



April 7, 2019

Honorable Tony Cárdenas
Co-Chair, Crime Prevention and Youth Development Caucus
U. S. House of Representatives (CA-29)
2438 Rayburn House Office Building
Washington, DC 20515

RE: Endorse “Eliminating Debtor’s Prison for Kids Act of 2019”

Dear Congressman Cárdenas:

The Western Center on Law and Poverty and the California Low-Income Consumer Coalition represent California’s poorest residents in policy and budget discussions addressing consumer issues. We are writing with our endorsement for the Eliminating Debtor’s Prison for Kids Act of 2019, which will make grants to states for the purpose of providing mental health services and behavioral health services to opportunity youth in schools or juvenile detention provided that the state’s Attorney General certifies that the state prohibits a juvenile justice fees to be charged to youth or their guardians.

Background

Every year, California juvenile courts place tens of thousands of youth on formal probation.¹ Under California state law which was repealed on January 1, 2018, counties were authorized to charge a range of administrative fees to parents or guardians of system-involved youth. In California, families were charged for their child’s public defender, for every night their child is detained, and for the electronic monitoring, probation supervision, and drug testing of their child.² Several recent reports have documented that this practice is widespread across the country.³

¹ CAL. DEP’T OF JUSTICE ET AL., JUVENILE JUSTICE IN CALIFORNIA (2015), <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf>.

² CAL. WELF. & INST. CODE §§ 902-914 (West 2016) (describing liability for cost of care, support, and maintenance of a ward (§ 902); public defender and court-appointed attorney services (§ 903.1); probation supervision and electronic surveillance (§ 903.2)); *Id.* § 729.9 (describing liability for cost of drug and substance abuse testing).

³ Feerman, J., Goldstein, N., Haney-Caron, E., and Fairfax Columbo, J. (2016). DEBTORS’ PRISON FOR KIDS? The High Cost of Fines and Fees in the Juvenile Justice System. Juvenile



Research by the Policy Advocacy Clinic at the U.C. Berkeley School of Law found that, before California law banned the practice,⁴ 51 California counties were charging families one or more juvenile fees.⁵ Fee types and amounts varied by jurisdiction, but 47 of 58 California counties charged detention fees, 32 charged for public defenders, 27 charged for electronic monitoring, 20 charged for probation supervision, 14 charged for drug testing, and 8 charged for investigation reports.⁶

Although most California counties charged juvenile administrative fees prior to January 1, 2018, several counties repealed or suspended assessments, including: Alameda, Contra Costa, Los Angeles, Sacramento, Santa Clara, and Sonoma Counties. Butte and Solano Counties had suspended juvenile detention fee assessments in 2017, and San Francisco has never charged juvenile fees.

The California legislature originally authorized fees “to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay.”⁷ However, research showed that fee collection often cost as much as or, in some cases, more than netted by payments. This is because the families whose youth were arrested, charged or detained were overwhelmingly low-income families of color.

Juvenile Administrative Fees Harm Vulnerable Families of Color

Juvenile administrative fees impose significant harms on families who cannot afford to pay them. Once assessed, juvenile fees become a civil judgment and are referred to the state Franchise Tax Board for wage garnishment or tax refund intercept. As a result, families may suddenly find that they are unable to cover basic expenses, like rent or groceries. The fees also weaken ties between youth and their parents by adding more

Law Center. Philadelphia, PA. Available at:

http://jlc.org/sites/default/files/publication_pdfs/JLC_debtorsPrison_9-6v2.pdf; National Juvenile Defender Center, “Abolishing the Criminalization of Poverty on

Young People: Bail, Fees, Fines, Costs and Restitution in Juvenile Court,” available at: https://njdc.info/bail-fines-and-fees-bench-card_final/; and, National Task Force on Fines, Fees and Bail Practices (2017). Principles on Fines, Fees, and Bail Practices. Available at

<http://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles-FinesFees.ashx>

⁴ Link to Bill language and analysis:

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB190

⁵ U.C. BERKELEY SCHOOL OF LAW, POLICY ADVOCACY CLINIC, MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA 6 (2017),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937534 (figures updated since report was published).

⁶ *Id.*

⁷ CAL. WELF. & INST. CODE § 903(c) (West 2016).



stress to family relationships, which undermines family reunification and the rehabilitative purpose of the juvenile justice system.⁸

Because of discrimination at every stage of the process, youth of color are overrepresented in the juvenile system compared to White youth, even when controlling for underlying charges. Black youth in California are four times more likely to be arrested than White youth, and over seven times more likely to be detained, incarcerated, and put on probation. Latino youth are almost twice as likely as White youth to be detained and put on probation, and almost three times as likely to be incarcerated.⁹

As a result of these disparities, families of color are liable for higher juvenile fee amounts. For instance, prior to Alameda County's 2016 juvenile fee repeal, the family of a Black youth serving average probation conditions was liable for more than double the juvenile administrative fees (\$3,438) as the family of a White youth serving average probation conditions (\$1,637).¹⁰

Recent research suggests that juvenile administrative fees may also increase the likelihood of recidivism. Criminologists found that financial penalties imposed on youth and their families is correlated with a greater likelihood of recidivism.¹¹ Similarly, a group of graduate students at the U.C. Berkeley Goldman School of Public Policy found that ending juvenile administrative fees in California could reduce recidivism.¹²

Juvenile Administrative Fees Are Costly to Administrators and Society

Although most states cite the reason for authorizing juvenile administrative fees as needing to protect their fiscal integrity, it was our experience in California that most counties generated little net revenue from the fees. Most families with youth in the juvenile system cannot afford to pay the fees, so recovery rates and net collection are low. For example, in fiscal year 2014-15 – the year before it ended all juvenile fee assessments and collection – Santa Clara County spent more than \$450,000 to collect \$400,000 in fees.¹³

⁸ *Id.* § 202(a).

⁹ Data on racial disparities in the juvenile justice system received from the W. Haywood Burns Institute for Juvenile Justice Fairness & Equity (2014) (on file).

¹⁰ U.C. BERKELEY SCHOOL OF LAW, POLICY ADVOCACY CLINIC, HIGH PAIN, NO GAIN: HOW JUVENILE ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 9 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2738710.

¹¹ Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders* 15 *YOUTH VIOLENCE & JUV. JUST.* 325 (2016).

¹² Ezra Cohn, Debbie Mayer, Caitlin O'Neil, Khalia Parish & Jenny van der Heyde, *An Economic Analysis of Charging Administrative Fees to Justice-Involved Youth* (2016) (on file).

¹³ SANTA CLARA COUNTY, CAL., RES. NO. 6 (2017) (enacted), http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=84679.



The Policy Advocacy Clinic estimates that more than 70% of county fee revenue pays for collection activity against families, not for the care and supervision of youth.¹⁴

Juvenile administrative fees also generate costly collateral consequences for families and communities. As noted above, juvenile fee debt may increase youth recidivism. Fee debt can also cause families to spend less on positive goods, such as education and preventative healthcare. Reducing such positive spending can impose long term costs on families, communities, and society by prolonging and exacerbating poverty.¹⁵

Support for Ending Juvenile Administrative Fees Is Increasing

There is growing recognition of the harmful impact of fees charged to families with a child in the juvenile system. Courts have raised concerns about juvenile administrative fees. For example, in August 2016, the U.S. Court of Appeals for the Ninth Circuit admonished Orange County for aggressively pursuing payment on a more than \$16,000 juvenile fee bill after the financial burden forced a single mother to sell her home and declare bankruptcy:

Not only does such a policy unfairly conscript the poorest members of society to bear the costs of public institutions, operating “as a regressive tax,” but it takes advantage of people when they are at their most vulnerable, essentially imposing “a tax upon distress.” Moreover, experience shows that the practice undermines the credibility of government and the perceived integrity of the legal process.¹⁶

In September 2016, The New York Times editorial board cited local fee reform efforts in California in calling for an end to juvenile administrative fees nationwide:

To their credit, Alameda County officials saw the folly of a system that harmed a lot of people and produced no discernible public benefit. Last March, the county Board of Supervisors put an immediate moratorium on all administrative court fees in juvenile cases. In July, the board voted to repeal those fees permanently. Counties across the country would be wise to follow suit.¹⁷

¹⁴ U.C. BERKELEY SCHOOL OF LAW, POLICY ADVOCACY CLINIC, MAKING FAMILIES PAY: THE HARMFUL, UNLAWFUL, AND COSTLY PRACTICE OF CHARGING JUVENILE ADMINISTRATIVE FEES IN CALIFORNIA 18-19 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937534.

¹⁵ Ezra Cohn, Debbie Mayer, Caitlin O’Neil, Khalia Parish & Jenny van der Heyde, *An Economic Analysis of Charging Administrative Fees to Justice-Involved Youth*, (2016) (on file).

¹⁶ *Rivera v. Orange Cty. Prob. Dep’t*, 832 F.3d 1103 (9th Cir. 2016).

¹⁷ The Editorial Board, *The Injustice of Making Kids Pay*, N.Y. TIMES, Sept. 5, 2016, https://www.nytimes.com/2016/09/05/opinion/the-injustice-of-making-kids-pay.html?_r=3.



Just a week before President Barack Obama left office, the U.S. Department of Justice issued a formal advisory to local juvenile justice jurisdictions regarding such fees:

Before courts impose fines and fees on juveniles – even on those rare juveniles who might be able to pay – they should consider whether such financial burdens serve rehabilitation. In many cases, fines and fees will be more punitive than rehabilitative, and they may in fact present an impediment to other rehabilitative steps, such as employment and education.¹⁸

Across the country, anti-poverty advocates, criminal justice reform advocates, and even probation officers and justices of the court have joined in a call to end juvenile justice fees and, instead, support investments in stabilizing youth re-entering and their families. The National Council of Juvenile and Family Court Judges (NCJFCJ) recently passed a resolution at its 2018 National Conference to support the elimination the hardships associated with fines, fees, and costs in juvenile courts.¹⁹ They are joined by numerous professional organizations including the American Bar Association, National Juvenile Defender Center, the Juvenile Law Center, and Conference of Chief Justices/Conference of State Court Administrators in recognizing the negative consequences of imposing juvenile justice related fines and fees.

Mental Health Programming Needed to Support System Involved Youth

By offering grant funding to states which have ended the assessment and collection of juvenile justice fees & fines for mental health services instead, the Eliminating Debtor's Prison for Kids Act of 2019 incentivizes states to move toward a services model that supports the rehabilitative goals of the juvenile justice system.

Mental health disorders are prevalent among youths in the juvenile justice system. One analysis conducted a decade ago suggested that, at some juvenile justice contact points, as many as 70 percent of youths have a diagnosable mental health problem. This is consistent with other studies that point to the overrepresentation of youths with mental health or behavioral health disorders within the juvenile justice system.²⁰ Meanwhile, many youth who enter the system confront significant traumatic experiences which can exacerbate their mental health disabilities or disorders or, in some cases, be the cause of

¹⁸ 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* (2017), <https://ojp.gov/about/ocr/pdfs/AdvisoryJuvFinesFees.pdf>.

¹⁹ NCJFCJ 2018 Resolution: http://www.ncjfcj.org/sites/default/files/FinesFeesCosts_Resolution_FNL_3-17-18.pdf

²⁰ "Intersection between Mental Health and the Juvenile Justice

System," a literature review by the Office of Juvenile Justice and Delinquency Prevent, available at:

<https://www.ojjdp.gov/mpg/litreviews/Intersection-Mental-Health-Juvenile-Justice.pdf>



them.²¹ Supporting programming to address the mental health needs of this population while also incentivizing the end to juvenile justice fees & fines makes the Eliminating Debtor's Prisons for Juveniles Act of 2019 the perfect mix of policy to support the national movement towards a more just, caring and successful youth justice system.

Western Center Endorses Eliminating Debtor's Prisons for Juveniles Act of 2019

In California, the goals of the juvenile justice system include preserving and strengthening family ties and facilitating the speedy "reunification of the minor with his or her family."²² Research shows that juvenile administrative fees frustrate these goals by harming families financially, straining family relations, and increasing recidivism. Many of the fees are also being imposed unlawfully, and counties are failing to adequately determine whether families can afford to pay the fees.²³ Research further shows that collection of these fees nets little revenue, and most of what is recovered pays for collection activity. While Congress is limited in its ability to legislate the use of Juvenile Justice Related fees, it's power of the purse could be helpful in supporting state and local jurisdictions which seek to end the use of the fees by supporting alternatives to the fees that are known to improve outcomes for opportunity youth who are system involved. By incentivizing the end to the assessment of juvenile justice related fees and fines, the Eliminating Debtor's Prison for Kids Act of 2019 will reduce the financial burden on some of the state's most vulnerable families and support the reentry of youth back into their homes and communities. It will do so while also supporting programming to address trauma and other mental health burdens carried by system involved youth, which may have led them into trouble in the first place. We look forward to supporting your efforts in passing this important piece of legislation.

Sincerely,

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²¹ "Trauma Among Youth in the Juvenile Justice System," National Center for Mental Health and Juvenile Justice, available at: <https://www.ncmhj.com/wp-content/uploads/2016/09/Trauma-Among-Youth-in-the-Juvenile-Justice-System-for-WEBSITE.pdf>

²² CAL. WELF. & INST. CODE § 202(a) (West 2016).

²³ WCLP's SB 190 Implementation Letter: <https://wclp.org/wp-content/uploads/2017/11/SB-190-County-Implementation-Packet-2017.11.08-2.pdf>