



## Debt Free Justice California

On January 8, the California Second District Court of Appeals issued a pioneering decision in the case of Velia Dueñas, a disabled, homeless mother of two. The court of appeals held that the trial court improperly imposed fines and fees against Ms. Dueñas by failing to assess whether or not she could actually afford to pay them, in violation of due process under the United States and California Constitution. The decision also shifted the burden of proving inability to pay from the defendant to the court, a significant departure from past precedent. Most importantly, the court recognized that **“imposing unpayable fines on indigent defendants is not only unfair, it serves no rational purpose, fails to further the legislative intent, and may be counterproductive.”**<sup>1</sup>

Debt Free Justice California (“DFJC”) applauds the court’s decision requiring that a defendant’s ability to pay be proven before a fine or fee is imposed. And, along with the court, we invite the Legislature to consider the Dueñas decision in creating new legislation to reduce the burden of fees on indigent individuals.

To be clear, we believe the most effective way to address the criminalization of poverty is through the elimination of criminal administrative fees, not through the strengthening of ability to pay practices, which are an ineffective approach to achieving racial and economic equity in the criminal justice system. Eliminating fees, on other hand, tackles the problem at its root, and leaves no room for collateral consequences. **We would also urge the legislature to do as the as the [LA Times recent editorial](#) suggested** and take a “comprehensive look at, and overhaul of, the justice system, [including fines] with the role of wealth and the impact of poverty in the forefront.”

Additionally, ability to pay determinations for fees are an inefficient way to raise revenue for the government. For example, in Alameda County, the rate of collection on probation supervision fees was just four percent.<sup>2</sup> In San Francisco, the Office of the Treasurer and Tax Collector found that more than 80 percent of probation fees went unpaid.<sup>3</sup> Furthermore, over 80 percent of individuals accused of crimes are indigent and qualify for the services of the Public Defender.<sup>4</sup> In light of this reality, counties either improperly charge low-income families and net

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<sup>1</sup> *People v. Dueñas*, Case No, B285645 at \*14 (Cal. 2nd Dist. Court App. Jan. 28, 2019), <http://www.publiccounsel.org/tools/assets/files/1106.pdf>.

<sup>2</sup> Alameda County Probation Department, Adult Services Probation Fees, presented at the Sept. 13, 2018 Alameda County Board of Supervisors Public Protection Committee, at slide 6, [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>3</sup> *Criminal Justice System Fees for 21,000 Waived*, San Francisco Chronicle (Aug. 23, 2018), <https://www.sfchronicle.com/politics/article/Criminal-justice-system-fees-for-21-000-waived-13175850.php>

<sup>4</sup> Laurence A. Benner, Eliminating Excessive Public Defender Workloads, 2011 A.B.A. CRIMINAL JUSTICE VOL. 2, [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_magazine/cjsu11\\_benner.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsu11_benner.authcheckdam.pdf).

little revenue, or they accurately determine that families lack the financial resources to pay a fine or fee.

Ability to pay also fails to effectively address pervasive racial and economic disparities caused by fines, fees and over-policing. A 2014 analysis of driver's license suspensions for inability to pay fines and fees in California found that zip codes with more than 20 percent of black residents were 95 percent more likely to exceed the statewide average of license suspensions. And in Los Angeles County black residents account for 33 percent of arrests made for driving with a suspended license, despite making up only 9.2 percent of the population.<sup>5</sup> Put simply, racially disproportionate treatment in the system leaves people of color with significantly more fines and fees, essentially creating a regressive tax on communities of color. Fines and fees that are automatically levied on individuals who find themselves involved within California's criminal justice system are unconstitutional burdens on indigent defendants, like Ms. Dueñas. These costs create hardship for indigent individuals forced to choose between paying for necessities like food, rent, and utilities and paying the county. When they have money for neither, people are subject to aggressive collection practices, including wage garnishment, tax refund intercepts, or even incarceration, as did Ms. Dueñas. By creating significant barriers for individuals seeking to rebuild their lives after a criminal conviction, fines and fees only perpetuate the cycle of poverty and can lead to recidivism.<sup>6</sup>

As outlined above, we strongly believe the best solution to addressing fees in the criminal justice system is elimination. A broader conversation should also happen around the purpose and impact of fines. However, should legislators decide to take on the court's invitation to amend existing statutes for consideration of ability to pay (acknowledging its inefficiencies and ineffectiveness), the burden of proof should fall on courts to show ability to pay and not on individuals to show their inability to pay, and individuals represented by the public defender should be presumed to not have the ability to pay.

For the reasons stated above, we ask that the Legislature consider instituting policies similar to those recently adopted in San Francisco and Alameda Counties.<sup>7</sup> Both counties have taken extraordinary measures to eliminate administrative fees associated with booking, electronic monitoring, probation, public defender representation, and the Sheriff's Work Alternative Program. These first-in-the-nation policies are groundbreaking steps toward reducing the criminalization of people of color and indigent people such as Ms. Dueñas. Any measures taken up by the Legislature should be in line with steps taken by local jurisdictions to repeal and address the impact of criminal fees. They should propel us forward toward a just future, not

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<sup>5</sup>For more information on racial disparities in policing see the *Amicus Curiae* prepared on behalf of Ms. Dueñas at <http://www.publiccounsel.org/tools/assets/files/1049.pdf>.

<sup>6</sup> Piquero, Alex and Jennings, Wesley. "Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders." September 2016.

<https://journals.sagepub.com/doi/abs/10.1177/1541204016669213>; White House Council of Economic Advisors. "Fines, Fees and Bail."

[https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215\\_cea\\_fine\\_fee\\_bail\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf)

<sup>7</sup> See <https://www.sfchronicle.com/crime/article/Alameda-County-looks-to-eliminate-fines-fees-for-13233067.php> and <https://www.eastbaytimes.com/2018/11/20/alameda-county-eliminates-some-criminal-justice-fees-that-saddle-inmates/>.

prolong the existence of a shameful, broken system. By passing legislation that repeals burdensome fees, California could lead the way in creating true a debt free justice system.