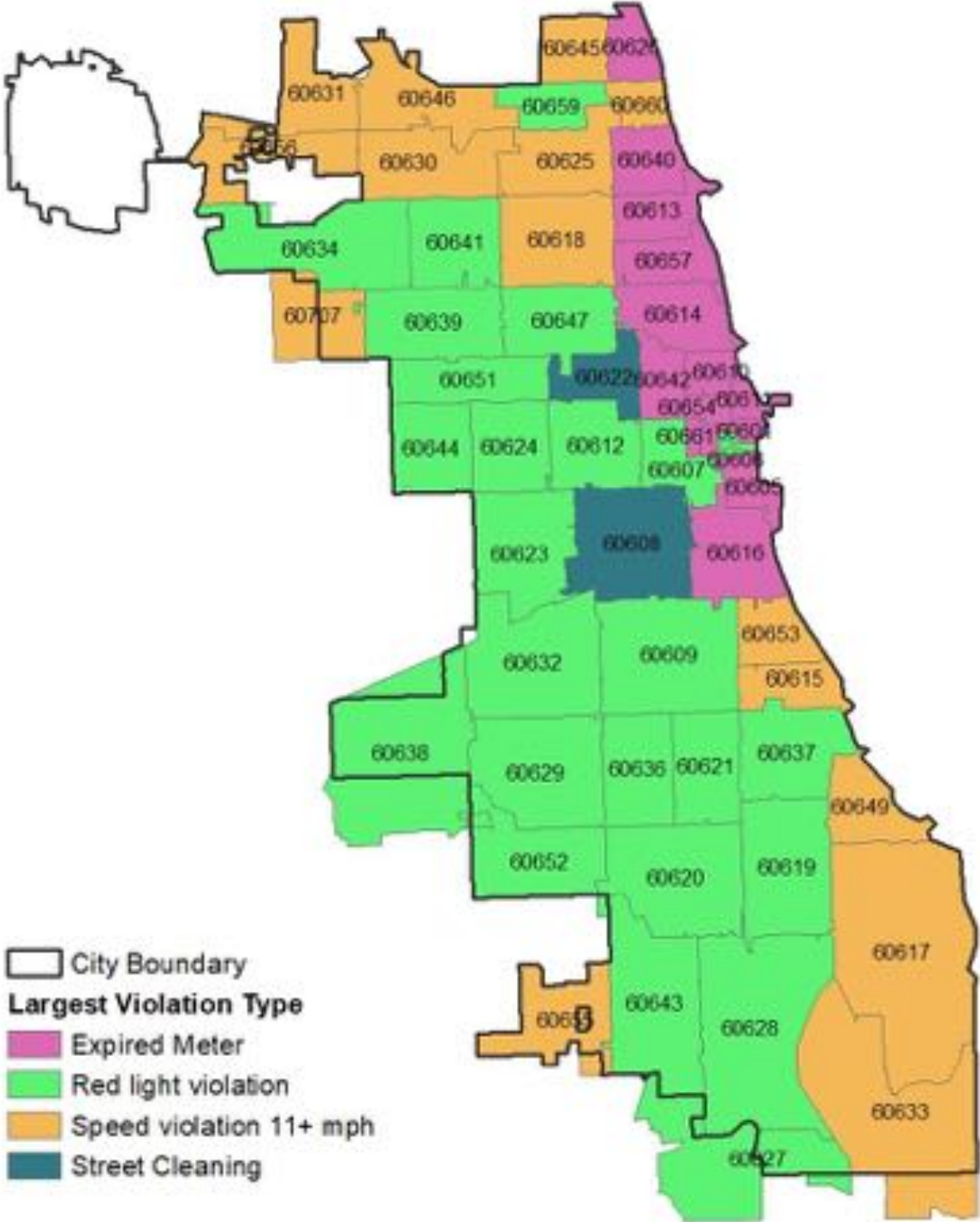




Figure 11: Speed Cameras

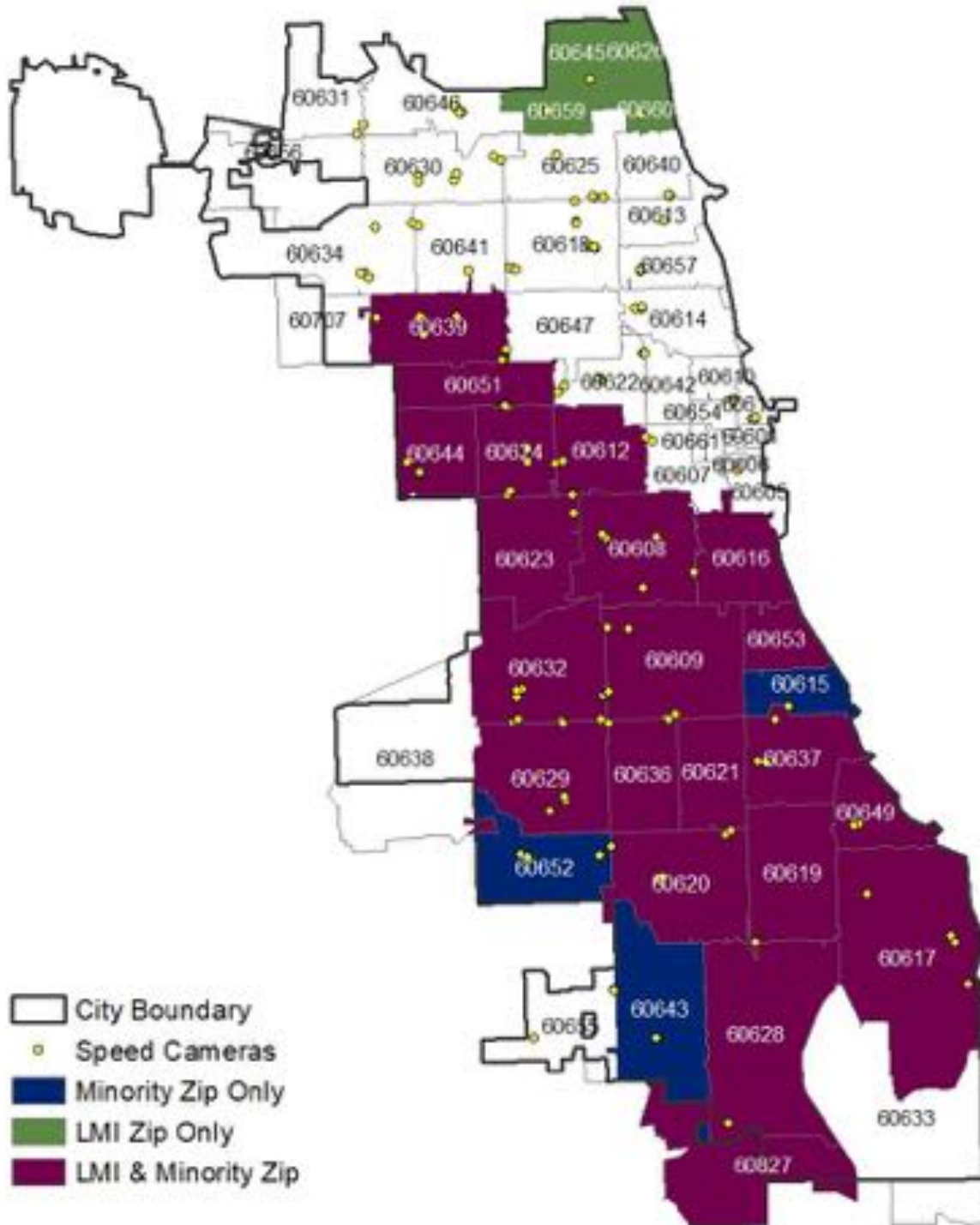


Figure 11: Red Light Cameras

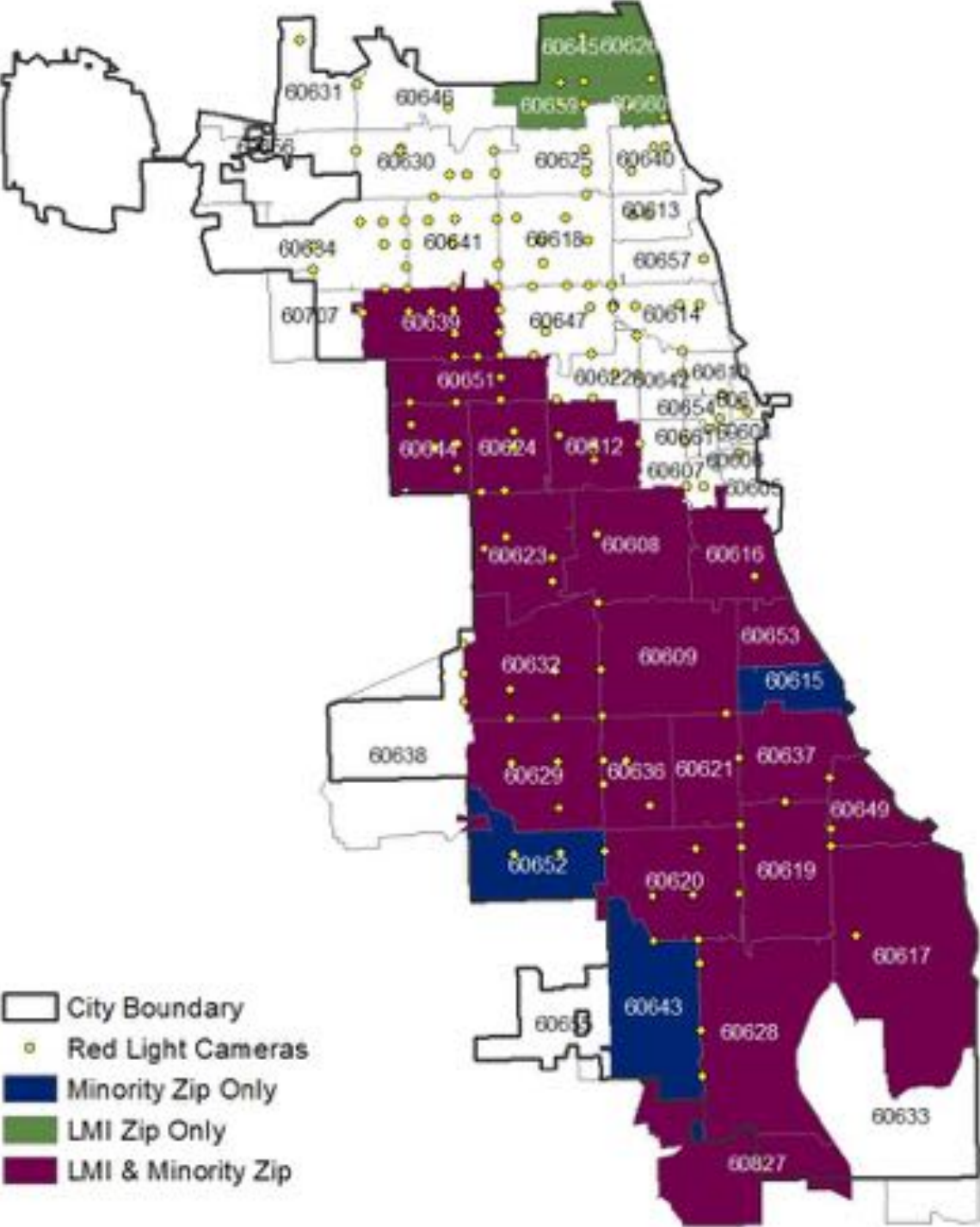


Figure 19: Unemployment Rate by Zip Code

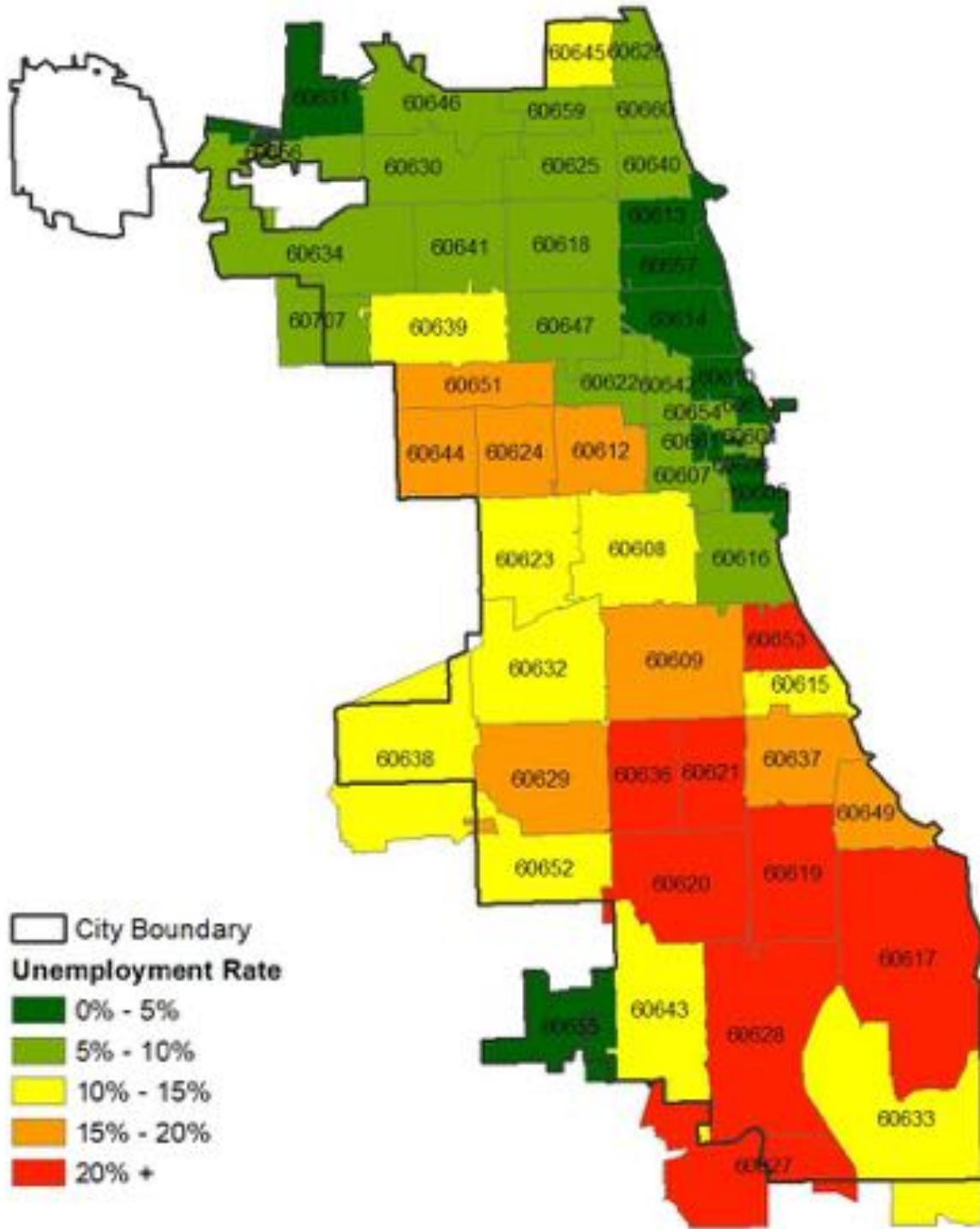
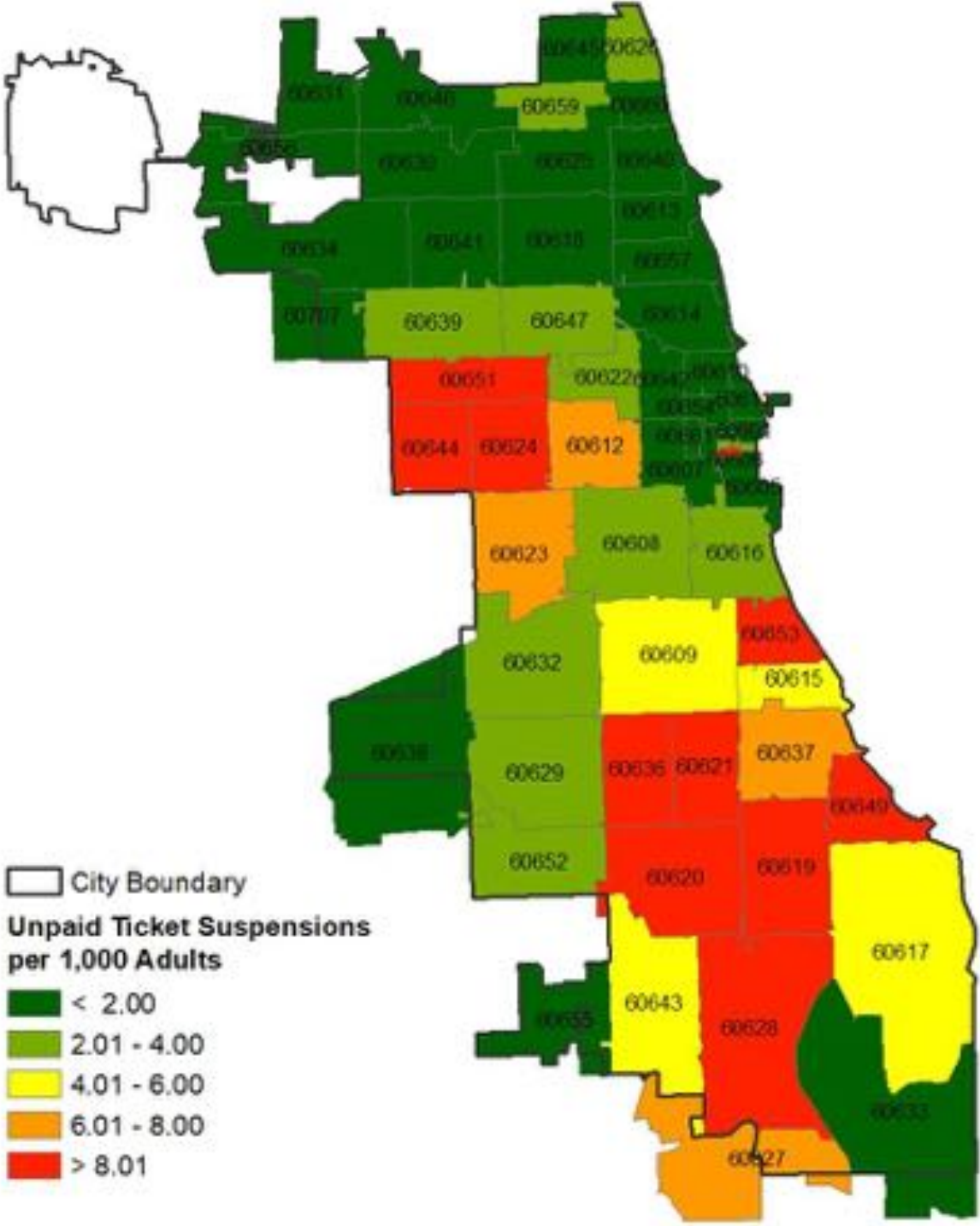




Figure 19: Unpaid Ticket Suspensions per 1,000 Adults



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