

2020

The Crippling Costs of the Juvenile Justice System: A Legal and Policy Argument for Eliminating Fines and Fees for Youth Offenders

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THE CRIPPLING COSTS OF THE JUVENILE JUSTICE SYSTEM: A LEGAL AND POLICY ARGUMENT FOR ELIMINATING FINES AND FEES FOR YOUTH OFFENDERS

ABSTRACT

Across the United States, approximately one million youth appear in juvenile court each year. In almost every state, youth and their families face monetary charges for a young person's involvement in the juvenile justice system. Too often the inability to pay subjects juveniles and their families to incarceration, suspension of driver's licenses, an inability to expunge records, and economic and social stress, and pushes the youth offender deeper into the juvenile justice system.

Over one hundred years ago, the Illinois legislature established the first separate juvenile court system. That system was designed to recognize that youth are different from adults and to respond with a focus on rehabilitation. Over the course of the century, while state juvenile justice systems have changed, the idea of a separate system has become firmly entrenched nationally and the core goals of supporting youth, assisting rehabilitation, and improving outcomes have remained the same. Fines and fees for youth offenders undermine these core values.

*This Comment argues that fines and fees imposed on youth offenders should be eliminated nationwide because they ignore the U.S. Supreme Court's holding in *Bearden v. Georgia*, they would be categorically banned under a correct interpretation of the Excessive Fines Clause, they are applied unlawfully under state statutes, they exacerbate economic and racial disparities, they increase recidivism rates for juveniles, and they create hardship for families, pushing responsibility onto sometimes uninvolved parents. Congress must safeguard the due process rights of youth and families and ensure the juvenile justice system, designed to support and rehabilitate, does not instead impose undue harm on juveniles and their families.*

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INTRODUCTION

Amir Whitaker had a very unstable upbringing.¹ His father was in and out of jail, many of his relatives, including his mother, were addicted to drugs, and he lived off of his grandparents' Social Security checks.² Due to his family's lack of income, at age fifteen, crack cocaine addicts became Amir's clients.³ To him, this job was a crime of poverty.⁴ Amir explained: "When you're in high school and you're having to provide breakfast for yourself, I had no other opportunities."⁵ In 2000, the police raided the house in which Amir lived.⁶ Amir, still a juvenile, and his mother were arrested.⁷ Amir was charged and spent two days in a juvenile detention facility, after which he was released into his aunt's custody.⁸ At Amir's sentencing hearing, he avoided further jail time, but the judge ordered probation, revoked his driver's license, and imposed a fine of roughly two thousand dollars.⁹ Amir said that he "had never had that amount of money, even when selling drugs."¹⁰ Amir managed to obtain a job at Burger King making \$5.15 an hour; however, every time he saw his probation officer, he was required to pay a certain amount so he did not violate probation.¹¹ "As the fines loomed," Amir felt he had no choice but to start selling drugs again.¹²

Not only do fines and fees negatively affect the individual juvenile charged, but they also affect their families. Michael Rizo was introduced to the criminal justice system at the early age of three when his mother was incarcerated.¹³ Throughout his childhood, Michael cycled in and out of foster care, and when he was eleven, he was arrested for the first time.¹⁴ Following his first arrest, Michael was repeatedly arrested and detained.¹⁵ As Michael's arrests piled up, so too did his fees for court-ordered ankle monitoring bracelets and drug tests,

¹ See Eric Markowitz, *The Long-Term Costs of Fining Juvenile Offenders*, NEW YORKER (Dec. 24, 2016), <https://www.newyorker.com/business/currency/the-long-term-costs-of-fining-juvenile-offenders>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Brooke Pinnix, *Report: Juvenile Administrative Fees Burden Families Across California*, CHRON. SOC. CHANGE (May 4, 2017), <https://chronicleofsocialchange.org/news-2/juvenile-administrative-fees-burden-families-california>.

¹⁴ *Id.*

¹⁵ *Id.*

and his lodging and food while incarcerated.¹⁶ The county charged Michael's mother forty dollars every day Michael was incarcerated.¹⁷ By the time Michael was eighteen, his mother owed the county over \$25,000.¹⁸ Michael felt so guilty for "taking food away from his family's table," that at one point, he ran away from home.¹⁹

Additional examples of these fines and fees affecting juveniles' families occurred in Orange County, Contra Costa County, and Los Angeles County, all in California. In Orange County, Maria Rivera was charged more than \$16,000 for her son's detention.²⁰ Maria sold her house to pay the county more than \$9,500; however, when the county pursued the rest of the debt, Maria was forced to file bankruptcy.²¹ It was not until a federal court ordered Orange County to stop pursuing the debt that the county ceased.²² In Contra Costa County, Mariana Cuevas was charged roughly \$10,000 for her son's detention, even after all charges were dropped against him.²³ As a housecleaner, Mariana was already struggling to make ends meet.²⁴ In Los Angeles County, Sally Stokes was charged over \$1,000 for her granddaughter's detention.²⁵ Sally was living on Social Security benefits and could not afford to make payments.²⁶ Rather than discharge the debt, the county spent nearly \$13,000, more than ten times the fine, to pursue Sally's debt.²⁷

In 1899, the Illinois legislature passed the Juvenile Court Act, establishing the nation's first juvenile court.²⁸ The separate juvenile system was "designed to [appreciate] that youth are different from adults," and to respond to these

¹⁶ Teresa Wiltz, *Movement Against Juvenile Court Fees Runs into Resistance*, HUFFPOST (Jan. 17, 2018), https://www.huffingtonpost.com/entry/movement-against-juvenile-court-fees-runs-into-resistance_us_5a5f6c2fe4b0c40b3e5975fd.

¹⁷ Pinnix, *supra* note 13.

¹⁸ Stephanie Campos-Bui, *Debt-Free Justice: A Bottom-Up Approach to Ending Juvenile Fees in California*, CLEARINGHOUSE COMMUNITY (Apr. 2018), [<https://perma.cc/KL46-MJZH>].

¹⁹ Pinnix, *supra* note 13.

²⁰ Jeffrey Selbin & Abbye Atkinson, *Time to End Injustice in Juvenile Justice System*, ORANGE COUNTY REG. (Aug. 18, 2017, 9:01 AM), <https://www.oregister.com/2017/08/18/time-to-end-injustice-in-juvenile-justice-system/>.

²¹ *Id.*

²² *Rivera v. Orange Cty.*, Prob. Dep't, 832 F.3d 1103, 1111 (9th Cir. 2016).

²³ Eli Hager, *Your Child's Been Sent to Jail. And Then Comes the Bill*, WASH. POST (Mar. 3, 2017), <http://wapo.st/2lzpBZ5>.

²⁴ *Id.*

²⁵ Molly Hennessy-Fiske, *County Spent \$13,000 to Chase \$1,004*, L.A. TIMES (Mar. 4, 2009), <http://articles.latimes.com/2009/mar/04/local/me-probation-fees4>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Solomon J. Greene, Note, *Vicious Streets: The Crisis of the Industrial City and the Invention of Juvenile Justice*, 15 YALE J.L. & HUMAN. 135, 137 (2003).

differences with a “focus on rehabilitation and child development.”²⁹ Although “state juvenile justice systems have changed over time,” they have always maintained the core values of “supporting youth, assisting rehabilitation, developing youth competency, and improving outcomes.”³⁰ However, court fines and fees risk undermining these core values.³¹ In Amir’s case, rather than assisting in his rehabilitation, his fines led to him selling drugs again.³² In Michael’s case, rather than improving outcomes, he felt so guilty about his fines that he ran away from home.³³ In the other cases noted above, juveniles’ families were paying the fines and fees,³⁴ which ignored the notion that the juvenile system is supposed to focus on the youth offender.

This Comment argues that fines and fees for youth offenders should be eliminated nationwide for several reasons: they ignore the U.S. Supreme Court’s holding in *Bearden v. Georgia*;³⁵ they would be categorically banned under a correct interpretation of the Excessive Fines Clause; and they are applied improperly under state statutes. Additionally, these financial burdens exacerbate economic and racial disparities, increase recidivism rates for juveniles, and push responsibility onto sometimes uninvolved parents. Part I provides a brief overview of the different fines and fees that can be imposed on youth offenders. Part II addresses the recent legislation in California that eliminated fines and fees for youth offenders and several other jurisdictions that have scaled back juvenile fines and fees in the past few years. Part III discusses the legal reasons why Congress should ban fines and fees for youth offenders, including the ban of debtors’ prison, the argument that these financial burdens constitute excessive fines as defined in the U.S. Constitution, and the unlawful application of state statutes. Part IV examines the policy reasons why Congress should ban fines and fees for youth offenders, such as the exacerbation of disparities, the increase in recidivism, and the hardship on families.

²⁹ JESSICA FEIERMAN ET AL., JUVENILE LAW CTR., DEBTORS’ PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM 4 (2016).

³⁰ *Id.*

³¹ In a recent report on juvenile fees in Alameda County, the authors quote probation officers in multiple counties recognizing that the stress of fees may hamper efforts to support positive outcomes in the juvenile justice system. JEFFREY SELBIN, U.C. BERKELEY POLICY ADVOCACY CLINIC, HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 15–17 (2016).

³² See Markowitz, *supra* note 1.

³³ See Pinnix, *supra* note 13.

³⁴ See Hager, *supra* note 23; Hennessy-Fiske, *supra* note 25; Selbin & Atkinson, *supra* note 20.

³⁵ 461 U.S. 660 (1983).

I. FINES AND FEES FOR YOUTH OFFENDERS

This Part provides a brief overview of some of the Legal Financial Obligations (LFOs) that are imposed on youth offenders and their parents when a juvenile becomes entangled with the criminal justice system.³⁶ LFOs are fines, fees, costs, and restitution imposed by a court over and above a criminal sentence.³⁷ These financial obligations are authorized or required in every state, except for California, and are imposed on youth offenders and their parents in forty-one states.³⁸ LFOs include, among other things, fees for DNA samples, electronic monitoring bracelets, jury fees, public defenders, room and board, and drug testing.³⁹

Some may ask, “How did we get here?” The answer is an increase in the correctional population. Between 1980 and 2016, the total adult correctional population rose from approximately 1,842,000 to roughly 6,613,000.⁴⁰ As a result of this increase, the cost of running prisons, jails, probation, parole, and courts increased.⁴¹ Due to the increase in these costs, states were faced with budget deficits.⁴² To offset these costs, courts started charging criminal defendants, including juveniles, for associated expenses.⁴³ However, because many offenders assigned monetary penalties are unable to pay, this practice has been ineffective in raising revenues and has placed many poor offenders, including juveniles, in an inescapable cycle of debt.⁴⁴ Additionally, “significant research establishes that court costs, fees, and fines exacerbate poverty for individuals in the adult criminal justice system and their families.⁴⁵ The U.S. Department of Justice has even found that the harm caused by imposing costs

³⁶ See *The Fees that Keep Juvenile Offenders in Financial Chains*, SHARED JUST. (Nov. 22, 2016), <http://www.sharedjustice.org/most-recent/2016/11/21/the-fees-that-keep-juvenile-offenders-in-financial-chains>.

³⁷ *Questions and Answers About Legal Financial Obligations (LFOs)*, ACLU WASH., <https://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos> (last visited Feb. 18, 2019).

³⁸ See FEIERMAN ET AL., *supra* note 29, at Executive Summary 1; see also Eli Hager, *California Ends Practice of Billing Parents for Kids in Detention*, MARSHALL PROJECT (Oct. 11, 2017, 9:28 PM), <https://www.themarshallproject.org/2017/10/11/california-ends-practice-of-billing-parents-for-kids-in-detention> (discussing California’s ban on assessing certain fees against parents of juvenile offenders).

³⁹ *The Fees that Keep Juvenile Offenders in Financial Chains*, *supra* note 36.

⁴⁰ *Key Statistic: Total Correctional Population*, BUREAU JUST. STAT., <https://www.bjs.gov/index.cfm?ty=kfdetail&iid=487> (last visited Feb. 18, 2019).

⁴¹ COUNCIL OF ECON. ADVISORS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR 1–2 (2015).

⁴² *The Fees that Keep Juvenile Offenders in Financial Chains*, *supra* note 36.

⁴³ *Id.*

⁴⁴ COUNCIL OF ECON. ADVISORS, *supra* note 41, at 4–5.

⁴⁵ FEIERMAN ET AL., *supra* note 29, at 4.

without adequate due process can be profound.⁴⁶ Individuals may confront increasing debt, face repeated incarceration for nonpayment, lose their jobs, and become trapped in cycles of poverty.⁴⁷

While most previous research has focused on the effects of fines and fees on adults, this Comment will focus on the effects of these fines and fees on youth offenders and their families, arguing for the elimination of all fines and fees for juvenile offenders. A 2016 Juvenile Law Center (JLC) report found that in almost every state and the District of Columbia, juvenile offenders who appear in juvenile court may be charged for multiple court-related costs, fines, and fees.⁴⁸ Although the imposition of many of these fines and fees is up to the judge's discretion, in practice, they are often imposed.⁴⁹ According to the JLC report, under state statutes, courts may require juveniles, parents, or both to pay court expenses,⁵⁰ fees for a public defender,⁵¹ costs for evaluations and testing, probation supervision fees and costs, fees and costs for participation in diversion programs, child support, treatment costs, health care costs, the cost of GPS monitoring, cost of care generally, and fines.⁵² Seven of these categories of fees and the related state statutes are discussed below, emphasizing the extent of the issue of imposing fines and fees on youth offenders.

The first type of fee is court expenses which range from a designated amount to “an obligation to cover a broad array of costs for service, notice, deposition, travel expenses, prosecution costs, and other legal expenses.”⁵³ Although only twenty-five states have statutes related to court expenses for juveniles, the JLC survey revealed that respondents from twenty-eight states were charged such

⁴⁶ Letter from Vanita Gupta, Principal Deputy Assistant Att’y Gen., Civil Rights Division, & Lisa Foster, Dir., Office for Access to Justice 3 (Mar. 14, 2016), https://www.tmccc.com/files/7614/8517/9751/00_-_Regan__Robby_BINER_Special_Session.pdf.

⁴⁷ *Id.* at 2; *see also* LISA FOSTER & KAROL V. MASON, 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 1, 10 (2017) (issuing an advisory warning against imposing excessive fees and fines on juveniles and emphasizing the inability of youth to pay these expenses themselves, the financial burden on their families, and the consequences that impede rehabilitation). *But see* Press Release, U.S. Dep’t of Justice, Attorney General Jeff Sessions Rescinds 25 Guidance Documents (Dec. 21, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents> (rescinding the Obama-era advisory but the Trump “administration declined to comment on whether it supports the imposition of such fees”).

⁴⁸ FEIERMAN ET AL., *supra* note 29, at 4.

⁴⁹ *See id.* at 6.

⁵⁰ Court expenses can include witness fees, transportation, cost of prosecution, and cost of court operations.

⁵¹ In some states, youth or families are charged fees for public defenders even if they have been determined indigent. *Id.*

⁵² *Id.* at 5.

⁵³ *Id.* at 17.

expenses.⁵⁴ In some states, costs are not imposed at the trial level, but youth or their families must pay for any appellate costs, creating a chilling effect on appeals.⁵⁵ Of the JLC survey respondents who reported being charged court expenses, 65% indicated that difficulty paying caused problems, including debt, additional court visits that lead to missed work or school, and the juvenile's case remaining open longer than it would have been, resulting in more fees.⁵⁶

The second financial obligation that can be imposed on youth or their parents is the cost of a public defender. Over fifty years ago, in *Gideon v. Wainwright*,⁵⁷ the U.S. Supreme Court established that the U.S. Constitution affords all defendants the right to counsel in state felony proceedings.⁵⁸ The Court also held that a criminal defendant who cannot afford an attorney must be provided one.⁵⁹ Less than five years later, in *In re Gault*, the Court held that this right also applied to youth in juvenile justice proceedings.⁶⁰ However, across the United States, this right is accompanied by “hefty price tags.”⁶¹ In the vast majority of states, laws permit or require youth or their parents to pay for the cost of a court-appointed attorney.⁶² In some states, even families living in poverty or youth determined to be indigent must pay this cost.⁶³ Not only is the imposition of public defender fees on indigent defendants unconstitutional, but state statutes requiring youth offenders to pay public defender fees also inflict severe consequences on juveniles who fail to pay these attorney's fees.⁶⁴ One public defender and director of a Florida juvenile division wrote:

Besides adding financial and mental stress to the family, these fees and costs often keep a child under supervision until they're paid . . . even if all other court sanctions have been satisfied. The longer the probation or conditional release, the more likely there will be a violation and further court proceedings . . . with more costs.⁶⁵

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 372 U.S. 335 (1963).

⁵⁸ *Id.* at 344.

⁵⁹ *Id.*

⁶⁰ *Id.* at 336–37.

⁶¹ JESSICA FEIERMAN ET AL., JUVENILE LAW CTR., THE PRICE OF JUSTICE: THE HIGH COST OF “FREE” COUNSEL FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM 3 (2018).

⁶² *Id.* at 7.

⁶³ *Id.* at 6.

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* (quoting Email from Rob Mason, Dir. of the Juvenile Div. of the Office of the Pub. Def., Fourth Judicial Circuit, Fla., to Jessica Feierman (June 1, 2018)).

These state statutes also impose severe consequences on juveniles' families for failure to pay. For example, in Wisconsin, parents' debts can be sent to a collections agency;⁶⁶ in Minnesota, failure to pay can result in wage garnishment;⁶⁷ and in Florida and Oklahoma, parents who refuse appointed counsel for their child can be held in contempt of court.⁶⁸

The third type of fee is costs for evaluation or testing. Of the thirty states that have statutes associated with costs of evaluations or testing, survey respondents in twenty-six states reported youth or families making such payments.⁶⁹ These statutes relate to assessments generally, mental health evaluations, substance abuse evaluations or assessments, DNA or blood tests, and HIV or sexually transmitted infection (STI) tests.⁷⁰ These are court-ordered evaluations, and failure to obtain certain evaluations can result in denial of a bond, which means the juvenile must remain in custody pending adjudication of their case.⁷¹ Thus, the assessment of unpayable costs results in imprisoning juveniles for lack of money. As discussed below, this de facto debtor's prison is unconstitutional and creates financial strain without serving any penological purpose. Rather than force indigent juveniles and parents to pay these costs, the better policy is to establish by statute that testing is paid for by the state or local entity.⁷²

The fourth type of fee is a probation or supervision fee. Out of the twenty states that have statutes associated with probation or supervision fees and costs, survey respondents in eighteen states reported youth or families making these payments.⁷³ In twelve states, statutes impose probation or supervision fees or costs on youth, whereas in seventeen states, statutes impose these fees on youths' parents, although the parents may have had no role in their child's delinquency.⁷⁴ Probation and supervision fees are often assessed monthly, and failure to pay each month can be treated as a violation of probation and result in its

⁶⁶ *Id.*

⁶⁷ MINN. STAT. ANN. § 260B.331(b) (West 2019).

⁶⁸ FEIERMAN ET AL., *supra* note 61, at 10.

⁶⁹ FEIERMAN ET AL., *supra* note 29, at 13–14 (reporting that there are thirty-one states with statutes requiring or permitting costs associated with evaluations or testing, but this report was published before California eliminated all fines and fees for youth offenders).

⁷⁰ *Id.* at 14.

⁷¹ Overall, these statutes force juveniles to participate in evaluations, make juveniles pay for these involuntary evaluations, and, if the juvenile is unable to get an evaluation because they are unable to pay, require the juveniles to remain in confinement. *Id.* at 13.

⁷² *See, e.g.,* VA. CODE ANN. § 16.1-278.8:01 (West 2014) (“The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose.”).

⁷³ FEIERMAN ET AL., *supra* note 29, at 10–11.

⁷⁴ *Id.* at 11.

revocation.⁷⁵ Additionally, youth or their families may be required to pay other fees as a condition of probation.⁷⁶ Failure to pay probation fees, or any fees that are a condition of probation, may result in youth being placed in juvenile detention.⁷⁷ Thus, failure to pay, even if it is not willful, but rather due to a juvenile's or parent's inability to pay, can result in a juvenile's confinement.⁷⁸ One respondent to JLC's survey explained that if a juvenile cannot afford to pay for treatment ordered while on probation, they are "often charged with a probation violation, which results in a new sentence even though it's not the fault of the juvenile."⁷⁹ Another respondent noted that failure to pay probation fees could result in a youth's probation being extended, which could result in additional probation violations.⁸⁰

The fifth type of fee addressed is a fee related to informal adjustment or diversion. Although only twenty-two states have statutes related to payment for informal adjustment or diversion, according to JLC survey respondents, twenty-six states impose these fees.⁸¹ Research has shown that youth who are diverted out of the juvenile justice system and into diversion or informal adjustment programs are less likely to recidivate than their counterparts who are formally processed.⁸² Diversion and informal adjustment programs also allow youth to avoid certain costs imposed throughout formal processing.⁸³ In reality, fees for these programs act as a gatekeeping mechanism, leading poorer youth to formal processing and allowing wealthier youth to avoid system involvement.⁸⁴ One JLC survey respondent characterized diversion as "a privilege for those who are privileged."⁸⁵

The sixth type of fee discussed is cost of care. In general, costs of care include "the cost of child support, placement, programming, health care, and

⁷⁵ *Id.* at 10 (first citing 705 ILL. COMP. STAT. ANN. 405/5-615(10) (West 2019) (requiring a \$50/month supervision fee charged to youth or parents); and then citing ARK. CODE ANN. § 9-27-339 (West 2014) ("Nonpayment of restitution, fines, or court costs may constitute a violation of probation.")).

⁷⁶ *Id.* (reporting that there are thirteen states with statutes imposing probation or supervision fees or costs on youth, but this report was published before California eliminated all fines and fees for youth offenders).

⁷⁷ *Id.*

⁷⁸ *See id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 12.

⁸² Holly A. Wilson & Robert D. Hoge, *The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review*, 40 CRIM. JUST. & BEHAV. 497, 504-09 (2012).

⁸³ FEIERMAN ET AL., *supra* note 29, at 12.

⁸⁴ *Id.*

⁸⁵ *Id.*

other support.”⁸⁶ Of the forty-six states that have statutes that permit charging parents for the care and support of their youth involved with the juvenile justice system, survey respondents in thirty-one states reported youth and families paying for the cost of care.⁸⁷ Specifically, cost of care charges are composed of expenses for “food, clothing, shelter and supervision of the child,”⁸⁸ a child’s custody,⁸⁹ and detention,⁹⁰ confinement,⁹¹ or placement in a facility.⁹² Additionally, many states have statutes requiring a youth or parent to pay for the child’s physical or mental health care while the child is detained.⁹³ If the youth or parent is unable to pay for treatment, the child may be deprived of treatment, be held for a violation of probation, or face prolonged periods of incarceration.⁹⁴ One respondent to JLC’s survey stated that “if the family cannot pay for court-ordered treatment, and does not have insurance that can pay, sometimes the court-ordered treatment is simply not provided, leading to other complications in the child’s behavior or increased seriousness of the child’s condition.”⁹⁵ A youth or parent’s inability to pay also runs the risk of youth remaining in placement longer.⁹⁶ If a family is unable to pay for community-based treatment, then a judge may not release the child.⁹⁷ While parents are responsible for the cost of their child’s medical treatment when the child is living at home, imposing these costs on parents when their child is in juvenile justice custody can raise serious consequences, such as contempt orders, harming the parent and juvenile.⁹⁸

The seventh type of cost discussed is fines. Of the forty-two states that have statutes that permit the imposition of fines on youth involved in the juvenile

⁸⁶ *Id.* at 15.

⁸⁷ *Id.* (reporting that there are forty-seven states with statutes on cost of care, but this report was published before California eliminated all fines and fees for youth offenders).

⁸⁸ ARIZ. REV. STAT. ANN. § 8-243 (2018).

⁸⁹ *See, e.g.*, WIS. STAT. ANN. § 938.275 (West 2017).

⁹⁰ *See, e.g.*, N.C. GEN. STAT. ANN. § 7B-2704 (West 2017).

⁹¹ *See, e.g.*, ME. REV. STAT. ANN. tit. 15, § 3314-B (2017).

⁹² *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-243 (2018); IOWA CODE ANN. § 232.141 (West 2019); WASH. REV. CODE ANN. § 13.40.220 (West 2019).

⁹³ *See, e.g.*, NEV. REV. STAT. ANN. § 62B.110 (West 2019) (“If a child becomes subject to the jurisdiction of the juvenile court and the child receives ancillary services that are administered or financed by a county, including, but not limited to, transportation or psychiatric, psychological or medical services, the county is entitled to reimbursement from the parent or guardian of the child.”); *see also* ARIZ. REV. STAT. ANN. § 8-243(B) (2018); ARK. CODE ANN. § 9-27-602(d)(1)–(2) (West 2014).

⁹⁴ FEIERMAN ET AL., *supra* note 29, at 15.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* (explaining that medication can be more expensive in the juvenile detention center, leading to dangerous interruptions in a child’s medications).

justice system, survey respondents in twenty-nine states reported youth or families paying fines.⁹⁹ The majority of states impose fines on youth, but a significant number of states impose fines on parents who were involved in the child's delinquency.¹⁰⁰ However, some states impose fines on the parents, even without the requirement of parental responsibility, pushing accountability onto and harming the uninvolved parent rather than disciplining the juvenile.¹⁰¹ The imposition of a fine may seem like a better alternative to incarceration or costly services, but because of the link between poverty and justice system involvement, this imposition can often be problematic.¹⁰² An individual who is unable to pay this fine may be incarcerated, whereas his or her wealthy counterpart will avoid confinement.¹⁰³

The imposition of these financial obligations can be burdensome and unlawful. Not only are there an abundance of fines and fees imposed during and after adjudication, but some of the costs described above, including court expenses, public defender fees, and costs of evaluations and testing, may be imposed before a court makes a delinquency determination.¹⁰⁴ In addition, even if a juvenile is not convicted, the youth or their family will not recoup the money paid.¹⁰⁵ Furthermore, in almost every state, youth and families are likely to pay multiple costs for juvenile court involvement at numerous points in the system.¹⁰⁶ For example, in Arkansas, Kansas, Michigan, Montana, Oregon, Texas, and Washington, state statutes permit the imposition of at least seven different categories of costs on youth or families.¹⁰⁷ Additionally, within one category of costs, an individual may be required to make multiple payments for different purposes.¹⁰⁸ For example, in some states where youth or families are ordered to pay for the "cost of care," a closer look at the statutes reveal they must pay for the cost of placement and the cost of programming or treatment.¹⁰⁹ Fines and fees can be burdensome individually, but when considered cumulatively, they may be overwhelming to financially stressed youth and families.¹¹⁰ Many

⁹⁹ *Id.* at 18 (reporting that there are forty-three states with statutes on fines, but this report was published before California eliminated all fines and fees for youth offenders).

¹⁰⁰ *See, e.g.,* ALA. CODE § 12-15-111 (2013) (stating that parents can be punished for contributing to a child's delinquency).

¹⁰¹ FEIERMAN ET AL., *supra* note 29, at 18.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 5.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *See id.* at 6.

impoverished families cannot pay one of these fees, let alone seven different fees at multiple times, without having to give up basic necessities.¹¹¹ One report in Alameda County, California, concluded that, for an average case, the total fees¹¹² to families for juvenile involvement added up to approximately \$2,000.¹¹³ If an individual is incarcerated for an extended period of time, then these fees can increase significantly.¹¹⁴ For a single parent making federal minimum wage, it would take almost two months' salary to pay off the average \$2,000 in court-related costs.¹¹⁵

For a judge to lawfully impose a fine or fee, there must be a state statute; however, the JLC report suggests that even in the absence of relevant statutes, courts often impose these charges.¹¹⁶ Furthermore, in many instances where fines or fees are discretionary under state law, they are frequently imposed.¹¹⁷ One survey respondent even reported that although the state statute requires judges to assess an individual's ability to pay particular costs, in practice all individuals and families must pay regardless of their financial situation.¹¹⁸ The abundance of fines and fees, the inconsistent and unlawful imposition of these financial burdens, and the drastic consequences of these costs on impoverished families are just a few reasons Congress should seize control from the states and categorically ban fines and fees for youth offenders.

Additionally, the imposition of these financial obligations on youth offenders and their families privatizes and individualizes state responsibility, namely the criminal justice system. The state and its citizens choose to adjudicate and potentially remove individuals from society; therefore, collectively, society needs to bear the brunt of the fiscal costs associated with this decision.¹¹⁹ Not only does the current scheme shift costs from the state onto

¹¹¹ FEIERMAN ET AL., *supra* note 29, at 6.

¹¹² These fees included investigation, GPS monitoring, placement, and public defender fees.

¹¹³ Myles Bess, *Double Charged: The True Cost of Juvenile Justice*, YOUTH RADIO (May 8, 2014), <https://youthradio.org/news/article/double-charged-nes-and-fees/>.

¹¹⁴ *Id.*

¹¹⁵ The federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206 (2012). For a single parent making the federal minimum wage, it would take approximately seven forty-hour work weeks, or 276 hours, to pay off costs of \$2,000.

¹¹⁶ See FEIERMAN ET AL., *supra* note 29, at 5.

¹¹⁷ See *id.* at 6.

¹¹⁸ *Id.* This categorical imposition is not only inconsistent with the state statute, but also contradicts the intent of the state statute, which is to help impoverished families. STEPHANIE CAMPOS-BUI ET AL., U.C. BERKELEY POLICY ADVOCACY CLINIC, *MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA* 16 (2017).

¹¹⁹ See Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 892 (2009); Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, 15 LOY. J. PUB. INT. L. 319, 328 (2014).

youth offenders, but it also shifts responsibility onto uninvolved parents, pushing accountability even further away from the state. The illogic in this structure is amplified when the state takes custody of a child through incarceration but continues forcing the individual or family to pay. Future research should focus on the different circumstances under which the state takes children away from parents. For example, in neglect and abuse cases it may be logical to have the parents pay for their children's care since the parents are at fault, but when the state incarcerates a juvenile for the juvenile's delinquent activity, it seems unreasoned to force the uninvolved parents to pay for the child's care.

II. ELIMINATION OF FINES AND FEES FOR YOUTH OFFENDERS: CASE STUDIES

Over the past five years, several states, cities, counties, and one Louisiana parish have scaled back fines and fees for youth offenders.¹²⁰ This cutback included many California counties, which led to California becoming the first state to eliminate fines and fees for youth offenders.¹²¹ This Part of the Comment proceeds with a description of the repeal or suspension of fines and fees for youth offenders in different California counties, the complete elimination of these fines and fees in California, and the curtailing of these fines and fees in other jurisdictions.

In 2016, Alameda County, California, was the first county in the state to enact a full repeal of all fines and fees for youth offenders.¹²² In March 2016, the Alameda County Board of Supervisors imposed an immediate moratorium on all fees charged to parents with children in the juvenile justice system.¹²³ Before the moratorium, Alameda County charged families a range of fees, including "\$25.29 per day for juvenile detention, \$90 per month for probation supervision, \$15 per day for electronic monitoring, \$28.68 per drug test, \$250 per day for juvenile investigation, and \$300 for legal representation."¹²⁴ This moratorium offered relief of more than \$2 million of debt to more than 2,900 families and shielded the thousands of families who pass through Alameda's

¹²⁰ Chief Judge Candice Bates-Anderson, Orleans Parish Juvenile Court, Standing Policy on Juvenile Administrative Fees (June 20, 2018), <https://finesandfeesjusticecenter.org/content/uploads/2018/12/Orleans-Parish-Juvenile-Fees-2018.07.19.pdf>; Wiltz, *supra* note 16.

¹²¹ S. 190, 2017 Sen., Reg. Sess. (Cal. 2017).

¹²² *Alameda County Halts Juvenile Probation Fees*, E. BAY COMMUNITY L. CTR. (Apr. 7, 2016), <https://ebclc.org/in-the-news/alameda-county-halts-juvenile-probation-fees/>.

¹²³ *Id.*

¹²⁴ CAMPOS-BUIET AL., *supra* note 118, at 20.

juvenile courts every year.¹²⁵ Even Alameda County Chief Public Defender Brendon Woods, whose office could have lost tens of thousands of dollars because of the moratorium, supported the cessation, saying: “The Board of Supervisors deserves tremendous credit for recognizing that an existing county policy was harming families, and taking swift action to correct the problem.”¹²⁶ The moratorium was the result of efforts led by the University of California Berkeley School of Law Policy Advocacy Clinic¹²⁷ and the East Bay Community Law Center.¹²⁸ In 2014, on behalf of the East Bay Community Law Center and various advocates, the Policy Advocacy Clinic began exploring juvenile justice fines and fees across California.¹²⁹ The Clinic focused on Alameda County because it was one of the few counties to charge all fee types, including an investigation fee that was not authorized by state law.¹³⁰ In 2015, the Clinic presented its findings to the Public Protection Committee of the Board of Supervisors, noting the high harms of these fees, including their disproportionate effect on youth of color, and the low financial gain to the county from these fees.¹³¹ Following this presentation, two supervisors wrote a letter to the full Board of Supervisors proposing the moratorium.¹³² In the letter, the two supervisors noted that many youth and families struggle to pay these fees, and “[i]mposing this kind of debt on families induces economic and familial instability, which undermines the rehabilitative purpose of the juvenile system.”¹³³ The letter also mentioned the severe consequences of these fees, including parents’ wages being garnished, bank accounts being levied, and tax refunds being intercepted.¹³⁴ Subsequently, the Board of Supervisors voted unanimously to impose an immediate moratorium on all juvenile fines and fees.¹³⁵ Three months later, Alameda County became the first county in California to enact a full repeal of all juvenile fees.¹³⁶

¹²⁵ *Id.* at 21; *Alameda County Halts Juvenile Probation Fees*, *supra* note 122.

¹²⁶ *Alameda County Halts Juvenile Probation Fees*, *supra* note 122.

¹²⁷ Referred to in this Comment as “Policy Advocacy Clinic.”

¹²⁸ *Alameda County Halts Juvenile Probation Fees*, *supra* note 122.

¹²⁹ Campos-Bui, *supra* note 18.

¹³⁰ *Id.*

¹³¹ *Minutes of Alameda County Board of Supervisors’ Public Protection Committee*, ACGOV.ORG (Oct. 8, 2015), https://www.acgov.org/board/com_calendar/documents/Public_Protection_October_8_2015_minutesI.pdf.

¹³² Campos-Bui, *supra* note 18.

¹³³ Letter from Richard Valle, Supervisor, & Keith Carson, Supervisor, to Board of Supervisors (Mar. 16, 2016).

¹³⁴ *Id.*

¹³⁵ Alameda County, Cal., Resolution No. 2016-66, (Mar. 29, 2016).

¹³⁶ Alameda County, Cal., Ordinance No. 2016-35 (July 12, 2016).

In response to Alameda County's full repeal, in 2016, Californian Counties Contra Costa and Santa Clara both imposed moratoriums ending the assessment and collection of fees for youth offenders.¹³⁷ The year before these moratoriums, Santa Clara County spent almost \$450,000 to collect less than \$400,000 in fines and fees from youth and their families.¹³⁸ In January 2017, Santa Clara County repealed all ordinances that allowed the assessment and collection of juvenile administrative fees.¹³⁹ Alameda, Contra Costa, and Santa Clara Counties joined Los Angeles County, which issued a moratorium on fees in 2009, and San Francisco County, which had never charged fees.¹⁴⁰ By the end of 2017, Sacramento, Solano, and Sonoma Counties had all reduced or ended juveniles fees.¹⁴¹

Following suit, in January 2018, the state of California became the first state to entirely eliminate fines and fees for youth offenders.¹⁴² In January 2017, State Senator Holly J. Mitchell of Los Angeles and State Senator Ricardo Lara of Bell Gardens introduced Senate Bill 190, which was co-sponsored by a dozen community groups.¹⁴³ To help raise awareness about the bill and the national issue, youth offenders and their families made short videos¹⁴⁴ and testified about the effect of fees on the youth's well-being and their families in general.¹⁴⁵ In addition to this testimony, researchers from the Policy Advocacy Clinic and PolicyLink¹⁴⁶ testified about the benefits to families and the low economic effect on county budgets of a fee repeal.¹⁴⁷

¹³⁷ Contra Costa County, Cal., Resolution No. 2016/606 (Oct. 25, 2016). Prior to this moratorium, Contra Costa County charged families of youth who were held in juvenile detention but were later found not guilty. Sukey Lewis, *Will California Counties Rethink Charging Parents Fees for Locked p Kids*, KQED NEWS (Oct. 24, 2016), <https://www.kqed.org/news/2016/10/24/many-california-counties-charge-parents-high-fees-while-kids-are-locked-up/>. Santa Clara County, Cal., Res. No. BOS-2016-110 (June 21, 2016).

¹³⁸ Santa Clara County, Cal., Res. No. BOS-2016-110 (June 21, 2016).

¹³⁹ Santa Clara County, Cal., Res. No. BOS-2017-6 (Jan. 24, 2017).

¹⁴⁰ Brooke Pinnix, *California Bill to End Crippling Administrative Fees in the Juvenile System*, CHRON. SOC. CHANGE (Mar. 13, 2017), <https://chronicleofsocialchange.org/news-2/california-bill-to-end-crippling-administrative-fees-for-juveniles-in-the-justice-system>.

¹⁴¹ *Id.*

¹⁴² S. 190, 2017 Sen., Reg. Sess. (Cal. 2017).

¹⁴³ *Id.*

¹⁴⁴ RYSE Center, *Support SB 190 to Stop Fees that Punish Youth and Families: Mariana's Story*, YOUTUBE (Aug. 16, 2017), <https://www.youtube.com/watch?v=smj4BGQIgnE&t=48s>.

¹⁴⁵ California Senate Democrats, *Sen. Holly J. Mitchell on Why SB 190 Is Needed to End Unfair Fees on Innocent Juveniles*, YOUTUBE (June 28, 2017), <https://www.youtube.com/watch?v=EYMqGE4ilQQ>.

¹⁴⁶ PolicyLink is a research and action institute which advances racial and economic equity. *About Us*, POLICYLINK, <http://www.policylink.org/about-us> (last visited Apr. 8, 2020).

¹⁴⁷ Campos-Bui, *supra* note 18; *California Legislative Information, Assembly Appropriations Committee*, CALCHANNEL (Aug. 23, 2017), http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=4915&meta_id=216293.

Despite all of the testimony and data supporting the bill, some legislators remained concerned with the effect Senate Bill 190 would have on counties.¹⁴⁸ Some opponents argued that fines and fees for youth offenders helped counties recoup their costs; however, the effectiveness of these fines and fees was oversold since many youth offenders and their families could not afford to pay these costs.¹⁴⁹ The Policy Advocacy Clinic found that in fiscal year 2014–2015, Alameda County spent \$250,938 to collect \$419,830 in juvenile administrative fees, netting only \$168,892.¹⁵⁰ In addition to this net gain being substantially low when compared to the amount of fees the county charged, this net gain was also negligible compared to Alameda’s \$2.74 billion budget, comprising a mere 6/1000ths of a percent.¹⁵¹

The bill’s co-sponsors knew that a compromise would be offered involving a fix to existing ability-to-pay provisions in counties’ statutes; however, the co-sponsors decided early in the campaign that justice would not be served by simply revising these provisions.¹⁵² Research conducted by the Policy Advocacy Clinic found that no single county in California could claim its fee practices were fair and cost-effective.¹⁵³ Some counties improperly billed impoverished families and netted little revenue, while other counties fairly assessed families’ inability to pay but procured even less revenue.¹⁵⁴ Thus, when the bill’s co-sponsors were offered a compromise regarding the revision of ability-to-pay provisions, the co-sponsors and authors declined.¹⁵⁵

Regardless of some legislators’ apprehension, nine months after the bill was introduced, it was approved by the California State Legislature.¹⁵⁶ On October 11, 2017, Governor Jerry Brown signed the bill, which became effective January 1, 2018.¹⁵⁷ The law repealed state law authorizing counties to charge administrative fees to parents or guardians for their children’s detention, legal representation, probation supervision, electronic monitoring, and drug testing.¹⁵⁸

Although California is still early in the implementation phase, preliminary results seem promising. By April 2018, all counties had formally ended fee

¹⁴⁸ Campos-Bui, *supra* note 18.

¹⁴⁹ Pinnix, *supra* note 140.

¹⁵⁰ SELBIN, *supra* note 31, at 12.

¹⁵¹ Pinnix, *supra* note 140.

¹⁵² Campos-Bui, *supra* note 18.

¹⁵³ CAMPOS-BUI, *supra* note 118, at 2.

¹⁵⁴ Campos-Bui, *supra* note 18.

¹⁵⁵ *Id.*

¹⁵⁶ S. 190, 2017 Sen., Reg. Sess. (Cal. 2017).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

assessments,¹⁵⁹ which was not a small feat given the state's population of approximately 39 million people.¹⁶⁰ Additionally, although Senate Bill 190 only required counties to end juvenile assessment, by April 2018, at least twenty-two counties had also halted fee collection and none had reported any negative consequences.¹⁶¹ As of April 2018, those twenty-two counties had waived more than 190,000 accounts which totaled more than \$200 million.¹⁶² Although Senate Bill 190 did not require refunds, Contra Costa County took the lead in "refunding families for payments made on fees that were unlawfully assessed."¹⁶³ California set the stage for a more just and effective juvenile justice system, proving that the elimination of fines and fees can be accomplished without financial harm.

In addition to California, the states of Washington and Utah, the city of Philadelphia, and the Orleans Parish of Louisiana are among a handful of jurisdictions that have scaled back fines and fees for youth offenders.¹⁶⁴ In 2015 in Washington the state legislature passed the Year Act, eliminating most non-restitution fines and fees allowed under Washington statutes.¹⁶⁵ The Year Act also allows juveniles with existing fines and fees to petition the court for modification or relief from fines, fees, and interest and directs judges to consider factors such as an individual's ability to pay juvenile diversion fees, juvenile court and appellate costs, collection fees for juvenile financial obligations, adjudication fees, and certain fines.¹⁶⁶

In 2017, Utah passed House Bill 239, capping how much juveniles can be charged. The Bill stated that the Commission on Criminal and Juvenile Justice and the Administrative Office of the Courts would work together to create "a statewide sliding scale for the assessment of fines, fees, and restitution, based on the ability of the minor's family to pay."¹⁶⁷ However, the Bill also noted that "the court may enforce orders of fines, fees or restitution through garnishments, wage withholdings, supplementary proceedings, or executions."¹⁶⁸

¹⁵⁹ Campos-Bui, *supra* note 18.

¹⁶⁰ *State Population Totals and Components of Change: 2010-2017*, U.S. CENSUS BUREAU (Sept. 4, 2018), https://www.census.gov/data/tables/2017/demo/pepest/state-total.html#par_textimage_1574439295.

¹⁶¹ Campos-Bui, *supra* note 18.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See Chief Judge Candice Bates-Anderson, *supra* note 120; Wiltz, *supra* note 16;

¹⁶⁵ S. 5564, 64th Leg., Reg. Sess. (Wash. 2015).

¹⁶⁶ *Id.*

¹⁶⁷ H.R. 239, 2017 Leg., Reg. Sess. § 40(1)(f) (Utah 2017).

¹⁶⁸ *Id.* § 70(4).

In March 2017, the city of Philadelphia announced that it would stop charging parents for their child's incarceration.¹⁶⁹ Before the shift, parents were being billed up to \$1,000 a month to pay for their child's stay at a juvenile detention center, even though some families could only afford to pay \$5 per month and the financial benefit to the city was minimal.¹⁷⁰ For example, in the fiscal year of 2016, Philadelphia netted \$551,261 from parents of delinquent children, which was a small fraction of the \$81,148,521 the city spent on delinquent placements.¹⁷¹

In June 2018, the Orleans Parish Juvenile Court ended the assessment and collection of discretionary juvenile fees in delinquency cases, becoming the first jurisdiction in the South to take such action.¹⁷² In a resolution signed by Chief Judge Candice Bates-Anderson adopting the new policy, the Court cited to "researchers, policymakers, and the National Council of Juvenile and Family Court Judges" who all found that "juvenile administrative fees undermine rehabilitation and public safety."¹⁷³ The resolution notes that the new policy "will allow the Court to better serve the youth of Orleans Parish, their families, and the community" and encourages other Louisiana parishes to end the imposition of juvenile administrative fees.¹⁷⁴

While the elimination or reduction of fines and fees for youth offenders in these individual cities and counties is a move in the right direction, more must be done to protect youth and their families. If a youth offender or their family is unable to pay their court costs, then the juvenile may be left without treatment, refused representation, or incarcerated, and the parents may be held in contempt of court.¹⁷⁵ These consequences are too severe for society to wait for every county, city, or state to eliminate its fines and fees for youth offenders; thus, the entire nation should follow California's lead, and Congress should eliminate all fines and fees for youth offenders.

¹⁶⁹ Eli Hager, *Philadelphia Ends Practice of Billing Parents for the Time Their Children Spend in Detention*, WASH. POST (Mar. 3, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/03/03/philadelphia-ends-practice-of-billing-parents-for-the-time-their-children-spend-in-detention/?utm_term=.3dd977e9fb05.

¹⁷⁰ *Id.*

¹⁷¹ Hager, *supra* note 23.

¹⁷² Chief Judge Candice Bates-Anderson, *supra* note 120.

¹⁷³ *Id.* (first citing NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOLUTION ADDRESSING FINES, FEES, AND COSTS IN JUVENILE COURTS (2018); then citing FEIERMAN ET AL., *supra* note 29, at 12; then citing CAMPOS-BUI ET AL., *supra* note 118, at 20; and then citing Alex Piquero & Wesley Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 13 YOUTH VIOLENCE & JUV. JUST. 325 (2017)).

¹⁷⁴ Chief Judge Candice Bates-Anderson, *supra* note 120.

¹⁷⁵ See FEIERMAN ET AL., *supra* note 61, at 10.

III. LEGAL REASONS TO ELIMINATE FINES AND FEES FOR YOUTH OFFENDERS

The imposition of fines and fees on youth offenders should be eliminated for three legal reasons. First, the imposition of fines and fees on youth offenders violates the holding in *Bearden* that a local government can only imprison a person for not paying a fine if it can be shown that the person willfully chose not to pay even though they could have paid, raising concerns of stare decisis and vertical federalism.¹⁷⁶ Because of the vague holding in *Bearden*,¹⁷⁷ Congress should implement bright-line criteria for judges to use when determining whether an individual is indigent versus willfully refusing to pay court-ordered fines and fees, categorically labeling juveniles as indigent. Second, both “excessive” and “fine” in the Eighth Amendment were incorrectly interpreted by the Supreme Court based on limited historical sources.¹⁷⁸ Under the correct interpretations, “excessive” should be addressed through an understanding of proportionality that accounts for the offense, offender’s characteristics, and effect the fine would have on the individual.¹⁷⁹ Thus, most fines and fees on juveniles would automatically be deemed excessive because of juveniles’ lack of resources and the concern of placing youth in a lifelong cycle of debt. Third, some applications of state statutes unlawfully include charging fees that are not authorized in the juvenile setting or fees that exceed statutory maximums.¹⁸⁰ Rather than try to seek out every unlawful application of a state statute, Congress should categorically eliminate all fines and fees for youth offenders.

A. *Debtors’ Prison and the Misapplication of Bearden*

The use of imprisonment to collect debts dates back 3,000 years.¹⁸¹ In early Rome, if a debtor failed to pay their debt in thirty days, the creditor could place him under house arrest for another thirty days.¹⁸² If the debtor failed to pay after the full sixty days, the creditor could sell the debtor into slavery.¹⁸³ These and other European laws influenced colonial law in America. In 1641, one colony’s General Court ruled that “anyone who failed to pay a private debt could be kept in jail at his own expense until the debt was paid,” which resulted in people

¹⁷⁶ *Bearden v. Georgia*, 461 U.S. 660 (1983).

¹⁷⁷ *Id.* at 672.

¹⁷⁸ Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 277–78 (2014).

¹⁷⁹ *See id.* at 278.

¹⁸⁰ CAMPOS-BUI ET AL., *supra* note 118, at 2.

¹⁸¹ John B. Mitchell & Kelly Kunsch, *Of Driver’s Licenses and Debtor’s Prison*, 4 SEATTLE J. SOC. JUST. 439, 445 (2005).

¹⁸² *Id.*

¹⁸³ *Id.*

dying in prison for the crime of their indigence.¹⁸⁴ Eventually, federal debtors' prisons were abolished in 1833, leaving the power in the hands of the states.¹⁸⁵ Subsequently, during the twentieth century, the Supreme Court held in three separate cases that incarcerating those too poor to repay their debt was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.¹⁸⁶

In 1970, in *Williams v. Illinois*, the Supreme Court held that if a person cannot afford to pay a fine, it is unconstitutional to convert that fine into jail time automatically.¹⁸⁷ Only one year later, the Court held in *Tate v. Short* that it is a violation of the Fourteenth Amendment's Equal Protection Clause to convert a fine to jail time simply because a person cannot pay the fine.¹⁸⁸ Yet citizens are routinely jailed for failing to repay debt.¹⁸⁹ Additionally, in 1983, in *Bearden*, the Supreme Court held that incarcerating indigent debtors was unconstitutional under the Fourteenth Amendment's Equal Protection Clause.¹⁹⁰ The Supreme Court's decision "compelled local judges to distinguish between debtors who are too poor to pay and those who have the financial ability but 'willfully' refuse" to pay.¹⁹¹ Although de jure debtors' prisons have been abolished in every state,¹⁹² de facto debtors' prison is prevalent, against the Supreme Court's holding in *Bearden*,¹⁹³ and has grave consequences for youth offenders and their families.¹⁹⁴

In *Bearden*, Danny Bearden pleaded guilty, and the trial court sentenced him to three years on probation.¹⁹⁵ As a condition of probation, Bearden was ordered

¹⁸⁴ Robert A. Freer, *Imprisonment for Debt in Massachusetts Before 1800*, 46 MISS. VALLEY HIS. REV. 252, 253 (1961). Additionally, in some American colonies, creditors could sell indigent debtors into indentured servitude. Mitchell & Kunsch, *supra* note 181, at 445.

¹⁸⁵ Devon Douglas-Bowers, *The History of America's Debtors' Prisons: The Shackles Return*, GLOBALRESEARCH (Nov. 1, 2014), <https://www.globalresearch.ca/the-history-of-americas-debtors-prisons-the-shackles-return/5411258>.

¹⁸⁶ See *Bearden v. Georgia*, 461 U.S. 660 (1983); *Tate v. Short*, 401 U.S. 395 (1971) (ruling that a defendant may not be jailed solely because he/she is too indigent to pay a fine); *Williams v. Illinois*, 399 U.S. 235 (1970) (deciding that a maximum prison term could not be extended due to the defendant's failure to pay court costs and fees).

¹⁸⁷ *Williams*, 399 U.S. at 243.

¹⁸⁸ *Tate*, 401 U.S. at 397.

¹⁸⁹ FEIERMAN ET AL., *supra* note 29, at 23.

¹⁹⁰ *Bearden*, 461 U.S. at 667.

¹⁹¹ Eli Hager, *Debtors' Prisons, Then and Now: FAQ*, MARSHALL PROJECT (Feb. 24, 2015), <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq>.

¹⁹² Mitchell & Kunsch, *supra* note 181, at 446.

¹⁹³ *Bearden*, 461 U.S. at 667-68.

¹⁹⁴ Hager, *supra* note 191.

¹⁹⁵ *Bearden*, 461 U.S. at 662.

to pay \$250 in restitution and a \$500 fine.¹⁹⁶ Bearden borrowed money and paid the first \$200; however, about a month later, he was laid off from his job.¹⁹⁷ Bearden repeatedly tried to find other work but was unable to, losing the ability to raise any income.¹⁹⁸ Before the balance was due, Bearden notified the probation office he would be late with his payment.¹⁹⁹ Three months later, the state filed a petition in court to revoke Bearden's probation for failure to pay.²⁰⁰ After a hearing, the trial court revoked Bearden's probation, entered a conviction, and sentenced Bearden to serve the remaining portion of his probation in prison.²⁰¹ The Supreme Court granted certiorari to resolve a split over whether revoking the probation of indigents for failure to pay fines violates the Equal Protection Clause.²⁰²

In analyzing this issue, the Court in *Bearden* examined the holdings in both *Williams* and *Tate*.²⁰³ The findings in these cases indicated that the state could not "[impose] a fine as a sentence and then automatically [convert] it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full."²⁰⁴ Alternatively, if the state determines a fine or restitution is the appropriate penalty for a crime, it may not subsequently imprison a person solely because he or she lacks the resources to pay.²⁰⁵ Both *Williams*²⁰⁶ and *Tate*²⁰⁷ differentiated this limitation on the imprisonment of indigents from a situation where a defendant was at fault for his or her failure to pay.²⁰⁸ This distinction was critical in the *Bearden* holding.²⁰⁹ There, the Court held that "in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay."²¹⁰ The Court ruled that if a probationer "willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation."²¹¹ However, if the probationer was unable to pay despite bona fide

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 662–63.

¹⁹⁹ *Id.* at 663.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 663–64.

²⁰³ *Id.* at 667.

²⁰⁴ *Tate v. Short*, 401 U.S. 395, 398 (1971).

²⁰⁵ *Bearden*, 461 U.S. at 667.

²⁰⁶ *Williams v. Illinois*, 399 U.S. 235, 242 n.19 (1970).

²⁰⁷ *Tate*, 401 U.S. at 400.

²⁰⁸ *See Bearden*, 461 U.S. at 668.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 672.

²¹¹ *Id.*

efforts, the court must consider alternative punishments.²¹² A court may imprison a probationer who made sufficient bona fide efforts only if alternative measures are inadequate to meet the interests in punishment and deterrence.²¹³ The three holdings from *Williams*,²¹⁴ *Tate*,²¹⁵ and *Bearden*²¹⁶ result in a rule that if the state determines a fine, restitution, or probation is the appropriate and adequate penalty for a crime, it may not subsequently imprison a person, possibly by revoking his or her probation, solely because he or she lacked the resources to pay. However, these holdings have been overlooked in general and, in particular, with regard to cases involving juveniles.

Under certain state statutes, judges now imprison juveniles for fines and fees they are unable to pay, effectively punishing them for their family's poverty. Some state laws explicitly establish that youth offenders or their family may be incarcerated for failure to pay their fines and fees,²¹⁷ disregarding the Supreme Court's holdings in *Williams*²¹⁸ and *Tate*.²¹⁹ Other state statutes establish that youth offenders who fail to pay may have their probation revoked,²²⁰ ignoring the holding in *Bearden*.²²¹ Furthermore, other state statutes specify that juveniles who fail to pay may "be turned away from diversion programs or be held in contempt of court,"²²² ignoring the Supreme Court's reasoning in *Bearden* that it was "fundamentally unfair" to imprison an indigent citizen.²²³ Following the holdings in *Williams*,²²⁴ *Tate*,²²⁵ and *Bearden*,²²⁶ these state statutes and their applications are both unlawful and harmful. These cases stand for the idea that a person cannot be imprisoned because they are unable to pay a debt.²²⁷ However, these state statutes ignore that proposition and the core values of the juvenile justice system. The juvenile justice system was created to focus on rehabilitation and improved outcomes for youth offenders, but, by reawakening

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Williams v. Illinois*, 399 U.S. 235, 243 (1970).

²¹⁵ *Tate v. Short*, 401 U.S. 395, 397 (1971).

²¹⁶ *Bearden*, 461 U.S. at 672.

²¹⁷ FEIERMAN ET AL., *supra* note 29, at 8.

²¹⁸ *Williams*, 399 U.S. at 243.

²¹⁹ *Tate*, 401 U.S. at 397.

²²⁰ FEIERMAN ET AL., *supra* note 29, at 8.

²²¹ *Bearden*, 461 U.S. at 672.

²²² FEIERMAN ET AL., *supra* note 29, at 8.

²²³ *Bearden*, 461 U.S. at 668–69.

²²⁴ *Williams v. Illinois*, 399 U.S. 235, 243 (1970).

²²⁵ *Tate v. Short*, 401 U.S. 395, 397 (1971).

²²⁶ *Bearden*, 461 U.S. at 672.

²²⁷ *See id.*; *Tate*, 401 U.S. at 397; *Williams*, 399 U.S. at 243.

debtors' prison for juveniles, these state statutes focus more on punishment for a juvenile's inability to pay than restoration.²²⁸

Although debtors' imprisonment is unconstitutional, the main reason de facto debtors' imprisonment still occurs is because neither the Supreme Court nor Congress has ever defined when nonpayment is due to indigency or willfulness, leading to inconsistent results. By leaving this *mens rea* determination to individual judges, the Supreme Court left open the possibility that a judge with high standards of "indigence" could circumvent the spirit of *Bearden* and send a poor debtor to prison.²²⁹ Additionally, judges have different criteria for determining whether a debtor is willfully neglecting his or her debt.²³⁰ For example, some judges will determine nonpayment to be willful, unless the debtor proves they exhausted all other sources of income, including "quitting smoking, collecting and returning used soda cans and bottles, and asking family and friends for loans."²³¹ Congress needs to provide bright-line criteria as to how a judge is supposed to determine whether a debtor is indigent or, rather, is willfully refusing to pay. Within these criteria, Congress must take into consideration the unique needs and circumstances of juveniles. Three reasons require this unique consideration: (1) compulsory education and labor laws; (2) the effect of this determination on youths' families; and (3) the Supreme Court's repeated warning that constitutional protections must be adjusted to the unique developmental needs of adolescents.

The first reason juveniles require unique attention is because of compulsory education and labor laws. Compulsory education laws force juveniles to attend school for an average of 6.64 hours a day until they reach a certain age, prohibiting youth from working and generating an income during those hours.²³² Labor laws, such as the Fair Labor Standards Act (FLSA), restrict the number of hours youth can work and list hazardous occupations that are too dangerous for juveniles.²³³ For example, under the FLSA, permissible work hours for fourteen- and fifteen-year-olds are three hours on a school day, eighteen hours in a school week, eight hours on a nonschool day, forty hours in a nonschool

²²⁸ See FEIERMAN ET AL., *supra* note 29, at 4.

²²⁹ Hager, *supra* note 191.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Average Number of Hours in the School Day and Average Number of Days in the School Year for Public School, by State: 2007-08*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/surveys/sass/tables/sass0708_035_s1s.asp (last visited Apr. 8, 2020).

²³³ 29 U.S.C. § 212 (2012); *The Fair Labor Standards Act of 1938, As Amended*, U.S. DEP'T LABOR, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf> (last visited Jan. 30, 2020).

week, and between 7 a.m. and 7 p.m.²³⁴ The combination of these occupational restrictions, plus the gap between federal minimum wage and the average amount of fines and fees a youth offender must pay, makes most youth offenders indigent. If a juvenile who is fourteen or fifteen can only work three hours on a school day and eight hours on a nonschool day, then during the average week, the juvenile will only be able to work thirty-one hours. If a juvenile works all thirty-one hours, then if they are making the federal minimum wage of \$7.25 per hour, they will make roughly \$224 per week, before taxes.²³⁵ However, this does not account for the FLSA provision that states juveniles can only work eighteen hours in a school week.²³⁶ Even if that provision is ignored and all of a juvenile's income went to paying court fines and fees, then, in the average case, a juvenile would have to work almost nine weeks to pay all of those costs. This is also dependent on whether the juvenile can find a job. Recently, significant numbers of teenagers have been shut out of the labor market, making this task more difficult.²³⁷ This is particularly true of youth living in poverty, who usually have more difficulty finding employment than their affluent peers and often work to support their family's financial needs.²³⁸ Furthermore, even if Congress could ensure opportunities to work, that may create new problems. Forcing youth to work too much may lead to long-term negative consequences, including lower grades and higher school dropout rates.²³⁹ Juveniles from more disadvantaged backgrounds also tend to work longer hours, heightening these negative

²³⁴ *Work Hours*, U.S. DEP'T LABOR, <https://www.dol.gov/general/topic/youthlabor/workhours> (last visited Apr. 8, 2020).

²³⁵ Under 29 U.S.C. § 206, the federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206 (2012).

²³⁶ *Work Hours*, *supra* note 234.

²³⁷ One recent study found that the number of jobs held by teenagers between ages fourteen and eighteen shrank by 33% between 2001 and 2014. CAREERBUILDER, *THE CHANGING FACE OF U.S. JOBS: COMPOSITION OF OCCUPATIONS BY GENDER, RACE, AND AGE FROM 2001–2004*, at 13 (2015). Another study found that the youth employment rate in 2011 was 26%, the lowest since World War II. JP MORGAN CHASE & CO., *BUILDING SKILLS THROUGH SUMMER JOBS: LESSONS FROM THE FIELD 4* (2015). Teens seeking jobs are now in competition with college graduates, workers over fifty-five, and others competing for the same entry-level roles. Andrew Soergel, *Why Teens Are Getting Shut Out of the Workforce*, U.S. NEWS & WORLD REP. (Mar. 26, 2015, 4:30 PM), <http://www.usnews.com/news/blogs/data-mine/2015/03/26/studies-suggest-teens-getting-shut-out-of-workforce>.

²³⁸ According to one report, only 21% of teenagers from low-income families worked at all, while 38% of wealthier teens had jobs. ANDREW SUM ET AL., CTR. FOR LABOR MKT. STUDIES AT NE. UNIV., *THE DISMAL STATE OF THE NATION'S TEEN SUMMER JOB MARKET, 2008–2012, AND THE EMPLOYMENT OUTLOOK FOR THE SUMMER OF 2013*, at 4 (2013).

²³⁹ According to one study, youth who work more than twenty hours a week “may have lower grade point averages and are more likely to drop out of school than those who work fewer hours.” CHILD TRENDS DATA BANK, *YOUTH EMPLOYMENT: INDICATORS ON CHILDREN AND YOUTH 2* (2015).

consequences.²⁴⁰ Fines and fees that push juveniles into such work experiences, therefore, undercut the juvenile justice system's rehabilitative goals.²⁴¹

The second reason juveniles require distinct consideration is because of the effect of these fines and fees on their families. Although neither the Supreme Court nor Congress has held juveniles to be categorically indigent, many states have realized that juveniles usually lack the resources to pay their own fines and fees. Thus, some state statutes include language indicating juveniles will be charged based on what their parents can pay,²⁴² or some statutes simply require the family pay rather than the youth.²⁴³ For example, many state statutes make youth access to counsel contingent on their family's financial status.²⁴⁴ Requiring a youth's family to pay their fines and fees transfers responsibility for a juvenile's action onto their family members who may be unable or unwilling to fulfill the obligation. If a family is unable to fulfill the responsibility, then the youth offender may be left without treatment, refused representation, or incarcerated for an extended period of time, and the parents may be, among other things, held in contempt of court.²⁴⁵ Families and parents should not be forced to pay for their child's actions, and juveniles should not be at the mercy of their parents' willingness to pay. If fees and fines are being pushed onto parents and families simply because juveniles lack the resources to pay, the better solution is to eliminate these payments, especially if juveniles' right to counsel could be at stake.²⁴⁶ The juvenile justice system was created to help improve a youth offender's life once released from the system, to teach juveniles responsibility, and to deter them from future delinquent acts.²⁴⁷ However, by imposing these fines and fees onto a juvenile's families, wealthy youth will learn nothing, and

²⁴⁰ *Id.* ("Some studies show that longer work hours are more prevalent among minority and other disadvantaged students.").

²⁴¹ FEIERMAN ET AL., *supra* note 29, at 7.

²⁴² Julie Miller, *Even Indigent Families Must Pay for Their Child's Attorney in Most States*, JUV. JUST. INFO. EXCHANGE (Aug. 14, 2018), <https://jjie.org/2018/08/14/even-indigent-families-must-pay-for-their-childrens-attorney-in-most-states-report-says/>.

²⁴³ *See* FEIERMAN ET AL., *supra* note 29, at 5.

²⁴⁴ FEIERMAN ET AL., *supra* note 61, at 5 (raising a number of concerns: "(1) The investigation into parents' incomes can be lengthy . . . ; (2) the investigation can stir fear in families . . . which can influence a child's decision to waive counsel . . . ; (3) some parents have incomes that fall just above the eligibility threshold, but they are not truly capable of paying for counsel . . . ; (4) some parents who are ineligible may decide not to hire an attorney, even if they can afford one, forcing the child to navigate the system alone; and (5) if parents incur the cost of representation, there is potential for conflict between the juvenile defender's loyalty to the child and perception of loyalty to the parents").

²⁴⁵ *Id.* at 10.

²⁴⁶ *See id.* (discussing the constitutional issues with making youth access to counsel contingent on his or her parent).

²⁴⁷ FEIERMAN ET AL., *supra* note 29, at 4.

poorer youth will suffer. Additionally, pushing this responsibility onto parents can cause strain between the juvenile and their family and can force families to decide between paying fines and fees or buying necessities.²⁴⁸

A final reason Congress should take into consideration the distinctive needs and circumstances of juveniles is to follow the Supreme Court's lead. In recent years, the Supreme Court has repeatedly discussed the need for constitutional protections to be calibrated to the unique needs of adolescents. In 2005, the Supreme Court started to take notice of psychological research regarding the brain development of juveniles, when attorneys in *Roper v. Simmons*²⁴⁹ referenced behavioral science in oral argument.²⁵⁰ One amicus curiae brief for the case, written by the American Psychological Association (APA), referenced numerous studies showing that adolescents often lack the ability to make mature judgments, control their impulses, and consider the consequences of their actions.²⁵¹ Citing this brief, the Court ruled that Simmons, who was accused of committing first-degree murder at age seventeen, could not receive the death penalty.²⁵² This research was again referenced by the Supreme Court in the 2010 case *Graham v. Florida*,²⁵³ in which Graham, age seventeen, had been sentenced to life in prison for violating his probation.²⁵⁴ The Court noted that "parts of the brain involved in behavior control continue to mature late through adolescence" and held that life without parole was unconstitutional for individuals under the age of eighteen who were convicted of crimes other than homicide.²⁵⁵ Then in 2012, in *Miller v. Alabama*,²⁵⁶ the Court held that states could not automatically sentence juveniles to life without parole even if they were convicted of homicide.²⁵⁷ The Court referenced a revised version of the APA's amicus brief and stated that the science had become stronger showing that "adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead and risk avoidance."²⁵⁸ Most recently, in 2016, the Court applied the *Miller*²⁵⁹ rule retroactively, holding that

²⁴⁸ The policy issue of pushing fines and fees onto families is discussed below. *See infra* Part IV.C.

²⁴⁹ 543 U.S. 551 (2005).

²⁵⁰ *See, e.g.*, Transcript of Oral Argument at 31, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

²⁵¹ Brief for American Psychological Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

²⁵² *Roper*, 543 U.S. at 551.

²⁵³ 560 U.S. 48 (2010).

²⁵⁴ *Id.* at 57.

²⁵⁵ *Graham*, 560 U.S. at 68.

²⁵⁶ *Miller v. Alabama*, 567 U.S. 460 (2012).

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 477 (noting some hallmark features of a juveniles as "immaturity, impetuosity, and failure to appreciate risks and consequences.").

²⁵⁹ *Id.*

prisoners previously given automatic life sentences with no possibility of parole for crimes committed as juveniles must have their cases reviewed.²⁶⁰ The Court again addressed how “children are constitutionally different from adults for purposes of sentencing,” noting that these differences result from juvenile’s “diminished culpability.”²⁶¹

The Supreme Court has repeatedly recognized that adolescent brains are not fully mature and that constitutional protections must be adjusted for juveniles.²⁶² This adjustment must reach fines and fees for juveniles. Juveniles and their families are being charged excessive amounts for an act committed by an individual whose brain has not developed in regions related to higher-order executive functions.²⁶³ Courts are sentencing juveniles and their families to a life of debt for a crime committed by a category of persons whom the Supreme Court has repeatedly explained need unique constitutional protections because of their lack of brain maturity.²⁶⁴ If juveniles or their families cannot pay these fees, juveniles can be incarcerated, effectively imprisoning them for their indigence.²⁶⁵ Debtors’ prison has already been deemed unconstitutional,²⁶⁶ but more must be done to protect vulnerable juveniles. Congress must create bright-line criteria to determine whether a person is indigent or willfully refusing to pay court-ordered fines and fees. In these criteria, protections must be given to juveniles, so they are not fined excessively, possibly incarcerated, or forced into a lifelong cycle of debt for a crime committed when their brain was not fully developed.

Problematic policies on fines and fees create modern-day debtors’ prisons. Some state laws explicitly allow youth or their families to be incarcerated for failure to pay, while others establish that youth who fail to pay may have probation revoked, be held in contempt of court, or be denied acceptance into a diversion program.²⁶⁷ The imposition of such serious penalties, including loss of liberty, for failing to pay fines and fees raises serious legal concerns.

²⁶⁰ *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

²⁶¹ *Id.* at 733 (quoting *Miller*, 567 U.S. at 471).

²⁶² *Montgomery*, 136 S. Ct. 718; *Miller*, 567 U.S. 460; *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

²⁶³ *See Miller*, 567 U.S. at 471–72.

²⁶⁴ *See Miller*, 567 U.S. 460; *Graham*, 560 U.S. 48; *Roper*, 543 U.S. 551.

²⁶⁵ FEIERMAN ET AL., *supra* note 29, at 15.

²⁶⁶ *See Bearden v. Georgia*, 461 U.S. 660, 661–62 (1983).

²⁶⁷ *See FEIERMAN ET AL.*, *supra* note 29, at 8.

B. *Incorrect Interpretation of “Excessive” and “Fine”*

The second major legal concern related to the imposition of fines and fees on youth offenders relates to the incorrect interpretations of “excessive” and “fine” within the Excessive Fines Clause in the Eighth Amendment of the U.S. Constitution. The Eighth Amendment states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”²⁶⁸ In 2019, in *Timbs v. Indiana*, the Supreme Court incorporated the Excessive Fines Clause against the states.²⁶⁹ Following this recent decision, the correct interpretations of “excessive” and “fine” became even more important to ensure consistent and just results across the country.²⁷⁰

When interpreting the Excessive Fines Clause, the Supreme Court restricts fines “to sanctions that are punitive in nature and paid exclusively to the government”²⁷¹ and reads excessive to mean, “either exclusively or primarily, the proportionality between the crime’s gravity and the amount of the fine.”²⁷² These definitions place many economic sanctions beyond the Clause’s reach and suggest that real-world consequences of fines should be ignored.²⁷³ The interpretations have also created disorder in the lower courts.²⁷⁴ Furthermore, the Court only relied on a limited set of historical sources²⁷⁵ when it interpreted the Clause. If the Court were to consider the entire historical record and update its interpretations, or if Congress were to enact a federal statute reinterpreting the Excessive Fines Clause after accounting for the entire historical record, then

²⁶⁸ U.S. CONST. amend. VIII.

²⁶⁹ 139 S. Ct. 682 (2019).

²⁷⁰ See Eugene Volokh, *Does the Excessive Fines Clause Apply to the States?*, REASON: VOLOKH CONSPIRACY (Mar. 5, 2018), <https://reason.com/volokh/2018/03/05/does-the-excessive-fines-clause-apply-to> (discussing why the Eighth Amendment is important to the everyday lives of many Americans).

²⁷¹ Colgan, *supra* note 178, at 277.

²⁷² *Id.*

²⁷³ *Id.* at 295.

²⁷⁴ *United States v. Aguasvivas-Castillo*, 668 F.3d 7, 17 (1st Cir. 2012) (interpreting the excessive analysis to include consideration of “whether the defendant falls into the class of persons at whom the criminal statute was principally directed”); *United States v. Levesque*, 546 F.3d 78, 83 (1st Cir. 2008) (“[A] court should also consider whether forfeiture would deprive a defendant of his or her livelihood.”); *Von Hofe v. United States*, 492 F.3d 175, 185–86 (2d Cir. 2007) (using a hybrid of the considerations mandated in sister circuits for its excessive analysis and considering the relationship between the property and the offense); *United States v. \$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004) (interpreting the excessive analysis to include consideration of “the nature and extent of the crime [and] whether the violation was related to other illegal activities”); *United States v. Sigillito*, 899 F. Supp. 2d 850, 866 (E.D. Mo. 2012) (considering only whether forfeiture was grossly disproportional to the offense); *State v. Cottrell*, 271 P.3d 1243, 1250–51, 1254 (Idaho Ct. App. 2012) (relying on *Bajakajian* in holding that restitution for officer’s injury was not a fine because it was remedial); *State v. Good*, 100 P.3d 644, 649 (Mont. 2004) (holding restitution is at least partly punitive and thus a fine).

²⁷⁵ Colgan, *supra* note 178, at 277.

the new interpretations would likely result in a categorical ban on fines and fees for juveniles. Additionally, the new interpretations would lead to more consistent results in all court decisions.

The four cases²⁷⁶ that serve as a basis for the Excessive Fines doctrine rest on historical interpretation. The early history of the use of and limitations on monetary punishments extends back to “ancient Hebrew’s *lex talionis*, as well as early systems of the pre-Norman England Anglos and Saxons, which prescribed exact” punishments for a specific wrongdoing.²⁷⁷ These systems gave way to amercements, which were financial penalties assessed by juries for civil and criminal wrongdoing; however, many commentators treated them as civil penalties.²⁷⁸ The Magna Carta prohibited amercements that were disproportionate to the offense or that would impoverish the wrongdoer, curtailing their abuse.²⁷⁹ In contrast, fines were initially voluntary offerings to the king; however, over time, fines morphed into required payments to secure release from imprisonment.²⁸⁰ Because all economic sanctions were rendered involuntary, the terms fines and amercements merged into simply fines.²⁸¹ Thus, scholars reasoned the subsequent prohibition on excessive fines in the English Bill of Rights²⁸² included both criminal and civil economic sanctions.²⁸³

While scholars explored the relevant English history in earnest by the 1980s, little was known about the American experience, partly because the Supreme Court had not taken a case regarding the Clause.²⁸⁴ It was not until 1989, in *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*,²⁸⁵ that the Supreme Court attempted to interpret the Clause. Although the *Browning-Ferris* majority noted that the proper method for interpreting the Excessive Fines Clause was to assess the historical record to determine how the Clause’s terms were understood at ratification, it rejected the historical interpretations reached by the academic community.²⁸⁶ Rather, the Court determined historical considerations mandated a narrow definition of fine, limited to “payment to a

²⁷⁶ United States v. Bajakajian, 524 U.S. 321, 324 (1998); Austin v. United States, 509 U.S. 602, 604 (1993); Alexander v. United States, 509 U.S. 544, 546–47 (1993); *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 260 (1989).

²⁷⁷ Colgan, *supra* note 178, at 296.

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 296–97.

²⁸⁰ *Id.* at 297.

²⁸¹ *Id.*

²⁸² Bill of Rights of 1689, 1 W. & M. Sess. 2 c. 2 (Eng.).

²⁸³ Colgan, *supra* note 178, at 297.

²⁸⁴ *Id.*

²⁸⁵ 492 U.S. 257 (1989).

²⁸⁶ *Id.* at 264–73.

sovereign as punishment for some offense.”²⁸⁷ The Court rejected the claim that punitive damage awards were fines under the Excessive Fines Clause,²⁸⁸ even though this idea had gained significant traction.²⁸⁹ The Supreme Court’s narrow definition was, without hesitation, subsequently adopted in three Excessive Fines Clause cases.²⁹⁰

Throughout the four Excessive Fines Clause cases, the Supreme Court cited the occasional American statute or case; however, the four opinions lacked any meaningful attempt to determine how colonial and early American courts and legislatures imposed and collected fines.²⁹¹ The Court also did not account for the temporal gap between the English Bill of Rights and the Excessive Fines Clause’s ratification over 100 years later.²⁹² While English history can provide some insight into the way Americans understood economic sanctions, its utility is limited by the adaptation of English common law to the particularities of colonial societies, likely changing how the ratifying generation would have understood the Clause’s meaning.²⁹³

The Court’s interpretation of “fines” contains two restrictions: (1) the sovereign-recipient restriction and (2) the penalties for punitive purposes restriction. With regard to the first restriction, if the Court had investigated the ratifying generation’s understanding of fines more in-depth, it would have discovered that the generation understood fines to be payable to individuals, not exclusively to the government.²⁹⁴ As to the second restriction, it is important to note that any evaluation of this requirement will be convoluted,²⁹⁵ which may explain why the historical support for this restriction is even weaker than the sovereign-recipient restriction.²⁹⁶ However, the addition of colonial and early American records to the historical interpretation reveals three problems with the

²⁸⁷ *Id.* at 265.

²⁸⁸ *Id.* at 259–60.

²⁸⁹ Colgan, *supra* note 178, at 298.

²⁹⁰ See *United States v. Bajakajian*, 524 U.S. 321, 324 (1998) (holding that a forfeiture of cash resulting from a criminal conviction for failure to report the transportation of money overseas was a fine under the *Browning-Ferris* historical definition); *Austin v. United States*, 509 U.S. 602, 602–03 (1993) (determining that a civil in rem forfeiture met the *Browning-Ferris* historical definition of a fine); *Alexander v. United States*, 509 U.S. 544, 544–45 (1993) (holding that an in personam forfeiture also met the *Browning-Ferris* historical definition of a fine).

²⁹¹ See, e.g., *Bajakajian*, 524 U.S. at 334–37.

²⁹² See *id.* (citing Bernadette Meyler, *Towards a Common Law Originalism*, 59 STAN. L. REV. 551, 556–57 (2006)).

²⁹³ *Id.*

²⁹⁴ See *id.* at 327–28.

²⁹⁵ See *id.* at 346 (Kennedy, J., dissenting) (“It is a mark of the Court’s doctrinal difficulty that we must speak of nonpunitive penalties, which is a contradiction in terms.”).

²⁹⁶ Colgan, *supra* note 178, at 310.

Court's punitive purpose requirement.²⁹⁷ First, the historical use of relevant nomenclature was broader than the Court allowed.²⁹⁸ Second, the use of economic sanctions that have remedial qualities for the purpose of punishment belies the Court's attempt to distinguish between remedial and punitive sanctions.²⁹⁹ Third, the identical collection treatment for fines and remedial sanctions suggests that the ratifying generation would have seen the two financial obligations as the same.³⁰⁰ While these additional historical records do not define fines, they indicate that the ratifying generation would have understood fines to be payable to individuals and would not have divided remedial and punitive penalties when determining whether a sanction qualified as a fine.³⁰¹

Even though the Supreme Court examined only a truncated historical record when interpreting "fines,"³⁰² it studied that history. Rather than engaging in the same substantial examination of history to interpret the term "excessive," the Supreme Court chose instead to simply adopt the Cruel and Unusual Punishment Clause's gross disproportionality test in the fourth Excessive Fines case heard by the Court.³⁰³ The Supreme Court's only interpretation of "excessive" came from *United States v. Bajakajian*.³⁰⁴ There, the Court briefly discussed how proportional a fine must be to a criminal offense by considering an English case that only described excessiveness in general terms³⁰⁵ and the Magna Carta. Then, the Court simply adopted the Cruel and Unusual Punishment Clause's gross disproportionality test without considering any textual or historical distinctions between the Eighth Amendment's different provisions.³⁰⁶ Additionally, the Supreme Court did not address the question of impoverishment as it related to this test.³⁰⁷ Instead, the conversation focused on the proportionality of the fine in light of the offense, the petitioner's characteristics, and the harm caused.³⁰⁸ Not surprisingly, the opinion has resulted in confusion. Lower courts have interpreted the opinion to mean both "that proportionality

²⁹⁷ *Id.* at 311.

²⁹⁸ *Id.* (noting that in the historical records economic sanctions called fines were used for remedial purposes, court costs, and incarceration costs).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* at 310.

³⁰² *Id.* at 299.

³⁰³ *United States v. Bajakajian*, 524 U.S. 321, 334–37 (1998).

³⁰⁴ *Id.* at 322.

³⁰⁵ *Id.* at 335 (citing *Earl of Devonshire's Case*, 11 How. St. Tr. 1367, 1372 (H.L. 1689)).

³⁰⁶ *Id.* at 336–37.

³⁰⁷ *Id.* at 337–40.

³⁰⁸ *Id.*

between the penalty imposed and the harm caused is the exclusive consideration in assessing whether a fine is excessive, or alternatively, that proportionality is a necessary albeit not exclusive condition whereby the Magna Carta's prohibition against impoverishing defendants may be brought to bear."³⁰⁹ Regardless of which interpretation is correct, the historical record suggests that the ratifying generation would have held a broader understanding of the concept of excessiveness.³¹⁰ That generation likely would have considered three factors when determining whether a fine was excessive: first, facts related to the offense and offender characteristics related to culpability; second, the fine's effect on the offender and his family; and third, the balance between the effect of the fine and the aggravating and mitigating circumstances of the crime.³¹¹

Because of the limited historical record the Court used in interpreting "fines" and "excessive," the Court or Congress should reinterpret the Clause to be more faithful to the entire historical record. After reviewing and weighing all relevant history, it seems that a "fine" is a deprivation of anything of economic value in response to a public offense, regardless of the recipient or purpose.³¹² As for the term "excessive," the strongest historical evidence indicates both proportionality and effect are constitutionally relevant.³¹³ Evidence suggests that proportionality should include both offense and offender characteristics that reflect the level of culpability in a case.³¹⁴ The evidence regarding effect is more complicated since the only evidence with explicit constitutional roots would support a bar on fines that would impoverish the defendant,³¹⁵ whereas weaker evidence from colonial and early American records sometimes supports and other times contradicts this bar.³¹⁶ Thus, if the Court or Congress desires to be consistent with the entire historical record, it should reinterpret "fines" to mean deprivation of anything of economic value in response to a public offense, regardless of whether it has a punitive purpose, and "excessive" should be assessed through broad understanding of proportionality and the fine's effect on the offender.

Under these new interpretations, fines and fees for youth offenders would likely be categorically banned. Under the suggested meaning of "fines," all fines and fees discussed in this Comment would be considered fines and, under the

³⁰⁹ See Colgan, *supra* note 178, at 321.

³¹⁰ *Id.* at 322.

³¹¹ *Id.* at 335–36.

³¹² *Id.* at 340–43.

³¹³ *Id.* at 343–45.

³¹⁴ See *id.*

³¹⁵ See MAGNA CARTA, ch. 20–21 (1215), reprinted in A.E. DICK HOWARD, MAGNA CARTA: TEXT AND COMMENTARY 42 (rev. ed. 1998).

³¹⁶ Colgan, *supra* note 178, at 345.

suggested assessment of “excessive,” most fines and fees would be considered excessive because they would likely impoverish juveniles, who already lack resources. The fines and fees discussed in this Comment are imposed following a juvenile’s arrest and are paid to the government. Thus, the issue of a non-sovereign recipient is not a concern. Additionally, the violations discussed in this Comment only relate to public offenses. The only possible concern is related to the purpose of the different fines and fees since most of the financial obligations discussed in this Comment are nonpunitive. However, under the new interpretation, the punitive or nonpunitive division would no longer matter for the Excessive Fines Clause. Therefore, all fines and fees discussed in this Comment would be considered fines under the suggested interpretation, which encompasses a more accurate and complete historical record.

Under the suggested interpretation of “excessive,” courts would have to account for the offense and offender’s characteristics, as well as the fine’s effect on the offender. While there are a variety of offenses juveniles can commit, all juveniles have one common characteristic that relates to their culpability, which is their immature brain development. As discussed above, the Supreme Court has repeatedly discussed the need for constitutional protections to be calibrated to the unique developmental needs of adolescents.³¹⁷ The Court first noted in *Roper* that “children are constitutionally different from adults for purposes of sentencing,” partially because of their “diminished culpability.”³¹⁸ The Court subsequently cited this language in *Graham*,³¹⁹ *Miller*,³²⁰ and *Montgomery*.³²¹ This diminished culpability characteristic must also apply to juveniles when it comes to determining whether a fine is excessive. Under the suggested interpretation, this diminished culpability would lean in favor of a fine against a juvenile being considered excessive. Additionally, most juveniles lack the resources needed to pay court fines and fees. Thus, the effect on most offenders would be detrimental. A significant number of juveniles would only be able to acquire a minimum-wage job and, because of compulsory education and labor laws, if a juvenile worked the maximum number of hours they were allowed every day, they would have to work over two months to pay off the average

³¹⁷ See *supra* text accompanying notes 245–265.

³¹⁸ *Roper v. Simmons*, 543 U.S. 551, 569–71 (2005). “Three general differences between juveniles under 18 and adults demonstrates that juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.* at 569. First, a lack of maturity and underdeveloped sense of responsibility are found in youth more often than in adults. *Id.* Second, juveniles are more vulnerable or susceptible to negative influences and outside pressures. *Id.* Third, the character of a juvenile is not as well formed as that of an adult. *Id.* at 570.

³¹⁹ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

³²⁰ *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

³²¹ *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016).

amount of court fees.³²² Court fines and fees are likely to push juveniles into a cycle of debt or back into illegal activity to raise enough money to pay their fines and fees.³²³ Some state statutes impose fines and fees on youth offenders' parents rather than the juvenile offender, but these are also likely to harm the parents and family or juvenile.³²⁴ Since every juvenile will have the characteristic of "diminished culpability,"³²⁵ and most fines will likely have a detrimental effect on each juvenile or their family, it appears fines are almost always excessive when charged to juveniles. Thus, rather than forcing judges to balance the above-mentioned factors, leading to inconsistent results, Congress should follow the Supreme Court's trajectory of providing juveniles with certain protections and categorically eliminate fines and fees for youth offenders.

C. *Unlawful Application of State Statutes*

The final legal reason Congress should categorically eliminate fines and fees for youth offenders is because judges unlawfully apply their state's statutes. Recent research has identified several unlawful fee policies and practices.³²⁶ First, some counties charge fees that violate state law.³²⁷ Second, although not discussed in this Comment, research has shown that some judges charge fees that exceed the statutory maximum.³²⁸ Third, as discussed above, by failing to properly assess a youth's ability to pay, counties are engaged in unconstitutional fee practices.³²⁹

As described above, state laws authorize counties to charge juveniles with several different fines and fees.³³⁰ However, some counties and judges feel the need to charge even more fines and fees than are permitted by law. For example, although only twenty-five states have statutes related to court expenses for juveniles, respondents to the JLC survey in twenty-eight states reported that youth or families were charged court expenses.³³¹ According to the same survey, although only twenty-two states have statutes related to costs for informal adjustment or diversion, twenty-six states impose these fees.³³² The imposition

³²² Under 29 U.S.C. § 206, the federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206 (2012).

³²³ Markowitz, *supra* note 1.

³²⁴ FEIERMAN ET AL., *supra* note 29, at 7.

³²⁵ Roper v. Simmons, 543 U.S. 551, 569–71 (2005).

³²⁶ CAMPOS-BUI ET AL., *supra* note 118, at 14.

³²⁷ *Id.*

³²⁸ *See id.*

³²⁹ *See supra* Part III.A.

³³⁰ *See supra* Part I.

³³¹ FEIERMAN ET AL., *supra* note 38, at 17.

³³² *Id.* at 12.

of a fine or fee without a state statute specifically addressing said financial obligation is unlawful. Rather than trying to create a system to ensure that such unlawful imposition does not occur in every county, city, and state, Congress should systematically eliminate fines and fees for youth offenders.

Another report, which focused specifically on California before its repeal of fines and fees for youth offenders, found that although California law never authorized counties to charge families for their children's investigation reports,³³³ eleven counties reportedly charged for this information.³³⁴ These fees ranged from \$250 to \$1,200 per case.³³⁵ Any county that charged a fee to families for a juvenile investigation report was doing so in violation of California law; however, nothing was done to stop this unlawful activity until the entire state categorically banned fines and fees for youth offenders. Rather than keeping watch of all fifty states' statutes relating to fines and fees for youth offenders and all judges' applications of these statutes, it would be less cumbersome and harmful to categorically eliminate all fines and fees for youth offenders.

The imposition of fines and fees on youth offenders is unconstitutional under the Supreme Court's holdings in *Williams*,³³⁶ *Tate*,³³⁷ and *Bearden*,³³⁸ would be categorically banned under a correct interpretation of the Excessive Fines Clause, and is unlawful in some jurisdictions. Additionally, Congress must take into consideration the unique circumstances and needs of juveniles given compulsory education and labor laws, the effect of imposing fines and fees on youths' families, and the Supreme Court's repeated statement that constitutional protections must be adjusted to the developmental needs of adolescents. Because of these legal concerns, Congress should categorically classify juveniles as indigent and eliminate the imposition of fines and fees for youth offenders.

IV. POLICY REASONS

The remainder of this Comment focuses on the policy reasons for eliminating fines and fees for youth offenders. According to the JLC, research on adults has shown that these economic sanctions "exacerbate poverty for

³³³ CAL. PENAL CODE § 1203.1a (West 2019) (applying only to cases "in which a defendant is convicted of an offense"); Santa Clara County, Cal., Res. No. BOS-2017-6 (2017). In California, "convicted of an offense" is a term of art that refers to adults. CAL. WELF. & INST. CODE § 203 (West 2019).

³³⁴ CAMPOS-BUI ET AL., *supra* note 118, at 14.

³³⁵ *Id.*

³³⁶ *Williams v. Illinois*, 399 U.S. 235, 243 (1970).

³³⁷ *Tate v. Short*, 401 U.S. 395, 397 (1971).

³³⁸ *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

indigent adults and their families and interfere with defendants' capacity to find permanent housing, manage drug or alcohol addictions, and maintain strong social bonds."³³⁹ For juveniles, the consequences may be equally, if not more, harmful. Recent research has presented three main policy reasons for the elimination of fines and fees for youth offenders.³⁴⁰ First, because youth in poverty and youth of color are overrepresented in the juvenile justice system, fines and fees exacerbate economic and racial disparities.³⁴¹ Second, research has shown that the imposition of fines and fees on youth offenders correlates with higher youth recidivism, which is against the core values of the juvenile justice system.³⁴² Third, fees cause financial hardship to families, weaken family relationships, and undercut family reunification.³⁴³

A. *Exacerbating Economic and Racial Disparities*

Financial obligations in the juvenile justice system exacerbate the system's existing economic and racial disparities.³⁴⁴ Youth in poverty and youth of color are overrepresented at every stage in the juvenile justice system, leading to a greater financial burden for these individuals and exacerbating already existing disparities.³⁴⁵ The core values of the juvenile justice system relate to rehabilitation and improved outcomes.³⁴⁶ However, imposing fines and fees that lead to unequal and unfair treatment does nothing to help these goals.

Because fines and fees for youth offenders lead to inherently unequal treatment for impoverished youth, Congress should eliminate fines and fees for youth offenders. The U.S. government has been working for years to try to get rid of economic inequality. For example, Temporary Assistance for Needy Families (TANF), and its predecessor, Aid to Families with Dependent Children (AFDC), have an over fifty-year history.³⁴⁷ The TANF program is one of the U.S. federal assistance programs that provides cash assistance to indigent

³³⁹ FEIERMAN ET AL., *supra* note 29, at 6.

³⁴⁰ CAMPOS-BUI ET AL., *supra* note 118, at 11.

³⁴¹ *See* FEIERMAN ET AL., *supra* note 29, at 8.

³⁴² *See* Press Release, Ctr. on Juvenile & Criminal Justice, Coalition Hails Governor for Signing Historic Juvenile Justice Reform Bill, and Calls for an Immediate End to all Juvenile Fee Assessments and Collections (Oct. 12, 2017), <https://ebclc.org/in-the-news/coalition-hails-governor-signing-historic-juvenile-justice-reform-bill-calls-immediate-end-juvenile-fee-assessments-collections/>.

³⁴³ *See* CAMPOS-BUI ET AL., *supra* note 118, at 11.

³⁴⁴ FEIERMAN ET AL., *supra* note 29, at 8.

³⁴⁵ *Id.*; *see* CAMPOS-BUI ET AL., *supra* note 118, at 11.

³⁴⁶ FEIERMAN ET AL., *supra* note 29, at 4.

³⁴⁷ *Work for Welfare*, FED. SAFETY NET, <http://federalsafetynet.com/work-for-welfare.html> (last visited Apr. 8, 2020).

American families.³⁴⁸ This program, emphasizing the welfare-to-work principle, is a grant given to each state to run their own welfare program and requires all recipients to find work within two years of receiving aid.³⁴⁹ Reducing economic inequality among U.S. citizens is an important goal for the government.

With respect to youth in poverty, these disparities occur because of unequal access to quality counsel, a system that allows children with access to private services avoid juvenile justice system involvement, high rates of youth from the child welfare system entering the juvenile justice system, and disproportionate entry into the juvenile justice system by youth in highly policed neighborhoods.³⁵⁰ Youth in poverty face harsher consequences than their affluent peers simply because of their inability to pay.³⁵¹ For example, youth who cannot pay for alternative programs may enter the juvenile justice system when a wealthier peer would not.³⁵² Poorer youth are more likely to be charged with violations of probation for failure to pay costs.³⁵³ Youth in poverty may be unable to expunge a juvenile record because they owe money to the court.³⁵⁴ These harsh consequences intensify the already existing inequalities in the juvenile justice system.³⁵⁵

Additionally, recent data suggest that juvenile fines and fees disproportionately harm youth and families of color.³⁵⁶ As mentioned above, youth of color are overrepresented at every stage in the criminal justice system.³⁵⁷ While the biggest racial disparities arise in the context of an arrest, such disparities are also evidenced at decisional stages including diversion, detention, probation, and commitment to placement.³⁵⁸ One study found that youth of color were more likely to still owe costs and owe a higher amount upon case closing.³⁵⁹ These disparities persist despite similar offending rates among white youth and youth of color for common juvenile offenses.³⁶⁰ Because of this racially disproportionate treatment, youth of color face a heavier financial

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ For a more detailed discussion of these and other factors leading to economic disparities in the system, see generally Tamar Birkhead, *Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53 (2012).

³⁵¹ FEIERMAN ET AL., *supra* note 29, at 8.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ CAMPOS-BUI ET AL., *supra* note 118, at 11.

³⁵⁸ See THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 6 (2016).

³⁵⁹ Piquero & Jennings, *supra* note 173, at 14.

³⁶⁰ See THE SENTENCING PROJECT, *supra* note 358, at 1.

burden compared to their white counterparts.³⁶¹ Additionally, because judges punish youth of color more frequently and harshly than their white peers, these youth offenders and often their families are liable for higher burdens.³⁶²

Similar to the desire to end economic disparities in the United States, the government and society as a whole have been trying to end racial disparities since the Civil Rights movement. Title VI of the Civil Rights Act of 1964 prohibits intentional discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.³⁶³ Most funding agencies have regulations implementing this law that also prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin.³⁶⁴ More recently, both former President George W. Bush and former Secretary of State and Democratic presidential candidate Hillary Clinton spoke about ending racial inequality.³⁶⁵ Reducing racial inequality is a significant and timely goal for the government.³⁶⁶ This goal has also recently been addressed regarding the juvenile justice system. In 2018, President Trump authorized the Juvenile Justice and Delinquency Prevention Act.³⁶⁷ This Act provides for a nationwide justice planning and advisory system spanning all states, territories, and the District of Columbia, federal funding for delinquency prevention and improvements in state and local juvenile justice programs and practices, and the operation of a federal agency, the Office of Juvenile Justice and Delinquency Prevention.³⁶⁸ The Act was based on a broad consensus that youth and families involved in the juvenile courts should be guarded by federal standards for care and custody.³⁶⁹ As it relates to racial inequality, under this new law, states must begin collecting data on racial disparities in the juvenile justice system and develop specific strategies for addressing those inequalities.³⁷⁰

³⁶¹ CAMPOS-BUIET AL., *supra* note 118, at 11.

³⁶² *Id.* at 12.

³⁶³ 42 U.S.C. § 2000d (2012).

³⁶⁴ *Id.*

³⁶⁵ George W. Bush, *Ending Racial Inequality*, C-SPAN (July 10, 2000), <https://www.c-span.org/video/?c4743877/ending-racial-inequality-george-w-bush>; Dan Merica & Eugene Scott, *Clinton: Ending Racial Inequality Will Be 'Mission' of Presidency*, CNN (Feb. 16, 2016), <https://www.cnn.com/2016/02/16/politics/hillary-clinton-civil-rights-groups-leaders-harlem/index.html>.

³⁶⁶ *See* 34 U.S.C. § 11101 (2012).

³⁶⁷ *Id.* (reauthorizing the initiatives enacted in 1974 as Pub. L. No. 93-415, 42 U.S.C. § 5601).

³⁶⁸ *Id.*

³⁶⁹ *Juvenile Justice and Delinquency Prevention Act*, COALITION FOR JUV. JUST., <http://www.juvjustice.org/federal-policy/juvenile-justice-and-delinquency-prevention-act> (last visited Feb. 9, 2019).

³⁷⁰ J. Brian Charles, *The Criminal Justice Reforms Trump Didn't Mention in His State of the Union*, GOVERNING (Feb. 7, 2019), <http://www.governing.com/topics/public-justice-safety/gov-trump-sotu-juvenile-criminal-justice-reform-states.html>.

Fee structures that push youth offenders deeper into the juvenile justice system for failure to pay contravene the rehabilitative goal of the juvenile justice system. Because the imposition of fines and fees for youth offenders have an economically and racially disparate impact, youth in poverty and youth of color may face harsher consequences and receive less rehabilitative treatment than their wealthier and white peers. Not only is it unfair for youth in poverty and youth of color to receive less rehabilitative treatment than their more affluent and white counterparts, but it is unfair for all youth offenders to have this financial burden imposed upon them that is contradictory to the core values of the juvenile justice system.³⁷¹

B. Increasing Likelihood of Recidivism

The use of monetary penalties aimed at punishment for delinquent acts and for deterring subsequent offending has long been a part of criminal justice systems.³⁷² While some sort of financial penalty may be a reasonable punishment, it may also result in adverse consequences.³⁷³ For example, recent research suggests that fines and fees on youth offenders may increase the likelihood of youth recidivism.³⁷⁴ One study found that the likelihood of recidivism was exacerbated among youth with more costs imposed at disposition and youth who owed costs upon case closing.³⁷⁵ This recent study also found that families of color were almost twice as likely as white families to have fine and fee debt upon their child's case closing.³⁷⁶ Thus, families of color are not only harmed by the greater likelihood and amount of fee debt, but also by the likelihood it will lead to recidivism.

³⁷¹ See FEIERMAN ET AL., *supra* note 29, at 4.

³⁷² See Piquero & Jennings, *supra* note 173, at 28.

³⁷³ *Id.*

³⁷⁴ *Id.*; Tamar R. Birckhead, *The New Peonage*, 72 WASH. & LEE L. REV. 1595 (2015) (describing how mandatory fees for youth in the juvenile court system can create insurmountable fee burdens, increasing the likelihood of youth recidivating); Stacy Hoskins Haynes et al., *Juvenile Economic Sanctions: An Analysis of Their Imposition, Payment, and Effect on Recidivism*, 13 CRIMINOLOGY & PUB. POL'Y 31, 37–38 (2014) (describing studies showing that the burdens of economic sanctions “might interfere with a juvenile’s ability to reenter society successfully after a conviction, thereby increasing the risk of recidivism”); R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 MINN. L. REV. 1779, 1796, 1811–12 (2015) (describing how the imposition of economic sanctions increases the likelihood of recidivism for all offenders). Research also suggests that fees are unlikely to have a general deterrent effect. R. Barry Ruback & Mark H. Bergstrom, *Economic Sanctions in Criminal Justice Purposes, Effects, and Implications*, 33 CRIM. JUST. & BEHAV. 242–73 (2006) (concluding that the lack of deterrence effect from economic sanctions is due to the relatively low size of economic sanctions and lack of adjustment according to the nature of individual crimes).

³⁷⁵ Piquero & Jennings, *supra* note 173, at 28–29.

³⁷⁶ *Id.* at 29.

Similar to society's desire to combat economic and racial disparities, the government and society as a whole have been trying to decrease recidivism rates for years. Over the last decade, state legislation has aimed to reduce recidivism rates by providing offenders with educational and job-training services and skills they need to be successful after release.³⁷⁷ More recently, legislation signed by President Trump makes significant changes to the treatment and rehabilitation of federal prisoners.³⁷⁸ Under this legislation, qualifying inmates can earn credit to be released from prison early and serve the remainder of their sentence in home confinement or halfway houses if they participate in the plan's anti-recidivism programs.³⁷⁹ The government and society are working to reduce recidivism throughout the entire criminal justice system, and there should be no exception for the juvenile justice system.

Additionally, although the juvenile justice system has changed tremendously since its creation in 1899, it still maintains rehabilitation as its primary goal.³⁸⁰ However, the most rigorous study to date concludes that fines and fees greatly increase the likelihood of youth recidivism.³⁸¹ This finding is contradictory to the primary goal of the juvenile justice system. This system was established to help youth offenders and ensure they thrive after their experience in it;³⁸² however, high fines and fees make youth offenders' success highly unlikely. If Congress truly believes the goal of the juvenile justice system should be rehabilitation, then it should eliminate the imposition of fines and fees on youth offenders.

C. *Creating Hardship on Families*

Fines and fees on youth offenders impose significant hardships on the large number of families in the juvenile justice system who cannot afford to pay them.³⁸³ These hardships frustrate the core values of the juvenile justice system.³⁸⁴ Further, these fines and fees force families to choose between paying

³⁷⁷ Lucia Bragg, *Federal Criminal Justice Reform in 2018*, NAT'L CONF. ST. LEGISLATURES (Mar. 2018), <http://www.ncsl.org/research/civil-and-criminal-justice/federal-criminal-justice-reform-in-2018.aspx>.

³⁷⁸ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.

³⁷⁹ Andrea Drusch, *Trump's Prison Plan to Release Thousands of Inmates*, MCCLATCHY DC BUREAU (Dec. 21, 2018), <https://www.mcclatchydc.com/news/politics-government/congress/article223414935.html>.

³⁸⁰ FEIERMAN ET AL., *supra* note 29, at 8.

³⁸¹ Piquero & Jennings, *supra* note 173, at 28.

³⁸² FEIERMAN ET AL., *supra* note 29, at 4.

³⁸³ CAMPOS-BUI ET AL., *supra* note 118, at 9.

³⁸⁴ FEIERMAN ET AL., *supra* note 29, at 8 (pushing the responsibility onto uninvolved parents does not result in youth offenders learning from or answering for their own delinquent act).

for necessities and paying the jurisdiction, they weaken ties between juveniles and their families by adding stress, and they undermine family reunification.³⁸⁵

For a single parent making federal minimum wage, the average court costs of \$2,000 constitute roughly two months' salary.³⁸⁶ Even average, or seemingly minimal, payments may require families to choose between buying basic necessities and paying court-ordered fees.³⁸⁷ Respondents to the JLC survey reported that fees cause difficulties for families who are "surviving on a day to day basis" and that "[s]ome of these families are teetering on the brink [financially] when their children enter the juvenile justice system and the added costs push them further."³⁸⁸ Some families "have difficulty scraping together 10 to 15 dollars out of their monthly budget to pay" these fees.³⁸⁹ Even that cost "means the difference to some [families] between eating for a day or two."³⁹⁰ Another respondent noted that even being required to pay a single type of cost "results in families not having funds for rent, food, groceries."³⁹¹ Parents and families need this money for personal necessities and to care for their children. If parents are required to pay this significant amount of money, they will lack resources for present and future expenses, leading to a cycle of debt and poverty.

In addition to these fines and fees creating financial hardship for many families involved in the juvenile justice system, research also shows that charging juvenile administrative fees weakens family relationships.³⁹² Many families already have challenging relationships due to their child's involvement in the juvenile justice system, and adding a financial burden can amplify feelings of anger or resentment.³⁹³ One youth offender incarcerated in Calabasas said he worried about the bills for fees imposed in his case every day.³⁹⁴ He explained that his mother worked two jobs and his rebellion cost the family a lot, causing tension and arguments.³⁹⁵ Although he wanted to return home, he knew the stress from the financial burden would make it hard to go back to his family.³⁹⁶ One

³⁸⁵ CAMPOS-BUI ET AL., *supra* note 118, at 9–10.

³⁸⁶ The federal minimum wage is \$7.25 per hour. 29 U.S.C. § 206 (2012). For a single parent making the federal minimum wage, it would take approximately seven forty-hour work weeks, or 276 hours, to pay off costs of \$2,000.

³⁸⁷ FEIERMAN ET AL., *supra* note 29, at 6.

³⁸⁸ *Id.*

³⁸⁹ *Id.* at 6–7.

³⁹⁰ *Id.* at 7.

³⁹¹ *Id.* at 7.

³⁹² CAMPOS-BUI ET AL., *supra* note 118, at 9.

³⁹³ *Id.* at 10.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

father described how fees from his son's detention strained their relationship.³⁹⁷ He explained that the fees "don't do anything besides make it more difficult for families to take care of each other," and that if the government garnished his wages, he would not be a better father, but would be "more angry at [his] son."³⁹⁸

These feelings of anger and resentment, combined with parental liability for fees, pull families apart. For example, one grandmother assumed guardianship of her three grandchildren after her daughter passed away.³⁹⁹ However, when her grandson was placed in juvenile hall and she received a large bill for court costs, she considered relinquishing custody of him to the county.⁴⁰⁰ In another instance, one youth offender was so distressed by the financial impact of his actions on his family that he considered running away from home and living on the streets in the hope that his family would be relieved of the financial burden.⁴⁰¹ Additionally, parental liability for juvenile fees does not hold the youth offender accountable or deter them from future delinquent acts but may create a hardship on the parents and offender's siblings. The costs imposed for juvenile justice involvement may determine "if another child in the family goes to college or not[, g]ets school clothes or not[, or gets] to do anything else other children get to do because money is being spent on the juvenile system."⁴⁰²

Imposing fines and fees on youth offenders exacerbates economic and racial disparities, increases the likelihood of recidivism, and creates a hardship on families. The juvenile justice system is designed to help young people meet their potential, get back on track, and become productive members of their communities.⁴⁰³ However, the imposition of fines and fees hinders these goals. For youth and families who cannot afford these payments, consequences include recidivism, incarceration, and significant financial strain. Moreover, existing studies suggest that fines and fees have limited fiscal benefit to states and counties given the difficulty in collecting from families in poverty and the high administrative costs in attempting to do so.⁴⁰⁴ The best solution to these negative consequences and lack of benefit is for Congress to categorically eliminate fines and fees for youth offenders.

³⁹⁷ *Id.*

³⁹⁸ *Id.* at 11.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* (explaining that if the grandmother relinquished custody, the state would become responsible for the fees).

⁴⁰¹ *Id.*

⁴⁰² FEIERMAN ET AL., *supra* note 29, at 7.

⁴⁰³ *Id.* at 25.

⁴⁰⁴ *See* SELBIN, *supra* note 31, at 17.

CONCLUSION

Across the country, youth and their families, including many in poverty, face monetary charges for a youth offender's involvement in the juvenile justice system. These fines and fees are unfair and unrealistic given adverse economic conditions faced by most families with youth in the juvenile system, and the consequences can be devastating. Youth and families who cannot pay face "criminal contempt, civil judgments that follow them into adulthood, probation violations, additional fees, incarceration, property liens, and ineligibility for expungement."⁴⁰⁵ Too often, the inability to pay pushes an offender deeper into the juvenile justice system and exacerbates the family's economic and emotional hardship.

Because fines and fees cause so much harm to youth and families, the best solution is for Congress to categorically eliminate the assessment and imposition of these financial burdens on youth offenders. Congress should follow California's lead and establish a more sustainable and effective model for funding court systems instead of attempting to get "blood from a turnip."⁴⁰⁶ Some may be worried about the revenue loss to counties by eliminating fines and fees for youth offenders, but these fines and fees generate minimal profits to counties. If all fines and fees for youth offenders are eliminated, the small amount of net gain each county gives up could be paid for by that state's funds appropriated to the state department that oversees the juvenile justice system.⁴⁰⁷

It is time to re-focus the juvenile justice system by eliminating fines and fees placed on youth who are not old enough to work full time or enter into contracts. The juvenile justice system was designed to help youth meet their potential and get back on track. However, the imposition of fines and fees that are unlikely to be paid do nothing for these goals. Thus, Congress should eliminate these financial burdens and require youth to perform community service or participate in diversion programs. The nation must remember that the juvenile court system was created because youth are different from adults and adjust the focus on a child's development and rehabilitation rather than his or her money.

⁴⁰⁵ FEIERMAN ET AL., *supra* note 29, at 7.

⁴⁰⁶ *Id.* at 9.

⁴⁰⁷ *See, e.g.*, VA. CODE ANN. § 16.1-278.8:01 (West 2014) ("The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose."); *see Resolution Addressing Fines, Fees, and Costs in Juvenile Courts*, NAT'L COUNCIL JUV. & FAM. CT. JUDGES (Mar. 17, 2018), <https://www.ncjfcj.org/wp-content/uploads/2019/08/resolution-addressing-fines-fees-and-costs-in-juvenile-courts.pdf>.

If Congress does not feel it can completely eliminate fines and fees for youth offenders, then it should at least require states to scale back these fines and fees. Congress could start by either eliminating some fines and fees, setting a ceiling on the number of fines and fees a county can charge, or setting a ceiling on the amount of money a county can charge. If Congress decides to require states to eliminate some fees, the first ones Congress should remove are fees for public defenders. The nation should ensure that “free” counsel is actually free of any costs for youth in the justice system. This approach would provide youth with the rights promised in *Gault* and *Gideon*, while also creating a more equitable juvenile justice system. If Congress decides it wants to allow states to impose any fees they want, then Congress should set a limit on the amount a county can impose in total fees on a youth offender. A recent study suggests there appears to be a “sweet spot” beyond which there is a diminishing probability youth will be able to pay their debt in full.⁴⁰⁸ Because a youth offender will likely be unable to pay more than this threshold amount, Congress should require states to put a cap on fines and fees in this amount. These approaches can hold youth offenders accountable while also supporting youth in realizing their potential.

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⁴⁰⁸ Piquero & Jennings, *supra* note 173, at 29.

* Managing Editor, *Emory Law Journal*, Volume 69; Emory University School of Law, J.D., 2020; Tulane University, B.A., 2017. Thank you to my faculty advisor, Professor Martha Fineman, for her guidance throughout the writing process. Thank you to Rashmi Borah, George Brewster, and the rest of the *Emory Law Journal* editors for their thoughtful and diligent feedback throughout the editing process. And finally, thank you to my family and friends for their continuous love and support.