



The Landscape of Criminal Justice Fines and Fees in New Mexico

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Who We Are



The only organization in the country devoted exclusively to the problem of fines and fees.

Goals:



FFJC's strategy is comprised of three key components:
Information, Advocacy, Collaboration

Information: <https://finesandfeesjusticecenter.org/clearinghouse/>

The Clearinghouse

FFJC's online Clearinghouse is a library of information about efforts to reform fines and fees in the legal system. The "recommended" designation signifies content we believe either constitutes or facilitates meaningful reform.

Enter Search Keywords



Copy search parameters

342 results

Sort by **Relevance** **Date** ▾



FILTERS

LEGISLATION

★ RECOMMENDED

Florida SB 1328/HB 903: Fines and Fees [Driver's license suspension]

This bill would end driver's license suspensions for unpaid fines and fees in Florida and allow people who owe fines and fees to make reasonable installment payments.

Driver's License Suspension, Payment Plans | Florida
January 17, 2020

CONTENT TYPE ▾

TOPICS ▾

JURISDICTIONS ▾

Advocacy



Free
TO
Drive



Finding New Models for Reform

CITIES & COUNTIES FOR
Fine and Fee Justice



Fines and Fees Reform is NOT Partisan



What is the difference between fines and fees and why does this matter?

Fines

- Fines are meant to punish individuals for breaking the law and act as a deterrent for others to break the law.



Range of Fines in NM

- Traffic Misdemeanor: up to \$300
- Petty Misdemeanor: up to \$500
- Misdemeanor: up to \$1,000
- 4th D Felony: up to \$5,000
- 3rd D Felony: up to \$5,000
- 2nd D Felony: up to \$10,000
- 1st D Felony: up to \$15,000

*Certain crimes have increased or mandatory financial penalties.

What is the difference between fines and fees and why does this matter?

Fees

- Fees by contrast, are intended to raise revenue.
- Conviction fees are essentially taxes that attach to every conviction—from traffic to felonies.
- They are present in EVERY part of the criminal justice process—even pre-adjudication.
- Using fee and fine revenues to fund the justice system can create perverse incentives with the potential to distort the fair administration of justice.
- When criminal courts become responsible for their own financing they may prioritize the imposition of significant fee and fine amounts and dedicated substantial staff to collecting these sums



What is the difference between fines and fees and why does this matter?

Fees

- Low income New Mexican's and New Mexican's of color are overrepresented in the criminal justice system.
- Therefore, they bare the brunt of the financial burden imposed.
- Fees are thus, a regressive system of taxes disproportionately imposed on those who can least afford them.

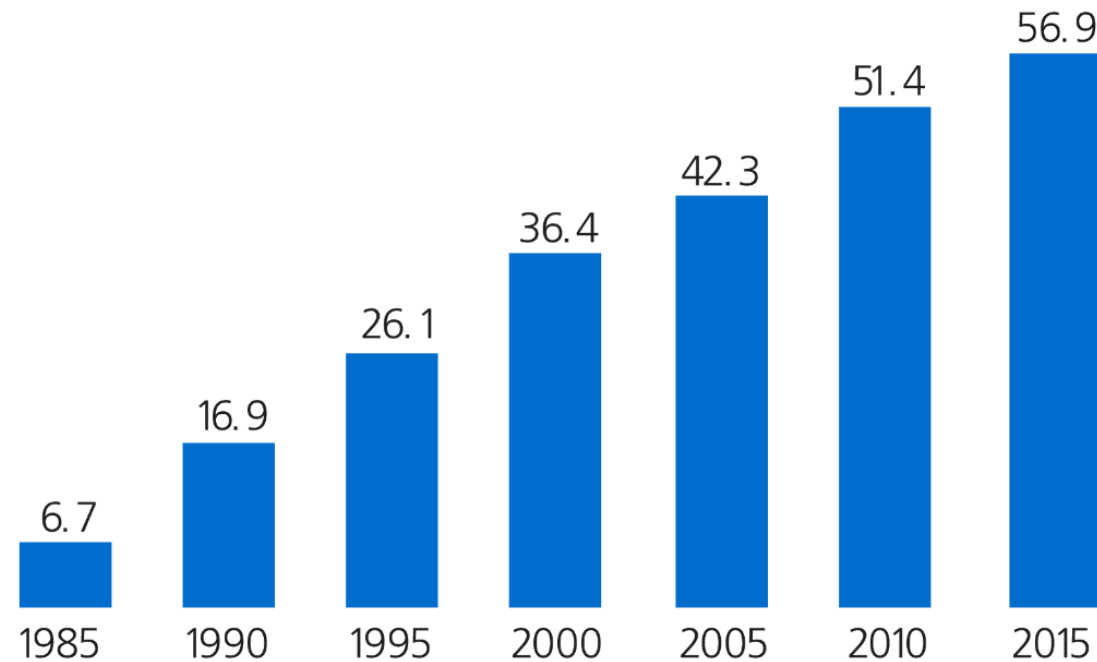
Ferguson

- About 15% of the City's revenue came from fines and fees
- Between 2010-2014, the City issued 90,000 citations
- Racially discriminatory practices by police and the municipal court
- 21,000 residents – 16,000 people with open warrants



Why cities use fines and fees for revenue?

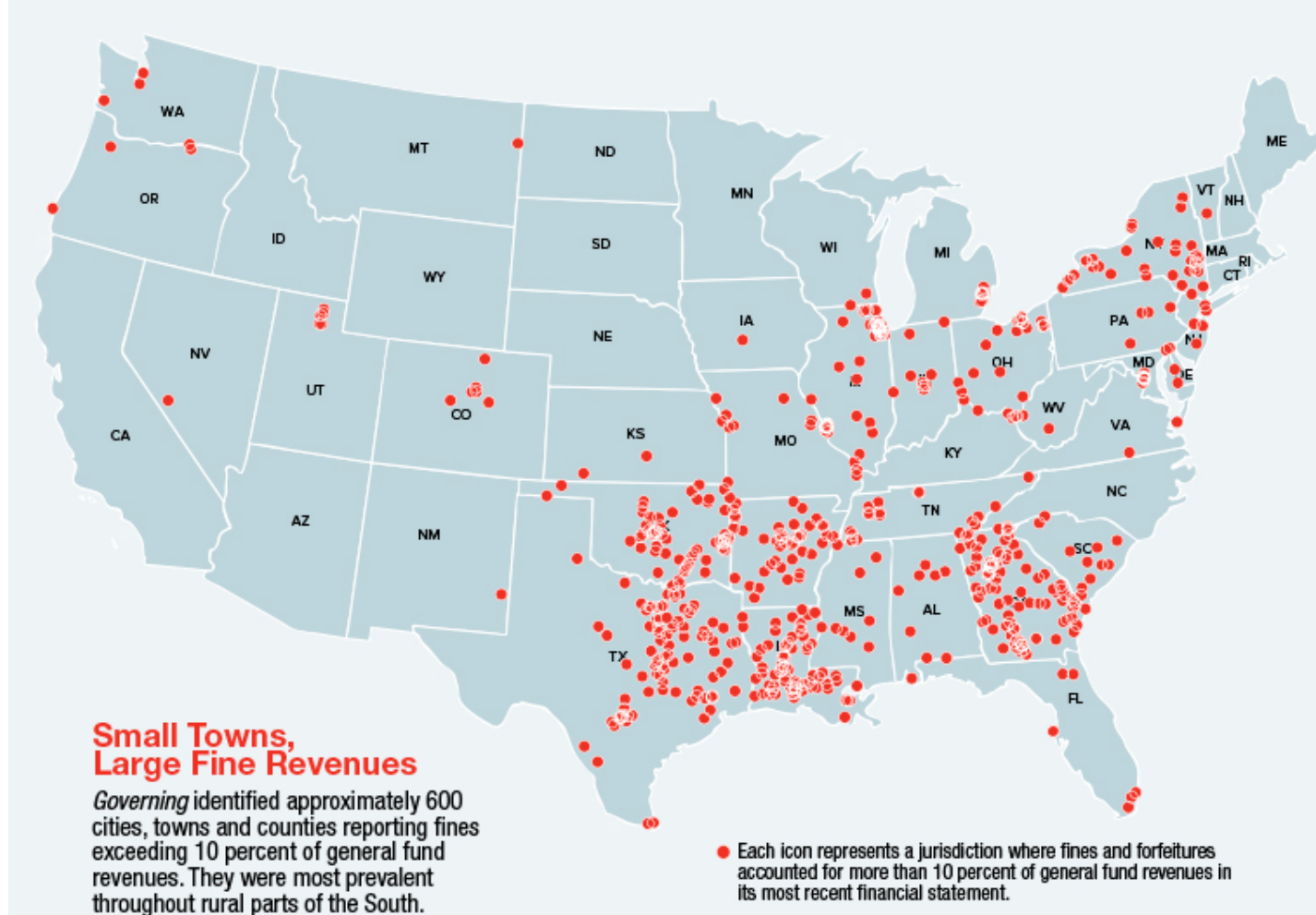
State Expenditures on Corrections in Billions, 1985-2015

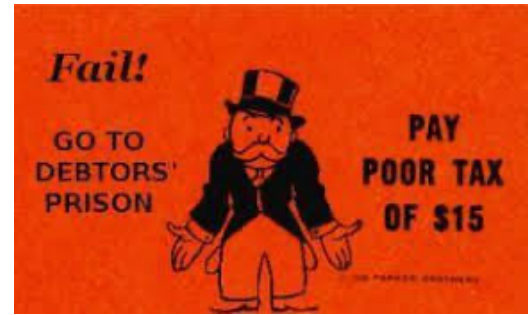
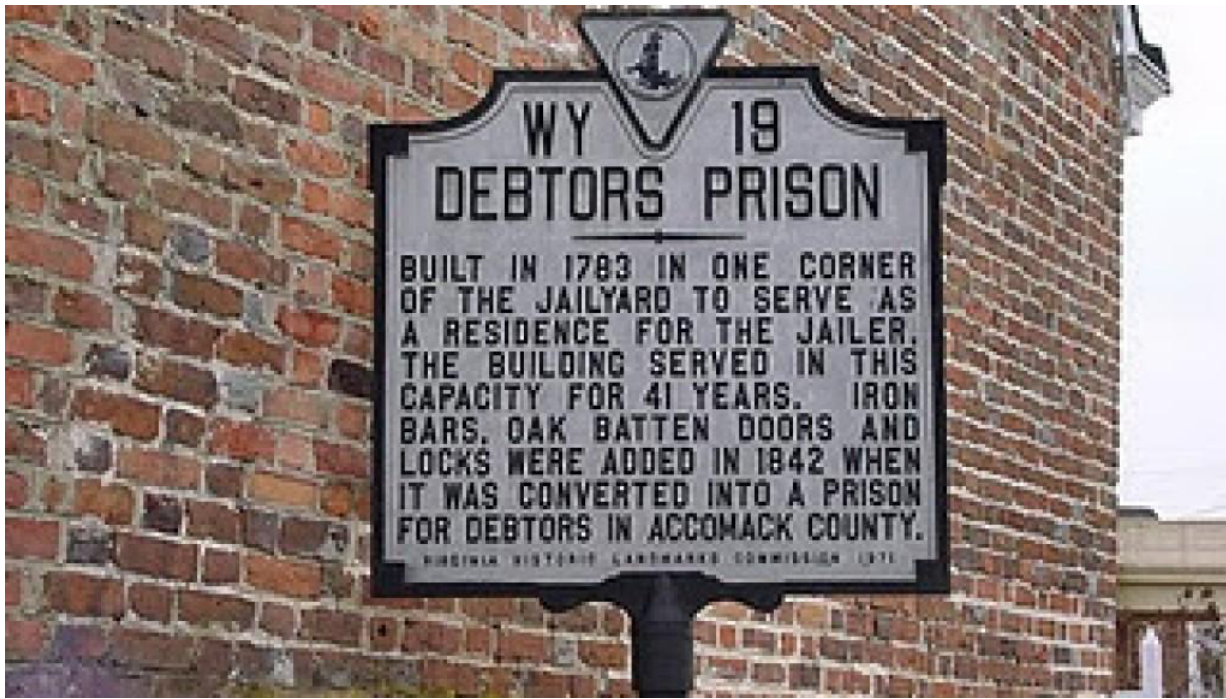


Source: National Association of State Budget Officers (1985-2015). *State Expenditure Report Series*. Washington, DC: National Association of State Budget Officers.

Addicted to Fines- GOVERNING

- Fines account for over 10% of general revenues in more than 600 US jurisdictions. In 284 of those jurisdictions, it's over 20%
- Most of those jurisdictions are in Arkansas, Georgia, Louisiana, Oklahoma, Texas, and New York





- Through the mid-19th century, debtor's prisons (similar to locked workhouses), were a common way to deal with unpaid debt in Western Europe and in the US (1600-1833).
- Abolished in the US in 1833.
- 1983 SCOTUS affirmed that incarcerating indigent debtors was unconstitutional under the 14th Amendment's = Protection Clause via the *Bearden v. Georgia*, 461 U.S. 660 (1983).
 - Held that local gov's can only imprison or jail someone for not paying a fine if it can be shown, by means of a hearing, that the person in question could have paid it but "willfully" chose not to do so. = **Ability to Pay Inquiry**
- 1998 SCOTUS indicated that a person's wealth or income is relevant to the Excessive Fines Clause of the 8th Amendment, *US v. Bajakajian*, 524 U.S. 321 (1998).
 - Held that "the touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish."
- 2019 *Timbs v. Indiana*-SCOTUS held that the Excessive Fines Clause applied to States.

NM Ability to Pay Inquiry: NMRA 6-207.1

- The court shall assess the D's ability to pay fines, fees, and the costs at the time of sentencing.
 - Defendants who can pay, shall be required to pay in accordance with the financial sentence imposed by the court.
 - Defendants who cannot pay, the court shall permit community service.
- Before the issuance of a warrant for failure to pay, the court shall issue a summons to appear or pay.
 - At hearing, the court may modify the payment agreement or convert the payment to community service.
 - The court must afford adequate procedural due process before jail is imposed.



Ohio Model-Litigation and Communication

The Ohio Supreme Court agreed to implement three reforms after their court and lower courts received demand letters from the ACLU documenting illegal practices:

- (1) hold accountable court personnel who perpetuate debtors' prisons;
- (2) provide training for judicial and non-judicial staff on [how to appropriately collect fines and fees](#); and
- (3) create and distribute a [bench card](#) on the collection of fines and fees for municipal judges.

The ACLU of Ohio's campaign was widely successful: municipal court procedures were changed, "warrants were recalled, people were released from jail, and more than \$180,000 was credited to individuals who were unconstitutionally jailed for failure to pay fines."



	Pre-Trial COR	Conviction	Probation	Prison/Jail	Other CJ Tools	Civil
Assessment	Fees	Fees, Fines and Restitution	Conviction Fees, Program Fees, Fines, Restitution	Fees	Fees	Fees
Types	Electronic Monitoring Drug Testing (TAD ankle monitor, Soberlink, urine analysis, etc.) Ignition Interlock Evaluation/Testing Counseling Classes Pre-trial services monitor Others	-Facilities fee -Docket fee -Automation fee -Corrections fee -Jury & witness fee -DV fee -Judicial Ed. fee -Traffic safety fee -Brain injury fee -Crime lab fee -Community comprehensive program fee -In-house screening fee -DWI school fee -Controlled substances fee -Crime victim reparation fee	Must pay all fines, fees, restitution imposed at sentencing (column to the left) AND comply with all COP. Fees associated with COP: Electronic Monitoring Drug Testing (TAD ankle monitor, Soberlink, urine analysis, etc.) Ignition Interlock	Fees for Services: Communication Medical Care Commissary (including standard hygiene products) Booking	Bench Warrants: Types of BW: Failure to Appear to Court. "FTA" Failure to Pay a Court fine/fee. "FTP" Failure to Comply with Conditions of Release or Conditions of Probation. "FTC" Diversion Programs PPD	Driver's license reinstatement Impoundment fees

Fees assigned at the point of conviction

- Municipal Court: \$29-\$\$\$\$
(Varies by Jx)
- Metro Court: \$65-\$425
- Magistrate Court: \$61-\$291
- District Court: Varies
depending upon offense.



Municipal Courts

Fee Remittance. Municipalities are required (per NMSA 35-14-11) to enact ordinances for the assessment of fines and fees upon *persons convicted of violating any municipal ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by imposing a term of imprisonment*. Fees currently assessed, collected, and remitted or retained include:

- \$20 corrections fee (stays with the municipality);
- \$6 automation fee (sent to the AOC);
- \$3 judicial education fee (sent to the Judicial Education Center)

*Except in home-rule municipalities, municipal courts may impose and collect only these fees.

In DWI cases, additional fees are collected and remitted to the AOC (NMSA 31-12-7):

- \$85 DWI lab fee (increased from \$65 per a statutory change effective July 1, 2010);
- \$75 DWI prevention fee.

A \$75 substance abuse lab fee is collected and remitted to the AOC for violations of the Substance Abuse Act (ref. NMSA 31-12-8).

What are our fees funding?

- \$10 Facilities Fee (\$24 Metro Ct.)
- \$20 Docket Fee
- \$10 Automation Fee
- \$20 Corrections Fee
- \$5 Jury and Witness Fee
- \$3 Judicial Education Fee
- \$3 Traffic Safety Fee
- \$5 Brain Injury Fee
- \$50 for Misdo, \$75 for Felony Crime Victim Reparation Fee
- \$5 Domestic Violence Fee
- \$100 DNA Fee (felony cases only)

Fees Attached to Particular Convictions

- \$85 DWI Chemical Testing Fee (DWI)
- \$75 DWI Comprehensive Community Corrections Fee (DWI)
- \$1 Juvenile Adjudication Fee (Traffic cases-penalty assessment M)
- \$85 Crime Lab Fee (DWI)
- \$75 Controlled Substances Fee (only applies to Drug Convictions)

- **66-8-116.3. Penalty assessment misdemeanors; additional fees.**
- In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:
 - A. in a county without a metropolitan court, twenty dollars (\$20.00) to help defray the costs of local government corrections;
 - B. a court automation fee of ten dollars (\$10.00);
 - C. a traffic safety fee of three dollars (\$3.00), which shall be credited to the traffic safety education and enforcement fund;
 - D. a judicial education fee of three dollars (\$3.00), which shall be credited to the judicial education fund;
 - E. a jury and witness fee of five dollars (\$5.00), which shall be credited to the jury and witness fee fund;
 - F. a juvenile adjudication fee of one dollar (\$1.00), which shall be credited to the juvenile adjudication fund;
 - G. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund;
 - H. a court facilities fee as follows:
 - in a county with a metropolitan court \$24.00;
 - in any other county 10.00;
 - and
 - I. until May 31, 2014, a magistrate courts operations fee of four dollars (\$4.00), which shall be credited to the magistrate courts operations fund.

- **35-6-1. Magistrate costs; schedule; definition of "convicted".**
- A. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend the following costs:
 - docket fee, criminal actions under Section [29-5-1](#) NMSA 1978 \$ 1.00;
 - docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section [35-6-3](#) NMSA 1978 20.00. Proceeds from this docket fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund;
 - docket fee, twenty dollars (\$20.00) of which shall be deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section [35-6-3](#) NMSA 1978 72.00;
 - jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made 25.00;
 - copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process 0.50. Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund; and
 - copying fee, for computer-generated or electronically transferred copies, per page 1.00. Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund.
- Except as otherwise specifically provided by law, docket fees shall be paid into the court facilities fund.
- B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.
- C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency. The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.
- D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend the following costs:
 - (1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code [[66-1-1](#) NMSA 1978] involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:
 - in a county with a metropolitan court \$10.00;
 - in a county without a metropolitan court 20.00;
 - (2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;
 - (3) traffic safety fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 3.00;
 - (4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 3.00;
 - (5) jury and witness fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 5.00;
 - (6) brain injury services fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 5.00; and
 - (7) court facilities fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:
 - in a county with a metropolitan court 24.00;
 - in any other county 10.00.
- E. Metropolitan court judges shall assess and collect and shall not waive, defer or suspend as costs a mediation fee not to exceed five dollars (\$5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund.

NMSA 35-14-11: Muni court costs- Corrections Fees

- D. All money collected pursuant to Paragraph (1) of Subsection B of this section shall be deposited in a special fund in the municipal treasury and shall be used for:
 - (1) municipal jailer or juvenile detention officer training;
 - (2) the construction planning, construction, operation and maintenance of a municipal jail or juvenile detention facility;
 - (3) paying the cost of housing municipal prisoners in a county jail or detention facility or housing juveniles in a detention facility;
 - (4) complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities;
 - (5) providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;
 - (6) defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities; or
 - (7) providing electronic monitoring systems.

In Practice

- [Driver's License Suspensions/J&S Traffic G at Arraignment Redacted.pdf](#)
- [Driver's License Suspensions/Register of Actions TR ND 2019 Redacted.pdf](#)
- [Driver's License Suspensions/Register of Actions Same Client TR DS Speeding BW NG Redacted.pdf](#)

The Steep Costs of Criminal Justice Fees and Fines

A Fiscal Analysis of Three States
and Ten Counties

**BRENNAN
CENTER
FOR JUSTICE**



Santa Fe County

- Assessed about \$1.1 million in fines and fees, of which \$352,000 was written off-through jail and community service credits.
- Of the remaining, \$786,000, \$724,000 was ultimately collected.
- At least \$294,000 was spent on collections activity and jailing alone, resulting in, at most, a \$430,000 net gain, or 38% of what was originally assessed.

Socorro County

- Socorro County: (Poverty rate of 25%-one of the lowest in the state)
- Assessed \$207,000 in fines and fees, of which \$88,000 was written off through jail and community service credits.
- Virtually all of the remainder, \$119,000 was collected.
- At least \$96,000 was spent on jail costs and collections activity, resulting in, at most, a \$24,000 net gain, or 11% of what was originally assessed.



Bernalillo County

- Court and jail costs for imposing and collecting fees and fines in Metro Ct. were \$2.178 million in 2016, or 117 percent of what ultimately was collected.
 - Ct. assessed more than \$4.1 million fines and fees
 - \$2.2 million was written off-through jail credits or community service
 - Of the remainder, close to \$1.9 million was ultimately collected.
 - **HOWEVER**, more than \$2.1 million was spent on collections activity (net loss of \$316,000)



Cost of Collections

- Bernalillo County: \$1.17 for every \$1
- Santa Fe County: \$.41 for every \$1
- Socorro County: \$.80 for every \$1



Brennan Center for Justice Recommendations

- Eliminate court-imposed fees-courts should be funded primarily by taxpayers, all of who are served by the system.
- Institute a sliding scale for fines based on ability to pay. \$200 fine may be a minor inconvenience to one person but is an insurmountable debt to another.
- Courts must stop jailing for failure to pay-harms rehabilitation efforts and makes little fiscal sense due to cost shifting.
- Eliminate debt-based drivers license suspensions. *Montana, Virginia, West Virginia, Idaho, Wyoming, Mississippi, California, Kentucky, Oregon
 - Driving for Opportunity Act-Creates incentives for states.
- Improve data automation practices to assist the public in understanding their debts and allows for ease of evaluation and efficacy of fees/fines as a source of revenue.
- Purge old balances that are unlikely to be paid but continue to complicate the lives of millions.

Bench Warrants and the Connection to Driver's License Suspensions



Debt-based Driver's License Suspensions

- Debt based driver's license suspension affects millions of families nationwide.
 - Nationwide there are at least 11 million DL suspensions for unpaid fines and fees.
- Reduces public safety.
- Hurts people's ability to repay their debts.
 - In one survey, 80% of respondents reported that they had no access to or were unqualified for job opportunities b/c of DL suspension.
 - Cripples transportation, especially in rural areas-in one jx, 42% of drivers lost their jobs once their driving privileges were suspended.
- Has catastrophic effects on individuals and their families.
 - Studies show that 75% of individuals continue driving even after their licenses have been suspended-exposing them to cascading consequences including jail time, a criminal conviction, and more \$\$\$\$.
- Low income people and people living paycheck-to-paycheck, are disproportionately affected by driver's license suspensions.
- There are better ways to promote debt repayment than suspending people's licenses.
 - Jx that lower fines for people who can't afford to pay them tend to see an increase in collections and a reduction in spending on enforcement. Phoenix-reduction in 90% of cases by an average of \$40, the amount collected rose from \$197 to \$360.

National Efforts



Free to Drive

[State Laws](#) [Impacted Population](#) [Firsthand Accounts](#) [Working for Reform](#) [Join the Coalition](#) [A Story Map by the](#)

Existing Laws for Failure to Pay

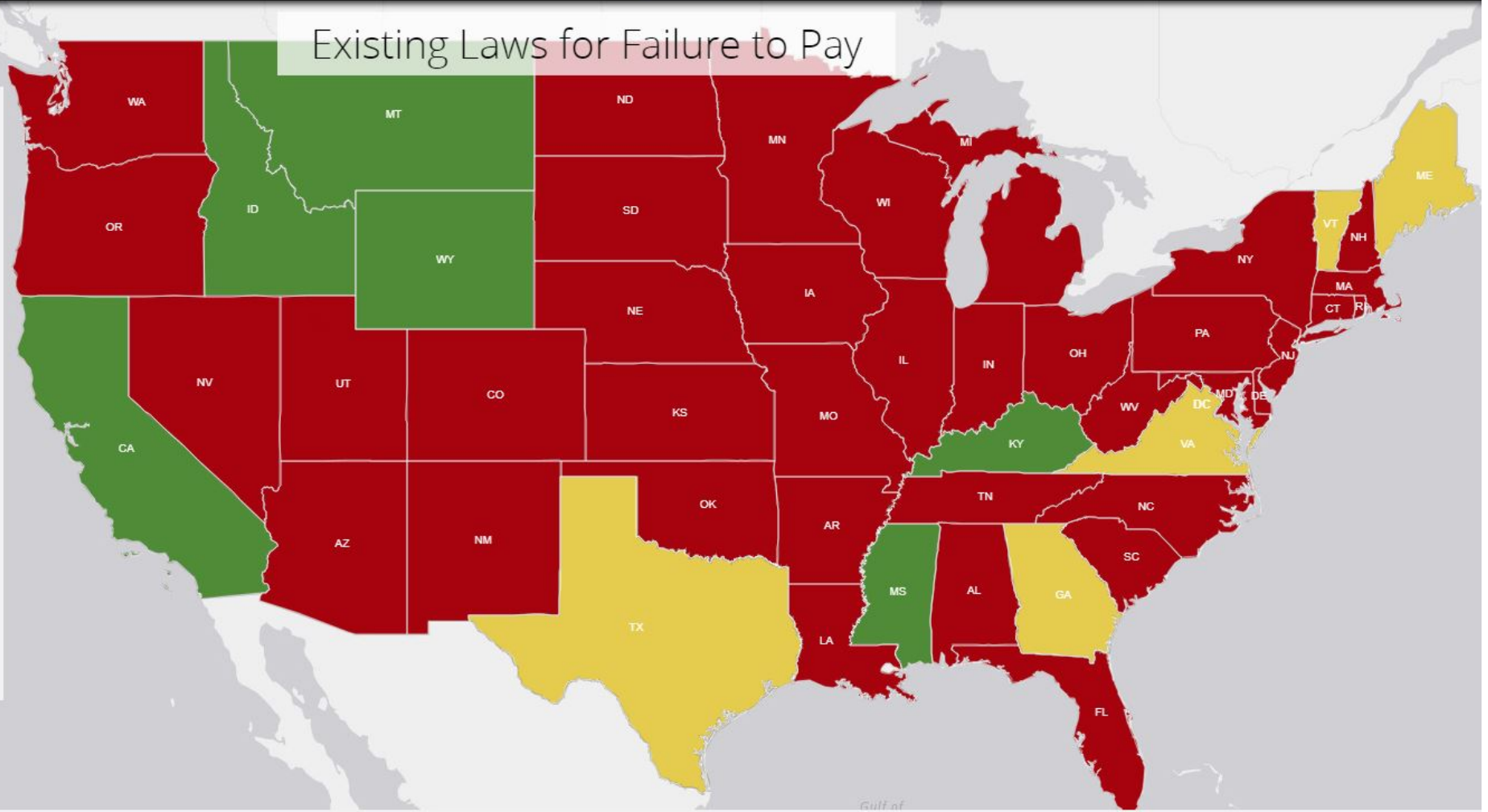
Several states have eliminated this practice; however, 44 states and District of Columbia still suspend, revoke or do not allow a person to renew their driver's license if they have unpaid court debt.

FREE TO DRIVE: State does not suspend, revoke, or prohibit the renewal of driver's licenses for failure to pay.

SOME REFORM: State has partial or temporary reform of license suspension, revocation, or renewal practices for failure to pay.

NO REFORM: State suspends licenses for failure to pay.

Click on a state to learn about existing laws for debt-based suspensions due to failure to pay.



Felony Disenfranchisement

1-4-27.1. Cancellation of registration following conviction; eligibility for voting upon satisfaction of conditions.

A. When a voter has been convicted of a felony in any state or federal court, the voter's registration shall be canceled.

B. A person convicted of a felony who is otherwise a qualified elector is eligible to register to vote when that person:

- (1) has been unconditionally discharged from a correctional facility or detention center;
- (2) has completed all conditions of parole or supervised probation; or
- (3) has had the conviction overturned on appeal.



Juvenile Justice Fees



Statute	Type	Amount
NM 32A-1-19(c)	Cost of expenses of treatment and support	Based on child support schedule
NM 32A-2-28	Reasonable costs of treatment, support, maintenance for child adjudicated delinquent and parent is party to a petition	Based on child support schedule
NM 32A-2-30	Reimbursement for counsel, for non-indigent child (Goes to state treasurer general fund)	Determined by court?
NM 31-15-12(c)	Public Defender Fee	\$10
NM 32A—19(A)(1-2)	Reasonable compensation for services and related expenses for counsel	Based on public defender fee schedule
NM 32A-1-19(A)(1)(3)	Expenses of service of summonses, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding	Unknown

ABA's 10 Guidelines on Fines and Fees*

*Approved by American Bar Association House of Delegates on August 6, 2018.

1. Fees imposed by a court must be related to the justice system, services rendered to the defendant, and never be in excess of a person's ability to pay.
2. A punitive fine should not result in substantial and undue hardship to a person or their family.
3. Incarceration or other disproportionate sanctions should not be the result of an individual's inability to pay a fine, fee, or restitution.
4. A court must hold an ability-to-pay hearing before it imposes a sanction on a person for nonpayment of fines, fees, or restitution.
5. A person's failure to pay court fines and fees should not result in deprivation of their right to vote or other fundamental rights.
6. Courts must consider alternatives to incarceration and disproportionate sanctions for people who are not able to pay fines and fees.
7. The standards for evaluating a person's ability to pay should be clear and consistent and should consider certain factors.
8. If a person is unable to afford a lawyer, counsel must be provided to them for free.
9. Finances, demographic data, and other information relevant to the imposition and collection of fines and fees should be made publicly available.
10. Public and private entities authorized to collect fines, fees, and restitution should adhere to these Guidelines.



Solutions and Reform



- Ending incarceration for nonpayment of fines and fees
- Eliminate driver's license suspensions for nonpayment of fines and fees
- Eliminate fees in juvenile proceedings

Solutions and Reform

- Eliminate fees for conviction, probation, parole, electronic monitoring, phone calls, commissary, jail fees, bench warrants.
- Reduce fines by mandating ability to pay assessments or capping fines at 1% of the individual's income.

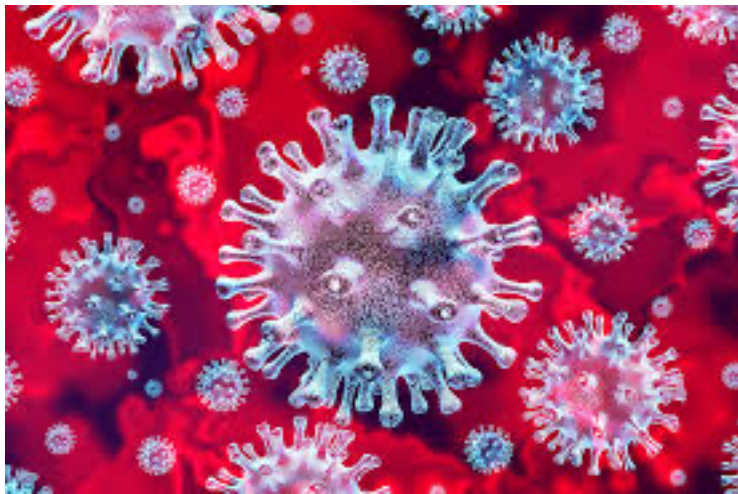


FFJC Covid Policy Recommendations

Extend New Mexico Supreme Court Order by 180 days.
Alternatively forgive all outstanding court fees.

Recall all bench warrants for FTP and FTA and waive the \$100 bench warrant fee.

Give judges discretion to waive or reduce fees and/or mandatory fines at sentencing, recognizing people's precarious financial circumstances.



People who are incarcerated and their families should be provided with free, easily accessible phone/video communication.

Probation and parole should not be extended or revoked, nor sanctions imposed, for unpaid fines and fees or other technical violations.

Direct all court clerks to stop notifying MVD for FTA or FTP.

Direct MVD to reinstate all driver's licenses stemming from suspensions for non-safety reasons, such as FTA or FTP.