

Ensuring Young People Are Not Criminalized for Poverty:

Bail, Fees, Fines, Costs, and Restitution in Juvenile Court

“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).

Juvenile courts across the country charge young people and their families bail, fines, fees, costs, and restitution without regard to children’s inability to pay. Such financial assessments are common in criminal courts, but in juvenile courts the consequences of such practices are even more detrimental, as they are exacerbated by children’s financial dependence. Children may feel pressure to waive their right to counsel if their legal representation imposes a financial burden on their families; and children and their families are pulled deeper into the court system for longer periods of time, for reasons unrelated to public safety. Further, when access to justice is conditioned on a person’s ability to pay fines, fees, and other costs to the courts, the disparities of class, race, and ethnicity are magnified.

Judges are uniquely positioned to eliminate the harms and hardships caused by the imposition of bail, fees, fines, costs, and restitution orders in court. This bench card illustrates some of the detrimental impacts of financial assessments and obligations upon youth and their families, and provides guidance for judges on how to exercise their discretion to alleviate harm and support youth on pathways to success.

PUNISHING POVERTY IS UNCONSTITUTIONAL

On March 14, 2016, the U.S. Department of Justice (DOJ) called for a national review of all policies that condition release and supervision on financial terms without first considering a person’s ability to pay, calling such practices “little more than punishing a person for his poverty.”¹ The DOJ letter intended to ensure that “courts at every level of the justice system operate fairly and lawfully,” and that every court inquires about ability to pay in all contexts.²

In January 2017, the DOJ issued an advisory applying the 2016 letter to youth, explaining that:


[I]n addition to fines, [juvenile] courts often impose fees on children for diversion programs, counseling, drug testing and rehabilitation programs, mental health evaluations and treatment programs, public defenders, probation, custody, and court costs. These fines and fees can be economically debilitating to children and their families and can have an enduring impact on a child’s prospects.³

The DOJ advisory notes the importance of going further to address the problems of charging fines and fees for youth rather than for adults, based on “children’s ‘diminished culpability and greater prospects for reform.’”⁴ The advisory references U.S. Supreme Court decisions that rely on adolescent development research showing critical differences between youth and adults when it comes to children’s judgment, understanding, and vulnerability,⁵ and explicitly applies that research and legal precedent to this issue: “Accordingly, as in virtually every other context, the justice system, with respect to fines and fees, must recognize and protect the special vulnerabilities of children.”⁶

In recognition of the unique challenges faced by children and the lasting harm caused by financial assessments, there is a growing trend among states to eliminate fines and fees for youth.⁷

Types of Financial Assessments and Obligations and Their Impacts

1. APPOINTMENT OF COUNSEL



Children have a constitutional right to counsel.⁸ All youth should be presumed eligible for an attorney by virtue of their status as children, without consideration of the income of their family;⁹ otherwise, children may feel pressure to waive their right to counsel rather than subject their family to repeated court appearances or what may be perceived to be an intrusive financial review. Additionally, children who are required to apply for counsel may spend more time in detention while their parents gather supporting documents and complete financial paperwork. Recognizing that children should be deemed automatically financially eligible for counsel, irrespective of family income, some states are codifying this presumption, including seven states in the last two years alone.¹⁰ The automatic appointment of client-directed counsel at the earliest possible moment in the proceedings allows time for youth to meet with an attorney who can advise them of their rights and explain the procedural process and the role of counsel.

Application fees also present a barrier to children asserting their right to counsel, as they must depend on their families to pay the fee. Fees that are assessed as part of the case can lead to extended periods of probation and financial obligations that follow children well into adulthood, impacting their ability to access education, housing, and employment. Conflicts also may arise when parents pay for the cost of counsel because they may feel entitled to direct the representation of their child, rather than ensuring client-directed representation.¹¹

2. BAIL AND DETENTION



“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹²

In August 2017, the American Bar Association (ABA) adopted a resolution prohibiting the use of financial conditions or collateral for release in any form in juvenile cases.¹³ The ABA resolution calls for the elimination of juvenile bail and the severe curtailing of the use of juvenile detention because:

Research indicates that detaining children, even for minimal periods[,] has an enduring traumatic impact, and also increases recidivism. Detention disrupts pro-social development by disrupting the connective tissue of access to family, school and community. Recidivism is also increased by increased rates in school dropout and failure, which fuels the school-to-prison pipeline. Children who do not graduate high school are eight times more likely to later be arrested.¹⁴

Several states are examining bail practices in the criminal system, and some have begun to apply recommended changes to juvenile court as well.¹⁵ Conditioning a child’s liberty on their ability to post cash bail ignores research showing that detention increases recidivism and exacerbates racial and ethnic disparities.¹⁶ Additionally, the imposition of cash bail that a youth or their family cannot pay fosters “class-driven preventive detention.”¹⁷ Such detention is not the least restrictive means of protecting public safety or assuring appearance in court because it accomplishes neither and penalizes poverty.¹⁸

3. PROBATION SUPERVISION FEES AND PLACEMENT FEES



“Equal justice means that the length of probation supervision imposed at the time of sentence should not be affected by the financial means of the defendant”¹⁹

As of September 2017, 21 states required youth and their families to pay fees for probation supervision and other probation services.²⁰ This practice prolongs justice system involvement, puts youth at higher risk for probation violations, and traps families in debt. These fees also broaden racial and economic disparities in a juvenile justice system that disproportionately impacts low-income, minority children.²¹ This practice raises concerns about fundamental fairness and due process. Recognizing the negative repercussions of such fees, some jurisdictions have taken steps to abolish probation and administrative fees.²²



4. COURT COSTS

The imposition of court costs — the collection of which may be unlawful where they are geared toward raising revenue rather than addressing public safety — can “cast doubt on the impartiality of the tribunal and erode trust between local governments and their constituents.”²³

Court costs imposed on youth undermine other conditions placed on young people — particularly where such legal financial obligations ultimately become debts owed to the court — and create an impression of the court as a collection agency rather than a neutral arbiter.²⁴ Additionally, where court costs are used to fund local programs in which youth are ordered to participate, the appearance of conflict or impropriety further erodes any sense that the court is impartial and fair.²⁵ This appearance is especially important in juvenile courts, where research demonstrates that outcomes are improved when children and their families feel they have been treated fairly.²⁶



5. FINES AND FEES

Fines and fees can have an economically debilitating effect on the lives of youth and their families, disrupting education and employment opportunities and allowing youth fewer avenues to success.²⁷ These fines and fees exacerbate economic disparities because the vast majority of youth and families involved with the juvenile justice system are low-income, and already in precarious financial situations.²⁸ And families with little means can be forced to choose between paying their outstanding court debts or covering the costs of food, housing, and other necessities.²⁹ Youth and their families who are unable to pay fees and fines move deeper into the court system, as their inability to pay leads to more fees, late charges, extended probation, civil liens, license forfeiture, and even incarceration.³⁰ These negative effects increase the risk of recidivism for children who continue to owe money after their juvenile cases have ended — and children of color feel this most acutely because they are overrepresented at every step of the juvenile justice system and are thus exposed to more frequent and higher fees.³¹



6. RESTITUTION

Restitution orders are generally designed to provide economic compensation for losses incurred when an offense has been committed against an individual, while also holding the young person accountable for the resulting damage.³² Restitution programs vary in approach, with some programs providing opportunities for job training, while others consist merely of an order to pay without any support to help youth earn money to make restitution payments.³³ Ordering restitution without appropriate supports can have the same lasting, detrimental effects as other court costs, fines, and fees. It can also have a negative impact on services provided to youth who are court-involved: “Jurisdictions in which restitution has been integrated with probation have seen the role and the nature of the work of probation officers change considerably. The probation officers’ work has shifted from counseling, social services, or once-a-month visits to implementing and monitoring restitution requirements.”³⁴



7. COMMUNITY SERVICE

While community service can sometimes be an appropriate alternative to restitution, it should not be used as an automatic condition in all cases. Community service that is ordered in lieu of restitution should promote positive youth development and support principles of restorative justice, allowing the youth to repair harm caused by their actions.³⁵ Community service that is merely punitive — including activities that impart punishment or humiliation, or are designed to hurt, exhaust, or label youth — does nothing to encourage reflection and community engagement.³⁶ Punitive community service is instead likely to alienate youth, as it perpetuates the perception of the young person as “alien to the community” — an outsider who is unworthy, a burden, or a threat.³⁷ Such programs can have long-term negative effects and do not benefit young people or the community. Additionally, community service that provides no opportunity to make measurable reparation has the opposite effect of restorative community service.³⁸ In order for community service to be worthwhile, it should help the young person develop skills that will provide for long-term success in the community and workforce, and the youth should be allowed adequate time to complete the requirements outside of time reserved for school, work, and family.

Addressing Financial Assessments in Your Courtroom

Financial assessments and considerations arise throughout a young person's involvement in the court system. Judicial discretion can significantly ameliorate the harms and hardships caused by the imposition of bail, fees, fines, costs, and restitution orders in court. Consider the following strategies when financial obligations arise, even where such assessments may be allowable under statute.



1. COUNSEL FEES

- Appoint counsel for youth, without consideration of family income. Financial eligibility (indigence) determinations should be abolished in youth cases.
- Exempt children and their families from the imposition of counsel fees.



2. BAIL AND DETENTION

- Release youth on personal recognizance unless there is an established likelihood of failure to appear.³⁹
- Do not impose cash bail or financial conditions for release.
- Do not detain children based only on the inability of the youth or their family to pay bail.
- Ensure that conditions of release are directly related to court appearance/failure to appear.



3. PROBATION SUPERVISION FEES AND PLACEMENT FEES

- Exempt youth and families from probation and post-release supervision fees.
- Exempt youth and families from fees for out-of-home placement.
- Do not assess probation, post-release, or out-of-home placement fees.



4. COURT COSTS

- Do not impose court costs on youth and families.
- Do not impose court costs as a way of generating revenue.



5. FINES AND FEES

- Do not impose fines and fees on youth and families.
- Do not impose fines and fees as a way of generating revenue or imposing sanctions.
- Do not condition access to a judicial hearing on the prepayment of fees.
- Do not incarcerate or detain any person for non-payment of fees, fines, or financial obligations when the failure to pay stems from poverty, lack of income, or an inability to pay.⁴⁰
- Presume that youth are unable to pay fines and fees.⁴¹



6. RESTITUTION

- Only impose restitution in limited cases in which the young person's actions caused actual monetary loss.
- Do not impose restitution without a determination of ability to pay.⁴²
- Restitution orders should be supported by evidence in the record and appropriate findings of fact which demonstrate that the best interest of the youth will be promoted by the imposition of restitution.
- Consider not only fairness to the victim in imposing restitution, but also the long-term impact of the restitution order on the future success of the youth.⁴³
- Do not require a youth to make restitution if the youth does not have and could not reasonably acquire the means to make restitution within a reasonable period of time.
- If a youth is required to pay restitution, apply any payments for fines, fees, and costs to the amount of restitution due first.



7. COMMUNITY SERVICE

- Order community service in lieu of restitution only in ways that promote positive youth development and help youth build skills that will provide for long-term success in the community and workforce.
- Ensure any community service ordered is limited in duration and does not prevent the youth from engaging in pro-social activities, school, and employment.
- Consider community service as a restorative learning opportunity for youth, not a sanction-based strategy to obtain costs.



8. WHERE A FINANCIAL ASSESSMENT MUST BE IMPOSED, OFFER A PAYMENT PLAN

- Offer a periodic payment plan for youth that:
 - Does not impose onerous user fees or interest.
 - Allows for electronic and web-based payments.
 - Offers a mechanism for youth to seek a reduction in their monthly obligation if financial circumstances change.

No court should incarcerate or detain any person for non-payment of costs, fees, fines, or financial obligations when the failure to pay stems from poverty, lack of income, or an inability to pay.⁴⁴

Families burdened by these obligations may face a difficult choice, either paying juvenile justice debts or paying for food, clothing, shelter, or other necessities. The cost of fines and fees may foreclose educational opportunities for system-involved youth or other family members. When children and their families are unable to pay fines and fees, the children often suffer escalating negative consequences from the justice system that may follow them well into adulthood.⁴⁵

- ¹ U.S. Dep't of Justice, *Dear Colleague Letter: Law Enforcement Fines and Fees* 1 (Mar. 14, 2016) [hereinafter *Dear Colleague Letter: Fines and Fees*] (letter to state and local courts on enforcement of fines and fees in criminal justice proceedings) (citing *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)), <https://www.justice.gov/crt/file/832461/download>.
- ² *Id.* Some states have taken the message to heart. See, e.g., *Brangan v. Commonwealth*, 477 Mass. 691 (2017) (requiring that Massachusetts judges consider ability to pay in setting bail).
- ³ U.S. Dep't of Justice, *Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on Levying Fines and Fees on Juveniles* 2 (Jan. 2017) [hereinafter *Advisory on Levying Fines and Fees on Juveniles*], <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf> (this, along with 24 other advisories, were rescinded by Attorney General Jeff Sessions on December 21, 2017). Cf. *Dear Colleague Letter: Fines and Fees*, *supra* note 1.
- ⁴ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 2 (citing *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016) (quoting *Miller v. Alabama*, 567 U.S. 460, 471 (2012))).
- ⁵ See generally *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3. See also *Montgomery*, 136 S. Ct. 718; *Miller*, 567 U.S. 460; *J.D.B. v. North Carolina*, 564 U.S. 261 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).
- ⁶ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 3. See also Resolution to the Criminal Justice Section 112D: Proposed Resolution and Report, Am. Bar Ass'n 2 (2017) [hereinafter ABA Proposed Resolution and Report 112D], https://www.americanbar.org/news/reporter_resources/annual-meeting-2017/house-ofdelegates-resolutions/112d.html (calling for an end to the use of bail/bond in the juvenile justice system, in part because "children are not little adults").
- ⁷ See *infra* notes 10, 15, 22 and accompanying text (listing states that have abolished fees for costs of counsel, probation supervision fees, and juvenile bail). In addition to several states that have reduced or eliminated certain fees associated with juvenile court, California and Washington have eliminated all fees for youth in juvenile courts. See S.B. 190, 2017-2018 Reg. Sess. (Ca. 2017) (ending the practice of charging youth and their families fees for their juvenile court involvement, including for detention, legal representation, and supervision); S.B. 5564, 64th Leg., 2015 Reg. Sess. (Wa. 2015) (abolishing the practice of charging court costs, fees, and fines, with limited exceptions). See also *Governor Inslee Signs the Act*, COLUMBIA LEGAL SERVICES (May 14, 2015).
- ⁸ *In re Gault*, 387 U.S. 1, 36 (1967).
- ⁹ See AM. BAR ASS'N, INST. OF JUDICIAL ADMIN., JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH 254, Part V, § 5.3(A) (Robert E. Shepherd ed., 1996) (recommending that the court appoint counsel for all youth who do not hire their own attorney, and not seek reimbursement from the child or their family regardless of their finances), <http://1.usa.gov/1gTj9t4>; NATIONAL JUVENILE DEFENSE STANDARDS § 10.3: ADVOCATE FOR PRESUMPTION OF INNOCENCE (NAT'L JUVENILE DEFENDER CTR. 2012) (recommending that counsel advocate for a presumption of indigence for all juvenile clients), <http://bit.ly/XYgDqU>.
- ¹⁰ See, e.g., S.B. 190, 2017-2018 Reg. Sess. (Ca. 2017) (A child's parent, guardian, or adult relative "shall not be liable for the cost of counsel or legal assistance furnished by the court for purposes of representing the minor."); DEL. CODE ANN. tit. 29, § 4602(c) (West 2016) ("Any person under the age of 18 arrested or charged with a crime or act of delinquency shall be automatically eligible for representation by the Office of Defense Services."); LA. CHILD. CODE ANN. art. 320(A) (2010) ("For purposes of the appointment of counsel, children are presumed to be indigent."); MASS. SUPER. JUD. CT. R. 3:10(h)(iv) (2016) (defining as indigent "a juvenile, a child who is in the care or custody of the Department of Children and Families, or a young adult"); MONT. CODE ANN. § 47-1-104(4)(b)(ii)-(iii) (West 2013) (providing that every youth charged in delinquency proceedings "is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel"); N.C. GEN. STAT. ANN. § 7b-2000(b) (2001) ("All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency."); OHIO ADMIN. CODE 120-1-03(B)(4) (2017) ("An applicant is presumed indigent and thus entitled to the appointment of counsel at state expense [when] . . . [t]he applicant is a child In determining the eligibility of a child for appointed counsel, the income of the child's parent, guardian, or custodian shall not be considered."); 42 PA. STAT. AND CONS. STAT. ANN. § 6337.1(b)(1) (West 2012) ("In delinquency cases, all children shall be presumed indigent."); VT. STAT. ANN. tit. 13, § 5238(g) (West 2016) (while nearly all potential defendants are evaluated to determine whether they should pay a co-payment or reimburse the state for publicly-funded legal counsel, the statute provides that "[a] juvenile shall not be ordered to pay any part of the cost of representation"); WASH. REV. CODE ANN. § 13.40.140(2) (West 2014) (while a youth's family's ability to pay will be assessed, "[t]he ability to pay part of the cost of counsel does not preclude assignment [and] [i]n no case may a juvenile be deprived of counsel because of a parent, guardian, or custodian refusing to pay"); WIS. STAT. ANN. § 938.23(1m)(a), (4) (West 2016) (providing a right to counsel to all youth charged with delinquency or held in a juvenile detention facility, and providing that "[i]f a [child] has a right to be represented by counsel or is provided counsel at the discretion of the court . . . and counsel is not knowingly and voluntarily waived, the court shall refer the [child] to the state public defender and counsel shall be appointed by the state public defender . . . without a determination of indigency"). See also IND. CODE ANN. § 31-32-4-2 (West 2017) (providing that the court "shall appoint counsel for the child at the detention hearing" if not earlier, and "may appoint counsel to represent any child in any other proceeding"). *But* see Ind. Code Ann. § 33-40-3-6(a) (West 2017)

(providing that a guardian may be charged for the representation if it is later determined the guardian is financially able).

- ¹¹ NATIONAL JUVENILE DEFENSE STANDARDS § 10.3: ADVOCATE FOR PRESUMPTION OF INNOCENCE cmt. (NAT'L JUVENILE DEFENDER CTR. 2012) (“[I]f parents incur the cost of representation, a potential conflict between the lawyer’s duty of loyalty to his or her client and a feeling of obligation to the payor may occur.”); MODEL RULES OF PROFESSIONAL CONDUCT r. 1.7, 1.8 (AM. BAR ASS’N 2016) (stating that a lawyer should not represent a client if there is a conflict of interest); JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES § 2.1(b)(2) (INST. OF JUDICIAL ADMIN. & AM. BAR ASS’N 1980) (“Where adversity of interests or desires between parent and child becomes apparent during the course of representation, a lawyer should be ready to reconsider the fee taking into account the child’s resources alone.”).
- ¹² U.S. CONST. amend. VIII.
- ¹³ Resolution to the Criminal Justice Section 112D: Adopted Resolution, Am. Bar Ass’n 2 (2017) [hereinafter ABA Adopted Resolution 112D], <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/112D.pdf>. See also JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO INTERIM STATUS § 4.7 (INST. OF JUDICIAL ADMIN. & AM. BAR ASS’N 1979) (recommending that “[t]he use of bail bonds in any form as an alternative interim status should be abolished”).
- ¹⁴ ABA Proposed Resolution and Report 112D, *supra* note 6, at 3 (internal citations omitted).
- ¹⁵ See, e.g., N.J. STAT. ANN. § 2A:162-17 (West 2017); N. J. STAT. ANN. § 2A:4A-34 (West 2006); N.J. STAT. ANN. § 2A:4A-38 (West 1995); KY. REV. STAT. ANN. § 610.190(1) (West 2015).
- ¹⁶ See, e.g., BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES 5 (2006), http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf; JAMES AUSTIN, KELLY DEDEL JOHNSON & RONALD JOHN WEITZER, U.S. DEP’T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, ALTERNATIVES TO THE SECURE DETENTION AND CONFINEMENT OF JUVENILE OFFENDERS 2-3 (2005), <https://www.ncjrs.gov/pdffiles1/ojdp/208804.pdf>; PATRICK MCCARTHY ET AL., THE FUTURE OF YOUTH JUSTICE: A COMMUNITY-BASED ALTERNATIVE TO THE YOUTH PRISON MODEL, NEW THINKING IN COMMUNITY CORRECTIONS BULLETIN 13 (U.S. DEP’T OF JUSTICE, NAT’L INST. OF JUSTICE 2016), http://www.aecf.org/m/resourcedoc/NIJ-The_Future_of_Youth_Justice-10.21.16.pdf; THE SENTENCING PROJECT, FACT SHEET: BLACK DISPARITIES IN YOUTH INCARCERATION (2017) [hereinafter BLACK DISPARITIES], <http://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>; THE SENTENCING PROJECT, FACT SHEET: NATIVE DISPARITIES IN YOUTH INCARCERATION (2017) [hereinafter NATIVE DISPARITIES], <http://www.sentencingproject.org/publications/native-disparities-youth-incarceration/>; THE SENTENCING PROJECT, FACT SHEET: LATINO DISPARITIES IN YOUTH INCARCERATION (2017) [hereinafter LATINO DISPARITIES], <http://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/>.
- ¹⁷ ABA Proposed Resolution and Report 112D, *supra* note 6, at 3.
- ¹⁸ ABA Adopted Resolution 112D, *supra* note 13.
- ¹⁹ Commonwealth v. Henry, 475 Mass. 117, 124 (2016).
- ²⁰ NAT’L JUVENILE DEFENDER CTR., ISSUE BRIEF: THE COST OF JUVENILE PROBATION: A CRITICAL LOOK INTO JUVENILE SUPERVISION FEES (2017) [hereinafter COST OF PROBATION ISSUE BRIEF], http://njdc.info/wp-content/uploads/2017/08/NJDC_The-Cost-of-Juvenile-Probation.pdf; NAT’L JUVENILE DEFENDER CTR., INFOGRAPHIC: THE COST OF JUVENILE PROBATION: A CRITICAL LOOK INTO JUVENILE SUPERVISION FEES (2017) [hereinafter COST OF PROBATION INFOGRAPHIC], <http://njdc.info/wp-content/uploads/2017/09/Cost-of-Probation-Infographic.pdf>.
- ²¹ See BLACK DISPARITIES; NATIVE DISPARITIES; LATINO DISPARITIES, *supra* note 16.
- ²² For example, in July 2016, the Massachusetts Trial Court abolished probation supervision fees, allowing community service in lieu for youth. MASSACHUSETTS TRIAL COURT, FINES AND FEES WORKING GROUP, REPORT TO TRIAL COURT 24 (Nov. 17, 2016) [hereinafter MASSACHUSETTS FINES AND FEES WORKING GROUP REPORT], <http://www.mass.gov/courts/docs/trial-court/report-of-the-fines-and-fees-working-group.pdf>. In 2015, Marion County, Indiana ended its practice of automatically assessing fees in juvenile cases. Telephone Interview with Juvenile Defender in Illinois (June 3, 2016). On October 11, 2017, legislation to end all administrative fees in the California Juvenile Justice System was signed into law by California Governor Jerry Brown. S.B. 190, 2017-2018 Reg. Sess. (Ca. 2017).
- ²³ *Dear Colleague Letter: Fines and Fees*, *supra* note 1, at 2 (citing CONFERENCE OF STATE COURT ADMINISTRATORS, 2011-2012 POLICY PAPER, COURTS ARE NOT REVENUE CENTERS (2012), <https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf>).
- ²⁴ See CONFERENCE OF STATE COURT ADMINISTRATORS, 2011-2012 POLICY PAPER, COURTS ARE NOT REVENUE CENTERS 9 (2012), <https://csgjusticecenter.org/wp-content/uploads/2013/07/2011-12-COSCA-report.pdf>.
- ²⁵ See *id.* at 10-11.
- ²⁶ See generally Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV.: J. AM. JUDGES ASS’N 26 (2007), <http://www.proceduralfairness.org/~media/Microsites/Files/procedural-fairness/Tyler.ashx>; Jeffrey Fagan & Tom Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217 (2005).
- ²⁷ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 1-2, 9.
- ²⁸ See Tamar R. Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J. L. & POL’Y 53 (2012).

- ²⁹ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 1.
- ³⁰ COST OF PROBATION ISSUE BRIEF, *supra* note 20, at 3; COST OF PROBATION INFOGRAPHIC, *supra* note 20; Mary Ann Scali & Hillela Simpson, *The Problem with Making Children Pay for Probation Supervision*, in NAT'L CTR. FOR STATE COURTS, TRENDS IN STATE COURTS: FINES, FEES, AND BAIL PRACTICES: CHALLENGES AND OPPORTUNITIES 58 (2017), <http://www.ncsc.org/-/media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx>. See also Mary Campbell McQueen, *Preface*, in NAT'L CTR. FOR STATE COURTS, TRENDS IN STATE COURTS: FINES, FEES, AND BAIL PRACTICES: CHALLENGES AND OPPORTUNITIES 1 (2017), <http://www.ncsc.org/-/media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx>; Elizabeth Hines, *View from the Michigan Bench*, in NAT'L CTR. FOR STATE COURTS, TRENDS IN STATE COURTS: FINES, FEES, AND BAIL PRACTICES: CHALLENGES AND OPPORTUNITIES 36 (2017), <http://www.ncsc.org/-/media/Microsites/Files/Trends%202017/Trends-2017-Final-small.ashx> (noting a similar trend in criminal court).
- ³¹ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 2 n.2, 4-5.
- ³² See generally U.S. DEP'T OF JUSTICE, PROMISING VICTIM-RELATED PRACTICES AND STRATEGIES IN PROBATION AND PAROLE ch. 3 (1999), <https://ojp.gov/ovc/publications/infores/probparole/chap3.htm>.
- ³³ DOUGLAS THOMAS & MARY HUNNINEN, NAT'L CTR. FOR JUV. JUST., MAKING THINGS RIGHT: MEANINGFUL COMMUNITY SERVICE FOR JUVENILE OFFENDERS 2 (2008) [hereinafter MAKING THINGS RIGHT], https://victimsofcrime.org/docs/restitution-toolkit/e2_ncjj-juvenile-community-service-2008.pdf?sfvrsn=2; Anne Larason Schneider & Jean Shumway Warner, *The Role of Restitution in Juvenile Justice Systems*, 5 YALE L. & POL'Y REV. 382, 389-90, 394 (1986), <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1107&context=yldr>.
- ³⁴ Schneider & Warner, *supra* note 33, at 394-95.
- ³⁵ See MAKING THINGS RIGHT, *supra* note 33, at 3; PACIFIC INST. FOR RES. AND EVALUATION, RESTTA NATIONAL DIRECTORY OF RESTITUTION AND COMMUNITY SERVICE PROGRAMS: TYPES OF PROGRAMS AND SERVICES (Peter R. Schneider & Matthew C. Finkelstein eds., 1998), <https://www.ojjdp.gov/pubs/restta/types.html>.
- ³⁶ See MAKING THINGS RIGHT, *supra* note 33, at 9.
- ³⁷ *Id.*
- ³⁸ See *id.*
- ³⁹ The Massachusetts Juvenile Probation Screening Assessment Tool (J-PAST) notes that even youth receiving a high failure to appear (FTA) score in fact appear 75% of the time. J-PAST TALKING POINTS, YOUTH ADVOCACY DIVISION (Sept. 2015), <https://www.publiccounsel.net/ya/wp-content/uploads/sites/6/2014/08/What-Every-Lawyer-Should-Know-About-the-Juvenile-Probation-Arrestment-Screening-Tool-JPAST.pdf>.
- ⁴⁰ See, e.g., *Commonwealth v. Gomes*, 407 Mass. 206, 212 (1990) (holding that a defendant cannot be incarcerated for failure to pay a fine without a determination of ability to pay).
- ⁴¹ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 7.
- ⁴² See, e.g., N.C. GEN. STAT. ANN. § 7B-2506(4) (West 2013) (“the court shall not require the juvenile to make restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution”); WASH. REV. CODE ANN. § 13.40.190(d) (West 2015) (“If the court determines that a juvenile has insufficient funds to pay and upon agreement of the victim, the court may order performance of a number of hours of community restitution in lieu of monetary penalty, at the rate of the then state minimum wage per hour.”); *In re Davis*, 126 N.C. App. 64 (1997) (reversing disposition orders requiring four juveniles to each pay \$1,000 in restitution where the state presented insufficient evidence to support \$4,000 in damages). See generally LaToya Powell, *Ordering Restitution in a Juvenile Delinquency Case*, ON THE CIVIL SIDE: A UNC SCHOOL OF GOVERNMENT BLOG (Sept. 20, 2017, 2:19 PM), <https://civil.sog.unc.edu/ordering-restitution-in-a-juvenile-delinquency-case/>.
- ⁴³ See Powell, *supra* note 42 (citing D.A.Q., 214 N.C. App. 535 (2011) (holding that restitution must be in the youth’s best interest)).
- ⁴⁴ See *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 1; *Dear Colleague Letter: Fines and Fees*, *supra* note 1, at 3-4; MASSACHUSETTS FINES AND FEES WORKING GROUP REPORT, *supra* note 22, at 9. See, e.g., *Gomes*, 407 Mass. at 212.
- ⁴⁵ *Advisory on Levying Fines and Fees on Juveniles*, *supra* note 3, at 1.