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Neighborhood Legal Services  
of Los Angeles County

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July 18, 2016

**BY EMAIL**

Judicial Council of California

Attn: Leadership Services Division, Special Projects

2860 Gateway Oaks Drive, Suite 400

Sacramento, CA 95833

Email: [FuturesCommission@jud.ca.gov](mailto:FuturesCommission@jud.ca.gov)

Dear Commission:

We, the undersigned, are civil rights and legal services organizations assisting low-income Californians in traffic court proceedings and with the reinstatement of suspended driver's licenses. Our clients owe high fines and fees, and are prohibited from driving simply because they cannot afford to pay. For the past several years, we have worked actively to create systemic change in the criminal justice system, starting with the reform of court-ordered debt imposition and collection practices.

We would like to thank the Commission on the Future of the California Courts (the Commission) for thoughtfully considering the ways to restructure our current criminal fines and fees system in order to restore procedural fairness and sensibility. We have several comments and recommendations, which we have set out below in the order of the Commission's goals/strategies.

**1. Increasing base fines for infractions and misdemeanors while eliminating surcharges, penalties, and assessments**

We strongly agree with the Commission that the "steep cost of infractions and misdemeanors is often out of reach for California's most economically disadvantaged citizens and is disproportionate to the offense." Too often, many of our clients are denied employment or are terminated from existing employment because their driver's licenses get suspended due to nonpayment of past-due traffic debt. If state action goes unchecked, this can lead to a massive downward spiral into unemployment, reliance on public assistance, and even homelessness, all of which would require significant and overwhelming public resources to correct.

The Commission's recommendation to increase base fines for infractions and misdemeanors while eliminating surcharges, penalties and assessments is insufficient. We have a concern that increasing the base fines will maintain, if not increase, the total balance owed on traffic infractions. For example, a \$35 base fine results in \$238 with all the penalty assessments and add-ons. Any suggestion that the base fine should approach \$238 now or in the future would render this recommendation meaningless. For our very low-income clients, increases to the base



fine to make the fine commensurate with the offense would still make the fine insurmountable given their limited financial resources. It does little to remedy the fact that California's most economically disadvantaged citizens are vulnerable to the collateral consequences of being unable to pay their base fines.

While there are no perfect solutions, we propose that the Commission consider a recommendation where fines and/or base fees are proportional to a person's income. This solution is based upon research and findings conducted in American jurisdictions in the late 1980s and 1990s, as well as currently well-developed and fledgling court projects in Puerto Rico and Europe.<sup>1</sup> We suggest that, the successes of these projects demonstrates that a renewal of an income-based fine structure in America is incredibly timely, and more critical than ever.

We recommend a sliding scale fining system based upon the gravity of the offense and the offender's daily income.<sup>2</sup> For example, in the case of Maricopa County, Arizona, the court implemented a "day fine" structure as an alternative to income-blind sentencing. Under this program, a defendant with a family of four with a daily income of \$50 was assessed at \$23 because of their dependents, and therefore the ability to pay was more accurately calculated.<sup>3</sup> Because this system results in a sliding scale dependent upon ability to pay at the time of sentencing, those who cannot afford payments will not be subjected to collections after sentencing. As an alternative measure, day fines present a workable solution for defendants convicted of crimes for which their income renders them unable to pay.

According to research by the Vera Institute of Justice, a system which expressly tailors the amount of a fine to the offender's ability to pay can, by increasing the efficiency of collection and enforcement efforts, both enhance the credibility and broaden the utility of the fine as a criminal sanction. By providing a scaling system, those convicted will be not only more able, but also more likely to pay the fine/fee amounts and produce revenue for the courts.

It should be undisputed that defendants convicted of the same offenses have widely varying abilities to serve the sentence imposed. Therefore, ability to pay must be taken into account at every stage of the proceedings, including after the judgment has been pronounced and prior to the closing of the case in the event that a change of circumstances occurs. Defendants are entitled, as a matter of law, where the ability to pay hearing can take place concurrently (e.g., arraignment, trial, sentencing). The court could easily implement such a process through its

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<sup>1</sup> Edwin W. Zedlewski, ALTERNATIVES TO CUSTODIAL SUPERVISION: THE DAY FINE, NATIONAL INSTITUTE OF JUSTICE (2010), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/230401.pdf>; 33 L.P.R.A. § 4683

<sup>2</sup> Edwin W. Zedlewski, ALTERNATIVES TO CUSTODIAL SUPERVISION: THE DAY FINE, NATIONAL INSTITUTE OF JUSTICE (2010).

<sup>3</sup> Susan Turner & Judith Greene, THE FARE PROBATION EXPERIMENT: IMPLEMENTATION AND OUTCOMES OF DAY FINES FOR FELONY OFFENDERS IN MARICOPA COUNTY, 21 Just. Sys. J. 1, 6-9 (1999), available at <http://www.justicestrategies.org/sites/default/files/publications/The%20Fare%20Probation%20Experiment%20Susan%20Turner%20and%20Judith%20Greene.pdf>



existing infrastructure for the authorization of fee waivers (e.g. FW-001). As a result, instituting a fee waiver process for these cases would require minimal if any additional court time or resources. In short, ability-to-pay assessments are critical to fair and meaningful consideration of a defendant's specific circumstances, while ensuring that the system is not unduly burdensome to many of our most vulnerable and working poor.

We propose the following modifications to the court's current debt collection practices:

1. Institute formal, consistent mechanisms to evaluate a defendant's ability to pay.
2. Ensure that every defendant is given the opportunity for an "ability to pay" determination as a pre-condition for the issuance of a "willful" failure to appear or pay a fine.
3. Allow community service for those who cannot afford to pay fines.
  - a. Allow community service hours to apply to civil assessment fees.
  - b. Credit community service hours at or above the state minimum wage.
  - c. Eliminate or waive sign-up fees for community service agencies.
4. Tie setting of fine/fee amounts to a person's actual ability to pay, as opposed to a default of charging the maximum fine amounts.
5. Adopt court rules that require judges to modify or vacate sentences if circumstances have changed.

## 2. **Depositing fine revenue into a single fund for distribution to the courts and state and local programs**

We agree with the Commission that the judicial branch's reliance on criminal fines and fees is improper and raises serious questions of due process. Under the current scheme, judicial officers materially benefit from determinations of guilt, resulting in a further denial of due process.

As noted in your detailed summary, the responsibility for collecting traffic court debt has been delegated by the counties to the courts. In 2002, counties were directed to send \$5 of every \$10 collected from a surcharge on court-ordered penalties back to the court.<sup>4</sup> In Los Angeles County, traffic courts are partially funded through fines and fees from traffic violations. In particular, revenues collected from Failures to Appear and civil assessment fees associated with the Failures to Appear under Cal. Penal Code § 1214.1 are deposited directly into the Trial Court Trust Fund, which directly benefits trial courts, and more specifically, the operating budgets of trial courts.<sup>5</sup> Operating budgets includes salaries, benefits, and public agency retirement contributions for

<sup>4</sup> Marcus Nieto, Cal. Research Bureau, WHO PAYS FOR PENALTY ASSESSMENTS IN CALIFORNIA?, 4 (Feb. 2006), available at <https://www.library.ca.gov/crb/06/03/06-003.pdf>

<sup>5</sup> See Cal. Gov. Code § 68085(a)(1) (describing the creation of the Trial Court Trust Fund, which apportions proceeds to the trial courts to fund trial court operations). See also Cal. Gov. Code §68085(a)(2)(B)(c)(2) (stating that the fees collected under Cal. Penal Code §1214.1 shall be deposited in the Trial Court Trust Fund)

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superior court judges and for subordinate judicial officers, which includes certain Commissioner positions.

The integrity of our judicial branch cannot be easily fixed by depositing fine revenue into a single fund for distribution to the courts and state and local programs. It just reorganizes the system in a way that preserves the problem. In general, we recommend that the courts draw their primary source of funding from the state's General Fund. Depending on court fines and fees to fund court operations may lead to unpredictable highs and lows in funding, as evidenced by the state Legislative Analyst's Office's observation that "revenue distributed from [reliance on criminal fines and fees] has steadily declined since 2010-2011." The General Fund is independent of the judicial system and does not depend on revenues raised from those who are struggling economically.

We are also wary that a single state-wide fund will not be sensitive to the local needs of each county. There must be some mechanism by which a county's contributions to the state-wide fund are returned proportionally to that county. Otherwise, there would be a net loss to counties like Los Angeles that comprise nearly a third of the state's court operations. Additionally, we are concerned about what "worthwhile programs" will be selected by the Governor and legislature to receive funding. The process would require full transparency as well as extensive community input. Additionally, we would strongly advocate that funding go to programs that would provide services for individuals who cannot pay their fines, i.e., mental health programs, public benefits programs, transitional housing programs, etc.

We propose that the Commission review the entire filing fee schedule. Wealthy litigants, especially corporations, should pay substantially greater fees to cover more of the actual cost of their litigation in the courts. It should not be an unreasonable policy that complex litigation requiring more court resources should warrant a higher filing fee. As long as the courts must rely to some degree on fines and fees to fund their operations, those dollars should not be coming from the pockets of those who are struggling just to put food on their tables."

### **3. Placing overall responsibility for collecting delinquent court-ordered debt in the state executive branch and not the courts and counties**

We agree with the Commission that "sound considerations of public policy" should permit collecting courts or counties to accept less than payment in full in satisfaction of court-ordered debt. Our clients can owe over \$10,000 in past-due traffic debt.

However, instead of designating a state agency to negotiate the consideration in full satisfaction of the obligation to the court, courts have the opportunity to fix the problem on the front end. If any base fines are increased, we propose that robust procedures, forms and policies be

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implemented to assess a person's ability to pay the base fine at every stage of the proceedings, including after the judgment has been pronounced and prior to the closing of the case in the event that a change of circumstances occurs..

We are concerned about the reliance on the Franchise Tax Board for collection services. FTB has a history of negatively handling criminal justice debt for low-income clients. FTB charges a high administrative fee.<sup>6</sup> It also garnishes wages, intercepts tax returns, levies savings in bank accounts, and acts to stall progress made towards economic stability for low-income people. Any agency that is charged with statewide collection responsibilities must not charge fees for low-income people, must not garnish or levy if the person continues to receive public assistance and/or has a gross income at or below a level that falls under the federal poverty line after garnishment, and must also provide a way for low-income people to reduce any collateral consequences of court-ordered debt.

Thank you for your consideration of these comments and recommendations. Please do not hesitate to reach out to any one of the undersigned authors of this public comment if you have further questions.

Best,

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<sup>6</sup> See Revenue and Taxation Code § 19280.