

# Pay or Prey

How the Alameda County  
criminal justice system  
extracts wealth from  
marginalized communities.



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All the clients who shared their stories with us

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## EXECUTIVE SUMMARY

Nationally, communities of color are suffering through widespread government-sanctioned wealth extraction. Local governments, constrained by shrinking budgets, routinely pass the costs of administering the criminal justice system onto individuals and their families by charging fees and costs. Stories of those impacted and the fight for justice have begun to dominate the national landscape.<sup>1</sup> Alameda County is no exception.

In 2016, Alameda County eliminated juvenile fees, which totaled \$2000 per juvenile individual on average.<sup>2</sup> This eventually led to the passage of a bill that made California the first state in the country to eliminate fees and court costs for juveniles.<sup>3</sup> But for adults, exorbitant criminal justice fines and fees remain the status quo. These realities are evident in the data. In total, the average adult on probation in Alameda County in 2018 may be assessed over \$6,000 in probation supervision fees, public defender fees, and sheriff's work alternative program fees.<sup>4</sup> The collections rates are consistently low, while the burden of court debt wreaks extraordinary havoc on the lives of individuals, who are disproportionately people of color trying to successfully reenter society. The current system is not only a manifestation of the racialization of the criminal justice system but also an example of how bad fiscal policy that exacts high pain for little gain contributes to wealth stripping of vulnerable communities. This white paper endeavors to provide evidence-based research and concrete stories of harm directly caused by a suite of criminal justice fees authorized by local county agencies and the Alameda County Board of Supervisors.

Fees for probation supervision, indigent defense services, and the Sheriff's Work Alternative Program are a serious financial burden on low-income individuals, creating insurmountable barriers to reentry and economic security with little measurable gain for Alameda County government stakeholders.<sup>5</sup>

These fees do not serve a punitive purpose, but rather operate solely to generate revenue. In 2009, at the height of a deep recession, the Alameda County Board of Supervisors increased fees for probation supervision from \$30/month to \$90/month and began charging new fees. In 2011, fees increased by more than 50% for indigent defense services provided by the public defender and court-appointed counsel. The Sheriff's Work Alternative Program experienced an increase in fees in 2007.

Despite state law allowing ability to pay determinations for criminal justice fees, individuals have consistently been assessed fees without such a determination in Alameda County. The result is that most people are, in effect, perpetually burdened by all their criminal justice debt long after serving their sentences in Alameda County.

Because of long-standing and pervasive racial bias at every juncture of the criminal justice system, criminal justice fees fall disproportionately on residents of color. The stark impacts are most readily apparent by observing the numbers of individuals on probation in Alameda County, the majority of whom are low-income African American residents of Oakland. Significant racial stratifications in income, wealth, and job stability make it so that high fees directly lead to disproportionate and inequitable harms on already economically vulnerable communities of color.

Considering the context of other economic wealth-stripping mechanisms embedded in the criminal justice system, criminal justice fees in Alameda County are causing high pain for families and low gain for local county government.

This paper concludes by recommending that the Alameda County Board of Supervisors repeal fees end collections, and discharge outstanding debt. This recommendation has been fully endorsed by the Probation Department, Public Defender, and Sheriff's Department.

## INTRODUCTION

Nationally, communities of color have been suffering through widespread government-sanctioned wealth extraction. This became even more apparent in the aftermath of the Ferguson protests following the death of Michael Brown.<sup>6</sup> In a scathing report by the Department of Justice,<sup>7</sup> investigators found what residents of Ferguson and surrounding jurisdictions already knew. Black residents made up 95% of people detained at the city jail for more than two days, 85% of driver's stopped, 95% of people charged with crimes relating to walking on roads, 94% of "failure to comply charges," and 92% of disturbing the peace charges.<sup>8</sup>

The report also found that a focus on generating revenue motivated police interactions.<sup>9</sup> Specifically, the report stated:

The City budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved ... The importance of focusing on revenue generation is communicated to Ferguson Police Department officers. Ferguson police officers from all ranks told us that revenue generation is stressed heavily within the police department, and that the message comes from City leadership.

The City's emphasis on revenue generation has a profound effect on FPD's approach to law enforcement. Patrol assignments and schedules are geared toward aggressive enforcement of Ferguson's municipal code, with insufficient thought given to whether enforcement strategies promote public safety or unnecessarily undermine community trust and cooperation. Officer evaluations and promotions depend to an inordinate degree on "productivity," meaning the number of citations issued. Partly as a consequence of City and FPD priorities, many officers appear to see some residents, especially those who live in Ferguson's predominantly African American neighborhoods, less as constituents to be protected than as potential offenders and sources of revenue.

Ferguson is not an outlier.<sup>10</sup> Across the country, local governments, constrained by shrinking budgets, routinely pass the costs of administering the criminal justice system onto individuals and their families by charging fines, fees and costs. Stories of those impacted and the fight for justice have begun to dominate the national landscape, and are beginning to spur significant reforms.<sup>11</sup>

This national movement has also found its way into California.<sup>12</sup> In Santa Clara County, Silicon Valley De-Bug has gained national attention for its criminal justice work and its pioneering of a "participatory defense model which taps the power of its larger community to support individuals charged with crime."<sup>13</sup> Similarly, the Chief of the Los Angeles Police Department has proposed "a plan that would allow thousands of homeless people to eliminate old bench warrants," something that could potentially purge hundreds of dollars in court ordered debt.<sup>14</sup>

In 2016, Alameda County eliminated juvenile fees, and in doing so, activated a national movement that made California the first state in the country to eliminate administrative fees for juveniles.<sup>15</sup> But for adults, high fines and fees remain the status quo. Recently, San Francisco not only repealed certain fees but also discharged \$32 million in outstanding court debt for over 21,000 people who have exited the criminal justice system.<sup>16</sup> This fiscal decision was made in recognition that; 1) the fees are assessed to low-income people who cannot afford to pay them; 2) increase barriers to reentry and the odds of recidivism; and; 3) are an anemic counterproductive source of revenue for the city and county of San Francisco.<sup>17</sup> We are on the cusp of similar broad change in Alameda County, which stands to bring about sweeping change for low-income communities of color in this county.

## Criminal Justice Fees for Adults in Alameda County

State law allows counties to recoup the costs of probation supervision and indigent defense fees, among other criminal justice fees. In Alameda County, these fees are as follows:

**Table 1**

Type	Amount	Penal Code Section
<b>Probation Department</b>		
Adult Supervision	\$90/month	PC 1203.1b(a)
Adult Investigation	\$710/case	PC 1203.1b, PC 1203.9(d)
<b>Sheriff's Department</b>		
Sheriff's Work Alternative Program	\$65 + \$12/day	PC 4024.2
<b>Public Defender</b>		
Adult Public Defender Fees	Depends on # of appearances	PC 987.5, 987.8

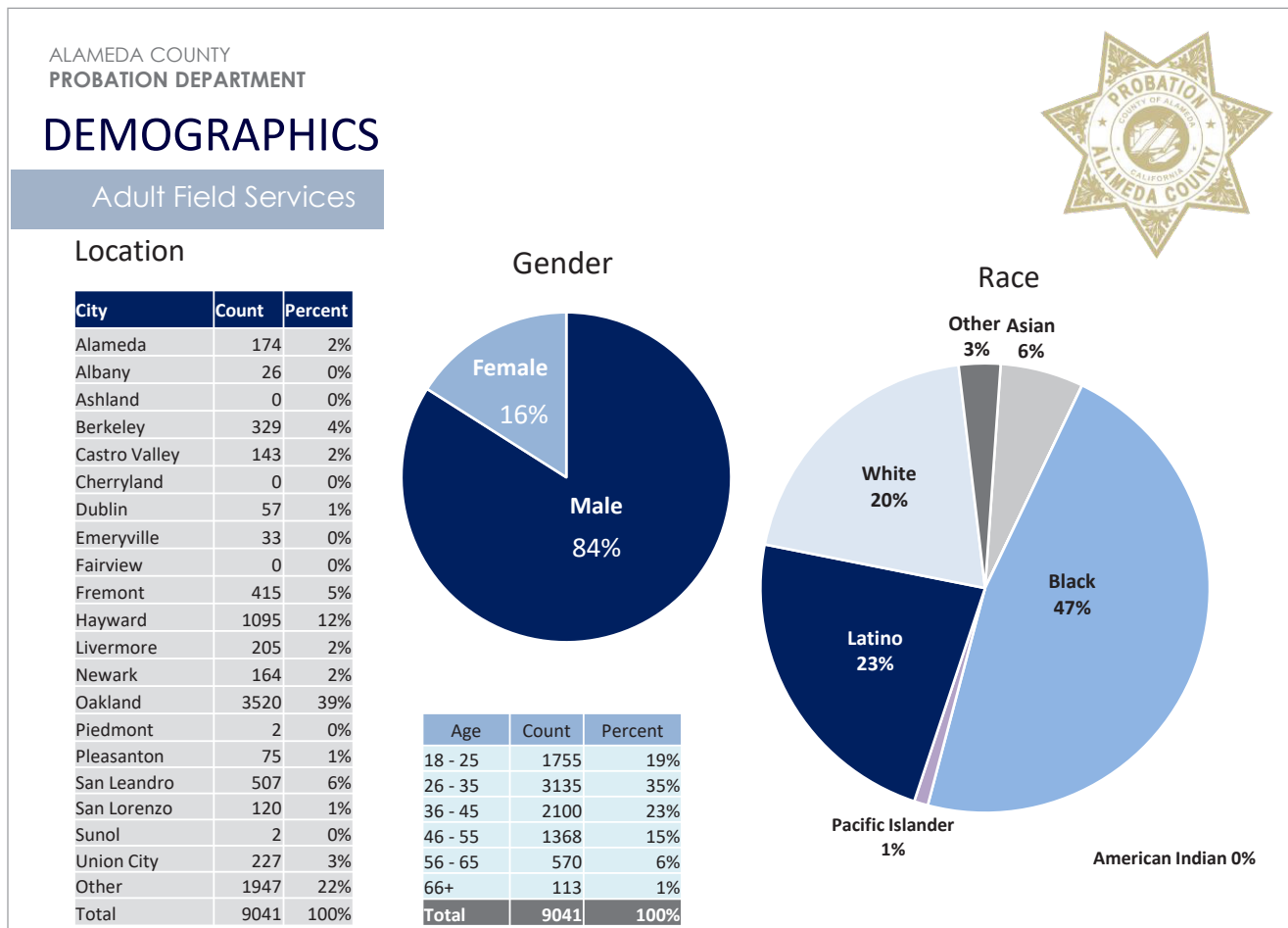
Each county department - the Probation Department, the Public Defender's Office, and the Sheriff's Department - is governed by a different set of internal policies and practices with regard to the fees in question. Each of these will be laid out in the following sections: (1) fees for probation, (2) fees for the public defender's office, and (3) fees for the Sheriff's Department.

### **Snapshot of Individuals in Alameda County**

In 2017-2018, the Alameda County Probation Department reported that there were 9,041 adults receiving some form of supervision from the Probation Department.<sup>18</sup> Of these 9,041 people, 4,625 are actively supervised cases and 4,416 are banked cases (a lower level of supervision that often requires checking in using an electronic kiosk instead of meeting in person with a probation officer).<sup>19</sup>

Although Black residents only represent 11.3% of Alameda County's population, Black individuals represent 47% of its probation population. Latinos represent 23% of people on probation.<sup>20</sup> Asian and Pacific Islanders represent 7%.<sup>21</sup> All said, 77% of Alameda County's individuals are people of color. 84% of individuals are male.<sup>22</sup> Over 50% of individuals on probation are between the ages of 18-35.<sup>23</sup> Roughly 40% of the people on probation live in Oakland.<sup>24</sup>

## Fees for Probation



Given the demographics of individuals on probation in Alameda County, paired with the widening racial inequities in the City of Oakland where almost 50% of individuals live, it is clear that the fees impact low-income people of color residents who have the fewest resources to spare. In April 2009, at the height of the recession, the Board of Supervisors voted to increase the pre-charge probation investigation report fee from \$250 to \$710 and the monthly probation supervision fee from \$30 to \$90 per month. In December 2009, the Board also introduced three new fees for drug testing (\$28.68/test), electronic monitoring (\$15/day), and record sealing (\$150/case). Today, in Alameda County, individuals are charged monthly probation supervision fees of up to \$90 per month, while pre-charge investigation reports cost \$710. The supervision fees for the entire term of probation are charged up front in full, which can be up to \$6,100 for a standard 5-year probation sentence.

**Table 2**

Net Monthly Income	Investigation Report Fee	Supervision Fee
\$0 - \$750	\$250	\$30 per month
\$751 - \$1,000	\$365	\$45 per month
\$1,001 - \$1,500	\$480	\$60 per month
\$1,501 - \$2,000	\$595	\$75 per month
\$2,001 and up	\$710	\$90 per month

Alameda County charges some of the highest probation fees in the San Francisco Bay Area. Below is an overview of what other Bay Area counties charge for probation fees and how Alameda County compares.<sup>25</sup>

**Table 3**

County	Total	Investigation Report Fee (per case)	Supervision Fee (monthly)
		<i>1 case</i>	<i>60 months</i>
Santa Clara	\$7,050	\$450	\$110
Alameda	\$6,110	\$710	\$90
San Mateo	\$4,865	\$365	\$75
Contra Costa	\$3,176	\$176	\$50
San Francisco	\$0	\$0	\$0

*Current Ability to Pay Practices May Not Be Compliant with State Law*

**Required Ability to Pay Determinations Are Not Being Performed**

Under state law, the probation officer “shall make a determination of the ability of the individual” to pay for probation supervision, a pre-charge investigation report, and for processing a jurisdictional transfer.<sup>26</sup> Yet consistently, in Alameda County, we have encountered clients that have had no ability to pay determinations conducted before being assessed fees.

Through a combination of information gleaned from Public Records Act requests as well as meetings with the Alameda County Probation Department, we have determined that the Probation Department is not currently conducting ability to pay determinations for individuals. This is both in violation of statute and in violation of their own internal manual.

Penal Code § 1203.1b (a) states that:

In any case in which an individual is convicted of an offense..., **the probation officer... shall make a determination of the ability of the individual to pay all or a portion of the reasonable cost of” any probation supervision, pre-investigation report, and jurisdictional transfer.**



When an individual is sentenced to formal probation in Alameda County, the Probation Department is required to conduct an interview with the individual. Before the interview, the individual completes a Statement of Assets form. The Statement solicits basic information about income, cash, and assets.

*Probation Manual: At the initial interview, the supervising deputy is to discuss in detail the individual's financial obligations ordered by the court and review the individual's "Statement of Assets Form."*

The Probation Department, upon reviewing the Statement of Assets when meeting with the individual, recommends the imposition of a Probation Investigation Fee and a monthly Probation Supervision Fee based on a "sliding fee scale." According to the Probation Department, these assessments are merely estimates and should not be regarded as the outcome of an ability to pay determination. In meetings, the Probation Department has stated that as a general practice, no comprehensive financial assessments are done for individuals, at the beginning of the probation term, at the end of their probation term, or at any point in between.

Probation officers are not adequately equipped to play the role of accountant or collections agent. This is evident from the fact that the Statement of Assets does not contain any information about expenses, housing, disabilities, or other conditions that may impact a person's ability to pay. Furthermore, the Probation Department generally does not calculate individualized reductions in probation fees, tailor payment plans to an individual's financial circumstances, or collect payments. Rather, a different county agency called Central Collections, which also does not conduct ability to pay determinations, is assigned this role.

Compounding the limitations of the Probation Department to conduct adequate financial assessments is the fact that individuals are not appointed an attorney for these initial meetings to review the Statement of Assets form. Public Defenders are not allowed in this process. Thus, individuals may not fully comprehend that they have the right to a meaningful assessment of their ability to pay. They may not fully understand the totality of the fees that are confronting them, to whom those fees are owed, and the consequences of failure to pay.

### **Real Life Story**

In 2018, C.O. was referred to the East Bay Community Law Center by a partner organization. C.O. had initially been placed on a probationary term in San Mateo County. During the pendency of his probationary term, C.O. was given an ability to pay determination by the San Mateo county probation office. Because C.O. is extremely low income, the result was that almost all of his probationary fees were zeroed out. Soon thereafter, C.O. successfully applied for an inter-jurisdictional transfer to have his probation moved from San Mateo County to Alameda County. His income was unchanged. Upon transferring his probation, however, C.O. was charged more for supervision in Alameda County than he was in San Mateo County. Regrettably, the Alameda County Probation Department did not do any independent assessment of CO's ability to pay. In order to rectify this situation, his legal advocates had to track down C.O.'s formal probation officer, acquire documents proving that this ability to pay assessment occurred and then provide this information to the Alameda County Probation Department.

Because of this practice, many individuals exit their probationary sentences still owing fines and fees. While it is laudable that probation terms are not extended for individuals who have yet to pay their debt in full, the way in which the practice is administered also runs counter to existing guidance within the Fines and Restitution (Collections Of) section of the Probation Adult Services Manual, which states that:

*Probation should not be allowed to expire with fines or restitution owing without returning the matter to Court. However, Unit Supervisors may authorize two exceptions, by notation on the reporting card, when there is no ability to pay: (1) welfare fraud restitution and (2) fines, fees and restitution orders. (Effective 12-09-02)*

The Probation Department sees the evaluation of an individual's financial status as within the Court's purview and not their own. In fact, in their own reports after individual interviews, the probation department writes, "The individual has been advised of the amount(s) and of the right to have a Court hearing with counsel concerning his ability to pay, pursuant to Section 1203.1b of the Penal Code."

### No Process to Pursue Fee Waiver or Reduction If One Becomes Unable to Pay

Making matters worse, there is no infrastructure in court to address problems of inability to pay probation fines and fees. First, even though some individuals are advised of the right to a court hearing on their ability to pay, not all are advised of that right and many people fear going back to court, cannot afford to take the time off work or school, cannot afford child care, and cannot leave a sick dependent. Second, and importantly, judicial officers have, by and large, ceased performing ability to pay hearings in court. In a memo dated September 28, 2016, the Presiding Judge of Alameda County Superior Court<sup>27</sup> indicated that judges would not conduct ability to pay hearings. Instead, they require that all ability to pay discussions occur during the plea negotiations between the public defender and the district attorney. This decision was made in the name of judicial economy and efficiency, but deprives individuals of a fair and neutral arbiter to preside over disputes about an individual's financial hardship.

Financial Hearing Officers are available at the court and, on paper, do perform ability to pay determinations. However, their reach is limited. They only have the authority to address inability to pay indigent defense fees, and do not have authority to take into account probation supervision fees, court fines, restitution, or a host of other criminal justice fees.

### Lack of Transparency about the Actual Costs of Probation Supervision

Though the law requires that "the reasonable cost of...probation supervision...shall not exceed the amount determined to be the actual average cost thereof,"<sup>28</sup> there is no public information available about the "actual average cost" of probation supervision. Nor is there any publicly available information about the difference in actual average costs of various types of probation supervision. In the past, the Probation Department has used salary and equipment costs as the basis for the "actual average cost" of all probation. The rationale being that a probation officer still needs to be employed and still has a case load, even if the individual under supervision is not meeting with the probation officer but checking in via some other method. The practical effect is that every individual is charged the same amount of probation supervision fees upfront regardless of what his or her individualized supervision entails. For example, there is no data available on the difference in costs of supervision when an individual is checking in via an electronic kiosk versus reporting to a live person. In the absence of information about the average cost of supervision services, serious questions arise about whether the cost of probation supervision is in fact correlated to the actual average cost of supervision.

**Low Collections Rate**

State law authorizes counties to charge fees to help recoup costs of probation and other programming. Yet, data from the Probation Department, County of Alameda Central Collections Unit, and the Alameda County Superior Court shows that the collections rates for criminal justice fees are consistently low and decline considerably as the debt ages.

Chief Probation Officer Wendy Still provided the most up-to-date data at the Alameda County Public Protection Committee Hearing on September 13, 2018. In the 2017-2018 financial year, Alameda County collected less than \$800,000 in adult probation, investigation, diversion and drug testing fees from a population from more than 35,000 individuals receiving probation services. However, the total outstanding balance on these probation-related fees for the year in Alameda County was more than \$21.3 million. In all, only 4% of outstanding debt was collected by Alameda County this past year.

The following table below contains probation data from the 2017-2018 financial year.<sup>29</sup>

**Table 4**

Adult Probation Fee Type	No. of Individuals with Outstanding Balance	Outstanding Balance on All Cases	Average Amount Outstanding Per Individual	Amount Paid in FY 17/18	Amount Paid in FY 17/18, as a % of Outstanding Balance
Adult Probation Investigation Fees	27,267	\$5,591,307	\$205	\$233,917	4%
Adult Probation Supervision Fees	7,148	\$15,000,266	\$2,099	\$577,816	4%
Misc. Fees - Diversion - Drug Test/ Lab Fees		- \$753,567 - \$2,935		- \$6,117 - \$868	- <1% - 30%
<b>Total Adult Probation Fees</b>	34,415	\$21,348,071	\$598	\$798,718	4%

**Fees for the Services of a Public Defender**

The landmark U.S. Supreme Court case *Gideon v. Wainwright* guaranteed indigent individuals the right to an attorney at no expense.<sup>30</sup> In doing so, the nation’s high court recognized that court-appointed attorneys are often the last, and only, line of defense for poor individuals in the criminal justice system. The American Bar Association estimates that a staggering 85 to 95 percent of people accused of crimes cannot afford their own lawyer.<sup>31</sup>

In Alameda County, the public defender’s office is the provider of critical free legal defense services for nearly 40,000 people annually who cannot afford counsel.<sup>32</sup> Yet, “free” public defense often comes with hidden costs. An indigent individual is required to pay a \$50 “registration fee” upfront to be represented by a public defender.<sup>33</sup> At the termination of a case, a judge sentences an individual to reimburse the public defender’s office at an amount commensurate with the number of appearances and hearings the public defender made in the course of the case.<sup>34</sup>

These public defender fees interfere with the right to counsel and hurt California’s most vulnerable people, including homeless individuals, disabled individuals, immigrants, and very low-income families.<sup>35</sup> They also add to the mounting criminal justice debt that hurts Californians and their families.

The fee table is as follows:

**Table 5**

Fee Table	1983-2011	2011-Present
<b>Misdemeanor</b>	\$100 for 3 or fewer appearances	\$150 for 3 or fewer appearances
	\$200 for 4+ appearances	\$300 for 4+ appearances
	\$300 for motions, trials or other evidentiary proceedings + \$50 each additional session	\$450 for motions, trials or other evidentiary proceedings + \$75 for each additional session
<b>Felonies</b>	Same as misdemeanor)	\$300 for 3 or fewer appearances
	\$100 for 3 or fewer appearances	\$500 for 4+ appearances
	\$200 for 4+ appearances	\$500 for motions, trial or other evidentiary proceedings + \$175 for each additional session <sup>36</sup>
	\$300 for motions, trials or other evidentiary proceedings + \$50 each additional session	

### Current Ability to Pay Practices May Not Be Compliant with State Law

In order to qualify for Public Defender services, an individual is required to fill out a “financial statement form” and make a declaration of their financial status under penalty of perjury. The form empowers the Public Defender’s Office “to make any inquiries necessary to verify [an applicant’s] Financial Statement including checking [their] employment, bank records, DMV records, and consumer credit reporting agencies.”<sup>37</sup>

From an analysis of a random sample of 152 financial statement forms, the average monthly income of the clients represented by the public defender was \$966. More than half of those who qualified for indigent defense services were unemployed. *Brendon Woods, Public Defender of Alameda County*<sup>38</sup>

California state law provides that “[n]o individual shall be denied the assistance of appointed counsel due solely to a failure to pay the registration fee.”<sup>39</sup> Moreover, “no fee shall be required of any individual that is financially unable to pay the fee.”<sup>40</sup> In Alameda County, a public defender may ask that a judge waive the public defender fees. Individuals are oftentimes referred to the Financial Hearing officer, who requires that the individual attend a separate financial hearing within 20 days of the date of sentencing. However, the Financial Hearing Officer has limited hours and is not always accessible in all courthouses. For example, the East County Hall of Justice, which serves South County, does not have a Financial Hearing Officer. Instead, there is only one clerk available one day per week (Friday). Rene C. Davidson Courthouse has no Financial Hearing Officer available at any time.

Making things worse, to the extent that individuals are given an initial financial assessment regarding their ability to pay, it is unclear whether any subsequent process allows for individuals to declare a change in their financial circumstances.

### Low Collections Rate

For the county, public defender fees were initially proposed as a way to raise revenue for the underfunded Public Defender’s Office. In fact, in Alameda County, these costs were recommended to be increased by the Public Defender’s Office in 2011.<sup>41</sup> In reality, however, even with the increased fees, the collections rate remains low.

Below is data relating to the collection of public defender fees presented by the Public Defender’s Office to the Alameda County Public Protection Committee on September 13, 2018:

**Table 6**

	Fiscal Year					
Description	2014	2015	2016	2017	2018	Total
Open Cases	41,355	39,865	39,378	36,291	34,056	190,945
Attorney Fees	\$270,353	\$278,804	\$258,931	\$243,693	\$195,868	\$1,247,649
Registration Fees	\$11,257	\$27,925	\$26,951	\$19,761	\$13,310	\$99,204
<b>Total</b>	<b>\$281,610</b>	<b>\$306,729</b>	<b>\$285,882</b>	<b>\$263,454</b>	<b>\$209,178</b>	<b>\$1,346,853</b>

On average, over the last 5 years, the Public Defender’s office collected \$269,370, which is a fraction of what remains uncollected. It is unclear how much the Public Defender actually assessed and how much was collected. Relatedly, it is unclear what the collections costs are.

### **Fees for the Sheriff’s Work Alternative Program**

Penal Code Section 4042.2 provides that the Board of Supervisors may authorize the sheriff to offer a voluntary program under which a person may participate in a work release program in lieu of incarceration. In Alameda County, this program was approved by the Board of Supervisors in 1982 and is known as the Sheriff’s Work Alternative Program, commonly called “SWAP.” The Sheriff’s Work Alternative Program is one of the few alternatives to incarceration where a person can avoid one day in a jail cell in exchange for one day of service to the sheriff or local community. Individuals can perform any of the following: manual labor to improve or maintain public facilities, manual labor in support of nonprofit organizations, performance of graffiti cleanup, performance of weed and rubbish abatement on public and private property, and performance of house repairs or yard services for senior citizens and senior centers, among other activities. Typically, an individual is sentenced to SWAP by a criminal court judge as a condition of probation for a misdemeanor or felony offense. SWAP sentences can range from a few days to more than 30 days.

Because of deeply entrenched biases at all stages of the criminal justice system from traffic stop to arrest to conviction, Penal Code section 4024.2(e) permits the Board of Supervisors to prescribe a “program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person according to his or her ability to pay.” In Alameda County, the Sheriff’s Office requires a “registration fee” of \$65 and a daily fee of \$12 to participate in SWAP.<sup>42</sup> The entire fee is calculated upon registration and a lump sum must be paid upfront in order for the person to enroll in the program. Individuals who cannot pay are denied the opportunity to enroll. Failure to enroll in SWAP is commonly treated as a failure to comply in criminal court and can result in jail time.<sup>43</sup> The result is that low-income people who are convicted of crimes end up incarcerated and separated from their families and loved ones, all because they are unable to afford an alternative to incarceration.

Many jurisdictions charge fees for SWAP. Below is how Alameda County compares to the fees charged in other counties:

**Table 7**

County	Daily Cost	Admin Fee
Alameda	\$12.00	\$65.00
Contra Costa	\$16.00	\$125.00
Fresno	\$10.00	\$60.00
San Francisco	\$0.00	\$0.00

In 2007, fees were increased from \$55.00 to \$65.00 for the administration fee, and \$8.00 to \$12.00 for the daily fee.

### Current Ability to Pay Practices May Not Be Compliant with State Law

The Alameda County Sheriff’s Office does not have a formal process for determining a person’s ability to pay. On the website, there is no mention of a financial hardship waiver or a reduction in fees based on a person’s proven inability to pay. There is also no formalized process to obtain information about a person’s income, assets or expenses. Finally, there is no information publicly available about the pro rata rate of administration. If someone cannot afford to pay, the Sheriff’s Department refers the individual back to the sentencing court.<sup>44</sup> This places a significant hindrance on their ability to comply with the terms of their probation. As a result, many people who cannot afford to pay are in fact denied the chance to avoid incarceration, while those who do have the funds to spare can enroll, avoid jail, and stay in compliance with the court’s order.


### **Real Life Story**

M.T. was sentenced to the SWAP program for a misdemeanor conviction. As instructed, he went to the Sheriff’s office to enroll, where he learned that he would need to make full payment of an enrollment fee and a lump sum payment for the daily fees. Unable to pay, he left without enrolling. At his next court date, the court found him in noncompliance with the terms of his probation because he had not completed SWAP and sentenced him to 10 days in jail. This left M.T. emotionally distraught and jeopardized his already insecure temporary employment.




**Declining Collections Rate**

In financial year 2017, SWAP collected approximately \$327,000 in fees. However, the cost of running the program exceeded \$973,000. Nearly \$800,000 of those costs are allocated to salaries of the deputy sheriff, sheriff tech, and an account clerk who staff the program. In addition, collections revenues have steadily declined. The actual revenue that has been collected for the program has declined nearly 40% in the last five years. Since then, the sheriff’s department has received annual budget increases. Under the 2018-19 Alameda County budget, the sheriff’s office received \$404.75 million — about 12.76 percent of the overall budget of Alameda County.



## ACTUAL OPERATING COSTS

PERSONNEL Classification	Salaries	Overtime	Difference	Benefits	Total S&EB	# POS.	TOTAL COST
DEPUTY SHERIFF II	\$106,173.00	\$12,157.00	\$3,132.00	\$97,643.00	\$219,105.00	2	\$438,210.00
SHERIFF TECH II	\$61,554.00	\$7,048.00	\$1,816.00	\$42,458.00	\$112,876.00	2	\$225,752.00
ACCOUNT CLERK II	\$52,572.00	\$6,020.00	\$1,551.00	\$39,202.00	\$99,345.00	1	\$99,345.00
					<b>TOTAL S&amp;EB</b>		<b>\$763,307.00</b>
<b>SPACE ALLOCATION: Total space allocated to SWAP - 26,438 Sq. Ft</b>							
Labor							\$91,348.53
Refuse							\$13,025.05
Maint-Bldg							\$5,537.37
Floor & Paint							\$18,566.29
Electric							\$35,939.20
Gas							\$9,044.78
Water							\$3,376.73
							<b>TOTAL EXPENSES - FY 2018</b>
							<b>\$176,837.95</b>
<b>VEHICLE EXPENSES:</b>							<b>TOTAL VEHICLE EXPENSES - FY 2018</b>
							<b>\$33,413.98</b>
							<b>GRAND TOTAL SWAP EXPENSES</b>
							<b>\$973,588.93</b>



**Table 8**

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
<b>Budgeted Revenue</b>	\$641,000	\$523,992	\$489, 996	\$402,000	\$402,000
<b>Actual Revenue</b>	\$526,068	\$469,840	\$387,175	\$329,276	\$327,970

## HIGH COST TO COLLECTION

The extraordinarily low collections rates, however, do not take into account the actual costs involved in assessing and collecting fees. While it is unclear how many employees are involved in the process, Alameda County Central Collections did provide a breakdown of costs of collection by month.<sup>45</sup> On average, Central Collections spent \$135,000 per month on collection efforts. For the full year, they spent approximately \$1.6 million toward collection of adult fines, fees and restitution for all cases, resulting in a net loss of \$1.3 million.<sup>46</sup>

**Table 9**

Amount Referred	Collection for FY	Cost of Collection	Net Revenue
\$1,900,000	\$285,000	\$1,621,162.32	\$-1,336,162.32

### Low Likelihood of Collections for Outstanding Debt

According to Chief Still, as of August 2018, over \$21.3 million in supervision, investigation reports, and diversion reports fees remain outstanding.<sup>47</sup> The average outstanding amount per individual is \$2,099.<sup>48</sup>

More generally, the likelihood of collection on court and criminal related fees, fines, and restitution owed to the county is greatly reduced over time. For example, Quarterly Aging Analysis Reports provided by Central Collections showed an 8% collection rate on accounts less than 6 months old and a 0% collection rate on accounts older than 3 years.<sup>49</sup>

## IMPACTS AND HARMS

In this Section, we will discuss the impacts of high criminal administrative fees on adults and their families.

### **Criminal Justice Fees Inequitably Distributed Across Alameda County**

In California, people of color and their families are disproportionately forced to face the harsh consequences of criminal justice fines and fees. In California, people are charged for the cost of their own incarceration. The average conviction-related costs, including restitution and attorney's fees, are \$13,607.<sup>50</sup> One study found that 85% of people returning from prison owe some form of criminal justice debt.<sup>51</sup> As discussed, in Alameda County, the average adult is charged over \$6,000 in fees.

Entrenched and unchecked racial bias in the criminal justice system has led to the over-incarceration of people of color, which means that the costs of incarceration and court fees disproportionately affect men of color and their families. The California Department of Corrections and Rehabilitation found that in 2015, over 71% of prisoners were men of color.<sup>52</sup> More specifically, 42% were Hispanic and 29% were African American.<sup>53</sup> Considering that men of color make up over 71% of prisoners in California, they are disproportionately subject to the fines and fees associated with their sentences.

After accounting for median household income for White, Black and Latino families, the difference in impact is especially stark. Table 11 tabulates the percentage of county population by race, percentage of probation population by race, and the median household income by race. Though Black and Latino men and women comprise only 35% of the population of Alameda County, they comprise 70% of all individuals in Alameda County.



The median household income for Black and Latino households is \$45,749 and \$62,925, respectively. In the absence of any individualized ability to pay determinations, assuming that the average adult probation fees over 5 years (the average duration of probation in Alameda County) is the same across all groups, it would take Black residents 1.6 months to pay off the average amount of adult probation fees (\$6,110), while it would take White residents only 0.81 months. This analysis presumes that someone would be paying their entire income toward fees, which this is not always the case. In reality, the number of months required to pay down adult fees would inevitably be longer because there are other bills and financial obligations that people have to keep up with in addition to the fees.

**Table 10**

	% of County Population <sup>54</sup>	% of Probation Population <sup>55</sup>	Median Household Income <sup>56</sup>	Average Adult Probation Fees	# of Months Pay Toward Adult Fees
<b>Black</b>	12%	47%	\$50,061	\$6,110	1.60
<b>Latino</b>	23%	23%	\$68,850	\$6,110	1.17
<b>White</b>	51%	20%	\$99,868	\$6,110	0.81

## Economic Harm

According to A Look Into Probation, reports published by the Alameda County Probation Department, the average adult remains on probation in Alameda County for five years.<sup>57</sup> As a result, individuals can be assessed over \$6,000 in fees just for supervision and a pre-investigation report.

$$\text{\$90/month Supervision} \times 12 \text{ months} \times 5 \text{ years} = \text{\$5,400}$$

$$\text{\$5,400} + \text{\$710/case Investigation Report} = \text{\$6,110}$$

Notably, as displayed in Table 2, individuals with a net monthly income of \$750 in Alameda County are expected to pay a \$250 investigation fee along with the \$30 monthly supervision fee. Making up more than 37% of an individual’s monthly income, such costs are not realistically affordable.

In Alameda County, conviction-related fees can lead to onerous private debt collection actions, wage garnishments, bank levies, and asset seizures being taken against a debtor to satisfy the debt obligation. Such actions impinge upon economic security and exacerbate problems for people who are vulnerable to poverty and homelessness.

When a person completes their probation still owing criminal justice fees, the outstanding balance is converted to a “civil judgment.” The California Franchise Tax Board, a state agency that uses a range of collections tactics to collect, is authorized by law to pursue civil judgments. The Franchise Tax Board will garnish up to 25% of wages, and levy any and all bank accounts in the individual’s name. This process can go on indefinitely, because unlike standard civil judgements, those for criminal justice fees have no statute of limitations.<sup>58</sup>

### Real Life Story

M.B., a recipient of food stamps and SSI, was living in a sober living facility when the Franchise Tax Board levied the entirety of her bank account to satisfy criminal justice debt in the amount of over \$1,800. This sum had taken her months to save up from her public assistance dollars and help from family and friends. She had been planning to find a place of her own after becoming sober. However, the Franchise Tax Board emptied her bank account without determining her ability to pay.

Not only will the Franchise Tax Board initiate extreme measures to collect on debt, banking institutions will also impose “legal processing fees” up to \$150 for processing a bank levy. These fees are taken directly out of a person’s available funds with very little warning and without due process of law.

### Real Life Story

T.G. had only \$300 in her bank account, which was extracted from her account to cover \$165 in criminal justice debt and a \$150 bank processing fee. T.G. lives in a homeless shelter. The only income that she has is a \$150 monthly stipend and food stamps.

## Housing

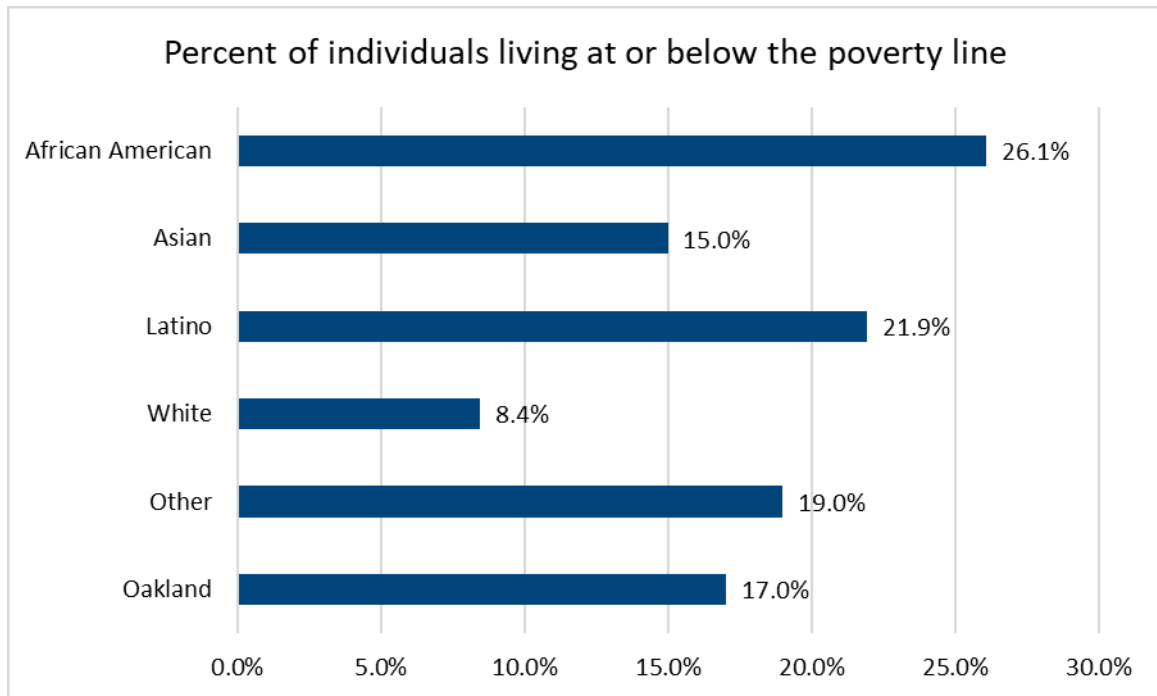
The same populations impacted by incarceration in Oakland are already impacted by high housing cost burdens. Black families in Alameda County “face the highest housing cost burden, with 63 percent devoting more than 30 percent of their income to housing.<sup>59</sup>” Latino families are not far behind with 58 percent being “housing cost burdened.<sup>60</sup>” These costs are so debilitating that nearly 1 in 5 of one survey’s participants’ families were unable to afford housing due to the loss of income that resulted from the family member’s incarceration.<sup>61</sup> The study found that, by paying fines and fees, many families were unable to pay rent or buy food.<sup>62</sup> When fines and fees resulting from incarceration are not paid, individuals are at risk of being sent back to prison or jail.

## Employment

According to a 2018 Equity Report by the City of Oakland, African American residents of Oakland were 2.12 times more likely than Whites to be unemployed.<sup>63</sup> African American residents of Oakland were 1.27 times more likely than Whites to not be in the labor force.<sup>64</sup> African American residents of Oakland were most likely to be living at or below the federal poverty level (26.1%), compared to 21.9% of Latinos, 15.0% of Asians, and 8.4% of Whites. This means that more than one in four African Americans and more than one in five Latinos were living at or below the federal poverty level in the City of Oakland. African American residents of Oakland were 3.09 times more likely than Whites to be living at or below the federal poverty level.<sup>65</sup>

In summary, Alameda County residents of color and White residents are not similarly economically situated. Residents of color, primarily African Americans, face formidable economic inequities that have led to significant and well-documented generational income and wealth stratifications that are too entrenched to ignore. Because criminal justice fees in Alameda County are uniformly imposed without proper consideration as to a person’s income or ability to pay, they are, in effect, placing disproportionate harms and impacts on Alameda County’s already-vulnerable communities of color.

**Data:**



Source: American Community Survey, 1-year PUMS, 2016 (Oakland PUMAs extend beyond the city boundaries, see maps here: [https://www.census.gov/geo/maps-data/maps/2010puma/st06\\_ca.html](https://www.census.gov/geo/maps-data/maps/2010puma/st06_ca.html))

## Reentry Prospects

Fees are more difficult to pay off in light of the fact that people sentenced to crimes are statistically more likely to be unemployed and low-income. Reliance on background checks have caused employers to screen out qualified job applicants who have criminal records, denying those individuals a job, steady income, opportunity for advancement, and potential for wealth acquisition. A criminal conviction not only leads to significant barriers to finding a job, but can also cause people to lose the jobs they currently have.

### Real Life Story

“My clients are deeply affected by probation fines and fees. In some cases, outstanding fines and fees will jeopardize a person’s ability to obtain a case dismissal or a reduction from felony to misdemeanor. This lowers their chances of securing employment, especially in fields that have job security and long-term benefits.” - Vinuta Naik, EBCLC Attorney

Private companies, licensed or otherwise authorized by local or state governments, are also increasingly charging “user fees” for programs that promote rehabilitation. For instance, drunk driving programs, domestic violence classes, anger management classes, and other types of “treatment” programs all charge registration fees and monthly program fees, in addition to a suite of fees for various rehabilitative services. For example, DUI programs can range from \$600 to over \$2,000, depending on the duration of the program. Inability to complete these programs is viewed by judges as failure to comply with the terms of the sentence, and can lead to incarceration or other criminal punishment. Thus, on top of their criminal justice fees, individuals are required to pay high fees to demonstrate their own rehabilitation or face detrimental consequences.

## **Family Stability**

For many low-income individuals of color, fees affect their health, education, employment, and the well-being of their families. High financial burdens fall on families, particularly women. Families of color are often forced to choose between paying the fees of incarceration and paying for basic necessities.

In a national survey by the Ella Baker Center for Human Rights, 63% of respondents reported that family members were primarily responsible for covering conviction-related costs. Nearly half also reported that their families could not afford to pay these fines and fees. 83% of family members primarily responsible for these costs were women. 1 in 5 families across income levels reported that they had to take out a loan to cover conviction-related costs. 43% of families found attorney's fees to be most difficult. 38% found court fees and fines to be most difficult.<sup>66</sup>

In the backdrop of this, a four-person household (two parents, one school-aged child, and one preschooler) would have to bring in \$98,296 annually to be self-sufficient in Alameda County.<sup>67</sup> Any allocation of household income to pay criminal justice fees diverts funds from basic living expenses for a family. This is especially salient in Alameda County where rising housing costs have caused unprecedented displacement of low-income individuals and families.

## **Loss of Driver's Licenses and Vehicle Registration**

California has some of the highest traffic fines and fees in the country.<sup>68</sup> Beyond the high monetary costs of traffic fines, there are significant consequences for failing to pay traffic fines on time, including a driver's license suspension. Between 2006 and 2013, the California DMV suspended nearly 17% of all drivers' licenses for individuals' inability to pay or failure to appear for traffic and parking violations.<sup>69</sup> In California, research shows that more drivers' licenses are suspended in communities that have higher populations of people of color.<sup>70</sup> This data shows that within large California cities, the counties with the highest driver's license suspension rates are also counties with predominantly non-white populations. For example, according to available data, the highest suspension rate in the Bay Area is in the Oakland zip code 94621, with a 7.4% suspension rate and a 34% Black and 58.1% Latino population.<sup>71</sup> As the figures from studies show, higher driver's license suspension rates map on to larger percentages of people of color.<sup>72</sup>

A factor adding to the inequity of traffic citations is racial profiling and over-policing, as well as implicit bias causing African Americans to suffer from heavier legal penalties. Disparities in policing have been recorded in Fresno, San Diego, Sacramento, as well as in the Bay Area.<sup>73</sup> Data in these areas reflect that, despite not having an increased likelihood of wrongdoing, African Americans and Latinos are more likely to be pulled over for traffic stops.<sup>74</sup> Considering the racial bias in traffic stops, Californians of color are even more likely to be cited for driving with a suspended license and thus suffer the aforementioned consequences.

The disproportionality of the fees and subsequent suspended drivers' licenses is even more significant because of the consequences resulting from those suspensions. The reality is that 78% of Californians have to drive to work.<sup>75</sup> Since many more people of color have their licenses suspended, they are more likely to lose their jobs because of suspended licenses. In 2014, 5,242,500 people in California had jobs where driving was a requirement.<sup>76</sup> Due to the disproportionate likelihood of driver's license suspensions, Californians of color are less able to obtain those jobs than white Californians. This demonstrates that traffic fines and fees negatively affect job opportunities.

When individuals fail to pay parking tickets on time, the fine increases. Eventually, if the fine goes unpaid, the owner is unable to renew their car registration. As cars must be registered with the DMV to be legally driven, failing to pay a parking ticket may ultimately result in the inability for anyone to drive the car legally. Additionally, driving a car without registration may incur fines and fees of its own. Similar to traffic tickets generally, there is no statewide, standardized amnesty program for parking tickets, and many counties do not have an amnesty program at all. Although there is a need for more demographic information specifically addressing parking tickets, due to the lack of amnesty programs and the blanket payment requirements, it is almost certain that parking tickets are having a disproportionate effect on low-income communities and communities of color.<sup>77</sup>

## Negative Credit

In the report, *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, a coalition of probation officers across the United States identify the negative impacts of legal debt. “[L]egal debt...can interfere with obtaining credit and making child support payments.... With poorer credit scores, individuals with legal debt also risk being denied employment, and they may be unable to secure credit cards, mortgages, leases or loans. Thus, employment, housing and transportation are all jeopardized....”<sup>78</sup> Indeed, because of the entrenched practices of over policing and abuse in certain communities, low-income individuals of color, by virtue of having more criminal justice debt, are disproportionately excluded from traditional forms of asset building due to inability to build credit. This in turn leads to a permanent and irremediable hindrance to wealth generation.

## RECOMMENDATION TO REPEAL CRIMINAL JUSTICE FEES IN ALAMEDA COUNTY

The City and County of San Francisco was the first county in the nation to successfully repeal probation supervision fees, electronic monitoring fees, and sheriff’s work alternative program fees. In its ordinance eliminating criminal justice fees, the Board of Supervisors of San Francisco acknowledged that “penalties can trap people in a cycle of debt, and low-income people and people of color are often the hardest hit.” The Board further acknowledged that by administering fees, the “government [became] a driver of inequality, creating additional layers of punishment for those moving through the criminal justice system.”<sup>79</sup>

In Alameda County, we are on the verge of similar change. The Alameda County Board of Supervisors has the power to repeal county ordinances and resolutions that impose criminal justice fees at the local level. The Probation Department, Public Defender, and Sheriff’s Department have all fully endorsed such legislation.<sup>80</sup>

“Fees” refers to fees charged to individuals for services of the Probation Department, including but not limited to probation supervision fees and investigation report fees; fees charged to individuals for representation by the Public Defender, including but not limited to registration fees and fees for all stages of criminal representation; and fees charged to individuals by the Sheriff’s Department, including but not limited to fees required to participate in the Sheriff’s Work Alternative Program.

We recommend the following:

**A. Stop All Fee Assessments Immediately**

To stop fee assessments against low-income individuals and families, the County should:

- Designate a point person to implement the cessation of fee assessments
- Inform all relevant county employees that no fees may be assessed, including, but not limited to:
  - Board of Supervisors
  - County Administrator
  - County Counsel
  - Chief Probation Officer
  - Collections/Revenue Officer
  - Public Defender
  - District Attorney
  - Presiding Judge
  - Court Executive Officer
- Update applicable online payment platforms and relevant county webpages to inform visitors that fees cannot be assessed
- Update all personnel manuals and training materials to inform county employees that fees will no longer be assessed

**B. End All Collection Activity**

To end fee collection activity the County should:

- Write off all accounts receivable balances for fees as satisfied
- Cease all solicitation of payment for previously assessed fees, including from third party debt collectors
- Inform all impacted individuals by mail that unpaid previously assessed fees are no longer owed and that no payment will be collected or accepted
- Update applicable online payment platforms and relevant county webpages to inform visitors that no payments on fees will be collected or accepted
- Recall all previously assessed fees referred to the Franchise Tax Board’s Court-Ordered Debt Collections and/or the Interagency Intercept Collection Program

**C. Discharge All Previously Assessed Fees**

To discharge previously assessed fees, the County should:

- Satisfy and release all fee agreements and stipulations entered into between the county financial evaluation officer and impacted individuals, and notify them in writing
- File an acknowledgement of satisfaction with the court of all relevant fee judgments and serve notice to impacted individuals

#### **D. Reimburse individuals who were improperly assessed fees**

Following the repeal of juvenile cost of care fees in Contra Costa County, the Board of Supervisors approved refunds for cost of care fees assessed to youth whose cases were dismissed or who were found not guilty.<sup>81</sup> Prompted by research mirroring the findings above, the Board's intent in refunding families was aimed at "removing a burden on families and instead supporting them to be successful."<sup>82</sup> As Supervisor John Gioia stated, "the greater community benefit is correcting a wrong that should never have occurred and acknowledging that we want to right that wrong."<sup>83</sup>

As previously stated, criminal justice fees fall disproportionately on residents of color, which makes the levying of these fees an issue of racial justice.<sup>84</sup> The myriad ways that these fees negatively affect the lives of those charged militate in favor of reimbursing individuals who were improperly charged. When we consider the ripple effects that come with diverting money from investments in health, education, and the welfare of one's self and family, it is clear that the collection of criminal justice fees has served only to reinforce cyclical poverty in Alameda's communities of color.

In order to repair predominantly Black and Latino communities that have suffered economic harm for years at the hands of county agencies, we cannot stop at ending collections; instead, we must address the wrongs that these collection practices have created by acknowledging the harm and investing in its correction.

Consequently, Alameda County must first commit to some form of reimbursement beyond the discharging of fines and fees. In order to carry this out, the county should commission a thorough study detailing the process of pursuing reimbursements and engage all three county agencies: the Probation Department, the Sheriff's Department, and the Public Defender's office. The parameters of reimbursements to be explored range from refunding those who paid upfront to participate in SWAP but failed to finish and were sent to jail, to those who had their probation terminated early but continued to be charged for the cost based on original fee assessments. In order to make reimbursements a reality, the onus must be on the county to investigate the logistics and implications. Such action would constitute the concrete, monetary reinvestment in communities of color that is needed to correct a history of predatory behavior.



## FOOTNOTES

- <sup>1</sup> Danielle Ziegelheim, *Grassroots Organizations Are Leading the Way on Criminal Justice Reform*, PACIFIC STANDARD (Aug. 14, 2018), <https://psmag.com/social-justice/the-grassroots-organizations-leading-criminal-justice-reform>.
- <sup>2</sup> S.B. 190, 678Chapter (Ca. 2017), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB190](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB190).
- <sup>3</sup> *Id.*
- <sup>4</sup> Letter from Donald H. Blevins Chief Probation Officer, Probation Department, to Board of Supervisors, County of Alameda (Mar. 11, 2009), [http://www.acgov.org/board/bos\\_calendar/documents/DocsAgendaReg\\_03\\_31\\_09/PUBLIC%20PROTECTION/Regular%20Calendar/Probation\\_Ordinance\\_Revise\\_Fee\\_Schedule.pdf](http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_03_31_09/PUBLIC%20PROTECTION/Regular%20Calendar/Probation_Ordinance_Revise_Fee_Schedule.pdf); Letter from Donald H. Blevins, Chief Probation Officer, Probation Department, to Board of Supervisors, County of Alameda (May 3, 2011), [http://www.acgov.org/board/bos\\_calendar/documents/DocsAgendaReg\\_05\\_10\\_11/PUBLIC%20PROTECTION/Regular%20Calendar/Public\\_Defender\\_fees\\_for\\_indigent\\_defense.pdf](http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_05_10_11/PUBLIC%20PROTECTION/Regular%20Calendar/Public_Defender_fees_for_indigent_defense.pdf); *Sheriff's Work Alternative Program*, ALAMEDA COUNTY SHERIFF'S OFFICE, [https://www.alamedacountysheriff.org/dc\\_swap.php](https://www.alamedacountysheriff.org/dc_swap.php) (last visited Sept. 21, 2018).
- <sup>5</sup> See e.g., Martin, Karin D., Sandra Susan Smith, and Wendy Still. *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*. New Thinking in Community Corrections Bulletin, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2017. NCJ 249976.
- <sup>6</sup> Jon Swaine, *Ferguson mired in sweeping racial discrimination, federal report finds*, THE GUARDIAN (Mar. 3, 2015, 3:00 PM EST), <https://www.theguardian.com/us-news/2015/mar/03/justice-department-racial-discrimination-ferguson-police>.
- <sup>7</sup> United States Dept. of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 6, (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).
- <sup>8</sup> Swaine, *supra* note 6.
- <sup>9</sup> United States Dept. of Justice, Civil Rights Division, *supra* note 2 at 9-15.
- <sup>10</sup> Tierney Sneed, *Ferguson's Problems Are Not Ferguson's Alone*, U.S. NEWS (Aug. 22, 2014, 6:18 PM), <https://www.usnews.com/news/articles/2014/08/22/fergusons-racial-problems-are-not-unique-to-ferguson>.
- <sup>11</sup> New York, which was making \$5 million dollars annually from phone calls made from within the City Jail, just made those calls free. Ziegelheim, *supra* note 1. Similarly, the State of Texas, recently renegotiated its contract with CenturyLink and reduced the cost of phone calls from \$0.26 per minute to \$.06 per minute. Zoe Greenberg, *Phone Calls From New York City Jails Will Soon Be Free*, NEW YORK TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/nyregion/phone-calls-free-nyc-jails.html>. Communities have organized to use collective power to bail out incarcerated women and unite them with their families for Mother's Day. Brandon Patterson, *Black Lives Matter is bailing out women for Mother's Day*, MOTHER JONES (May 12, 2017, 8:39 PM), <https://www.motherjones.com/politics/2017/05/black-lives-matter-mothers-day-bail-out/>.
- <sup>12</sup> Thomas Fuller, *California is the first state to scrap cash bail*, THE NEW YORK TIMES (Aug. 28, 2018), <https://www.nytimes.com/2018/08/28/us/california-cash-bail.html>.
- <sup>13</sup> Benny Evangelista, *Raj Jayadev, Visionary of the Year Nominee, tackles Justice Reform*, SAN FRANCISCO CHRONICLE (Feb. 16, 2017, 6:49PM), <https://www.sfchronicle.com/visionsf/article/Raj-Jayadev-Visionary-of-the-Year-nominee-10908656.php>.
- <sup>14</sup> Richard Winton, *LAPD chief proposes a 'radical solution': Eliminate old bench warrant for homeless people*, LOS ANGELES TIMES (Aug. 15, 2018, 5:00AM), <http://www.latimes.com/local/lanow/la-me-lapd-chief-homeless-amnesty-20180815-story.html>.
- <sup>15</sup> *Id.*



- <sup>16</sup> Trisha Thadani, *Criminal justice system fees for 21,000 waived*, SAN FRANCISCO CHRONICLE (Aug. 23, 2018, 6:00 AM), <https://www.sfchronicle.com/politics/article/Criminal-justice-system-fees-for-21-000-waived-13175850.php>.
- <sup>17</sup> THE FINANCIAL JUSTICE PROJECT SAN FRANCISCO & OFFICE OF THE TREASURER AND TAX COLLECTOR CITY AND COUNTY OF SAN FRANCISCO, CRIMINAL JUSTICE ADMINISTRATIVE FEES: HIGH PAIN FOR PEOPLE, LOW GAIN FOR GOVERNMENT, 9-10 (2018), [https://sftreasurer.org/sites/default/files/Criminal%20Justice%20Fees\\_High%20Pain\\_Low%20Gain%20FINAL.pdf](https://sftreasurer.org/sites/default/files/Criminal%20Justice%20Fees_High%20Pain_Low%20Gain%20FINAL.pdf).
- <sup>18</sup> Wendy Stills, Chief Probation Officer, Alameda County Probation Department, Final Budget Work Session 10 (June 27, 2017), [https://acgov.org/MS/OpenBudget/pdf/FY17-18/Probation%20Final%20Presentation%20Budget%20FY%2017-18\\_06\\_27\\_17.pdf](https://acgov.org/MS/OpenBudget/pdf/FY17-18/Probation%20Final%20Presentation%20Budget%20FY%2017-18_06_27_17.pdf).
- <sup>19</sup> *Id.* at 11.
- <sup>20</sup> *Id.* at 10. See U.S. CENSUS BUREAU, QUICKFACTS, ALAMEDA COUNTY, CALIFORNIA (last visited Sept. 23, 2018), (outlining population of Alameda County by race).
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.*
- <sup>24</sup> *Id.*
- <sup>25</sup> Letter from Stuart J. Forrest, Chief Probation Officer, San Mateo County, to Honorable Board of Supervisors (Dec. 19, 2011), [http://www.co.sanmateo.ca.us/bos.dir/BosAgendas/agendas2012/Agenda20120124/20120124\\_m\\_28.pdf](http://www.co.sanmateo.ca.us/bos.dir/BosAgendas/agendas2012/Agenda20120124/20120124_m_28.pdf).
- <sup>26</sup> PENAL CODE § 1203.1b(a) (2018).
- <sup>27</sup> Letter from Dennis J. McLaughlin, Supervising Judge, Alameda County, to FHJ Judicial Officers, District Attorney, Public Defender (Sept. 28, 2016) (on file with author) (“Because of the volume of dispositions made in the calendar departments, as well as the Court’s limited knowledge of the underlying facts, the Court is relying upon counsel to address fine issues (was there a citation [ ] OR release? Is there ability to pay the standard fine?) during negotiations, so these understands can be placed on the record before the plea is entered. If we address these issues before the case is called we will avoid surprises, have fewer matters passed for reconsideration, and expedite the process for staff, counsel, and defendants.”)
- <sup>28</sup> PENAL CODE § 1203.1b(a) (2018).
- <sup>29</sup> Wendy Stills, Chief Probation Officer, Alameda County Probation Department, Adult Services Probation Fees 6 (Sept. 13, 2018), [http://www.acgov.org/board/bos\\_calendar/documents/DocsAgendaReg\\_9\\_13\\_18/PUBLIC%20PROTECTION/Regular%20Calendar/Adult\\_Services\\_Fees\\_Probation\\_9\\_13\\_18.pdf](http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_9_13_18/PUBLIC%20PROTECTION/Regular%20Calendar/Adult_Services_Fees_Probation_9_13_18.pdf).
- <sup>30</sup> *Gideon v. Wainwright*, 372 US 335 (1963).
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