



December 11, 2020

**DFJC Responds to Attorney General Becerra's Reply Brief in *People v. Kopp***

On Wednesday, December 9, 2020, California Attorney General Xavier Becerra issued a reply brief on behalf of the State of California in *People v. Kopp*, “arguing that the imposition of unaffordable court user fees — which primarily serve to raise money for court processes and are not tied to culpability — on indigent criminal defendants statewide is unconstitutional.” Debt Free Justice California applauds Attorney General Becerra on his bold reasoning in his brief, and urges the California legislature to repeal all fees that are currently imposed on people in the criminal legal system.

Becerra argued that assessing criminal administrative fees on indigent Californians violates constitutional guarantees of due process and equal protection, and is an irrational mechanism to raise court revenue. He also underscored what impacted community members have been saying for years--that these criminal administrative fees cause extreme harm to system-impacted people but also to their families and loved ones who “cannot pay court fees without using moneys that normally would pay for the common necessities of life for the applicant and the applicant’s family.” These fees cause further harm by “subjecting indigent defendants to the unique harm of an unsatisfied criminal obligation, without any relationship to culpability or the goals of punishment.”

**We agree with Attorney General Becerra that it is unconstitutional, ineffective, and immoral to fund the criminal legal system on the backs of poor people. This is why it is imperative that we build on the Families Over Fees Act that eliminated 23 administrative fees, and work to eliminate ALL criminal administrative fees in California.**

In the reply brief, Becerra suggests that “a reasonable interim remedy would be to import into the criminal system the existing waiver-approach from civil cases,” where defendants can prove that they were receiving means-tested benefits, were within 125% of the Federal Poverty Level (FPL), or were otherwise indigent, and then receive a suspension or reduction in the fees. Because the criminal legal system is built on the criminalization of low-income and Black and Brown communities, importing the civil waiver process would have the practical effect of abolishing this subset of harmful fees for the vast majority of people charged with a crime. This is a welcome outcome.

However, in doing so, it would also keep in place an unjust system of fundraising off of the backs of communities under siege by the over-policing and over-arresting of low-income and Black and Brown people. A system that is not only unfair but inefficient in effectuating the outcome of raising money for court processes. We believe the only solution is to eliminate these fees all together, addressing the problem right at the root. Courts should be funded by proper budgeting not through a state-sanctioned predatory and regressive taxation scheme.

Making it easier for individuals on the margins to prove their inability to pay through waivers and presumptions based on receipt of public benefits and a formula such as the Federal Poverty Line is helpful but justice requires bolder action. The majority of people charged with criminal offenses are poor. By some estimates, a minimum of 60 percent and a maximum of 90 percent of all criminal cases involve indigent defendants. A 2018 report from the People’s Policy Project

found that the Black and White wealth gap is the primary factor in disproportionate incarceration rates. Our current criminal legal system is the unavoidable consequence of racialized wealth extraction and other policy decisions.

As a coalition, DFJC has been working towards the abolition of criminal legal fees and their racialized wealth stripping since 2017. We drafted and fought tirelessly for the passage of AB 1869, which eliminated 23 of the most harmful criminal administrative fees across California, because we have seen firsthand the racialized harm of the criminal legal system and the associated fees on Black and Brown communities. Due to over policing and targeted policing in Black and Brown communities, they are punished more frequently and harshly at a variety of discretion points. They are more likely to be arrested, incarcerated, and put on probation, and they serve longer jail and probation terms. Due to the racial wealth gap, Black and Brown people also pay a larger percentage of their income on criminal administrative fees.

These fees disproportionately harm low-income people and Black and Brown people, now more than ever. COVID-19 has further exposed the racialized economic and health structures of our country. The same Black and Brown communities that face over policing and higher rates of fees have been disproportionately impacted by the virus and by the subsequent economic impacts. Incarcerated people, mostly Black and Brown, caged in unsafe conditions, face explosive rates of viral infection. As communities face increased health costs and dramatic unemployment caused by COVID-19, the pain of these fees is higher than ever before.

**The only way to ensure that the criminal legal system no longer operates on the backs of poor, Black, and Brown communities is to stop assessing and collecting criminal administrative fees. Any solution that does not contemplate full abolition only shifts discretion and perpetuates existing racial biases in the system.**

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