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– Tara Mikkilineni
Attorney, Civil Rights Corps

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Roots conducted, a pattern emerged: Most seeking relief were poor when fines were imposed upon them, and they were charged additional fees and suffered consequences as a result of their inability to pay their fines in full.

And while Legal Services Day is slowly expanding, erasing fines that would likely never be paid, courts across the state continue to levy court debts on people in poverty, who then continue to suffer the consequences.

How we got here

Lisa Foster began examining fines and fees in America's criminal justice system while serving as an office director at the U.S. Department of Justice under the Obama administration. When a report came out on Ferguson, Mo., in the wake of Michael Brown's shooting, it revealed how that city's court was imposing stiff fines and then using coercive practices, such as jailing debtors, to extract payments.

“When we read the report in my office, we realized this is probably not just a problem in Ferguson,” Foster said. “We started to do some research and investigation and realized this was an enormous problem everywhere in the country.”

After leaving the Department of Justice, Foster kept coming back to the issue of fines and fees – it kept her up at night, she said. So this past April, she launched the Fines and Fees Justice Center in Washington, D.C., where she and her co-director, Joanna Weiss, have begun their team's reform work by focusing on pilot projects in New York and Florida.

The comprehensive reform they're aiming for, she said, is “eliminating fees from the system altogether and making fines proportionate to the offense and to the individual.”

They've already had one big win in New York City, where they were part of a coalition that persuaded City Council to eliminate fees for phone calls made from jail.

Fines have always been a part of the criminal justice system, Foster said, but they used to be much smaller and imposed as an alternative to jail for minor crimes – not in addition to lengthy prison sentences as they commonly are today.

The additional fees that get tacked onto fines are a modern-day phenomenon altogether, she said.

“The increase in fees, both in the number of fees imposed and the amount of fees, has really been within the last 30 years, and it has coincided with mass incarceration,” said Foster.

The onset of mass incarceration meant increased costs to the justice system, including court costs, all while the no-new-taxes movement was taking hold in the late 1980s.

“So what they did was latch on to what they call ‘user fees,’ and started charging people for some of the costs of the system,” Foster said. “In some states, legislators became addicted to this form of revenue and started funding all kinds of things outside the justice system with this money.”

But Foster takes issue with funding the criminal justice system through the imposition of these user's fees.

“I know, because I've been an advocate and a judge for my entire adult life, that the justice system serves all of us. It protects the community's safety. It enforces rights and responsibilities. It resolves disputes fairly, and it should be paid for by everyone, not simply people who happen to be caught up in the system,” she argued. “Justice is to me, not just the third branch, it's the branch that ensures every other branch adheres to the rule of law and to the constitution, and without it, we lose our democracy.”

Another relatively new Washington, D.C.-based organization tackling fines and fees is Civil Rights Corps. It's been challenging the United States' bail system through lawsuits against jurisdictions across the country, and it has taken aim at predatory diversion-program fees and the practice of suspending drivers licenses for nonpayment of traffic fines.

All the policies it's targeting for reform – from pretrial to probation – explained Civil Rights Corps attorney Tara Mikkilineni, go against the same fundamental discrimination principle that the Supreme Court, long ago, pointed to in determining that debtors' prisons were unconstitutional. That principle says you can't punish people for being in poverty.

“This problem of disparate treatment of the poor that results in these cycles that the poor get locked into that prevent them from ever being able to escape their circumstances,” said Mikkilineni, “is just endemic to the criminal legal system and it is all over the country.”

A nonpartisan issue

Before the Ferguson report began bringing fines and fees issues to light in 2015, they largely flew under the radar.

“The problem was hidden,” said Foster, thinking back to the conversations that led to her fines and fees reform efforts at the U.S. Department of Justice. “Very few people – including most Supreme Court justices – had an idea that in their states, what was actually going on in lower courts with respect to fines and fees. Most legislators, who enacted all these fees, rarely ever thought about the cumulative impact of these fees on people and what collection practices their courts were engaging in and how harmful these were to individuals and communities.”

After convening stakeholder conversations in the nation's capital, Foster sent out a letter to every state's chief justice and state court administrator, highlighting

seven common but unconstitutional practices related to collecting fines and fees. She also initiated a grant program for states willing to reform their practices.

Since then, fines and fees reform has gained traction in some areas.

While California is one of the worst states when it comes to the dollar amounts of fines and fees it imposes, said Foster, it's also where some of the most significant reform efforts are taking place.

San Francisco County's Board of Supervisors unanimously voted to abolish all criminal justice fees for incarceration, probation, penalty assessments and electronic monitoring earlier this year, acknowledging within the language of the ordinance that, “These fines, fees, and penalties can trap people in a cycle of debt, and low-income people and people of color are often hit the hardest. ... More specifically, these financial burdens frequently hit individuals at the precise moment they are trying to turn their lives around.”

People of color have consistently comprised more than half the participants at Legal Services Days in Multnomah County throughout the past year, said Thalia Sady, an attorney at Community Law. “It just reaffirms what we all know to be true – how our system has disproportionately affected people of color in our community,” she said.

Alameda County, Calif., is considering an ordinance similar to San Francisco's.

Eliminating egregious criminal fines and fees isn't solely a leftist ideal; some of the most conservative groups in the nation are also pushing for these reforms. The American Legislative Exchange Council (ALEC), Right on Crime and the Institute for Justice have all pushed for reforms around court fines and fees.

In 2017, Texas passed a set of bills that require, among other reforms, that a defendant be assessed for ability to pay during or immediately after sentencing. If the defendant doesn't have sufficient resources, the judge must delay payment, exchange the money owed for community service hours, or reduce or waive the fine. Since this law was enacted, warrants have decreased by 7 percent and the collection of fines has increased 6.4 percent, according to the National Center for State Courts.

Foster said in West Palm Beach, Fla., court staff picks up the phone and calls people when their payments are past due. This along with enacting more reasonable pay structures has improved their collection rate.

“Today, almost everybody gets a text message or email from their doctor, or even the person who cuts their hair, if they have an appointment,” she said. “But we don't do that for people in our court system, and we should. We all need a reminder.”

In Oregon, state statute directs that a judge “may” or “shall” consider a

Oregon Judicial Department's outstanding debts

Since 1988, the Oregon Judicial Department has collected \$2.86 billion in fines, fees restitution and other financial obligations on 16.7 million cases. But it's imposed \$4.7 billion on 18.5 million cases. After writing off the \$145 million in debt that's expired, there's \$1.7 billion left in outstanding debt that's still owed to the department.

While 75 percent of violations, such as speeding tickets, are paid within 30 days, for those who miss the 30-day mark, additional fees and surcharges can escalate the balance owed rapidly. A speeding ticket can go from \$165 to \$390 in just 110 days. Multnomah County parking tickets double in 90 days, and a \$39 ticket more than quadruples to \$164 after 145 days. And it's primarily low-income Oregonians who get tagged with these additional costs for failure to pay up front.

The average misdemeanor case takes 5 years to pay off, and more than half the outstanding balance owed is from felony cases. Most of those dollars – \$561 million – is restitution owed to victims. Some restitution amounts are so large that a single outstanding bill can add to the total significantly. For example, the unnamed teenager who was ordered to pay \$36.6 million this past May for starting the Eagle Creek Fire: If his debt goes to collections, another \$10.2 million could be added to the balance owed in the form of a 28 percent collections fee. (The judge in this case noted that if the teen keeps up on payments for 10 years, the debt will be considered paid in full.)

The Judicial Department only expects to collect about 15 percent of its \$1.7 billion in outstanding debt. That's because the older a debt becomes, the less likely the state will be able to collect it. After 20 years, it writes off criminal debt completely, unless restitution is owed, then it writes off the debt after 50 years.

Of Oregon's 13,500 inmates held in state Department of Corrections facilities, 76 percent have outstanding criminal debt totaling \$163 million. Collecting these funds became easier this past legislative session when lawmakers approved Senate Bill 844, which allows the state to garnish unprotected funds from an inmate's trust account. In other words, the state can take money the inmate's friends and family put on his or her books for commissary items, phone calls, etc. The average monthly payment is projected to be \$22.